Attachment No. 1

STATE OF TEXAS §

COUNTY OF BRAZOS §

JORDAN CENTER
CHAPTER 380 AGREEMENT

This Chapter 380 Development Agreement ("Agreement") is entered into on this 18 day of Dec., 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 party 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	**DEVELOPER**
City of Bryan, Texas	BCS Modern Living, LLC
Attn: City Manager	Attn: CEO
P.O. Box 1000	419 North Main Street, Ste. 120
Bryan, Texas 77805-1000	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 18th day of December, 2015.

City of Bryan, Texas

Jason P. Bienski, Mayor

BCS Modern Living, LLC

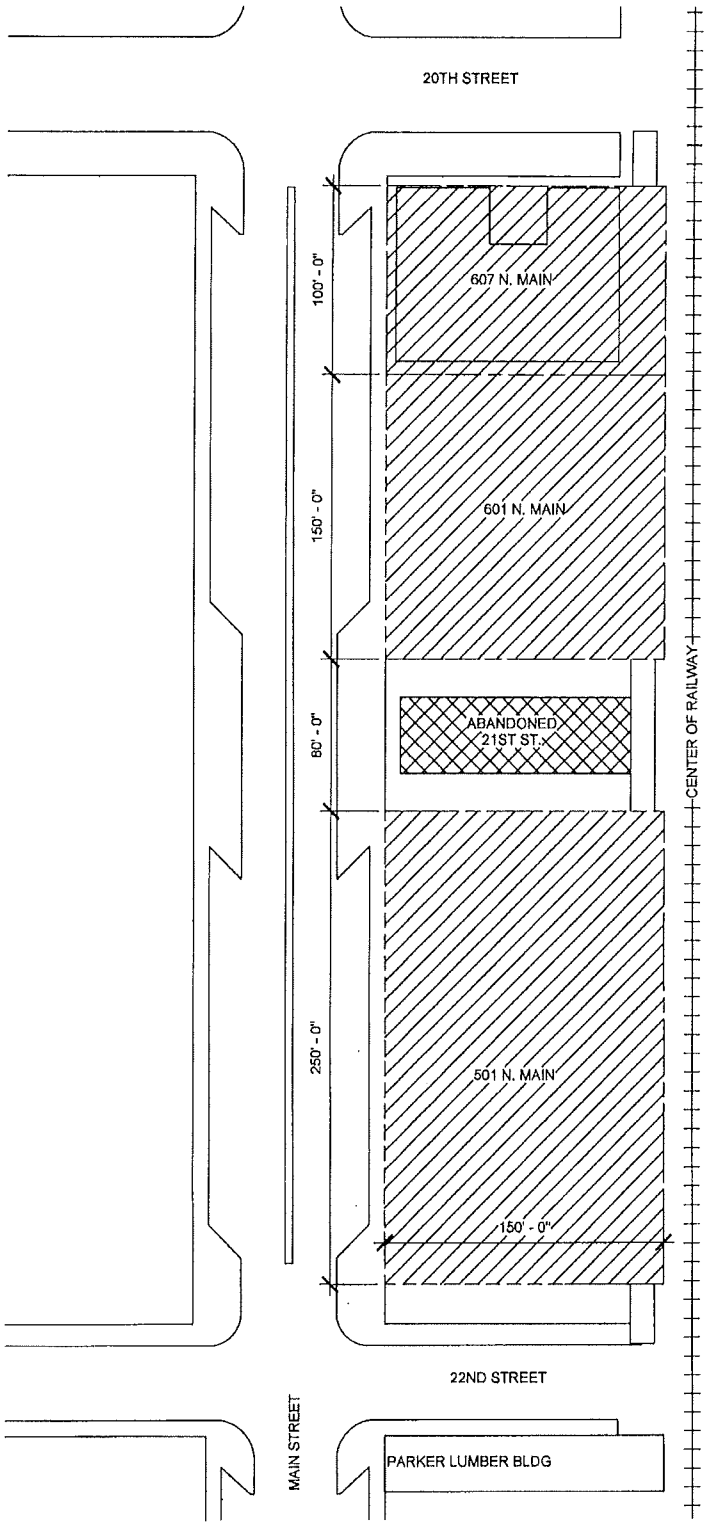
Chris Lawrence, CEO

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney



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

8/21/2015 6:07:29 PM