

FORM 132.M
(Approving/Authorizing)

City of Houston Ordinance No. 96-909

AN ORDINANCE APPROVING AND AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF HOUSTON, THE REINVESTMENT ZONE NUMBER THREE AND THE HOUSTON HOUSING FINANCE CORPORATION FOR THE REDEVELOPMENT OF THE RICE HOTEL; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 11th day of September, 1996.

APPROVED this _____ day of _____, 19_____.

Mayor of the City of Houston

FORM 132.M
 (Approving/Authorizing)

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is SEP 17 1996

[Signature]
 City Secretary

(Prepared by Legal Dept.
 (JSW:WHU: 8/22/96)
 (Requested by Director, Finance & Administration)
 (L.D. File No.)

[Signature]
 Assistant City Attorney

c:\wpdocs\whor1244

AYE	NO	
✓		MAYOR LANIER
••••	••••	COUNCIL MEMBERS
		ABSENT-VACATION HUEY
✓		YARBROUGH
✓		WONG
✓		BONEY
✓		TODD
✓		DRISCOLL
✓		KELLEY
✓		FRAGA
✓		CASTILLO
✓		SAENZ
✓		ROACH
✓		SANCHEZ
✓		PEAVY
✓		ROBINSON
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: SEP 17 1996

AGREEMENT BY AND BETWEEN THE
CITY OF HOUSTON, TEXAS,
REINVESTMENT ZONE NUMBER THREE, CITY OF HOUSTON, TEXAS,
AND THE
HOUSTON HOUSING FINANCE CORPORATION

STATE OF TEXAS §

COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is made by and between the City of Houston, Texas, a municipal corporation and a home-rule city in the State of Texas (the "City"); Reinvestment Zone Number Three, City of Houston, Texas, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the "Market Square TIRZ"); and the HOUSTON HOUSING FINANCE CORPORATION, a not-for-profit housing finance corporation organized and existing under the laws of the State of Texas (the "HHFC").

W-I-T-N-E-S-S-E-T-H:

WHEREAS, by resolution of the City Council of the City adopted on December 5, 1979, the City authorized the creation of HHFC to aid, assist and act on behalf of the City in the provision of housing within the City; and

WHEREAS, by City Ordinance No. 95-1323, the City created the Market Square TIRZ pursuant to Chapter 311, Texas Tax Code (the "TIRZ Act") and approved a preliminary Project Plan and a preliminary Financing Plan for the Market Square TIRZ; and

WHEREAS, the City has appointed a Board of Directors of the Market Square TIRZ ("TIRZ Board") to govern the Market Square TIRZ; and

WHEREAS, the City and the Market Square TIRZ have prepared and approved a final Project Plan and a final Financing Plan for the Market Square TIRZ; and

WHEREAS, the Project Plan includes the acquisition and rehabilitation of the Rice Hotel by HHFC; the remediation of asbestos and lead paint from the Rice Hotel; the demolition of the annex to the Rice Hotel and construction of a parking garage in lieu thereof; and the construction of a tunnel from the Rice Hotel to connect with the tunnel system in the downtown area of the City; and

WHEREAS, the City created the Market Square TIRZ pursuant to the TIRZ Act with a duration from January 1, 1996 until (1) December 31, 2025, or (2) such time, subsequent to the issuance of tax increment bonds, if any, that all Project Costs, tax increment bonds, and the interest on the bonds, have been paid in full, whichever comes first; and

WHEREAS, HHFC has agreed to acquire the Rice Hotel, remediate asbestos and lead paint, demolish the annex to the Rice Hotel and construct a parking garage, construct a tunnel system (as contemplated in the Project Plan), and remodel the Rice Hotel as a housing rental project in consideration of the City and the TIRZ Board making payments to HHFC as contemplated by this Agreement; and

WHEREAS, the Rice Hotel is a structure of historical significance to the City, which has been vacant and unoccupied for 18 years and is in a deteriorating condition; and

WHEREAS, the restoration and preservation of the Rice Hotel is a public benefit to the City and its residents; and

WHEREAS, the City has issued a Certificate of Appropriateness for the demolition of the Rice Hotel annex pursuant to Chapter 33 of the Code; and

WHEREAS, because HHFC is a public, not-for-profit housing finance corporation created to aid, assist, and act on behalf of the City, its projects and activities (including those contemplated for the Rice Hotel) will constitute "public works and improvements" within the meaning of Chapter 311 of the Texas Tax Code, and as provided in the Project Plan; and

WHEREAS, Chapter 311 of the TIRZ Act and Chapter 394, Local Government Code, authorize the City, the Market Square TIRZ, and HHFC to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed as follows:

ARTICLE I.

DEFINITIONS

"Agreement" shall mean this Agreement and all attachments hereto between the City, the Market Square TIRZ, and HHFC.

"Appraisal District" shall mean the Harris County Appraisal District.

"Captured Appraised Value" shall mean the total appraised value of property in the Market Square TIRZ as of January 1 of any year less the Tax Increment Base of the Market Square TIRZ, all as defined in the TIRZ Act. *of the City...*

"City" shall mean the City of Houston, Texas.

"City Council" shall mean the City Council of the City.

"Code" shall mean the Code of Ordinances, Houston, Texas, which includes the City's Building Code and the Fire Code.

"County" shall mean Harris County, Texas.

"Developer" shall mean an entity that agrees to remodel or rehabilitate the Rice Hotel or any part thereof for residential, retail, or commercial activities.

"Disadvantaged Business" as used in Section 311.0101 of the TIRZ Act and in this Agreement shall, for the purposes of the Market Square TIRZ and any Project or Financing Plans related thereto, have the same meaning as Minority Business Enterprise or Women-owned Business Enterprise as set out in Chapter 15 of the Code and certified by the City's Affirmative Action office.

“Finance and Administration Department” shall mean the Department of Finance and Administration of the City.

“Financing Plan” shall mean the reinvestment zone financing plan for the Market Square TIRZ as amended from time to time pursuant to the TIRZ Act, as approved by the City Council of the City and the TIRZ Board.

“HHFC Board” shall mean the Board of Directors of the Houston Housing Finance Corporation.

“HHFC Obligations” shall mean the bonds, notes, or other contractual obligations which HHFC may incur from time to time pursuant to Article III hereof, and which are defined in Article III, Section B.

“Market Square TIRZ” shall mean Reinvestment Zone Number Three, City of Houston, Texas, as enlarged from time to time, which was created by City Ordinance No. 95-1323.

“Project Costs” shall have the meanings set forth in Section 311.002(1) and the other provisions of the TIRZ Act and as set out in the Project Plan.

“Project Plan” shall mean the Project Plan for the Market Square TIRZ as it may be amended from time to time by the City Council and the TIRZ Board pursuant to the terms of the TIRZ Act.

“Public Works Department” shall mean the Department of Public Works and Engineering of the City.

“Rice Hotel” shall mean the land and buildings located at 917 Texas Avenue, Houston, Texas 77002, which is shown on the map attached hereto as Attachment 1.

“Rice Hotel Project” shall mean the project described in Article II for the acquisition, improvement, and redevelopment of the Rice Hotel into loft apartments and commercial, retail, and office facilities.

“School District” shall mean the Houston Independent School District.

“Tax Increments” shall mean the total amount of ad valorem property taxes levied each year by each Taxing Unit participating in the Market Square TIRZ (to the extent of their agreement to participate) on the Captured Appraised Value. *in the Act*

“Tax Increment Base” shall mean the total appraised value of all real property taxable by the City located in the Market Square TIRZ as of January 1, 1995, the year in which the Market Square TIRZ was created and designated as a reinvestment zone, plus the total appraisal of all real property taxable by the City and the other Taxing Units participating in the Market Square TIRZ and annexed to the Market Square TIRZ determined as of January 1 of the year in which the area was annexed to the Market Square TIRZ.

“Tax Increment Fund” shall mean the Tax Increment Fund, which shall be a separate fund, created by the City for the Market Square TIRZ pursuant to Section A of Article IV, including any subaccount therein, into which Tax Increments shall be deposited by the City.

“Taxing Unit” shall mean the City, the County, the HISD, and all other governmental entities that levy an ad valorem tax on property in the Market Square TIRZ which agree to participate in the Market Square TIRZ.

“TIRZ Act” shall mean Chapter 311, Texas Tax Code.

“TIRZ Board” shall mean the Board of Directors of the Market Square TIRZ.

ARTICLE II.

ACQUISITION AND IMPROVEMENT OF RICE HOTEL BY HHFC

- A. Acquisition of Rice Hotel. HHFC agrees to acquire the Rice Hotel. After acquisition HHFC agrees to demolish the annex added to the Rice Hotel during 1958 and will construct on that site a parking garage suitable for use by tenants in the remodeled Rice Hotel. HHFC agrees to remediate asbestos and lead paint within the Rice Hotel and thereafter construct and remodel, or cause the construction and remodeling of the Rice Hotel into loft apartments and commercial, retail, and office space. HHFC also agrees to construct, or cause to be constructed, an underground pedestrian tunnel which will connect the Rice Hotel to the underground pedestrian walkway now serving downtown Houston.
- B. Historic Designation. HHFC agrees that it shall submit an application or cause one to be submitted for designation of the Rice Hotel as a City of Houston landmark pursuant to Chapter 33 of the Code on or before December 1, 1996. HHFC agrees on behalf of itself and on behalf of any lessee or assignee of HHFC that no historic preservation exemptions shall be claimed by HHFC, its lessee or assignee as a result of this designation. HHFC agrees that in any lease agreement or in any documents relating to the sale of the Rice Hotel a provision to this effect will be included.
- C. Equal Employment Opportunity. With respect to any work done by HHFC, pursuant to Section IIA, relating to (i) asbestos and lead paint remediation from the Rice Hotel, (ii) demolition of the annex, (iii) construction of the parking garage, and (iv) construction of the extension of the downtown pedestrian tunnel system to the Rice Hotel, HHFC agrees to comply fully with the provisions of the City's current Equal Employment Opportunity Ordinance, the provisions of which are set out in Attachment 2, or as they may be amended from time to time,.

D. Participation of Disadvantaged Business Enterprises. It is the policy of the City to insure that Minority and Women's Business Enterprises have the opportunity to fully compete for and participate in City contracts.

HHFC agrees to use its best efforts to carry out this policy through award of subcontracts to Disadvantaged Business enterprises with respect to (i) asbestos and lead paint remediation, (ii) demolition of the annex, (iii) construction of the parking garage, and (iv) construction of the extension of the downtown pedestrian tunnel system to the Rice Hotel to the extent consistent with the efficient performance of this Agreement.

Without limiting the generality of the foregoing, HHFC agrees that it will make Good Faith Efforts (as defined by the Director of Affirmative Action) to award 17% of the value of contracts awarded by HHFC, with respect to (i) asbestos and lead paint remediation, (ii) demolition of the annex, (iii) construction of the parking garage, and (iv) construction of the extension of the downtown pedestrian tunnel system to the Rice Hotel to Disadvantaged Business enterprises. While it is not a requirement of this Agreement that HHFC, in fact, meet or exceed these goals, it is a requirement that HHFC objectively demonstrate to the City that it has exerted Good Faith Efforts to meet these goals. To this end, HHFC shall maintain records with respect to this work showing (i) its subcontracts, supply agreements and support with and to Disadvantaged Business enterprises and (ii) specific efforts to identify and award subcontracts, supply agreements, and support with and to Disadvantaged Business enterprises. HHFC shall submit quarterly reports of its efforts under this Article to the Director of the City's Affirmative Action Division in such form and manner as the Director of Affirmative Action may prescribe.

E. Maintenance of Rice Hotel. HHFC agrees that in any lease agreement relating to the Rice Hotel Project or in any documents relating to the sale of the Rice Hotel it will cause the lessee or purchaser to agree to maintain the Rice Hotel in good condition as an historic structure.

F. Sale of Rice Hotel. After completion of the Rice Hotel Project, HHFC reserves the right to sell the Rice Hotel. Any sale shall obligate the purchaser to assume the obligations of the HHFC which it has to the City and the Market Square TIRZ under this Agreement. HHFC shall have no further obligation with respect to the Rice Hotel after the assumption of HHFC's obligations by the purchaser of the Rice Hotel. After the sale of the Rice Hotel, HHFC will still be entitled to the payments to be made by the City and the Market Square TIRZ pursuant to Article III of this Agreement.

ARTICLE III.

CONTRACTUAL OBLIGATIONS OF HHFC

A. General Statement. The parties have agreed that HHFC may issue, sell, or place bonds or notes, or enter into other HHFC Obligations with Developers or other entities to be repaid from and secured with moneys to be paid by the City and the Market Square TIRZ to HHFC from Tax Increments pursuant to this Agreement.

B. Power to Issue HHFC Obligations. Subject to the provisions of this Article, HHFC shall have the power from time to time to issue bonds and notes and incur HHFC Obligations upon such terms and conditions as the HHFC Board shall determine to be necessary or desirable which will be secured by and payable from the payments made by the Market Square TIRZ and the City pursuant to this Agreement. HHFC Obligations may be in the form of a bond or bonds, or a note or notes, or in the form of a contract with a Developer or other entity who agrees to construct works, improvements, or other facilities included in the Rice Hotel Project. HHFC may issue its bonds or

notes, or incur other HHFC Obligations from time to time without any further approval of the City or the Market Square TIRZ, to the extent allowed by law. HHFC agrees to notify the Director of the Finance and Administration Department and the Chairperson of the TIRZ Board in the event HHFC proposes to issue bonds or notes, or to incur HHFC Obligations, secured by or payable from the payments made by the Market Square TIRZ and the City pursuant to this Agreement.

C. Use of Tax Increments. HHFC may use the moneys paid by the City and the Market Square TIRZ to (1) pay principal and interest on the bonds and notes of HHFC, (2) make payments on other HHFC Obligations as required by the contracts entered into with Developers or other entities, or (3) reimburse itself for costs and expenses associated with the Rice Hotel Project which are eligible as Project Costs.

D. Pledge of Tax Increments. Without further approval of the City or the Market Square TIRZ, HHFC may pledge and assign all or a part of the payments to be made under this Agreement to:

1. the owners and holders of bonds and notes of HHFC; and
2. Developers or other entities pursuant to its contractual obligations.

The City and the TIRZ Board consent to any such assignment and pledge.

ARTICLE IV.

DUTIES AND RESPONSIBILITIES OF THE CITY

A. Tax Increment Fund. The City and the Market Square TIRZ will establish a separate fund including subaccounts if necessary in the City Treasury into which Tax Increments shall be deposited (the "Tax Increment Fund").

B. Administration Expenses of the Market Square TIRZ. Notwithstanding any other provision of this Agreement, the City and the Market Square TIRZ reserve the right to use the first

\$10,000 per year from Tax Increments paid into the Tax Increment Fund for the purposes of paying the non-City costs of administering and operating the Market Square TIRZ.

C. Payments to HHFC. The City and the Market Square TIRZ agree, for a twenty-five (25) year term, to pay to HHFC the sum of \$750,000 per year from Tax Increments paid into the Tax Increment Fund by all participating Taxing Units to reimburse HHFC for its costs associated with the (1) acquisition and renovation of the Rice Hotel, (2) asbestos and lead paint remediation from the Rice Hotel, (3) demolition of the annex added to the Rice Hotel in 1958, (4) construction of a new parking garage on that site, (5) construction of an extension of the downtown pedestrian tunnel system to the Rice Hotel, and (6) other improvements to the Rice Hotel described in Article II. The City and the TIRZ Board agree that beginning with the year 1996, the first \$750,000 of Tax Increments each year paid into the Tax Increment Fund shall be paid to HHFC for a twenty-five (25) year period of time. If in any year, including the year 1996, the Tax Increments are not adequate to pay \$750,000 to HHFC, the deficit, plus interest at the rate of 8% per annum compounded annually, shall be paid to HHFC in a future year or years during the term of this Agreement in which the Tax Increments exceed \$750,000.

D. Taxation of Rice Hotel. HHFC agrees to include in any lease agreement or any sale documents of the Rice Hotel a requirement that the lessee or the purchaser of the Rice Hotel render the Rice Hotel for taxation to the Harris County Appraisal District at not less than \$27,000,000 during the term of this Agreement. HHFC agrees that no exemption from ad valorem taxes for historical or any other purposes shall be taken on the Rice Hotel. Any lease or sale agreement relating to the Rice Hotel shall contain a provision prohibiting the lessee or purchaser from claiming an exemption from ad valorem taxes on the Rice Hotel for the term of this Agreement.

E. Limitation of Source of Payment. The City and the Market Square TIRZ shall have no financial obligation to HHFC other than as provided in this Agreement. The obligation of the City and the Market Square TIRZ to HHFC under this Agreement is limited to the Tax Increments. This Agreement shall create no obligation on the City or the Market Square TIRZ that is payable from taxes or other moneys of the City other than the Tax Increments.

F. Allocated Funds; Limitation of Duties of the City and the Market Square TIRZ. The duty of the City and the Market Square TIRZ to pay money to HHFC for any purpose under this Agreement is limited in its entirety by the provisions of this Article. The payments herein provided for shall be the entire and complete compensation of HHFC for undertaking the Rice Hotel Project.

G. Collection and Payment of Tax Increments by the City and the Market Square TIRZ. The City and the Market Square TIRZ covenant and agree that they will take all necessary steps authorized under the TIRZ Act and other applicable laws to continuously collect the Tax Increments during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. To the extent the City and the Market Square TIRZ may legally do so, the City and the Market Square TIRZ also covenant and agree that they will not permit a reduction, abatement, or exemption in the Tax Increments paid by the Taxing Units. In addition, the City covenants and agrees that it will not dissolve HHFC and that any repeal of the right and power to collect the Tax Increments will not be effective until all the bonds, notes, or other HHFC Obligations have been paid in full, legally defeased, or all payments have been made to HHFC as provided in this Agreement. The City and the Market Square TIRZ further covenant and agree to pay, on the beginning of each calendar quarter, to HHFC by a direct deposit into a fund of HHFC (the "HHFC Rice Hotel Fund"), 100% of the Tax Increments after retaining \$10,000 per year pursuant to Section B of Article IV hereof and prior to the payment of any other obligations, without counterclaim or offset, and without deduction

of costs of collection or other City expenses, until all payments due under this Agreement to HHFC are current. In the event the City and the Market Square TIRZ make a payment of Tax Increments which has been paid under protest by a taxpayer and the taxpayer is successful in its protest, then the amounts to be repaid to the protesting taxpayer shall be offset against future Tax Increments. The return of any money to a protesting taxpayer shall not diminish the obligation of the City and the Market Square TIRZ to make the payments as required by this Agreement but shall only affect the time of the payment.

H. Pledge of Tax Increments to HHFC. (a) The City and the Market Square TIRZ hereby irrevocably pledge the Tax Increments to the payment of their obligations to HHFC pursuant to the terms of this Agreement. Except as provided in Section B of Article IV, all payments to the City and the Market Square TIRZ for expenses of creating the Market Square TIRZ, for its administration, or for the costs of collection of the Tax Increments shall be subordinate to the obligation to make the payments to HHFC as required by this Agreement.

(b) The lien on, pledge of, and rights in and to the Tax Increments established, made, and granted in subsection (a) of this Section shall constitute a first and senior lien thereon, subject only to (i) the rights of the City and the Market Square TIRZ to pay up to \$10,000 per year of non-City costs of operating and maintaining the Market Square TIRZ; and (ii) the rights of any of the holders of bonds, notes, or other obligations that have been heretofore or are hereafter issued by a Taxing Unit that are payable from and secured by a general levy of ad valorem taxes throughout the Taxing Unit.

I. Obligations of the City and the Market Square TIRZ to be Absolute. The obligation of the City and the Market Square TIRZ to make the payments set forth in this Agreement from Tax Increments shall be absolute and unconditional, and until such time as this Agreement, bonds or

notes, and the other contractual obligations of HHFC incurred pursuant to this Agreement have been fully paid or provision for payment thereof shall have been made in accordance with their terms the City and the Market Square TIRZ will not suspend or discontinue any payments provided for in this Agreement and will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the failure of HHFC to perform and observe any agreement contained herein, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, including the duty to complete the Rice Hotel Project. Nothing contained in this section shall be construed to release HHFC from performance of any of the agreements on its part contained in this Agreement, and in the event HHFC shall fail to perform any such agreement on its part, it is expressly provided that the City may at law or in equity, by suit, mandamus action or any other proceeding enforce and compel performance of all duties required to be performed by HHFC under this Agreement, so long as this action does not abrogate the obligations of the City and the Market Square TIRZ to make the payments set forth in this Agreement in order for HHFC to be able to pay its bonds and notes or to meet its other HHFC Obligations. The City and the Market Square TIRZ may bring an action for HHFC's failure to perform under this Agreement. Any damages will be subordinate to the pledge by HHFC of the revenues received pursuant to this Agreement to the owners or holders of its bonds, notes, or other obligations.

J. Subordinate Lien Obligations. The City and the Market Square TIRZ reserve the right to issue bonds or notes or enter into other contractual obligations secured in whole or in part by liens on the Tax Increments that are junior and subordinate to the lien on the Tax Increments pledged to the payment of the obligations to HHFC pursuant to this Agreement. Any subordinate lien obligations may be further secured by any other source of payment lawfully available for such purposes.

K. Remedies. This Agreement shall be and remain irrevocable until all payments to HHFC shall have been made as provided herein. In the event of a default in the performance of any duty or covenant provided by law or in this Agreement, HHFC and its assignees may pursue all legal remedies afforded by the Constitution and laws of the State of Texas to compel the City and the Market Square TIRZ to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the foregoing, it is expressly provided that HHFC, or its assignees, may at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the City and the Market Square TIRZ under this Agreement, including the deposit of the Tax Increments into the Tax Increment Fund herein provided, and the application of such Tax Increments in the manner required by this Agreement.

ARTICLE V.

PUBLIC CONVENIENCE AND SAFETY

A. Observance of City Code. HHFC shall observe City Code in completing the Rice Hotel Project.

B. Performance of Duties. HHFC shall perform its duties in a manner that will cause the least inconvenience and annoyance to the general public and the property owners, and will exercise every necessary precaution for the safety of the property and the protection of any and all persons and property located adjacent to or making passage through said property.

ARTICLE VI.

PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by State law, no director of HHFC, nor any employee or agent of HHFC, no director of the Market Square TIRZ, nor any employee or agent of the Market Square TIRZ, and no officer or employee of the City, nor any agent of the City, shall be personally responsible for any liability arising under or growing out of the Agreement, or operations of HHFC under the terms of this Agreement.

ARTICLE VII.

RELEASE

HHFC, ON BEHALF OF ITSELF, ITS SUCCESSORS, LESSEES, ASSIGNS AND SURETIES HEREBY RELEASES THE CITY, THE MARKET SQUARE TIRZ, AND THEIR SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, AGENTS, EMPLOYEES, AND OFFICERS FROM ANY LIABILITY ARISING OUT OF THE CITY'S OR THE MARKET SQUARE TIRZ'S ACTS OR OMISSIONS RELATING TO THIS AGREEMENT, WITH THE EXCEPTION OF THE CITY'S OBLIGATIONS TO MAKE PAYMENTS AS SET OUT IN ARTICLE IV-B AND C ABOVE. THIS RELEASE APPLIES TO ANY SUCH LIABILITY WHETHER EXISTING NOW OR ARISING IN THE FUTURE AND SHALL EVEN EXTEND TO LIABILITY ARISING OUT OF THE CITY'S JOINT OR SOLE NEGLIGENCE.

HHFC SHALL REQUIRE ITS LESSEES, ASSIGNS, PURCHASERS (OF THE RICE HOTEL), SUCCESSORS AND SURETIES TO EXECUTE A RELEASE OF THE CITY CONTAINING THE ABOVE TERMS AND CONDITIONS AS A PART OF ANY CONTRACT BETWEEN HHFC AND SUCH ENTITIES.

ARTICLE VIII.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that HHFC shall perform all work and services on the Rice Hotel Project as an independent contractor and not as an officer, agent, servant, or employee of the City or the Market Square TIRZ; that except as herein provided, HHFC shall have exclusive control of and the exclusive right to control the details of the Rice Hotel Project (provided it is consistent with the Project Plan), and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between the City or the Market Square TIRZ and HHFC, its officers, agents, employees, contractors, and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the City or the Market Square TIRZ and HHFC. No person performing any of the work and services on the Rice Hotel Project shall be considered an officer, agent, servant, or employee of the City or the Market Square TIRZ.

ARTICLE IX.
INSURANCE

HHFC shall obtain and maintain in effect during the term of this Agreement, insurance coverage in at least the amounts set out below, and shall furnish the City with certificates of insurance documenting such coverage prior to the beginning of the Rice Hotel Project. HHFC may satisfy this obligation by requiring any lessee, purchaser, or assignee of the Rice Hotel to obtain and maintain such coverage. If lenders or other parties involved in the financing of the Rice Hotel Project do not require at least the following types and amounts of insurance, HHFC shall notify the City Attorney in writing. If the City Attorney does not approve the alternate insurance coverage, HHFC shall purchase the coverages set out above but only if the City provides to HHFC sufficient funds to pay:

- (1) the premiums for any coverages not provided at all, and/or
- (2) the additional premium increment to bring existing insurance coverage up to the limits set out below.

All such policies except Worker's Compensation shall be primary to any other insurance and shall name the City and the Market Square TIRZ as an additional insured. All liability policies shall be issued by a Company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key Rating Guide, Property-Casualty United States.

HHFC shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance (including Pollution liability):
 - \$1,000,000 per occurrence; \$2,000,000 aggregate (defense costs excluded from face amount of policy)

- (2) Workers' Compensation including Broad Form All States endorsement:
 - Amount shall be in statutory amount
- (3) Automobile Liability insurance
 - \$1,000,000 combined single limit per occurrence
- (4) Commercial Property insurance
 - Replacement Value of the Rice Hotel
- (5) Builder's Risk (during renovation only - no exclusions for property under renovation)
 - Aggregate Limits are per 12-month policy period unless otherwise indicated

All insurance policies required by this Agreement shall require on their face, or by endorsement, that the insurance carrier waive any rights of subrogation against the City or the Market Square TIRZ, and that it shall give thirty (30) days written notice to the City and the Market Square TIRZ before the policy may be cancelled or materially changed. Within such thirty (30) day period, HHFC covenants that it will provide other suitable policies in lieu of those about to be cancelled or materially changed, so as to maintain in effect the coverage required under the provisions hereof.

ARTICLE X.

LAW TO BE OBSERVED

HHFC at all times shall observe and comply with all federal and state laws, local laws, ordinances, codes, orders, and regulations of the federal, state, county, or city governments, or other administrative bodies thereof. The federal, state and local laws, ordinances, and regulations which affect those engaged or employed in the work, or the equipment used in the work, or which in any way affects the conduct of the work, shall be at all times in effect, and no pleas of misunderstanding shall be considered on account of ignorance thereof.

ARTICLE XI.

PERMITS

Before proceeding with the work hereunder, HHFC shall obtain and pay for any necessary permits and licenses, whether issued by the state, county, or city, and upon the request of the Director of Finance and Administration and/or the Director of Public Works and Engineering of the City shall furnish proof thereof.

ARTICLE XII.

INFORMATION

HHFC shall, at such times and in such form as City may require, furnish periodic information concerning the status of HHFC and the performance of its obligations under this Agreement, and such other statements, certificates and approvals relative to HHFC as may be requested by the City.

ARTICLE XIII.

COORDINATION WITH CITY OFFICIALS

HHFC will coordinate its activities with the Department of Public Works and Engineering and the Department of Finance and Administration of the City.

ARTICLE XIV.

ADDRESS AND NOTICE

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to HHFC at the following address:

Houston Housing Finance Corporation

c/o J.S. Norman, Jr.

Norman and Norman

9545 Katy Freeway, Suite 125

Houston, Texas 77024

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to the City at the following address:

Director
Department of Finance and Administration
City of Houston
P.O. Box 1562
Houston, Texas 77251

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to the Market Square TIRZ at the following address:

Market Square Tax Increment Reinvestment Zone
c/o Houston Downtown Management Corporation
1111 Bagby, Suite 2600
Houston, Texas 77002-2546

ARTICLE XV.

APPLICABLE LAWS

This Agreement is made subject to the Constitution and laws of the State of Texas and the Charter of the City.

ARTICLE XVI.

CAPTIONS

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, or part of this Agreement.

ARTICLE XVII.

SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of the City, of the Market Square TIRZ, or of HHFC.

ARTICLE XVIII.

TERM AND TERMINATION, DISSOLUTION OF HHFC
AND THE MARKET SQUARE TIRZ

A. In General. The initial term of this Agreement shall begin on the date of countersignature and end upon the earlier of (i) termination of the Market Square TIRZ or (ii) the date all payments required by this Agreement have been made to HHFC.

B. Dissolution of HHFC. The City agrees not to dissolve HHFC unless it makes satisfactory arrangements to provide for the payments of HHFC's bonds, notes, or other HHFC Obligations incurred prior to HHFC's dissolution.

C. Dissolution of Market Square TIRZ. The City agrees not to dissolve the Market Square TIRZ unless it makes satisfactory arrangements to provide for all payments which the City and the Market Square TIRZ are to make to HHFC pursuant to the terms of this Agreement.

ARTICLE XIX.

AMENDMENT OR MODIFICATIONS

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only by the mutual written consent of the parties hereto.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of HHFC and the City in duplicate originals which shall be considered of equal force and effect.

DATED this ____ day of August, 1996.

HOUSTON HOUSING FINANCE
CORPORATION

THE CITY OF HOUSTON, TEXAS

President, Board of Directors

Mayor

ATTEST:

ATTEST:

Secretary, Board of Directors

City Secretary

COUNTERSIGNED:

City Controller

Date Countersigned: _____

APPROVED AS TO FORM:

Sr. Assistant City Attorney

L.D. File No. _____

Date: _____

DRAFT
August 22, 1996

REINVESTMENT ZONE NUMBER THREE,
CITY OF HOUSTON, TEXAS

Chairman, Board of Directors

ATTEST:

Secretary, Board of Directors

DRAFT

August 22, 1996

REINVESTMENT ZONE NUMBER THREE, CITY OF HOUSTON, TEXAS

Defined in preamble:

City
HHFC
Market Square TIRZ

Defined in Recitals:

public works and improvements
TIRZ Act
TIRZ Board

Defined in definitions:

Agreement
Appraisal District
Captured Appraised Value
City
City Council
Code
County
Developer
Disadvantaged Business
Finance and Administration Department
Financing Plan
HHFC Board
HHFC Obligations
Market Square TIRZ
Project Cost
Project Plan
Public Works Department
Rice Hotel
Rice Hotel Project
School District
Tax Increments
Tax Increment Base
Tax Increment Fund
Taxing Unit
TIRZ Act
TIRZ Board

Defined elsewhere in Agreement:

HHFC Rice Hotel Fund

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

53

SUBJECT: Ordinance Approving an Agreement with the Houston Housing Finance Corporation (HHFC) for Reinvestment Zone Number Three (Market Square)

Category: *W*

Page 1 of 2

Agenda Item: SEP 11 1996

40

FROM (Department or other point of origin): Planning and Development Department

Origination Date: 08-30-96

Agenda Date: SEP 04 1996

DIRECTOR'S SIGNATURE: *[Signature]*

Council District affected: 1 - John Castillo

For additional information contact: Robert M. Litke
Phone: 754-0008

Date and identification of prior authorizing Council action:

RECOMMENDATION: (Summary)

Adopt an ordinance approving an agreement with the Houston Housing Finance Corporation (HHFC) to participate in Reinvestment Zone Number Three, City of Houston, Texas, also known as the Market Square tax increment reinvestment zone (TIRZ).

-909

Amount of Funding:

F & A Budget:

SOURCE OF FUNDING: General Fund Grant Fund Enterprise Fund

Other (Specify)

SPECIFIC EXPLANATION:

The proposed agreement provides the mechanism by which the City, through Reinvestment Zone Number Three, City of Houston, Texas (the Market Square Zone) can facilitate the financing of the following activities relating to the remodeling of the Rice Hotel:

- (1) acquisition and improvement of the Rice Hotel by the Houston Housing Finance Corporation (HHFC);
- (2) demolition of the annex and parking structure added to the hotel in 1958;
- (3) construction of a new parking garage for tenants of the apartments;
- (4) remediation of asbestos and lead paint;
- (5) construction and remodeling of the Rice Hotel into loft apartments, commercial, retail and office space; and,
- (6) the construction of an underground pedestrian tunnel which will connect the Rice Hotel to the existing underground pedestrian walkway in downtown Houston.

Under the agreement, the City unconditionally will pay to the HHFC \$750,000 each year for 25 years only from the tax increments generated in the Market Square Zone. The tax increment will come from taxes levied by the City, Harris County and Houston Independent School District (up to a maximum \$410,000 per year) on the annual increase in value over the base year value of \$22,314,700 in the Market Square Zone. The obligation of the City to pay HHFC is superior to all other payments except that the first \$10,000 of tax increment annually may be used to pay for the administration of the Market Square Zone. If the tax increment is not adequate in any year, the deficit will accrue to be paid in future years when the tax increment is adequate, with 8% interest. The City is not obligated to make any payment out of the General Fund or from any source other than tax increments.

-continued-

REQUIRED AUTHORIZATION

F & A Director:

Other Authorization:

Other Authorization:

Date 08-30-96	Subject: Agreement with HHFC (Market Square TIRZ)	Originator's Initials	2 Page 2 of _____
-------------------------	---	----------------------------------	-----------------------------

In exchange for the City's unconditional promise to pay \$750,000 a year, HHFC agrees that it will carry out the activities listed above, apply for designation of the Rice Hotel as a City historic landmark, and cause any lessee or purchaser to maintain the Rice Hotel in good condition as an historic structure. The agreement authorizes the HHFC to use the annual payment from the City (1) to pay principal and interest on bonds and notes issued by the HHFC; (2) to pay contractual obligations of the HHFC; and, (3) to reimburse the HHFC for cost and expenses incurred in connection with the Rice Hotel that are eligible to be paid under Tax Increment Financing Act.

Attachment: ordinance

cc: Dan Jones, Agenda Director
Jimmie Schindewolf, Chief of Staff
Richard Lewis, F&A Director

Gene L. Locke, City Attorney
Anna Russell, City Secretary

dh:mksq6.rca