# DEVELOPMENT AGREEMENT
# WHITECAP NORTH PADRE ISLAND

This Development Agreement (this "**Agreement**") is entered into by and between **ASHLAR INTERESTS, LLC**, a Texas limited liability company, (the "**Developer**") and the City of Corpus Christi, Texas (the "**City**"), to be effective on December 12, 2023 ("**Effective Date**").

## RECITALS

**WHEREAS**, the City is a home-rule municipality of the State of Texas located within Nueces, Aransas, San Patricio, and Kleberg Counties; and

**WHEREAS**, Developer, acting solely on behalf of Diamond Beach Holdings, LLC (the "**Owner**"), and the City (which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**") desire to enter into this Agreement; and

**WHEREAS**, Owner owns approximately 242.011 acres of land located wholly within the corporate limits of the City and Nueces County (the "**County**") and described by metes and bounds in **Exhibit A** and depicted on **Exhibit B** (the "**Property**"); and

**WHEREAS**, the Property is zoned as "RS-4.5/PUD" Single-Family 4.5 District with a Planned Unit Development Overlay by Ordinance No. 032890 (the "**Zoning Ordinance**") approved by the City Council of the City ("**City Council**") on October 18, 2022; and

**WHEREAS**, the Parties intend that the Property will be developed in accordance with the Zoning Ordinance as a master planned mixed-use development (the "**Development**" or the "**Project**") consisting of single-family, multi-family and commercial uses as described in the Zoning Ordinance; and

**WHEREAS**, the Property lies within Reinvestment Zone Number Two, City of Corpus Christi, Texas (the "**Zone**") established by Ordinance No. 024270 adopted by the City Council on November 14, 2000 in accordance with the Tax Increment Financing Act, Texas Tax Code Chapter 311, as amended (the "**Zone Act**"); and

**WHEREAS**, on December 6, 2022, the City Council approved Ordinance No. 032929 extending the term of the Zone to December 31, 2042 and amending the *Tax Increment Reinvestment Zone #2, City of Corpus Christi Project and Finance Plan* (as revised and amended, the "**TIRZ Final Project and Finance Plan**") to add certain onsite and offsite public infrastructure projects (the "**TIRZ Projects**") for the benefit of the Property and the Zone; and

**WHEREAS**, Developer has agreed to pay for and construct the TIRZ Projects; and, the board of directors of the Zone (the "**Zone Board**") and the City have agreed to reimburse Developer for a portion of the costs of the TIRZ Projects from certain revenues deposited into the tax increment fund for the Zone (the "**TIF Fund**") in accordance with the TIRZ Final Project and Finance Plan, and that certain *TIRZ #2 Development Reimbursement Agreement – Whitecap*, effective as of April 28, 2023 (as the same may be amended from time to time, the "**TIRZ Agreement**")[1] a copy of which is attached hereto as **Exhibit C** and is incorporated herein for all purposes, and this Agreement; and

[1] The Parties acknowledge that the Zone Board intends to consider approval of an Amended and Restated TIRZ Agreement that increases the maximum reimbursement from the TIF Fund from $11,500,000 to $25,500,000.

**WHEREAS**, the Property also lies within the Whitecap Public Improvement District No. 1 (the "**PID**") created by Resolution No. 032761 approved by the City Council on May 17, 2022, and recorded in the real property records of Nueces County as Instrument No. 2022024701 on May 20, 2022; and

**WHEREAS**, Developer has agreed to pay for and construct certain public infrastructure projects (the "**PID Authorized Improvements**"); and, the City intends to reimburse Developer under the terms of a reimbursement agreement (the "**PID Reimbursement Agreement**"), substantially in the form attached as **Exhibit D** with such changes as may be agreed to by the Parties, for a portion of the costs of the PID Authorized Improvements from the collection of special assessments ("**PID Assessments**") levied against portions of the Property that are specially benefitted by the PID Authorized Improvements, which may include through the issuance and sale by the City of special revenue bonds secured by the PID Assessments ("**PID Bonds**"), as described in this Agreement; and

**WHEREAS**, the Parties intend to enter into one or more agreements related to the Project (each a "**Chapter 380 Agreement**") in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, as amended;

**WHEREAS**, the Parties intend for this Agreement, the TIRZ Agreement, the PID Reimbursement Agreement (as defined below), and any Chapter 380 Agreement, if entered into in the future (collectively, the "**Public Infrastructure Agreements**") to establish certain commitments related to the Project, the construction and financing of the TIRZ Projects and PID Authorized Improvements (collectively, the "**Public Infrastructure**"), and

**WHEREAS**, based on current plans, which are subject to change as development of the Project progresses, the Developer estimates the total Capital Investment in the Project will be approximately as follows:

| | |
|---|---|
| TIRZ Projects: | |
| • *Bridge Improvements*<br>• *Project Increment Improvements* | $25,500,000[2] |
| PID Authorized Improvements: | |
| • *Road Improvements*<br>• *Water Improvements*<br>• *Sanitary Sewer Improvements*<br>• *Drainage Improvements*<br>• *Parks and Open Space Improvements* | $70,000,000<br>to<br>$100,000,000 |
| Private Investment | |
| • *Amenities, Parks and Open Space Improvements for Initial Phase*<br>• *Private Infrastructure*<br>• *Public Infrastructure not Reimbursed by PID or TIRZ* | $30,000,000<br>to<br>$50,000,000 |

[2] Subject to Zone Board approval an Amended and Restated TIRZ Agreement consistent with the TIRZ Final Project and Finance Plan and the Zone Act.

**NOW, THEREFORE**, for and in consideration of the mutual covenants of the Parties set forth in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

## ARTICLE ONE
## RECITALS AND REPRESENTATIONS

1.01 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council, and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, must be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

1.02 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Developer represents and warrants that this Agreement has been approved by appropriate action of Developer, and that the individual executing this Agreement on behalf of Developer has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions. Each Party further acknowledges and agrees that the performance by the Parties under this Agreement is authorized by Sections 372.023 and 372.152 of the PID Act (defined below); and Section 311.008 of the Zone Act (defined below).

## ARTICLE TWO
## PURPOSES, TERM AND CONSIDERATION

2.01 Purposes. The Parties desire to enter into this Agreement and the PID Reimbursement Agreement, and have entered into the TIRZ Agreement, to provide for the construction of the Public Infrastructure related to the Project and to establish the means of and terms for financing the Public Infrastructure by the City and the Developer.

2.02 Term. The term of this Agreement (the "**Term**") shall start on the Effective Date and shall expire on the later of: (1) all costs of the Public Infrastructure to be reimbursed to the Developer under the Public Infrastructure Agreements have been paid in full, or (2) thirty (30) years from the Effective Date of this Agreement. The Parties may extend the term of this Agreement if they execute an agreement in writing. Each of the Public Infrastructure Agreements will expire in accordance with their terms.

2.03 Consideration. The covenants of, benefits to, and performances by, the Parties set forth in the Public Infrastructure Agreements, plus the mutual promises expressed herein, are good and valuable consideration for the Public Infrastructure Agreements, the sufficiency of which is hereby acknowledged by the Parties.

## ARTICLE THREE
## PUBLIC INFRASTRUCTURE

3.01 Public Infrastructure. Except as otherwise expressly provided for in this Agreement, all Public Infrastructure shall be designed, constructed, installed, and inspected in compliance with all applicable City ordinances, rules, regulations, standards, policies, orders, guidelines or other City-adopted or City-enforced requirements, including the City's uniform engineering design standards and the Zoning Ordinance, as they exist as of the date of this Agreement (collectively, the "**City Regulations**"). Additionally, the TIRZ Projects shall also comply with the TIRZ Final Project and Finance Plan and the PID Authorized Improvements provide a special benefit to the Property to be assessed and shall be as described in the PID Service and Assessment Plan for the PID to be adopted by the City Council.

3.02 License to Enter. If any TIRZ Projects or PID Authorized Improvements are or will be on land owned or controlled by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to construction and maintenance (pending acquisition and acceptance) of the TIRZ Projects or PID Authorized Improvements, as applicable. Developer agrees that it and all of its agents, assigns, contractor, and employees will comply with the City's requirements for construction of public works on City property, which are attached hereto as **Exhibit E**. The City hereby agrees to enter into a license agreement, in a form reasonably acceptable to the City Attorney, to allow Developer to enter upon City-owned land as required by any agreement relating to the dredging of canals as described in Section 3.06 below.

3.03 Effluent Water. The Parties agree that they will enter into an agreement for access to effluent water substantially in the form of the City's standard agreement for effluent water for the purposes of maintaining pond levels within the Project and for the irrigation of public open spaces.

3.04 The City acknowledges that no sales tax is owed on materials incorporated into all Public Infrastructure to be owned by the City. The City agrees to provide to Developer and its designees a copy of the City's sales tax exemption certificate to be used when purchasing materials incorporated into the Public Infrastructure. The City supports sales tax exemption for such materials incorporated into such Public Infrastructure to the extent such improvements are to be conveyed to the City and primarily used for a public purpose. Developer acknowledges and agrees that sales tax will not be approved for reimbursement by the City.

3.05 Ownership and Maintenance of Public Infrastructure and Other Improvements.

(a) Upon inspection, approval, and acceptance of the water and wastewater Public Infrastructure, the City shall own, maintain, and operate the water and wastewater Public Infrastructure and provide water and wastewater service to the Project.

(b) Upon inspection, approval, and acceptance of the roadway and storm water Public Infrastructure, the City shall own and maintain the roadways and storm water Public Infrastructure.

(c) Upon establishment of one or more owners' association(s) (each an "**Owners' Association**"), an Owner Association shall maintain and operate the City-owned public open spaces, pedestrian mobility bridges, trails, common areas, right-of-way irrigation systems, right-of-way landscaping, screening walls, and appurtenances on behalf of the City as shown on **Exhibit F**. The City will enter one or more maintenance

agreements with an Owners' Association prior to such improvements being dedicated to the City. Such areas may be irrigated from any available water source, including, but not limited to, water from the retail water provider, ponds, or a water well. Said improvements shall not be maintained and operated by the City unless the Parties agree in writing to the terms and conditions of maintenance and operation by the City.

3.06 Canals and Bulkheads. The Parties acknowledge and agree that all canals and bulkheads within the Project shall be privately owned and maintained. The Parties further acknowledge and agree that an Owners' Association will enter into an agreement with the United States Army Corp of Engineers (USACE) for the purposes of dredging the canals and managing the dredged material as part of the necessary maintenance of the canals and bulkheads. The Parties agree that if required, each Party will work diligently with the USACE to identify an appropriate location within City-owned open space for the deposit of dredged materials (typically consisting of naturally recurring deposited bottom sediment such as sand, silt and clays) in accordance with such agreement. The deposit of any such dredged materials shall comply with all applicable Federal and State laws and City regulations.

3.07 Permitting. Subject to Developer's complying with all applicable laws, City agrees to cooperate with Developer to expeditiously process permits, including plat applications, site plan applications, building permit applications, building and construction inspections required for the Project. The Parties agree that a designated individual from the Development Services Department shall be appointed by the City and to assist in facilitating efficient review and processing of applications, plans, permits, inspections, and other approvals, as applicable, necessary for the Project. The Parties further agree that if delays longer than sixteen (16) days occur, the Parties will work in good faith to identify a third-party engineering firm to assist the City with the necessary reviews of applications, plans, permits, and inspections.

3.08 Recordation of Final Plat. Developer shall be permitted by right to record plats prior to completion of sidewalks required by Section 3.30.2.C.4 of the City's Unified Development Code and shall follow the process set forth in Section 8.1.10.B of the City's Unified Development Code for deferral of sidewalk completion.

## ARTICLE FOUR
## ZONE FINANCING

4.01 Zone Financing. The City has created the Zone and approved the TIRZ Final Project and Finance Plan in accordance with the TIRZ Act to promote economic development and stimulate business and commercial activity in the Zone and to significantly enhance the value of taxable real property in the Zone and to generally benefit the City. Unless extended, the Zone expires on December 31, 2042.

(a) As of the date of this Agreement, the TIRZ Projects consist of the public bridges, ponds, walking trail, kayak launches and water exchange improvements described in the TIRZ Final Project and Finance Plan and the TIRZ Agreement. The total estimated costs of the TIRZ Projects (the "**TIRZ Project Costs**") are set forth in the TIRZ Agreement. In the TIRZ Agreement, the City and the Zone Board agree to reimburse the Developer for TIRZ Project Costs in an amount not to exceed the Reimbursement Cap as defined in the TIRZ Agreement.

(b) The TIRZ Project costs shall be paid solely from the revenues deposited by the City in the TIF Fund in accordance with the TIRZ Final Project and Finance Plan and the TIRZ Agreement.

(c) The TIRZ Agreement is an agreement authorized by Texas Tax Code Section 311.008(b) and 311.010(b) and, as such, the TIRZ Projects are exempt from the public bid requirements of Texas Local Government Code Chapter 252.

(d) To the extent that anything in this agreement is inconsistent or in conflict with the TIRZ Agreement, the TIRZ Agreement will control.

(e) The Parties agree that, subject to approval by the Zone Board and the City in accordance with the Zone Act, the City, the Zone Board, and the Developer and/or Owner, may enter into additional agreements or may amend the TIRZ Agreement in the future for the reimbursement of additional TIRZ Project Costs incurred for the benefit of the Zone and the Development.

## ARTICLE FIVE
## PID FINANCING

5.01 PID Financing. The City has created the PID, to fund, in part, the PID Authorized Improvements that will confer a special benefit upon the Property. As soon as reasonably practical following a request by the Developer and subject to City Council approval, the City agrees to levy PID Assessments and, provided the City's financial advisor confirms the bonds meet the below requirements and are marketable to third party institutional investors, the City agrees to consider the issuance of PID Bonds, subject to City Council approval.

(a) Funding of the PID Authorized Improvements, including but not limited to road, water, sewer, storm drainage, open space and trail improvements, and related appurtenances, providing special benefit to the Property, will include, to the maximum extent authorized by State law, and only as requested by the Developer, one or more of the following: (i) annual payments by the City to the Developer of PID Assessments not pledged to the repayment of PID Bonds issued by the City secured solely by PID Assessments in accordance with the PID Act; (ii) the issuance by the City of PID Bonds as described herein; or (iii) any other method approved in writing by the Parties.

(b) The PID Authorized Improvements to be funded by PID Assessments or PID Bonds will be described in the service and assessment Plan for the PID (as amended and updated to from time to time, the "**PID Service and Assessment Plan**") and the PID Authorized Improvements for the first phase of development within the Project are shown on **Exhibit G**. The PID Authorized Improvements for subsequent phases of the Project will be as described and depicted in the PID Service and Assessment Plan.

(c) The total estimated cost of the PID Authorized Improvements (the "**PID Project Costs**"), including the costs of any maintenance bond required by applicable City Regulations, will be as stated in the PID Service and Assessment Plan.

(d) The Developer will provide an engineer’s opinion of probable cost, and the City, in consultation with its financial advisor and PID administrator, will prepare the PID Service and Assessment Plan, which is subject to City Council approval. After the City approves the final PID Project Costs, prepares a proposed assessment roll based thereon,

and files the PID Service and Assessment Plan and proposed assessment roll with the City Secretary for public inspection, the City will hold a public hearing and consider levying PID Assessments against the Property.

(e) Subject to City Council approval, the City shall review and update the PID Service and Assessment Plan consistent with the requirements of Section 372.013(b) of the PID Act. As needed for consistency with any updated PID Service and Assessment Plan and consistent with the requirements of Sections 372.019 and 372.020 of the PID Act, the City shall make supplemental assessments, reassessments or new assessments such that assessments reflect the updated PID Project Costs.

(f) Concurrent with the levy of PID Assessments and as needed to implement the PID Service and Assessment Plan, the City, subject to City Council approval, and the Developer will enter into a PID Reimbursement Agreement under the PID Act, including specifically Sections 372.023 and 372.026, that provides for the Developer's construction of certain PID Authorized Improvements and the City's reimbursement to the Developer of certain PID Project Costs.

(g) The City will use its reasonable efforts, subject to City Council approval, to issue one or more series of PID Bonds secured, in whole or in part, by PID Assessments levied against the portion of the Property specially benefitted by the PID Authorized Improvements. PID Bonds may also be secured by any other revenue authorized by the PID Act or other State law and approved by the City Council of the City. The net proceeds from the sale of PID Bonds (i.e., net of costs and expenses of issuance and amounts for debt service reserves and capitalized interest) will be used to pay PID Project Costs. Notwithstanding the foregoing, the obligation of the City to issue PID Bonds is conditioned upon the following: (i) there being a total overall minimum value to lien ratio of 3 to 1 (unless the City, in its sole discretion approves a lower value to lien ratio); (ii) the adequacy of the bond security and the financial obligation of the Developer to pay: (a) the amount, if any, by which PID Project Costs exceed the net proceeds from the sale of PID Bonds, and (b) the amount, if any, of cost overruns and all private costs needed to reach final lot value; and (iii) the PID bonds are approved by the Texas Attorney General. In the event the total overall minimum value to lien is less than 3 to 1 and the City, in its sole discretion, approves a lower value to lien ratio for the issuance of PID Bonds, to the extent permitted by applicable laws, the City may elect to hold back a portion of the PID Bond proceeds not supported by the total overall 3 to 1 value to lien ratio until the value produced by development of the Property increases to 3 to 1 value to lien. The net proceeds from the sale of the PID Bonds will be deposited in and disbursed from a construction fund created and administered pursuant to the indenture under which the PID Bonds are issued. Additionally, if the PID Project Costs exceed the net bond proceeds of the PID Bonds, the City may require the Developer to: (i) deposit cash in the amount of the shortfall to a designated account under the trust indenture relating to such PID Bonds, or (ii) provide satisfactory evidence to the City that Developer has sufficient available funds to finance the PID Project Costs not paid by the net proceeds of the PID Bonds in the form of a closed loan with a bank or financial institution, a letter of credit, or other evidence that the City finds acceptable, including Grant Dollars if applicable. The total amount of PID Bonds secured by PID Assessments levied against the Property shall not exceed $100,000,000.

(h) Pursuant to Texas Local Government Code Section 252.022(a)(9), the PID Authorized Improvements are exempt from the public bid requirements of Texas Local Government Code Chapter 252.

(i) To the extent that anything in this agreement is inconsistent or in conflict with the PID Reimbursement Agreement once approved by the City Council and entered into by the Parties, the PID Reimbursement Agreement will control.

5.02 PID Notice. When selling any portion of the Property after the PID is created, the Developer shall provide notice to anyone who purchases property within the PID in the form and manner required by the Texas Property Code, as amended, including specifically Sections 5.014, 5.0141, 5.0142, and 5.0143.

## ARTICLE SIX
## EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within five business days after it is due.

6.02 Remedies. IF A PARTY IS IN DEFAULT, THE AGGRIEVED PARTY MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT, SEEK ANY RELIEF AVAILABLE AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, AN ACTION UNDER THE UNIFORM DECLARATORY JUDGMENT ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND INJUNCTIVE RELIEF. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

(a) entitle the aggrieved Party to terminate this Agreement except as described in subsection (g) below; or

(b) entitle the City to suspend performance under this Agreement (including, but not limited to, withholding any type of development approval or municipal service) unless: (i) the portion of the Property for which performance is suspended is the subject of the default, or (ii) the portion of the Property for which performance is suspended is owned or controlled by the owner or developer in default (for example, the City shall not be entitled to suspend its performance with regard to the Project of "Tract X" by "Owner A" based on the grounds that any other developer is in default with respect to any other tract but may suspend performance with regard to development of "Tract X" and all tracts owned by "Owner A" if "Owner A" is in default on "Tract Y"); or

(c) affect any portion of the Property other than the platted lot or unplatted tax parcel that is subject to the default; or

(d) entitle the aggrieved Party to seek or recover exemplary damages; or

(e) withhold approval of any plat or other development permit or wrongfully condition or deny a plat or other development permit that meets City Regulations; or

(f) limit the Term.

(g) Notwithstanding the foregoing subsection (a) above, the Parties expressly agree that if, after providing notice to the Developer and an opportunity for the Developer to correct or cure any incorrect information or misleading statement, a mutually agreed-upon third-party arbiter determines that the Developer has made any materially misleading or incorrect representation or warranty, on behalf of itself or the Owner, in this Agreement or in any financial statement, certificate, report, or opinion submitted in connection with this Agreement, the Developer shall be in default of this Agreement; and, subject to City Council approval, the City may terminate this Agreement.

6.03 Limited Waivers of Immunity. The City does not waive or surrender any of its governmental powers, immunities, or rights, except to the extent permitted by law and necessary to allow the Developer to enforce its remedies under this Agreement.

## ARTICLE SEVEN
## ASSIGNMENT AND ENCUMBRANCE

7.01 Assignment. Except as provided below, Developer may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City, which approval will not be unreasonably withheld or delayed. The City agrees that Developer may: (a) assign all or part of its rights and obligations under this Agreement to: (1) any entity affiliated with Developer by reason of controlling, being controlled by, or being under common control with Developers; or (2) any successor to Developer due to the termination of the relationship between the Developer and the Owner; and (b) assign its right to receive payments under this Agreement to: (1) a tenant in the Project; or, (2) to a third-party lender advancing funds for the acquisition of all or part of any part of the Property or for the construction of the Public Infrastructure. The City expressly consents to any assignment described in the preceding sentence and agrees that no further consent of City to such an assignment will be required. The Developer agrees to provide City with written notice of any such assignment.

7.02 Encumbrance by City. The City shall not collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of its rights, title, or interest under this Agreement without Developer’s prior written consent.

7.03 Assignees as Parties. An Assignee shall be considered a "Party" and the "Developer" for the purposes of the rights, title, interest, and obligations assigned to the Assignee.

7.04 No Restriction on Property Transfer. No provision of this Agreement shall limit the ability of the Developer or any other person to transfer voluntarily or involuntarily its right, title, or interest in or to all or any portion of the Property.

## ARTICLE EIGHT
## ADDITIONAL PROVISIONS

8.01 Notices. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "**Notice**") must be in writing, shall be signed by or on behalf of the Party giving the Notice, and shall be effective as follows: (a) on or after the 3rd business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by E-mail; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person and delivery by regular mail (with a confirming copy sent by E-mail). Notices given pursuant to this section shall be addressed as follows:

| | |
|---|---|
| To the City: | City of Corpus Christi<br>Attn: City Manager's Office<br>P.O. Box 9277<br>Corpus Christi, TX 78469-9277<br>Email: elsyb@cctexas.com |
| With a copy to: | City of Corpus Christi<br>Attn: City Attorney's Office<br>P.O. Box 9277<br>Corpus Christi, TX 78469-9277 |
| To the Owner: | Diamond Beach Holdings, LLC<br>Attn: Steve Yetts<br>400 Las Colinas Blvd. E., Suite 1080<br>Irving, TX 75039<br>Email: syetts@ashlardev.com |
| To the Developer: | Ashlar Interests, LLC<br>400 Las Colinas Blvd E, Suite 1075<br>Irving, TX 75039<br>Email: syetts@ashlardev.com |
| With a copy to: | Shupe Ventura, PLLC<br>Attn: Misty Ventura<br>9406 Biscayne Blvd.<br>Dallas, TX 75218<br>Email: misty.ventura@svlandlaw.com |

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

8.02 Estoppel Certificates. From time to time upon written request of the Developer, on behalf of the Owner, the City Manager shall execute a written estoppel certificate, in a form acceptable to the City Attorney, clearly identifying any obligations of the Developer on behalf of

the Owner under this Agreement that are in default or, with the giving of notice or passage of time, would be in default, as well as a description of what the City believes will cure such default; and stating, to the extent true, that to the best knowledge and belief of the City, the Developer, on behalf of the Owner, is in compliance with its duties and obligations under this Agreement.

8.03 Interpretation. The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

8.04 Entire Agreement; Severability. The Public Infrastructure Agreements constitute the entire agreement between the Parties and supersede all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, such unenforceable provision shall be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties. In the event there is a conflict between the terms and provisions of this Agreement and an indenture of trust related to a series of PID Bonds, the terms and provisions of the indenture shall apply, and the City shall provide written Notice of such conflict to the Developer and to the Owner. In the event there is a conflict between the terms and provisions of this Agreement and the TIRZ Agreement, PID Reimbursement Agreement, or Chapter 380 Agreement the applicable terms and provisions of the TIRZ Agreement, PID Reimbursement Agreement, or Chapter 380 Agreement, respectively, shall apply.

8.05 Reservation of Rights. By entering into this Agreement, Developer does not waive any right that Developer or Owner may now or hereafter have with respect to any claim: (1) of rights arising from Chapter 245 of the Texas Local Government Code, as amended; (2) that the application of the City Regulations to the development of the Property violates any local, state or federal law; or (3) that an action by the City constitutes a "Taking", an inverse condemnation of all or any portion of the Property, or an illegal exaction.

8.06 Applicable Law; Venue. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Nueces County, Texas. Venue for any action to enforce or construe this Agreement shall be Nueces County, Texas.

8.06 Non-Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

8.07 No Third-Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

8.08 Force Majeure. Each Party shall use good faith, due diligence, and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to a Force Majeure Event (defined below), to perform its obligations under this Agreement, then the obligations of such Party (the "Impacted Party") affected by the Force Majeure Event shall be temporarily suspended. Within three business days after the occurrence of a Force Majeure Event, the Party claiming the right to temporarily suspend its performance, shall give Notice to all the Parties, including a detailed explanation of the Force Majeure Event and a description of the action that will be taken to remedy the Force Majeure Event and resume full performance at the earliest possible time. The term "Force Majeure Event" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence, and reasonable care, including specifically: (a) acts of God; (b) natural disasters, such as flood, fire, hurricane, earthquake, severe weather events, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes, or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, organized labor activities, including but not limited to labor stoppages or slowdowns; (h) restraints or delays impacting power, storage, transportation or supplies, including, but not limited to, telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; (i) any other similar events or circumstances beyond the reasonable control of the Impacted Party or (j) any unreasonable delays of the City, either in its capacity as a governmental entity with respect to actions related to the development and construction of the Project Improvements, such as the granting of permits or conducting inspections, or in its capacity as a Party to this Agreement with respect to its obligations under this Agreement (which unreasonable delays are not due to a Force Majeure Event as described in clauses (a)-(i) above; provided, that in no event shall the obligation to make a payment be considered a Force Majeure Event

8.09 Employment of Undocumented Workers. During the term of this Agreement, the Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a(f), the Developer shall repay the incentives granted herein within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101(c), Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

8.10 No Boycott of Israel. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the

term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, 'boycott Israel,' a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

8.11 Iran, Sudan, and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law or Texas law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

8.12 No Discrimination Against Fossil Fuel Companies. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, 'boycott energy companies,' a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

8.13 No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby

verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification and the following definitions:

(a) 'discriminate against a firearm entity or firearm trade association,' a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association;

(b) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(c) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.'

8.14 Affiliate. As used in Sections 8.10 through 8.13, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

8.15 Form 1295. Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "**TEC**') electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "**Form 1295**"). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

8.16 Public Information. Notwithstanding any other provision to the contrary in this Agreement, all information, documents, and communications relating to this Agreement may be subject to the Texas Public Information Act and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Developer agrees that this Agreement may be terminated if the Developer knowingly or intentionally fails to comply with a requirement of that subchapter, if applicable, and the Developer fails to cure the violation on or before the 10th business day after the date the City provides notice to Developer of noncompliance with Subchapter J, Chapter 552. Pursuant to Section 552.372, Texas Government Code, Developer is required to preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to the City for the duration of this Agreement; promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Developer on request of the City; and on completion of the Agreement, either provide at no cost to the City all contracting information related to the contract that is in the custody or possession of the entity or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the City.

8.17 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

8.18 Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

8.19 Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein for all purposes:

| | |
|---|---|
| Exhibit A | Metes and Bounds Description of the Property |
| Exhibit B | Depiction of the Property |
| Exhibit C | TIRZ Agreement |
| Exhibit D | Form of PID Reimbursement Agreement |

| | |
|---|---|
| Exhibit E | Requirements for Construction of Public Works on City Property |
| Exhibit F | Ownership and Maintenance Exhibit |
| Exhibit G | Phase 1 PID Authorized Improvements[3] |

[*Remainder of page left blank intentionally. Execution pages and exhibits follow.*]

[3] Exhibit D is based on preliminary design and engineering which are subject to change. Final PID Authorized Improvements may differ from the depictions shown on Exhibit D.

EXECUTED to be effective as of the Effective Date set forth above.

**CITY:**

**CITY OF CORPUS CHRISTI, TEXAS**

BY: _____

NAME: _____

DATE: _____

**ATTEST:**

BY: _____

NAME: _____

DATE: _____

**DEVELOPER:**

**ASHLAR INTERESTS, LLC**
a Texas limited liability company,

BY: _____

NAME: _____

DATE: _____

**EXHIBIT A**
**METES AND BOUNDS DESCRIPTION OF THE PROPERTY**

**Metes and Bounds Description of the Property**
**(approximately 242.011 acres)**

242.011 acres being all of a 39.692 acre tract referenced and described by metes & bounds in Substitute Trustee's Deed, Doc. No. 2017050832, Official Records, Nueces County, Texas, said 39.692 acre tract being out of Tract 27C and 27D of the Padre Island – Corpus Christi Island Fairway Estates, hereafter referred to as P.I.C.C.I.F.E., Lots 27C and 27D, a map of which is recorded in Vol. 67, Pg. 779, Map Records, Nueces County, Texas; and 202.319 acres referenced in Correction Warranty Deed, Doc. No. 2018045542, Official Records, Nueces County, Texas, and described by metes & bounds of a 28.629 acre tract (Tract 1), a 72.316 acre tract (Tract 2), a 74.440 acre tract (Tract 3), and a 30.684 acre tract (Tract 4), save & except 3.749 acres, said 3.749 acres being a portion of a 60-foot wide street tract, also known as 'Aquarius Street Re-Alignment', recorded in Doc. No. 2011039226, Official Records, Nueces County, Texas; said 202.319 acres including portions of Tract 27C and 27D of P.I.C.C.I.F.E., Lots 27C and 27D, a map of which is recorded in Vol. 67, Pg. 779, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Blocks 45 & 46, a map of which is recorded in Vol. 42, Pg. 153-154, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Block 3, a map of which is recorded in Vol. 40, Pg. 145-146, Map Records, Nueces County, Texas; all of P.I.C.C.I.F.E., Blocks 37, 38, 39, and 40, a map of which is recorded in Vol. 41, Pg. 128, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Blocks 24-33, a map of which is recorded in Vol. 40, Pg. 154-159, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Blocks 43 & 44, a map of which is recorded in Vol. 42, Pg. 10-11, Map Records, Nueces County, Texas; and portions of P.I.C.C.I.F.E., Blocks 34, 35, and 36, a map of which is recorded in Vol. 40, Pg. 183-184, Map Records, Nueces County, Texas, said Blocks 26, 35, 36, 43, 44, and a portion of Block 34 now vacated as per plat recorded in Vol. 67, Pg. 688, Map Records, Nueces County, Texas.

**EXHIBIT B**
**DEPICTION OF THE PROPERTY**

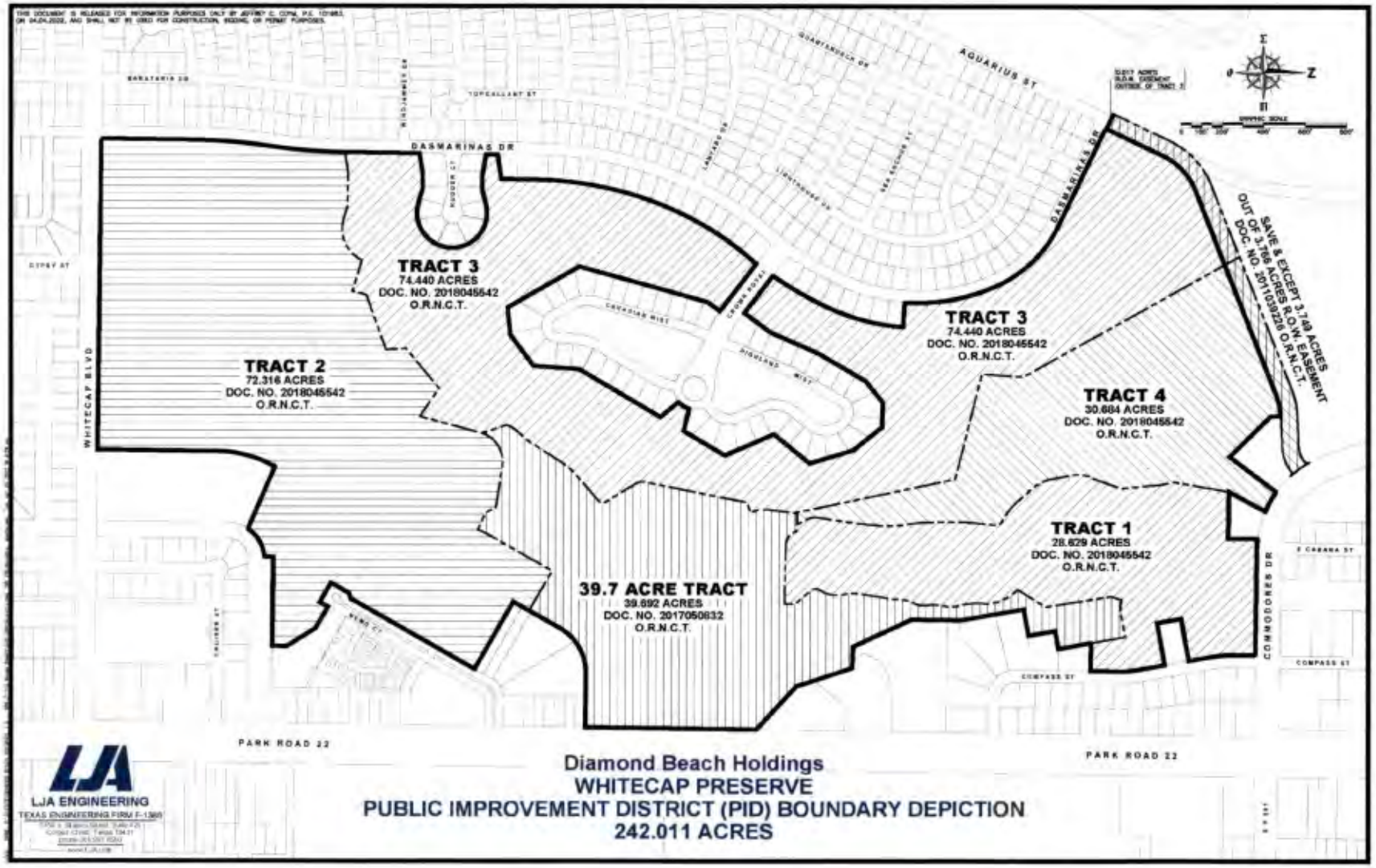


**EXHIBIT C**

**TIRZ AGREEMENT**

## TIRZ #2 DEVELOPMENT REIMBURSEMENT AGREEMENT- WHITECAP

This TIRZ #2 Development Reimbursement Agreement – Whitecap (the "**Agreement**") is entered into by and between the City of Corpus Christi, Texas (the "**City**"), as the agent of the Reinvestment Zone Number Two, City of Corpus Christi, Texas ("**TIRZ #2**"), and Ashlar Interests, LLC (the "**Developer**"). The Developer and the City are individually referred to as a "**Party**" and collectively as the "**Parties.**"

### Recitals

WHEREAS on November 14, 2000, the City Council of the City (the "**City Council**") approved Ordinance No. 024270, which established the TIRZ #2 in accordance with Texas Tax Code Chapter 311 (as amended, the "**Act**"), which ordinance was most recently amended on December 6, 2022, by Ordinance No. 032929 to, among other items, extend the term of the TIRZ #2 until December 31, 2042, modify the boundaries of TIRZ #2 to add portions of the Whitecap Public Improvement District (the "**District**"), and add certain infrastructure improvements to be constructed related to the District as described in the Plan (defined below) for TIRZ #2. TIRZ #2 promotes economic development and stimulates business and commercial activity in the specified boundary near Park Road 22, Commodores Drive, Aquarius Street and Nemo Court as laid out in the creation ordinance;

WHEREAS on December 6, 2022, the City Council most recently approved an Amended Project and Financing Plan (the "**Plan**") for TIRZ #2;

WHEREAS the Developer has proposed a development plan (the "**Development**" or "**Project**") for certain improvements depicted on attached **Exhibit A** (each, an "**Improvement**" and, collectively, the "**Improvements**"), including specific eligible infrastructure improvements (each an "**Eligible Infrastructure Improvement**") as listed in the attached **Exhibit C**;

WHEREAS, the Improvements are planned to be constructed on the property included in the District, with such property being more fully described on attached **Exhibit B** (the "**Property**");

WHEREAS, the Property is located within TIRZ #2, and the Improvements are included as approved improvements in the Plan;

WHEREAS, any reference to "**City**" or "**City Staff**," is entirely in agency capacity for TIRZ #2, and further the City as a home-rule municipal corporation is not a party to this agreement;

WHEREAS, any reference to "**Contract Administrator**" shall mean the City's Director of Finance and Procurement, or designee, unless a different Contract Administrator is named by notice mailed to the Developer in accordance with the Agreement; and

WHEREAS the Developer desires to be reimbursed for certain future costs of Eligible infrastructure incurred for the Development, and the City, as agent for TIRZ #2, desires to reimburse the Developer for these costs in accordance with this Agreement; and

WHEREAS, this Agreement is an agreement authorized by Section 311.008(b) and 311.010(b) of the Act that the City, as agent of TIRZ #2, finds to be necessary to implement the Plan and achieve the purposes of TIRZ #2;

**Agreement**

Now therefore, in consideration of the mutual covenants and obligations, the parties agree as follows:

**Section 1. Reimbursement Obligations.**

The City shall reimburse the Developer from available TIRZ #2 funds for costs of the Eligible Infrastructure Improvements listed in attached **Exhibit C** (the **"Estimated Project Costs"**) in accordance with this Agreement provided that: (a) the total aggregate amount of all such reimbursements for Eligible Infrastructure Improvements may not exceed $11,500,000.00 (the "**Reimbursement Cap**") and (b) if the Developer actually incurs a cost for an Eligible Infrastructure Improvement less than that Eligible Infrastructure Improvement's Estimated Project Cost, the City shall reimburse the Developer for only the amount of the cost that the Developer actually incurred (the "**Actual Project Costs**") for that Eligible Infrastructure Improvement. The Estimated Project Costs listed in **Exhibit C** are based on preliminary engineering and are subject to change; however, in no case will reimbursement to the Developer exceed the Reimbursement Cap.

For purposes of this Agreement, the value of the Property located within TIRZ #2 as of January 1, 2022, is $17,300,784.00 (the "**Base Value**"). The property taxes paid to the taxing entities and dedicated to TIRZ #2 for the increased value above the Base Value constitutes the property tax increment. The total anticipated project cost, including costs that are not eligible for reimbursement, is $150,000,000.00.

Based on qualifications of the Development as an authorized project of TIRZ #2, the reimbursement structure is as follows:

(a) Payments From Available TIRZ #2 Funds. Specifically for the Eligible Infrastructure Improvements consisting of the two bridge Improvements listed below (each a "**Bridge Improvement**"), reimbursement will be paid from lawfully available funds on deposit in the tax increment fund for TIRZ #2 in three equal annual payments beginning the calendar year after each Bridge Improvement is completed and accepted by the City and the Actual Project Costs of such Bridge Improvement have been approved in accordance with this Agreement. Before any reimbursement can begin, the Developer must fully complete construction on all components of each of the listed Bridge Improvements. Upon completion of a Bridge Improvement, the Developer shall execute a "**Certificate for Payment,**" substantially in the form attached as **Exhibit D**, to the Contract Administrator along with supporting documentation in the standard form required for TIRZ #2 projects for review and approval for payment in accordance with Section 1(c) below. Upon approval, and subject to the Developer's compliance with all obligations in Section 2, the three annual payments from available TIRZ #2 increment funds shall be made on or before April 30th of each year until all approved Actual Project Costs for the Bridge Improvement have been reimbursed or obligations under this Agreement have terminated in accordance with Section 6 below. The maximum reimbursement from lawfully available funds on deposit in the tax increment fund for TIRZ #2 under this Section 1(a) shall not exceed an aggregate amount of $5,900,000 for both Bridge Improvements. The individual Bridge Improvements are listed below; and, each Bridge Improvement is more completely described in **Exhibit C**.

a. Commodores Mobility Bridge
b. Encantada Avenue Mobility Bridge.

The Developer will construct the Bridge Improvements in accordance with the terms of a license agreement between the City and the Developer, which will be agreed at a later date. The license agreement will provide for all construction requirements including the provision of payment and performance bonds if required by State law. When construction of a Bridge Improvement is complete in accordance with the license agreement, the City will provide a letter accepting the Bridge Improvement. Upon acceptance of each Bridge Improvement, Developer shall be entitled to reimbursement for Actual Project Costs of each Bridge Improvement under this Section 1(a).

(b) Payments From 50% of Available Project Increment. The Actual Project Costs of other Eligible Infrastructure Improvements will be reimbursed solely from Project Increment (defined below) on deposit in the tax increment fund for TIRZ #2. The Eligible Infrastructure Improvements to be paid solely from Project Increment (collectively, the "**Project Increment Improvements**") consist of:

1. Public Mobility Bridges
2. Preserve Community Walking Trail
3. Aquarius Street Box Culvert Water Exchange.

Actual Project Costs for Bridge Improvements not paid under Section 1(a) above may be reimbursed from Project Increment after completion of all Project Increment Improvements as described in Section 1(b)3 below if funding is still available under the Reimbursement Cap.

1. Developer shall be eligible for reimbursement for the Actual Costs of the Project Increment Improvements upon the earlier of: (1) expenditure of at least $52,000,000 in total project costs for the Whitecap project as evidenced by submittal of a job costs report along with evidence of payments made, so long as all such costs were incurred after the Effective Date of this Agreement, or (2) approval of a final plat by the City's Planning & Zoning Commission and a set of stamped construction plans evidencing approval by City staff for the first phase of development within Sector 3 (zoned Resort Commercial CR-2) as shown on Exhibit H to the Whitecap Planned Unit Development (PUD) Guidelines and Master Site Plan approved by Ordinance No. 032890 adopted by the City Council on October 18, 2022. Subject to meeting the eligibility requirement, beginning the calendar year after each Project Increment Improvement is completed and accepted by the City as evidenced by a recorded plat for any Project Increment Improvement (or a Certificate of Occupancy for any asset that requires it) from the City's Development Services Department and the Actual Project Costs of such Project Increment Improvement have been approved in accordance with this Agreement, the City shall reimburse annually an amount equal to up to 50% of the property tax increment (for assessed value in excess of the Base Value) actually paid to the participating taxing entities in TIRZ #2 attributable to the Property and paid into the tax increment fund of the TIRZ #2 (such 50% of the property tax increment generated solely from the Property collected by participating taxing entities is referred to herein as the "**Project Increment**").

2. Each such payment shall be made no later than April 30th of each year, subject to the approval of a Certificate for Payment in accordance with Section 2 and the Developer's compliance with all obligations in Section 2. Each year's payment will be limited to 50% of the Project Increment actually collected from the Property by all taxing entities on or before January 31st of that year. Each payment is also limited to the amount of Eligible Infrastructure Improvement assets that have been inspected and accepted by the City in a recorded plat provided to the Contract Administrator. Upon completion of a Project Increment Improvement, the Developer shall execute a Certificate for Payment to the Contract Administrator along with supporting documentation in the standard form required for TIRZ #2 projects, for review and approval for payment in accordance with Section 1(c) below. Each approved Certificate for Payment will certify the total maximum reimbursement for the Project Increment Improvement to be paid from Project Increment. The amount of reimbursement is limited to Actual Project Costs, which may include all costs related to the construction of the asset, including permit fees, design, and construction costs, but not interest.

3. Prior to the completion of all Eligible Infrastructure Improvements and acceptance by the City as described above, the amount reimbursed under this Agreement for Actual Project Costs for any Eligible Infrastructure Improvement may not exceed the budgeted costs listed for that Eligible Infrastructure Improvement in Exhibit C. Following completion of all Eligible Infrastructure Improvements shown on Exhibit C and acceptance by the City as described above, if the Actual Project Costs for a specific Eligible Infrastructure Improvement are less than the budgeted costs shown on Exhibit C (a "**Cost Underrun**"), then such Cost Underrun may be applied to reimburse the Developer for a cost overrun on another Eligible Infrastructure Improvement so long as: (1) the total reimbursement paid to the Developer under this Agreement does not exceed the Reimbursement Cap; and (2) any approved Actual Project Costs, including costs for a Bridge Improvement in excess of $5,900,000, are reimbursed solely from Project Increment in accordance with Section 1(b)1 above.

4. After City has paid to Developer an amount equal to all approved Actual Project Costs of Eligible Infrastructure Improvements up to the Reimbursement Cap or obligations under this Agreement have terminated in accordance with Section 6 below, City shall have no further obligation to pay any amount to Developer.

(c) Process for Review and Approval of Actual Project Costs. Following the completion of any Eligible Infrastructure Improvement for which the Developer is eligible for reimbursement, the Developer shall submit a Certificate for Payment along with all supporting documentation in the standard form required for TIRZ #2 projects to the Contract Administrator for reimbursement of Actual Project Costs. Upon receipt of a Certificate for Payment and supporting documentation from the Developer, the City shall conduct a review in order to: (1) confirm that such request is complete, (2) confirm that the work for which payment is requested was performed in accordance with all applicable laws, applicable plans, and with the terms of this Agreement and any other agreement between the parties related to

Property, and (3) verify and approve the Actual Project Costs of such work specified in such Certificate for Payment. The City shall also conduct such review as is required in its discretion to confirm the matters certified in the Certificate for Payment. The Developer agrees to cooperate with the Contract Administrator and the City, as agent of TIRZ #2, in conducting each such review and to provide such additional information and documentation as is reasonably necessary to conclude each such review. The Developer further agrees that if the City provides to the Developer a sales tax exemption certificate, then sales tax will not be approved for payment under a Certificate for Payment. Within twenty (20) business days following receipt of any Certificate for Payment, the Contract Administrator shall either: (1) approve the Certificate for Payment and process it for payment, or (2) provide the Developer with written notification of disapproval of all or part of a Certificate for Payment, specifying the basis for any such disapproval. Any disputes shall be resolved as required by section 1(d) below. The Contract Administrator shall facilitate the payment of the approved or partially approved Certificate for Payment as quickly as practicable thereafter.

(d) If there is a dispute over the amount of any payment requested under a submitted Certificate for Payment, the Contract Administrator shall nevertheless facilitate payment of the undisputed amount, and the Developer and the City, as agent of TIRZ #2, shall use all reasonable efforts to resolve the disputed amount before the next payment is made; however, if the City, as agent of TIRZ #2, and Developer are unable to resolve the disputed amount, then the City's determination of the disputed amount (as approved by the TIRZ #2 Board) shall control.

(e) No interest shall accrue on any amount of unreimbursed Actual Project Costs, and City shall not be obligated to pay Developer any interest whatsoever.

**Section 2. Developer Obligations.**

(a) Developer agrees that the completed Improvements shall substantially conform to the Conceptual Development Plan attached hereto as **Exhibit A** and the descriptions and Estimated Project Costs in **Exhibit C**. Any amendments to the Conceptual Development Plan must be submitted in writing and approved by the City Manager or designee ("City Manager").

(b) Developer shall complete the Eligible Infrastructure Improvements in accordance with the deadlines listed below. Any extension of time for completion of any of the Eligible Infrastructure Improvements must be submitted in writing and approved by the City Manager. In no event may the completion date for any Improvement be extended for longer than one year from the date listed below without approval of the board of directors of TIRZ #2 (the "**TIRZ #2 Board**"). The requirements for each Eligible Infrastructure Improvement are more completely described in Exhibit A.

1. Public Mobility Bridges – December 31, 2025
2. Commodores Drive Mobility Bridge – December 31, 2025
3. Preserve Community Walking Trail – December 31, 2025
4. Aquarius Street Box Culvert Water Exchange – December 31, 2025
5. Encantada Avenue Mobility Bridge – December 31, 2025

(c) Nothing in this Agreement shall be construed to limit or restrict any landowner's right to protest ad valorem taxes levied against property owned by the landowner of the Property. A landowner's decision to protest ad valorem taxes on Property does not constitute a default under this Agreement. Developer acknowledges and agrees that if Diamond Beach Holdings, LLC, the landowner of the Property as of the effective date of this Agreement (the "**Landowner**"), or any entity affiliated with the Landowner that may become a landowner of the Property within the District, fails to pay the required taxes on a lot or lots within the Property or files an appeal to the Nueces County Appraisal District or any state or federal court of the assessed value of a lot or lots within Property for ad valorem tax purposes, the City and TIRZ #2 shall be under no obligation to make any payments from revenues generated by that lot or lots under this Agreement until such time as the appeal is resolved and all taxes are paid in full. Any late fees, fines, or interest assessed as a result of the failure to pay taxes or the appeal process shall not be reimbursed to the Developer under this Agreement.

(d) The Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of Eligible Infrastructure Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer has sole responsibility of ensuring that all Eligible Infrastructure Improvements are constructed in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall at all times employ adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Eligible Infrastructure Improvements to be acquired and accepted by the City from the Developer. Inspection and acceptance of Eligible Infrastructure Improvements will be in accordance with applicable City ordinances and regulations. This Agreement is an agreement authorized by Texas Tax Code Section 311.008(b) and 311.010(b) and, as such, is exempt from the public bid requirements of Texas Local Government Code Chapter 252.

(e) In performing obligations under this Agreement, the Developer is an independent contractor and not the agent or employee of the City.

**Section 3. Audit.**

Developer, during normal business hours and with at least five (5) business days prior notice, shall allow designated City Staff reasonable access to inspect all financial and business records of Developer that relate directly to the Improvements to the extent necessary to assist City Staff in verifying the Developer's compliance with the terms and conditions of this Agreement. TIRZ #2 and the City shall have the right to have these records audited and shall maintain the confidentiality of these records to the extent permitted under applicable state and federal laws, including the Texas Government Code.

**Section 4. Sales Tax Sourcing.**

The Developer shall, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business, utilize, or

cause its contractors to utilize, Separated Building Materials and Labor Contracts for all taxable building material contracts related to the Development in the amount of $100,000 or more, to site payment of the sales tax on building materials for the Development to the Property.

**Section 5. Maintenance of Property and Improvements.**

Developer, on behalf of Landowner, must maintain the area or areas of the Property, including any Eligible Infrastructure Improvements made to the Property, that Landowner owns in accordance with the City's Code of Ordinances for the entirety of the time that the Landowner owns that area or areas of the Property.

**Section 6. Termination.**

Except for any obligations that are specifically stated to survive beyond the final payment or termination of the Agreement, this Agreement shall terminate upon the earlier of: (1) December 31, 2042; or (2) when Developer has been fully reimbursed in accordance with Section 1 of this Agreement. Notwithstanding the foregoing or any other provision in this Agreement, if the City, as the agent of TIRZ #2, determines that an Event of Default described in Section 18(b) below has occurred or that Developer has violated a law of the State of Texas that invalidates or voids this Agreement or requires termination of this Agreement; then, (1) Developer shall immediately repay all funds paid from TIRZ #2 funds, including Project Increment, under this Agreement, (2) Developer shall pay reasonable attorney fees and costs of court, if applicable, and (3) neither the City nor the TIRZ #2 Board shall be held liable for any consequential damages. Additionally, it is expressly agreed and acknowledged by the Parties that if the Developer fails to construct an Eligible Infrastructure Improvement after receiving a Notice of Default as described in Section 19 below, upon expiration of the Cure Period (defined below) the City may terminate its obligations under this Agreement solely related to the reimbursement of costs for such Eligible Infrastructure Improvement by providing written notice of such termination to the Developer; provided, however, such a termination as to a single Eligible Infrastructure Improvement shall not allow the City to withhold approved payments to the Developer for Eligible Infrastructure Improvements constructed and accepted by the City up to the Estimated Project Costs shown on Exhibit C for each Eligible Infrastructure.

**Section 7. Representations and Warranties.**

(a) Developer warrants and represents to City the following:

1. Developer, if a corporation, partnership, or limited liability company, is duly organized, validly existing, and in good standing under the laws of the State of Texas, and further has all corporate power and authority to carry on its business as presently conducted in Corpus Christi, Texas.

2. Developer has the authority to enter into and perform, and will perform, the terms of this Agreement.

3. Developer has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed and has timely paid and will timely pay all assessments, fees, and other governmental charges, including applicable ad valorem taxes, during the term of this Agreement.

4. If an audit determines that the request for funds was defective under the law or the terms of this agreement, Developer agrees to reimburse the City for the sums of money not authorized by law or this Agreement within thirty (30) days of written notice from the City requesting reimbursement.

5. The parties executing this Agreement on behalf of Developer are duly authorized to execute this Agreement on behalf of Developer.

(b) City warrants and represents to the Developer the following:

1. The City, as the agent of TIRZ #2, has the authority to enter into and perform its obligations under this Agreement.

2. The person executing this Agreement on behalf of the City and TIRZ #2 has been duly authorized to do so.

3. This Agreement is binding upon the City, as the agent for TIRZ #2, and the TIRZ #2 Board in accordance with its terms.

4. The execution of this Agreement and the performance by the City of its obligations under this Agreement do not constitute a breach or event of default by the City under any other agreement, instrument, or order to which the City is a party or by which the City is bound.

**Section 8. Force Majeure.**

If the City or Developer are prevented, wholly or in part, from fulfilling its obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, pandemic, other causes of force majeure, or by reason of circumstances beyond its control, then the obligations of the City or Developer are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon.

**Section 9. Employment of Undocumented Workers.**

During the term of this Agreement, the Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a(f), the Developer shall repay the incentives granted herein within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101(c), Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

**Section 10. No Boycott of Israel.**

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, 'boycott Israel,' a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**Section 11. Iran, Sudan, and Foreign Terrorist Organizations.**

The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

**Section 12. No Discrimination Against Fossil Fuel Companies.**

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

**Section 13. No Discrimination Against Firearm Entities and Firearm Trade Associations.**

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification and the following definitions:

(a) 'discriminate against a firearm entity or firearm trade association,' a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association;

(b) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(c) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association,

federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code."

**Section 14. Affiliate.**

As used in this Agreement, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Section 15. Form 1295.**

Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

**Section 16. Assignment.**

This Agreement is not assignable by any Party without the written consent of the non-assigning Party. However, Developer may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of Developer without City consent. In such cases, Developer shall give City no less than thirty (30) days prior written notice of the assignment or other transfer. For assignments in which written consent from the other Party is required, that consent shall not be unreasonably withheld, conditioned, or delayed.

Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of the City, if consent is required under this Section, shall be deemed an event of default in accordance with the terms of Sections 18 and 19 herein. Any assignment of this Agreement in violation of this Section and not cured in accordance with the terms of this Agreement, shall enable the City to terminate this Agreement.

Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of payments under this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, shall the City or TIRZ #2 be obligated in any way to said financial institution or other provider of capital.

**Section 17. Indemnity.**

**The Developer in performing its obligations under this Agreement is acting independently, and the City, as agent for TIRZ #2, and the TIRZ #2 Board assumes no responsibilities or liabilities to third parties in connection with the Eligible Infrastructure Improvements. The Developer agrees to indemnify, defend, and hold harmless the City, the TIRZ #2 Board, and their respective officers, agents, employees, and volunteers in both their public and private capacities, from and against claims, suits, demands, losses, damages, causes of action, and liability of every kind, including, but not limited to, expenses of litigation or settlement, court costs, and reasonable attorneys' fees which may arise due to any death or injury to a person or the loss of, loss of use, or damage to property, arising out of or occurring as a consequence of the performance of this Agreement, excluding any errors, omissions, or willful misconduct, negligent act or omission of the City, the TIRZ #2 Board, and their respective officers, agents, employees, and volunteers. Developer must, at its own expense defend all actions based on those claims and demands with counsel reasonably satisfactory to the City Attorney. The City and the TIRZ #2 Board agree to reasonably cooperate and assist Developer in providing such defense, including specifically assertion of governmental immunity and sovereign immunity to the fullest extent under applicable law. The provisions of this Section are solely for the benefit of the Parties to this Agreement and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Notwithstanding the foregoing, the Developer shall be released upon the assignment of this Agreement to any permitted third-party assignee for claims arising subsequent to the assignment to such third-party assignee, and the City and/or the TIRZ #2 Board shall seek indemnification under this Section from the third-party assignee.**

**Section 18. Events of Default.**

The following events constitute a default of this Agreement:

(a) If either Party fails to perform an obligation imposed on such Party by this Agreement (a "**Failure**") and such Failure is not cured after notice and the expiration of the cure periods provided in this Section 19 and Section 20, then such Failure shall constitute a "**Default.**".

(b) The TIRZ #2 Board or City Staff determines that any representation or warranty on behalf of Developer contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to

the TIRZ #2 in connection with this Agreement was incorrect or misleading in any material respect when made.

(c) Developer makes an assignment of this Agreement for the benefit of creditors, except as provided in Section 16.

**Section 19. Notice of Default.**

Should a Party determine a Failure according to the terms of this Agreement, such Party shall notify the other Party of the Failure in writing. The non-performing Party shall have sixty (60) days from the date of the notice to cure such Failure (each such period a "**Cure Period**"). Notwithstanding the above, if such non-monetary Failure cannot be cured by reasonably diligent efforts within sixty (60) days, then such occurrence shall not be a default so long as defaulting Party promptly initiates and diligently and continuously attempts to cure the same, even if the same is not cured within the Cure Period. The non-defaulting Party may elect to extend the Cure Period by providing the defaulting Party written notice of such extension.

**Section 20. Results of Uncured Default.**

If the Developer is in default and has not cured or attempted to initiate a cure within the Cure Period, the City shall have available all remedies at law or in equity; provided no Default by the Developer shall entitle the City to terminate this Agreement except as expressly stated in Section 6 above or to withhold approved payments to the Developer. If the City is in default, the Developer shall have available all remedies at law or in equity; provided, however, no Default by the City shall entitle the Developer to terminate this Agreement.

**Section 21. No Waiver.**

(a) No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement.

(b) No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement.

(c) Any waiver or indulgence of Developer's default may not be considered an estoppel against the City or the TIRZ #2 Board.

(d) It is expressly understood that the failure by a Party to insist upon the strict performance of any provision of this Agreement by the other Party, or the failure by a Party to exercise its rights upon a default by the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Agreement.

**Section 22. Available Funds.**

Developer specifically agrees that City and the TIRZ #2 Board shall only be liable to Developer for the actual amount of the money due Developer under this Agreement from TIRZ #2 funds as described in

Section 1 above. Payment by City is strictly limited to the total amount of increment funds for TIRZ #2 as set forth in this Agreement.

**Section 23. Notices.**

Any required notices under this Agreement shall be in writing, signed by or on behalf of the Party giving notice, and sent by mail, postage prepaid, addressed as follows:

To Developer:
Ashlar Interests, LLC
Attn: Steve Yetts
400 Las Colinas Blvd E, Suite 1075
Irving, TX 75039
Email: syetts@sahlardev.com

To City, as agent of TIRZ #2:
City of Corpus Christi
Attn.: City Manager's Office
Tax Increment Reinvestment Zone #2
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Email: ElsyB@cctexas.com

Notice is effective on or after the 10th business day after being deposited in the United States mail in the manner provided above with a confirming copy sent by E-mail.

**Section 24. Estoppel Certificate.**

From time to time upon written request of the Developer, the City Manager will execute a written estoppel certificate, in a form that is reasonably acceptable to the City Attorney, (1) identifying any obligations of the Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; or (2) stating, to the extent true, that to the best knowledge and belief of the City, the Developer is in compliance with its duties and obligations under this Agreement.

**Section 25. Amendments or Modifications.**

No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.

**Section 26. Captions.**

The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

**Section 27. Severability.**

If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section,

paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

**Section 28. Venue.**

Venue for any legal action related to this Agreement is in Nueces County, Texas.

**Section 29. Sole Agreement.**

This Agreement constitutes the sole agreement between City and Developer. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

**Section 30. Exhibits.**

The following Exhibits are attached to this Agreement and are incorporated herein for all purposes:

**Exhibit A – Conceptual Development Plan**

**Exhibit B – Property Description**

**Exhibit C – Description of Eligible Infrastructure Improvements and Estimated Project Costs**

**Exhibit D – Form of Certificate for Payment**

**Section 31. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

[Signature Page Follows]

APPROVED AS TO FORM: 27 day of April, 2023.

Assistant City Attorney

For City Attorney

EXECUTED BY DEVELOPER AND CITY AS AGENT FOR TIRZ #2 TO BE EFFECTIVE AS OF APRIL 28, 2023.

**City of Corpus Christi, Texas**
**on behalf of Reinvestment Zone Number Two, City of Corpus Christi, Texas:**

By: Constance D Sanchez

Constance Sanchez

Chief Financial Officer

Date: April 27, 2023

Attest:

By: Rebecca Huerta

Rebecca Huerta

City Secretary

**Developer:**

Ashlar Interests, LLC
a Texas limited liability company

By:

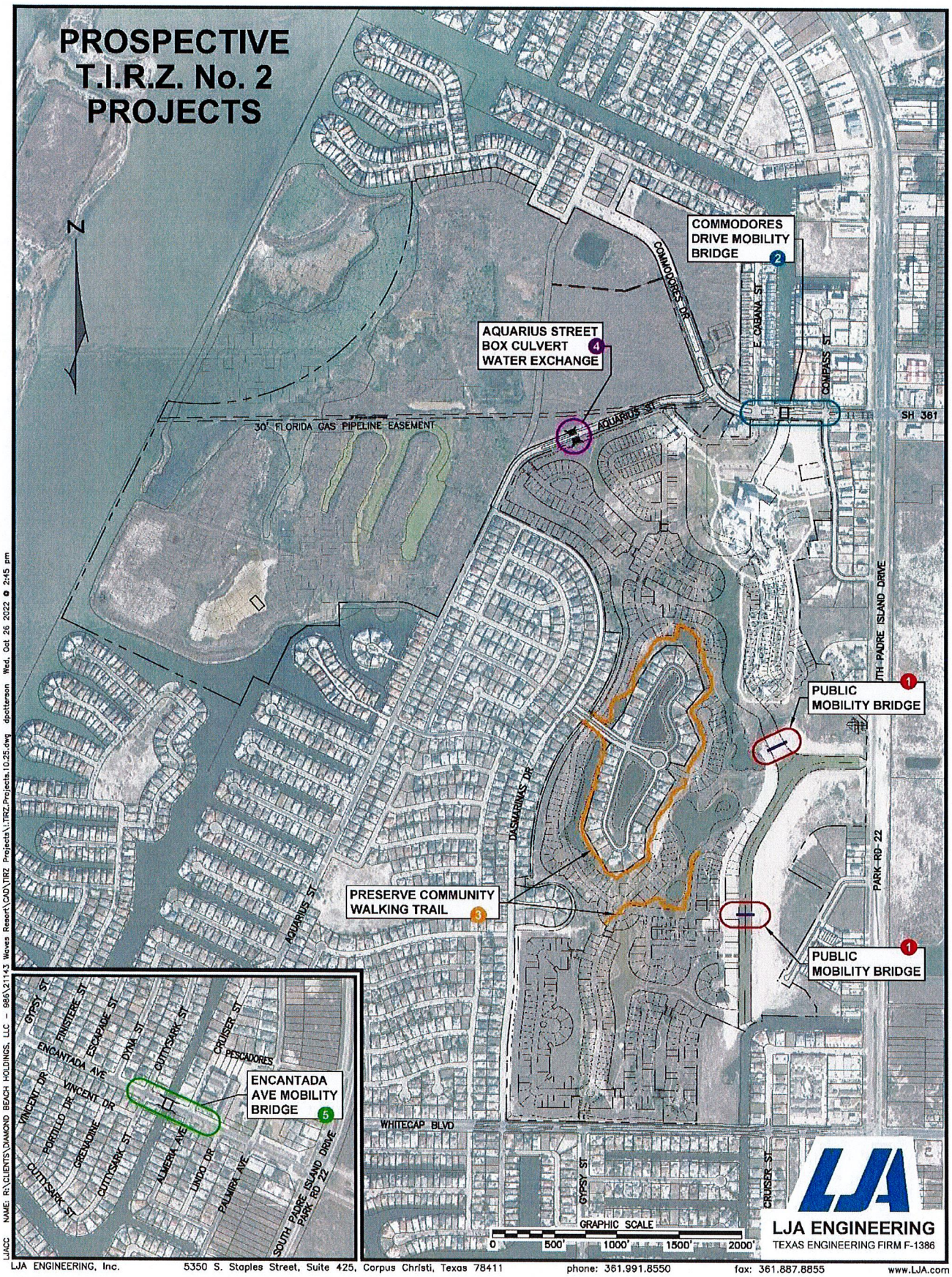
Title: President

Date: 4/13/23

Exhibit A – Conceptual Development Plan

# Whitecap Development Overview


12


PROSPECTIVE
T.I.R.Z. No. 2
PROJECTS
N
COMMODORES DRIVE MOBILITY BRIDGE 2
AQUARIUS STREET BOX CULVERT WATER EXCHANGE 4
COMMODORES DR
E ORIANA ST
COMPASS ST
SH 361
30' FLORIDA GAS PIPELINE EASEMENT
AQUARIUS ST
PUBLIC MOBILITY BRIDGE 1
PUBLIC MOBILITY BRIDGE 1
PRESERVE COMMUNITY WALKING TRAIL 3
DASMARINAS DR
PARK RD 22
AQUARIUS ST
WHITECAP BLVD
GYPSY ST
CRUISER ST
ENCANTADA AVE MOBILITY BRIDGE 5
GYPSY ST
FINISTERE ST
ESCAPADE ST
DYNA ST
CUTTYSARK ST
CRUISER ST
PESCADORES
ENCANTADA AVE
VINCENT DR
PORTILLO DR
GRENADINE
ALMERIA AVE
LINDO DR
PALMIRA AVE
SOUTH PADRE ISLAND DRIVE
PARK RD 22
GRAPHIC SCALE
0
500'
1000'
1500'
2000'
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
LJACC NAME: R:\CLIENTS\DIAMOND BEACH HOLDINGS, LLC - 986\21143 Waves Resort\CAD\TIRZ Projects\1-TIRZ Projects\10.25.dwg dpotterson Wed, Oct 26 2022 2:45 pm
LJA ENGINEERING, Inc. 5350 S. Staples Street, Suite 425, Corpus Christi, Texas 78411 phone: 361.991.8550 fax: 361.887.8855 www.LJA.com

## Exhibit B – Property Description

| Property Description | Nueces County Geo ID | Acres |
|---|---|---|
| 14353 Commodores Dr | 3730-0000-0273 | 28.6300 |
| 14901 Padre Island Dr S | 3730-0000-0274 | 45.2404 |
| Island Fairway Ests 39.67 ACS | 3730-0000-0276 | 39.6700 |
| Island Fairway Ests 70.0003 ACS | 3730-0000-0277 | 70.0003 |
| Island Fairway Ests 30.68 ACS | 3730-0000-0278 | 30.3000 |
| Nemo Court | 3730-0003-0040 | 5.0000 |
| Personal Property | D001-6175-0000 | |
| Island Fairway Estates Lot 1 Blk 33 14002 Dasmarin | 3730-0033-0010 | 0.2393 |
| Island Fairway Estates Lot 2 Blk 33 14006 Cat Boat ( | 3730-0033-0020 | 0.2066 |
| Island Fairway Estates Lot 3 Blk 33 14010 Cat Boat ( | 3730-0033-0030 | 0.2107 |
| Island Fairway Estates Lot 4 Blk 33 14014 Cat Boat ( | 3730-0033-0040 | 0.2176 |
| Island Fairway Estates Lot 5 Blk 33 14018 Cat Boat ( | 3730-0033-0050 | 0.2393 |
| Island Fairway Estates Lot 6 Blk 33 14022 Cat Boat ( | 3730-0033-0060 | 0.2727 |
| Island Fairway Estates Lot 7 Blk 33 14025 Cat Boat ( | 3730-0033-0070 | 0.2727 |
| Island Fairway Estates Lot 8 Blk 33 14021 Cat Boat ( | 3730-0033-0080 | 0.2727 |
| Island Fairway Estates Lot 9 Blk 33 14017 Cat Boat | 3730-0033-0090 | 0.2475 |
| Island Fairway Estates Lot 10 Blk 33 14013 Cat Boat | 3730-0033-0100 | 0.2176 |
| Island Fairway Estates Lot 11 Blk 33 14009 Cat Boat | 3730-0033-0110 | 0.2066 |
| Island Fairway Estates Lot 12 Blk 33 14005 Cat Boat | 3730-0033-0120 | 0.2066 |
| Island Fairway Estates Lot 13 Blk 33 14001 Cat Boat | 3730-0033-0130 | 0.2298 |
| Island Fairway Estates Lot 1 Blk 37 .2633 | 3730-0037-0010 | 0.2633 |
| Island Fairway Estates Lot 27 Blk 37 .2152 | 3730-0037-0020 | 0.2152 |
| Island Fairway Estates Lot 3 Blk 37 .2152 | 3730-0037-0030 | 0.2152 |
| Island Fairway Estates Lot 4 Blk 37 .2152 | 3730-0037-0040 | 0.2152 |
| Island Fairway Estates Lot 5 Blk 37 .2073 | 3730-0037-0050 | 0.2073 |
| Island Fairway Estates Lot 6 Blk 37 .3080 | 3730-0037-0060 | 0.3080 |
| Island Fairway Estates Lot 7 Blk 37 .2075 | 3730-0037-0070 | 0.2076 |
| Island Fairway Estates Lot 8 Blk 37 .2152 | 3730-0037-0080 | 0.2152 |
| Island Fairway Estates Lot 9 Blk 37 .2152 | 3730-0037-0090 | 0.2152 |
| Island Fairway Estates Lot 10 Blk 37 .2152 | 3730-0037-0100 | 0.2152 |
| Island Fairway Estates Lot 11 Blk 37 .2152 | 3730-0037-0110 | 0.2152 |
| Island Fairway Estates Lot 12 Blk 37 .2152 | 3730-0037-0120 | 0.2152 |
| Island Fairway Estates Lot 13 Blk 37 .2152 | 3730-0037-0130 | 0.2152 |
| Island Fairway Estates Lot 14 Blk 37 .2152 | 3730-0037-0140 | 0.2152 |
| Island Fairway Estates Lot 15 Blk 37 .2152 | 3730-0037-0150 | 0.2152 |
| Island Fairway Estates Lot 16 Blk 37 .2152 | 3730-0037-0160 | 0.2152 |
| Island Fairway Estates Lot 17 Blk 37 .2152 | 3730-0037-0170 | 0.2152 |
| Island Fairway Estates Lot 18 Blk 37 .2439 | 3730-0037-0180 | 0.2439 |
| Island Fairway Estates Lot 1 Blk 38 .3098 | 3730-0038-0010 | 0.3098 |
| Island Fairway Estates Lot 2 Blk 38 .3135 | 3730-0038-0020 | 0.3135 |
| Island Fairway Estates Lot 3 Blk 38 .3258 | 3730-0038-0030 | 0.3258 |
| Island Fairway Estates Lot 4 Blk 38 .3381 | 3730-0038-0040 | 0.3381 |
| Island Fairway Estates Lot 5 Blk 38 .3990 | 3730-0038-0050 | 0.3990 |
| Island Fairway Estates Lot 6 Blk 38 .3666 | 3730-0038-0060 | 0.3666 |
| Island Fairway Lot 7 Blk 38 .3197 | 3730-0038-0070 | 0.3197 |
| Island Fairway Estates Lot 8 Blk 38 .3197 | 3730-0038-0080 | 0.3197 |
| Island Fairway Estates Lot 9 Blk 38 .3187 | 3730-0038-0090 | 0.3187 |

| Property Description | Nueces County Geo ID | Acres |
|---|---|---|
| Island Fairway Estates Lot 10 Blk 38 .3136 | 3730-0038-0100 | 0.3136 |
| Island Fairway Estates Lot 11 Blk 38 .3385 | 3730-0038-0110 | 0.3385 |
| Island Fairway Estates Lot 1 Blk 39 .2037 | 3730-0039-0010 | 0.2037 |
| Island Fairway Estates Lot 2 Blk 39 .2324 | 3730-0039-0020 | 0.2324 |
| Island Fairway Estates Lot 3 Blk 39 .2037 | 3730-0039-0030 | 0.2037 |
| Island Fairway Estates Lot 4 Blk 39 .2037 | 3730-0039-0040 | 0.2037 |
| Island Fairway Estates Lot 5 Blk 39 .2324 | 3730-0039-0050 | 0.2324 |
| Island Fairway Estates Lot 6 Blk 39 .2324 | 3730-0039-0060 | 0.2324 |
| Island Fairway Estates Lot 7 Blk 39 .2037 | 3730-0039-0070 | 0.2037 |
| Island Fairway Estates Lot 8 Blk 39 .2037 | 3730-0039-0080 | 0.2037 |
| Island Fairway Estates Lot 9 Blk 39 .2037 | 3730-0039-0090 | 0.2037 |
| Island Fairway Estates Lot 10 Blk 39 .2324 | 3730-0039-0100 | 0.2324 |
| Island Fairway Estates Lot 1 Blk 40 .2324 | 3730-0040-0010 | 0.2324 |
| Island Fairway Estates Lot 2 Blk 40 .2037 | 3730-0040-0020 | 0.2037 |
| Island Fairway Estates Lot 3 Blk 40 .2037 | 3730-0040-0030 | 0.2037 |
| Island Fairway Estates Lot 4 Blk 40 .2037 | 3730-0040-0040 | 0.2037 |
| Island Fairway Estates Lot 5 Blk 40 .2324 | 3730-0040-0050 | 0.2324 |
| Island Fairway Estates Lot 15 Blk 45 Nemo Court 1.2 | 3730-0045-0150 | 1.2143 |
| Island Fairway Estates Lot 13 Blk 46 Nemo Court .43 | 3730-0046-0130 | 0.4362 |
| Island Fairway Estates Lot 14 Blk 46 Nemo Court .43 | 3730-0046-0140 | 0.4362 |
| Island Fairway Estates Lot 15 Blk 46 Nemo Court .43 | 3730-0046-0150 | 0.4362 |
| Island Fairway Estates Lot 16 Blk 46 Nemo Court .43 | 3730-0046-0160 | 0.4362 |
| Island Fairway Estates Lot 17 Blk 46 Nemo Court .43 | 3730-0046-0170 | 0.4362 |
| Island Fairway Estates Lot 18 Blk 46 Nemo Court .43 | 3730-0046-0180 | 0.4362 |
| Island Fairway Estates Lot 19 Blk 46 Nemo Court .43 | 3730-0046-0190 | 0.4362 |
| Island Fairway Estates Lot 20 Blk 46 Nemo Court .43 | 3730-0046-0200 | 0.4362 |
| Island Fairway Estates Lot 21 Blk 46 Nemo Court .43 | 3730-0046-0210 | 0.4362 |
| Island Fairway Estates Lot 22 Blk 46 Nemo Court .43 | 3730-0046-0220 | 0.4362 |
| Island Fairway Estates Lot 23 Blk 46 Nemo Court .43 | 3730-0046-0230 | 0.4362 |
| Island Fairway Estates Lot 24 Blk 46 Nemo Court .43 | 3730-0046-0240 | 0.4362 |
| Island Fairway Estates Lot 25 Blk 46 Nemo Court .43 | 3730-0046-0250 | 0.4362 |
| Island Fairway Estates Lot 26 Blk 46 Nemo Court .43 | 3730-0046-0260 | 0.4338 |
| Island Fairway Estates Lot 27 Blk 46 Nemo Court .42 | 3730-0046-0270 | 0.4223 |
| Island Fairway Estates Lot 28 Blk 46 Nemo Court .54 | 3730-0046-0280 | 0.5402 |

Metes and bounds begin on next page.

**Metes and Bounds Description of the Property**
**(approximately 242.011 acres)**

242.011 acres being all of a 39.692 acre tract referenced and described by metes & bounds in Substitute Trustee's Deed, Doc. No. 2017050832, Official Records, Nueces County, Texas, said 39.692 acre tract being out of Tract 27C and 27D of the Padre Island – Corpus Christi Island Fairway Estates, hereafter referred to as P.I.C.C.I.F.E., Lots 27C and 27D, a map of which is recorded in Vol. 67, Pg. 779, Map Records, Nueces County, Texas; and 202.319 acres referenced in Correction Warranty Deed, Doc. No. 2018045542, Official Records, Nueces County, Texas, and described by metes & bounds of a 28.629 acre tract (Tract 1), a 72.316 acre tract (Tract 2), a 74.440 acre tract (Tract 3), and a 30.684 acre tract (Tract 4), save & except 3.749 acres, said 3.749 acres being a portion of a 60-foot wide street tract, also known as 'Aquarius Street Re-Alignment', recorded in Doc. No. 2011039226, Official Records, Nueces County, Texas; said 202.319 acres including portions of Tract 27C and 27D of P.I.C.C.I.F.E., Lots 27C and 27D, a map of which is recorded in Vol. 67, Pg. 779, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Blocks 45 & 46, a map of which is recorded in Vol. 42, Pg. 153-154, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Block 3, a map of which is recorded in Vol. 40, Pg. 145-146, Map Records, Nueces County, Texas; all of P.I.C.C.I.F.E., Blocks 37, 38, 39, and 40, a map of which is recorded in Vol. 41, Pg. 128, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Blocks 24-33, a map of which is recorded in Vol. 40, Pg. 154-159, Map Records, Nueces County, Texas; a portion of P.I.C.C.I.F.E., Blocks 43 & 44, a map of which is recorded in Vol. 42, Pg. 10-11, Map Records, Nueces County, Texas; and portions of P.I.C.C.I.F.E., Blocks 34, 35, and 36, a map of which is recorded in Vol. 40, Pg. 183-184, Map Records, Nueces County, Texas, said Blocks 26, 35, 36, 43, 44, and a portion of Block 34 now vacated as per plat recorded in Vol. 67, Pg. 688, Map Records, Nueces County, Texas.

## Exhibit C – Eligible Infrastructure Improvements and Estimated Project Costs[1]

**Prospective T.I.R.Z. No. 2 Funded Projects**

| | | |
|---|---|---|
| ❶ Public Mobility Bridges (2 at $2.0MM) | $ | 4,000,000 |
| ❷ Commodores Drive Mobility Bridge | $ | 3,200,000 |
| ❸ Preserve Community Walking Trail | $ | 1,200,000 |
| ❹ Aquarius Street Box Culvert Water Exchange | $ | 400,000 |
| ❺ Encantada Avenue Mobility Bridge | $ | 2,700,000 |
| **TOTAL Prospective T.I.R.Z. No. 2 Funded Projects** | **$** | **11,500,000** |

[1] Estimated costs and exhibits of proposed projects in this Exhibit C are preliminary and subject to change.


LJA ENGINEERING, Inc. 5350 S. Staples Street, Suite 425, Corpus Christi, Texas 78411 phone: 361.991.8550 fax: 361.887.8855 www.LJA.com


LJA ENGINEERING, Inc. 5350 S. Staples Street, Suite 425, Corpus Christi, Texas 78411 phone: 361.991.8550 fax: 361.857.8855 www.LJA.com


PROSPECTIVE
T.I.R.Z. No. 2
PROJECTS
N
AQUARIUS ST
DASHARMAS DR
PARK RD 22
SOUTH PADRE
WHITECAP BLVD
GYPSY ST
CRUISER ST
PINTIERE ST
ESCAPADE ST
DYNA ST
CUTTSARK ST
PESCADORES
ENCANTADA AVE
VINCENT DR
PORTILLO DR
GRENADINE
ALMERA AVE
LINDO DR
PALMIRA AVE
SOUTH PADRE ISLAND DRIVE
PARK RD 22
ENCANTADA AVE MOBILITY BRIDGE
5
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
GRAPHIC SCALE
0
500'
1000'
1500'
2000'
LJA ENGINEERING, Inc.
5350 S. Staples Street, Suite 425, Corpus Christi, Texas 78411
phone: 361.991.8550
fax: 361.887.8855
www.LJA.com


PROSPECTIVE
T.I.R.Z. No. 2
PROJECTS
N
COMMODORES DR
E JIBAW ST
COMPASS ST
SH 361
30' FLORIDA GAS PIPELINE EASEMENT
AQUARIUS ST
SOUTH PADRE ISLAND DRIVE
PARK RD 22
DASMARIÑAS DR
AQUARIUS ST
PRESERVE COMMUNITY
WALKING TRAIL
3
WHITECAP BLVD
GYPSY ST
DRUSER ST
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
GRAPHIC SCALE
0
500'
1000'
1500'
2000'
LJA ENGINEERING, Inc.
5350 S. Staples Street, Suite 425, Corpus Christi, Texas 78411
phone: 361.991.8550
fax: 361.887.8855
www.LJA.com


PROSPECTIVE
T.I.R.Z. No. 2
PROJECTS
N
AQUARIUS STREET
MULTI-BOX CULVERT
WATER EXCHANGE 4
30' FLORIDA GAS PIPELINE EASEMENT
COMMODORES DR
E OBANA ST
COMPASS ST
AQUARIUS ST
SH 361
SOUTH PADRE ISLAND DRIVE
PARK RD 22
DASHARIUS DR
AQUARIUS ST
WHITECAP BLVD
GYPSY ST
CRUISER ST
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
GRAPHIC SCALE
0 500' 1000' 1500' 2000'
LJA ENGINEERING, Inc. 5350 S. Staples Street, Suite 425, Corpus Christi, Texas 78411 phone: 361.991.8550 fax: 361.887.8855 www.LJA.com

**Exhibit D – Form of Certificate for Payment**

**TIRZ #2 Certificate for Payment – Whitecap Project**

Reference is made to that certain TIRZ #2 Development Reimbursement Agreement – Whitecap (the "**TIRZ #2 Whitecap Agreement**") by and between the City of Corpus Christi, Texas (the "**City**"), as the agent of the Reinvestment Zone Number Two, City of Corpus Christi, Texas ("**TIRZ #2**"), and Ashlar Interests, LLC. (the "**Developer**"). Developer requests payment to the Developer (or to the person designated by the Developer) from available TIRZ revenues under the terms of the TIRZ #2 Whitecap Agreement in the amount of _____ DOLLARS AND __ CENTS ($_____) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of the Eligible Infrastructure Improvements described below within TIRZ 2 for the Whitecap Project.

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this TIRZ #2 Certificate for Payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. The itemized payment requested for the listed Eligible Infrastructure Improvements to be paid from available TIRZ revenues in accordance with the TIRZ #2 Whitecap Agreement has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.

3. The itemized amounts listed for the Eligible Infrastructure Improvements herein is a true and accurate representation of the Eligible Infrastructure Improvements associated with the creation, acquisition, or construction of said Eligible Infrastructure Improvements and such costs (i) are in compliance with the TIRZ #2 Whitecap Agreement and the applicable provisions of the Amended Project and Financing Plan for TIRZ #2 as most recently amended; and (ii) shall not cause the aggregate reimbursement to the Developer under the TIRZ #2 Whitecap Agreement to exceed $11,500,000 after taking into account all amounts previously paid under the TIRZ #2 Whitecap Agreement.

4. The Developer is in compliance with the terms and provisions of the TIRZ #2 Whitecap Agreement and the applicable provisions of the Amended Project and Financing Plan for TIRZ #2 as most recently amended.

5. The Developer has timely paid all ad valorem taxes it owes or an entity the Developer controls owes, located in the TIRZ #2 and has no outstanding delinquencies.

6. All conditions set forth in the TIRZ #2 Whitecap Agreement and the applicable provisions of the Amended Project and Financing Plan for TIRZ #2, as most recently amended, for the payment hereby requested have been satisfied.

7. The work with respect to Eligible Infrastructure Improvements included herein has been completed, and the City has inspected such Eligible Infrastructure Improvements and has accepted such Eligible Infrastructure Improvement as required under the TIRZ #2 Whitecap Agreement.

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the TIRZ #2 Whitecap Agreement, after receiving this payment request, the City has inspected the Public Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

Payments requested hereunder shall be made as directed below:

a. X amount to Person or Account Y for Z goods or services.

b. Payment instructions

(Remainder of page left blank intentionally. Execution pages follow.)

I hereby declare that the above representations and warranties are true and correct.

**ASHLAR INTERESTS, LLC**
**a Texas limited liability company**

By:_____

Name:_____

Title:_____

APPROVAL OF REQUEST

The City is in receipt of the attached TIRZ #2 Certificate for Payment – Whitecap Project, acknowledges such certificate, and finds the certificate to be in order. After reviewing the certificate, the City approves the reimbursement requested in the attached TIRZ #2 Certificate for Payment – Whitecap Project and authorizes and directs payment of the amounts set forth below from the appropriate TIRZ Account. The City's approval of the TIRZ #2 Certificate for Payment – Whitecap Project shall not have the effect of estopping or preventing the City from asserting claims under the TIRZ #2 Development Reimbursement Agreement – Whitecap or any other agreement between the parties or that there is a defect in the Eligible Infrastructure Improvements.

**CITY OF CORPUS CHRISTI, TEXAS**

By:_____

Name:_____

Title:_____

| Eligible Infrastructure Improvement Description | Maximum Reimbursement Amount | Amount Previously Paid | Current Amount Approved to be Paid | Amount Remaining Unpaid After Current Payment |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

# EXHIBIT D

# FORM OF PID REIMBURSEMENT AGREEMENT

**PID Reimbursement Agreement**
**Whitecap Public Improvement District**

This PID Reimbursement Agreement (this "Agreement") is entered into by Ashlar Interests, LLC (the "Developer") and the City of Corpus Christi Texas (the "City"), to be effective _____, 20__, (the "Effective Date"). The Developer and the City are individually referred to as a "Party" and collectively as the "Parties."

## SECTION 1. RECITALS

1.1 WHEREAS, capitalized terms used in this Agreement shall have the meanings given to them in Section 2;

1.2 WHEREAS, unless otherwise defined: (1) all references to "sections" shall mean sections of this Agreement; (2) all references to "exhibits" shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to "ordinances" or "resolutions" shall mean ordinances or resolutions adopted by the City Council;

1.3 WHEREAS, the Developer is a Texas limited liability company;

1.4 WHEREAS, the City is a Texas home-rule municipality;

1.5 WHEREAS, on May 17, 2022, the City Council passed and approved the PID Creation Resolution authorizing the creation of the PID pursuant to the Act, covering approximately 242.011 contiguous acres within the City's corporate limits, which land is described in the PID Creation Resolution;

1.6 WHEREAS, on _____, 20__, the City Council passed and approved an Assessment Ordinance related to Improvement Area #1 of the;

1.7 WHEREAS, the City Council expects to pass and approve additional Assessment Ordinances related to other phases of development in the PID in the future as such phases are developed;

1.8 WHEREAS, each Assessment Ordinance approves the SAP, including each Assessment Roll attached thereto;

1.9 WHEREAS, the SAP identifies Authorized Improvements to be designed, constructed, and installed by or at the direction of the Parties that confer a special benefit on the Assessed Property;

1.10 WHEREAS, the SAP sets forth the Actual Costs of the Authorized Improvements;

1.11 WHEREAS, the Assessed Property is being developed in phases or "Improvement Areas;"

1.12 WHEREAS, this Agreement shall apply to all Improvement Areas and no additional reimbursement agreement shall be required for Improvement Areas to be developed in the following the initial phase of development constituting "Improvement Area #1";

1.13 WHEREAS, the SAP determines and apportions the Actual Costs of the Authorized Improvements to the Assessed Property, which Actual Costs represent the special benefit that the Authorized Improvements confer upon the Assessed Property as required by the Act;

1.14 WHEREAS, in each Assessment Ordinance the City levied or expects to levy a portion of the Actual Costs of the Authorized Improvements as Assessments against the Assessed Property in the amounts set forth on the Assessment Roll(s);

1.15 WHEREAS, Assessments, including the Annual Installments thereof, are or will be due and payable once levied as described in the SAP;

1.16 WHEREAS, Assessments, including the Annual Installments thereof, shall be billed and collected by the City or its designee;

1.17 WHEREAS, the Parties agree the City's obligations to reimburse the Developer for Actual Costs of Authorized Improvements constructed for the benefit of any Improvement Area are: (1) contingent upon the City levying Assessments against property within such Improvement Area benefitting from the Authorized Improvements, (2) payable solely from the Assessments, including the Annual Installments of such Assessments, collected from Assessed Property within such Improvement Area, and (3) not due and owing unless and until the City actually adopts an Assessment Ordinance levying such Assessments;

1.18 WHEREAS, Assessment Revenue from the collection of Assessments, including the Annual Installments thereof, shall be deposited (1) as provided in the applicable Indenture if PID Bonds secured by such Assessments are issued, or (2) into the PID Reimbursement Fund if no such PID Bonds are issued or none of such PID Bonds remain outstanding;

1.19 WHEREAS, Bond Proceeds shall be deposited as provided in the applicable Indenture;

1.20 WHEREAS, a PID Project Fund related to each series of PID Bonds shall only be used in the manner set forth in the applicable Indenture;

1.21 WHEREAS, this Agreement is a "reimbursement agreement" authorized by Section 372.023(d)(1) of the Act;

1.22 WHEREAS, the foregoing RECITALS: (1) are part of this Agreement for all purposes; (2) are true and correct; (3) create obligations of the Parties (unless otherwise stated therein or in the body of this Agreement), and (4) each Party has relied upon such Recitals, each of which are incorporated as part of this Agreement for all purposes, in entering into this Agreement; and

1.23 WHEREAS, all resolutions and ordinances referenced in this Agreement (e.g., the PID Creation Resolution, Development Agreement, and each Assessment Ordinance), together with all other documents referenced in this Agreement (e.g., the SAP and each Indenture), are incorporated as part of this Agreement for all purposes as if such resolutions, ordinances, and other documents were set forth in their entirety in or as exhibits to this Agreement.

NOW THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this Agreement, the Parties agree as follows:

## SECTION 2. DEFINITIONS[1]

2.1 "Act" is defined as Chapter 372, Texas Local Government Code, as amended.

2.2 "Actual Costs" are defined in the SAP.

2.3 "Administrator" is defined in the SAP.

2.4 "Agreement" is defined in the introductory paragraph.

2.5 "Annual Collection Costs" are defined in the SAP.

2.6 "Annual Installment" is defined in the SAP.

---

[1] All definitions will be conformed with the definitions contained in the SAP and Indenture, as applicable.

2.7 "Applicable Laws" means the Act and all other laws or statutes, rules, or regulations of the State of Texas or the United States, as the same may be amended, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.

2.8 "Assessed Property" is defined in the SAP.

2.9 "Assessment" is defined in the SAP.

2.10 "Assessment Ordinance" is defined in the SAP.

2.11 "Assessment Revenue" means the revenues actually received by or on behalf of the City from any one or more of the following: (1) an Assessment levied against Assessed Property, or Annual Installment payment thereof, including any interest on such Assessment or Annual Installment during any period of delinquency, (2) a Prepayment, and (3) foreclosure proceeds.

2.12 "Assessment Roll" is defined in the SAP.

2.13 "Authorized Improvements" are defined in the SAP.

2.14 "Bond Proceeds" mean the proceeds derived from the issuance and sale of [a series of] PID Bonds that are deposited and made available to pay Actual Costs in accordance with the applicable Indenture.

2.15 "Certificate for Payment" means a certificate (substantially in the form of Exhibit A or as otherwise approved by the Developer and the City Representative) executed by a representative of the Developer and approved by a City Representative, delivered to a City Representative (and/or, if applicable, to the trustee named in any applicable Indenture), specifying the work performed and the amount charged (including materials and labor costs) for Actual Costs, and requesting payment of such amount from the appropriate fund or funds. Each certificate shall include supporting documentation in the standard form for City construction projects and evidence that each Authorized Improvement (or its completed segment) covered by the certificate has been inspected by the City.

2.16 "Change Order" is defined in Section 3.12.

2.17 "City" is defined in the introductory paragraph.

2.18 "City Council" means the governing body of the City.

2.19 "City Representative" means any person authorized by the City Council to undertake the actions referenced herein.

2.20 "Closing Disbursement Request" means a request in the form of Exhibit B or as otherwise approved by the Parties.

2.21 "Commitment" is defined in Section 3.10.

2.22 "Cost Underrun" is defined in Section 3.11.

2.23 "County" is defined in the SAP.

2.24 "Default" is defined in Section 4.8.1.

2.25 "Delinquent Collection Costs" are defined in the SAP.

2.26 "Developer" is defined in the introductory paragraph.

2.27 "Developer Advances" mean advances made by the Developer to pay Actual Costs.

2.28 "Developer Improvement Account" means an account of the PID Project Fund which may be created and established under the applicable Indenture (and segregated from all other funds contained in the PID Project Fund) into which the City deposits, or directs the applicable trustee to deposit, any funds received from the Developer as required under such Indenture.

2.29 "Development Agreement" is defined in the SAP.

2.30 "Effective Date" is defined in the introductory paragraph.

2.31 "Failure" is defined in Section 4.8.1.

2.32 "Improvement Area" is a phase of development defined and described by metes and bounds in the SAP..

2.33 "Improvement Area #1" is defined in the SAP.

2.34 "Indenture" means the applicable trust indenture pursuant to which PID Bonds are issued.

2.35 "Maturity Date" is the date one year after the last Annual Installment is collected.

2.36 "Party" and "Parties" are defined in the introductory paragraph.

2.37 "PID" is defined as the Whitecap Public Improvement District, created by the PID Creation Resolution.

2.38 "PID Bonds" are defined in the SAP.

2.39 "PID Creation Resolution" is defined as Resolution No. 032761 passed and approved by the City Council on May 17, 2022, and recorded in the official public records of Nueces County, Texas, as Instrument No. 2022024701 on May 20, 2022.

2.40 "PID Pledged Revenue Fund" means, collectively, the fund established by the City under each applicable Indenture (and segregated from all other funds of the City) into which the City deposits Assessment Revenue securing PID Bonds issued and still outstanding.

2.41 "PID Project Fund" means, collectively, the fund, including all accounts created within such fund, established by the City under each applicable Indenture (and segregated from all other funds of the City) into which the City deposits Bond Proceeds in the amounts and as described in the applicable Indenture.

2.42 "PID Reimbursement Fund" means the fund, including all accounts created within such fund to designate Assessment Revenues collected from each Improvement Area, to be established by the City under this Agreement (and segregated from all other funds of the City) into which the City deposits Assessment Revenue if not deposited into the PID Pledged Revenue Fund.

2.43 "Prepayment" is defined in the SAP.

2.44 "Reimbursement Agreement Balance" is defined in Section 3.3.

2.45 "SAP" is defined as the *Whitecap Public Improvement District Service and Assessment Plan* approved _____, 20__, as part of the Assessment Ordinance adopted by the City Council on _____, 20___ and recorded in the official public records of Nueces County, Texas as Instrument No. _____ on _____, 20___, as the same may be updated or amended by City Council action in accordance with the Act.

2.46 "Transfer" and "Transferee" are defined in Section 4.11.

## SECTION 3. FUNDING AUTHORIZED IMPROVEMENTS

3.1 Fund Deposits. Until PID Bonds payable from Assessment Revenue collected from a specific Improvement Area of the development are issued, the City shall bill, collect, and immediately deposit into the PID Reimbursement Fund all Assessment Revenue consisting of: (1) revenue collected from the payment of Assessments (including pre-payments and amounts received from the foreclosure of

liens but excluding costs and expenses related to collection); and (2) revenue collected from the payment of Annual Installments (excluding Annual Collection Costs and Delinquent Collection Costs). Unless and until PID Bonds payable from Assessment Revenue collected from a specific Improvement Area of the development are issued, funds in the PID Reimbursement Fund shall be deposited into a segregated account relating to the Improvement Area from which such Assessment Revenue was collected and such funds shall only be used to pay Actual Costs of the Authorized Improvements benefitting that Improvement Area or all or any portion of the Reimbursement Agreement Balance related to that Improvement Area in accordance with this Agreement.

Once PID Bonds payable from Assessment Revenue collected from a specific Improvement Area of the development are issued, the City shall bill, collect, and immediately deposit all Assessment Revenue collected from that Improvement Area that secure such series of PID Bonds in the manner set forth in the applicable Indenture. The City shall also deposit Bond Proceeds and any other funds authorized or required by the applicable Indenture in the manner set forth in the applicable Indenture. Annual Installments shall be billed and collected by the City (or by any person, entity, or governmental agency permitted by law) in the same manner and at the same time as City ad valorem taxes are billed and collected. Funds in the PID Project Fund shall only be used in accordance with the applicable Indenture; provided that funds disbursed from the applicable PID Project Fund pursuant to Section 3.5 below shall be made first from Bond Proceeds held in the applicable accounts within such PID Project Fund until such accounts are fully depleted and then from the Developer Improvement Account of the applicable PID Project Fund, if applicable. Subject to Section 3.6 below, the Actual Costs of Authorized Improvements within each Improvement Area shall be paid from: (1) the Assessment Revenue collected solely from Assessments levied on the property within such Improvement Area benefitting from such Authorized Improvements and on deposit in the PID Reimbursement Fund; or (2) net Bond Proceeds or other amounts deposited in an account of the PID Project Fund created under an Indenture related to PID Bonds secured by Assessment Revenue collected solely from Assessments levied on benefitted property within such Improvement Area. The City will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens related to such Assessments to be enforced continuously, in the manner and to the maximum extent permitted by the Applicable Laws, and, to the extent permitted by Applicable Laws, to cause no reduction, abatement or exemption in the Assessments for so long as any PID Bonds are outstanding or a Reimbursement Agreement Balance remains outstanding. The City shall determine or cause to be

determined, no later than February 15 of each year whether any Annual Installment is delinquent. If such delinquencies exist, then the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action to foreclose the currently delinquent Annual Installment; provided, however, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessment or the corresponding Assessed Property or to use any City funds, revenues, taxes, income, or property other than moneys collected from the Assessments for the payment of Actual Costs of Authorized Improvements under this Agreement. Once PID Bonds are issued, the applicable Indenture shall control in the event of any conflict with this Agreement.

3.2 Payment of Actual Costs. Subject to Section 3.6 below, if PID Bonds are not issued (or prior to such issuance) to pay Actual Costs of Authorized Improvements, the Developer may elect to make Developer Advances to pay Actual Costs. If PID Bonds are issued, the Bond Proceeds shall be used in the manner provided in the applicable Indenture; and, except as may be required under the Development Agreement and/or an applicable Indenture, the Developer shall have no obligation to make Developer Advances for the related Authorized Improvements, unless the Bond Proceeds, together with any other funds in the PID Project Fund or PID Reimbursement Fund, are insufficient to pay the Actual Costs of such Authorized Improvements, in which case the Developer shall make Developer Advances to pay the deficit. If Developer Advances are required in connection with the issuance of a series of PID Bonds, then such Developer Advances may be reduced by the amount of payments of Actual Costs of the Authorized Improvements (or portions thereof) to be financed by such PID Bonds that the Developer has previously paid if (1) the Developer submits to the City all information related to such costs that would be required by a Closing Disbursement Request at least five (5) days prior to the pricing date of such PID Bonds, and (2) the City approves such Actual Costs in writing. The Developer shall also make Developer Advances to pay for cost overruns (after applying cost savings). The lack of Bond Proceeds or other funds in the PID Project Fund shall not diminish the obligation of the Developer to pay Actual Costs of the Authorized Improvements.

3.3 Payment of Reimbursement Agreement Balance. Subject to the terms, conditions, and requirements of this Agreement, including Section 3.6 hereof, The City agrees to pay to the Developer, and the Developer shall be entitled to receive payments from the City, until the Maturity Date, for the lesser of: (a) amounts shown on each approved Certificate for Payment for Actual Costs of Authorized

Improvements paid by or at the direction of the Developer, and (b) the reimbursement amount shown in Schedule I of the SAP plus: (1) simple interest on the unpaid principal balance at a rate equal to or less than five percent (5%) above the highest average index rate for tax-exempt bonds reported in a daily or weekly bond index shown on Schedule I of the SAP that was approved by the City Council of the City and reported in the month before the date the obligation is incurred (which date is the date of approval by the City of the Assessment Ordinance levying the Assessments from which the Reimbursement Agreement Balance, or a portion thereof, shall be paid) for years one through five beginning on the date each Certificate for Payment is delivered to the City Representative; and (2) simple interest on the unpaid principal balance at a rate equal to or less than two percent (2%) above the highest average index rate for tax-exempt bonds reported in a daily or weekly bond index reported in the month before the date the obligation was incurred (which date is the same as the approval by the City of the Assessment Ordinance levying the Assessments from which the Reimbursement Agreement Balance, or a portion thereof, shall be paid) for years six and later (the unpaid principal balance, together with accrued but unpaid interest, owed the Developer for all Certificates for Payment is referred to as the "Reimbursement Agreement Balance"); provided, however, upon the issuance of PID Bonds, the interest rate due and unpaid on amounts shown on each Certificate for Payment to be paid to the Developer shall be the lower of: (1) the interest rate on such series of PID Bonds issued to finance the costs of the Authorized Improvements for which the Certificate for Payment was filed, or (2) the interest rate approved by the City Council of the City in the Assessment Ordinance levying the Assessments from which the Bonds shall be paid. The interest rates set forth in Schedule I of the SAP shall be approved by the City Council in each Assessment Ordinance as authorized by the Act. The principal amount of each portion of the Reimbursement Agreement Balance to be paid under each Assessment Ordinance, and the interest rate for such portion of the Reimbursement Agreement Balance, shall be shown on Schedule I attached to the SAP and Schedule I is incorporated as a part of this Agreement for all purposes. Interest shall accrue on each Reimbursement Agreement Balance from the later of: (1) final plat approval as evidenced by recording the final plat in the real property records of the County, and (2) the levy of Assessments securing such Reimbursement Agreement Balance. As the City passes and approves additional Assessment Ordinances and/or issues PID Bonds, the City shall approve an updated Schedule I as part of the updated or amended SAP for the sole purpose of showing the principal amount of the portion of the Reimbursement Agreement to be paid under such newly-adopted Assessment Ordinance and any adjustments to the interest rate for such

portion of the Reimbursement Agreement Balance if applicable. Such updated Schedule I attached to the SAP shall automatically be incorporated as part of this Agreement for all purposes as if attached hereto without any further action from the Parties.

The Reimbursement Agreement Balance is payable solely from: (1) the PID Reimbursement Fund if no PID Bonds are issued for the purposes of paying the Authorized Improvements related to such Reimbursement Agreement Balance, or (2) or from PID Bond Proceeds. No other City funds, revenues, taxes, income, or property shall be used even if the Reimbursement Agreement Balance is not paid in full by the Maturity Date. All payments made from Bond Proceeds shall be made in the manner set forth in the applicable Indenture. So long as no PID Bonds are issued and the City has received and approved a Certificate for Payment, the City shall make payments to the Developer toward the Reimbursement Agreement Balance related to each Improvement Area from Assessment Revenue collected from such Improvement Area (excluding the portion of each Assessment, or Annual Installment thereof, collected for Annual Collection Costs) and deposited in the PID Reimbursement Fund. Such payments shall be in an amount not to exceed the Assessment Revenue (excluding the portion of each Assessment, or Annual Installment thereof, collected for Annual Collection Costs) related to such Improvement Area on deposit in the PID Reimbursement Fund; and, such payments shall be made at least annually and no later than 60 days after the date payment of the Annual Installments are due and payable to the City. In the event that a Prepayment of an Assessment is made prior to the issuance of PID Bonds, the City shall remit payment to the Developer of an amount of the Reimbursement Agreement Balance then due and payable not to exceed the Assessment Revenue related to such Prepayment from the Assessment Revenue deposited into the PID Reimbursement Fund within 60 days after the Prepayment is made. Payments made from the PID Reimbursement Fund toward any outstanding Reimbursement Agreement Balance, shall first be applied to unpaid interest on such Reimbursement Agreement Balance owed to the Developer, and second to unpaid principal of the Reimbursement Agreement Balance owed to the Developer. Each payment from the PID Reimbursement Fund shall be accompanied by an accounting that certifies the Reimbursement Agreement Balance as of the date of the payment and that itemizes all deposits to and disbursements from the fund since the last payment.

Approval of a Certificate for Payment and all payments under this Agreement are predicated on: (1) the Developer constructing and installing, or the City acquiring (if applicable), the Authorized Improvements (or portion thereof) shown on each Certificate for Payment as required under the

Development Agreement; (2) the Developer providing the necessary supporting documentation in the standard form for City construction projects; and (3) the City's inspection of each Authorized Improvement (or portion thereof) covered by each Certificate for Payment; provided, however, in no event shall the City Representative be authorized to approve a Certificate for Payment if the City has not previously levied an Assessment against Assessed Property within an Improvement Area related to and benefitting from the Authorized Improvements for which such Certificate for Payment has been submitted. If there is a dispute over the amount of any payment, the City shall nevertheless pay the undisputed amount, and the Parties shall use all reasonable efforts to resolve the disputed amount before the next payment is made; however, if the Parties are unable to resolve the disputed amount, then the City's determination of the disputed amount (as approved by the City Council) shall control. Notwithstanding anything to the contrary in this Agreement, the City shall be under no obligation to reimburse the Developer for Actual Costs of any Authorized Improvement that is not accepted by the City.

The City's obligation to reimburse the Reimbursement Agreement Balance related to the Authorized Improvements for a particular Improvement Area constructed for the benefit of the Assessed Property within such Improvement Area is: (1) contingent upon the City levying Assessments against property within such Improvement Area benefitting from the Authorized Improvements, (2) payable solely from the Assessments, including the Annual Installments of such Assessments, collected from Assessed Property within such Improvement Area, and (3) not due and owing unless and until the City actually adopts an Assessment Ordinance levying such Assessments.

3.4 PID Bonds. The City, in its sole, legislative discretion, may issue PID Bonds, in one or more series, when and if the City Council determines it is financially feasible for the purposes of: (1) paying all or a portion of the Reimbursement Agreement Balance; or (2) paying directly Actual Costs of Authorized Improvements. PID Bonds issued for such purpose will be secured by and paid solely as authorized by the applicable Indenture. Upon the issuance of PID Bonds for such purpose and for so long as PID Bonds remain outstanding, the Developer's right to receive payments each year in accordance with Section 3.3 shall be subordinate to the deposits required under the applicable Indenture related to any outstanding PID Bonds and the Developer shall be entitled to receive funds pursuant to the flow of funds provisions of such Indenture. The failure of the City to issue PID Bonds shall not constitute a "Failure" by the City or otherwise result in a "Default" by the City. Upon the issuance of the PID Bonds, the Developer has a duty to construct those Authorized Improvements as

described in the SAP and the Development Agreement. The Developer shall not be relieved of its duty to construct or cause to be constructed such improvements even if there are insufficient funds in the PID Project Fund to pay the Actual Costs. This Agreement shall apply to all PID Bonds issued by the City whether in one or more series, and no additional reimbursement agreement shall be required for future series of PID Bonds.

3.5 Disbursements and Transfers at and after Bond Closing. The City and the Developer agree that from the proceeds of the PID Bonds, and upon the presentation of evidence satisfactory to the City Representative, the City will cause the trustee under the applicable Indenture to pay at closing of the PID Bonds approved amounts from the appropriate account to the persons entitled to payment for costs of issuance and payment of costs incurred in the establishment, administration, and operation of the PID and any other costs incurred by the Developer and the City as of the time of the delivery of the PID Bonds as described in the SAP. In order to receive disbursement, the Developer shall execute a Closing Disbursement Request to be delivered to the City no less than five (5) days prior to the pricing date for the applicable series of PID Bonds for payment in accordance with the provisions of the Indenture. In order to receive additional disbursements from any applicable fund under an Indenture, the Developer shall execute a Certificate for Payment, no more frequently than monthly, to be delivered to the City for payment in accordance with the provisions of the applicable Indenture and this Agreement. Upon receipt of a Certificate for Payment (along with all accompanying documentation required by the City) from the Developer, the City shall conduct a review in order to confirm that such request is complete, to confirm that the work for which payment is requested was performed in accordance with all Applicable Laws and applicable plans therefore and with the terms of this Agreement and any other agreement between the parties related to property in the PID, and to verify and approve the Actual Costs of such work specified in such Certificate for Payment. The City shall also conduct such review as is required in its discretion to confirm the matters certified in the Certificate for Payment. The Developer agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. The Developer further agrees that if the City provides to the Developer a sales tax exemption certificate then sales tax will not be approved for payment under a Certification for Payment. Within fifteen (15) business days following receipt of any Certificate for Payment, the City shall either: (1) approve the Certificate for Payment and forward it to the trustee for payment, or (2) provide the Developer with written notification of disapproval of all

or part of a Certificate for Payment, specifying the basis for any such disapproval. Any disputes shall be resolved as required by Section 3.3 herein. The City shall deliver the approved or partially approved Certificate for Payment to the trustee for payment, and the trustee shall make the disbursements as quickly as practicable thereafter.

3.6 Obligations Limited. The obligations of the City under this Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or a debt or other obligation of the City payable from any source other than the PID Reimbursement Fund or the PID Project Fund. The Parties further agree that the City's obligation under this Agreement to reimburse the Developer for Actual Costs of Authorized Improvements within any Improvement Area shall only be paid from: (1) net proceeds of PID Bonds, if issued, on deposit in the PID Project Fund related to such PID Bonds, and/or (2) Assessments, including Annual Installments of such Assessments, collected from such Improvement Area. The Parties further agree that the City's obligation under this Agreement to reimburse the Developer for Actual Costs of Authorized Improvements constructed for the benefit of any Improvement Area is: (1) contingent upon the City levying Assessments against property within such Improvement Area benefitting from the Authorized Improvements, (2) payable solely from the Assessments, including the Annual Installments of such Assessments, collected from Assessed Property within such Improvement Area, and (3) not due and owing unless and until the City actually adopts an Assessment Ordinance levying such. Concurrent with the levy of Assessments against an Improvement Areas, the City will: (1) establish a separate account within the PID Reimbursement Fund relating solely to such Improvement Area, if no PID Bonds are issued, or (2) establish a separate PID Project Fund will be established under an Indenture if PID Bonds are issued, out of which the City will pay its obligations related to such Improvement Area; and, until such time, this Agreement does not create any obligations of the City with respect to any Improvement Area for which Assessments have not been levied. Unless approved by the City, no other City funds, revenues, taxes, or income of any kind shall be used to pay: (1) the Actual Costs of the Authorized Improvements; (2) the Reimbursement Agreement Balance even if the Reimbursement Agreement Balance is not paid in full on or before the Maturity Date; or (3) debt service on any PID Bonds. None of the City or any of its elected or appointed officials or any of its officers, employees, consultants or representatives shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

3.7 Obligation to Pay. Subject to the provisions of Section 3.3 and 3.6, if the Developer is in substantial compliance with its obligations under the Development Agreement, then following the inspection and approval of any portion of Authorized Improvements for which Developer seeks reimbursement of the Actual Costs by submission of a Certificate for Payment or City approval of a Closing Disbursement Request, the obligations of the City under this Agreement to pay from Assessment Revenue or the net proceeds of PID Bonds, as applicable, disbursements (whether to the Developer or to any person designated by the Developer) identified in any Closing Disbursement Request or in any Certificate for Payment and to pay debt service on PID Bonds are unconditional AND NOT subject to any defenses or rights of offset except as may be provided in any Indenture.

3.8 City Delegation of Authority. All Authorized Improvements shall be constructed by or at the direction of the Developer in accordance with the plans, the Development Agreement, applicable City ordinances and regulations, and with this Agreement and any other agreement between the parties related to property in the PID. The Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of Authorized Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer has sole responsibility of ensuring that all Authorized Improvements are constructed in accordance with the Development Agreement and in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Authorized Improvements to be acquired and accepted by the City from the Developer. If any Authorized Improvements are or will be on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Authorized Improvements. Inspection and acceptance of Authorized Improvements will be in accordance with applicable City ordinances and regulations.

3.9 Security for Authorized Improvements. Prior to completion and conveyance to the City of any Authorized Improvements, the Developer shall cause to be provided to the City a maintenance bond in the amount required by the City's subdivision regulations for applicable Authorized Improvements, which maintenance bond shall be for a term of two years from the date of final acceptance of the applicable Authorized Improvements. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that legal counsel for the City has the right to reject any surety company regardless of such company's authorization to do business in Texas. Nothing in this Agreement shall be deemed to prohibit the Developer or the City from contesting in good faith the validity or amount of any mechanics or materialman's lien and/or judgment nor limit the remedies available to the Developer or the City with respect thereto so long as such delay in performance shall not subject the Authorized Improvements to foreclosure, forfeiture, or sale. In the event that any such lien and/or judgment with respect to the Authorized Improvements is contested, the Developer shall be required to post or cause the delivery of a surety bond or letter of credit, whichever is preferred by the City, in an amount reasonably determined by the City, not to exceed 120 percent of the disputed amount.

3.10 Ownership and Transfer of Authorized Improvements. If requested in writing by the City, the Developer shall furnish to the City a commitment for title insurance (a "Commitment") for land related to the Authorized Improvements to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City. The Commitment shall be made available for City review and must be approved at least fifteen (15) business days prior to the scheduled transfer of title. The City agrees to approve the Commitment unless it reveals a matter which, in the reasonable judgment of the City, would materially affect the City's use and enjoyment of the Authorized Improvements. If the City objects to any Commitment, the City shall not be obligated to accept title to the applicable Authorized Improvements until the Developer has cured the objections to the reasonable satisfaction of the City.

3.11 Remaining Funds After Completion of an Authorized Improvement. Within any applicable Improvement Area, upon the final completion of an Authorized Improvement within such Improvement Area and payment of all outstanding invoices for such Authorized Improvement, if the Actual Cost of such Authorized Improvement is less than the budgeted cost as shown in Exhibit ___ to the SAP (a "Cost Underrun"), any remaining budgeted cost will be available to pay Cost Overruns on any other Authorized Improvement within such Improvement Area. A City Representative shall

promptly confirm to the Administrator (as defined in the SAP) that such remaining amounts are available to pay such Cost Overruns, and the Developer, the Administrator and the City Representative will agree how to use such moneys to secure the payment and performance of the work for other Authorized Improvements. Any Cost Underrun for any Authorized Improvement is available to pay Cost Overruns on any other Authorized Improvement and may be added to the amount approved for payment in any Certificate for Payment, as agreed to by the Developer, the Administrator and the City Representative.

3.12 Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as "Change Orders") required for the construction of an Authorized Improvement. The Developer or its contractors may approve and implement any Change Orders even if such Change Order would increase the Actual Cost of an Authorized Improvement, but the Developer shall be solely responsible for payment of any Cost Overruns resulting from such Change Orders except to the extent amounts are available pursuant to Section 3.12 hereof. If any Change Order is for work that requires changes to be made by an engineer to the construction and design documents and plans previously approved under the Development Agreement, then such revisions made by an engineer must be submitted to the City for approval by the City's engineer prior to execution of the Change Order.

## SECTION 4. ADDITIONAL PROVISIONS

4.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until the earlier to occur of the Maturity Date or the date on which the Reimbursement Agreement Balance is paid in full.

4.2 No Competitive Bidding. Construction of the Authorized Improvements shall not require competitive bidding pursuant to Section 252.022(a) (9) of the Texas Local Government Code, as amended. All plans and specifications, but not construction contracts, shall be reviewed and approved, in writing, by the City prior to Developer selecting the contractor. The City, at its election made prior to the Developer entering into a construction contract, shall have the right to examine and approve the contractor selected by the Developer prior to executing a construction contract with the contractor, which approval shall not be unreasonably delayed or withheld.

4.3 Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City.

4.4 Audit. The City Representative shall have the right, during normal business hours and upon five (5) business days' prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Authorized Improvements. For a period of two years after completion of the Authorized Improvements, the Developer shall maintain proper books of record and account for the construction of the Authorized Improvements and all costs related thereto. Such accounting books shall be maintained in accordance with customary real estate accounting principles. The Developer shall have the right, during normal business hours, to review all records and accounts pertaining to the Assessments upon written request to the City. The City shall provide the Developer an opportunity to inspect such books and records relating to the Assessments during the City's regular business hours and on a mutually agreeable date no later than ten (10) business days after the City receives such written request. The City shall keep and maintain a proper and complete system of records and accounts pertaining to the Assessments for so long as PID Bonds remain outstanding or Reimbursement Agreement Balance remains unpaid.

4.5 Developer's Right to Protest Ad Valorem Taxes. Nothing in this Agreement shall be construed to limit or restrict Developer's right to protest ad valorem taxes. The Developer's decision to protest ad valorem taxes on Assessed Property does not constitute a Default under this Agreement.

4.6 PID Administration and Collection of Assessments. The Administrator shall have the responsibilities provided in the SAP related to the duties and responsibilities of the administration of the PID, the City shall provide the Developer with a copy of the agreement between the City and the Administrator. If the City contracts with a third-party for the collection of Annual Installments of the Assessments, the City shall provide the Developer with a copy of such agreement. For so long as PID Bonds remain outstanding or the Reimbursement Agreement Balance remains unpaid, the City shall notify the Developer of any change of administrator or third-party collection of the Assessments.

4.7 Representations and Warranties.

4.7.1 The Developer represents and warrants to the City that: (1) the Developer has the authority to enter into and perform its obligations under this Agreement; (2) the Developer has the financial resources, or the ability to collect sufficient financial resources, to meet its obligations under this Agreement; (3) the person executing this Agreement on behalf of the

Developer has been duly authorized to do so; (4) this Agreement is binding upon the Developer in accordance with its terms; and (5) the execution of this Agreement and the performance by the Developer of its obligations under this Agreement do not constitute a breach or event of default by the Developer under any other agreement, instrument, or order to which the Developer is a party or by which the Developer is bound.

4.7.2 The City represents and warrants to the Developer that: (1) the City has the authority to enter into and perform its obligations under this Agreement; (2) the person executing this Agreement on behalf of the City has been duly authorized to do so; (3) this Agreement is binding upon the City in accordance with its terms; and (4) the execution of this Agreement and the performance by the City of its obligations under this Agreement do not constitute a breach or event of default by the City under any other agreement, instrument, or order to which the City is a party or by which the City is bound.

4.8 Default/Remedies.

4.8.1 If either Party fails to perform an obligation imposed on such Party by this Agreement (a "Failure") and such Failure is not cured after notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a "Default." If a Failure is monetary, the non-performing Party shall have ten (10) days within which to cure. If the Failure is non-monetary, the non-performing Party shall have thirty (30) days within which to cure.

4.8.2 If the Developer is in Default, the City shall have available all remedies at law or in equity; provided no default by the Developer shall entitle the City to terminate this Agreement or to withhold payments to the Developer from the PID Reimbursement Fund or the PID Project Fund in accordance with this Agreement and the Indenture.

4.8.3 If the City is in Default, the Developer shall have available all remedies at law or in equity; provided, however, no Default by the City shall entitle the Developer to terminate this Agreement.

4.8.4 The City shall give notice of any alleged Failure by the Developer to each Transferee identified in any notice from the Developer, and such Transferees shall have the right, but not the obligation, to cure the alleged Failure within the same cure periods that are

provided to the Developer. The election by a Transferee to cure a Failure by the Developer shall constitute a cure by the Developer but shall not obligate the Transferee to be bound by this Agreement unless the Transferee agrees in writing to be bound.

4.9 Remedies Outside the Agreement. Nothing in this Agreement constitutes a waiver by the City of any remedy the City may have outside this Agreement against the Developer, any Transferee, or any other person or entity involved in the design, construction, or installation of the Authorized Improvements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the PID. Nothing herein shall be construed as affecting the City's or the Developer's rights or duties to perform their respective obligations under other agreements, use regulations, or subdivision requirements relating to the development property in the PID.

4.10 Estoppel Certificate. From time to time upon written request of the Developer, the City Manager will execute a written estoppel certificate, in form and substance satisfactory to both Parties that: (1) identifies any obligations of the Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; or (2) states, to the extent true, that to the best knowledge and belief of the City, the Developer is in compliance with its duties and obligations under this Agreement.

4.11 Transfers. The Developer has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part without the consent of (but with notice to) the City, the Developer's right, title, or interest to payments under this Agreement (but not performance obligations) including, but not limited to, any right, title, or interest of the Developer in and to payments of the Reimbursement Agreement Balance, whether such payments are from the PID Reimbursement Fund in accordance with Section 3.3 or from Bond Proceeds (any of the foregoing, a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"); provided, however, that no such conveyance, transfer, assignment, mortgage, pledge or other encumbrance shall be made without prior written consent of the City if such conveyance, transfer, assignment, mortgage, pledge or other encumbrance would result in: (1) the issuance of municipal securities, and/or (2) the City being viewed as an "obligated person" within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission, and/or (3) the City being subject to additional reporting or recordkeeping duties. Notwithstanding the foregoing, no Transfer shall be effective until notice of the Transfer is given to the City. The City may rely on notice of a Transfer received from the Developer without

obligation to investigate or confirm the validity of the Transfer. The Developer waives all rights claims against the City for any funds paid to a third party as a result of a Transfer for which the Ci received notice.

4.12 Applicable Law; Venue. This Agreement is being executed and delivered and is intended to performed in the State of Texas. Except to the extent that the laws of the United States may apply, t substantive laws of the State of Texas shall govern the interpretation and enforcement of th Agreement. In the event of a dispute involving this Agreement, venue shall lie in any court competent jurisdiction in Nueces County, Texas.

4.13 Notice. Any notice referenced in this Agreement must be in writing and shall be deemed giv at the addresses shown below: (1) when delivered by a nationally recognized delivery service such FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless whether such person is the named addressee; or (2) 72 hours after deposited with the United Stat Postal Service, Certified Mail, Return Receipt Requested.

To the City:
Attn: City Manager's Office
City of Corpus Christi
P.O. Gox 9277
Corpus Christi, Texas 78469-9277
E-mail: ElsyB@cctexas.com

With a copy to:
Attn: City Attorney's Office
City of Corpus Christi
P.O. Gox 9277
Corpus Christi, Texas 78469-9277
E-mail: aimee@cctexas.com

To the Developer:
Attn: Steve Yetts
Ashlar Interests, LLC
400 Las Colinas Blvd. E., Suite 1075
Irving, Texas 75039
E-mail: syetts@ashlardev.com

With a copy to:
Attn: Misty Ventura
Shupe Ventura, PLLC
9406 Biscayne Blvd.
Dallas, Texas 75218
E-mail:misty.ventura@svlandlaw.com
TEL: (214) 328-1101
FAX: (800) 519-3768

Any Party may change its address by delivering notice of the change in accordance with this section.

4.14 Conflicts; Amendment. In the event of any conflict between this Agreement and any other instrument, document, or agreement by which either Party is bound, the provisions and intent of the applicable Indenture controls. This Agreement may only be amended by written agreement of the Parties.

4.15 Severability. If any provision of this Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions.

4.16 Non-Waiver. The failure by a Party to insist upon the strict performance of any provision of this Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Agreement.

4.17 Third Party Beneficiaries. Nothing in this Agreement is intended to or shall be construed to confer upon any person or entity other than the City, the Developer, and Transferees any rights under or by reason of this Agreement. All provisions of this Agreement shall be for the sole and exclusive benefit of the City, the Developer, and Transferees.

4.18 Counterparts. This Agreement may be executed in multiple counterparts, which, when taken together, shall be deemed one original.

4.19 Employment of Undocumented Workers. During the term of this Agreement, the Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a(f), the Developer shall repay the incentives granted herein within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101(c), Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

4.20 No Boycott of Israel. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section

and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, 'boycott Israel,' a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

4.21 Iran, Sudan, and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or

https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to enable to City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law or Texas law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

4.22 No Discrimination Against Fossil Fuel Companies. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies" a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section

809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

4.23 No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification and the following definitions:

(a) 'discriminate against a firearm entity or firearm trade association,' a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional

business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association;

(b) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(c) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code."

4.24 Affiliate. As used in Sections 4.19 through 4.24, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

4.25 Form 1295. Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to

acknowledge such form with the TEC through its electronic filing application system not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

4.26 Changes in Law. The Parties acknowledge and expressly agree that, during the Term, either Party may take advantage of changes in the law notwithstanding anything to the contrary in this Agreement.

4.27 Public Information. Notwithstanding any other provision to the contrary in this Agreement, all information, documents, and communications relating to this Agreement may be subject to the Texas Public Information Act and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Developer agrees that this Agreement may be terminated if the Developer knowingly or intentionally fails to comply with a requirement of that subchapter, if applicable, and the Developer fails to cure the violation on or before the tenth business day after the date the City provides notice to Developer of noncompliance with Subchapter J, Chapter 552. Pursuant to Section 552.372, Texas Government Code, Developer is required to preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to the City for the duration of this Agreement; promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Developer on request of the City; and on completion of the Agreement, either provide at no cost to the City all contracting information related to the contract that is in the custody or possession of the entity or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the City.

[*Execution pages follow.*]

**CITY:**

**CITY OF CORPUS CHRISTI, TEXAS**

By:_____

Paulette Guajardo, Mayor

**ATTEST:**

By:_____

Rebecca Huerta, City Secretary

**APPROVED AS TO FORM AND LEGALITY:**

By:_____

_____, [Assistant] City Attorney [for City Attorney]

**DEVELOPER:**

**ASHLAR INTERESTS, LLC**
a Texas limited liability company

By: _____

Title: _____

## EXHIBIT A

## CERTIFICATE FOR PAYMENT FORM

The undersigned is an agent for Ashlar Interests, LLC (the "Developer") and requests payment from the applicable account of the [PID Reimbursement Fund] [PID Project Fund] from the City of Corpus Christi, Texas (the "City") in the amount of _____ for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Authorized Improvements providing a special benefit to property within the Whitecap Public Improvement District. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the PID Reimbursement Agreement between the City and the Developer, effective as of _____, 20__ (the "Reimbursement Agreement").

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment Form on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.

3. The amount listed for the Authorized Improvements below is a true and accurate representation of the Actual Costs associated with the creation, acquisition, or construction of said Authorized Improvements, and such costs (i) are in compliance with the Reimbursement Agreement, and (ii) are consistent with the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Reimbursement Agreement, the Indenture, the Service and Assessment Plan and the Development Agreement.

5. The Developer has timely paid all ad valorem taxes and annual installments of special assessments it owes or an entity the Developer controls owes, located in the Whitecap Public Improvement District and has no outstanding delinquencies for such assessments.

6. All conditions set forth in the Indenture (as defined in the Reimbursement Agreement) for the payment hereby requested have been satisfied.

7. The work with respect to the Authorized Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Authorized Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

9. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for major improvements or any phase of Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements (or segment) has been completed and the City has accepted such Authorized Improvements (or segment). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Authorized Improvements (or segment).

**Payments requested are as follows:**

a. X amount to Person or Account Y for Z goods or services.

b. Etc.

[If the Authorized Improvements are to be paid in part from one series of PID Bonds and in part from another, insert the following:

As required by Section _____ of the Indenture, the costs for the Authorized Improvements that constitutes the pro-rata share of such Authorized Improvements allocable to the designated Bonds shall be paid as follows:

| Authorized Improvements: | Amount to be paid from _____ Fund | Amount to be paid from _____ Fund | Total Cost of Authorized Improvements |
|---|---|---|---|
| | | | |

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Reimbursement Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

I hereby declare that the above representations and warranties are true and correct.

**ASHLAR INTERESTS, LLC**
a Texas limited liability company

By: _____

Title: _____

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, acknowledges that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City, and otherwise finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and shall [include said payments in the City Certificate submitted to the Trustee directing payments to be made from the appropriate account of the PID Project Fund] [direct payment from the PID Reimbursement Fund] to the Developer or to any person designated by the Developer.

**CITY OF CORPUS CHRISTI, TEXAS**

By: _____

Name: _____

Title: _____

Date: _____

## Exhibit B

## FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for _____ (the "Developer") and requests payment to the Developer (or to the person designated by the Developer) from the Cost of Issuance Account of the Project Fund from _____ (the "Trustee") in the amount of _____ ($_____) to be transferred from the Cost of Issuance Account of the PID Project Fund upon the delivery of the PID Bonds for costs incurred in the establishment, administration, and operation of the Whitecap Public Improvement District (the "District"), as follows. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Indenture of Trust by and between the City and the Trustee dated as of _____, 20__ (the "Indenture") relating to the [INSERT NAME OF BONDS] (the "PID Bonds").

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced establishment, administration, and operation of the District at the time of the delivery of the PID Bonds have not been the subject of any prior payment request submitted to the City.

3. The amount listed for the below costs is a true and accurate representation of the Actual Costs associated with the establishment, administration and operation of the District at the time of the delivery of the PID Bonds, and such costs are in compliance with the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Reimbursement Agreement, the Indenture, the Service and Assessment Plan, and the Development Agreement.

5. All conditions set forth in the Indenture and the Reimbursement Agreement for the payment hereby requested have been satisfied.

6. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

**Payments requested hereunder shall be made as directed below:**

[Information regarding Payee, amount, and deposit instructions attached]

I hereby declare that the above representations and warranties are true and correct.

**ASHLAR INTERESTS, LLC**
a Texas limited liability company

By: _____

Title: _____

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Certificate submitted to the Trustee directing payments to be made from Costs of Issuance Account upon delivery of the PID Bonds.

**CITY OF CORPUS CHRISTI, TEXAS**

By: _____

Name: _____

Title: _____

Date: _____

**EXHIBIT E**

**REQUIREMENTS FOR CONSTRUCTION OF PUBLIC WORKS ON CITY PROPERTY**

When working on portions of the development within existing City Right-of-Way or on City property, Developer agrees to comply with the following terms and conditions:

a. Development of Plans and Specifications. Developer will have a licensed engineer or architect prepare all plans and bid specifications for the development on City property or within the City's right-of-way in compliance with all applicable City, State and Federal codes and regulations for a City public works project, including compliance with the City's Infrastructure Design Manual available at www.cctexas.com/idm. Developer shall use commercially reasonable efforts to ensure that the contract with the engineer or architect for design includes the terms and conditions included on the attached Attachment A; and, shall notify the City of any requested variances from the terms and conditions included on Attachment A. The Developer shall provide all plans and specifications to the City for review and approval prior to beginning any construction work on City property or within the City's right-of-way; provided, however, if a City review and/or approval has not occurred within ten (10) business days, the City will work with Developer to identify a third-party engineering firm to assist the City with the necessary review in accordance with Section 3.07 of the Development Agreement.

b. Project Bids. Developer shall competitively procure all construction contracts for work done on City property or within the City's right-of-way in a commercially reasonable manner. Developer shall use commercially reasonable efforts to ensure the specifications and contract terms for construction include the terms outlined in attached and incorporated Attachment B; and, shall notify the City of any requested variances from the terms in Attachment B. Developer shall be responsible for providing oversight and contract management services including inspection services to verify work is timely and properly completed. Developer shall obtain all required City permits for the work done on City property or within the City's right-of-way, including a right-of-way permit when required.

[*Remainder of page left blank intentionally. Execution pages and exhibits follow.*]

**ATTACHMENT A to Exhibit E**

**REQUIRED TERMS FOR CONTRACT**
**WITH ARCHITECT OR ENGINEER ("CONSULTANT")**

ADDITIONAL SCOPE OF SERVICES. In addition to preparation of plans and specifications in compliance with all applicable City Codes and State laws, Consultant will conduct regular on-site inspections and observations of construction contractor's work in progress, materials and equipment to assist in determining if the work is in general proceeding in accordance with construction documents.

INDEMNIFICATION

A. Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents, employees, excluding the engineer or architect or that person's agent, employee or subconsultant, over which the City exercises control ("Indemnitee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement or failure to pay a subcontractor or supplier committed by Consultant or its agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this agreement. This indemnification does not apply to any liability resulting from the negligent acts or omissions of the City or its employees, to the extent of such negligence.

B. Consultant shall defend Indemnitee, with counsel reasonably satisfactory to the City Attorney, from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, included in the indemnification above if the claim is not based wholly or partly on the negligence of, fault of or breach of contract by Indemnitee. If a claim is based wholly or partly on the negligence of, fault of or breach of contract by Indemnitee, the Consultant shall reimburse the City's reasonable attorney's fees in proportion to the Consultant's liability.

C. Consultant must advise City in writing within three (3) business days of any written claim or demand against City or Consultant received by Consultant related to or arising out of Consultant's activities under this Agreement.

INSURANCE. Consultant must not commence work under this Agreement until all insurance required has been obtained Developer has delivered a certificate of insurance to the City. Unless agreed to in writing by the City, Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained. Insurance Requirements for the Consultant are shown in ATTACHMENT A-1

**ATTACHMENT A-1 TO EXHIBIT E**

**ARCHITECT/ENGINEER ("CONSULTANT")**

1. Insurance Requirements

1.1 Consultant must not commence work under this agreement until all required insurance has been obtained and Developer has delivered a certificate of insurance to the City. Unless agreed to in writing by the City, Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

1.2 The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.

| TYPE OF INSURANCE | MINIMUM INSURANCE COVERAGE |
|---|---|
| 30-written day notice of cancellation, required on all certificates or by applicable policy endorsements | Bodily Injury and Property Damage<br>Per occurrence - aggregate |
| Commercial General Liability including:<br>1. Commercial Broad Form<br>2. Premises - Operations<br>3. Products/ Completed Operations<br>4. Contractual Liability<br>5. Independent Contractors<br>6. Personal Injury- Advertising Injury | $1,000,000 Per Occurrence<br>$2,000,000 Aggregate |
| AUTO LIABILITY (including)<br>1. Owned<br>2. Hired and Non-Owned<br>3. Rented/Leased | $500,000 Combined Single Limit |
| PROFESSIONAL LIABILITY<br>(Errors and Omissions) | $1,000,000 Per Claim<br>If claims made policy, retro date must be prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured. |

## ATTACHMENT B TO EXHIBIT E

## REQUIRED TERMS AND CONDITIONS FOR CONSTRUCTION OF THE PROJECT

1. Performance and Payment Bonds. Bonds furnished must be the requirements of Texas Insurance Code Chapter 3503, Texas Government Code Chapter 2253, and all other applicable laws and regulations. The contractors who are awarded contracts for construction of a public work on City property or within the City's right-of-way shall furnish the following bonds by surety companies authorized to do business in Texas:

A. Payment Bond - A payment bond in the amount of One Hundred Percent (100%) of the contract for construction shall be furnished for the protection of all persons, firms and corporations who may furnish materials or perform labor. The payment bond shall be made with City of Corpus Christi as an Obligee.

B. Performance Bond - A performance bond in the amount of One Hundred Percent (100%) of the contract for construction shall be furnished covering the faithful performance of the contract. The performance bond shall be made with City of Corpus Christi as an Obligee.

2. All construction agreements for the Project shall include the following provisions. The Indemnity section shall be in large bold face font.

A. INDEMNITY. THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI AND ALL OF ITS OFFICIALS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND REASONABLE ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND CONTRACTOR SHALL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF CORPUS CHRISTI FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

B. Project shall be constructed in accordance with all applicable Federal, State and City codes, laws and regulations.

C. Contractor and any subcontractors employed on this Project will comply with Chapter 2258 of the Texas Government Code by paying Contractor's employees or subcontractors not less than the general prevailing wage rates.

D. Contractor warrants that the goods and services provided under this Contract shall be warranted against any defaults for one (1) year from final acceptance for water, wastewater, and storm sewer system improvements and for two (2) years from final acceptance for all streets, sidewalks, curbs, and gutters.

E. Contractor shall provide insurance as required by Attachment B-1.

**ATTACHMENT B-1 TO EXHIBIT E**

**INSURANCE REQUIREMENTS**

I. CONTRACTOR'S LIABILITY INSURANCE

A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.

B. Contractor must furnish to the City's Risk Manager and Director of Facilities & Property Management one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies by endorsement, and a waiver of subrogation endorsement is required on all applicable policies. Endorsements must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

| TYPE OF INSURANCE | MINIMUM INSURANCE COVERAGE |
|---|---|
| 30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies. | Bodily Injury and Property Damage<br>Per occurrence - aggregate |
| COMMERCIAL GENERAL LIABILITY including:<br>1. Commercial Broad Form<br>2. Premises – Operations<br>3. Products/ Completed Operations<br>4. Contractual Liability<br>5. Independent Contractors<br>6. Personal Injury- Advertising Injury | $1,000,000 Per Occurrence<br>$1,000,000 Aggregate |
| AUTO LIABILITY (including)<br>1. Owned<br>2. Hired and Non-Owned<br>3. Rented/Leased | $1,000,000 Combined Single Limit |

| | |
|---|---|
| WORKERS'S COMPENSATION<br>(All States Endorsement if Company is not domiciled in Texas)<br><br>Employers Liability | Statutory and complies with Part II of this Exhibit.<br><br>$500,000/$500,000/$500,000 |
| INSTALLATION FLOATER | Value of the equipment |

C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.

B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.

C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

D. Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.

E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor’s performance of the work covered under this contract.

H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.

I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

**EXHIBIT F**

**OWNERSHIP AND MAINTENANCE EXHIBIT**

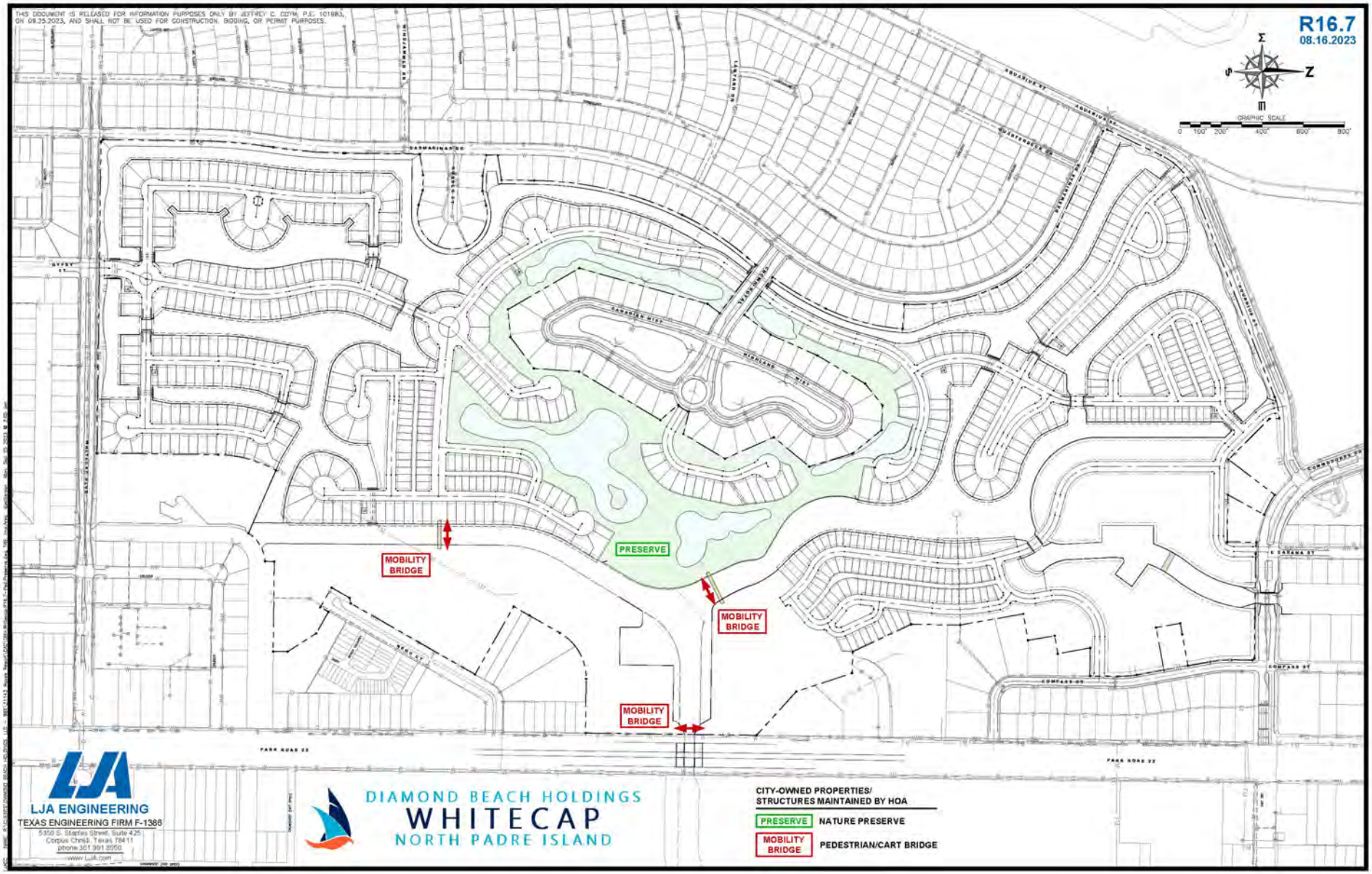
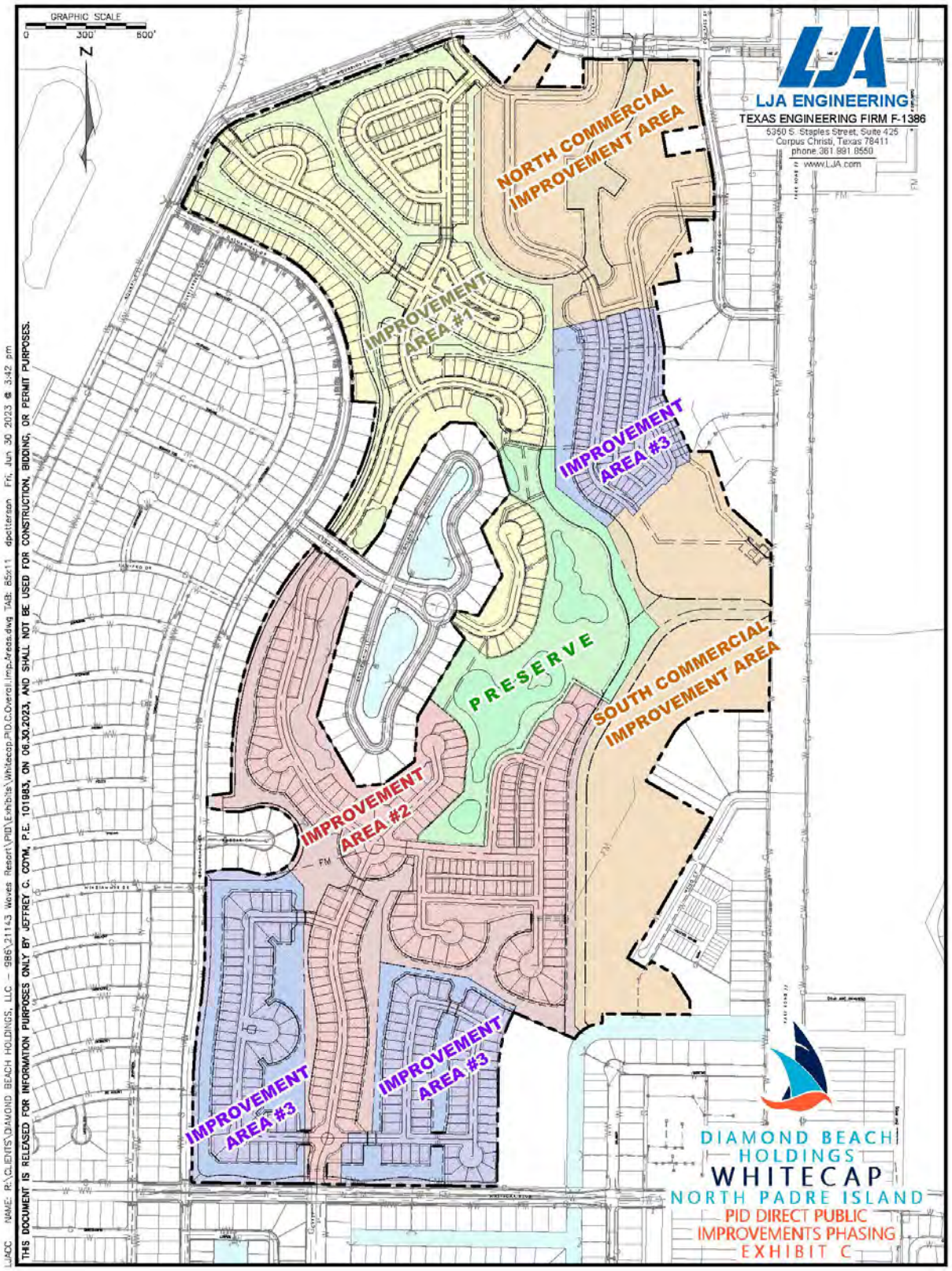
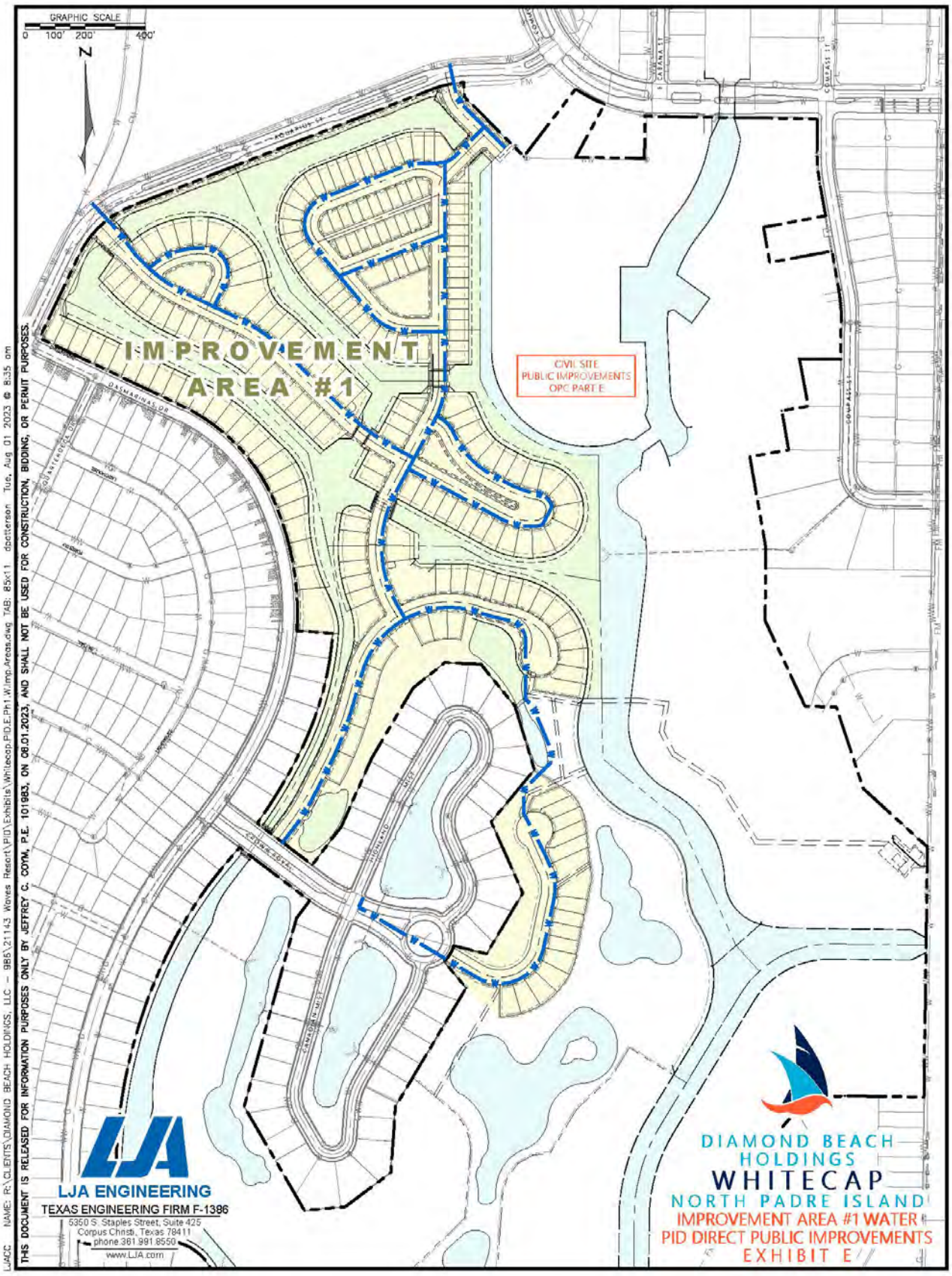


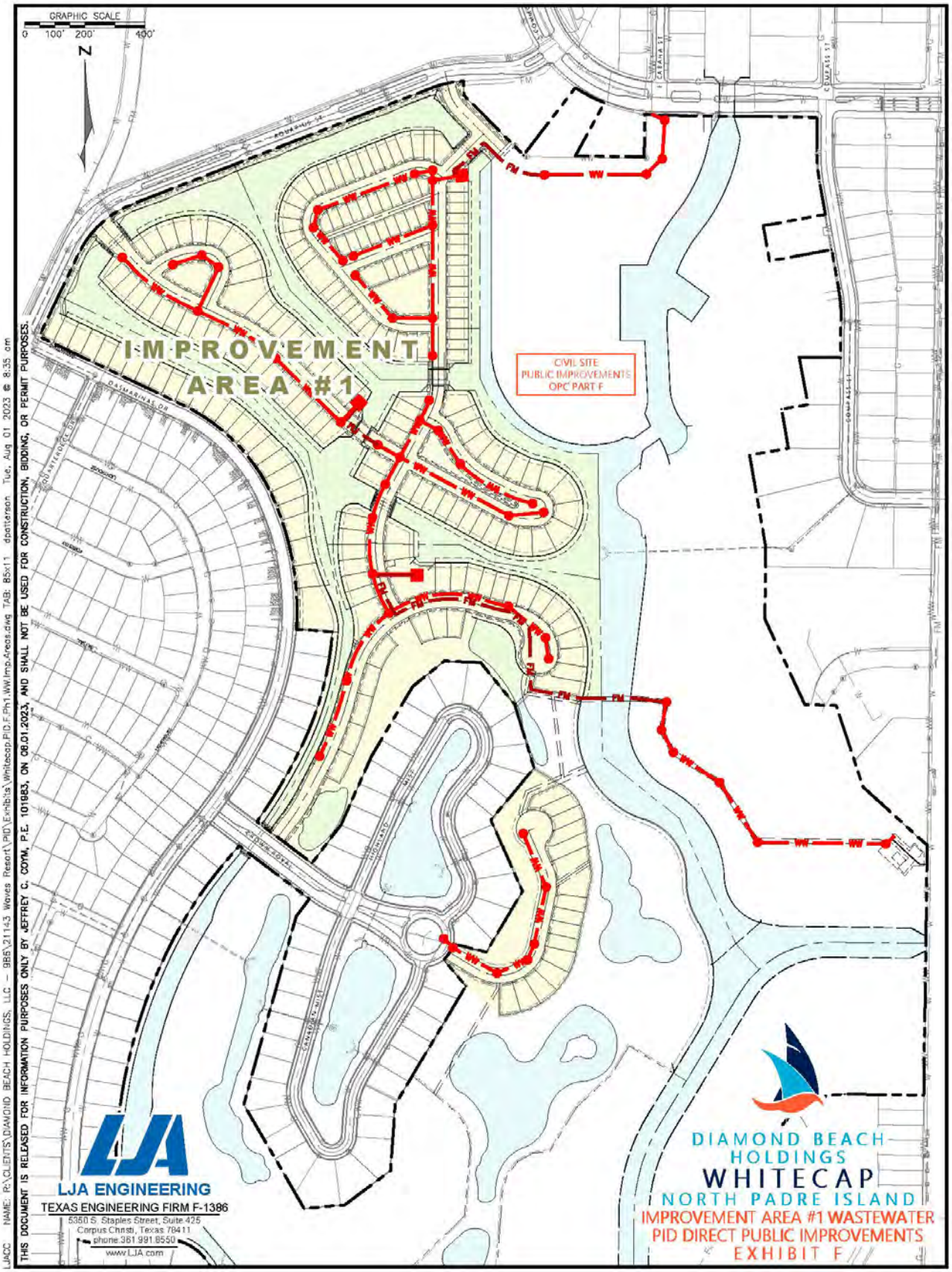
**EXHIBIT G**

**PHASE 1 PID AUTHORIZED IMPROVEMENTS EXHIBIT**




GRAPHIC SCALE
0 100' 200' 400'
N
IMPROVEMENT AREA #1
CIVIL SITE PUBLIC IMPROVEMENTS OPC PARTS A, B, C, & D
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
5350 S. Staples Street, Suite 425
Corpus Christi, Texas 78411
phone.361.991.8550
www.LJA.com
DIAMOND BEACH HOLDINGS
WHITECAP
NORTH PADRE ISLAND
IMPROVEMENT AREA #1 SITE, STREET, & STORM
PID DIRECT PUBLIC IMPROVEMENTS
EXHIBIT D
THIS DOCUMENT IS RELEASED FOR INFORMATION PURPOSES ONLY BY JEFFREY C. COTM, P.E. 101983, ON 08.01.2023, AND SHALL NOT BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.
LJACC NAME: R:\CLIENTS\DIAMOND BEACH HOLDINGS, LLC - 986\21143 Waves Resort\PID\Exhibits\Whitecap.PID.Ph1.Imp.Areas.dwg TAB: 85x11 dpatterson Tue, Aug 01 2023 @ 8:35 am


GRAPHIC SCALE
0 100' 200' 400'
N
IMPROVEMENT AREA #1
CIVIL SITE PUBLIC IMPROVEMENTS OPC PART E
THIS DOCUMENT IS RELEASED FOR INFORMATION PURPOSES ONLY BY JEFFREY C. COYM, P.E. 101983, ON 06.01.2023, AND SHALL NOT BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.
LJACC NAME: R:\CLIENTS\DIAMOND BEACH HOLDINGS, LLC – 985\21143 Waves Resort\PID\Exhibits\Whitecap.PID.E.Ph1.W.Imp.Areas.dwg TAB: 85x11 dpatterson Tue, Aug 01 2023 @ 8:35 am
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
5350 S. Staples Street, Suite 425
Corpus Christi, Texas 78411
phone 361.991.8550
www.LJA.com
DIAMOND BEACH HOLDINGS
WHITECAP
NORTH PADRE ISLAND
IMPROVEMENT AREA #1 WATER
PID DIRECT PUBLIC IMPROVEMENTS
EXHIBIT E


GRAPHIC SCALE
0 100' 200' 400'
N
IMPROVEMENT AREA #1
CIVIL SITE PUBLIC IMPROVEMENTS OPC PART F
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
5360 S. Staples Street, Suite 425
Corpus Christi, Texas 78411
phone 361.991.8550
www.LJA.com
DIAMOND BEACH HOLDINGS
WHITECAP
NORTH PADRE ISLAND
IMPROVEMENT AREA #1 WASTEWATER
PID DIRECT PUBLIC IMPROVEMENTS
EXHIBIT F
THIS DOCUMENT IS RELEASED FOR INFORMATION PURPOSES ONLY BY JEFFREY C. COYM, P.E. 101983, ON 08.01.2023, AND SHALL NOT BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.
LJACC NAME: P:\CLIENTS\DIAMOND BEACH HOLDINGS, LLC - 985\21143 Waves Resort\PID\Exhibits\Whitecap PID F Ph1 WW Imp Areas.dwg TAB: 85x11 dpatterson Tue, Aug 01 2023 @ 8:35 am

LJACC NAME: R:\CLIENTS\DIAMOND BEACH HOLDINGS, LLC - 986\21143 Waves Resort\PID\Exhibits\Whitecap.PID.G.Sections.dwg TAB: 8.5x11 dpatterson Tue, Dec 13 2022 @ 8:41 am
THIS DOCUMENT IS RELEASED FOR INFORMATION PURPOSES ONLY BY JEFFREY C. COYM, P.E. 101983, ON 12.13.2022, AND SHALL NOT BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.
TYPICAL RESIDENTIAL LOCAL STREET & UTILITIES
TYPICAL CR-2 LOCAL STREET & UTILITIES
TYPICAL BOULEVARD & UTILITIES
TYPICAL ALLEYWAY
EARTHWORK (OPC PART B)
50' R.O.W. (OPC PART C)
28' B-B
6" CONCRETE PAVEMENT STREET
SIDEWALK
WATER LINE (OPC PART E)
STORM WATER LINE (OPC PART D)
WASTEWATER LINE (OPC PART F)
70' R.O.W. (OPC PART C)
22' B-B
MEDIAN
22' R.O.W. (OPC PART C)
20' B-B
6" CONCRETE PAVEMENT ALLEY
THICKENED EDGE
10" (TYP.)
EARTHWORK (OPC PART B) (TYP.)
GRAPHIC SCALE
LJA ENGINEERING
TEXAS ENGINEERING FIRM F-1386
5350 S. Staples Street, Suite 425
Corpus Christi, Texas 78411
phone 361.991.8550
www.LJA.com
DIAMOND BEACH HOLDINGS
WHITECAP
NORTH PADRE ISLAND
STREETS & UTILITIES
EXHIBIT G