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**AFFORDABLE HOUSING AGREEMENT**

**between**

**THE CITY OF HOUSTON, TEXAS,**

**REINVESTMENT ZONE NUMBER FIVE, CITY OF HOUSTON, TEXAS  
(MEMORIAL HEIGHTS ZONE),**

**and**

**MEMORIAL-HEIGHTS REDEVELOPMENT AUTHORITY**

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**AFFORDABLE HOUSING AGREEMENT  
BETWEEN THE CITY OF HOUSTON;  
REINVESTMENT ZONE NUMBER FIVE, CITY OF HOUSTON, TEXAS; AND THE  
MEMORIAL-HEIGHTS REDEVELOPMENT AUTHORITY**

**STATE OF TEXAS           §  
                                      §  
COUNTY OF HARRIS       §**

**KNOW ALL MEN BY THESE PRESENTS**

This agreement for the provision of affordable housing ("Agreement") is made between the City of Houston, Texas ("the City"), a municipal corporation and home-rule city of the State of Texas, located in Harris County, Texas, acting by and through its governing body, the City Council; Reinvestment Zone Number Five, City of Houston, Texas, a tax increment reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code acting by and through its Board of Directors (the "Zone" or "Memorial Heights Zone"); and the Memorial-Heights Redevelopment Authority, a not-for-profit local government corporation organized and existing under the laws of the State of Texas acting by and through its Board of Directors (the "Authority"). For the purposes of this Agreement, the City, the Zone, and the Authority are referred to singularly as "Party" and collectively as "the Parties." It is the intention of the Parties to this Agreement to set forth, in writing, the terms and conditions of their understanding and agreement regarding the payment of costs to provide affordable housing in or out of the Zone.

**I. RECITALS**

**WHEREAS**, pursuant to Chapter 311 of the Texas Tax Code, as amended, the City created the Zone, approved by Ordinance No. 1996-1337 on December 18, 1996; and

**WHEREAS**, on May 21, 1997, by Ordinance No. 97-594, the City approved a Project Plan and Reinvestment Zone Financing Plan for the Zone, as amended on August 11, 1999

by Ordinance No. 1999-823 and on September 3, 2008 by Ordinance No. 2008-784 ("the Plans"). The Plans include the provision of affordable housing as a Project Cost; and

**WHEREAS**, pursuant to the Agreement between the City, the Zone, and the Authority approved by Ordinance No. 97-1590 on December 17, 1997 (the "Tri-Party Agreement"), the City is obligated to pay annually to the Zone and the Authority certain monies in the Tax Increment Fund of the Zone for the implementation of the Plans; and

**WHEREAS**, Section 311.010(b) of the Texas Tax Code allows the City to enter into an agreement with the Zone and the Authority to dedicate revenue from the tax increment fund to pay the costs of providing affordable housing in or out of the Zone; and

**WHEREAS**, the City, the Zone and the Authority desire to enter into this Agreement to provide for the payment of funds for the provision of affordable housing by the City pursuant to its affordable housing programs; **NOW, THEREFORE**, in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Parties contract and agree as follows:

## **II. OBLIGATIONS OF THE PARTIES**

### **(1) Obligations of the Zone and the Authority**

Beginning with the Fiscal Year 2009, the Parties agree that the annual amounts shown on Exhibit 2 - Part B Table 2 of the Plans will be designated for affordable housing. For Fiscal Year 2009 and each subsequent Fiscal Year until the termination of the Zone, the Zone and Authority agree to transmit to the City the amount shown for affordable housing costs in the City Council approved Operating Budget for the Zone and Authority for the Fiscal Year. The Zone and the Authority shall transfer the funds to the City no later than June 30<sup>th</sup> of each Fiscal Year; except that the Zone and the Authority shall not be required to make this transfer if the City has not made the payment of tax increments as required by

the Tri-Party Agreement. If the Zone and the Authority are not able to make the required payment due to the City's delay in making transfers of tax increment revenue pursuant to the Tri-Party Agreement, the Zone and the Authority shall make the required payment within 30 days of receiving transfers from the City. The obligation of the Zone and the Authority to make this payment is expressly subordinate to all other obligations of the Zone and Authority that are payable from revenues received pursuant to the Tri-Party Agreement and that were incurred prior to the effective date of this Agreement. Any amounts due under this Agreement that are not paid in the Fiscal Year when due shall accrue to the subsequent Fiscal Year(s) until paid. The City foregoes interest on any unpaid balance.

**(2) Obligations of the City**

The City shall dedicate all revenues received from the Zone and the Authority to the provision of affordable housing pursuant to the Plans and Ordinance No. 1999-0488, adopted on May 19, 1999, which approved the designation of funds in Fund 2409 to be used by the Houston & Community Development Department for the City's affordable housing program.

**III. NOTICES**

All notices and communications required or permitted by this Agreement shall be in writing and mailed by Certified Mail, Return Receipt Requested, to:

The City:                    Director, Finance Department  
                                     City of Houston  
                                     P. O. Box 1562  
                                     Houston, TX 77251

The Zone:                    The Chairman c/o  
                                     Vinson & Elkins LLP  
                                     1001 Fannin Street, Suite 2500  
                                     Houston, Texas 77002  
                                     Attn: Clark Stockton Lord

The Authority:       The Chairman c/o  
                          Vinson & Elkins LLP  
                          1001 Fannin Street, Suite 2500  
                          Houston, Texas 77002  
                          Attn: Clark Stockton Lord

#### **IV. GENERAL PROVISIONS**

**(1) Entire Agreement**

This Agreement comprises the entire agreement between the Parties relating to funding affordable housing costs. Accordingly, this Agreement merges all prior negotiations and understandings of the Parties hereto and supersedes and nullifies all prior agreements, negotiations, assurances, conditions, covenants (expressed or implied), or other understandings of the Parties, whether written, verbal, antecedent, or contemporaneous with the execution of this Agreement.

**(2) Effective Date**

This Agreement becomes effective when all parts are signed by the last Party whose signature renders the Agreement fully executed.

**(3) Term of Agreement**

This Agreement shall terminate on December 31, 2016, provided, however, that the obligation to any amounts payable to the City under this Agreement that have not been paid by December 31, 2016 shall survive the termination of this Agreement.

**(4) Severability**

If one or more of the provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalidity, illegality, or unenforceable provision had

never been included, provided that such invalidity, illegality, or unenforceability does not materially prejudice the City or the Zone in their respective rights and obligations contained in the Agreement.

**(5) Headings**

The headings throughout this Agreement are merely guides and shall not be interpreted to construe or restrict any part of this Agreement.

**(6) Interpretation**

Each Party to this Agreement acknowledges that such Party has reviewed this Agreement and participated in its drafting and agrees that no provision of this Agreement shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have drafted, structured, or dictated such provision(s).

**(7) Assignment**

This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may be given on behalf of the City by the Director of the Housing and Community Development Department. Consent shall be given on behalf of the Zone and the Authority acting through each of their respective boards of directors or governing bodies.

**(8) Counterparts**

This Agreement may be executed in counterparts, in a single original, or in duplicate originals. As applicable, each counterpart or duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes.

**IN WITNESS HEREOF**, the City, the Zone, and the Authority have made and executed this Agreement.

**CITY OF HOUSTON:**

Bill White  
Mayor Martha L. Stein Date: 8/21/09

**ATTEST/SEAL:**  
Anna Russell  
City Secretary Date: 8/21/09

**COUNTERSIGNED:**  
Thomas D. Parker  
City Controller Melinda B. Appel Date: 8-25-09

**APPROVED:**  
Michelle Mitchell  
Director, Finance Department Date: 8/14/09

**APPROVED AS TO FORM:**  
Donna Capps  
Assistant City Attorney Date: 8/13/09  
L.D. File No. 0610800066005

**REINVESTMENT ZONE NUMBER FIVE, CITY OF HOUSTON, TEXAS  
(MEMORIAL-HEIGHTS ZONE):**

By:  Date: 8-11-09

Printed Name: Charles S Leyendecker

Printed Title: CHAIRMAN

**ATTEST/SEAL:**

By:  Date: 8-11-09

Printed Name: TOM KVINTA

**MEMORIAL-HEIGHTS REDEVELOPMENT AUTHORITY:**

By:  Date: 8.11.09

Printed Name: Charles S. Leyendecker

Printed Title: CHAIRMAN

**ATTEST/SEAL:**

By:  Date: 8-11-09

Printed Name: TOM KVINTA