

CERTIFICATE FOR ORDINANCE

THE STATE OF TEXAS           §  
COUNTY OF MONTGOMERY   §

We, the undersigned officers of the City Council of the City of Magnolia, Texas, hereby certify as follows:

1.       The City Council of the City of Magnolia, Texas, convened in regular meeting on the 10<sup>th</sup> day of February, 2009, at the regular meeting place thereof, within said City, and the roll was called of the duly constituted officers and members of said City Council and the Acting City Secretary, to wit:

Jimmy W. Thornton, Jr.	Mayor
Sammie L. Scott	Councilmember, Position 1
John W. Bramlett	Councilmember, Position 2
Todd Kana	Councilmember, Position 3
David G. Sutherland	Councilmember, Position 4
Patsy Ogden Williams	Councilmember, Position 5
LuAnn D. Drake	City Secretary

and all of said persons were present, except the following absentee(s): Todd Kana, thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written

ORDINANCE NO. 2009-142

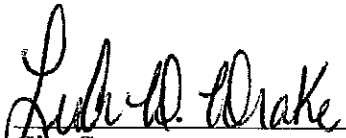
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA ACCEPTING AND APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR THE MAGNOLIA RIDGE PHASE 1 PUBLIC IMPROVEMENT DISTRICT; MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING SPECIAL ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS, PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE

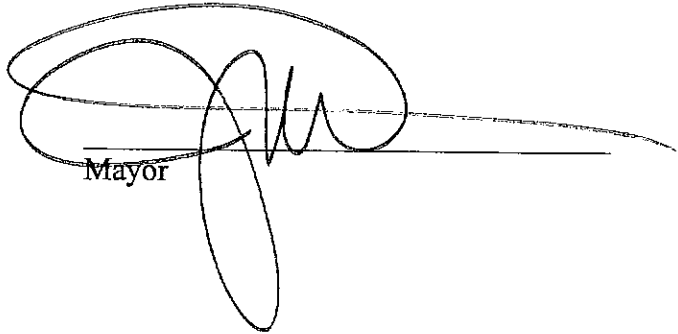
was duly introduced for the consideration of said City Council and read in full. It was then duly moved and seconded that said ordinance be adopted; and, after due discussion, said motion, carrying with it the adoption of said ordinance, prevailed and carried by the following vote:

AYES: All members of the City Council shown present above voted "Aye".  
NOES: None.

2. A true, full and correct copy of the aforesaid ordinance adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; that said ordinance has been duly recorded in said City Council's minutes of said meeting; that the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said meeting pertaining to the adoption of said ordinance; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the date, hour, place and purpose of the aforesaid meeting, and that said ordinance would be introduced and considered for adoption at said meeting, and each of said officers and members consented, in advance, to the holding of said meeting for such purpose; that said meeting was open to the public as required by law; and that public notice of the date, hour, place and subject of said meeting was given as required by the Texas Open Meetings Act.

SIGNED AND SEALED this 10<sup>TH</sup> day of February, 2009.

  
\_\_\_\_\_  
City Secretary

  
\_\_\_\_\_  
Mayor

(SEAL)

ORDINANCE NO. 2009-142

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA ACCEPTING AND APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR THE MAGNOLIA RIDGE PHASE 1 PUBLIC IMPROVEMENT DISTRICT; MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING SPECIAL ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS, PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE

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**WHEREAS**, on February 11, 2008, a petition was submitted and filed with the City Secretary (the "City Secretary") of the City of Magnolia, Texas (the "City") pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the "PID Act"), requesting the creation of a public improvement district over a portion of the area of the City to be known as Magnolia Ridge Phase 1 Public Improvement District (the "District"); and

**WHEREAS**, the petition contained the signatures of the owners of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the District, as determined by the then current ad valorem tax rolls of the Montgomery Central Appraisal District and the signatures of property owners who own taxable real property that constitutes more than fifty percent of the area of all taxable property that is liable for assessment by the District; and

**WHEREAS**, on March 11, 2008 and October 13, 2008, after due notice, the City Council of the City (the "City Council") held public hearings in the manner required by law on the advisability of the public improvements and services described in the petition as required by Section 372.009 of the PID Act and made the findings required by Sec. 372.009(b) of the PID Act and, by Resolution No. 2008-007, adopted by a majority of the members of the City Council, authorized the District in accordance with its finding as to the advisability of the public improvement and services; and

**WHEREAS**, on October 27, 2008, the City published notice of its authorization of the District in the Tomball Magnolia Tribune, a newspaper of general circulation in the City; and

**WHEREAS**, no written protests of the District from any owners of record of property within the District were filed with the City Secretary within 20 days after October 27, 2008; and

**WHEREAS**, the City Council, pursuant to Section 372.016(b) of the PID Act, published notice on January 30, 2009 in the Conroe Courier, a newspaper of general circulation in the City, of a public hearing to consider the proposed "Assessment Roll" and the "Service and Assessment Plan" and the levy of the "Assessments" on property in the District; and

**WHEREAS**, the City Council, pursuant to Section 372.016(c) of the PID Act, by causing the mailing of the notice of the public hearing to consider the proposed Assessment Roll and the Service and Assessment Plan and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

**WHEREAS**, the City Council convened the hearing at 7:00 p.m. on the 10th day of February 2009 at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Plan, the Assessment Roll, and each proposed assessment, and to offer testimony pertinent to any issue presented on the amount of the Assessment, the allocation of Costs, the purposes of the Assessment, the special benefits of the Assessment, and the penalties and interest on annual installments and on delinquent annual installments of the Assessment; and

**WHEREAS**, the City Council finds and determines that the Assessment Roll and the Service and Assessment Plan should be approved and that the Assessments (as defined in the Service and Assessment Plan) should be levied as provided in this Ordinance and the Service and Assessment Plan and Assessment Roll; and

**WHEREAS**, the City Council further finds that there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of Costs, the Assessment Roll, and the levy of Assessments; and

**WHEREAS**, prior to the issuance of bonds secured by the Assessments, the owners (the "Landowners" or the "Assessed Parties") of 100% of the privately-owned and taxable property located within the District, and who are the persons to be assessed pursuant to this Ordinance, will have executed a Landowner Agreement (the "Landowner Agreement") in the form and substance acceptable to the City, in which the Assessed Parties approve and accept the Service and Assessment Plan, approve the Assessment Roll, approve this Ordinance and approve the levy of the Assessments against their property located within the District, and agree to pay the Assessments when due and payable, subject to the credits provided for herein and in the Service and Assessment Plan; and

**WHEREAS**, the City Council closed the hearing, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the PID Act.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:**

Section 1. Terms.

Terms not otherwise defined herein are defined in the Service and Assessment Plan attached hereto as Exhibit A (the "Service and Assessment Plan").

Section 2. Findings.

The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The City Council hereby finds, determines, and ordains, as follows:

(a) The apportionment of the PID Costs, and the Annual Collection Costs pursuant to the Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the construction of the public improvements identified in the Service and Assessment Plan, and is hereby approved;

(b) The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Improvement Project;

(c) The Service and Assessment Plan apportions the cost of a public improvement to be assessed against property in the District and such apportionment is made on the basis of special benefits accruing to the property because of the improvement.

(d) All of the real property in the District which is being assessed in the amounts shown in the Assessment Roll will be benefited by the services and improvements proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property will receive special benefits in each year equal to or greater than each annual Assessment and will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed;

(e) The method of apportionment of the PID Costs and Annual Collection Costs set forth in the Service and Assessment Plan results in imposing equal shares of the PID Costs and Annual Collection Costs on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the Costs;

(f) The Service and Assessment Plan should be approved as the service plan and assessment plan for the District as described in Sections 372.013 and 372.014 of the PID Act;

(g) The Assessment Roll in the form attached as Exhibit D to the Service and Assessment Plan (the "Assessment Roll") should be approved as the assessment roll for the District;

(h) The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Annual Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments, and procedures in connection with the imposition and collection of Assessments should be approved and

will expedite collection of the Assessments in a timely manner in order to provide the services and improvements needed and required for the area within the District; and

(i) A written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered, and formally acted upon.

Section 3. Assessment Plan.

The Service and Assessment Plan is hereby accepted and approved pursuant to the PID Act Sections 372.013 and 372.014 as the service plan and the assessment plan for the District.

Section 4. Assessment Roll.

The Assessment Roll is hereby accepted and approved pursuant to the PID Act Section 372.016 as the assessment roll of the District.

Section 5. Levy and Payment of Special Assessments for Costs of Improvement Project.

(a) The City Council hereby levies an assessment on each tract of property located within the District, as shown and described on the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll as a special assessment on the properties set forth in the Assessment Roll.

(b) The levy of the Assessments shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(c) The collection of the Assessments shall be as described in the Service and Assessment Plan.

(d) Each Assessment may be paid in a lump sum or may be paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.

(e) Each Assessment shall bear interest at the rate or rates specified in the Service and Assessment Plan.

(f) Each Annual Installment shall be collected each year in the manner set forth in the Service and Assessment Plan.

(g) The Annual Collection Costs for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

Section 6.     Method of Assessment.

The method of apportioning the Costs is as set forth in the Service and Assessment Plan.

Section 7.     Penalties and Interest on Delinquent Assessments.

Delinquent Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the PID Act and the Service and Assessment Plan.

Section 8.     Prepayments of Assessments.

As provided in subsection 372.018(b) of the PID Act and in Section VI(E) of the Service and Assessment Plan, the owner (the "Owner") of any Assessed Property may prepay the Assessments levied by this Ordinance.

Section 9.     Lien Priority.

As provided in the Landowner Agreement, the City Council and the Landowners intend for the obligations, covenants and burdens on the Landowners of Assessed Properties, including without limitation such Landowners' obligations related to payment of the Assessments and the Annual Installments, to constitute a covenant running with the land. The Assessments and the Annual Installments levied hereby shall be binding upon the Assessed Parties, as the Landowners of Assessed Properties, and their respective transferees, legal representatives, heirs, devisees, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Assessments shall have lien priority as specified in the Service and Assessment Plan and the PID Act.

Section 10.    Appointment of Administrator and Collector of Assessments.

(a)     Appointment of Administrator.

MuniCap, Inc., of Columbia, Maryland, is hereby appointed and designated as the initial Administrator of the Service and Assessment Plan and of the Assessments levied by this Ordinance. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator's fees, charges and expenses for providing such service shall constitute an Annual Collection Cost.

(b)     Appointment of Collector.

Beverly J. Standley, Finance Clerk of the City, is hereby appointed as the collector of the Assessments (the "Collector"). The Collector hereby delegates the Collector's duties to the Montgomery County Tax Assessor-Collector and reserves the right to delegate the Collector's duties to another qualified collection agent selected by the City if the County terminates its tax collection services contract.

Section 11. Applicability of Tax Code.

To the extent not inconsistent with this Ordinance, and not inconsistent with the PID Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code shall be applicable to the imposition and collection of Assessments by the City.

Section 12. Severability.

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

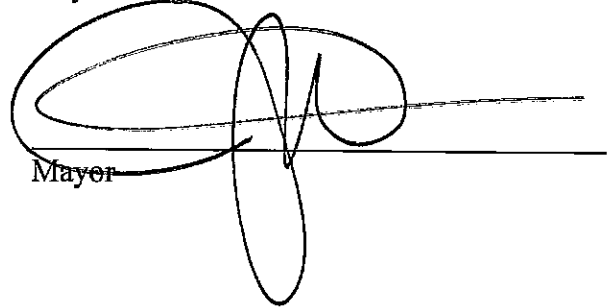
Section 13. Effective Date.

This Ordinance shall take effect, and the levy of the Assessments, and the provisions and terms of the Service and Assessment Plan shall be and become effective on upon passage and execution hereof. However, the Service and Assessment Plan and this Ordinance shall automatically terminate if bonds secured by the Assessments are not issued by the City on or before February 10, 2011.

[Remainder of page left blank intentionally]

ADOPTED, PASSED, and APPROVED by the City Council, by a vote of 4 members voting "for" and 0 members voting "against" and with 1 absentees, on this 10th day of January 2009.

City of Magnolia

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right. It is positioned over a horizontal line.

Mayor

Attest:

A handwritten signature in black ink, appearing to read "Lub D. Drake", written over a horizontal line.

City Secretary

[SEAL]

Approved as to Form:

\_\_\_\_\_  
City Attorney