

AN ORDINANCE 2011-06-16-0509

AUTHORIZING AMENDMENTS TO THE DEVELOPMENT AGREEMENT ALLOWING FOR THE ASSUMPTION BY SAN ANTONIO HIGHLAND HEIGHTS DEVELOPMENT, LLC AND ACCOMPANYING AMENDMENTS TO THE FINAL FINANCE PLAN AND FINAL PROJECT PLAN FOR TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR, CITY OF SAN ANTONIO, TEXAS, KNOWN AS THE HIGHLAND HEIGHTS TIRZ.

* * * * *

WHEREAS, the City of San Antonio (“City ”) recognizes the importance of its continued role in economic development and on December 17, 1998, the City created Tax Increment Reinvestment Zone Number Four, by Ordinance Number 88998, in accordance with the Tax Increment Financing Act (“TIF Act”), and the City’s TIF Guidelines; and

WHEREAS, City Council approved the Final Project and Finance Plans for the Highland Heights TIRZ on August 26, 1999 through Ordinance Number 90381; and

WHEREAS, on October 30, 2006, the City entered into a Development Agreement including Final Project Plan and a Final Finance Plan with Highland Heights S.A., LLC, and the Board Of Directors For Reinvestment Zone Number Four, City of San Antonio, Texas (“Board”), and Interlocal Agreements with University Health Systems and Bexar County pursuant to Ordinance Number 2006-08-17-0916; and

WHEREAS, Highland Heights S.A. LLC, the current Developer, has failed to fulfill its duties and responsibilities under the Development Agreement; and

WHEREAS, San Antonio Highland Heights Development, LLC seeks the City’s consent in order to receive tax increment proceeds, and specifically agrees to assume all of the obligations and responsibilities of the Developer under the Development Agreement; and

WHEREAS, on May 25, 2011, the Board approved and adopted amendments to the Final Finance Plan, Final Project Plan, and Development Agreement allowing San Antonio Highland Heights Development, LLC to assume all the Developer’s responsibilities, duties, rights and benefits under the Development Agreement; and

WHEREAS, the TIF Act requires that City Council approve any amendment, assignment and assumption of the Development Agreement, the Final Finance Plan or the Final Project Plan, adopted by the Board; and

WHEREAS, it is now necessary for City Council to approve this assumption of the Development Agreement and accompanying amendments to the Final Project Plan and Final Finance Plan and to authorize the City Manager or her designee to execute the aforementioned agreement; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The assumption of all Developer responsibilities and duties as well as all rights, title and interest in the Development Agreement for Tax Increment Reinvestment Zone Number Four, City of San Antonio, Texas by San Antonio Highland Heights Development, LLC, is hereby approved.

SECTION 2. This Amendment to the Development Agreement, as approved on May 25, 2011 by the TIRZ Board, is approved, and a copy is attached as Exhibit 1 and incorporated into this Ordinance for all purposes.

SECTION 3. The amended Development Schedule in the Final Project Plan and Final Finance Plan for the TIRZ is feasible and approved, and a copy is attached and incorporated into this Ordinance for all purposes as Exhibit 2.

SECTION 4. Approval and execution of the attached changes have no fiscal impact. The City and other participating taxing entities' maximum contributions shall remain unchanged as will the termination date on or before September 20, 2017. Each entity is currently authorized to pay up to the following amount: City \$2,315,427, Bexar County \$1,274,341 and University Health System \$488,124 as authorized by and in accordance with the Development Agreement and TIF Act.

SECTION 5. If any provision of this Ordinance or the application of any provision of this Ordinance is held invalid, the remainder of this Ordinance shall nevertheless be valid and enacted without the invalid provision(s).

SECTION 6. This Ordinance shall take effect immediately upon passage by eight affirmative votes; otherwise, it shall be effective ten days after its passage.

PASSED AND APPROVED this 16th day of June, 2011.

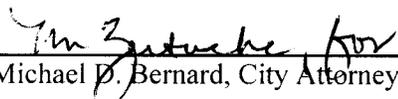

M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 19

Name:	5, 6, 8, 10, 11, 12, 13, 14, 15A, 15B, 15C, 15D, 15E, 15F, 16, 17, 18A, 18B, 19, 21, 22A, 22B						
Date:	06/16/2011						
Time:	10:19:32 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Amendment to the Highland Heights TIRZ Legal Documents to adjust the construction schedule and approval of the Assumption of the Highland Heights Development Agreement by San Antonio Highland Heights Development, LLC. [T.C. Broadnax, Assistant City Manager / Interim Director, Planning and Community Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				x
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Exhibit 1

**Highland Heights TIRZ
Assumption of the Development Agreement**

AGREEMENT FOR SAN ANTONIO HIGHLAND HEIGHTS DEVELOPMENT, LLC
TO ASSUME THE HIGHLAND HEIGHTS DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, TAX INCREMENT REINVESTMENT
ZONE NUMBER FOUR, AND HIGHLAND HEIGHTS S.A. LLC.

WHEREAS, the City of San Antonio ("City"), Texas, Highland Heights S.A., LLC, and the Board Of Directors For Reinvestment Zone Number Four, City of San Antonio, Texas ("Board"), entered into a Development Agreement pursuant to Ordinance Number 2006-08-17-0916, on or before October 30, 2006; and

WHEREAS, the Developer, Highlands Heights S. A., LLC, completed the development of Phase 1 of the Development Agreement with private capital and financing from KBM Real Estate Investments, Ltd.; and

WHEREAS, Highland Heights S. A., LLC executed a Deed in Lieu of Foreclosure to KBM Real Estate Investments, Ltd. dated February 2, 2010, and recorded under Document No. 20100023988 of the Official Public Records of Real Property of Bexar County, Texas; and

WHEREAS, KBM Real Estate Investments, Ltd. entered into a Special Warranty Deed to San Antonio Highland Heights Development, LLC ("New Developer"), dated February 2, 2010, and recorded under Document Number 20100023989 of the Official Public Records of Real Property of Bexar County, Texas, which included an assignment of the proceeds of the Development Agreement in order to obtain refinancing of the Project; and

WHEREAS, City must grant consent to effectuate any assignment of tax increment proceeds and Assumption of the Development Agreement; and

WHEREAS, New Developer seeks the written consent of the City in order to receive tax increment proceeds, and specifically agrees to assume all of the obligations and responsibilities of the Developer under the Development Agreement as required; and

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations and benefits contained in this Assumption Agreement, the Parties hereto agree as follows:

1. The New Developer hereby specifically agrees to assume all duties, obligations and liabilities and agrees to be bound by and to perform all of the obligations, duties, covenants, and conditions of the Developer under the Development Agreement, including the obligation to complete Phase 2 of the Project in accordance with the Development Agreement.
2. The City and Board hereby consent to the assumption of all rights and obligations under the Development Agreement by the New Developer and the specific agreement of the New Developer to assume all of the Developer's obligations under the Development Agreement.
3. Nothing herein shall be construed to waive the claims any party to this Assumption Agreement may have against Developer, which claims are specifically preserved. Further, nothing herein shall be construed as a release of claims as to Developer, nor a release of

Developer's rights, responsibilities, and obligations under the Development Agreement.

4. Paragraph 17.1 of the Development Agreement is amended to provide for notice to the New Developer as follows:

San Antonio Highland Heights Development, LLC
2579 Liberty Street
Ecaumont, TX 77702

5. Each person executing this Agreement represents, warrants, assures and guarantees that he or she has full legal authority to: (i) execute this Agreement on behalf of the City, Board, and New Developer, respectively; and (ii) to bind each Party hereto to all terms, conditions, provisions and obligations herein.

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

7. 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.

8. All captions used herein 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 hereto.

9. No Other Changes. Except as specifically set forth in this Assumption Agreement, all of the terms and conditions of the Development Agreement shall remain the same and are reconfirmed. The Development Agreement shall continue in full force and effect, and with this Assumption Agreement, shall be read and construed as one instrument.

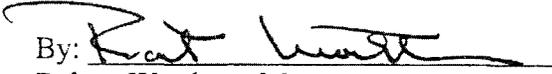
10. This written Agreement embodies the final and entire agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed as of the date of each signature below. This Assumption Agreement will become effective on the date of the last signature below:

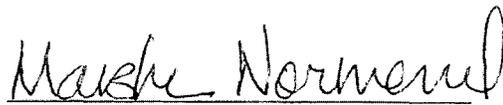
CITY OF SAN ANTONIO

NEW DEVELOPER
San Antonio Highland Heights
Development, LLC

SHERYL SCULLEY
City Manager
City of San Antonio

By: 
Robert Wortham, Manager

Date: _____

By: 
Marsha Normand, Manager

Date: 5/24/2011

BOARD OF DIRECTORS,
Tax Increment Reinvestment Zone Number Four

Name: _____
Title: Chairman, Board of Directors
Address: _____
Date: _____

Approved as to form:

City Attorney

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR, CITY OF SAN ANTONIO, TEXAS AUTHORIZING ASSUMPTION BY SAN ANTONIO HIGHLAND HEIGHTS DEVELOPMENT LLC. OF ALL RIGHTS, TITLE, AND INTEREST, ALONG WITH ALL RESPONSIBILITIES AND DUTIES OF DEVELOPER, IN AND TO THE DEVELOPMENT AGREEMENT.

Whereas, the Board of Directors of Tax Increment Reinvestment Zone Number Four, City of San Antonio, Texas, Highland Heights S.A. LLC, the City of San Antonio, Texas and Bexar County, Texas entered into a Development Agreement pursuant to Ordinance Number 2006-08-0916; and

Whereas, the First Phase of the Project that is the subject of the Development Agreement has been completed; and

Whereas, Highland Heights S.A. LLC, the Developer, has abandoned the Project and failed to fulfill its duties and responsibilities under the Development Agreement; and

Whereas, San Antonio Highland Heights Development LLC desires to assume the rights, title and interest, along with all responsibilities and duties, in and to the Development Agreement; and

Whereas, pursuant to section 16.3 of the Development Agreement this Board deems San Antonio Highland Heights Development, LLC to be qualified to assume the responsibilities of the Development Agreement; and

Whereas, nothing herein shall be deemed or construed to be a release of any party's claims against Highland Heights S.A. LLC arising from its actions or inactions pursuant to the Development Agreement, which claims are specifically reserved; and

Whereas, San Antonio Highland Heights Development, LLC is willing and able to perform all responsibilities and duties that would be required of it by the Development Agreement; and

Whereas, San Antonio Highland Heights Development, LLC specifically agrees to assume all remaining obligations of the Developer under the Development Agreement; and

Whereas, upon this Board's approval this assignment shall be forwarded to the City of San Antonio, Texas, University Health Systems and Bexar County, Texas who shall give consent, as evidenced by an ordinance passed and approved by City Council and a resolution or order passed and adopted by the Commissioners Court, prior to this assignment becoming effective; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX REINVESTMENT ZONE NUMBER FOUR, CITY OF SAN ANTONIO, TEXAS:

Section One. The recitals set out above are adopted in their entirety.

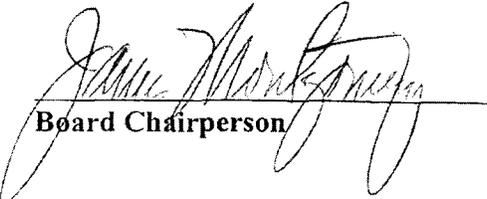
Section Two. The assumption of all rights, title and interest in the Development Agreement for the development of Tax Increment Reinvestment Zone Number Four, City of San Antonio, Texas by San Antonio Highland Heights Development, LLC, is hereby approved.

Section Three. The assumption of all Developer responsibilities and duties within the Development Agreement for the development of Tax Increment Reinvestment Zone Number Four, City of San Antonio, Texas by San Antonio Highland Heights Development, LLC, is hereby approved.

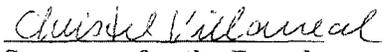
Section Four. All claims held by any party regarding Highland Heights S.A. LLC as related to its actions or inactions arising from its duties and responsibilities under the Development Agreement are preserved and are not waived hereby.

Section Five. Upon final approval of the assignment by the City Council of the City of San Antonio and Bexar County Commissioners Court, without the necessity for further action by this Board, the Chairman is hereby authorized to execute the necessary documents and or instruments to effectuate the assignment.

PASSED, APPROVED and ADOPTED this 25 day of May, 2011 to be effective upon the last approval date by either Ordinance of the City Council of the City of San Antonio, Texas or Resolution or Order of Bexar County Commissioners Court.


Board Chairperson

ATTEST:


Secretary for the Board

APPROVED AS TO FORM:

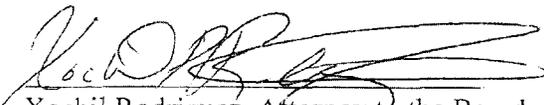

Xochil Rodriguez, Attorney to the Board

Exhibit 2

**Highland Heights TIRZ
Amended Development Schedule**

HIGHLAND HEIGHTS BLUFF
San Antonio, Texas
DEVELOPMENT SCHEDULE

	Takedown	New Rooftops		
2010 Lots				
Remaining	111			
2011				
First Quarter		15	10	
Second Quarter		15	10	
Third Quarter		15	10	
Fourth Quarter		15	10	
2012				
First Quarter		15	15	
Second Quarter		15	15	
Third Quarter		15	15	
Fourth Quarter		6	10	
2013				
First Quarter			10	
Second Quarter			6	
Third Quarter				
Fourth Quarter				
2014		111	111	
New Lots	63			
First Quarter				
Second Quarter		10	10	
Third Quarter		10	10	
Fourth Quarter		10	10	
2015				
First Quarter		10	10	
Second Quarter		10	10	
Third Quarter		10	10	
Fourth Quarter		3	3	
		63	63	253

Note: Bear in mind that the Developer does not build the houses.
The Developer sells to Builders and the Builders build houses.

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE HIGHLAND HEIGHTS TIRZ TO AMEND THE PROJECT AND FINANCE PLANS OF THE DEVELOPMENT AGREEMENT.

Whereas, the City of San Antonio (“City”), the Highland Heights TIRZ Board (“Board”) and Highland Heights, S.A. LLC (“Developer”) entered into a Development Agreement pursuant to Ordinance No. 2006-08-17-0916; and

Whereas, the City and Board also entered into an Interlocal Agreement for the Highland Heights TIRZ with Bexar County and the University Health System to which the above mentioned Development Agreement was attached and incorporated; and

Whereas, Highland Heights S.A. LLC, the Developer, is no longer involved in the development of the Project and failed to fulfill its duties and responsibilities under the Development Agreement; and

Whereas, San Antonio Highland Heights Development LLC desires to assume the rights, title and interest, along with all responsibilities and duties, in and to the Development Agreement; and

Whereas, with the assumption of the Development Agreement by San Antonio Highland Heights Development LLC, it is now necessary to amend the Construction Schedule in the Project Plan and Finance Plan of the Development Agreement; and

Whereas, City has determined that the above referenced changes to the Construction Schedule in the Project Plan and Finance Plan do not constitute a material change; and

Whereas, in accordance with Paragraph 23.2 of the Development Agreement, the Construction Schedule may be amended by approval of the Developer, Board and the City; and

Whereas, the Board approves the amendments to the Construction Schedule of the Project Plan and Finance Plan of the Development Agreement and requisite incorporation of those updates into both Interlocal Agreements; **NOW THEREFORE:**

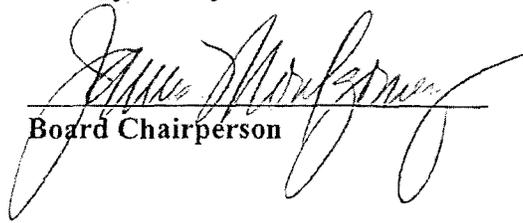
BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX REINVESTMENT ZONE NUMBER FOUR, THE HIGHLAND HEIGHTS TIRZ, CITY OF SAN ANTONIO, TEXAS:

Section 1: The recitals set out above are adopted in their entirety.

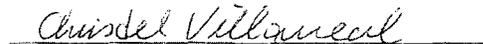
Section 2: The amendments to the Construction Schedule in the Project Plan and Finance Plan of the Development Agreement, attached as Exhibits A and B in substantially final form, are hereby approved.

Section 3: Parties understand that these changes may require further approval by City Council in order to be fully executed.

PASSED, APPROVED and ADOPTED this 25th day of May 2011.


Board Chairperson

ATTEST:


Secretary for the Board

APPROVED AS TO FORM:


Xochil Rodriguez, Attorney to the Board