

TAX INCREMENT FINANCING AGREEMENT

THIS TAX INCREMENT FINANCING AGREEMENT ("Agreement") is made and entered into and effective as of the 16 day of September 2008 (the "Effective Date"), by and between WILLIAMSON COUNTY, TEXAS (the "County") and the CITY OF GEORGETOWN, TEXAS (the "City"), political subdivisions of the State of Texas, with respect to the creation of, and the level of participation in, the Reinvestment Zone Number _____, City of Georgetown, Texas (the "Zone"). The City and the County are sometimes referred to jointly herein as the "Parties".

WITNESSETH:

WHEREAS, Brae Group, LTD ("Developer") is the owner of approximately 31.935 acres of land in the Rivery Park Subdivision, Georgetown, Texas ("Developer's Property"), and the City is the owner of Rivery Park, a public park located in the corporate limits of the City ("City's Property"); and

WHEREAS, after compliance with the procedures and giving all notices and presentations required by V.T.C.A, Tax Code, Chapter 311, Tax Increment Financing Act (the "Act"), on December 11, 2007, the City created the Zone for the Developer's Property and the City's Property by adopting Ordinance No. 2007-91

WHEREAS, Section 311.013(f) of the Act provides that the County may enter into an agreement with the governing body which created the Zone, to participate in the payments of tax increments for certain project costs as agreed upon by the County and said governing body; and

WHEREAS, said agreement may include conditions for payment of that tax increment into a tax increment fund and must specify the portion of said tax increment to be paid into said fund, along with the term of said payments,

WHEREAS, by majority vote of the Commissioners Court of the County, on the 16 day of September, 2008, the County agreed to participate in the Zone effective as of said date, and desires to enter into an agreement with the City to delineate the terms on which the County will participate in the Zone;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned Parties agree as follows:

I.

FINDINGS

1. **Recitals.** The recitals set forth above are incorporated herein for all purposes and are found by the Commissioners Court of the County and the City Council of the City to be true and correct statements of fact. It is further found and determined that the City and the County have authorized and approved this Agreement by ordinance, resolution or order adopted by their respective governing bodies, and that, upon this Agreement being executed by both Parties, this Agreement will be in full force and effect as of the Effective Date.

2. **Zone.** The City created the Zone and requested that the County participate by depositing a certain percentage of the County ad valorem tax received on tax increments within the Zone into a tax increment fund which is to be utilized for purposes as allowed in Section 311.011 of the Act and as recommended by the board of directors of the Zone and as approved by the City.

3. **Tax Increments.** The City's Annual Tax Increment shall equal the real property taxes levied by the City for that year on the Captured Appraised Value (the "City's Tax Increment"). The County's Annual Tax Increment shall equal the real property taxes levied by the County for that year on the Captured Appraised Value (the "County's Tax Increment"). The Captured Appraised Value is the appraised value of real property in the Zone for a tax year less the Tax Increment Base. The Tax Increment Base of the City and the County for the Zone is the total appraised value of all real property taxable by the City and the County located in the Zone, as determined as of January 1, 2007 (the "Tax Increment Base").

II.

COUNTY OBLIGATIONS AND RESERVATION OF RIGHTS

1. **General.** The County agrees to participate in the Zone as provided in this Article II.

2. **Percentage of Tax Increments.** The County will participate in the Zone to the extent of Eighty percent (80%) of the County's Tax Increment. The City has agreed to participate to the extent of One Hundred (100%) of the City's Tax Increment. The annual Tax Increment shall equal the property taxes levied by the City and the County in the Zone for each tax year on the Captured Appraised Value. The maximum net proceeds to Developer from the Tax Increment Fund from the City and County Tax Increment shall not exceed twenty-five (25) million dollars.

3. **Payments of Tax Increments.** The applicable percentage of the City and County Tax Increments shall be paid into a tax increment fund established for the Zone by the City (Tax Increment Fund) in compliance with section 311.013 of the Act.

4. **Tax Increment Fund Projects.** The Tax Increment Payments deposited into the Tax Increment Fund are intended to be utilized solely for the reasonable expenses incurred in the administration of the Zone and the design and construction of infrastructure projects and improvements listed in the Project Plan, (the "Tax Increment Projects"). All Tax Increment Projects shall only be those public improvements listed in the Project Plan, attached hereto as Exhibit "A". The Act authorizes the amendment of the Project Plan by majority vote of both the Zone Board of Directors and the City Council of the City. Notwithstanding the Act, the County's agreement to participate in the Zone is subject to the following, to-wit:

- (a) Subject to the provisions of subsection (d) below, the City agrees to remit to the County each and every year for the term of this Agreement Fifty Percent (50%) of the 1% general sales tax received by the City within the Zone as long as the County contributes Eighty Percent (80%) of the County's Tax Increment to the Tax Increment Fund. Said sales tax payment shall be due and owing by December 1 of each and every year for the duration of this Agreement.
- (b) The portion of the Project Plan pertaining to the conference/performing center may not be materially amended without prior approval of the Commissioners Court. Said approval or disapproval shall be determined by the Commissioners Court in a timely manner, and approval shall not be unreasonably withheld.

- (c) The County's participation is specifically conditioned upon the construction of a conference/performing arts center capable of seating banquet style between 1,500 to 4,500 people and designed to accommodate multiple small scale events
 - (d) The convention/conference center as described herein shall be fully constructed by October 1, 2011 subject to events of Force Majeure. If, for any reason, the convention/conference center is not fully constructed by October 1, 2011, the County reserves the right to terminate this Agreement and cease payment of any tax increment revenues as stated herein. No tax increment revenues shall be paid from the Tax Increment Fund to the Developer as required herein until the conference/convention center is fully constructed. If the convention/conference center is not fully constructed by October 1, 2011, all sums previously deposited into the TIF fund by the County shall be returned to the County. If funds are returned to the County pursuant to this subsection (d), then the County shall be also be required to return all sales taxes received from the City pursuant to subsection (a), above.
 - (e) This Agreement is specifically conditioned upon the City finalizing all Tax Increment financing Agreements with the Developer with the same terms and conditions as stated herein.
 - (f) "Force Majeure" shall mean that, whenever a period of time is prescribed in this Agreement for an action to be taken by a party, such party shall not be responsible or liable for, and there shall be excluded from the computation for any such period of time, any delays due to events beyond the reasonable control of the party such as floods, earthquakes or other disasters, fire or other casualty, riot or other civil unrest, court order, act of God, act of terrorism, war, exposure to toxic chemicals, shortages of labor or materials, governmental approvals (including but not limited to approvals from the Texas Commission on Environmental Quality), and similar acts or events that are beyond the reasonable control of the party.
5. **Zone Board of Directors.** The County shall be allowed to appoint four of the nine members of the board of directors of the Zone and to retain this ratio if the board is expanded, so long as the board

members appointed by the State Representative and State Senator are counted toward the County's four members.

III.

Term of Agreement and Renewal

Term of Agreement. The term of this Agreement shall begin as of the Effective Date and extend until December 31, 2031, or until the Developer has received \$25 million in net proceeds from the TIF, whichever occurs earlier, or at such other date as the Zone may be terminated by operation of law or by the terms of Ordinance No. 2007-91.

IV.

General and Miscellaneous

1. **Prior Written Agreements.** This Agreement is without regard to any and all prior written contracts or agreements between the City and Williamson County regarding any other subject or matter, and does not modify, amend, ratify, confirm or renew any such other prior contract or agreement between the Parties.
2. **Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other, or to provide or to not provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties. The County shall not be obligated to fund any additional monies other than as stated herein.
3. **Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claim on behalf of any third party. Neither the City nor Williamson County waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
4. **Amendments and Modifications.** Unless otherwise specified herein, this Agreement may not be

amended or modified except in writing executed by both the City and Williamson County, and authorized by their respective governing bodies.

5. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, to give effect to the intent of this Agreement and be deemed to be validated and enforceable.

6. **Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

7. **Compliance Documentation.** On or before February 1st of each year during the term of this Agreement, City hereby agrees to provide County with any and all certifications and/or reports necessary to provide evidence that all parties to this Agreement are in compliance with the terms and conditions hereof and that all conditions set forth in this Agreement have been satisfied as of the date in which the City provides said certifications and/or reports.

8. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the **Effective Date**, when **both** Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

WILLIAMSON COUNTY, TEXAS

By: 

DAN A. GATTIS
County Judge
Williamson County, Texas

CITY OF GEORGETOWN, TEXAS

By: 

GEORGE G. GARVER
Mayor