

DOWNTOWN DEVELOPMENT REIMBURSEMENT AGREEMENT- Hilton Garden Inn

This Downtown Development Reimbursement Agreement (the “**Agreement**”) is entered into by and between the City of Corpus Christi, Texas (the “**City**”), as the agent of the Corpus Christi Tax Increment Reinvestment Zone #3 (“**TIRZ #3**”), and SEA District Hotel Group, LP (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 listed on attached **Exhibit A** (each, an “**Improvement**” and, collectively, the “**Improvements**”). The Improvements are planned to be constructed on the property located at 701 E Port Ave, 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; and

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;

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 \$1,415,000 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) 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 up to 75% of the property taxes paid on the Improvements to the participating taxing entities in TIRZ #3, for the 10 year period established in Exhibit A.
- (2) Each such payment shall be made no later than 30 days following the Developer's submittal of a valid Request for Reimbursement
- (3) 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.
- (4) 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.

Section 2. Closing Statement Required.

This Section 2 is only applicable to a Developer who is in the process of purchasing the Property, but has not completed the purchase as of the date this agreement is executed by the Developer. 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 or TIRZ #3 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 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) Developer submits for full construction permit on or before November 30, 2020.
- (b) Developer obtains all required building permits from the City and commences construction of the Improvements on or before March 1, 2021.
- (c) The Developer constructs all of the Improvements on the Property on or before December 31, 2022 (the “**Completion Date**”) in accordance with **Exhibit A** and the City’s building codes and policies.
- (d) The completed Improvements must include all elements (including but not limited to: all design, structural, architectural, lighting, landscaping, etc.) which are shown or referenced in the Development Plan attached hereto as Exhibit A. Any amendments to the Development Plan must be submitted in writing and be approved by all parties to this Agreement.
- (e) The City’s Development Services Department issues a C of O for the Improvements.
- (f) 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;
- (g) Appropriate City Staff has inspected the Improvements and certifies that the Improvements are complete, acceptable, and comport to the terms of this Agreement.
- (h) Request for Reimbursement form is reviewed and approved by the appropriate City staff.
- (i) 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.

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.

Section 5. Maintenance of Property and Improvements.

Developer must maintain the property for the entirety of the Agreement in accordance with the City’s Property Maintenance requirements. Citations from the Code Enforcement for property maintenance issues will initiate termination provision (Section 6).

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. 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 2 Conditions for Reimbursement by the Completion Date, this Agreement shall terminate immediately, unless mutually agreed to in writing in accordance with Section 17.

Three citations from the City's Code Enforcement Division for property maintenance violations and/or one Code Enforcement citation that results in the City abating the property will initiate a review process by the TIRZ #3 Board, at which time the Board may elect to terminate the Agreement.

Section 7. Warranties.

Developer warrants and represents to City the following:

- (a) Developer, if a corporation or partnership, 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.
- (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 2.

Section 16. Notices.

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

Developer:

SEA District Hotel Group, LP
Attn: Deven Bhakta
President/CEO
PO Box 61178
Corpus Christi, TX 78466

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.

APPROVED AS TO FORM: ____ day of _____, 20__.

Assistant City Attorney
For City Attorney

By: _____

City Manager/Designee

Date: _____

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

Attest:

By: _____

Rebecca Huerta
City Secretary

SEA District Hotel Group, L.P.
By its general partner, SEA District Hotel Group GP, LLC

By: _____

Deven Bhakta
Member

Date: _____

Exhibit A – Project Description

Exhibit B – Property Description

Exhibit C – Estimated Project Costs

Exhibit D – TIRZ #3 Reimbursement Request Form

Exhibit A – Project Description

The Development is a new 196 room dual hotel (Hilton Garden Inn & Homewood Suites) with an “artsy & industrial” concept. The project will include a ground level restaurant and bar with outdoor dining, a 5,000 square foot conference room, fitness room, and pool. There will be rooftop amenities including a bar/lounge, event space, and a sustainable garden. In order to prepare the site, excavation of previously dumped concrete and water and storm drain utilities must be installed. Controlled access to parking will ensure adequate parking supply to guests even when events occur in the SEA District.

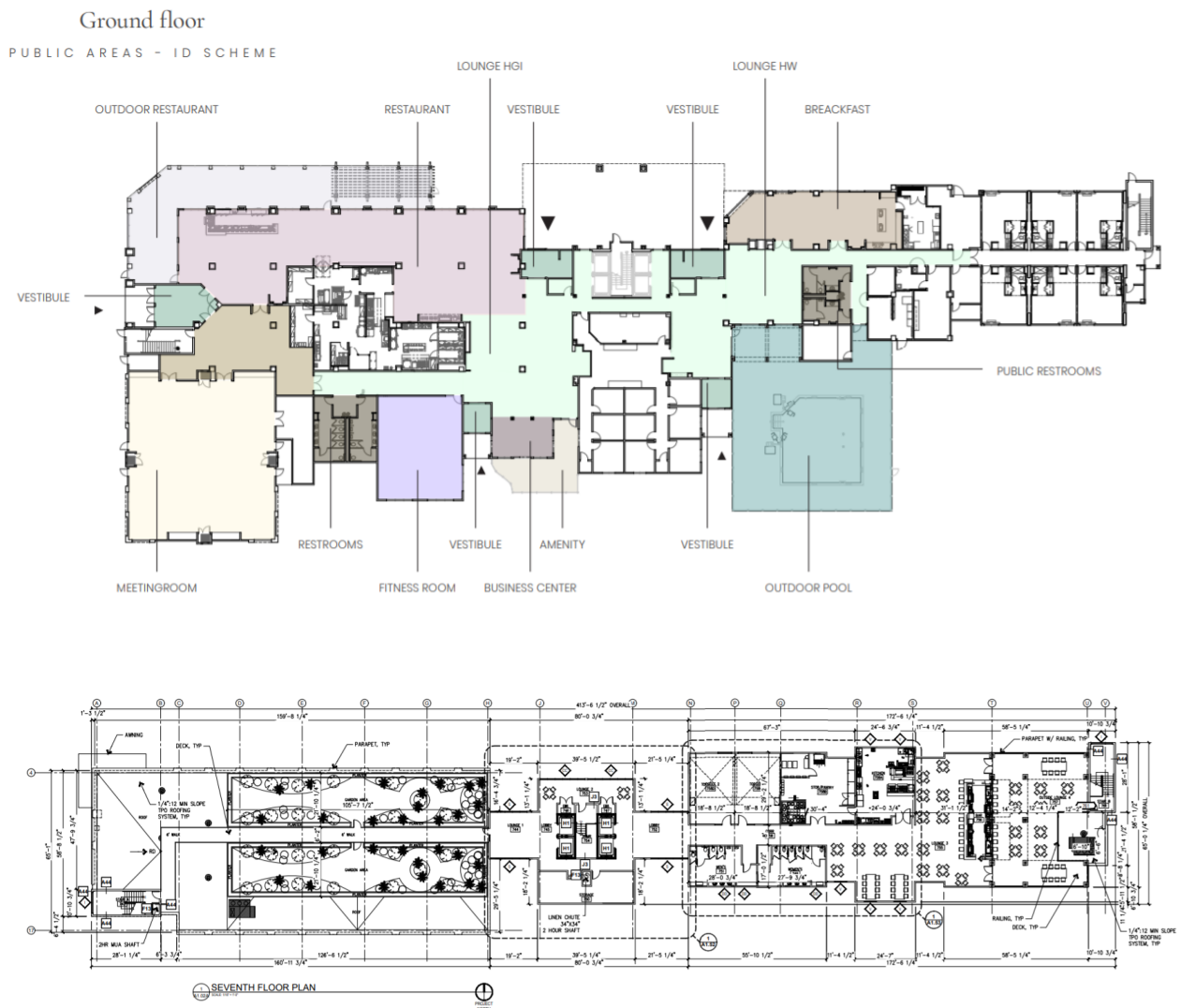
To meet the urban design requirements of the TIRZ #3 programs, the developer will make the following improvements:

- 1) Perimeter right-of-way sidewalks will be at least 10 feet wide as required in the Streetscape Zone Ordinance (UDC 16.13.2.B.1)
- 2) Provide shade trees or a shade structure and lighting along the pathway of the sidewalks for walkability. Shade trees or shade structures must be placed every 25 feet or less. (Palm trees are not considered shade trees)
- 3) Per the “Requirements for Well-Designed Urban Developments” Guidelines adopted by the TIRZ #3 Board, off-street parking must be visually appealing and integrated with the building’s design, screened with architectural and landscape elements. Cars must not be visible from the street. For new construction that includes a surface lot, the building frontage must have zero setback adjacent to higher traffic streets, with parking in the rear. Access to new lots should be through side-streets or alleyways. All parking must be paved, striped and lighted.

Exterior Concept:



Ground Floor & Rooftop Conceptual Floor Plans



The renderings are conceptual drawings only and not reflective of the final design. Project work is to reflect the items described in the above "Project Description".

Exhibit B – Property Description

Property ID: 507679

Geographic ID: 6903-0002-0012

Legal Description: PORT ADDITION 2.6 ACRES OUT LOT 1 BLOCK 2

Property Address: 701 E Port Ave, Corpus Christi, TX 78401

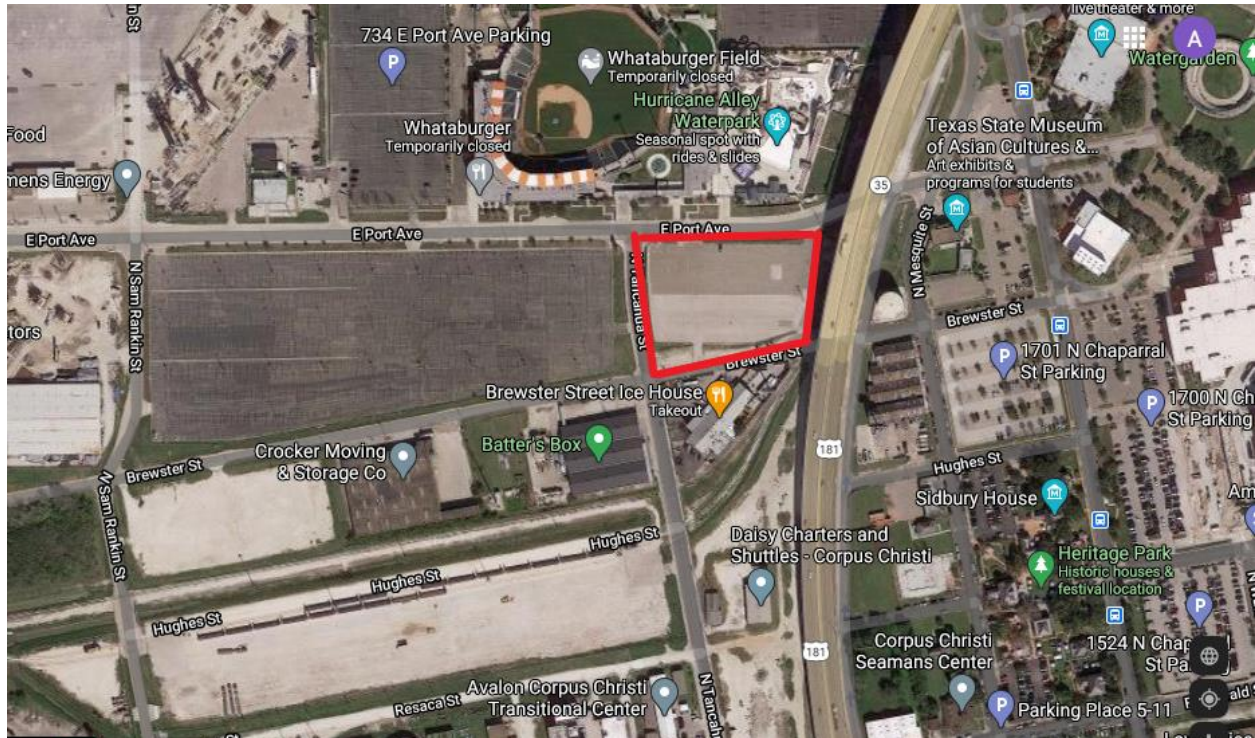


Exhibit C – Project Costs

Improvement	Estimated Cost	Category
1) Additional Site Prep/Underground Debris Excavation	\$ 700,000	Public Improvements/Utilities
2) Site Utilities	\$ 280,000	
3) Rooftop Garden	\$ 350,000	Urban Design/Landscaping
4) Parking Controls	\$ 85,000	Parking
Total Reimbursement Basis	\$1,415,000	

*Total Possible Reimbursement Basis identifies the Project Costs that make the Development eligible under the Incentive Guidelines. The Actual Reimbursement is identified in Section 1 of the Agreement.

Exhibit D – Request for Reimbursement Form

City of Corpus Christi – City Manager's Office
Corpus Christi Downtown Management District

Tax Increment Reinvestment Zone #3 Request for Reimbursement

Project Name: _____

Grant Program: _____

Type of Reimbursement: ☐ One Time ☐ Re-Occurring (First Payment)

Requestor: _____ Date Requested: _____

Improvement	Estimated Cost (Per Agreement Exhibit C)	Actual Cost (Per Attached Documentation)	Invoice Reference
1)			
2)			
3)			
4)			
5)			
TOTAL			

Attached is the Following:

- 1) Executed TIRZ #3 Reimbursement Agreement ☐
- 2) Certificate of Occupancy Date: _____ ☐
- 3) Documentation of Expenses ☐

Signatures for Submittal:

Authorized Developer: _____ Date: _____

Authorized General Contractor: _____ Date: _____

An incomplete Request for Reimbursement will not be processed. Submit a hard copy and combined PDF version to AlyssaB@ccotexas.com. Upon receipt of Request, final inspection will be scheduled.

Signatures for Approval Process

Request Rec'd By City: _____ Date: _____

Documentation Complete: _____ Inspection of Project: _____

Notes: _____

Reimbursement Approved by TIRZ #3 Board: _____ Date: _____

Tax Increment Reinvestment Zone #3 Request for Reimbursement
Updated October 2015