

AN ORDINANCE 2012 - 03 - 01 - 0147

APPROVING THE EXTENSION OF THE TERM OF TAX INCREMENT REINVESTMENT ZONE NUMBER FIFTEEN (“NORTH EAST CROSSING TIRZ”) FOR UP TO TWO YEARS, THROUGH SEPTEMBER 30, 2028, WITH REGARD TO THE CITY ONLY, AND AUTHORIZING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY, NEIGHBORHOOD REVITALIZATION INITIATIVE, LTD. AND THE BOARD OF DIRECTORS FOR THE NORTH EAST CROSSING TIRZ TO PROVIDE FOR REIMBURSEMENT TO THE CITY FOR NECESSARY STREET REPAIRS.

* * * * *

WHEREAS, by Ordinance Number 95930, dated June 13, 2002 (“Creating Ordinance”), pursuant to Chapter 311 of the Texas Tax Code (as amended), the City (“City”) created the North East Crossing TIRZ (“Zone”) and established a board of directors for Zone (“Board”) in order to promote development and redevelopment of land in the Zone (“Zone Property”) through the use of tax increment financing; and

WHEREAS, pursuant to Ordinance Number 96177, passed and approved on August 8, 2002, Board entered into a Development Agreement with City and Neighborhood Revitalization Initiative, Ltd. (“Developer”) for the development of Zone Property and the Development Agreement was amended through the passage of Ordinance Number 101756, dated December 1, 2005; and

WHEREAS, certain streets in Units 5, 6 and 7 of the Zone (“Streets”) need repair and City and Developer agreed to a plan for such work through a Memorandum of Understanding and now City and Developer wish to amend the Development Agreement to provide that City shall make repairs to the Streets and be reimbursed with Zone funds up to the amount of \$600,000.00 and amend the Creating Ordinance to extend the Zone, with regard to the City only, for up to two years through September 30, 2028, allowing Developer to be reimbursed for Board-approved invoices displaced by City’s repayment; **NOW THEREFORE:**

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

SECTION 1. The Second Amendment to the Development Agreement between City, Board and Developer is authorized and approved. The City Manager or her designee is authorized to sign the Second Amendment. A copy of the Second Amendment, previously executed by Board and Developer, is attached to this Ordinance as **Exhibit I**.

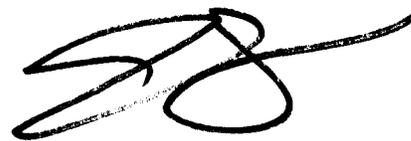
SECTION 2. An amendment to Ordinance Number 95930, passed and approved by City Council on June 13, 2002, is authorized and approved and the following language shall be added to Section 4 of the Ordinance:

“If necessary under the provisions of the Development Agreement, the term of the Zone will be extended beyond September 30, 2026 until Developer is reimbursed for any outstanding payments due under Section 6.2 of the Development Agreement in full or September 30, 2028, whichever is sooner (“Extension Period”). The Extension Period shall only apply to the City of San Antonio’s participation in the Zone. The Extension Period shall not apply to any other participating taxing entity. During the Extension Period, the City shall be paid its administrative costs provided for in the Development Agreement.”

SECTION 3. City staff is authorized to make any necessary changes to the Final Financing Plan required by this Ordinance.

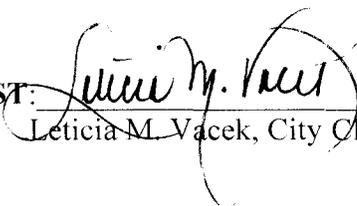
SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 1st day of March, 2012.



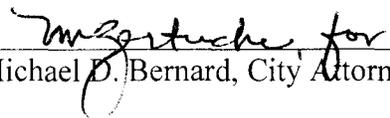
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

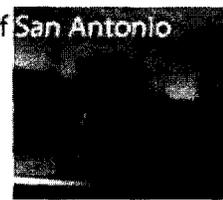


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 19

Name:	5, 6, 7, 8, 9, 10, 11, 13, 14A, 14B, 14C, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J, 15K, 15L, 16, 18, 19, 20A, 20B						
Date:	03/01/2012						
Time:	10:17:44 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance extending the term of Tax Increment Reinvestment Zone Number Fifteen (“North East Crossing TIRZ”) for up to two years, through September 30, 2028, and amending the Development Agreement between the City, Neighborhood Revitalization Initiative, Ltd. and the Board of Directors for the North East Crossing TIRZ to provide for reimbursement to the City for necessary street repairs. [David Ellison, Acting Assistant City Manager; John Dugan, Director, Planning and Community Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10	x					

Exhibit
I

**SECOND AMENDMENT OF THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, TEXAS and
NEIGHBORHOOD REVITALIZATION INITIATIVE, LTD., and
BOARD OF DIRECTORS OF
REINVESTMENT ZONE NUMBER FIFTEEN, CITY OF SAN ANTONIO, TEXAS**

This Second Amendment of the Development Agreement (“Amendment”) is made in multiple originals and is entered into by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation of Bexar County, Texas (“**CITY**”); **NEIGHBORHOOD REVITALIZATION INITIATIVE, LTD.**, a Texas limited partnership, (“**DEVELOPER**”); and **BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER FIFTEEN, CITY OF SAN ANTONIO, TEXAS** (“**BOARD**”).

WITNESSETH:

WHEREAS, by Ordinance Number 95930, dated June 13, 2002, **CITY** created Reinvestment Zone Number Fifteen ("Zone") in accordance with the Tax Increment Financing Act, as amended (Chapter 311 of the Texas Tax Code, Vernon’s Texas Codes Annotated, hereinafter called the “Act”) and established a board of directors for Zone; and

WHEREAS, on July 1, 2002, by a Board Resolution, **BOARD** adopted and approved a final Project Plan and a final Financing Plan defined hereunder and referred to herein as “Project Plan” and “Financing Plan” for the Zone; and

WHEREAS, **CITY** approved the Project Plan and Financing Plan for the Zone by Ordinance Number 96176 on August 8, 2002; and

WHEREAS, pursuant to said authority above, **BOARD** entered into a binding Development Agreement with **CITY** and **DEVELOPER** for **DEVELOPER** to develop the Zone Property as specified in the Project Plan, Financing Plan and Development Agreement; and

WHEREAS, by Ordinance Number 96177 on August 8, 2002, the City Manager of the City of San Antonio or the City Manager’s designee was authorized and did execute the Development Agreement (“Development Agreement”); and

WHEREAS, the Development Agreement was amended by **CITY**, **DEVELOPER** and **BOARD** (“First Amendment”) and by Ordinance Number 101756 on December 1, 2005, the City Manager of the City of San Antonio or the City Manager’s designee was authorized and did execute the First Amendment; and

WHEREAS, **CITY** notified **DEVELOPER** that there existed failures in certain streets within Zone Units 5, 6 and 7 (“Failures”) and requested that **DEVELOPER** correct such Failures and

after several discussions **CITY** and **DEVELOPER** agreed to a Memorandum of Understanding regarding the Failures (“MOU”); and

WHEREAS, the MOU provides that **DEVELOPER** will reimburse **CITY** the amount of \$20,135.20 as reimbursement of the City’s funds utilized to repair a portion of Geranium Path in Unit 5 of the Zone and **DEVELOPER** will enter into a construction contract with a third-party contractor to perform corrective work approved by **CITY** to address the Failures on or before December 2, 2011 and **DEVELOPER** has complied with both provisions at its own cost, which sum of money expended by **DEVELOPER** will not be reimbursed from the Zone fund; and

WHEREAS, the MOU also provides that **CITY** may, at its election, make certain repairs to the streets in Zone Units 5, 6 and 7 if such streets are in need of repair, on or before September 1, 2016, and be reimbursed up to \$600,000.00 from the Zone fund; and

WHEREAS, while not required by the Act, a Construction Schedule was attached to the Development and Interlocal Agreements as an exhibit and formed the basis for charts contained in the Final Financing Plan, in order to provide a mechanism for **CITY** and **DEVELOPER** to implement and monitor the progress of the construction in the Zone; and

WHEREAS, the phasing of the Construction Schedule for the Zone was anticipated by the parties and participating taxing entities to undergo amendments and be flexible as circumstances warranted; and

WHEREAS, **DEVELOPER** has requested the amendment of the phasing of the Construction Schedule exhibit, as market conditions have changed in the area; and

WHEREAS, the First Amendment modified the process for revising the Construction Schedule so that the phasing of the Construction Schedule is allowed to be amended by approval of **BOARD** and **CITY**, as evidenced by written agreement between **BOARD** and the Director of the Department of **CITY** responsible for the management of the TIF Programs, as long as the overall Final Project Plan and Final Financing Plans are not materially changed by such amendment; and

WHEREAS, although **DEVELOPER** and **CITY** do not believe that the amendment of the phasing of the Construction Schedule exhibit by **DEVELOPER** materially changes the overall Final Project Plan and Final Financing Plans, **DEVELOPER** has requested that the amendment of the phasing of the Construction Schedule exhibit be approved by **CITY** via an approved ordinance of the City Council of **CITY** to negate any future discussions or issues relating to the amendment of the phasing of the Construction Schedule exhibit materially changing the overall Final Project Plan and Final Financing Plans; and

WHEREAS, on February 7, 2012, by a Board Resolution, **BOARD** adopted and approved the Second Amendment of the Development Agreement; NOW THEREFORE:

In consideration of the terms, covenants, agreements and devises herein contained, and in consideration of other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree, covenant and warrant as follows:

A. **MOU**. The MOU which is attached to this Amendment as Attachment I, shall be incorporated into the Development Agreement for all purposes as Exhibit G. The MOU shall not be used to interpret the terms of this Amendment unless the MOU is specifically referenced in the section being construed.

B. **Section 3.3**. **The following shall be added as Section 3.3 of the Development Agreement and the remainder of Article III shall be renumbered accordingly:**

“City Repairs and Replacements. CITY may make any or all of the repairs set forth in Section 4(b) of the MOU on or before September 1, 2016 (“City Repairs and Replacements”). Upon the completion of such City Repairs and Replacements, CITY shall be reimbursed for such cost in an amount not to exceed \$600,000.00 (“City’s Reimbursement”). BOARD shall use Available Tax Increment Funds that would be otherwise payable to DEVELOPER and pay CITY the amount of City’s Reimbursement on or before the later to occur of: (i) ninety (90) days of receiving the request from CITY or (ii) fifteen (15) days after a sufficient amount of Available Tax Increment Funds become available to BOARD. The payment of City’s Reimbursement shall take priority over any payment to DEVELOPER and management fees due to CITY.”

C. **Section 6.2**. The following shall be added as Section 6.2 and the remainder of Article VI shall be renumbered accordingly:

“Payment of Developer Invoices During Extension Period.

“Should DEVELOPER have BOARD-approved invoices and/or financing costs that have not been reimbursed on September 30, 2026 (“Unpaid Amounts”) and City’s Reimbursement was paid to CITY, DEVELOPER shall be reimbursed for such Unpaid Amounts. The payment to DEVELOPER of such Unpaid Amounts shall be made on or before September 30, 2028 and the total amount to be paid to DEVELOPER for such Unpaid Amounts shall not exceed City’s Reimbursement plus interest at a rate of 5.48% per annum commencing on the date City’s Reimbursement was paid to CITY (“Interest”). As available Tax Increment Funds are received by BOARD after September 30, 2026, but before September 30, 2028, such funds shall be paid to DEVELOPER up to the amount of City’s Reimbursement plus Interest or a lesser amount if the Unpaid Amounts are less than the amount of the City’s Reimbursement plus Interest.”

D. **Construction Schedule**. Exhibit C entitled “North East Crossing Project Construction Schedule” of the Development Agreement is replaced with the “Revised North East

Crossing Project Construction Schedule,” which is attached to this Amendment as Attachment II and incorporated in its entirety into the Development Agreement. Exhibit E entitled Development Targets of the Development Agreement is amended by deleting the Construction Timetable at the end of the Exhibit and inserting the Revised North East Crossing Project Construction Schedule, which is attached to this Amendment as Attachment II.

- E. All other provisions and conditions of the Development Agreement are retained in their entirety and remain unchanged.

IN WITNESS WHEREOF, THIS SECOND AMENDMENT OF DEVELOPMENT AGREEMENT IS EXECUTED TO BE EFFECTIVE _____, 2012.

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
CITY MANAGER

DEVELOPER

**NEIGHBORHOOD REVITALIZATION
INITIATIVE, LTD., a Texas Limited Partnership**

By: GORDON H. INDUSTRIES, LP, a Texas Limited Partnership, its general partner

By: GH INDUSTRIES MANAGEMENT, LLC, a Texas limited liability company, its general partner

By: _____
Gordon V. Hartman, Member

**BOARD OF DIRECTORS OF REINVESTMENT
ZONE NUMBER FIFTEEN, CITY OF SAN
ANTONIO, TEXAS**

By: _____
Raoul Edward Berlanga, Presiding Officer

Approved as to form: _____
City Attorney

Attachment I
Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is executed as of the 10 day of October, 2011, by and between **CITY OF SAN ANTONIO**, a Texas municipal corporation (hereinafter called the "City") and **NEIGHBORHOOD REVITALIZATION INITIATIVE, LTD.**, a Texas limited partnership (hereinafter referred to as "**DEVELOPER**") (Sometimes CITY and DEVELOPER are collectively referred to as "Parties").

WHEREAS, the City notified Developer that there existed failures ("Failures") in certain streets within the Northeast Crossing Subdivision Units 5, 6 and 7 (the "Units") and requested that Developer correct such Failures; and

WHEREAS, pursuant to the terms of the Unified Development Code of the City of San Antonio ("UDC"), after the construction of certain streets, such construction shall be warranted for at least a year; and

WHEREAS, without admitting any liability for the Failures, Developer has agreed to reimburse City for funds expended to repair a portion of the Units and Developer has agreed to repair other portions of the Units; and

WHEREAS, the Parties have agreed to address the payment of the long term repair and replacement of the streets in the Units by using tax increment funds generated by Reinvestment Zone Number Fifteen ("Reinvestment Zone 15") to pay for the City's replacement and repair of the streets in the Units; and

WHEREAS, the Developer has come to an agreement with the City regarding the implementation of a plan to resolve this matter and they have entered into this Agreement to memorialize the Parties' agreement as to the repair and replacement of streets in the Units:

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The City accepts the payment of \$20,135.20 from Developer as reimbursement of the City's funds utilized to repair a portion of Geranium Path in Unit 5, Northeast Crossing Subdivision, and such funds will not be reimbursed to Developer from Reinvestment Zone 15; and
2. Developer shall enter into a contract with a third-party contractor to perform the work and repairs attached to this Agreement as Exhibit A ("Developer's Repair Work") to address the Failures and the Developer's Repair Work shall be substantially completed on or before December 2, 2011; such costs associated with Developer's Repair Work will not be reimbursed to Developer from Reinvestment Zone 15; and

3. The City shall inspect, monitor and approve all of Developer's Repair Work and, if such work performed by Developer is completed in accordance with the UDC, then the City shall: (i) provide a letter of completion within ten business days of final inspection, (ii) not legally pursue Developer to pay for any more repairs of the streets in the Units; and (iii) release Developer from any further liability concerning the one year warranty of the streets in the Units; and
4. Upon approval of the Board of Directors of Reinvestment Zone 15 ("Board") and the City Council of City ("City Council"), the City and Developer shall amend the Development Agreement and Ordinance creating Reinvestment Zone 15 to address the following issues ("Proposed Amendments"):
 - a. The term of Reinvestment Zone 15 and the Development Agreement shall be extended only to provide for 4(e), below;
 - b. On or before September 1, 2016, the City shall have the right but not the obligation to complete the work and repairs attached to this Agreement as Exhibit B or some of the work and repairs attached to this Agreement as Exhibit B ("City Repairs and Replacements");
 - c. Upon completion of City Repairs and Replacements, City shall be reimbursed from the Reinvestment Zone 15 fund in an amount to cover the cost of the City Repairs and Replacements but not to exceed \$600,000.00 ("City's Reimbursement");
 - d. To the extent Developer has Board-approved invoices for reimbursable costs and accrued interest (as prescribed in the Finance Plan) that have not been paid as of the last day of the term in 2026 ("Developer Invoices"), such Developer Invoices shall be paid during the Extension Period defined below, in an amount equal to City's Reimbursement plus interest at the rate of 5.48% commencing on the date of the payment of City's Reimbursement to the City ("Developer's Reimbursement");
 - e. The term of Reinvestment Zone 15 will be extended beyond September 30, 2026 until Developer is reimbursed in an amount equal to City's Reimbursement plus interest at the rate of 5.48% commencing on the date of the payment of City's Reimbursement to the City until paid in full or September 30, 2028, whichever is sooner ("Extension Period"). Only Developer's Reimbursement and any administrative fees due the City under the Finance Plan shall be paid during the Extension Period. No additional payments shall be considered;
 - f. Payment of City's Reimbursement shall take priority over any payment to Developer and TIRZ management fees paid to the City; and

- g. City's Reimbursement shall not be considered an amendment of the Financing Plan and should require no action by the Board or the City Council to be effective.

The Parties will use their best efforts to obtain the approval of the Board and the City Council to the Proposed Amendments within 120 days of the date of this Agreement. If the Board, Developer and City Council do not approve the Proposed Amendments prior to March 30, 2012, then this Section 4 shall automatically terminate; and

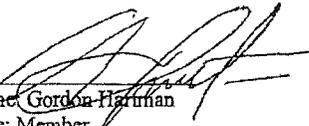
5. The City and Developer both agree and confirm that this Agreement has been freely and voluntarily entered into, and each has had an opportunity to present this Agreement to their counsel, and that no representations or promises of any kind, other than as contained herein, have been made by either party to induce any other party to enter into this Agreement; and
6. Nothing in this Agreement shall be construed as a waiver of, or limitation on, any future claims, causes of action, or remedies available to the City and the Developer.

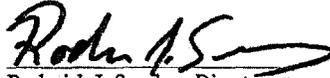
Accepted this 10 day of October, 2011.

**NEIGHBORHOOD REVITALIZATION
INITIATIVE, LTD.**, a Texas Limited Partnership

GORDON H. INDUSTRIES, LP,
a Texas Limited Partnership, its general partner

GH INDUSTRIES MANAGEMENT, LLC,
a Texas limited liability company, its general partner

By: 
Name: Gordon Hartman
Title: Member


Roderick J. Sanchez, Director
Development Services

Approved as to form:

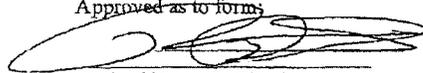

Michael Bernard, City Attorney

EXHIBIT A

Northeast Crossing Unit 5		
	<u>Location</u>	<u>Original Area</u>
5-1	Wisteria Hill at intersection with Woodlake Parkway	7' x 93' (651 sf)
5-2	Wisteria Hill Between Magnolia Bluff and Hibiscus Falls	8' x 190' (1,520 sf)
5-5	Iris Isle in front of lots 2, 3, and 4	8' x 230' (1,840 sf)
5-6	Crack Seal all the cracks in the streets from curb to curb and block to block in Unit 5	
5-7	Iris Isle patch around cul-de-sac	8' x 67' (536 sf)

Northeast Crossing Unit 7		
	<u>Location</u>	<u>Original Area</u>
7-2	Crack Seal all the streets curb to curb and block to block in Unit 7	

EXHIBIT B

Northeast Crossing Unit 5, 6 and 7		
	<u>Street Name</u>	<u>Area</u>
1	Azalea Square	4,719 sy
2	Blossom Bend	815 sy
3	Bluebonnet Bay	2,824 sy
4	Clematis Trail	3,352 sy
5	Geranium Path	1,554 sy
6	Hibiscus Falls	2,055 sy
7	Iris Isle	1,365 sy
8	Linda Vista	1,568 sy
9	Magnolia Bluff	5,092 sy
10	Monets Garden	1,731 sy
11	Plumbago Place	3,389 sy
12	Primrose Post	2,150 sy
13	Wisteria Hill	7,172 sy

Note: The above mentioned streets shall be repaired with mill / overlay and any base failures encountered.

Attachment II
Revised North East Crossing Project Construction Schedule

Year	Single-Family	Multi-Family
2002-2010	429	
2011	5	
2012	40	
2013	60	
2014	65	
2015	70	
2016	70	
2017	70	
2018	80	
2019	80	
2020	80	
2021	75	250
2022	80	
2023	80	
2024	80	
Total	1364	250