

SUPPLEMENT TO DEVELOPMENT FINANCING AGREEMENT BY AND AMONG
THE CITY OF BAY CITY, TEXAS REINVESTMENT ZONE NUMBER TWO,
CITY OF BAY CITY, AND BOLD FOX DEVELOPMENT, LLC

Section 1. General Statement; Agreement for Development of TIRZ Projects; Definitions

(a) General Statement. The parties acknowledge and agree that the Development is included in the TIRZ Plan, as it may be amended from time to time, and is subject to the terms of this Agreement, and the costs for same are Project Costs eligible for funding through the Tax Increment. The TIRZ Plan shall not be amended without Developer consent, to the extent it would affect the reimbursement of Developer. The City and the Developer agree that, subject to the consideration provided in this Agreement, the Developer shall assist the City and the Zone in the implementation of the TIRZ Plan and in the funding of the TIRZ Projects therein. Such assistance shall include the design, financing and construction of the Development. The responsibilities of the parties are set forth herein.

(b) Agreement to Reimburse Project Costs. The Development is subject to the terms of this Agreement, and the TIRZ shall reimburse the Developer for all amounts advanced for Project Costs in accordance with Section 4 hereof.

(c) Definitions

The following capitalized terms shall have the meanings provided below.

“Completion,” or “Complete,” as applied to each TIRZ Project, shall mean the point at which a TIRZ Project is available for its intended use as evidenced by a Certificate of Completion by the Developer’s engineer (such Certificate to be issued if the TIRZ Project was completed in accordance with the plans and specifications) and approved by the Public Works Department of the City.

“Interest” shall mean (i) for all Developer advances that are financed by City bonds, the rate on the City bonds sold to fund such advances, and (ii) for all Developer advances that are not financed by City bonds, the prime rate as published in the Wall Street Journal (but not to exceed 8%), with the rate for Developer advances for TIRZ Projects to be set on the date of initial expenditure.

“Net Tax Increment” shall mean the Tax Increment less amounts reasonably required or anticipated to be required for the administration and operation of the Zone, including a reasonable operating reserve.

“Reimbursement Audit” shall mean a report prepared by the City calculating the reimbursement to a Developer for funds advanced for the design and construction of a particular TIRZ Project. A Notice of Completion must be filed with the City on or before the completion for the TIRZ Project. The purpose of a Notice of Completion is to allow the City to assess whether Developer completed all requirements of the Development as

defined in this Agreement. The Notice of Completion must include a final construction report in a form reasonably acceptable to the City that specifically outlines the total Costs expended or caused to be expended for improvements constructed as part of the Development, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid, including, without limitation, final lien waivers signed by Developer's or an Affiliate's general contractor.

"Tax Increment Fund" or "TIF" shall mean the fund created by the City for the Zone, including any subaccount therein, into which all Tax Increments shall be deposited by the City or other participants.

"Tax Increment" shall mean the amount of property taxes collected each year by the City and any other taxing unit that participates in the Zone with property tax increments (to the extent of their participation) on the captured appraised value.

Section 4. Financing and Reimbursement of Project Costs

(a) Design and Construction of TIRZ Projects. The Developer agrees to pay or cause to be paid all costs necessary to design and construct the TIRZ Projects for the Development. Such payments are Project Costs and are eligible for reimbursement in accordance with the TIRZ Plan and this Agreement.

(b) Cost of Land Acquisition. The cost of land for sites for TIRZ Projects listed on Exhibit B is a Project Cost and is eligible for reimbursement. The amount that will be reimbursed for land will be determined by City's Finance Director based on a certified appraisal on the property provided by the Developer.

(c) Funding of Reimbursements.

(1) The Developer will be reimbursed by the City for any TIRZ Projects. City shall begin repaying the Developer for actual Project Costs as shown in the Reimbursement Audit, and shall continue such repayment until repaid in full, on the earliest date that funds are available from any of the following sources, and solely from such sources:

- (i) proceeds from the sale of City bonds, as set forth in subsection (2), and
- (ii) the Net Tax Increment, subject to the limitations set forth in subsection (3).

(2) As provided herein, the City shall issue one or more series of bonds at the earliest feasible date, which bonds will be secured by a pledge of the Tax Increment Fund. The net proceeds of the bonds shall be deposited into a special fund of the City and shall be used by the City to reimburse the Developer for the full amount (or such portion thereof as is deemed by the City as supportable by the TIRZ Projects as provided below) of eligible Project Costs, plus Interest. Such City bonds shall be sold within 120 days (or such other period as may be agreed by the parties) of a written request therefor from the Developer; provided that the Net Tax Increment (based upon the tax valuation of the Zone as certified or estimated by the Matagorda County

Appraisal District, or its successor) expected to be generated with respect to the Development is sufficient to support the applicable bonds bearing interest at the then-current rate of interest as determined by the City's Finance Director for comparable issues, after taking into account the portion of the Development's Net Tax Increment required to pay any outstanding City bonds, including City bonds issued to refund outstanding City bonds.

(3) In addition to the Developer's right to reimbursement from City bond proceeds, upon request from the Developer, the Zone shall reimburse the Developer for Project Costs, plus Interest, from Tax Increment accumulated in the Tax Increment Fund, attributable to the Development and available in accordance with the priorities described in the Priority of Reimbursement below.

(4) The Zone reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. Developer agrees that (i) it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or City for all or any portion of the reimbursement, and (ii) the Developer agrees to sign such receipts and indemnities (regarding proper parties to receive payment) as are reasonably required by the City.

(d) Priority of Reimbursement and Multiple Developers.

Subject to all limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that the Tax Increment generated within the Property in the Zone shall be applied in the following order of priority ("Priority of Reimbursement"):

- (i) Two and a half percent of the Tax Increment to pay City administrative expenses.
- (ii) City's costs associated with amending the TIRZ #2 boundaries and annexation of the Property into the City, in an amount not to exceed \$50,000.
- (iii) \$2,354,462.69 due to Bay City Community Development Corporation ("BCCDC") for public infrastructure improvements, including water, sewer, drainage, street and intersection improvements, pursuant to that certain Development Financing Agreement by and among the City, the Zone, and BCCDC, dated _____.
- (iv) Amounts pledged or required for the payment of outstanding City bonds, including City bonds in the process of issuance and refunding bonds.
- (v) Developer's Project Costs, pursuant to Section 4(c)(3) above.
- (vi) Any remaining funds after Developer's Project Costs are fully reimbursed pursuant to the terms of this Agreement (the "Available Funds") are available for commitment to future Developer projects.

In the event that the Zone enters into other agreements with developers of land within the Zone for the financing of TIRZ projects, it is the intention of the parties that each developer

shall be responsible for the creation of Tax Increment required for its own reimbursement. To the extent Developer constructs any projects or facilities in the TIRZ that benefit property in the TIRZ which is not Developer's Property, Developer may be reimbursed for expenses related to these facilities from the Tax Increment generated within the TIRZ, but outside the Property.