

## **CONFIDENTIALITY AND RELEASE AGREEMENT**

This Confidentiality and Release Agreement (the "Agreement") is by and between Houston First Corporation, a local government Corporation ("HFC") and \_\_\_\_\_ (the "Potential Developer").

### **PART ONE: GENERAL WAIVER, RELEASE AND INDEMNITY**

The Documents (defined below) that are the subject of this Agreement are provided for informational purposes and as an accommodation to Potential Developer in connection with its proposed response to the HFC Request for Proposals for the development of a hotel located on top of the north parking garage and office tower being developed by HFC and that is to be connected via skybridge to the George R. Brown Convention Center in Houston, Texas (the "Project"). The Documents are drafts and have not been finalized. The Documents are subject to revisions and changes as HFC further defines the scope and specificity of design for the Project and for such other purposes as HFC or other members of the Developing Parties (defined below) may deem necessary or appropriate. Under no circumstances may you rely on the Documents as accurately defining the final design of the Project. HFC, Griffin Partners, Inc., WHR Architects, Inc., J.T. Vaughn Construction, LLC, Strategic Advisory Group, LLC and their officers, directors, attorneys, and subcontractors (collectively the "Developing Parties"), make no claims, representations, warranties, promises, or guarantees about the accuracy, completeness, or adequacy of any information contained in the Documents. To the extent that Potential Developer, or any of its agents, contractors or employees, elects to use or rely upon the same, Potential Developer hereby agrees that such use shall be at the sole risk of Potential Developer, and without recourse of any kind to any of the Developing Parties. Potential Developer hereby (a) releases, acquits and forever discharges each of the Developing Parties of and from any and all claims, suits, causes of action, liabilities, damages, costs or expenses that may suffered or incurred at any time by Potential Developer arising out of, in any way, any use of the Documents by Potential Developer, (b) agrees to indemnify, defend and hold harmless each of the Developing Parties of, from and against any and all claims, suits causes of action, liabilities damages, demands, costs or expenses suffered or incurred by any of the Developing Parties arising out of or related to any use of the Documents

by the Potential Developer, or any of its agents, contractors or employees, (c) agrees that none of the Developing Parties has any obligation to provide any updates made to the Documents or to advise Potential Developer of errors or omissions therein known to, or hereafter discovered by, any of the Developing Parties, and (d) agrees that nothing in the Documents should be construed to constitute a recommendation or endorsement of any design professional, developer, contractor, subcontractor, product, service, law firm or attorney.

## **PART TWO: CONFIDENTIALITY AND OTHER MATTERS**

1. General Terms. This Part Two of this Agreement confirms the mutual understandings of Potential Developer and HFC in connection with the disclosure and review of any and all information regarding HFC and the future hotel development site that are provided to Potential Developer or any Related Party (as defined below) by the Developing Parties, including, but not limited to, any design or construction documents, drawings, plans, data, reports, forecasts, projections, surveys, diagrams, records, engineering reports, and other documents, or electronic transmittals concerning the Property or the Developing Parties themselves (the "Documents"). HFC shall make the Documents available in electronic form to the Potential Developer following HFC's receipt of this Agreement, duly executed by Potential Developer. Part Two of this Agreement shall not apply to any of the Documents that include information that (i) is or becomes generally available to the public, (ii) was in the possession of the undersigned or any Related Party prior to the date of the Agreement (and is not subject to any pre-existing confidentiality agreement in favor of HFC, any affiliate thereof, and/or any of the Developing Parties), (iii) was obtained by the undersigned or any Related Party from a third party who, to the knowledge of the undersigned and the Related Parties, is not subject to any confidentiality agreement regarding such information, or (iv) is independently developed by the undersigned or any Related Party without reliance on the Documents.

2. Ownership, Use and Return of Documents. Notwithstanding release to Potential Developer, the Documents shall continue to be the property of the Developing Parties. The Documents may only be used by the Potential Developer solely for the purpose of determining Potential Developer's response to the Request for Proposals and not for any other purpose. The Documents may not be copied or duplicated without HFC's prior written consent and must be returned to HFC (or with HFC's permission, destroyed by Potential Developer and any Related Party, and in such instance Potential Developer shall certify in writing to HFC that such information has been so destroyed) immediately upon request, if Potential Developer declines to respond to the Request for Proposals, is not selected as the developer of the hotel or Potential Developer terminates any discussions or negotiations with respect to the proposed transaction.

3. Confidentiality and Disclosure of Documents by Potential Developer. Potential Developer acknowledges on behalf of itself and any and all Related Parties that the Documents are considered confidential and proprietary information of the Developing Parties, and Potential Developer will not make (or cause or permit any Related Party to make) any Documents available, or disclose any of the contents thereof, to any person without the Developing Parties' prior written consent; provided, however, that the Documents may be disclosed to the Potential Developer's partners, employees, legal counsel, advisors, institutional lenders and other contractors or consultants (collectively the "Related Parties") as reasonably required to respond to the Request for Proposals or for an evaluation of the proposed transaction. Such Related Parties shall be informed by Potential Developer of the confidential nature of the Documents and the terms of this Agreement and shall be directed by Potential Developer to keep the Documents and related information strictly confidential in accordance with this Agreement and to otherwise abide by the terms of this Agreement as if such party was the Potential Developer hereunder. In the event any Related Party shall take or omit to take any action which if taken or omitted to be taken by Potential Developer would constitute a

breach of or a default under the terms hereof, the such act or omission by such Related Party shall be deemed to be a breach of the terms hereof by Potential Developer.

### **PART THREE - MISCELLANEOUS**

1. Term of Agreement. The terms and conditions of this Agreement shall remain in full force and effect for a period of two years from the date hereof.

2. Remedies. In the event that Potential Developer and/or any Related Party fails to comply with the terms and conditions of this Agreement, Potential Developer and such Related Party may be liable to the Developer Parties for such breach. The Developer Parties, either collectively or individually, shall be entitled to exercise any right, power, or remedy available at law or in equity for such breach. Without prejudice to any other rights or remedies that the Developer Parties may have with respect to any breach by Potential Developer and/or any Related Party, Potential Developer on behalf of its and any Related Party, hereby acknowledges and agrees that (a) damages would not be an adequate remedy for any breach of the terms of this Agreement by Potential Developer and/or any Related Party, (b) it is not aware of and will not seek to advance any reason why the Developer Parties should not be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the terms of this Agreement by Potential Developer and/or any Related Party and (c) no proof of special damages shall be necessary for the enforcement of the terms of this Agreement.

3. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to its conflicts of law provisions. Venue shall lie exclusively in the District Courts of Harris County, Texas.

5. Entire Agreement. Waiver or Modification. This Agreement contains the entire understanding between the parties with respect to the subject matter hereof, and may not be altered, varied, revised or amended, except by an instrument in writing signed

by the parties subsequent to the date of this Agreement. The parties have not made any other agreement or representation with respect to such matter.

**HOUSTON FIRST CORPORATION**

By: \_\_\_\_\_

Name: Dawn Ullrich, President and CEO

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_