

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, AUTHORIZING, ADOPTING AND APPROVING THE SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT, TOGETHER WITH EACH OF ITS ATTACHMENTS FOR THE BEACH TOWN EAST DEVELOPMENT IN REINVESTMENT ZONE NUMBER 13 (ORDINANCE NO. 01-102) IN ORDER TO CLARIFY AND TO AMEND CERTAIN PROVISIONS IN SETTLEMENT OF DISPUTES BETWEEN THE PARTIES

WHEREAS, the City of Galveston, Texas (the City) is a municipal corporation and a home rule city in the state of Texas; and

WHEREAS, the Texas Tax Code, Chapter 311, the Tax Increment Financing Act, authorizes cities to use tax increment financing to develop reinvestment zones; and

WHEREAS, the City of Galveston Ordinance No. 01-102 created the Beach Town East Beach Development as Reinvestment Zone Number Thirteen (“the Zone”) pursuant to a Preliminary Project Plan and Preliminary Reinvestment Zone Financing Plan; with the Zone acting by and through its governing body, the Board of Directors (“the Zone Board”); and

WHEREAS, the Texas Transportation Code, Chapter 431, Subchapter D authorizes the creation and organization of public non-profit local government corporations to act as duly constituted authority of a city to aid and assist the city in performance of one or more governmental functions; and

WHEREAS, the Galveston Island Redevelopment Authority (“the Authority”) is a public not for profit local government corporation organized and existing under the Texas Transportation Corporation Act, Chapter 431, acting by and through its governing body, the Board of Directors (“the Authority Board”); and

WHEREAS, Intercontinental United Investors, L.P. is a successor in interest to Intercontinental United Investors, Corp. (“the Developer”);

WHEREAS, the City approved Ordinance No. 02-071 creating the Authority, its Articles of Incorporation and Bylaws, and confirming the appointment of the initial directors and chairperson; and

WHEREAS, the Zone Board adopted a final Project Plan and Reinvestment Zone Financing Plan and submitted it to the City Council for City approval; and the City Council approved it by Ordinance No. 02-079; and

WHEREAS, the Texas Tax Code provides that the the City and the Zone may enter into agreements as the Zone Board considers necessary or convenient to implement the Project and Financing Plan and achieve its purposes; and

WHEREAS, the City, Galveston County and the Zone entered into an Inter-local Agreement, effective May 19, 2003 and approved by Ordinance No. 03-057 for the participation of Galveston County in the Zone; and

WHEREAS, the City, the Zone, and the Authority have entered into an agreement (the “Tri-Party Agreement”), effective June 12, 2003, and approved by Ordinance No. 03-058 pursuant to which the City delegated to the Authority the power and authority to administer the Zone including, but not limited to, the power to engage in activities relating to the acquisition and development of land, construct and improve infrastructure in the Zone, enter into development agreements with developers/builders in the Zone and to issue, sell or deliver its bonds, notes or other obligations in accordance with and subject to the limitations set forth in the Tri-Party Agreement and Project and Financing Plan; and

WHEREAS, the Authority Board and Zone Board determined it was in the best interest of the Zone and the Authority to contract with the Developer, the developer of the land within the Zone, in order to provide for the efficient and effective implementation of the Project and Financing Plan; and did enter into such an agreement; and

WHEREAS, the Zone, the Authority, and the Developer entered into an agreement (“the Development Agreement”), effective August 26, 2004;

WHEREAS, the Developer desires to continue with the development of Beach Town and with the Zone prior to the time the Authority can issue its bonds or notes to pay certain costs of design and construction of the TIRZ improvements; and

WHEREAS, the Authority intends, at its earliest feasible date, subject to Section 6.01 of the ~~Tri-Party~~ Development Agreement, to exercise its authority in accordance with Texas law, to issue its bonds or notes secured by the available tax increment generated by the project to reimburse the Developer for project costs advanced on behalf of the Zone and the Authority pursuant to the Development Agreement; and

WHEREAS, the Authority and the Zone have complied with all of their obligations under the Development Agreement and the Developer has no claim for breach by the Authority or the Zone under Article 7 of the Agreement; and

WHEREAS, certain disputes arose between the Zone, the Authority and the Developer over interpretation of the Development Agreement; and

WHEREAS, the Zone, the Authority, and the Developer desire to clarify certain provisions in the Development Agreement, and to settle certain disputes between the parties; and

WHEREAS, the Zone, the Authority, and the Developer did enter into an Amended and Restated Development Agreement effective July 25, 2014 in order to clarify certain provisions of certain disputes between the parties; and

WHEREAS, a Second Amended and Restated Development Agreement has been prepared for the consideration of the City Council reiterating the terms of the July 2014 Amended and Restated Development Agreement, and updating it to reflect present conditions; and

WHEREAS, the Second Amended and Restated Development Agreement was considered and approved by the Zone and the Authority at their meetings of January 19, 2018; and

WHEREAS, the City Council of Galveston finds that the Second Amended and Restated Development Agreement does not reduce or increase the geographic area of the zone, increase the amount of bonded indebtedness to be incurred, increase or decrease the percentage of a tax increment to be contributed by a taxing unit, increase the total estimated project costs, or designate additional property in the zone to be acquired by the city, and thus a public hearing pursuant to Texas Tax Code 311.011(b) is not required; and

WHEREAS, the City Council of Galveston finds that notwithstanding the above finding that a public hearing is not required pursuant to Texas Tax Code 311.011, a public hearing on this Ordinance will promote transparency and provide an opportunity for public comment on the Second Amended and Restated Development Agreement; and

WHEREAS, pursuant to the terms of the Inter-local Cooperation Agreements with the County of Galveston and the Galveston Navigation District, this Ordinance was made available to those organizations for comment more than ten days prior to its submission to the City Council of Galveston for adoption.

WHEREAS, the Second Amended and Restated Development Agreement is in the best interest of the City, the Zone and the Authority;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS:

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. The City Council of Galveston does approve, authorize, adopt, and incorporate herein the Second Amended and Restated Development Agreement , together with its attachments, in order to clarify certain provisions in settlement of disputes between the parties relating to Ordinance Nos. 01-102, 02-071, 02-079, 03-057 and 03-058; and

SECTION 3. The effective date of the Second Amended and Restated Development Agreement is January 25, 2018, and

SECTION 4. Any and all distributions made to the developer pursuant to the Amended and Restated Development Agreement are valid, and are approved, authorized and adopted; and

SECTION 5. Any and all funds paid to the developer pursuant to the Amended and Restated Development Agreement are valid, and are approved, authorized, and adopted; and

SECTION 6. The Amended and Restated Development Agreement is conclusively presumed valid, as of the date it was signed, and presumed to have been made in accordance with all applicable statutes and rules; and

SECTION 7. If any section, paragraph, clause or provision of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 8. It is hereby found, determined and declared that a sufficient notice of the date, hour, place and subject of the meeting of the City Council at which this Ordinance was adopted was posted at a place convenient and rapidly accessible at all times to the general public at the city hall of Galveston for the time required by law preceding this meeting, as required by the Open Meetings Act, § 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject hereof has been discussed, considered and formally acted upon. The City Council further, approves and confirms such written notice and contents and posting thereof.

SECTION 9. That in accordance with the provisions of Section 12 and 13 of the Article II of the City Charter this Ordinance has been publically available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 10. All orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 11. This Ordinance shall be and become effective from and after its adoption and publication in accordance with provisions of the Charter of the City of Galveston.

APPROVED AS TO FORM:

DONALD S. GLYWASKY
CITY ATTORNEY

I, _____, Secretary of the City Council of the City of Galveston, do hereby certify that the forgoing is a true and correct copy of Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on _____, 2018 as the same appears in the records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this ____ date of ____, 2018.
