

STATE OF TEXAS §

COUNTY OF BRAZOS §

JORDAN CENTER
CHAPTER 380 AGREEMENT

This Chapter 380 Development Agreement (“Agreement”) is entered into on this ___ day of _____, 2015, by and between the City of Bryan, Texas (“City”) and BCS Modern Living, LLC (“Developer”) as a framework for the development and sale of the property described below.

WHEREAS, Developer is in the process of purchasing Lots 1-5, Block 265 and all of Block 264, Bryan Original Townsite, as well as the closed portion of W. 21st St., in Bryan, Brazos County, Texas (“Property”) which is more particularly described in **Exhibit A**; and

WHEREAS, Developer has plans to develop the Property into a high end multi story mixed used development to include ample parking, retail/office uses, multi-family residential uses, as well as public spaces including an outdoor art gallery; and

WHEREAS, Developer has determined that it needs assistance from the City in order to make the proposed plans feasible, and is willing to agree to meet specific development benchmarks in exchange for such assistance; and

WHEREAS, the City has determined that this proposed development is in the best interests of the City, and that any proposed incentives would be justified by the development of the Property as planned; and

WHEREAS, City finds that it is in the best interests of the citizens of Bryan and the development of the downtown Bryan area to enter into this Agreement to ensure the development of the Property; and

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

A. Permit Fees

1. During the term of this Agreement, the City agrees to waive up to \$75,000.00 in permit fees charged for building, electrical, mechanical, or plumbing permits. This waiver shall not include any fees, deposits, or charges not listed above.

B. Rebate

2. Beginning January 1 of the year following execution of this Agreement, Developer shall be entitled to a rebate of 100% of ad valorem taxes paid for improvements on the Property. Developer shall be entitled to the rebate for up to seven (7) years, or until a cumulative total of \$1,140,000.00 in ad valorem taxes have been rebated, whichever comes first. This rebate is subject to annual appropriation for same by the City Council.
3. Provided that Developer is not in breach of this Agreement, and provided that taxes have been paid for a given year, Developer can submit a request for rebate of that portion of the taxes attributable to improvements. Such request must be in writing and must include a copy of the receipt from the Brazos County Tax Office showing the amount of taxes paid.

C. Sculpture

4. The Developer is going to construct a sculpture garden that will be free to the public and will be a cultural benefit to downtown Bryan. The City agrees to provide a grant of up to \$50,000.00 for the Developer to commission a sculpture to be placed in that garden. At or around the time the sculpture garden is being constructed, the Developer may select one or more artists to create one or more sculptures for the outdoor garden. For each sculpture to be paid for, in whole or in part, with funds being provided under this section, City Council approval is required. Before an artist is commissioned, the City Council must be provided a design of the sculpture and a price to be paid, for review and approval. Once a sculpture is approved, the Developer may engage the artist who will create the sculpture, and provide an invoice upon completion. The City will pay the Developer within thirty (30) days following a written request with an invoice from the artist attached, provided that the work does not deviate materially from the design.
5. Any sculpture paid for in whole or in part out of the funds provided under this section must be accessible to the public, subject to reasonable restrictions imposed by the Developer, or its successors or assigns. In the event that the sculpture garden is ever closed to the public, the City is entitled to claim the sculpture and install it in a park or other public location of the City's choosing, or if removal of the sculpture is impractical, the City is entitled to reimbursement from Developer, its successors or assigns, for any money provided under this section.

D. Development Benchmarks

6. As a condition of this Agreement, Developer agrees that on January 1 of the year following the final certificate of occupancy for the Property, the improvements on the Property shall value at least \$25,000,000.00 as determined by the Brazos Central Appraisal District. Additionally, the improvements on the Property must continue to be appraised having at least \$25,000,000.00 in value throughout the term of this Agreement.
7. As a condition of this Agreement, Developer agrees that within one (1) calendar year of the execution of this Agreement, Developer will have applied for building permits for the development of the Property. Developer further agrees that it will have obtained a final certificate of occupancy for the development of the Property within thirty (30) months of the execution of this Agreement.
8. As a condition of this Agreement, Developer agrees to comply with all City ordinances and applicable state laws relating to the construction and maintenance of the Property. Failure to obtain a certificate of occupancy due to non-compliance with this condition shall be deemed a breach of this Agreement.

E. Term & Termination

9. The term of this Agreement shall be from the date of execution by all parties through the end of the seventh (7th) full calendar year following execution by all parties, unless terminated sooner.
10. In the event that Developer breaches this Agreement, the City shall tender notice of such breach giving Developer thirty (30) days to cure, if feasible, or establish that there is no breach. If Developer fails, or is unable, to cure the breach, the City shall be entitled to payment of all the permit fees waived, sculpture grants paid, and taxes rebated pursuant to this Agreement. Developer's obligation to pay the fees and taxes shall be due and payable immediately upon expiration of the thirty (30) cure period and shall survive termination of this Agreement.

F. Miscellaneous

11. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker"). During the term of this Agreement, Developer shall notify City of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Developer to the City not later than the 120th day after the date the City notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.
12. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section.
13. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
14. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
15. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
16. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
17. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
18. No Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term

of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

19. Notices. Any notices required to be provided pursuant to this Agreement are deemed provided within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested, or on the day of transmission by facsimile, email, or when hand delivered to the address provided herein. CITY and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY

City of Bryan, Texas
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

DEVELOPER

BCS Modern Living, LLC
Attn: CEO
419 North Main Street, Ste. 120
Bryan, Texas 77803

20. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
21. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
22. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
23. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
24. Gender and Number. 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 and vice versa, unless the context requires otherwise.
25. No Special Relationship Created. Nothing contained herein, nor any acts of the parties in connection herewith, shall be deemed or construed by the parties hereto or by third parties as creating the relationship of (a) principal and agent, (b) a partnership, or (c) a joint venture, as between the parties hereto. No third party shall obtain any rights as a result of this Agreement.

[signatures to follow]

Executed to be effective this _____ day of _____, 2015.

City of Bryan, Texas

BCS Modern Living, LLC

Jason P. Bienski, Mayor

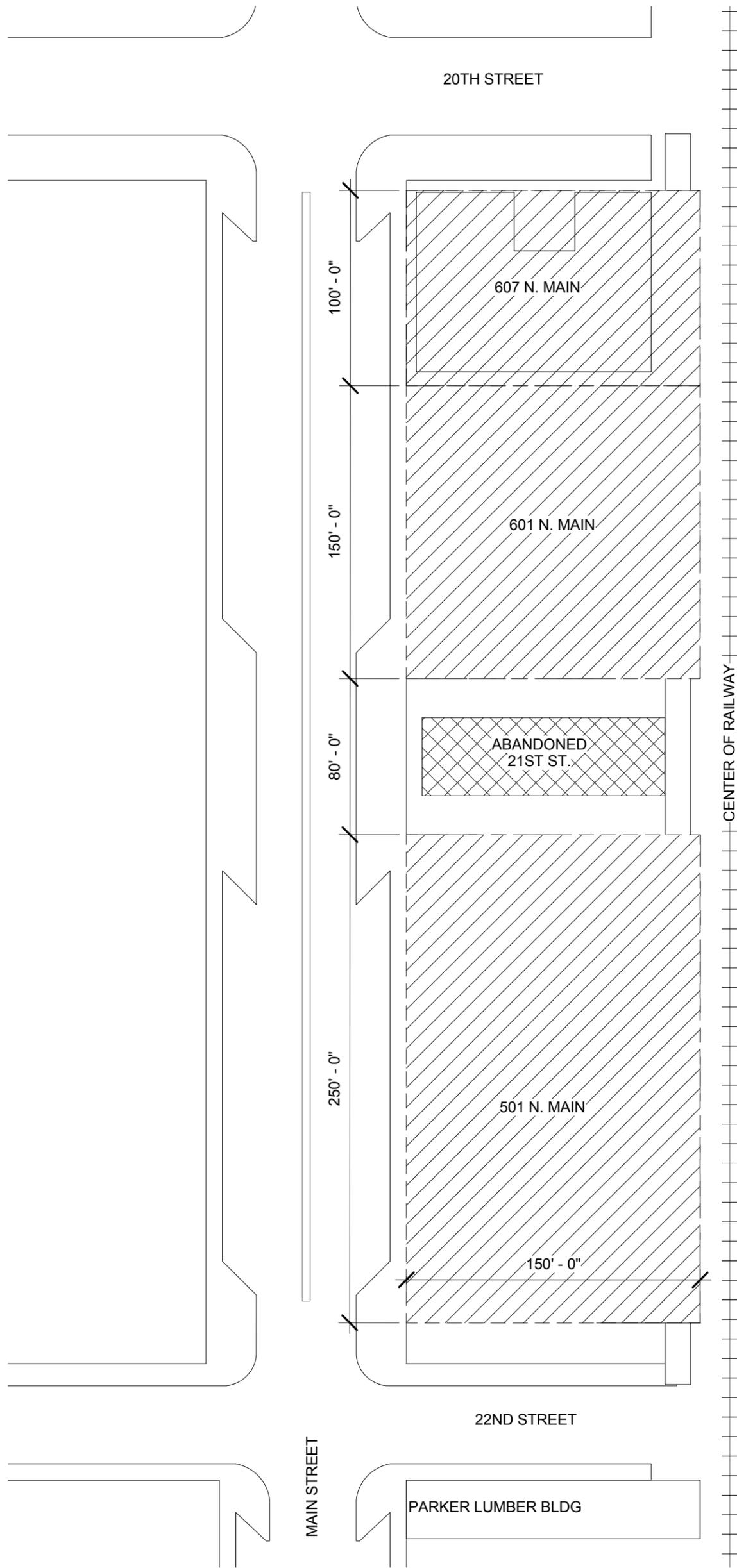
Chris Lawrence, CEO

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney



① Site
1" = 60'-0"



419 N. Main St. Suite 120
Bryan, Texas 77803
979.314.7363
www.laurelhousestudio.com



No.	Description	Date

Project number	14-C-0617
Date	8/21/15
Drawn by	
Checked by	

EXHIBIT A

Scale 1" = 60'-0"

Multi-Use

SALES CONTRACT

This Sales Contract ("**Agreement**") is made and entered into by and between **BRYAN COMMERCE AND DEVELOPMENT, INC** ("**Seller**") and **BCS MODERN LIVING, LLC** ("**Buyer**"), upon the terms and conditions set forth in this Agreement.

1. PURCHASE AND SALE

Under the terms of this Agreement, Seller agrees to sell and convey, and Buyer agrees to purchase and acquire real property commonly referred to as 607 North Main Street, 601 North Main Street, and 501 North Main Street, in Bryan, Brazos County, Texas, said real property being more particularly described as follows:

- 1.1. Land.** CITY OF BRYAN TOWNSITE, BLOCK 265, LOT 4 & 5, CITY OF BRYAN TOWNSITE, BLOCK 265, LOT 1-3 , CITY OF BRYAN TOWNSITE, BLOCK 264, LOT ALL and all previously existing alleys and right of ways through property;
- 1.2. Improvements.** All improvements, fixtures, or personal property, if any, located on, attached to, or used in connection with the Property;
- 1.3. Appurtenances.** all and singular the rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys, and rights-of-way; and
- 1.4. Intangibles.** The following intangibles, if any, associated with the real property: Seller's rights under Restrictive Covenants, Declaration, the Development and Construction Guidelines, the PUD, the site development permits, building permits and fiscal deposited with the City of Bryan, licenses and permits with respect to the Property, third party warranties or guaranties, if transferable, any trade names, if transferable, used in connection with the Property, water rights, wastewater rights, utility rights and development rights associated with or appurtenant to the real property, including, without limitation rights to receive or install water and wastewater service from a governmental authority or utility company providing or regulating same, whether owned by Seller and/or allocable to the real property which allow for the development of the real property, and Seller's right, title and interest in and to any and all of the confidential and Property Information divulged to Buyer pursuant to the terms of this Agreement, including but not limited to surveys, site plans, soil and substrata studies, water studies, environmental studies, renderings, plans and specifications, engineering plans and studies, landscape plans and other plans, diagrams or studies of any kind, if any, now or hereafter in Seller's possession which relate, in whole or in part, to the real property;

(collectively referred to herein as the "**Property**").

A schematic of the Property is attached as **Exhibit A**, which is attached hereto and incorporated herein by reference for all purposes. Seller shall provide Buyer a listing of the

Contracts related to the Property to be assigned by Seller to Buyer at Closing (and identified as such) to the best knowledge of Seller as part of the Property Information.

2. PURCHASE PRICE

2.1. Purchase Price. The "**Purchase Price**" of the Property shall be \$125,000 and shall be payable in cash as described below in Article 6 of this Agreement.

3. ESCROW DEPOSIT AND INDEPENDENT CONSIDERATION

3.1. Escrow Deposit.

3.1.1. **Deposits.** For the purpose of securing the performance of Buyer under the terms and provisions of this Agreement and as a condition precedent to the effectiveness of this Agreement, Buyer shall deliver to University Title Company ("**Title Company**") at 1021 University Dr., College Station, TX 77840, upon Buyer's execution of this Agreement, the sum of \$10,000.00, ("**Escrow Deposit**"), via either a cash deposit, wire transfer or cashier's check, which shall be held and distributed by the Title Company pursuant to the terms of this Agreement.

3.1.2. **Non-refundable; Applicable to Purchase Price.** The Escrow Deposit shall be non-refundable in all events except the event of Seller's default under this Agreement and shall be credited against the Purchase Price as described below in Article 6 of this Agreement. The Escrow Deposit shall be applied to the Purchase Price at the Closing subject to the other provisions contained herein.

3.2. Terms of Escrow

3.2.1. **Account.** The Escrow Deposit shall be deposited by the Title Company in interest bearing, federally insured accounts. For purposes of this Agreement, the terms "**Escrow Deposit**" shall also include all interest earned thereon.

3.2.2. **Condition to Contract.** Notwithstanding any provisions contained herein or in any other document or instrument to the contrary, Buyer shall have no rights whatsoever under this Agreement until the Escrow Deposit has been delivered to the Title Company pursuant to the terms of this Agreement and the Title Company has signed this Agreement.

3.2.3. **Acceptance by Escrow Agent.** The Title Company must sign this Agreement as evidence that the Title Company agrees to be bound by the obligations contained herein with respect to the Escrow Deposit, the Supplemental Escrow Deposit and the Approval Deposit. In the event the Title Company does not sign this Agreement, Buyer and Seller shall mutually and reasonably select another title company on or before the expiration of five days following written notice by either party to the other that said selection is required.

4. TITLE COMMITMENT AND OTHER MATTERS

4.1. Title Commitment.

4.1.1. **Scope.** Within 30 days after the Effective Date (hereinafter defined), Seller, at Seller's sole cost and expense, shall cause the Title Company to produce and deliver to Buyer a commitment to issue a standard owner's policy of title insurance ("**Title Commitment**") committing to insure fee simple title to the Property and an easement estate in any easements appurtenant to the Property as being vested in Buyer upon closing together with complete and legible copies (to the extent available from public records) of all exception documents applicable to the Property that are referred to in the Title Commitment (collectively with the Title Commitment, referred to herein as the "**Title Documents**"). The Title Company shall be requested to trace the ownership of any outstanding mineral interest and derivative instruments at the expense of the Buyer. The Title Commitment and the Title Documents shall be provided by the Title Company to the Surveyor for the Surveyor's use in preparation of the Survey. The Title Commitment shall be reissued and updated after review by the Title Company of the Survey and an inspection of the Property. The Title Company is directed by the parties not to make general exception for "**parties in possession,**" "**roads,**" "**tenants** ", or "**visible and apparent easements,**" but to only make specific exception for any such matter as is determined based upon the Title Company's inspection and/or review of the Survey. As to any blanket easement or mineral exception, the Title Company is requested pursuant to Rule P-39 to issue express insurance insuring the Buyer against loss due The Title Company is instructed to issue to Buyer and Buyer's lender an insured services closing letter as permitted by Article 9.49 of the Texas Insurance Code.

4.1.2. **Title Review Period.** Buyer shall have a period of 30 days after receipt of the Title Commitment as revised by the Title Company based on its review of the Survey and an inspection of the Property, the Title Documents and the Survey to review same and to deliver to Seller, in writing, any objections Buyer may have to any matters contained therein. Buyer's failure to object to specific title and survey matters within the relevant time period and in the manner provided in this paragraph shall constitute a waiver of Buyer's right to object to such matters, and all title matters to which Buyer does not properly object shall be deemed waived, accepted and approved by Buyer, except as hereinafter provided.

4.1.3. **Cure Period.** In the event Buyer timely notifies Seller of any objections as provided above, Seller may, but has no obligation to, undertake to eliminate or modify any objectionable matters. In the event Seller does not eliminate such matters or otherwise satisfy Buyer's objections within the greater ("**Cure Period**") of 10 days after

receipt of such written notice ("**Seller's Minimum 10 Day Period**") or the 90 day Feasibility Period hereafter provided in Section 5.1.1, Buyer shall have as its sole remedy the option either;

(i) to terminate this Agreement by giving written notice of termination to Seller within the later to occur of ten days after the end of the Cure Period , in which event the Escrow Deposit shall be returned to Buyer, subject to Sections 4.2.2 and 4.3.3 or

(ii) to have such objections be deemed waived, accepted and approved, as provided herein or

(iii) to renegotiate the terms of this Agreement.

4.1.4. **Waiver of Objection.** If Buyer does not terminate this Agreement in accordance with the terms of Section 4.1.3, all uncured title objections and Buyer's right to terminate under this Section 4.1 shall be deemed to be waived for all purposes, and the Escrow Deposit, shall become non-refundable except as provided herein.

4.1.5. **Permitted Exceptions.** Notwithstanding the foregoing, all matters reflected on Schedule C of the Title Commitment, liens, assessments and items which are designated by the Title Company as matters to be satisfied at or prior to the Closing shall not constitute Permitted Exceptions, shall not be deemed approved or waived by Buyer and shall be discharged and satisfied by Seller at or prior to the Closing. The matters which are reflected on Schedule B of the Title Commitment and matters which are approved or deemed waived or approved by Buyer as provided herein are referred to herein as the "**Permitted Exceptions**".

4.2. Survey.

4.2.1. **Order.** Within 5 days after the Effective Date, Seller shall, at Seller's sole cost and expense, order a survey of the Property ("**Survey**"), in accordance with the terms of Section 4.2.3, from a licensed Texas surveyor to be selected by Seller who is approved by Buyer.

4.2.2. **Scope.** The Survey shall be addressed to Seller, Buyer and the Title Company and shall:

(1) locate and depict all visible or recorded easements and rights-of-way (including applicable recording data and easements appurtenant to the Property), encroachments, conflicts and protrusions affecting the Property;

(2) show all improvements located on the Property to be platted;

(3) contain a metes and bounds description of the Property and each of the tracts to be platted;

(4) set forth the gross square feet within the Property, and each of the tracts to be platted;

(5) show the approximate location of any portion of the Property situated within the 100 year floodplain as established by the most recent FEMA flood map that includes the Property;

(6) show the topographic conditions of the property to a detail level of 1' identifying elevation of all existing curbs, streets, pavement, improvements, drainage and other unique conditions of the site;

(7) show location of all trees on site indicating type and size;

(8) satisfy the requirements of a Category 1A Land Title Survey according to the specifications of the Texas Society of Professional Surveyors' Manual Of Practice for Land Surveying in Texas, the current "**Minimum Standard Detail Requirements for Land Title Surveys**" jointly established by the American Land title Association ("**ALTA**") and the American Congress on Surveying and Mapping;

(9) show the location of all zoning, use and density classifications, noting any permitted grandfathered non-conformities, special use permits, variances or the like; and

(10) shall state that the Surveyor has reviewed the Title Commitment and each of the Title Documents, state that it satisfies the criteria established by the Title Company for the deletion of the Schedule B survey exception, and specifically identify the Title Commitment and reflect on the Survey the Title Commitment exception number/letter for each of the matters listed in Schedule B susceptible of location by Survey.

Any different or additional information not set forth above which is requested by Buyer to be included on the Survey shall be at Buyer's sole cost and expense. In the event this Agreement is terminated for any reason, except due to Seller's default, the cost of the Survey up to \$5,000.00 shall be deducted from the Escrow Deposit, the amount so deducted shall be paid to Seller, and the remaining Escrow Deposit shall be distributed as provided in this Agreement, all subject to Section 4.3.3.

4.2.3. **Description.** Prior to the commencement of the **Survey**, Seller shall replat the **Property** to consolidate all existing lot lines, existing alleys, abandoned alleys and abandoned right of ways into one contiguous lot. The legal description of the **Property** contained in the **Survey** shall be incorporated herein, and the **Agreement** shall be deemed amended by the substitution of the legal description of the Property contained in the Survey.

4.3. Seller Provided Information.

4.3.1. **Property Information.** Within 15 days from the Effective Date, Seller shall deliver to Buyer a copy of existing surveys, topographical maps and engineering studies of the Property; any and all information regarding condemnation notices, proceedings and awards; any and all geotechnical, endangered species and environmental inspection reports; site plan studies; soils reports; and all other items related to the development of the Property, but only to the extent that the above-listed items are in Seller's possession and

relevant to the ownership or operation of the Property (collectively, the "**Property Information**").

4.3.2. Non-Reliance. Notwithstanding any provisions contained herein or in any other document or instrument to the contrary, with respect to the Property Information, Buyer acknowledges and agrees that

(1) the information contained in the **Property Information** is general in nature and that there are variations as to environmental and soil conditions between portions of the **Property**, and from time to time,

(2) Seller is providing the Property Information as an accommodation, and in no event shall Seller, its owners, affiliates, officers, employees or agents, be deemed to warrant that any information or theories contained in the **Property Information** are true, correct or complete, and any and all warranties, express or implied, with respect to the Property Information are hereby disclaimed, and

(3) Buyer shall be solely responsible for determining whether to rely on the information contained in the Property Information.

4.3.3. Confidentiality. The **Property Information** shall be delivered to Buyer in strict confidence and shall not be disclosed to any third parties, except such engineers and other professionals as necessary for Buyer to conduct its due diligence on the **Property**, without the prior written consent of Seller; provided, that Buyer shall also be entitled to disclose the **Property Information** without the consent of Seller:

(a) as required by law, court order or subpoena; and

(b) to Buyer's employees, architects, engineers, attorneys, lenders, partners, investors and other related parties in connection with Buyer's decision to purchase, planned development of or loans obtained in connection with the Property.

Buyer hereby agrees that, to the extent Buyer discloses any Property Information to third party consultants such as engineers and other professionals (other than Buyer's legal counsels) assisting Buyer in conducting due diligence, Buyer shall obtain from each such third party an executed consultant confidentiality agreement in a form provided by Buyer, and Buyer shall promptly forward a copy of such executed consultant confidentiality agreement to Seller. Seller hereby agrees that Buyer, in the course of Buyer's due diligence and evaluation of the confidential information, may contact Seller's consultants for assistance with Buyer's evaluation of the confidential information. Seller agrees to request Seller's consultants to be fully cooperative with Buyer. Buyer is permitted to contact governmental authorities to make inquiries as to the status of any policy, permit or governmental regulation affecting the Property, and in so doing may note that Buyer is evaluating purchasing the Property or has contracted to purchase the Property.

In the event that this Agreement is terminated for any reason, Buyer Shall return all **Property Information** to Seller within 15 days after termination. Delivery of the **Property Information** shall be a condition precedent to

Buyer's right to receive a refund of the Escrow Deposit as set forth herein. Buyer's obligation to return the Property Information to Seller shall survive any termination of this Agreement.

5. FEASIBILITY STUDY, INSPECTION AND APPROVAL PERIOD

5.1. Feasibility Study.

- 5.1.1. **Feasibility Period.** Buyer shall have a period of 90 days beginning the day after the Effective Date ("**Feasibility Period**") to review and study the Property and to determine whether or not the Property is suitable for Buyer's needs. Such review and study shall include all inspections, if any, obtained by Buyer pursuant to Section 5.2 hereof.
- 5.1.2. **Termination.** In the event Buyer determines in its sole opinion, for any or no reason, that the Property is not suitable for its needs and intended uses or Buyer does not desire to proceed with the acquisition of the Property, Buyer may terminate this Agreement by giving a written termination notice to Seller prior to the expiration of the Feasibility Period. If such notice is delivered by Buyer to Seller within the Feasibility Period this Agreement will terminate, and the Escrow Deposit, shall be returned to Buyer By the Title Company, subject to Sections 4.2.2 and 4.3.3, and neither party will have any further rights or obligations under this Agreement, except as otherwise expressly provided in this Agreement.
- 5.1.3. **Waiver of Title Objections.** If this Agreement continues in effect as provided in Section 5.1.3 above, Buyer shall be deemed to have waived all rights to object to any title matters which Seller has not agreed and is not obligated to cure, as well as all rights, if any, to object to items delivered or made available to Buyer pursuant to Article 4, and all rights, if any, to object to matters discovered (or matters that could have, with reasonable diligence, been discovered) during the inspections, if any, obtained by Buyer pursuant to Section 5.2, and all such items and matters referenced earlier in this sentence shall be deemed accepted and approved by Buyer.

5.2. Inspection.

- 5.2.1. **Entry.** During the Feasibility Period, Buyer, at Buyer's expense, through its authorized agents, personnel, employees, independent contractors and consultants shall be entitled to enter upon the Property in order to make such inspections as it may deem necessary. All investigations and inspections shall be conducted during reasonable business hours.
- 5.2.2. **Indemnification.** Buyer agrees to indemnify Seller and hold Seller Harmless from any and all claims, demands, liabilities, damages and costs, including attorneys' fees arising out of or resulting directly or indirectly from any activity of Buyer pursuant to this Section 5.2.1. Buyer and Buyer's agents, inspectors, subcontractors, employees, or

representatives shall execute a Waiver and Hold Harmless Agreement on a form approved by Seller prior to entering onto the Property.

5.2.3. **Survival.** Notwithstanding any provision of this Agreement to the contrary, the indemnity set forth in Section 5.2.2 shall survive the Closing or termination of this Agreement and shall not be subject to any limitation or liquidation of damages set forth herein.

5.2.4. **Restoration.** If the sale of the Property is not consummated, Buyer shall restore, or cause to be restored, the surface of the Property to as near the condition thereof, existing prior to any entry by Buyer, its agents, employees, contractors or representatives due to physical changes to the Property arising out of or caused by Buyer, its agents, employees, contractors or representatives, as may be practicable.

5.3. Infrastructure Improvements.

5.3.1. **Cooperation.** During the Feasibility Period, Buyer and Seller shall cooperate to plan and develop the Property.

5.4. Approval Period.

5.4.1. **Platting.** Seller shall have a period of time after the Effective Date in which to use commercially reasonable efforts to plat the Property ("**Approval Period**"); such platting shall be deemed a condition precedent to the Closing.

5.4.2. **Period.** The Approval Period shall commence upon the Effective Date and shall expire on the earlier of (i) the date that the plat approvals are obtained, or (ii) 50 days after the Effective Date.

5.4.3. **Election.** In the event Seller does not plat the Property prior to the expiration of the Approval Period, then Buyer, as its sole remedy, may elect either

(i) to terminate this Agreement by giving a written termination notice to Seller prior to the expiration of the Approval Period, or

(ii) not to terminate this Agreement and to assume, at the Closing, any and all of Seller's rights and obligations pertaining to such platting, and Buyer shall be solely responsible for completing such application process and obtaining all plat approvals.

5.4.4. **Termination.** If Buyer elects to terminate this Agreement, such notice shall be delivered by Buyer To Seller within the Approval Period in order for this Agreement to terminate, in which event the Escrow Deposit and the Supplemental Escrow Deposit, if any, shall be returned to Buyer by the Title Company, subject to Sections 4.2.2 and 4.3.3, and neither party will have any further rights or obligations under this Agreement, except as otherwise expressly provided in this Agreement.

6. CLOSING

6.1. Closing.

- 6.1.1. **Closing Date.** The "Closing" of this transaction shall occur at the office of the Title Company on the 20th day after the expiration of the Feasibility Period, or at such other time, date and place as Seller and Buyer may mutually agree upon (which date is herein referred to as the "Closing Date").
- 6.1.2. **Extension.** Buyer may extend the Closing for one 45 day period by giving written notice to Seller and paying to Seller a non-refundable fee of \$5,000.00 before the end of the Feasibility Period as consideration to Seller for the extension. The consideration which must be paid by Buyer in order to purchase the extension shall be non-refundable to Buyer in all events but shall be credited against the Purchase Price at the Closing.

6.2. Seller's Obligations. At the Closing, Seller shall:

- 6.2.1. **Deed.** Deliver to Buyer duly executed and acknowledged Warranty Deed conveying good and indefeasible title in fee simple, deed.
- 6.2.2. **Possession.** Deliver to Buyer possession of the Property.
- 6.2.3. **Title Policy.** Pay the Title Company the basic premium for a Texas Owner's Title Policy to be issued by the Title Company in Buyer's favor in the full amount of the Purchase Price, insuring Buyer's fee simple title to the Property, subject only to those title exceptions allowed under this Agreement, such other exceptions as may be accepted by Buyer, or deemed accepted by Buyer as provided in this Agreement, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy. Buyer shall pay the Title Company's fee for inspecting the Property and deleting the exception for rights of parties in possession in Schedule B of the Title Policy.
- 6.2.4. **Title Company Documents.** Execute and deliver such other documents as the Title Company may reasonably require in order to consummate the transaction contemplated under this Agreement.
- 6.2.5. **Costs.** Pay Seller's Closing costs and expenses, as described in Section 6.4.
- 6.2.6. **FIRPTA.** Execute and deliver an affidavit regarding IRTPA compliance as described in Section 10.12 below.
- 6.2.7. **Assignments.** Execute and deliver one or more documents assigning, to the extent and in the manner allowed by law, any and all of Seller's rights and obligations in and under (a) the Confidentiality Agreements executed by Seller and Seller's Consultants and other persons, such as prospective Buyers, (b) the Contracts related to the Property (identifying with particularity each such Contract and the obligations being assumed), and (c) Intangible Property, including Restrictive Covenants, Declarations, Development and Construction Guidelines and all Contracts related to the Property.

6.3. Buyer's Obligations. At the Closing, Buyer shall:

- 6.3.1. **Price Paid.** Deliver to Seller the balance of the Purchase Price either in cash, by cashier's check, by wired funds or by other instruments or means acceptable to Seller in Seller's sole discretion not later than 2:00 p.m. on the Closing Date. Subject to Section 8.4 hereof, the Escrow Deposit, the Supplemental Escrow Deposit, and the Approval Deposit, if any, shall be applied to the Purchase Price at the Closing.
- 6.3.2. **Title Policy Endorsements.** Pay the Title Company the additional premium and the inspection fee for the deletion of the rights of parties in possession exception and the boundary survey exception, except for shortages in area, if desired by Buyer.
- 6.3.3. **Costs.** Pay Buyer's Closing costs and expenses, as described in Section 6.4.
- 6.3.4. **Title Company Documents.** Execute and deliver such other documents as the Title Company may reasonably require in order to consummate the transaction contemplated under this Agreement.

6.4. Closing and Other Costs. All costs and expenses of the Closing, and certain other costs associated with the sale and purchase of the Property, shall be borne and paid as follows:

- 6.4.1. **Escrow Fee.** The escrow fee, if any, charged by the Title Company shall be paid one-half by Seller and one-half by Buyer.
- 6.4.2. **Title Policy.** Fees for the Title Commitment and the Texas Owner's Title Policy shall be paid by Seller, exclusive of deletion of the boundary survey exception, except for shortages in area and any fees for inspecting the Property in order to delete the exception for rights of parties in possession, which shall be paid by Buyer.
- 6.4.3. **Filing Fees.** Filing fees for the deed, and any deed of trust and/or other financing documents shall be paid by Buyer. Filing fees for any releases of liens or similar documents shall be paid by Seller.
- 6.4.4. **Party's Own Expenses.** Except as otherwise expressly provided in this Agreement, each party shall pay any and all costs and expenses incurred by the respective party in connection with this Agreement and the transactions contemplated hereby, including, without limitation, attorneys' fees and expenses.

6.5. Survival. The agreements as to prorations, adjustments, reimbursements, replacements and so forth in this Article 6 shall survive the Closing and shall not be merged therein.

6.6. Conditions. The obligations of both parties to close are contingent upon the execution of the agreements listed below on or before the date of Closing:

- 6.6.1. **Chapter 380 Agreement.** An agreement with the City of Bryan that meets the following conditions:
- (i) The Property will achieve an increased value, per Brazos Central Appraisal District, of \$25,000,000.00 in the tax year following completion of construction.

- (ii) Tax rebate of 100% of increased value over the course of 7 years, or until \$1,140,000 has been rebated.
 - (iii) Agreed upon timelines for construction of approved uses, including a mix of multi-family housing, retail, and dining.
 - (iv) A waiver of fees up to \$75,000.00.
 - (v) Providing for a sculpture fund of \$50,000.00 to commission public sculpture for the Property.
- 6.6.2. **Chapter 381 Agreement.** An agreement with Brazos County for a tax rebate of 100% of increased value over the course of 7 years, or until \$760,000 has been rebated.
- 6.6.3. **Right of Way Abandonment.** An agreement with the City of Bryan to close and abandon 21st Street between Main Street and the Union Pacific Right of way.

7. COVENANTS OF SELLER

- 7.1. Between the Effective Date and the Closing , Seller shall:
- 7.1.1. **Maintenance.** Maintain the Property in its normal manner and in the ordinary course of its business;
 - 7.1.2. **Discharge Liens.** Allow no liens or encumbrances to be imposed or exist on the Property That will not be paid or discharged at the Closing; and
 - 7.1.3. **Notify as to Litigation.** Promptly Advise Buyer in writing of any litigation initiated with respect to the Property of which Seller becomes aware.

8. DEFAULT AND REMEDIES

8.1. **Default by Seller.** In the event of a breach or default by Seller in the performance of its covenants under this Agreement (except as a result of a default by Buyer), and the continuation of such breach or default for twenty days after written notice thereof has been given by Buyer and received by Seller ("**Notice And Cure Period**"), Buyer shall have the right, as its sole and exclusive remedy with respect to such breach or default, to terminate this Agreement by giving written notice thereof to Seller, whereupon neither party shall have any further rights or obligations under this Agreement except as specifically provided otherwise in this Agreement, and the Title Company shall deliver the Escrow Deposit to Buyer(subject to Sections 4.2.2 and 4.3.3 above).

In no event shall Seller be liable to Buyer for damages (whether actual, speculative, consequential, punitive or otherwise) for a breach or default in the performance of Seller's covenants under this Agreement, except as provided in Section 8.3 below.

8.2. **Default by Buyer.** In the event that performance of this Agreement is tendered by Seller and the sale is not consummated through default by

Buyer, then Seller, as Seller's sole and exclusive remedy, shall have the right to terminate this Agreement by giving written notice thereof to Buyer, where upon the Title Company immediately shall deliver the Escrow Deposit, free of any claims by Buyer, as liquidated damages, and neither party hereto shall have any further rights or obligations under this Agreement except as specifically provided otherwise in this Agreement. The Escrow Deposit constitute a good faith estimate of actual damages that Seller would suffer and shall be liquidated damages for default of Buyer because of the difficulty, inconvenience and uncertainty of ascertaining Seller's actual damages for Buyer's failure to close this Agreement.

8.3. Other Remedies. In no event shall either party be liable for any speculative, consequential or punitive damages.

8.4. Disbursement of Escrow Deposits. Seller and Buyer expressly agree that notwithstanding any provisions contained herein or in any other document or instrument to the contrary, the Escrow Deposit shall be disbursed by the Title Company to Seller at 5:00 p.m., Bryan, Texas time, on the Closing Date if this Agreement shall not have been fully closed and funded (with "**collected funds**" at the escrow depository bank used by the Title Company) by such time, unless and only unless the failure to close and fund shall have been caused by Seller's default. Seller shall deliver to the Title Company and Buyer, on or after such time, a certificate stating that Buyer has defaulted under the terms of this Agreement and Seller is entitled to the Escrow Deposit. All parties to this Agreement expressly and irrevocably instruct the Title Company to make such disbursement of the Escrow Deposit without any other written authorization from any parties hereto, and all parties do hereby agree to indemnify and hold the Title Company harmless for making any disbursement in an attempt to comply with the provisions hereof. These indemnities shall survive the Closing or termination of this Agreement. Nothing in this Article 9 shall delay the Title Company in disbursing the Escrow Deposit as described in this Section 8.4, and the Title Company shall disburse those items in accordance with the terms of this Section 8.4 regardless of any notice and cure period contained herein.

8.5. Attorneys' Fees and Costs. In the event of litigation regarding this Agreement, the non-prevailing party shall be obligated and agrees to pay reasonable attorney's' fees and expenses incurred by the prevailing party, whether at the trial or appellate level. This provision shall survive the Closing or termination of this Agreement.

9. NOTICES

9.1. All notices, demands, requests, and other communications under this Agreement must be in writing and shall be deemed received on the date of delivery if delivered by hand or by facsimile to the party to whose attention it is directed and the sending telecopier generates confirmation of sending, or on the third business day if sent by registered or certified mail, return receipt

requested, postage prepaid, or on the next day if by nationally recognized overnight courier service, addressed as follows:

If to Seller:

Bryan Commerce and Development, Inc.
City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

If to Buyer:

BCS Modern, LLC
419 North Main Street
Suite 120
Bryan, Texas 77803

or such other address as either party hereto designates to the other in writing or not less than five days' advance notice.

10. MISCELLANEOUS

- 10.1. Assignment of Agreement.** This Agreement may only be assigned by Buyer with Seller's prior written consent or in whole or in part to one or more entities of which Buyer is a participant. Any assignee of Buyer must expressly assume all of Buyer's liabilities, obligations and duties hereunder.
- 10.2. Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created here under are performable in Brazos County, Texas.
- 10.3. Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 10.4. Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, this invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.
- 10.5. Prior Agreements Superseded.** This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter. This Agreement may only be amended by a written document, signed by both Seller and Buyer. This Agreement may not be amended orally.
- 10.6. Time Of Essence.** Time is of the essence in this Agreement, including but not limited to each and every time constraint and deadline imposed by the terms of this Agreement, together with the obligation of the parties to close the transaction contemplated by this Agreement on the Closing Date;

provided, however, if any date specified herein or if the last date of any time specified herein is a Saturday, Sunday or national bank holiday, such date shall be extended to the next following date that is not a Saturday, Sunday or national bank holiday.

10.7. Gender. 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, and vice versa, unless the context requires otherwise.

10.8. Recordation Prohibited. In no event shall this Agreement or any memorandum hereof be recorded without the prior written consent of Seller, which may be granted or withheld in Seller's sole discretion and judgment, and any such recordation or attempted recordation shall constitute a breach of this Agreement by the party responsible for such recordation or attempted recordation.

10.9. Compliance with Texas Real Estate License Act. IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 20 OF THE TEXAS REAL ESTATE LICENSE ACT, Buyer IS HEREBY ADVISED THAT Buyer SHOULD BE FURNISHED WITH OR OBTAIN A POLICY OF TITLE INSURANCE OR Buyer SHOULD HAVE AN ABSTRACT COVERING THE PROPERTY EXAMINED BY AN ATTORNEY OF Buyer's OWN SELECTION.

10.10. Acceptance of Offer. This instrument shall be regarded as an offer by Buyer to Seller, and shall be open for acceptance until 5:00 o'clock p.m., Central Time, on the date that is five days after Seller receives executed copies of this Agreement from Buyer. This offer may be accepted by Seller only by the delivery of one executed copy of this Agreement to Buyer by the time specified for acceptance.

10.11. Effective Date. As used herein, the term "**Effective Date**" shall mean the date on which the Title Company acknowledged receipt of a fully signed copy of this Agreement and the Escrow Deposit.

10.12. FIRPTA Compliance. At the Closing, Seller shall deliver to Buyer, in recordable form, an affidavit prepared by Buyer's attorney and sworn to by Seller and all other persons and entities, if any, owning an interest in the subject property, under penalty of perjury, stating:

10.12.1. The taxpayer identification number for Seller and for all persons and entities, if any, owning an interest in the Property; and

10.12.2. That neither Seller nor any person or entity owning an interest in the Property is a foreign person within the meaning of the Foreign Investment in Real Property Tax Act, ("**FIRPTA**"), as amended by the Tax Reform Act of 1984; and

10.12.3. That Buyer is not required to withhold any sums under FIRPTA, as amended by the Tax Reform Act of 1984, at the Closing.

10.13. Authority. Each party warrants and represents to the other that it is now and shall at the Closing be in good standing, fully authorized to do business in Texas, in compliance with all applicable laws, rules, and regulations, and fully licensed, authorized, and empowered to perform its respective rights and obligations under this Agreement without the need for further consent, approval, or ratification from any other person or entity.

11. DISPOSITION OF THE PROPERTY BY SELLER

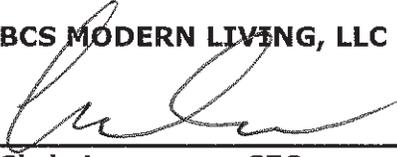
11.1. General. Notwithstanding any provision of this Agreement to the contrary, prior to the due termination or expiration of this Contract, Seller Covenants that it shall not convey, assign, or lease the Property, or any part thereof, to any person or entity other than Buyer In a transaction that survives closing of the sale of the Property to Buyer; and this provision.

BRYAN COMMERCE AND DEVELOPMENT, INC.



Jason P. Bienski, President

BCS MODERN LIVING, LLC

 8.26.14

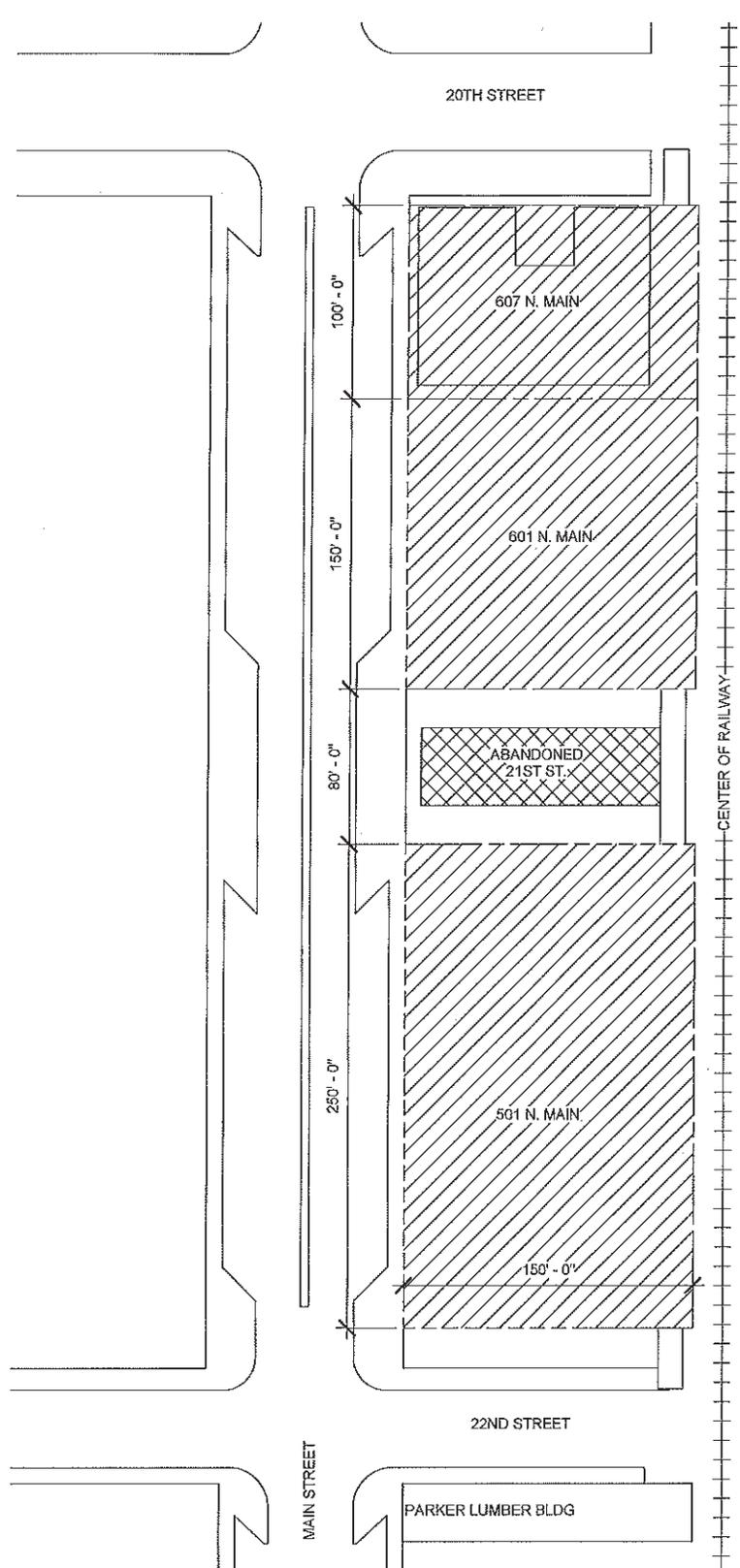
Chris Lawrence, CEO

APPROVED AS TO FORM:



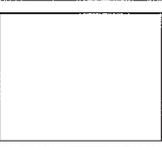
City Attorney

Attest: 
Secretary, BCD



① Site
1" = 60'-0"

laurelhouse
 419 N. Main St. Suite 120
 Bryan, Texas 77803
 979.314.7363
 www.laurelhousestudio.com



No.	Description	Date

Project number	14-C-0617
Date	8/21/15
Drawn by	
Checked by	

EXHIBIT A
 Scale 1" = 60'-0"
Multi-Use

Exhibit B
Title Company Receipt

This Title Company Receipt is attached to that Certain Sales Contract ("Agreement") by and between Bryan Commerce and Development, Inc. ("Seller") and BCS Modern Living, LLC ("Buyer") for CITY OF BRYAN TOWNSITE, BLOCK 265, LOT 4 & 5, CITY OF BRYAN TOWNSITE, BLOCK 265, LOT 1-3, CITY OF BRYAN TOWNSITE, BLOCK 264, LOT ALL and all previously existing alleys and right of ways through property. Capitalized terms used herein shall have the same meaning provided in the Agreement.

The undersigned acknowledges receipt of the Earnest Money which shall be kept in escrow as provided in the Agreement. The undersigned received executed copies of the Agreement from both Buyer and Seller on the Effective Date, as stated below.

Agreement Effective Date: the 4 day of September, 2015

University Title Company

Victoria Smith

Signature

Victoria Smith

Print Name