

DOWNTOWN DEVELOPMENT REIMBURSEMENT AGREEMENT

This Downtown Development Reimbursement Agreement (the "Agreement") is entered into by and between the Corpus Christi Tax Increment Reinvestment Zone #3 ("TIRZ #3"), through its agent, the City of Corpus Christi, Texas (the "City"), and The 600 Building, L.L.C., a Louisiana limited liability company (the "Developer").

Recitals

WHEREAS on December 16, 2008, the City Council of the City (the "City Council") approved Ordinance 027996, which established the TIRZ #3 in accordance with Texas Tax Code Chapter 311. TIRZ #3 promotes economic development and stimulates business and commercial activity in its downtown Corpus Christi area (the "Zone");

WHEREAS on August 25, 2015, the City Council approved a Project and Financing Plan (the "Plan") for TIRZ #3;

WHEREAS the Board of Directors of TIRZ #3 (the "Board") includes members of the City Council in a non-public-official capacity, as well as a representative from each Nueces County and Del Mar College, who have committed to contribute to TIRZ #3 through Interlocal Agreements created in 2009 and amended in 2012 and 2016;

WHEREAS the Corpus Christi Downtown Management District ("DMD") assists the City with administration of TIRZ #3, recommends projects and recommends a DMD representative to be appointed to the Board through an Interlocal Agreement;

WHEREAS on November 10, 2015, the City Council approved Ordinance 030680, which amended Ordinance 027996 and authorized the Board to approve agreements in this form, to be entered into by the City, as the Board considers necessary or convenient to implement the Plan and achieve its purpose;

WHEREAS the Plan contained certain programs designed to improve conditions and increase commerce within the Zone;

WHEREAS the Developer has proposed a development plan (the "Development") for the certain improvements described on attached Exhibit A (the "Improvements"). The Improvements are planned to be constructed on the property located at 600 Leopard Street, with such property being more fully described on attached Exhibit B (the "Property"). The Property is located within the Zone, and the Improvements fall within one of the programs approved in the Plan;

WHEREAS the Development concept has been refined through cooperation between the Developer, the City and the DMD to meet the desired goals of revitalization within the Zone and serve a public benefit;

WHEREAS any reference to "City" or "City Staff," is entirely in agency capacity for TIRZ #3, and further the City as a home-rule municipal corporation is not a party to this agreement;

WHEREAS the Developer desires to be reimbursed for certain future costs incurred pursuant to the Development, and TIRZ #3 desires to reimburse the Developer for these costs in accordance with this Agreement;

WHEREAS The 600 Building Manager, L.L.C., a Louisiana limited liability company (the "Managing Member") serves as the managing member of the Developer; and

WHEREAS Wisznia 600 Building, Inc., a Louisiana corporation ("Wisznia") serves as the managing member of the Managing Member.

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 #3 funds in an amount up to the estimated project cost listed next to each Improvement in attached Exhibit C (the "Estimated Project Costs"), except that (a) the total amount of all such reimbursements for the Development may not exceed \$2,560,000 and (b) if the Developer actually incurs a cost for an Improvement less than that Improvement's Estimated Project Cost, the City shall reimburse the Developer for only the amount of the cost that the Developer actually incurred for that Improvement. Based on qualifications of the Development, the program reimbursement structure is as follows:

- (a) Downtown Living Initiative (minimum of 10 units must be built in order to qualify):
 - (1) \$10,000 Per Unit for 126 units. Payment to be made over two (2) consecutive fiscal years at 63 units per year beginning the year that the Developer receives a Certificate of Occupancy.
- (b) Project Specific Development Agreement:
 - (1) Beginning the year after the Developer receives a Certificate of Occupancy ("C of O") for the Improvements from the City's Development Services Department, the City shall reimburse annually 100% of the property taxes paid on the Improvements to the participating taxing entities in TIRZ #3, up to a total cap of \$1,300,000, for a maximum of ten (10) years. In no event shall the payments under this Project Specific Development Agreement exceed \$1,300,000.
 - (2) Once the cap has been reached, the City shall have no further obligation to pay any amount to the Developer.
 - (3) Each such payment shall be made no later than 30 days following the Developer's submittal of a valid Request for Reimbursement
 - (4) After City has paid to Developer an amount equal to all of the Project Costs, City shall have no further obligation to pay any amount to Developer.
 - (5) No interest shall accrue on any amount of unreimbursed Project Costs, and City shall not be obligated to pay Developer any interest whatsoever under this Agreement.
 - (6) If the Developer fails to pay the required taxes on the property or files an appeal to the Nueces County Appraisal District or any state or federal court of the assessed value of Property for ad valorem tax purposes, the City and TIRZ #3 shall be under no obligation to make any payments 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. Reimbursement is limited to the actual amount of property tax paid on the Improvements.

The reimbursement of Estimated Project Costs shall initially be funded directly to Wisznia. The initial funding of the reimbursement of Estimated Project Costs to Wisznia shall not otherwise alter or excuse any obligation of the Developer. Under the terms of the operating agreement of the Managing Member, Wisznia shall be required to contribute any amounts received under this Agreement as a reimbursement of Estimated Project Costs as a capital contribution to the Managing Member. In turn, under the terms of the operating agreement of the Developer, the Managing Member shall be required to contribute any amounts received under this Agreement as a reimbursement of Estimated Project Costs as a capital contribution to the Developer.

The Developer shall treat all payments of the reimbursement of Estimated Project Costs to Wisznia as non-shareholder contributions to capital, in accordance with the provisions of Section 118 of the Internal Revenue Code of 1986 (the "Code"), and the City agrees not to take any actions inconsistent with such treatment. Developer further understands that the City expresses no opinion with respect to the appropriate federal income tax treatment of such payments. Developer acknowledges that the City has not made any representations or covenants other than in this section with respect to such federal income tax treatment of the reimbursement of Estimated Project Costs.

The Managing Member and Wisznia hereby intervene and join in this Agreement for the purpose of acknowledging and agreeing to the terms of this Agreement, including the capital contribution requirements as set forth in this Section 1.

Section 2. Closing Statement Required.

Within 30 days of closing, and prior to beginning any work, the Developer shall provide to the appropriate City Staff a certified closing or settlement statement (such as a HUD-1) for the mortgage or loan used to finance the Development.

(a) The City shall maintain the confidentiality of this information to the fullest extent possible under the law. The City and TIRZ #3 are governmental entities subject to the Texas Public Information Act (the "Act"). In the event that the City determines that this information is responsive to a valid request under the Act, the City shall timely request an opinion from the Office of the Attorney General of Texas (the "Attorney General") and argue that the information is confidential and not subject to release under the Act. The City shall timely notify the Developer of any such request and provide the Developer with the opportunity to make arguments to the Attorney General regarding the confidentiality of the information.

(b) In the event the amount of the loan is less than what had been stated in the application, and as a result the equity requirement shown in the closing statement is lower than the Cap listed in Section 1 of this Agreement, the Cap shall be automatically reduced so that the total amount of TIRZ #3 Reimbursement does not exceed the equity provided by the Developer.

Section 3. Conditions for Reimbursement.

The City shall reimburse Developer in accordance with Section 1 only if the following conditions are fulfilled:

- (a) The Developer purchases the Property with a closing date on or before January 1, 2017.
- (b) The Developer constructs all of the Improvements on the Property within twenty (20) months after the start of construction (the "Completion Date") in accordance with Exhibit A and the City's building codes and policies.
- (c) The City's Development Services Department issues a C of O for the Improvements.
- (d) Within 60 days of the issuance of C of O, the Developer submits a Request for Reimbursement for actual Project Costs, in the form contained in Exhibit D, including:
 - (i.) C of O;
 - (ii.) specific improvements completed under the Project and the amount of money that Developer paid for completion of such work and that Developer claims as actual Project Costs;
 - (iii.) supporting documents demonstrating that such amounts were actually paid by Developer, including but not limited to invoices, receipts and final lien waivers signed by the general contractor;
- (e) Appropriate City Staff has inspected the Improvements and certifies that the Improvements are complete, acceptable, and comport to the terms of this Agreement.
- (f) Upon acceptance by City Staff, Request for Reimbursement form is reviewed and approved by the Board.

Section 4. Audit

Developer will also make available for inspection by designated City Staff all financial and business records of Developer that relate to the Project, in order to assist City Staff in verifying the Developer's compliance with the terms and conditions of this Agreement. TIRZ #3 shall have the right to have these records audited. Information gained by the City under this section will be used solely to verify Developer's compliance with the terms and conditions of this Agreement.

Section 5. Maintenance of Improvements.

If the Developer constructs the Improvements, the Developer shall maintain the Improvements, premises, and adjacent public right of way in good condition and so as to not contribute to blight in the Zone for so long as the Developer owns or manages Property. The Developer's obligation to maintain the Improvements and public right of way adjacent to the Property, includes without limitation, maintaining the landscaping, sidewalks, aesthetics, and general cleanliness of the premises.

Section 6. Termination.

Unless sooner terminated in accordance with this Section, this Agreement shall survive the expiration of TIRZ #3. If the Developer has not fully complied with Section 3 Conditions for Reimbursement by the Completion Date, this Agreement shall terminate immediately, unless mutually agreed to in writing in accordance with Section 17.

Section 7. Warranties.

Developer warrants and represents to City the following:

- (a) Developer, if a corporation or partnership, is duly organized, is validly existing, is in good standing in its home state, and is qualified to do business 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. Developer, if an out-of-state or foreign business entity, is registered with the Secretary of State of the State of Texas in accordance with Section 9.001 of the Texas Business Organizations Code as a foreign entity transacting business in Texas.

- (b) Developer has the authority to enter into and perform, and will perform, the terms of this Agreement.
- (c) 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.
- (d) 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 30 days of written notice from the City requesting reimbursement.
- (e) The parties executing this Agreement on behalf of Developer are duly authorized to execute this Agreement on behalf of Developer.
- (f) Developer does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the payments at the rate and according to the terms as specified by City Ordinance, as amended, not later than the 120th day after the date Developer has been notified of the violation.

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, 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. Assignment.

Developer may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the Board. Any attempted assignment without such approval is void, and constitutes a breach of this Agreement. Assignment can only be requested for multi-year reimbursements, after completion of obligations by Developer.

Section 10. Indemnity.

Developer covenants to fully indemnify, save, and hold harmless the TIRZ #3, the City, their respective officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims, demands, and actions of any kind on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any manner connected with Developer activities conducted under or incidental to this Agreement, including any injury, loss or damage caused by the sole or contributory negligence of any or all of the Indemnitees. Developer must, at its own expense, investigate all those claims and demands, attend to their settlement or

other disposition, defend all actions based on those claims and demands with counsel satisfactory to Indemnitees, and pay all charges of attorneys and all other cost and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions.

Section 11. Events of Default.

The following events constitute a default of this Agreement:

- (a) Failure of Developer to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions, or warranties of this Agreement.
- (b) TIRZ #3, the 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 #3 in connection with this Agreement was incorrect or misleading in any material respect when made.
- (c) Developer makes an assignment for the benefit of creditors.
- (d) Developer files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.

Section 12. Notice of Default.

Should the City determine that Developer is in default according to the terms of this Agreement, the City shall notify Developer in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Developer to cure the event of default.

Section 13. Results of Uncured Default.

After exhausting good faith attempts to address any default during the cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of Developer, as determined by the City, the following actions must be taken for any default that remains uncured after the Cure Period.

- (a) Developer shall immediately repay all funds paid from TIRZ #3 funds under this Agreement.
- (b) Developer shall pay reasonable attorney fees and costs of court.
- (c) The City and TIRZ #3 shall have no further obligations to Developer under this Agreement.
- (d) Neither the City nor the TIRZ #3 may be held liable for any consequential damages.
- (e) The City may pursue all remedies available under law.

Section 14. 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 TIRZ #3.
- (d) It is expressly understood that if at any time Developer is in default in any of its conditions or covenants of this Agreement, the failure on the part of the City to promptly avail itself of the rights and remedies that the City may have, will not be considered a waiver on the part of the City, but City

may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

Section 15. Available Funds.

Developer specifically agrees that City and the TIRZ #3 shall only be liable to Developer for the actual amount of the money due Developer under this Agreement from TIRZ #3 funds, and shall not be liable to Developer for any actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by City or the TIRZ #3 under the terms of this Agreement. Payment by City is strictly limited to the total amount of increment funds for TIRZ #3. City shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual tax increment funds be less than the total amount paid to all contracting parties at the time, then in that event, all contracting parties shall receive only their pro rata share of the available increment funds for that year, as compared to each contracting parties' grant amount for that year, and City and the TIRZ #3 shall not be liable to for any deficiency at that time or at any time in the future. In this event, City will provide all supporting documentation, as requested. Reimbursements paid to Developer shall require a written request from Developer accompanied by all necessary supporting documentation, as outlined in Section 3.

Section 16. Notices.

Any required written notices shall be sent by certified mail, postage prepaid, addressed as follows:

Developer:

The 600 Building, L.L.C.
C/O Marcel Wisznia
800 Common Street, Suite 200
New Orleans, LA 70112

and

The 600 Building, L.L.C.
C/O Linda Burns
67 Tee Road
Lumberton, MS 39455

City of Corpus Christi
Attn.: City Manager's Office
Tax Increment Reinvestment Zone #3
P.O. Box 9277
Corpus Christi, Texas 78469-9277

Notice is effective upon deposit in the United States mail in the manner provided above.

Section 17. 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 18. 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 19. 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 20. Venue.

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

Section 21. 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.

[REMANIDER OF PAGE LEFT BLANK INENTIONALLY]

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

APPROVED AS TO FORM: 16 day of November, 2016.

Aimee Alonzo-Rivera

Assistant City Attorney

For City Attorney

By: Thargie C. Rose

City Manager/Designee

Date: 11/15/16

City of Corpus Christi on behalf of Tax Increment Reinvestment Zone #3

Attest:

By: Rebecca Huerta

Rebecca Huerta

City Secretary

TIRZ #3 AUTHORIZED
BY COUNCIL 11-15-16
RH
SECRETARY TR

Developer

The 600 Building, L.L.C.

By: The 600 Building Manager, L.L.C.

Its: Manager

By: Wisznia 600 Building, Inc.

Its: Manager

By: _____

Marcel L. Wisznia, President

Date: _____

11/9/16

Managing Member

The 600 Building Manager, L.L.C.

By: Wisznia 600 Building, Inc.

Its: Manager

By: _____

Marcel L. Wisznia, President

Date: _____

11/9/16

Wisznia

Wisznia 600 Building, Inc.

By: _____

Marcel L. Wisznia, President

Date: _____

11/9/16

Exhibit A – Project Description

Exhibit B – Property Description, Metes & Bounds, Plat

Exhibit C – Estimated Project Costs

Exhibit D – TIRZ #3 Reimbursement Request Form

Exhibit A – Project Description

The **600 Building** project involves the historic rehabilitation/conversion of the existing office tower located in downtown Corpus Christi into multi-family residential, shared office space, and retail. The renovated building will offer 126 apartments. The building features six floors of integrated parking comprising 143 spaces. A wide range of amenities will be offered to the residents including a swim spa, exercise rooms, steam and sauna, movie room, billiards, communal gourmet kitchen, an electronic gaming room and more. The ground floor will include approximately 2700 square feet of commercial space.

Exhibit B – Property Description, Metes & Bounds, Plat

Legal Description of Property Here. Both Metes & Bounds and Plat will be separate pages.

BLUFF LTS 1 & 2 BK 4

Exhibit C – Project Costs

Improvement	Estimated Cost	Category
1) Demolition (Asbestos)	\$1,200,000	Environmental Remediation
2) Glass/Glazing; Masonry	\$1,450,000	Historic Preservation
3) Site Utilities	\$ 150,000	Public Improvements/ Utilities
4) Code Compliance	\$500,000	
Total Qualifying Project Construction Costs:	\$3,300,000	

