GRAYSON HEIGHTS PROJECT
DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), pursuant to City Ordinance No. 2022_____, passed and approved on the __th day of ____ 2021 , is entered into by and between the City of San Antonio, a Texas Municipal Corporation in Bexar County, Texas ("City"), the Board of Directors ("Board") for Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas, and Grayson Heights LLC ("Developer"), a Texas corporation, whom together may be referred as the "Parties".

RECITALS

WHEREAS, in response to a petition submitted in May of 2021 by Developer, the City, through Ordinance No. 93101, established Tax Increment Reinvestment Zone Number Eleven, San Antonio, Texas, known as the Inner City TIRZ ("TIRZ") in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), to promote development and redevelopment which may not have occurred through private investment in the reasonably foreseeable future, and created the Board, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, the City and the Board recognize the importance of their continued role in development activities and actively participate in funding projects that facilitate the City's economic goals and enhance the property values within the Inner City TIRZ; and

WHEREAS, the Grayson Heights Project is a mixed-use development approximately located across from Ft. Sam Houston in between Quitman St. and E Carson, consisting of 281 multi-family units, structured parking, associated amenities, retail space, and the necessary infrastructure improvements; and

WHEREAS, the total costs for the Grayson Heights Project is approximately $80 million; and

WHEREAS, up to $2,100,000.00 in funds will be utilized for public infrastructure improvements necessary to complete the project and shall be eligible for payment as Inner City TIRZ reimbursable funds; and

WHEREAS, Grayson Heights, LLC will contribute $500,000.00 to the City of San Antonio's Affordable Housing Fund; and

WHEREAS, in accordance with Section 311.010 (b) of the Act, the Board is authorized to enter into agreements to dedicate revenue from the tax increment fund to pay for eligible project costs that benefit the TIRZ; and

WHEREAS, on May 6, 2022, the Board adopted Resolution T11 2022-05-06-03R, attached and incorporated into this Agreement as **Exhibit A,** authorizing the execution of this Agreement to provide reimbursement for eligible Project Costs in an amount not to exceed $2,100,000.00.

WHEREAS, pursuant to said authority above, the Parties hereby enter into a binding agreement to develop the Project; **NOW, THEREFORE**,

In consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the Parties severally and collectively agree, and by the execution hereof are bound, to the performance and accomplishment of tasks hereinafter described.

ARTICLE I. AGREEMENT PURPOSE

Developer shall undertake the Project which is anticipated to benefit the City, enhance the value of all the taxable real property in the TIRZ, and promote economic development which would not otherwise occur solely through private investment in the reasonably foreseeable future.

ARTICLE II. TERM

TERM. The term of this Agreement shall be from the Effective Date through the earlier of 1) Developer's receipt of the Maximum Reimbursement Amount; or (2) termination of the TIRZ, or (3) termination of this Agreement as provided for herein.

ARTICLE III. DEFINITIONS

3.1 **Agreement, City, Board, and Developer** – shall have the meaning specified in the preamble of this document.

3.2 **Act** – means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as may be amended from time to time.

3.3 **Administrative Costs –** means the reasonable costs incurred directly and/or indirectly by the City for the administration of the TIF Program.

3.4 **Adversarial Proceedings** – means any cause of action involving this Agreement filed by Developer against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.

3.5 **Available Tax Increment** – has the meaning given in the Act, Section 311.012 (a), contributed by each participating taxing entity to the TIRZ Fund, and distributed in accordance with the order of priority of payment of the TIRZ.

3.6 **Completion –** In order for the Project to achieve a state of "Completion,' Public Improvements must be accepted by City as "completed" in accordance with Section 2.8 and 4.1 of this Agreement.

3.7 **Construction Schedule –** means the specific timetable for constructing the Project, which Developer shall commence construction at the Project Site as stated in Section 5.1 and shall use commercially reasonable efforts to complete construction, subject to Force Majeure and any applicable provision pursuant of this Agreement.

3.8 **Contract Progress Payment Request ("CPPR") –** means the request form prepared and submitted by Developer for reimbursement due to the Developer pursuant to the requirements of this Agreements and the CPPR Form, attached hereto and incorporated herein for all purposes as **Exhibit B**. The CPPR shall also include and reflect all waivers granted through any City program or incentives.

3.9 **Effective Date** – means the last date that is listed on the signature page of this Agreement.

3.10 **Finance Plan** – means the Inner City TIRZ Finance Plan, as defined in the Act, and approved and amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

3.11 **Force Majeure** – means any event beyond the control of a party and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent that event or circumstance, including, without limitation, acts of God, fire, flood, storm, earthquake, accident, war, rebellion, insurrection, riot, or invasion.

3.11 **Participating Taxing Entity** – means any governmental entity recognized as such by Texas law which is participating in this Project by contributing a percentage of its tax increment.

3.12 **Person –** means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

3.13 **Policy** – means the City of San Antonio's Tax Increment Financing Policy as of the effective date of this Agreement..

3.14 **Project** – has the meaning found in Section 5.1 of this Agreement.

3.15 **Project Costs –** has the meaning found in the Act, Section 311.002. Project Costs are limited to expenses approved by the Board within the TIRZ boundary, incurred after execution of this Agreement.

3.16 **Project Plan** – means the Project Plan as defined in the Act for the Inner City TIRZ as approved and periodically amended by the Board and the City and incorporated by reference for all purposes into this document as if set out in its entirety.

3.17 **Project Site** – The real property located across from Ft. Sam Houston at multiple addresses between Quitman St, Spofford Avenue, E Carson, and N. New Braunfels San Antonio, Texas 78208 (as more fully described in the metes and bounds attached hereto and incorporated herein for all purposes as **Exhibit C**).

3.18 **Project Status Report** – means the document the Developer prepares and submits in accordance with this Agreement's requirements and **Exhibit D,** attached hereto and incorporated herein for all purposes.

3.19 **Public Improvements** – means improvements that provide a public benefit, including but not limited to utilities, streets, streetlights, water and sewer facilities, walkways, parks, flood and drainage facilities, parking facilities, demolition work, fencing and landscaping, without regard to location in or outside of the public right of way, and the categories of work included in the definition of Project in this Agreement or listed in the Finance Plan.

3.20 **Public Infrastructure** – means a building, highway, road, excavation, and repair work or other project development or public improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction and the categories of work included in the definition of Project in this Agreement.

3.21 **Tax Increment** – has the meaning found in the Act, Section 311.012. Tax Increment applies only to taxable real property within the TIRZ.

3.22 **TIF** – means Tax Increment Financing.

3.23 **TIRZ Fund** – means the fund created by the City for the deposit of Tax Increment for the zone, entitled "Reinvestment Zone Number Eleven, City of San Antonio, Texas."

3.24 **TIF Division –** means the division of the City's Neighborhood & Housing Services (or successor) Department responsible for the management of the City's Tax Increment Financing Program.

3.25 **TIRZ** – means Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas, known as the Inner City TIRZ.

Singular and Plural: Words used in the singular, where the content so permits, also include the plural and vice versa, unless otherwise specified.

ARTICLE IV. REPRESENTATIONS

When an improvement has both private and public benefits, only that portion dedicated to the public may be reimbursed by the City, such as, but not limited to, capital costs, including the actual costs of public improvements, alteration, remodeling, repair, or reconstruction of existing buildings and structures.

4.1 CITY'S AUTHORITY. City represents that it is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

4.2 BOARD'S AUTHORITY. The Board represents that the TIRZ, as established pursuant to City Ordinance No. 93101, has the authority, through the Board Chair's affixed signature to this Agreement, to carry out the functions and operations contemplated by this Agreement.

4.3 DEVELOPER'S AUTHORITY. Developer represents that it has the right to enter into this Agreement and perform the requirements set forth herein. Developer's performance shall be lawful and shall not violate any applicable judgment, order, or regulation nor result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIRZ Fund only from Available Tax Increment to the extent provided herein. Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

4.4 NO INCREMENT REVENUE BONDS. Neither the City nor the Board will issue any tax increment revenue bonds to cover any costs directly or indirectly related to Developer's improvement of the TIRZ under this Agreement.

4.5 REASONABLE EFFORTS. Each party to this Agreement will cooperate and make reasonable efforts to expedite the subject matter hereof and acknowledge that successful performance of this Agreement requires their continued cooperation.

4.6 CONSENTS. Each party to this Agreement represents that the execution, delivery, and performance of this Agreement requires no consent or approval of any person that has not been obtained.

4.7 DUTY TO COMPLETE IMPROVEMENTS. Each party understands and agrees that Developer shall ensure the successful completion of all required improvements at no additional cost to the City and/or the TIRZ in accordance with the terms of this Agreement, even after the TIRZ terminates.

4.8 NO INTERLOCAL AGREEMENTS. Each party to this Agreement understands and agrees that the City is the only participating taxing entity contributing 100% of the tax increment to the TIRZ Fund for this Project, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

4.9 DEVELOPER BEARS THE RISK. Developer understands and agrees that any expenditure made by Developer in anticipation of reimbursement of TIRZ Funds shall not be, nor shall be construed to be, the financial obligations of City and/or the TIRZ. Developer bears all risks associated with reimbursement, including, but not limited to incorrect estimates of tax increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and unanticipated effects covered under legal doctrine of force majeure. Any contribution made by Developer in anticipation of reimbursement from the TIRZ Fund shall never be an obligation of the general funds of the City but are only obligations of the TIRZ Fund, and are subject to limitations herein.

4.10 RIGHT TO ASSIGN PAYMENT. The Parties may rely upon the payments to be made to them out of the TIRZ Fund as specified in this Agreement and Developer may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to Developer.

ARTICLE V. THE PROJECT

5.1 PROJECT. The Project shall consist of approximately 280 multi-family units, 75,000 square feet of commercial/office space, a 166,000 square foot parking garage, green space, and a conference room space for community use. The Project includes revitalization of vacant and underutilized properties, rehabilitation of a historic structure, and the necessary public infrastructure to support the Project included but not limited to sidewalks, street reconstruction, landscaping, public utilities, exterior lighting, environmental remediation, and public park improvements. The Project is estimated to commence in June 2022 and be completed by December 31, 2023.

5.2 PRIVATE FINANCING. The cost of Public Improvements, capital costs and all other improvement expenses associated with the Project shall be funded by Developer's own capital or through commercial or private construction loans/lines of credit secured solely by Developer. Developer may use all, any or part of the TIRZ Property as collateral for the construction loan(s) as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication.

5.3 REIMBURSEMENT. Reimbursement of TIRZ Funds is subject to availability and priority of payment and are not intended to reimburse all costs incurred in connection with the Project or expenses incurred by Developer for performance of the obligations under this Agreement. Neither the City nor the Board can guarantee that Available Tax Increment shall completely reimburse Developer. Available Tax Increment shall constitute a source of reimbursement to Developer for construction of the Public Improvements to include sidewalks, street reconstruction, landscaping, public utilities, exterior lighting, environmental remediation, and public park improvements and further defined in Section 8.2. Total reimbursement to Developer from the TIRZ Fund will not exceed TWO MILLION ONE HUNDRED THOUSAND DOLLARS AND NO CENTS ($2,100,000.00). Developer is eligible for reimbursement of Project Costs in accordance with this Agreement. The terms by which the Project Costs will be reimbursed are further defined in **Exhibit G**, attached hereto and incorporated herein for all purposes.

ARTICLE VI. DUTIES AND OBLIGATIONS OF DEVELOPER

6.1 DISCRETIONARY PROGRAM. Developer agrees that the TIF Program is a discretionary program and that the City and the Board have no obligation to extend TIF to Developer. Developer agrees that it has no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future City Charter, City Code, City Ordinances, and state or federal laws and regulations.

6.2 COMPLIANCE. Developer, Developer's designee or development consultant agrees to exercise supervision over the construction of the public infrastructure and public improvements associated with the Project. Developer shall retain overall responsibility for the Project. Developer shall comply and cause its contractors and subcontractors to comply with all applicable provisions of the Policy, the City Charter, the City Code (including, but not limited to, the Unified Development Code such as Universal Design and Construction requirements), and all applicable federal, state and local laws. Developer shall cooperate with the City and the Board in providing all necessary information in order to assist the City in determining Developer's compliance with this Agreement.

6.3 DUTY TO COMPLETE. Developer agrees to complete, or cause to be completed, the improvements described in Section 5.1 above in accordance with this Agreement. Developer agrees to provide, or cause to be provided, all materials, labor and services for completing the Project. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of improvements.

6.4 COMMENCEMENT OF CONSTRUCTION. From the Effective Date of this Agreement forward, Developer shall not commence any construction on the Project until the plans and specifications have been approved by the appropriate City department and the requirements of all applicable federal, state, and local laws have been met.

6.5 PAYMENT AND PERFORMANCE BONDS. Developer shall cause its general contractor(s) to obtain payment and performance bonds which, in addition to being in favor of Developer shall name the City as co-beneficiary or co-obligee of the bonds for all phases of the construction of the Public Improvements on the Project Site, and which shall allow enforcement of such bonds by the City. Said bonds for each phase shall be in an amount sufficient to cover the entire contract cost of the construction and completion of the Public Improvement portions of the Project, detailed in Section 5.3 above. Developer shall submit copies of the payment and performance bonds to the City's TIF Division and its contractors; however, Developer must obtain approval of the bonds by the City's Risk Management Department prior to construction, of which approval shall not be unreasonably delayed.

6.6 SUPERVISION OF CONSTRUCTION. Developer retains overall responsibility for the Project; subject to this retention, Developer may delegate supervision duties over the construction of all Public Work, and cause said construction to be performed, at a minimum, in accordance with all legal requirements detailed in Section 6.2 above and also including Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate City department, notwithstanding any other provision of this Agreement.

6.7 DELAYS. Developer is responsible for the Project's construction, which is anticipated to be completed no later than December 31, 2023. If the commencement or completion of the Project is delayed by reason(s) beyond the Developer's control, then at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, or his or her designee, the commencement and completion deadlines set forth in this Agreement may be

extended by no more than six (6) months. In the event that Developer does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with Article XXII the Parties may extend the deadlines in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if Developer fails to complete the Project in compliance with the revised Construction Schedule, other than as a result of force majeure, such failure may constitute a material breach of this Agreement.

6.8 PAYMENT OF APPLICABLE FEES. Developer is responsible for paying Project construction costs of all applicable permit fees and licenses which have not been lawfully waived to the City and all governmental agencies.

6.9 INFRASTRUCTURE MAINTENANCE. At its own expense, Developer shall maintain or cause to be maintained all Public Works, broadly defined to include a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part, from public funds, without regard to whether the work is done under public supervision or direction, until said works' dedication to the City and for one (1) year after Completion. Upon acceptance of a street or drainage improvement for maintenance by the City, Developer shall deliver to the City a one (1) year extended warranty bond naming the City as the obligee in conformity with Chapter 35, the City's Unified Development Code. The cost of repair, replacement, reconstruction and maintenance for defects discovered during the first year after Completion disclosed to Developer by the City within a reasonable period of time, but no more than thirty (30) days from the time of discovery, shall be paid by Developer or the bond company and shall not be paid out of the TIRZ Fund. After the expiration of the one (1) year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of Public Improvements dedicated to the City shall be the sole responsibility of the City.

a. Developer, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, Developer shall use its best efforts to dedicate (or grant a public easement) Public Improvements where applicable to the appropriate taxing entity (as determined by the City), at no additional expense to the City or TIRZ.

b. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee, or City official or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a city employee or agent do not work as an estoppel against the City under this contract or the Unified Development Code.

6.10 QUARTERLY STATUS AND COMPLIANCE REPORTS. Upon the commencement and throughout the duration of the construction of this Project, Developer shall submit to the City's TIF Division Project Status Reports (see Sections 3.16 and 6.6 above), on a quarterly basis or, as requested by the City, in accordance with the requirements of this Agreement and of the Status Report Form, attached hereto as **Exhibit F**. If Project Status Reports are not submitted on a quarterly basis or as requested by the City or the Board, Developer shall not receive reimbursement from the TIRZ Fund in accordance with Section 5.3 above until after such reports are provided.

6.11 PROJECT SITE INSPECTION. Developer shall allow the City and the Board reasonable access to the Property Site owned or controlled by Developer for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project and Developer's compliance with this Agreement. The Board and TIF Division Staff shall

be provided a right of entry onto the Project Site to conduct random walk-through inspections of the Project's Development subject to all security and Site safety requirements.

6.12 REQUESTS FOR REIMBURSEMENT. Developer shall initiate reimbursement requests of eligible Project Costs by submitting to the City's TIF Division applicable invoices and a Contract Progress Payment Request Form ("CPPR"), as detailed in attached **Exhibit C.**

6.13 AFFORDABLE HOUSING FUND. Developer shall contribute FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS ($500,000.00) to the City of San Antonio's Affordable Housing Fund. Developer shall make the contribution by paying 23.81% of each reimbursement to the City of San Antonio's Affordable Housing Fund within thirty (30) days of receipt of the reimbursement from the TIRZ.

6.14 SOURCE OF INCOME DISCRIMINATION. Developer agrees that it shall not refuse to lease a housing unit constructed under this Agreement to an otherwise qualified person solely because that person's source of income to pay rent includes funding from a federal housing assistance program or a housing voucher directly or indirectly funded by the federal government. If Developer fails to comply with the requirements set forth in this section, the Agreement shall be terminated, and Developer:

a. shall refund any funds awarded under this Agreement with respect to the Phase of the Project in which such housing unit was located; and

b. may be precluded or debarred from being awarded or entering into any further contracts with the City through which Developer would participate or receive housing incentives.

ARTICLE VII. DUTIES AND OBLIGATIONS OF CITY AND BOARD

7.1 NO BONDS. Neither City nor the Board shall sell or issue any bonds to pay or reimburse Developer or any third party for any improvements to the TIRZ property performed under the Project Plan, Finance Plan, or this Agreement.

7.2 PLEDGE OF FUNDS. City and the Board pledge to use Available Tax Increment, as reimbursement to Developer for approved and eligible Project Costs, up to the maximum total amount specified herein, excluding tax revenue collected after, subject to the terms and conditions herein, priority of payment, and termination of the TIRZ.

7.3 COORDINATION OF BOARD MEETINGS. City and Board hereby agree that 1) all meetings of the Board as well as all administrative functions shall be coordinated and facilitated by the TIF Division; and 2) all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with the City Code and state law. TIF Division authority also extends to control of the Board Agenda in conjunction with established City policy.

7.4 COLLECTION EFFORTS. City and Board shall use reasonable efforts to cause each Participating Taxing Entity which levies real property taxes in the TIRZ to levy and collect their ad valorem taxes due on the TIRZ Property and to contribute their portion of the Available Tax Increment Funds toward reimbursing the Developer for the construction of the Public Improvements required under the Project Plan, Finance Plan and this Agreement.

7.5 ELIGIBLE PROJECT COSTS. Upon review of the TIF Division staff, the Board shall consider for approval Developer's request(s) for reimbursement of eligible Project Costs. Costs other than shall

be eligible for reimbursement only if approved by the Board incurred in the performance of, and in compliance with, this Agreement and with all applicable laws.

ARTICLE VIII. COMPENSATION TO DEVELOPER

8.1 CPPR APPROVAL. Upon completion of public infrastructure and public improvements related to the Project, Developer may submit to the TIF Division a completed CPPR. The TIF Division shall process each completed CPPR without unreasonable delay. Should there be discrepancies in the CPPR or if more information is required, Developer will have thirty (30) calendar days upon notice by the City and/the Board to correct any discrepancy or submit additional requested information. Failure to timely submit the additional information requested by the City may result in the delay of Developer's requested reimbursement.

8.2 MAXIMUM REIMBURSEMENT OF DEVELOPER. Following the Board's authorization, the Developer shall receive, in accordance with the Finance Plan, total reimbursements for Public Improvements, as specified in Section 5.3, of a maximum not to exceed TWO MILLION ONE HUNDRED THOUSAND DOLLARS AND NO CENTS ($2,100,000.00) on eligible Project Costs. The terms by which the Project Costs will be reimbursed are further defined in **Exhibit G**, attached hereto and incorporated herein for all purposes. Developer understands that any amendments to the maximum amount of reimbursement herein are prohibited and any request for further incentives beyond the amount set forth herein shall require a new application and subsequent approval by the Board and City Council.

8.3 PROCESSING OF PAYMENT REQUESTS. Board-authorized reimbursements of Available Tax Increment Funds shall be made to Developer and shall not be unreasonably delayed provided that the City has no active claim for reimbursement under this section.

8.4 PRIORITY OF PAYMENT. The Parties agree that the TIRZ Fund will reimburse Developer for Projects Costs in the order of priority of payment for the TIRZ.

8.5 SOURCE OF FUNDS. The source of the funds to reimburse Developer shall be from the Available Tax Increment levied and collected on the real property located in the TIRZ and contributed by the Participating Taxing Entities to the TIRZ Fund.

8.6 PARTIAL PAYMENTS. If Available Tax Increment does not exist in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority required by Section 8.4 above, and the remainder shall be paid as tax increment becomes available. No fees, costs, expenses, interest, or penalties shall be paid to any party on any late or partial payment.

8.7 INVALID PAYMENTS. If any payment to Developer is held invalid, ineligible, illegal or unenforceable under applicable federal, state or local laws, then and in that event, Developer shall repay such payment in full to the City for deposit into the TIRZ Fund.

ARTICLE IX. INSURANCE

9.1 Developer must require that the insurance requirements contained in this Article be included in all of its contracts or agreements for construction of Public Improvements where Developer seeks payment under this Agreement, unless specifically exempted in writing by the City and/or the Board.

9.2 PROOF OF INSURANCE. Prior to commencement of any work under this Agreement, Developer shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Division, which shall be clearly labeled **"Inner City TIRZ #11, Grayson Heights Project"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in Section 17.1 of this Agreement. The City shall have no duty to pay/perform under the Agreement until such certificate(s) and their endorsements has been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

9.3 REQUIRED TYPES AND AMOUNTS. Developer's financial integrity is of the interest to the City and the Board, therefore, subject to the Developer's right to maintain reasonable deductibles in such amounts as approved by the City, Developer and/or Developer's contractor, shall maintain in full force and effect during the construction of all Public Improvements required and any extension hereof, at the Developer's or the Developer's contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A– or better by the A.M. Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amounted listed:

TYPE	**AMOUNTS**
1. Workers' Compensation **2.** Employers' Liability	***Statutory*** $1,000,000.00/$1,000,000.00/$1,000,000.00
3. Commercial General Liability Insurance to include coverage for the following: **a.** Premises/Operations **b.** Products/Completed Operations **c.** Personal/Advertising Injury **d.** Contractual Liability **e.** Independent Contractors **f.** Damage to property rented by you	For Bodily Injury and Property Damage of: **$1,000,000.00** per occurrence; **$2,000,000.00** General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage. Coverage must include per project aggregate.
4. Business Automobile Liability: **a.** Owned/leased vehicles **b.** Non-owned vehicles **c.** Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of **$1,000,000.00** per occurrence.
5. Professional Liability (Claims-made basis)	**$1,000,000.00** per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of

	any act, malpractice, error, or omission in professional services.
6. Umbrella or Excess Liability Coverage	**$5,000,000.00** per occurrence combined limit Bodily Injury (including death) and Property Damage.
7. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any eligible new or existing structures.
8. Environmental Insurance –(Contractor's Pollution Liability (Claims-made coverage)	$1,000,000 per occurrence; $2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
9. Explosion, Collapse, Underground Property Hazard Liability	$2,000,000 per claim

9.4 RIGHT TO REVIEW. The City reserves the right to review the insurance requirements during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance shall the City allow modification whereupon the City may incur increased risk.

9.5 REQUESTS FOR CHANGES. The City shall be entitled, upon request and without expense to receive copies of the policies, declaration page and all endorsements as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy term, condition, limitation, or exclusion (except where policy provisions are established by law or regulation binding upon either of the Parties, or the underwriter of any such policies). Developer and/or Developer's contractor shall comply with any such request and shall submit a copy of the replacement certificate of insurance to City within ten (10) days of the requested change. Developer and/or Developer's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to the City and the Board at the addresses listed under Section 17.1 of this Agreement.

9.6 REQUIRED PROVISIONS AND ENDORSEMENTS. Developer agrees that with respect to the above required insurance, all insurance contract policies, and Certificate(s) of Insurance will contain the following provisions:

a. Name the City and its officers, officials, employees, volunteers, and elected representative as additional insureds as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability policies;

b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio if the City is an additional insured shown on the policy;

c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and,

d. Provide thirty (30) calendar days advance written notice directly to City at the same addresses listed in this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for non-payment of premium.

9.7 CANCELLATIONS AND NON-RENEWAL. Within five (5) calendar days of a suspension, cancellation, non-renewal, or material change in coverage, Developer and or Developer's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same address listed in Section 17.1 of this Article. City shall have the option to suspend Developer or Developer's contractor'(s) performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the City may exercise any and all available legal remedies.

9.8 CITY'S REMEDIES. In addition to any other remedies the City may have upon Developer and/or Developer's contractor for the failure to provide and maintain insurance or policy endorsements to the extent and within the time required, the City shall have the right, to order Developer to stop work, and/or withhold any payment(s), which become due until Developer and/or Developer's contractor demonstrates compliance with the requirements.

9.9 RESPONSIBILITY FOR DAMAGES. Nothing in the Agreement shall be construed as limiting in any way the extent to which Developer and/or Developer's contactor may be held responsible for payments of damages to persons or property resulting from Developer's or its subcontractors' performance of the work covered under this Agreement.

9.10 PRIMARY INSURANCE. Developer's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising under this Agreement.

9.11 DEVELOPER'S OBLIGATION. Developer agrees to obtain all insurance coverage with minimum limits of not less than the limits delineated under Section 9.3 of this Article from each subcontractor to Developer and Certificate of Insurance and Endorsements that names the Developer and City as additional insureds. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in the Agreement. Developer and any subcontractors are responsible for all damages to their own equipment and/or property. Developer must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to Agreement.

9.12 "ALL RISK". At all times during the performance of construction, Developer and it's contractor shall maintain in full force and effect builder's "All Risk" insurance policies covering such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a replacement cost basis, insuring 100% of the insurable value of construction improvements.

ARTICLE X. WORKERS COMPENSATION INSURANCE COVERAGE

10.1 This Article is applicable only to construction of Public Improvements, the costs for which the Developer is seeking reimbursement from the City and the Board, and is not intended to apply to the private improvements made by the Developer.

10.2 DEFINITIONS.

a. *Certificate of coverage ("certificate")* - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC- 81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.

b. *Duration of the project* - includes the time from the beginning of the work on the Phase of the Project until the Developer's/person's work on the project has been completed and accepted by the City.

c. *Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code)* - includes all persons or entities performing all or part of the services the Developer has undertaken to perform on the Project, regardless of whether that person contracted directly with the Developer and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

10.3 Developer must provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer, if any, providing services on the Project, for the duration of the Project.

10.4 Developer must provide a certificate of coverage to the City prior to being awarded the contract.

10.5 If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the Phase of the Project, Developer must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

10.6 Developer shall obtain from each contractor or subcontractor providing services on a project, and shall provide to the City:

a. a certificate of coverage, prior to that contractor or subcontractor beginning work on the Project, so City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

b. no later than seven (7) days after receipt by Developer, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

10.7 Developer will retain all required certificates of coverage for the duration of the Project, as described in Section 5.1, and for one (1) year thereafter.

10.8 Developer will notify the City in writing by certified mail or personal delivery, within ten (10) days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

10.9 Developer will post on the TIRZ property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

10.10 Developer will contractually require each person with whom it contracts to provide services on a Project, to:

a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable Phase of the Project;

b. provide to the Developer, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the applicable Phase of the Project;

c. provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

d. obtain from each other person with whom it contracts, and provide to the Developer:
(i) a certificate of coverage, prior to the other person beginning work on the Project; and
(ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

e. retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;

f. notify the City in writing by certified mail or personal delivery, within ten (10) business days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

g. perform as required by paragraphs a-f above with the certificates of coverage to be provided to the person for whom they are providing services.

10.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, Developer represents that all its employees to provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self Insurance Regulation. Providing false or misleading information

may subject Developer to administrative penalties, criminal penalties, civil penalties, or other civil actions.

10.12 Developer's failure to comply with any of these provisions is a breach of this Agreement and entitles the City and/or Board to declare the Agreement void and exercise all legal remedies if the Developer does not cure the breach within ten (10) business days after receipt of notice of breach from the City without necessity of the sixty (60) day cure period as set forth in Section 11.3.2 of this Agreement.

ARTICLE XI. TERMINATION AND RECAPTURE

11.1 TERMINATION. For purposes of this Agreement, termination means the expiration of the term, as provided by Article II. Term, herein. In addition, the City and/or the Board may terminate this Agreement in the following manners: (1) Termination without cause pursuant to Section 11.2, (2) Termination for cause pursuant to Section 11.3, and (3) Termination by law pursuant to Section 11.4.

11.2 TERMINATION WITHOUT CAUSE. This Agreement may be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, any proposed payment of outstanding reimbursements due, any pay-back plan of disbursed funds, and the proposed effective date of such termination.

11.3 TERMINATION FOR CAUSE/DEFAULT. Upon written Notice, which must be provided in accordance with Article XVII. Notice of this Agreement, the City and/or the Board shall have the right to terminate this Agreement for cause, in whole or in part, if Developer fails to: (1) comply with any material term or condition of this Agreement, which shall be deemed a default; and (2) fails to cure such default in accordance with the requirements set forth in this Article 11.

11.3.1 NOTICE OF DEFAULT. After sending a written Notice of Default, the City will not distribute TIRZ funds to Developer until the default is cured.

11.3.2 CURE. Upon written Notice of Default resulting from a material breach of this Agreement, such default will be cured within ninety (90) calendar days from the date of the Notice of Default (the "Cure Period"). In the case of default, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, or his or her designee, the Cure Period may be extended for such period of time reasonably necessary to allow Developer to cure such default, so long as, Developer commences to cure such default within the Cure Period and thereafter diligently pursues such cure, provided that Developer upon receipt of Notice of Default advise the City and the Board of Developer's intent to cure such default within the extended period granted. If there are no reasonable means to cure the default, Developer shall be apprised of that as well as the facts leading to that conclusion in the Notice of Default and said Notice of Default may serve as Notice of Termination.

11.3.3 FAILURE TO CURE. In the event Developer fails to cure any default of this Agreement within the Cure Period (or extended period), the City and the Board may, upon issuance to Developer of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.

11.3.4 REMEDIES UPON DEFAULT. The Parties shall have the right to seek any remedy in law to which they may be entitled, in addition to termination and repayment of funds, if a Party defaults under the material terms of this Agreement. The City and Board shall have the right to recapture disbursed funds associated directly with such default, pursuant to section 11.5 below and the Developer shall repay all such disbursed funds to the TIRZ Fund.

11.4 TERMINATION BY LAW. If any applicable state or federal law or regulation is enacted or promulgated which prohibits the performance of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

11.5 RECAPTURE. Only in the event of a termination pursuant to Section 11.3 for cause, the City and/or the Board, shall have the right to recapture all disbursed funds, as set forth herein, made under this Agreement and Developer shall repay disbursed funds as requested by the City and/or the Board in the said Notice of Termination within sixty (60) days from the effective date of the Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the TIRZ Fund.

11.6 CLOSE-OUT. Regardless of how this Agreement is terminated, Developer will effect an orderly transfer to City or to such person or entity as the City may designate, at no additional cost to the City, copies of all completed or partially completed documents, records, or reports, produced as a result of or pertaining to this Agreement, regardless of storage medium, if so requested by the City, or shall otherwise be retained by Developer in accordance with Article XIV. Records, of this Agreement. Reimbursements due to Developer, at the time of termination, will be conditioned upon delivery of all such documents, records, or reports, if requested by the City. Within ninety (90) calendar days of the effective date of completion, or termination or expiration of this Agreement, Developer shall submit to City and/or the Board all requests for reimbursements in accordance with Section 6.12 above through the effective date of termination. Failure by Developer to submit requests for reimbursements within said ninety (90) calendar days shall constitute a Waiver by Developer of any right or claim to collect Available Tax Increment that Developer may be otherwise eligible for pursuant to this Agreement.

ARTICLE XII. INDEMNIFICATION

12.1 **DEVELOPER covenants and agrees TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY (and the elected officials, employees, officers, directors, and representatives of CITY), and BOARD (and the officials, employees, officers, directors, and representatives of BOARD), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon CITY, and/or upon BOARD, directly or indirectly arising out of, resulting from or related to DEVELOPER, any agent, officer, director, representative, employee, consultant or subcontractor of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to CITY and/or the BOARD, under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.**

12.2 **It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS, CITY and the BOARD, from the consequences of CITY'S and/or the Board's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of CITY, and/or Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of City and/or Board is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY, AND/OR THE BOARD AND IN THE NAME OF CITY, AND IN THE NAME OF THE BOARD, any claim or litigation brought against CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

ARTICLE XIII. LIABILITY

13.1 DEVELOPER. As between City, the Board, any Participating Taxing Entity, and Developer, Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of Developer's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of the Agreement.

13.2 CITY AND BOARD. To the extent permitted by Texas law, no director, officer, employee or agent of City, Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIV. RECORDS

14.1 RIGHT TO REVIEW. Following notice to the Developer, City reserves the right to conduct, at its own expense, examinations, during regular business hours, of the books and records related to this Agreement including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Developer's services hereunder. The City and Participating Taxing Entities also reserve the right to perform any additional audits relating to Developer's services, provided that such audits are related to those services performed by Developer under this Agreement. These examinations shall be conducted at the offices maintained by Developer.

14.2 PRESERVATION OF RECORDS. All applicable records and accounts of the Developer relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Developer throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred for retention to the City at no cost to the City upon request. During this time, at Developer's own expense, the City and Participating Tax Entities may require that any or all such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within thirty (30) days following written request.

14.3 DISCREPANCIES. Should the City or Participating Tax Entities discover errors in the internal controls or in the record keeping associated with the Project, Developer shall be notified of such errors and the Parties shall consult on what steps may be necessary to correct such discrepancies within a reasonable period of time, not to exceed sixty (60) days after discovery. The Board shall be informed of the action taken to correct such discrepancies.

14.4 OVERCHARGES. If it is determined as a result of such audit that Developer has overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIRZ Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than two (2) percent of the greater of the budget or payments to Developer for the year in which the discrepancy occurred, and the TIRZ Fund is entitled to a refund as a result of such overcharges, then Developer shall pay the cost of such audit.

ARTICLE XV. NON-WAIVER

15.1 ACTIONS OR INACTIONS. No course of dealing on the part of the City, the Participating Tax Entities, the Board, or the Developer nor any failure or delay by the City, the Board, or the Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

15.2 RECEIPT OF SERVICES. The receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant(s) in this Agreement against assignment, or an acceptance of the assignee, or a release of the Developer from further performance by Developer of the covenant(s) contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City through an ordinance passed and approved by its City Council.

ARTICLE XVI. ASSIGNMENT

16.1 ASSIGNMENT BY CITY. The City and/or Board may assign their rights and obligations under this Agreement to any governmental entity the City creates without prior consent of Developer. If the City and/or Board assign their rights and obligations under this Agreement then the City and/or the Board shall provide Developer written notice of assignment within thirty (30) days of such assignment.

16.2 ASSIGNMENT BY DEVELOPER. Developer may sell or transfer its rights and obligations under this Agreement only upon approval and written consent by the Board, as evidenced by Board Resolution, and subsequent City Council approval, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement. Any participating taxing entities must acquiesce to such assignment in writing prior to any assignment.

16.3 WORK SUBJECT TO AGREEMENT. Any work or services referenced herein shall be by written contract or agreement and, unless the City grants specific waiver in writing, such written contract or agreement shall be subject by its terms, insofar as any obligation of the City or the Participating Tax Entities is concerned, to each and every provision of this Agreement. Compliance by Developer's contractor and/or subcontractors with this Agreement shall be the responsibility of Developer.

16.4 NO THIRD PARTY OBLIGATION. The City, the Participating Tax Entities and/or the Board shall in no manner be obligated to any third party except for permitted assignments pursuant to Sections 16.2, including any contractor, subcontractor, or consultant of the Developer, for performance of work or services under this Agreement.

16.5 LENDING INSTITUTIONS. Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. Developer shall notify the City of all such assignments to a lending institution or other provider of capital. In no event, shall the City and/or the Board be obligated in any way to the aforementioned financial institution or other provider of capital. The City shall only issue a check or other form of payment to Developer.

16.6 WRITTEN INSTRUMENT. Each transfer or assignment to which there has been consent, pursuant to Section 16.2 above, shall be by instrument in writing, in form reasonably satisfactory to the Board, and shall be executed by the transferee or assignee who shall agree in writing, for the benefit of the City, the Participating Tax Entities and the Board, to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to the TIF Division. Failure to obtain the Board's consent by resolution, or failure to comply with the provisions herein first, shall prevent any such transfer or assignment from becoming effective. In the event the Board approves the assignment or transfer of this Agreement, Developer shall be released from such duties and obligations.

16.7 NO WAIVER. Except as set forth in Section 16.3 of this Agreement, the receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenants in this Agreement against assignment or an acceptance of the assignee or a release of further observance or performance by Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by City Council in the form of a duly passed ordinance.

ARTICLE XVII. NOTICE

17.1 ADDRESSES. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

THE CITY	**THE BOARD**	**DEVELOPER**
City of San Antonio City Clerk Attn: Risk Management Dept. P.O. Box 839966 San Antonio, TX 78283-3966	Inner City TIRZ Attn: TIF Division City Tower 100 W. Houston St., 6th Floor San Antonio, TX 78205	Killen, Griffin & Farrimond, PLLC Grayson Heights, LLC. Attn: Ashley Farrimond 1422 E. Grayson Street, Suite 500 San Antonio, TX 78208

17.2 CHANGE OF ADDRESS. Notice of change of address by any Party must be made in writing and mailed to the other Parties within fifteen (15) business days of such change. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XVIII. CONFLICT OF INTEREST

18.1 CHARTER AND ETHICS CODE PROHIBITIONS. The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a prohibited "financial interest" in a contract with the City or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

a. A City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;

b. An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) ten (10) percent or more of the voting stock or shares of the entity, or (ii) ten (10) percent or more of the fair market value of the entity; or

c. An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

18.2 CERTIFICATION. Pursuant to the subsection above, Developer warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Developer does not cause a City employee or officer to have a prohibited financial interest in the Agreement. Developer

further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 NO AGENCY. All Parties expressly agree that in performing their services, the Board and Developer at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or Developer respectively shall be independent contractors of the Board and/or the Developer. The Parties hereto understand and agree that the City, the Participating Tax entities and the Board shall not be liable for any claim that may be asserted by any third party occurring in connection with services performed by Developer, under this Agreement unless any such claim is due to the fault of the City.

19.2 NO AUTHORITY. The Parties further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XX. TAXES

Developer shall pay, on or before the respective due dates, to the appropriate collecting authority all applicable Federal, State, and local taxes and fees which are now or may be levied upon the TIRZ Property owned by Developer, the Developer or upon the Developer's business conducted on the TIRZ Property or upon any of the Developer's property used in connection therewith, including employment taxes. Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developer.

ARTICLE XXI. PREVAILING WAGES

21.1 The TIF Program is a discretionary program, and it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," will apply to TIF Development Agreements. Developer agrees that the Developer will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

21.2 In accordance with Chapter 2258, Texas Government Code, and Ordinance No. 2008-11-20-1045, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement for the Public Work is included as **Exhibit E** and made a part of this Agreement. Developer is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer calls for bids for construction of a given phase.

21.3 Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts for the Public Work with the Developer's general contractor and all subcontractors for construction of each Phase. The Developer shall forfeit as a penalty to the City $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Developer or any subcontractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

ARTICLE XXII. CHANGES AND AMENDMENTS

22.1 ORDINANCE AND ORDER REQUIRED. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by the Presiding Officer of the Inner City Board of Directors, the City and Developer and evidenced by passage of a subsequent City ordinance.

22.2 CONSTRUCTION SCHEDULE. Notwithstanding the above, the Construction Schedule may be amended, as evidenced by approval of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee. In the event an amendment to the Construction Schedule as stated in Section 6.7 will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 22.1 above. For the purposes of section 22.1 and 22.2, the Parties agree that any extension of the Construction timeframes set forth in the Construction Schedule of less than twelve (12) months shall not be deemed a material change to this Agreement. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. Developer may rely on the determination of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee, whether a change in the Construction Schedule would result in a material change to the overall Project requirements.

22.3 AUTOMATIC INCORPORATION OF LAWS. Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement and shall become a part as of the effective date of the rule, regulation or law. Notwithstanding the foregoing, nothing contained herein shall be deemed to be a waiver by Developer of any right by Developer to assert or seek any vested rights pursuant to any applicable statute, law or regulation.

ARTICLE XXIII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, then said clause or provision shall not affect any other clause or provision, and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable provision, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXIV. LITIGATION EXPENSES

24.1 City policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation or adversarial proceedings related to TIF against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIRZ payment to persons engaged in litigation or adversarial proceedings related to TIF with the City or Participating Tax Entities. Ineligible persons shall be excluded from participating as either participants or principals in all TIRZ projects during the term of their litigation.

24.2 During the term of this Agreement, if Developer files or pursues an **adversarial proceeding** regarding this Agreement against the City, the Participating Tax Entities and /or the Board, without first engaging in good faith mediation of the dispute, then all access to funding provided hereunder shall be withheld and Developer will be ineligible for consideration to receive any future tax increment funding while any adversarial proceedings remain unresolved.

24.3 Under no circumstances will the Available Tax Increment received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any **adversarial proceeding** against the City, the Participating Tax Entities, the Board or any other public entity. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XII. above.

ARTICLE XXV. LEGAL AUTHORITY

25.1 Each person executing this Agreement on behalf of each Party, represents, warrants, assures, and guarantees that s/he has full legal authority to execute this Agreement on behalf of the City, Board, and/or Developer, respectively and to bind the City, Board, and/or Developer, to all the terms, conditions, provisions, and obligations of this Agreement.

ARTICLE XXVI. VENUE AND GOVERNING LAW

26.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

26.2 Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

ARTICLE XXVII. PARTIES' REPRESENTATIONS

27. 1 This Agreement has been jointly negotiated by the City, Board and Developer and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXVIII. CAPTIONS

28.1 All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

ARTICLE XXIX. LICENSES/CERTIFICATIONS

29.1 Developer warrants and certifies that, to its knowledge, any person providing services hereunder has the requisite training, license, and/or certification to provide said services and meets the competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXX. NONDISCRIMINATION AND SECTARIAN ACTIVITY

30.1 Developer understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex,

age, gender (to include transgender), sexual orientation, veteran status or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under Agreement.

ARTICLE XXXI. ENTIRE AGREEMENT

31.1 NO CONTRADICTIONS. This written Agreement embodies the final and entire Agreement between the Parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

31.2 INCORPORATION OF EXHIBITS. Each Exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

EXHIBIT A: Resolution T112022-05-06-03R, contract negotiation and execution authorization
EXHIBIT B: Contract Progress Payment Request Form
EXHIBIT C: Project Site
EXHIBIT D: Project Status Report Form
EXHIBIT E: Prevailing Wages
EXHIBIT F: Defined Reimbursement Terms

IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of each signature below. This agreement shall be effective on the date of the last signature below.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Erik Walsh City Manager

Date

BOARD OF DIRECTORS
Inner City TIRZ #11

Councilman Jalen McKee-Rodriguez, Board Chair

Date

Grayson Heights, LLC.

TITLE

Date

APPROVED AS TO FORM:

Assistant City Attorney