

**BOONVILLE TOWN CENTER
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN FIVE AGS INVESTMENTS, LLC
THE CITY OF BRYAN, TEXAS**

This Agreement entered into by and between the **CITY OF BRYAN, TEXAS**, a Texas home rule municipal corporation, (“**City**”), and **FIVE AGS INVESTMENTS, LLC**, a limited liability company created and operating under the laws of the State of Texas, (“**Developer**”); collectively referred to as “**Parties.**”

W I T N E S S E T H:

WHEREAS, Developer owns 9.41 acres of investment property with frontage or access to frontage along Texas State Highway 6 within the incorporated boundaries of the City (“**Properties**”) which are more particularly described as Lots 1 and 2, Block 2 of the Boonville Town Center subdivision as shown on the plat filed in Volume 8534, Page 33 of the Official Records of Brazos County, Texas, and Lot 3B, Block 1, of the Replat of Block 3 as shown on the replat filed in Volume 9013, Page 257 of the Official Records of Brazos County, Texas; and

WHEREAS, although the Properties are as yet undeveloped, the City considers them a prime opportunity for infill along Highway 6, because retail (including but not limited to multi-tenant), restaurant, or hotel/motel uses would be the highest and best use of the property by bringing in business, jobs, and tax revenue into the City; and

WHEREAS, the Developer desires to offer incentives to potential purchasers induce the development of this tract, but needs assistance from the City in order to make such incentives economically viable; and

WHEREAS, the City has an interest in increasing the City’s tax base, bring in new business, and create new jobs for its citizens; and

WHEREAS, the City desires to ensure that the development of the Properties is a gain for the City involving only new business and not relocation of existing businesses; and

WHEREAS, Chapter 380 of the Texas Local Government Code permits a city to create a program that will expend funds in the form of grants or loans for the purpose of stimulating economic development within the limits of the city; and

WHEREAS, the City Council finds that the contemplated use of the Properties, the contemplated improvements to the Properties, and the other terms set forth in this Agreement are consistent with encouraging economic development within the City and it is in the City’s best interest to enter into this agreement with the Developer for the purpose of assisting with the development of the Properties; and

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

A. INCENTIVE

1. The City agrees to reimburse the Developer an amount not to exceed \$275,000.00 over the course of five (5) years to cover the cost of the economic incentives offered to purchasers of the Properties. As a source for the reimbursement, the City will pay fifty percent (50%) of sales taxes from the Properties and fifty percent (50%) of taxes collected for increased ad valorem value during the course of this Agreement. The City will only remit funds actually paid to the City and the reimbursement obligation is subject to annual appropriation by the City Council.
2. The ad valorem tax reimbursement is based on the increased value of the Properties, as determined by the Brazos County Appraisal District (“**BCAD**”), whose determination is binding for the purposes of this Agreement. The Increased Value (“**Increased Value**”) is determined by taking the then current appraised value and subtracting \$2,573,450.00, the value of the Properties at the start of this Agreement as shown in the appraisal records attached as Exhibit “A” (“**Base Value**”). Developer is entitled to a payment equal to fifty percent (50%) of the taxes paid to the City which are attributable to the Increased Value.
3. The City will reimburse fifty percent (50%) of sales taxes collected on purchases made on, or attributable to, the Properties. Developer will require that any lessee, grantee, or purchaser of all or a portion of the Properties will execute the annual disclosure authorization required by the Texas Comptroller of Public Accounts enabling the City to determine which portion of the sales tax revenue is attributable to the Properties. This information will be kept confidential, to the extent allowed by law.

B. TERM & REIMBURSEMENT

4. Reimbursement shall be on an annual basis, paid in arrears, following submission of a written request by Developer. Upon receipt of the request, the City may require the Developer to provide supporting documentation to establish the amount of the reimbursement. The City may assist the Developer in obtaining this information and the information will be kept confidential, to the extent allowed by law. The City will determine the amount of ad valorem and sales taxes actually collected and calculate the amount of the reimbursement payment. The reimbursement payments will be made within sixty (60) days following the request, provided that the conditions set forth in this Agreement have been met.
5. The term of this Agreement shall be five (5) years beginning when the first certificate of occupancy is issued for a building on the Properties or on April 1, 2013, whichever is sooner. This Agreement shall terminate earlier if the amount of reimbursement paid to the Developer totals \$275,000.00.

6. The right to reimbursement may survive the expiration of this contract if bona fide disputes, or errors not within Developer's control, result in a delay in payment of taxes to the City. This will only be the case if all other conditions of this Agreement are met and the "not to exceed" threshold of \$275,000.00 has not been reached. Developer may only request reimbursement of taxes assessed during the term of this Agreement if they are paid.

C. LIMITATIONS ON REIMBURSEMENT

7. Developer will not be entitled to reimbursement from tax revenue generated by a business that relocated from within the City limits. For the purposes of this Agreement, relocation means the closure of one location in the City and the opening of another on the Properties. This term does not include the opening of a new location without a corresponding closure. The City is not entitled to claw back tax revenue paid to the Developer prior to a closure. The City Manager is authorized to grant an exception to this provision, if the circumstances are such that there is sufficient new tax revenue to justify the incentive.
8. Developer will not be entitled to reimbursement if it fails to provide the City with the necessary documentation to support the reimbursement. Developer is responsible for ensuring that the City has access to sales tax information for the businesses on the Properties.

D. MISCELLANEOUS

9. 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, which will not be unreasonably conditioned, delayed, or withheld.
10. 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.
11. 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.

12. 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.
13. 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.
14. 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.
15. No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
16. Notices. 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, City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

DEVELOPER

Five Ags Investments, LLC
809 University Drive East, Ste. 101-A
College Station, Texas 77840

17. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
18. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
19. Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

Executed and effective on the date approved by the City Council, the ____ day of _____, 2012.

ATTEST:

CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

FIVE AGS INVESTMENTS, LLC

Hunter Goodwin, Managing Member

STATE OF TEXAS §

COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared Hunter Goodwin, on behalf of Five Ags Investments, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN to before me on this ____ day of _____, 2012.

Notary Public – State of Texas

Commission expires: _____

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WITNESSETH:

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 P.O. Box 1000
 Bryan, Texas 77805-1000

DEVELOPER
 Five Ags Investments, LLC
 2800 South Texas Avenue, Suite 401
 Bryan, Texas 77802

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Executed and effective on the date approved by the City Council, the ____ day of _____, 2012.

ATTEST:

CITY OF BRYAN, TEXAS

 Mary Lynne Stratta, City Secretary

 Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

FIVE AGS INVESTMENTS, LLC

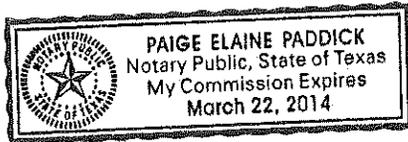
Hunter Goodwin
Hunter Goodwin, Managing Member

STATE OF TEXAS §

COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared Hunter Goodwin, on behalf of Five Ags Investments, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN to before me on this 18th day of April, 2012.



Paige Paddick
Notary Public – State of Texas
Commission expires: March 22, 2014