

**BOWIE SCHOOL RENOVATION
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**

This Chapter 380 Economic Development Agreement (this "Agreement") is entered into by and between the CITY OF BRYAN, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "City"), and BRV PARTNERS, L.P., a Texas limited partnership (hereinafter referred to as "Developer").

WHEREAS, the City of Bryan, Texas ("City") is a home rule municipality which is duly incorporated and chartered under the constitution and laws of Texas; and

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, the City and the community at large have gone through numerous efforts to restore Downtown Bryan and the vicinity in order to increase residential, retail and commercial activity, add property value to enhance tax revenue, and to improve the overall atmosphere of the City; and

WHEREAS, Developer acquired property formerly comprising Bowie Elementary School at the intersection of W. 26th Street and S. Sims Avenue which includes the former school building which is presently in a decaying and unusable condition; and

WHEREAS, Developer's proposed plans for the property at the intersection of 26th Street and Sims Avenue will remove urban blight and provide development that accomplishes the City's goals for the downtown Bryan vicinity as per its comprehensive plans; and

WHEREAS, the City Council determines that this Agreement will encourage similar development and removal of urban blight, thus raising property values and increasing the customer base for downtown stores and restaurants and finds that it is in the City's best interest to enter into this agreement to assist in the rehabilitation, renovation and adaptive reuse of the former school building and grounds; and

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties agree as follows:

Article I. Definitions

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

"Ad Valorem Tax Revenues" means the amount of Real Property Taxes collected by the City on the Property, a portion of which will be repaid to Developer in the form of Chapter 380 Payments.

"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 Taxable Value**” shall mean the Taxable Value for the Property for the year in which this Agreement is executed.

“**Chapter 380 Payment(s)**” or “**Cash Incentives**” “Cash Incentive” shall mean that amount of money to be reimbursed annually by CITY to DEVELOPER as a grant herein calculated upon a percentage of ad valorem taxes assessed and collected for a specified year for the Property and Improvements attributable to the Incremental Taxable Value in the calendar year immediately preceding the year in which a Chapter 380 Payment is requested. Such amount shall be calculated based upon the Incremental Taxable Value for each year of the Agreement, unless otherwise provided herein.

“**Commencement of 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; and (ii) all necessary permits for the construction of the Project, pursuant to the plans therefor have been issued by all applicable governmental authorities.

“**Completion of Construction**” shall mean: (i) substantial completion of the renovation of the Facility; and (ii) a final certificate of occupancy has been issued for the Facility.

“**Developer**” shall mean BRV Partners, L.P., and its Affiliates.

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

“**Expiration Date**” means the earlier to occur of (i) the date the Chapter 380 Payment is received from the City in the year following 10 years after the First Year of Cash Incentives or (ii) the total amount of Chapter 380 Payments received by Developer has reached the Maximum Reimbursement Amount, as defined herein. In recognition of the fact that the Chapter 380 Payments by necessity are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to be extended for the time necessary to make any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement.

“**Facility**” shall mean the former school building located on the Property.

“**Fee Waiver Incentive(s)**” shall mean the waiver by City of charges for defined development related fees.

“First Year of Cash Incentive(s)” shall mean the first calendar year following the calendar year in which Commencement of Construction occurs.

“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 or work stoppages. 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.

“Incremental Taxable Value” means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

“Maximum Reimbursement Amount” means an amount equal to the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00).

“Payment Request” means a written request from Developer to the City for payment of the annual Cash Incentive accompanied by copies of tax receipts showing that Developer's tax payments are current.

“Project” is Developer's planned renovation of the Facility, consisting of the adaptive re-use of the Facility as a multifamily residential structure and associated work on the surrounding grounds.

“Property” means the real property bounded by W. 26th Street, S. Sims Avenue, W. 27th Street and W. Sterling Avenue.

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

“Real Property Taxes” means the City's share of the ad valorem taxes received by the City from the Brazos County Tax Assessor-Collector on the value of the Real Property located on the Property, which shall include land and improvements taxed by the City, and shall exclude ad valorem taxes received by the City on Personal Property located on the Property.

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

Article II. Developer Obligations

2.1 Developer will undertake renovation of the Facility. Subject to events of Force Majeure, Commencement of Construction of the Facility must begin no later than December 1, 2017 (the “Start Date”), and Developer shall notify the City of such Start Date. Subject to events of Force Majeure, Completion of Construction and all necessary occupancy permits from the City shall have been issued no later than February 1, 2019.

2.2 Developer shall construct a minimum of 48 high-end residential units, each including bathroom and kitchen facilities. The Project will increase the value of the Property as appraised by the Brazos County Appraisal District (“BCAD”), in their sole discretion, by at least \$3,000,000.00. The Project shall substantially comply with the Site Plan attached hereto as Exhibit “A.”

2.3 Developer shall use best efforts to ensure the Property complies with City's Historical Preservation Overlay District Requirements as set forth in City's Code of Ordinances section 130-24 (d) through (j), and will use reasonable efforts to obtain historic landmark or similar designation for the Property.

2.4 Developer will meet the following Reporting Requirements.

a. Upon the City's written request, Developer will promptly provide to the City any information reasonably necessary for the City to determine if Developer has complied with this Agreement.

b. Developer will allow the City reasonable access to the Property during regular business hours to inspect the Property and Facility to verify that Developer is complying with the terms of this Agreement.

2.5 The Property and the Facility constructed thereon at all times shall be constructed, operated and used in the manner (i) that is consistent with City's Code of Ordinances, as amended; and (ii) that is in accordance with all applicable state and local laws, codes, and regulations.

2.6 When applicable, Developer agrees to comply with all applicable disclosure requirements, including those under Section 2252.908 Texas Government Code when entering into a contract that requires approval of the governing body of the City unless falling within certain exceptions, and Chapter 176 Texas Local Government Code for vendor disclosure requirements for certain business relationships with local government officers or their family members.

2.7 Developer agrees to pay all ad valorem taxes and assessments owed to City prior to such taxes and/or assessments becoming delinquent. Developer shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. In the event that Developer contests such tax or assessment, all uncontested taxes and assessments shall be promptly paid to City prior to delinquency. If Developer undertakes any such contest, it shall notify City and keep City apprised of the status of such contest. Should Developer be unsuccessful in any such contest, Developer shall promptly pay all taxes, penalties and interest resulting therefrom.

2.8 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 Cash Incentives 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 Cash Incentives until repaid.

Article III. City Obligations

3.1 During the term of this Agreement, the City agrees to waive, as Fee Waiver Incentives, up to \$25,000.00 in permit fees for the Project charged for building, electrical, mechanical, or plumbing permits. This waiver shall not include any fees, deposits, or charges not listed above.

3.2 City will provide the Cash Incentive.

a. Subject to the terms and conditions of this Agreement, and provided that the Taxable Value for the Property is at least THREE MILLION DOLLARS (\$3,000,000.00) additional value above Base Year Taxable Value beginning January 1st following the First Year of Cash Incentives and as of January 1st of each year thereafter this Agreement is in effect, City hereby grants an annual Cash Incentive to Developer in the following amounts expressed as a percentage of tax revenue actually received by the City attributable to the Incremental Taxable Value in the calendar year immediately preceding the year in which a Chapter 380 Payment is requested.

<u>Year</u>	<u>Annual Cash Incentive</u>
First Year of Cash Incentives	100%
Year 2	100%
Year 3	90%
Year 4	90%
Year 5	80%
Year 6	70%
Year 7	60%
Year 8	50%
Year 9	40%
Year 10	30%

The City's obligations under this Agreement are conditioned upon annual appropriation for same by the City Council.

b. The total amount of Cash Incentive will in no event exceed a cumulative total of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00), at which time City's obligation to grant Cash Incentives to Developer ends.

c. City will remit the annual Cash Incentive to Developer within 60 days of Developer's written request for that year's Cash Incentive along with copies of tax receipts showing that Developer's tax payments are current (Payment Request). Developer's Payment Request shall be made no sooner than February 1 and no later than June 1 of a 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.**

Article IV. Default and Termination

4.1 Developer shall have committed a breach of this Agreement if it:

- a. fails to complete the Project in accordance with this Agreement;
- b. has delinquent ad valorem or sales taxes owed to the City (provided the Developer retains its right to timely and properly protest such taxes or assessment); or
- c. becomes bankrupt or insolvent.

4.2 Upon breach by Developer of any obligations under this Agreement, the City shall notify Developer in writing that Developer has breached this Agreement and is in default. Developer shall have thirty days from receipt of such notice of default in which to cure any such breach (the "Cure Period"). If the breach

cannot reasonably be cured within a Cure Period, and the Developer has diligently pursued such remedies as shall be reasonably necessary to cure such breach, then the City may extend the Cure Period as may be reasonably necessary for Developer to cure such breach.

4.3 No Cash Incentive payments shall be made nor any Fee Waiver Incentive allowed until any breach is cured. If the breach is not timely cured, the City may terminate this agreement.

4.4 The term of this Agreement shall begin on the Effective Date and continue through the Expiration Date, unless one of the following occurs:

- a. Developer receives notice of default and such default remains uncured after the Cure Period, as may be extended, and the City provides written notice to the Developer that the Agreement is terminated;
- b. A party elects to terminate this Agreement (which may occur at any given time) by giving the other party at least sixty days written notice; or
- c. Developer has been paid the cumulative sum of \$175,000.00 in Cash Incentives by the City in accordance with the terms of this Agreement.

Article V. Recapture and Offset

5.1 If Developer does not have timely Completion of Construction, Developer agrees to reimburse City the Cash Incentives previously paid and the cash value of all Fee Waiver Incentive the City has provided to the Developer hereunder excluding any reimbursement payments previously made by the Developer. The Developer shall also reimburse the City for any and all reasonable attorney's fees and costs incurred by the City as a result of any action required to obtain reimbursement of funds. Such reimbursement shall be due and payable 120 days after the Developer receives written notice of default accompanied by copies of all applicable invoices.

5.2 City may, at its option, offset any amounts due and payable under this Agreement, including Cash Incentive payments, against any debt (including taxes) lawfully due to City from Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court; provided, however (i) City shall provide Developer notice within thirty (30) calendar days of determining that any debt is believed lawfully due to City from Developer; (ii) Developer shall have an opportunity to resolve or pay such debt to City within thirty (30) calendar days after receipt of notice before any offset to amounts payable under this Agreement may occur; and (iii) Developer retains all rights to timely and properly contest whether or in what amount any debt is owed to City, and City may not offset any asserted amount of debt owed by Developer against amounts due and owing under this Agreement during any period during which Developer is timely and properly contesting whether such amount of debt is due and owing.

Article VI. Miscellaneous

6.1 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, trustees, receivers, 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. If Developer assigns this Agreement without written approval of the City Council, this Agreement shall terminate immediately and the Cash Incentives and Fee Waiver Incentives provided for herein shall cease from the date such unauthorized assignment occurred.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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
BRV Partners L.P.
900 E. 30th Street
Bryan, Texas 77803

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

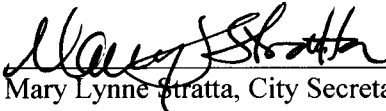
6.10 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 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.

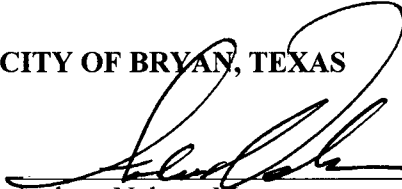
6.12 No Special Relationship Created. Nothing contained herein, nor any acts of the parties in connection herewith, shall be deemed or construed by the parties hereto or by third parties as creating the relationship of (a) principal and agent, (b) a partnership, or (c) a joint venture, as between the parties hereto. No third party shall obtain any rights as a result of this Agreement.

EXECUTED in duplicate originals on this 15th day of June, 2017.

ATTEST:


Mary Lynne Stratta, City Secretary

CITY OF BRYAN, TEXAS


Andrew Nelson, Mayor

APPROVED AS TO FORM:


Janis K. Hampton, City Attorney

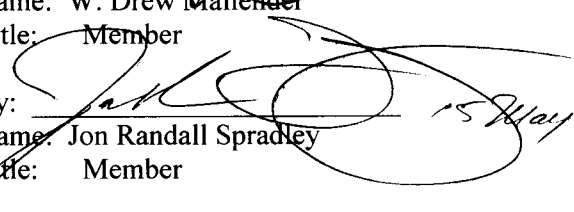
BRV PARTNERS, L.P.,
a Texas limited partnership

By: Lakshmi Group, LLC, a Texas
limited liability company,
its General Partner.

By: Bowie School Redevelopment Partners, Ltd.,
a Texas limited partnership, its Sole Member

By: Bowie School GP, LLC, a Texas
limited liability company, its General Partner

By: 
Name: W. Drew Mallender
Title: Member

By: 
Name: Jon Randall Spradley
Title: Member