

STATE OF TEXAS §

COUNTY OF BRAZOS §

JORDAN CENTER
CHAPTER 381 AGREEMENT

This Chapter 381 Development Agreement (“Agreement”) is entered into on this ___ day of _____, 2015, by and between Brazos County, Texas (“County”) 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 County to make the proposed plans feasible, and is willing to agree to meet specific development benchmarks in exchange for such assistance; and

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

WHEREAS, County 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. Rebate

1. Beginning January 1 of the year following execution of this Agreement, Developer shall be entitled to a rebate of 100% of the operations and maintenance portion of the ad valorem taxes (“O&M 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 \$760,000.00 in O&M Taxes have been rebated, whichever comes first. This rebate is subject to annual appropriation for same by the County Commissioners.

2. As a condition precedent to the County's obligation to make a Chapter 381 payment during the term of this Agreement, Developer, at a minimum, must remain in compliance with the Chapter 380 Agreement between City of Bryan and BCS Modern Living, LLC. (Exhibit "A").
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.

B. Term & Termination

4. 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.
5. In the event that Developer breaches this Agreement, the County 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 County 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.

C. Miscellaneous

6. 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 County 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 County not later than the 120th day after the date the County 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.
7. 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 County. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section.

8. 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.
9. 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 Brazos County, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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. County and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

COUNTY

Brazos County, Texas
Attn: County Auditor
200 South Texas Ave., Suite 218
Bryan, Texas 77803

DEVELOPER

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

15. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
16. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
17. 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.
18. 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.
19. 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.
20. 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.

Brazos County, Texas

BRAZOS COUNTY COMMISSIONERS COURT

Duane Peters, County Judge

Lloyd Wassermann
Commissioner, Precinct 1

Sammy Catalena
Commissioner, Precinct 2

Kenny Mallard
Commissioner, Precinct 3

Irma Cauley
Commissioner, Precinct 4

ATTEST:

Karen McQueen, County Clerk

BCS Modern Living, LLC

Chris Lawrence, CEO