CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN

BOONVILLE CENTER, LLC

AND

CITY OF BRYAN, TEXAS

This Chapter 380 Economic Development Agreement (the "***Agreement***") is entered by and between the CITY OF BRYAN, TEXAS, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as "***City***"), and BOONVILLE CENTER, LLC, a Texas limited liability company (hereinafter referred to as "***Developer***"). City and Developer may also be referred to collectively as the "***Parties***" or individually as a "***Party***."

WHEREAS, the City has established an economic development program pursuant to Chapter 380 of the Texas Local Government Code which authorizes the City to make economic development loans and grants to encourage the promotion of local economic development and the stimulation of business and commercial activity within the City, including fulfilling the needs for a mixed-use project consisting of a full-line retail grocery store and retail pads ("***Retail Development***") and high quality market-rate multifamily residential housing to accommodate workforce needs within the City; and

WHEREAS, City is interested in this development primarily due to the Retail Development and the subsequent property tax, sales tax and employment created by retail for this growing area of Bryan; and

WHEREAS, City actively seeks economic development prospects in Bryan through participation in and establishment of an economic development program; and

WHEREAS, City desires to stimulate business, increase the City's tax base and create new jobs and housing opportunities for its citizens; and

WHEREAS, Developer intends to acquire the real property consisting of approximately 35.522 acres located within the city limits of the City, and more particularly described by the boundary survey attached hereto as Exhibit "A" (the "***Property***"), and then further subdivide for a mixed-use development of a large supermarket anchored retail development and a multifamily residential development project on the Property; and

WHEREAS, City has determined that a mixed-use development on the Boonville Road/FM 158 corridor is desirable and advantageous for the citizens of City by providing employment opportunities, enhancing the quality of life for citizens and increasing both sales and ad valorem tax revenues to the City; and

WHEREAS, Developer and the City agree it would be mutually beneficial for Developer to develop the Property as articulated in the Boonville Center Development Concept Plan, attached hereto as Exhibit "B" and incorporated herein for all purposes; and

WHEREAS, the improvement and expansion of water, sanitary sewer, stormwater mitigation, roadways and traffic control infrastructure in the vicinity of Boonville Road to serve the Project and the surrounding area would benefit both the Developer and the City; and

WHEREAS, the Project has not been mapped for FEMA and the law requires floodplain mapping to be performed and a Letter of Map Revision ("***LOMR***") submitted post-construction; and

WHEREAS, it has been determined, prior to this Project, that 100 year floodplain exists on portions of residential lots in the Wheeler Ridge subdivision adjacent to the stream on the east side from Boonville Rd. to Green Valley Rd. (the "***Existing Conditions***"); and

WHEREAS, City desires to have this Project reduce the floodplain on the Existing Conditions and therefore Developer (or at Developer's election, the Phase MFR Developer) shall install a drainage system ("***Wheeler Ridge Drainage***") as part of the public infrastructure improvements which shall be subject to reimbursement pursuant to this Agreement; and

WHEREAS, City also desires to mitigate additional drainage of the Retail Development into the floodway in the "Greenspace"; and

WHERAS, Engineers hired by the Developer and by the City have determined a detention pond ("***Mixed-Use Pond***") is more beneficial than an open detention area to serve multiple landowners and benefit the public downstream in Carter's Creek; and

WHEREAS, Developer's engineer has estimated Developer will expend significantly more than $938,710.00 in upgrades, extensions and additions to on-site and existing public infrastructure; and

WHEREAS, Developer plans to develop the Project at its sole cost, as is required of the Developer by the City of Bryan Code of Ordinances, and shall dedicate and convey any of the public infrastructure to the City or other appropriate public entity that the City requests to be dedicated by easement or other appropriate instrument; and

WHEREAS, the City Council finds the Project and the construction by Developer of the proposed Subdivision Improvements and the Public Infrastructure Improvements will provide a valuable catalyst for other development in the City and increased ad valorem and sales tax revenues to the City; and

WHEREAS, in consideration of the construction of the Project in accordance with the performance measures set forth herein, including the Public Infrastructure Improvements as defined herein, the City agrees to incentivize the Project with Chapter 380 Payments to Developer paid from lawfully available revenues which shall be derived from the increase in ad valorem taxes generated by the Project, as set out herein; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales tax and ad valorem tax revenues to the City and additional jobs resulting from the Project, the City desires to enter into this Agreement pursuant to TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other laws applicable to the development of public infrastructure as an economic incentive for the Developer to develop and construct the Project; and

WHEREAS, the City Council finds given the incentives provided, Developer will realize a distinct benefit from proceeding with the Project based on the Project's value; and

WHEREAS, to ensure that the benefits City provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other law, Developer agrees to comply with certain conditions for receiving the monetary incentives contemplated herein, including conditions relating to property development, procurement, and compliance with all applicable city ordinances.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE I
DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"***Ad Valorem Tax Collections***" means the City's share of all ad valorem taxes assessed and collected by the Brazos County Tax Assessor-Collector on the Property which, for the purpose of this Agreement only, shall include the Real Property and all Improvements taxed by the City but shall exclude ad valorem taxes collected by the City on Personal Property located on the Property.

"***Affiliate***" means any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"***Bankruptcy or Insolvency***" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any portion of the Property owned by Developer or a material part of a Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the filing of a voluntary petition for bankruptcy protection by a Party, or the

commencement of an involuntary bankruptcy proceeding against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"*Base Year Ad Valorem Tax Collections"* shall mean the Ad Valorem Tax Collections the City was owed or otherwise collected, whichever is greater, for the 2023 tax year as of the Effective Date of this Agreement.

"Base Ad Valorem Tax Value" shall mean the final certified appraised value of the Property for tax year 2023 as of the Effective Date of this Agreement.

"*Certificate of Occupancy*" means the certificate of occupancy issued by the City for the Phase SM in accordance with the development regulations of the City, which certificate shall not be unreasonably withheld, conditioned or delayed.

"*Chapter 380 Incentive Period*" means the seven (7) year period commencing with the first tax year following the issuance of a Certificate of Occupancy for the Phase SM. For the sole purpose of providing an example and clarification, if the City issued a certificate of occupancy for Phase SM on June 1, 2024, then tax year 2025 would be the first year of the Chapter 380 Incentive Period and such period would continue for seven (7) years ending with tax year 2031.

"*Chapter 380 Payment(s)*" shall mean the City's payment of money grants to the Developer pursuant to this Agreement and as authorized by TEXAS LOCAL GOVERNMENT CODE, Chapter 380, which are derived from the public funds generated by the Incremental Ad Valorem Tax Collections generated by the Project.

"*Commencement of Construction*" or **"*Commence Construction*"** means that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project or the applicable phase of the Project; and (ii) all necessary permits for the construction of the Project or for the applicable phase of the Project, pursuant to the respective plans therefor have been issued by all applicable governmental authorities.

"*Completion of Construction*" or **"*Complete Construction*"** shall mean that: (i) the construction of the Project Improvements, Phase SM, or other applicable phase of the Project is substantially complete and a certificate of occupancy has been issued for the applicable improvement or phase; and (ii) the City Engineer has accepted the respective infrastructure, as the case may be.

"*Developer*" shall mean Boonville Center LLC, a Texas limited liability company, and its Affiliates.

"*Effective Date*" shall mean the date that this Agreement is fully executed by both the City and Developer.

"*End-User*" shall mean any person or entity to whom all or a portion of the Property is sold, leased or otherwise transferred by Developer for its intended use in connection with the Project.

"*Force Majeure*" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns, work stoppages or epidemic. In no event shall Force Majeure include Developer's financial inability to perform or Developer's inability to perform as a result of changes in market conditions.

"*Improvements*" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"*Incremental Ad Valorem Tax Collections*" shall mean the difference between the *Ad Valorem Tax Collections* and the *Base Year Ad Valorem Tax Collections* due as of January 1st for the tax year prior thereto.

"*Incremental Ad Valorem Tax Value*" shall mean the amount of certified assessed ad valorem tax value of the Property that exceeds the Base Ad Valorem Tax Value in any given tax year during the Chapter 380 Incentive Period.

"*Maximum Payment Amount*" means the total of all Chapter 380 Payments paid to Developer by City pursuant to this Agreement, which amount shall not exceed NINE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED TEN AND NO/100 DOLLARS ($938,710.00).

"*Maximum Reimbursement Amount*" means an amount equal to the lesser of (i) the verified actual Public Infrastructure Improvement Costs or (ii) the Maximum Payment Amount.

"*Multifamily Residential Development*" means a structure or grouping of structures as defined in City of Bryan Code of Ordinances section 62-1 providing at least 250 units to be priced at market rate.

"*Payment Request*" means a written request from Developer to the City for payment of the annual Chapter 380 Payment accompanied by (i) a report of all property ID numbers for each record owner of a lot, parcel or Project Facility located on the Property and (ii) receipts or other written documentation verifying amounts Developer paid for Public Infrastructure Improvements Costs.

"*Personal Property*" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"*Phase SM*" shall mean a large format, upscale HEB Supermarket one or more neighboring pad ready sites suitable for commercial and/or retail structures located where approximately shown on Exhibit "B".

"*Phase MFR*" shall mean a Multifamily Residential Development**,** as approximately shown on Exhibit "B".

"*Project*" or "*Boonville Center"* is Developer's planned mixed-use project consisting of the Supermarket with associated pad ready sites, and Multifamily Residential Development as depicted on the conceptual land plan attached hereto as Exhibit "B".

"*Project Facility*" (or **"*Project Facilities*")** shall mean a building, structure or other Project Improvements constructed on the Property.

"*Project Improvements*" shall mean the construction of the Supermarket, Multifamily Residential Development, other new Facilities constructed on the Property and other ancillary facilities such as required parking and landscaping more fully described in the submittals filed with City, from time to time, in order to obtain a building permit(s), and stormwater drainage infrastructure. Project Improvements may include future retail and general commercial and office uses as determined by the City Council through the rezoning process.

"*Property*" means the real property depicted by the survey as described in Exhibit "A".

"*Public Infrastructure Improvements*" means the water, sanitary sewer, stormwater mitigation, streets and roadways, and traffic-control signals, whether one or more, constructed to serve the Property for the Project, whether in whole or in part, for which grants may be paid pursuant to this Agreement. Such improvements generally include, but are not limited to (i) the extension of public water supply from the north side of Boonville Road to the south side of Boonville Road and along the south side of Boonville Road running east and west on Boonville Road and southerly to Green Valley Drive as shown on Exhibit "C" attached hereto; (ii) the construction of sanitary sewer along the south side of Boonville Road from City's lift station near the intersection of Briarcrest Drive and Boonville Road to a point near the intersection of Boonville Road and Miramont Boulevard, approximately as shown on Exhibit "C" attached hereto; (iii) the construction of a drainage system mitigating the flood plain for Wheeler Ridge; (iv) the construction of the Mixed-Use Pond to serve the Project as well as neighboring property owners and those downstream in Carter's Creek; and (v) three deacceleration lanes, which may be constructed in multiple phases, in the areas shown on Exhibit "C" attached hereto. When the context requires, the term Public Infrastructure Improvements applies specifically to the relevant subcategory (i), (ii), (iii), (iv) or (v) in this definition. Notwithstanding the foregoing, Public Infrastructure Improvements shall not include the preparation of new or amended flood maps or letters of map revisions as may be required by FEMA which shall be the responsibility of the City.

"*Public Infrastructure Improvement Costs*" shall mean the actual costs reasonably incurred for or otherwise paid by the Developer in connection with the construction of Public Infrastructure Improvements in accordance with City Resolution No. 3298, as may be amended, including all costs incurred for materials, construction, testing, and inspections arising in connection with the construction of Public Infrastructure Improvements. Developer shall also be entitled to a waiver of permit fees and impact fees associated with the construction of Public Infrastructure Improvements, as well as costs paid to obtain performance, payment and maintenance bonds on the Project. Only those costs paid for Public Infrastructure Improvements that have been dedicated to and accepted by the City may qualify as Public Infrastructure Improvement Costs.

"Public Traffic Control Improvements" shall mean the construction and installation by or on behalf of the City of traffic-control signals at the intersection of Miramont Boulevard and Boonville Road and/or the intersection of Green Valley Drive and Briarcrest Drive-FM1179.

"*Real Property*" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"Subdivision Improvements" means all improvements to real property required of the Developer in accordance with the City of Bryan Subdivision Ordinance, the cost shall of which shall be borne solely by Developer.

"*Supermarket*" means a large format, upscale H-E-B or better full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit.

"*Taxable Value*" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given calendar year.

"*Termination Date*" means the earlier to occur of (i) the end of the Chapter 380 Incentive Period, or (ii) the total amount of Chapter 380 Payments received by Developer has reached the Maximum Reimbursement Amount, or (iii) the expiration of five (5) years from the Effective Date of this Agreement without the Commencement of Construction of the Phase SM portion of the Project; or (iv) the failure to Complete Construction of the Phase SM portion of the Project within two (2) year from the Commencement of Construction of same. Notwithstanding the foregoing, and in recognition of the fact the Chapter 380 Payments are, by necessity, calculated and paid after taxes have been assessed and paid to the City for the tax year prior, and therefore always run in arrears, the City's payment obligations which mature as a result of Developer's timely performance under the terms hereunder shall survive the termination of this agreement.

ARTICLE II.
TERM

2.01 The term of this Agreement shall begin on the Effective Date and shall continue until the Termination Date, unless sooner terminated as provided herein.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF DEVELOPER AND CITY

3.01 In order to induce City to enter into this Agreement, Developer represents and warrants as follows:

(a) Developer is a duly organized and validly existing limited liability company under the laws of the State of Texas.

(b) Developer has the power and authority to execute, deliver and perform the terms and provisions of this Agreement and all other instruments or material agreements that may be executed by the Developer in connection with its obligations hereunder. The execution, delivery, and performance by Developer of this Agreement have been duly authorized by all requisite action by the Developer, and this Agreement is a valid and binding obligation of the Developer enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

(c) The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

(d) To its best knowledge, Developer is not a party to or otherwise bound by any material agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Developer's ability to perform its obligations under this Agreement.

(e) The Developer fully intends, subject to the conditions set forth in this Agreement, to commence and complete, or cause to be completed, construction of the Project.

3.02 In order to induce Developer to enter into this Agreement, City represents and warrants as follows:

(a) City is a home rule city operating under the laws of the State of Texas and is authorized and empowered to enter into this Agreement.

(b) The City has created and provided for the administration of an economic development program which authorizes the conditions and obligations set forth in this Agreement.

(c) The City has the authority to levy, assess, and collect ad valorem taxes on the Property and to use the taxes collected by it from property within the City, including the Property, as provided in this Agreement.

ARTICLE IV.
PUBLIC INFRASTRUCTURE IMPROVEMENTS

4.01 **Design.** Within sixty (60) days of the Effective Date of this Agreement, Developer shall engage a Professional Engineer, licensed in the State of Texas and proficient in Civil Engineering **(**the "***Engineer***"), to design the Public Infrastructure Improvements in accordance with City of Bryan Engineering Standards and Specifications (the "***Design Plans***"). Design Plans shall be subject to review and final approval by the City Engineer, which review and approval shall not be unreasonably delayed or withheld.

4.02 **Construction Plans.** Before commencing construction of the Public Infrastructure Improvements, Developer shall cause Developer's Engineer to prepare the construction plans for the construction of the Public Infrastructure Improvements in accordance with the approved Design Plans, which plans shall be submitted for, and subject to, the review and approval of the

City Engineer (which review and approval shall not be unreasonably delayed or withheld), and the Texas Department of Transportation ("***TxDOT***") to the extent required (collectively, the "***Construction Plans***"). The Developer agrees to comply with all applicable development requirements of the City, the TxDOT and any other regulatory agency having jurisdiction over the Property, subject only to the Developer's vested rights in accordance with Tex. Loc. Gov't Code Ch. 245 which shall control unless otherwise waived in writing, and any variances to the extent applicable. No material modifications to the Construction Plans may be made without review and approval by the City Engineer, which review and approval shall not be unreasonably delayed or withheld.

4.03 **Construction.** The Developer shall Commence Construction of the Public Infrastructure Improvements no later than one hundred twenty (120) days after the award of the construction contract pursuant to Section 4.04 hereof, subject to the City's timely issuance of required permits or events of Force Majeure, and shall cause Completion of Construction to occur not later than twelve (12) months after the Commencement of Construction (the "***Completion Date***"). Prior to commencement of construction of any Public Infrastructure Improvements, the Developer or its engaged engineer will give written notice by certified mail or hand-delivery to the City Manager stating the date that construction will commence. Construction of the Public Infrastructure Improvements will be in accordance with the approved Construction Plans, and with the applicable City of Bryan Engineering Standards and Specifications. During the progress of the construction and installation of the Public Infrastructure Improvements, the City may conduct periodic, on-the-ground inspections.

4.04 **Competitive Bidding.** Construction contracts for the Public Infrastructure Improvements shall be let on a competitive bidding basis as required by law applicable to the City. After preparation and approval of Construction Plans as required by this Agreement, the Developer shall advertise for or solicit bids for construction as described in the Construction Plans. The City's representatives shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts in accordance with the notice provision of Section 13.07 of this Agreement. The City shall designate from time to time in writing the persons who shall be its designated representative(s). Failure of the City's representative to attend any pre-bid conference, bid opening or award of contract meeting shall not be caused to postpone or otherwise delay such meeting. Developer shall construct the Public Infrastructure Improvements at its expense under the Terms of this Agreement and in accordance with the approved Construction Plans.

4.05 **Payment and Performance Bonds.** The Developer shall require each contractor constructing the Public Infrastructure Improvements to furnish a payment and performance bond in an amount equal to the full cost of the portion of Public Infrastructure Improvements made the basis of Developer's construction contract with that contractor, conditioned on the contractor's full and timely performance under the construction contract. The payment and performance bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds $100,000.00, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of $1,000,000.00 by a reinsurer listed on the U.S. Treasury list. The Developer and City shall be named as dual obligees for each payment and performance bond(s) and copies of certificates of such bond(s) shall be delivered to

the City. In the event, Developer fails or refuses to complete the Public Infrastructure Improvements by the Completion Date, the City shall be entitled to exercise its rights as an obligee under the performance bond(s) and may complete the construction of the Public Infrastructure Improvements and charge the performance bond(s) for the costs. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. The provisions of this Section 4.05 shall survive the termination of this Agreement.

4.06 **Insurance.** Developer shall require each contractor constructing the Public Infrastructure Improvements to carry the types of insurance and coverage with respect to Public Infrastructure Improvements as set forth in attached Exhibit "D". The Construction Contract shall require the contractor to deliver to the City Manager certificates of insurance evidencing such coverage before the Commencement of Construction and shall provide that within ten (10) days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewals and payment of premium shall be delivered by each of the Developer's construction contractor(s) to the City Manager.

4.07 **Mechanics' Liens**. Developer is expressly prohibited from subjecting the Public Infrastructure Improvements to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any construction and development work arising in any other manner in connection with the construction of the Public Infrastructure Improvements.

4.08 **Final Acceptance of Public Infrastructure Improvements.** The City will not issue a Letter of Acceptance for the Public Infrastructure Improvements until they are completely constructed ("***Final Completion***") to the satisfaction of the City Engineer. However, upon substantial completion of the Public Infrastructure Improvements, a "punch list" of outstanding items shall be presented to Developer and its contractor(s) indicating those outstanding items and deficiencies that need to be addressed for Final Completion of the Public Infrastructure Improvements.

4.08.1 When construction of the Public Infrastructure Improvements is finally completed by the contractor(s) in accordance with this Agreement, and the following items have been accomplished, the City will accept the dedication of the Public Infrastructure Improvements as being complete, as evidenced by the City's issuance to the Developer a Letter of Acceptance and the Developer's conveyance of the Public Infrastructure Improvements by deed to the City:

(a) A final inspection of all improvements has been accomplished and the resulting "Punch List" corrected; and

(b) The contractor has provided the City a Maintenance Bond, equal to one hundred percent (100%) of the approved cost estimates provided by the Developer indicating that he will be responsible for defects in the project due to faulty materials and/or workmanship for a period of one (1) year from date of final acceptance; and

(c) The Developer has submitted an "All Bills Paid Affidavit" from the Contractor and Developer evidencing to the City that final payment to the contractor has been made, and that all subcontractors and persons furnishing labor and materials have been paid in full and all claims settled, and

(d) The required "as built" construction plans have been submitted to and accepted by the City, and

(e) The certification of the Developer's design engineer as to the completeness of the "as built" drawings has been submitted to the City Engineer.

4.09 **Title vests in the City.** Upon the City's issuance of the Letter of Acceptance and the Developer's execution of the deed, title to all of the Public Infrastructure Improvements (except for the Mixed-Use Pond) shall vest in the City and Developer relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the City shall have no liability or responsibility in connection with such improvements until title vests in the City, as stated herein.

ARTICLE V.
CHAPTER 380 PROGRAM

5.01 **Public Infrastructure Improvements.** As consideration of and part of this Agreement, City agrees to pay to Developer the Chapter 380 Payments to reimburse Developer the Public Infrastructure Improvement Costs as provided in this Agreement if the Developer satisfies the following requirements pertaining to the Project:

(a) Complete Construction of the Public Infrastructure Improvements within eighteen (18) months of the later of (1) the Effective Date of this Agreement, or (2) the City's issuance of the required permit(s) to begin construction; and

(b) Commence Construction of the Phase SM portion of the Project within five (5) years of the Effective Date of this Agreement, subject to the City's timely issuance of the required permit(s) to begin construction; and

(c) Obtain and maintain an Incremental Ad Valorem Tax Value of the Property of at least $8,000,000.00 beyond the Base Ad Valorem Tax Value as defined by this Agreement; and

(d) During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to City on the Property owned by the Developer, or any other property owned by Developer and located within the City of Bryan, to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal, nor shall Developer fail to render for taxation any property owned by Developer and located within the City of Bryan; and

(e) Exercise commercially reasonable efforts to pursue new commercial and retail tenants and End-Users to add economic value to the Property and create new jobs.

5.02 **Public Traffic Control Improvements.** As further consideration of and part of this Agreement, City agrees to construct the Public Traffic Control Improvements, namely the signals as shown on Exhibit "C" located (i) at the intersection of Miramont Boulevard and Boonville Road and (ii) at the intersection of Green Valley Drive and Briarcrest Drive-FM1179. The City shall commencement construction of the Public Traffic Control Improvements at the intersection of Miramont Boulevard and Boonville Road within two (2) years after the Effective Date of this Agreement, and shall commence the construction of the Public Traffic Control Improvements at the intersection of Green Valley Drive and Briarcrest Drive-FM1179 upon Commencement of Construction of the Phase SM portion of the Project provided that Developer gives 90 days advance written notice to City of its date for Commencement of Construction of the Phase SM portion. In each event, the City shall complete the construction of the applicable Public Traffic Control Improvements within twelve (12) months of commencing construction for such Public Traffic Control Improvement. In the event TxDOT supersedes plans to improve the Green Valley Drive/Briarcrest Drive-FM1179 intersection and undertakes its project, such event shall satisfy City's obligation ii.

ARTICLE VI
GENERAL REQUIREMENTS

6.01. Developer agrees as good and valuable consideration for this Agreement that construction of the Improvements by Developer will be in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

6.02 This Agreement shall not constitute a waiver by the City of any codes, ordinances, rules and regulations. Further, Developer acknowledges that by executing this Agreement, no entitlement or agreement concerning zoning or land use shall arise, either implied or otherwise.

6.03 Construction plans for the Improvements constructed on the Property by Developer will be filed with City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

6.04 Developer agrees to maintain the Improvements owned by it during the term of this Agreement in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

6.05 City, its agents and employees shall have the right of access to the Property during construction by Developer to inspect the Improvements at reasonable times and with reasonable notice to Developer, and in accordance with visitor access and security policies of Developer and Developer's tenants, in order to ensure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

ARTICLE VII.
THE CHAPTER 380 PAYMENTS

7.01 **Condition Precedent.** The City's obligation to make the Chapter 380 Payment(s) to Developer as set forth herein is conditioned upon Developer satisfying those conditions specified in section 5.01 and 5.02 above and Developer's compliance with all of the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, Developer may qualify for the Chapter 380 Payments pledged in section 5.01 and 5.02 separately without one being contingent upon the other.

7.02 Subject to the Developer's compliance with the conditions precedent set forth in Article V above and the other terms and conditions set forth in this Agreement, City agrees to pay Developer the Chapter 380 Payments as follows:

7.02.1 For the reimbursement of Public Infrastructure Improvement Costs, Chapter 380 Payments shall be calculated as being the amount equal to fifty percent (50%) of the Incremental Ad Valorem Tax Collections for the year in which a Chapter 380 Payment is requested. Chapter 380 Payments may only be requested during the Chapter 380 Incentive Period and must be requested annually.

7.03 In no event will the Chapter 380 Payment paid in connection with a tax year exceed fifty percent (50%) of the amount of ad valorem taxes actually collected by the City on the Property by July 1 for such tax year.

7.04 The City's obligation to make the Chapter 380 Payment(s) hereunder is subject to annual appropriation by the Bryan City Council, which the City agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

7.05 The total amount of Chapter 380 Payments paid by the City under this Agreement shall in no event exceed the Maximum Payment Amount at which time City will have fully satisfied its obligation to make the Chapter 380 Payments to Developer as required by this Agreement.

7.06 City will remit the first Chapter 380 Payment to Developer no later than sixty (60) days after receipt by the City Manager of a proper Payment Request from the Developer in accordance with the terms of this Agreement. Beginning with the First Year of the Chapter 380 Incentive Period, Developer may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Developer to timely submit to the City Manager a Payment Request will result in the forfeiture of the Chapter 380 Payment attributable to that tax year.

7.07 During the term of this Agreement, Developer shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Developer from claiming any exemptions from tax provided by applicable law.

ARTICLE VIII.
DEFAULT

8.01 **Events of Default**. Developer shall be in default of this Agreement upon the occurrence of any of the following during the term of this Agreement:

(a) Developer fails to comply with any of its obligations under this Agreement; or

(b) Developer fails to file any required report or statement or to give any required notice pursuant to this Agreement; or

(c) Developer fails to timely pay any sales or ad valorem property taxes owed to the City and fails to properly follow legal procedures for protest or contest of such taxes.

8.02 If the Developer should default in the performance of any obligation of this Agreement, the City shall provide Developer written notice of the default, and a minimum period of sixty (60) days to cure such default, prior to pursuing any remedy for default.

8.03 If Developer remains in default after notice and opportunity to cure, City shall have the right, but not the obligation, to (i) suspend the Chapter 380 Payments or (ii) terminate the Agreement and the Chapter 380 Payments which have accrued after the date of default; and (iii) to exercise all available remedies at law and at equity.

ARTICLE IX
EVENTS OF FORCE MAJEURE

9.01 It is expressly understood and agreed by the Parties to this Agreement that if the performance by either Party of any obligation hereunder is delayed by reason of an event of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected Party to overcome the event of Force Majeure and resume performance thereof. The Party claiming delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practicable after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein.

ARTICLE X.
TERMINATION

10.01 This Agreement shall terminate upon any one or more of the following:

(a) By mutual agreement of the Parties;

(b) According to the Termination Date;

(c) Upon the Developer having been paid the Maximum Reimbursement Amount;

(d) By City if the Developer suffers an uncured event of default pursuant to Section 8.03; or

(e) If Developer sells or otherwise conveys the Property or any portion of the Property to a third party, other than an Affiliate, without the prior written approval of City, which approval shall not be unreasonably delayed or withheld. For purpose of this section 10.01(e), "Developer" shall mean the Developer and its development collaborators which have been identified to City in the formulation of this Agreement to obtain ownership of all or parts of Phase SM and Phase MFR to construct and/or operate such Phases.

ARTICLE XI.
INDEMNIFICATION

11.01 **Developer does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of Developer, its officers, agents, or employees arising out of or in connection with the performance of this Agreement, and Developer will at its own cost and expense defend and protect the City from any and all such claims and demands. The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or any contractor or subcontractor under workman's compensation or other employee benefit acts. Developer shall be entitled to approve the legal counsel chosen to defend the City.**

ARTICLE XII
REPORTING AND AUDITING

12.01 **Compliance Certification**. Developer shall, before December 31 of each calendar year that the Agreement is in effect, certify in writing to City that it is in compliance with each term of the Agreement, using the certification form attached hereto as Exhibit "E". The submission of these reports shall be the responsibility of Developer and shall be signed by an officer of the Developer.

12.02 **Maintenance of Records.** Developer shall be responsible for maintaining records of all costs incurred and payments made for the Project, and all records evidencing compliance with all Developer obligations required under this Agreement. Developer shall maintain such records for a period of five (5) years after termination of this Agreement.

12.03 **Access to Records / Right to Audit**. Developer shall allow City reasonable access, during normal business hours, to review and audit its records and books and all other relevant records related to the Agreement upon five (5) business days' prior written notice to the Developer.

ARTICLE XIII.
MISCELLANEOUS

13.01 **Incorporation of Recitals.** The determinations recited and declared in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

13.02 **Entire Agreement.** This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

13.03 **Exhibits, Titles of Articles, Sections and Subsections.** The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

13.04 **Amendments.** This Agreement may only be amended, altered, or voluntarily terminated by written instrument signed by all parties.

13.05 **Assignment**. Developer may not assign this Agreement without the prior written consent of the City Council, except that Developer may assign this Agreement in whole or in part to an Affiliate or in connection with any merger, reorganization, sale of all or substantially all of its assets or any similar transaction; provided that Developer provides the City Manager with written notice promptly after any such assignment. The Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

13.06 **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 any way 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.

13.07 **Notices.** Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English and may be in electronic form. The contact information for each Party is as follows:

CITY:

City of Bryan, Texas
Attn: City Manager
300 S. Texas Ave.
Bryan, Texas 77803
Telephone: (979) 209-5100

DEVELOPER:

BOONVILLE CENTER, LLC
Attn: Jay Williams
8811 Gaylord Dr Ste 200
Houston, TX 77024
Telephone: (832) 804-8500

13.08 **Applicable Law and Venue**. This Agreement is made and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Brazos County, Texas. Venue for any matters in federal court will be in the United States District Court for the Southern District of Texas, Houston Division.

13.09 **Severability**. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision to be illegal, invalid or unenforceable.

13.10 **Third Parties**. The City and Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Developer or permitted assignees of the City and Developer, except that the indemnification and hold harmless obligations by Developer provided for in this Agreement shall inure to the benefit of the indemnitees named herein.

13.11 **No Joint Venture**. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

13.12 **Employment of Undocumented Workers.** During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Developer shall repay to City all Chapter 380 Payments received under this Agreement as of the date of such violation within 120 days after the date Developer is notified by City of such violation, plus interest at the rate of 5% simple interest from the date of Developer's receipt of the Chapter 380 Payments until repaid. The Developer's obligation to repay any recapture amounts to the City due under this Section 13.12, and the City's right and authority to recover all of the Chapter 380 Payments made to Developer under this Agreement shall survive the termination of this Agreement.

13.13 **Government Code Provisions**. Developer hereby verifies that it complies with the following requirements: (a) Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited, a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153; (b) Pursuant to Texas Government Code 2271.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (i) does not boycott Israel, and (ii) will not boycott Israel during the term of the contract.

13.14 **Basic Safeguarding of Developer Information Systems.**

13.14.1 Developer shall apply basic safeguarding requirements and procedures to protect Developer's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent businessperson would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

13.14.2 Developer shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

13.15 **No Personal Liability.** No elected official of the City, officer or employee of City shall be personally liable to the Developer or any successor in interest of Developer, in the event of any default or breach by the City, or for any amount which may become due to Developer or to its successor in interest, or for breach of any obligation under the terms of this Agreement.

13.16 **Right of Offset.** The City may deduct from any Chapter 380 payments, as an offset, any delinquent and unpaid utility charges, or other unpaid fees, charges, or taxes assessed and other sums of money owed to, or for the benefit of, the City by Developer; provided that, before offsetting such sums, the City must provide Developer with (a) advance notice of such offset, (b)

sixty days to take action to remedy the situation giving rise to the offset, and/or (c) reasonable opportunity, at its own expense, to contest such offset.

13.17 **Independent Contractor**. Developer shall at all times during the Term of this Agreement remain an independent contractor.

13.18 **No Presumption Regarding Drafter**. The parties hereto acknowledge and agree that: (i) each party has participated in the drafting of this Agreement; (ii) each party has had the opportunity to have this document reviewed by their respective legal counsel; (iii) the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applied to the interpretation of this Agreement; and (iv) no inference in favor of, or against, any party shall be drawn from the fact that one party has drafted any portion hereof.

13.19 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS:	**BOONVILLE CENTER, LLC,** a Texas limited liability company
_____	_____
Bobby Gutierrez, Mayor	
Date: _____	Date: _____

ATTEST:

_____
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

_____
Thomas A. Leeper, City Attorney

EXHIBIT “A”

Boundary Survey

EXHIBIT “B”

Concept Plan

EXHIBIT “C”

Public Infrastructure Improvements

INSERT NEW EXHIBIT

EXHIBIT "D"

Insurance Requirements

Developer agrees to procure and maintain for the duration of this contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Developer, his agents, representatives, employees, or subDevelopers.

If the Developer fails to maintain the required insurance, the City shall have the right to cancel the contract or no payments will be made to Developer until satisfactory evidence of insurance is received.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL).** Developer shall maintain CGL insurance with a limit of not less than **$2,000,000 each occurrence**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
   1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, products-completed operations, property damage, bodily injury, and personal and advertising injury, and liability assumed under an insured's contract.
   1.2 **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. This can be provided in the form of an endorsement to the Developer's insurance.
2. **Business Automobile Liability (AL)**. Developer shall maintain automobile liability with a limit not less than **$1,000,000 each accident.**
   2.1. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
   2.2. Coverage shall be written on ISO form CA 00 01, CA 00 08, CA 00 09.
3. **Workers' Compensation (WC)**. Developer shall maintain workers compensation insurance with **Texas Statutory Limits** and Employers Liability insurance with a limit of not less than **$1,000,000** per accident for bodily injury or disease.
   3.1. **This policy shall be endorsed with a waiver of subrogation in favor of the City** for all work performed by the Developer, its employees, agents, and subDevelopers.

If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Developer.

By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Developer, and such coverage and limits shall not be deemed as a limitation on Developer's liability under the indemnities granted to the City in this contract.

Self-insured retentions must be declared and approved by the City. The City may require the Developer to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

General Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. ***Primary Coverage.*** For any claims related to this contract, the **Developer's insurance coverage shall be primary** insurance coverage as respects the City, its officers, officials, employees, and volunteers. There shall be no modification to make it excess over other available insurance. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.
2. ***Notice of Cancellation.*** Each insurance policy required shall provide that coverage **shall not be canceled, except with notice to the City**. If the City is notified a required insurance coverage will cancel or non-renew during the contract period, the Developer shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect.
3. ***Acceptability of Insurers.*** Insurance is to be placed with insurers authorized to conduct business in the State with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City.
4. ***Waiver of Subrogation.*** Developer hereby grants to City a waiver of any right to subrogation which any insurer of Developer may acquire against the City by virtue of payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
5. ***Evidence of Insurance.*** Developer shall furnish the City with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) before work begins. However, failure to obtain the required documents prior to the work beginning or failure to identify a deficiency from evidence that has been provided shall not be construed as a waiver of Developer's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions. Developer shall provide certified copies of all required insurance policies within 10 days of City's written request of said copies.

6. ***SubDevelopers.*** If the Developer's insurance does not afford coverage on behalf of any subDeveloper hired by the Developer, the Developer shall require and verify that all subDevelopers shall maintain insurance meeting all the requirements stated herein, and Developer shall ensure that City is an additional insured on insurance required from subDevelopers.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

EXHIBIT "E"

STATE OF TEXAS §
CITY OF BRAZOS §

ECONOMIC DEVELOPMENT AGREEMENT
ANNUAL CERTIFICATION FORM

REPORTING YEAR 20__

I, the authorized representative and officer of the BOONVILLE CENTER, LLC do hereby certify to the City Council of the City of Bryan, Texas ("***City***") that BOONVILLE CENTER, LLC is in full compliance with the terms of the Chapter 380 Economic Development Agreement with the City, entered into on the __ day of _____, 202__. I include herewith receipts or other written documentation verifying amounts Developer paid for Public Infrastructure Improvements Costs in the Reporting Year.

Signed this _____ day of _____, 20__.

_____ _____

_____

Print Name **Signature** **Title**

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day _____, 20__, by _____, as the _____ of BOONVILLE CENTER, LLC on behalf of said company.

_____
Notary Public, State of Texas