

**BUSINESS INCENTIVE AGREEMENT BETWEEN
THE CORPUS CHRISTI B CORPORATION AND ELEVATE QOF, LLC
FOR THE DEVELOPMENT OF A HOTEL AND RETAIL PROJECT**

This Business Incentive Agreement for Capital Investments and the development of a Homewood Suites by Hilton hotel with retail space on the first floor ("Agreement") is entered into between the Corpus Christi B Corporation ("Corporation") and Elevate QOF, LLC ("Company"), a Texas limited liability company.

WHEREAS, the Texas Legislature in Chapter 501 et seq. of the Local Government Code (Development Corporation Act of 1979) (the "Act") empowered local communities with the ability to adopt an optional local sales and use tax as a means of improving the economic health and prosperity of their citizens;

WHEREAS, on November 8, 2016, residents of the City passed Proposition 1, Adopt Type B Sales Tax to Replace Expiring Portion of Type A Sales Tax, which authorized the adoption of a sales and use tax to be administered by a Type B Corporation at the rate of one-eighth of one percent to be imposed for 20 years with use of the proceeds for (1) 50% to the promotion and development of new and expanded business enterprises to the full extent allowed by Texas law, (2) \$500,000 annually for affordable housing, and (3) the balance of the proceeds for the construction, maintenance and repair of arterial and collector streets and roads;

WHEREAS, the 1/8th cent sales tax authorized by passage of Proposition 1 was subsequently enacted by the City Council and filed with the State Comptroller of Texas, effective April 1, 2018, to be administered by the Corpus Christi B Corporation Board;

WHEREAS, the Corpus Christi B Corporation exists for the purposes of encouraging and assisting entities in the creation of jobs for the citizens of Corpus Christi, Texas;

WHEREAS, the Company has proposed a development project for construction of a new 127-room hotel at the intersection of Chaparral Street and Lomax Street in the City's downtown, which includes the creation of 65 new full-time jobs (the "Project");

WHEREAS, Section 501.073 of the Act requires the City Council to approve all programs and expenditures of the Corporation; and

WHEREAS, the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to Company, through this Agreement with Company, to be used by Company to develop the Project;

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and Company agree as follows:

1. *Effective Date.* The effective date of this Agreement ("Effective Date") is the latest date that either party executes this Agreement, so long as the Agreement has been approved by the City's City Council. Company understands that this Agreement is dependent upon the approval of City Council.

2. *Term.* The term of this Agreement is for seven years beginning on the Effective Date.

3. *Performance Requirements.*

a. Company agrees to use these funds to reimburse the cost of certain improvements allowed under Section 501.103 and 505.152 of the Texas Local Government Code needed for the Project.

b. Company agrees to provide the Corporation with a sworn certificate by an authorized representative of the Company, certifying the amount expended for qualifying improvements.

c. Company must provide the Corporation with a detailed list of expenditures each year within 30 days of the anniversary of the Effective Date until construction is complete.

d. During the term of this Agreement, Company will invest at least \$28,000,000 for construction of the Project, which must include at least 120 hotel rooms, 7,000 square feet of retail space, and indoor and outdoor dining space. The Project must include high-end features, including metal framing, a rooftop bar, and entertainment spaces, such as the anticipated Top Golf digital amenities on the fifth floor. The retail, dining, bar, and entertainment spaces must be available to the general public and not reserved for the exclusive use of hotel guests.

e. Company must complete the improvements required in **Exhibit A** on or before September 30, 2025.

f. On or before September 30, 2025, Company must certify the creation of at least 55 new full-time jobs, with a minimum payroll of \$1,499,960. Company shall, over the term of this Agreement, create 65 full-time jobs, no later than September 30, 2027, with an average salary of \$30,769 as described in the schedule below.

Year	Number of New Jobs	Number of Retained Jobs	Average Salary	Annual Payroll
2025	55	0	\$27,272	1,499,960
2026	5	55	\$28,333	1,699,980
2027	5	65	\$29,320	1,905,800
2028	0	65	\$30,769	1,999,985
2029	0	65	\$32,300	2,099,500

g. Company must retain all jobs created in accordance with this Agreement for the full term of the Agreement.

h. Company must retain ownership interest in the Project for at least five years after completion of construction. Assignment of this Agreement or payments under this Agreement during that five-year period is only effective if approved in writing by the City Manager of the City of Corpus Christi.

4. Grant Award.

a. The Corporation will grant Company the amount not to exceed \$2,000,000, which will be paid in five annual payments not to exceed \$400,000. Company can request payments annually following the issuance of a permanent Certificate of Occupancy for the Project and proof of compliance with the requirements of Section 3 above.

i. After completion of the Project (and verification of the required expenditures), should Company fail to meet all of the Performance Requirements in any one year, Company shall receive a reduced percentage of the Cash Incentive in effect that year. Such reduction will be in that percentage equal to the percentage that Company's performance falls below the Performance Requirements. However, if Company fails to meet at least 70% of any of the Performance Requirements in any one year, then Company is not entitled to any payment for that year.

ii. In the event that Company fails to meet both the required number of jobs and the required payroll, Company will receive the lower prorated incentive. This requires a calculation of $\# \text{ of created jobs} / \# \text{ of required jobs} * \$400,000$ and $\$ \text{ of actual payroll} / \$ \text{ of required payroll} * \$400,000$. Whichever number is lower is the incentive to be paid.

iii. For purposes of example, if Company creates at least 55 full-time jobs in the first year, with the minimum payroll of \$1,499,000, then Corporation will provide the full incentive for that year at \$400,000. However, if Company creates only 53 new full-time jobs in the first year with a payroll of \$1,450,000, then Company is entitled to 96.4% of the incentive amount,

which is \$385,455, based on the creation of only 96.4% of the required full-time jobs. If the Company creates only 37 new full-time jobs in the first year or has a payroll of less than \$1,049,972, then Company is not entitled to any incentive payment in the first year.

b. The Corporation will provide the funding within 60 days after receipt of a qualified annual reimbursement request for such funding from Company, but no earlier than the 61st day after the public hearing held at the Corporation's meeting on December 11, 2023. 3. Along with any request for reimbursement, Company must submit certification that there are no mechanics, contractor's or materialman's liens against the property and provide documentation establishing that all other performance requirements, including the creation of jobs, have been met. If Company does not provide the required documentation prior to the end of the Term, this Agreement shall expire, and Company shall not be entitled to the grant funds.

5. *Utilization of Local Contractors and Suppliers.* Company agrees to exercise reasonable efforts in utilizing local contractors and suppliers in the construction of the Project, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business, with a goal of 50% of the total dollar amount of all construction contracts and supply agreements being paid to local contractors and suppliers. For the purposes of this section, the term "local" as used to describe manufacturers, suppliers, contractors, and labor includes firms, businesses, and persons who reside in or maintain an office within a 50-mile radius of Nueces County. Company agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of Company to comply with the Local Requirement, and to provide an annual report to the City Manager or designee, from which the City Manager or designee shall determine if Company is in compliance with this requirement. Failure to substantially comply with this requirement, in the sole determination of the City Manager or designee, shall be a default hereunder.

6. *Utilization of Disadvantaged Business Enterprises ("DBE").* Company agrees to exercise reasonable efforts in utilizing contractors and suppliers that are determined to be DBEs, including minority business enterprises, women-owned business enterprises and historically-underutilized business enterprises. In order to qualify as a business enterprise under this provision, the firm must be certified by the City, the Regional Transportation Authority or another governmental entity in the jurisdiction of the home office of the business as complying with state or federal standards for qualification as such an enterprise. Company agrees to a goal of 30% of the total dollar amount of all construction contracts and supply agreements being paid to DBEs, with a priority made

for DBEs which are local. Company agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of Company to comply with the DBE Requirement, and to provide an annual report to the City Manager or designee, from which the City Manager or designee shall determine if Company is in compliance with this requirement. Failure to substantially comply with this requirement, in the sole determination of the City Manager or designee, shall be a default hereunder. For the purposes of this section, the term "local" as used to describe contractors and suppliers that are determined to be DBEs, including minority business enterprises, women-owned business enterprises and historically-underutilized business enterprises includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County.

7. *Living Wage Requirement.* In order to count as a permanent full-time job under this agreement, the job should provide a "living wage" for the employee. The target living wage under this agreement is that annual amount equal or greater than poverty level for a family of three, established by the U.S. Department of Health and Human Services Poverty Guidelines, divided by 2,080 hours per year for that year.

8. *Health Insurance.* To qualify for this incentive, an employer shall certify that it has offered a health insurance program for its employees during the term of the Agreement. The health insurance program must comply with all applicable laws.

9. *Warranties.* Company warrants and represents to Corporation the following:

- a. Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas, has all power and authority to carry on its business as presently conducted in Corpus Christi, Texas.
- b. Company has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.
- c. Company has timely filed and will timely file all local, State, and Federal tax reports and returns required by laws to be filed and all taxes, assessments, fees, and other governmental charges, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.
- d. Company has received a copy of the Act and acknowledges that the funds granted under this Agreement must be utilized solely for purposes authorized under State law and by the terms of this Agreement.

e. The person executing this Agreement on behalf of Company is duly authorized to execute this Agreement on behalf of Company.

f. Company does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall repay the payments received under this Agreement to the City, with interest at the Wall Street Journal Prime Rate, not later than the 120th day after the date Company has been notified of the violation.

10. *Compliance with Laws.* During the Term of this Agreement, Company shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

11. *Non-Discrimination.* Company covenants and agrees that Company will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Project, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

12. *Force Majeure.* If the Corporation or Company is 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 Corporation or Company 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.

13. *Assignment.* Company may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the Corporation and City. Any attempted assignment without approval is void and constitutes a breach of this Agreement.

14. *Indemnity.* Company covenants to fully indemnify, save, and hold harmless the Corporation, 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 Company's 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. Company 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 costs and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions.

15. *Events of Default by Company.* The following events constitute a default of this Agreement by Company:

- a. The Corporation or City determines that any representation or warranty on behalf of Company contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to the Corporation in connection with this Agreement was incorrect or misleading in any material respect when made;
- b. Any judgment is assessed against Company or any attachment or other levy against the property of Company with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- c. Company makes an assignment for the benefit of creditors.
- d. Company files a petition in bankruptcy or is adjudicated insolvent or bankrupt.
- e. If taxes owed by Company become delinquent, and Company fails to timely and properly follow the legal procedures for protest or contest.
- f. Company changes the general character of business as conducted as of the date this Agreement is approved by the Corporation.

g. Company fails to complete all of the improvements listed in **Exhibit A** on or before September 30, 2025, or fails to comply with one or more terms of this Agreement.

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

17. *Results of Uncured Default by Company.* The following actions must be taken for any default that remains uncured after the Cure Period.

a. Company shall immediately repay all funds paid by Corporation to it under this Agreement.

b. Company shall pay Corporation's reasonable attorney fees and costs of court to collect amounts due to Corporation if not immediately repaid upon demand from the Corporation.

c. Upon payment by Company of all sums due, the Corporation and Company shall have no further obligations to one another under this Agreement.

18. *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 Company's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time Company is in default in any of its conditions or covenants of this Agreement, the failure on the part of the Corporation to promptly avail itself of the rights and remedies that the Corporation

may have, will not be considered a waiver on the part of the Corporation, but Corporation may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

19. Company specifically agrees that Corporation shall only be liable to Company for the actual amount of the money grants to be conveyed to Company, and shall not be liable to Company for any actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Corporation under the terms of this Agreement. Payment by Corporation is strictly limited to those funds so allocated, budgeted, and collected solely during the grant term of this Agreement. Corporation shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for any one year be less than the total amount of grants to be paid to all contracting parties with Corporation for that year, then in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue for that year, less Corporation's customary and usual costs and expenses, as compared to each contracting parties' grant amount for that year, and Corporation shall not be liable to for any deficiency at that time or at any time in the future. In this event, Corporation will provide all supporting documentation, as requested. Payments to be made shall also require a written request from Company to be accompanied by all necessary supporting documentation.

20. The parties mutually agree and understand that funding under this Agreement is subject to annual appropriations by the City Council; that each fiscal year's funding must be included in the budget for that year; and the funding is not effective until approved by the City Council.

21. *Notices.*

- a. Any required written notices shall be sent mailed, certified mail, postage prepaid, addressed as follows:

Company:

Elevate QOF, LLC
Attn: Deven Bhakta/Philip Ramirez
1410 Crescent Dr.
Corpus Christi, Texas 78412

Corporation:

Corpus Christi B Corporation
Attn.: Executive Director
1201 Leopard Street
Corpus Christi, Texas 78401

b. A copy of all notices and correspondence must be sent the City at the following address:

City of Corpus Christi
Attn.: Assistant City Manager
P.O. Box 9277
Corpus Christi, Texas 78469-9277

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

23. *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.

24. *Relationship of Parties.* In performing this Agreement, both the Corporation and Company will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

25. *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.

26. *Severability.*

a. 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.

b. 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.

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

28. *Sole Agreement.* This Agreement constitutes the sole Agreement between Corporation and Company. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

29. *Survival of terms of Agreement and obligations of parties.* The terms of this Agreement and the obligation of the parties relating to Section 14 shall survive the termination of this Agreement.

(Remainder of this page intentionally left blank)

Corpus Christi B Corporation

By: _____
Leah Pagan Olivarri
President

Date: _____

Attest:

By: _____
Rebecca Huerta
Assistant Secretary

Elevate QOF, LLC

By its managing member, Jacek, LLC

By: _____
Deven Bhakta
Manager

Date: 01/18/24

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on January 18th, 2024, by Deven Bhakta, Manager of Jacek, LLC, a Texas limited liability company, as the managing member of Elevate QOF, LLC, a Texas limited liability company, on behalf of the company.

Darlene L. Gonzalez
Notary Public
State of Texas

