

ORDINANCE NO. 20110623-037

AN ORDINANCE APPROVING A MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF THE BLOCK 51 PROJECT.

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

PART 1. The Council finds that the Block 51 project described in SP-2010-0095C.MGA, is a large, long term project under Section 25-1-540 (*Managed Growth Agreements*).

PART 2. The Council approves the Managed Growth Agreement ("MGA") between the City of Austin and International Bank of Commerce, attached and incorporated into this ordinance as Exhibit A. The MGA is limited to the Block 51 development approved under Site Plan No. SP-2010-0095C.MGA, subject to any minor revisions approved in accordance with the MGA. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

PART 3. The City Manager or his designee may execute the agreement for the City.

PART 4. The Council waives board or commission review, if any, required for the MGA.

PART 5. This ordinance takes effect on July 5, 2011.

PASSED AND APPROVED

_____, June 23 _____, 2011 §
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 Leo Leffingwell
 Mayor

APPROVED: _____ ATTEST: _____
 Karen M. Kennard Shirley A. Gentry
 City Attorney City Clerk

EXHIBIT A

MANAGED GROWTH AGREEMENT **BETWEEN THE CITY OF AUSTIN AND** **INTERNATIONAL BANK OF COMMERCE**

This Managed Growth Agreement ("Agreement") Between the City of Austin, Texas ("City") and International Bank of Commerce ("IBC") is made and entered into by the City, a home rule municipal corporation acting by and through its duly authorized City Manager and IBC. IBC and the City may be referred to jointly as Parties or singly as "Party" in this Agreement.

RECITALS

1. On April 7, 2010, International Bank of Commerce filed an application for a consolidated site plan for the construction of the Block 51 project on property described in Exhibit A, which is attached hereto and incorporated herein ("the Property").
2. On April 15, 2011, the City approved Site Plan No. SP-2010-0095C, authorizing the construction of a mixed use development with a 13 story mixed use building (33,996 square foot) which will include 147,849 square feet of office, 17,416 financial services, and 11,174 square feet of restaurant space, parking garage and other associated improvements on .89 acre ("the Project").
3. International Bank of Commerce desires to extend the life of the project because the on-site construction of the building can not begin until the improvements of the Little Shoal Creek Tunnel Realignment and Utility Relocation has been approved and completed. NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and International Bank of Commerce agree as follows:

A R T I C L E I **PURPOSE & LEGAL AUTHORITY**

Section 1.01 Purpose.

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for International Bank of Commerce to acquired permits and complete the Project in phases.

Section 1.02 Legal Authority.

Section 25-1-540 of the City Code authorizes the execution of managed growth agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a large, long-term mixed-use project, provides site redevelopment, and the cost participation benefits for the Little Shoal Creek Tunnel Realignment and Utility Relocation.

Section 1.03 Expiration Date

Section 25-1-540 provides that a managed growth agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project. By Ordinance No. 20110623-037, the City Council directed that the expiration date is to be April 15, 2021.

ARTICLE II **TERMS**

Section 2.01 Original Regulations; Expiration Date

Subject to Section 2.03 below, International Bank of Commerce may construct the Project to comply with City regulations in effect on March 17, 2010, which is the day the application was originally submitted under the Comprehensive Watershed Ordinance and Land Development Code ("Original Regulations"). The expiration date of Site Plan No. SP-2010-0095C.MGA for purposes of Chapter 25-5 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be April 15, 2021.

Section 2.02 Revisions to the Site Plan

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, International Bank of Commerce may not construct any improvements on the Property that the City Manager determines to vary substantially from the Project as defined by Site Plan No. SP-2010-0095C.MGA without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations.

Section 2.03 Exceptions from Right to Develop Under Original Regulations

In this section, International Bank of Commerce agrees to comply with City regulations adopted after April 15, 2011, as they pertain to:

- a. erosion and sedimentation controls;
- b. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons;
- c. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City; and

ARTICLE III **MISCELLANEOUS PROVISIONS**

Section 3.01 Notice.

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice ") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin: City Manager
 P.O. Box 1088
 Austin, Texas 78767

with required copy to: City Attorney
 P.O. Box 1088
 Austin, Texas 78767

Owner

International Bank of Commerce (Robert Barnes)
816 Congress Ave., Suite 101
Austin, TX 78701

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 3.02 Severability.

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

Section 3.03 Waiver.

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

Section 3.04 Applicable Law and Venue.

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

Section 3.05 Incorporation of Exhibits.

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

Section 3.06 Assignability, Successors, and Assigns.

This Agreement is not assignable by International Bank of Commerce or the City without the prior written consent of the City Council or IBC.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 3.07 Amendment.

This Agreement may only be amended in writing on the approval of the City Council and IBC.

A R T I C L E I V
DEFAULT AND REMEDIES FOR DEFAULT

Section 4.01 Default.

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

International Bank of Commerce

By: _____

Name:

Title:

Date: _____

Approved as to form:

City of Austin:

Brent Lloyd
Assistant City Attorney

Sue Edwards
Assistant City Manager
Date: _____

EXHIBIT A

"The Property"

.89 acres more or less as described in
Lots 1-4 Original City of Austin Subdivision, Block 51
and the south 10 feet of a vacated 20 foot alley adjoining said Lots 1-4
recorded in document #200915888564
of the official records of Travis County, Texas.