

STATE OF TEXAS §

COUNTY OF BRAZOS §

**FIRST AMENDMENT
CHAPTER 380 DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND TRADITIONS
ACQUISITION PARTNERSHIP, LP.**

This First Amendment to the above named Chapter 380 Development Agreement is executed on this the ~~56~~ day of April, 2020, and is made by and between the City of Bryan, Texas, a home-rule municipal corporation ("City") and Traditions Acquisition Partnership, L.P., a limited partnership operating pursuant to the laws of the State of Texas ("TAP").

WHEREAS, the parties entered into the original Agreement on the 20th day of November, 2014 for the development of the Parc at Traditions, a planned development including senior living, commercial, and residential components; and

WHEREAS, TAP and/or it's assigns has completed construction of the project and while the project substantially met with the City Council's expectations with regards to the final product, the improvements to the Property have not achieve the required \$35,000,000 in BCAD value; and

WHEREAS, the City Council finds that the cost to the public of waiving some of the development related fees is still outweighed by the potential benefit of economic drivers such as new jobs, sales tax revenue, and increased property value despite not quite achieving expectations; and

WHEREAS, the City Council has determined that there is sufficient benefit to the City to amend the Agreement in accordance with the terms set forth below; and

NOW, THEREFORE, City and TAP agree as follows:

A. Amendments

1. The parties acknowledge that a total of \$65,200 in fees have been waived pursuant to the Agreement, but no fees were waived in 2019. The parties further acknowledge that the improvements to the Property were valued by BCAD in 2019 at the amount of \$23,143,488, which is only sixty-seven percent (67%) of the \$35,000,000 benchmark.
2. The parties agree to amend the term of the Agreement to extend through June 14, 2021.
3. The parties agree that the benchmark TAP is required to meet by June 14, 2019 is \$30,000,000, and that TAP did not meet said benchmark.
4. The parties agree that in light of the substantial value of the improvements on the Property and the benefits to the citizens of Bryan therefrom, in lieu of a demand for recapture of the full amount of waived fees, TAP shall only be required to pay a proportional amount equal to the shortfall from the benchmark, which is thirty-three percent (33%) or \$21,516.00. TAP will tender this amount within ten (10) business days of the execution of this Amendment. Should TAP fail to comply with this provision, the City is entitled to demand repayment of the full \$65,200.00

B. Reservations

5. All capitalized terms used and/or defined in the Agreement have the same meaning when used in this Amendment.
6. All terms and conditions of the original Agreement remain in full force and effect except where expressly modified herein.

Executed and effective on this the 5th day of May, 2020;
5/5/2021

CITY OF BRYAN:

Andrew Nelson
Andrew Nelson, Mayor

TAP:

Spencer W. Clements
Spencer W. Clements, Vice President

ATTEST:

Mary L. Stratta
Mary Lynne Stratta, City Secretary



APPROVED AS TO FORM:

Thomas Leeper
for Janis Hampton, City Attorney

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**CHAPTER 380 DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND TRADITIONS
ACQUISITION PARTNERSHIP, LP.**

This Agreement is made by and between the City of Bryan, Texas, a home-rule municipal corporation ("City") and Traditions Acquisition Partnership, L.P., a limited partnership operating pursuant to the laws of the State of Texas ("TAP").

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, TAP is under contract to purchase 36 acres of property ("Property"), more specifically described in Exhibit "A", belonging to Bryan Commerce and Development, Inc. ("BCD"), a Texas local government corporation that is an economic development arm of the City; and

WHEREAS, as a precondition necessary to facilitate the sale of the Property from BCD to TAP, it was determined that TAP needed an agreement with the City whereby the City would waive certain development related fees in exchange for TAP's completion of the planned construction, which is determined to be potential economic boon for the City; and

WHEREAS, the City is willing to waive certain development related fees for development of the Property, provided that the planned construction of the commercial/senior living and residential components of the project are completed generally consistent with plans approved by BCD and TAP prior to entering into the purchase and sale agreement for the Property; and

WHEREAS, the City Council finds that the development of the Property, in a manner consistent with the needs and plans of the City, requires the City's participation; and

WHEREAS, the City Council finds that the City as a whole has a need for planned senior living communities, like the one proposed by TAP, and that the construction of such facilities at the Property will spur further development in the area and increase the value of the surrounding property as well; and

WHEREAS, the City Council finds that the cost to the public of waiving the development related fees is outweighed by the potential benefit of economic drivers such as new jobs, sales tax revenue, and increased property value; and

NOW, THEREFORE, City and TAP agree as follows:

A. Fee Waiver

1. When the developer of the Property applies for permits from the City associated with development of the Property, the City agrees to waive building, mechanical, electrical, and plumbing permit fees. The City agrees to waive platting fees, recording fees, impact fees, and parkland dedication fees for the Property as well. The City will keep a running total of all fees waived pursuant to this Agreement. Single-family residential development is not eligible for any waivers listed above. The waivers outlined in this agreement are only applicable to multi-family, commercial and non-single family residential development of the Property, specifically including the senior living facility.

B. Guidelines

2. Development of the Property will be generally based on the assumptions in the appraisal prepared by Holtkamp Realty Consultants, dated November 21, 2013. For the purposes of this agreement, a planned senior living facility is preferred over single-family residential dwelling units; such senior living facility shall be considered a residential land use.
3. Site development of the commercial/senior living component will commence construction within eighteen (18) months following the closing date for the sale of the Property by BCD to TAP.
4. Upon completion of all the improvements within the residential and commercial/senior living components of the Property, the development will achieve an aggregate value of \$35,000,000.00 pursuant to the records of the Brazos County Appraisal District. The Property must have achieved this value within forty-eight (48) months following the closing date for the sale of the Property by BCD to TAP.

C. Term

5. The term of this Agreement shall begin upon execution by both parties and shall end five (5) years following the closing date for the sale of the Property by BCD to TAP, unless terminated sooner as provided herein.

D. Audit, Breach, & Recapture

6. It shall be a breach of this agreement if:
 - a. Development of the commercial/senior living component does not commence within eighteen (18) months; or
 - b. Forty-eight (48) months after the closing date for the sale of the Property by BCD to TAP, the taxable valuation of the Property is less than \$35,000,000.00.
7. In the event of a breach, TAP shall be notified in writing that it is in breach. TAP will have sixty (60) days in which to cure the breach. In the event the breach is uncured, this agreement may be terminated and the City is entitled to payment from TAP equal to the running total of fees that have been waived pursuant to this Agreement.

E. Miscellaneous

8. 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. TAP shall not assign this Agreement without the written approval of the City Manager, such consent not to be unreasonably withheld.

9. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: City Manager
 City of Bryan
 P.O. Box 1000
 Bryan, Texas 77805

If to TAP: Spencer Clements
 Traditions Acquisition Partnership, L.P.
 2100 Traditions Blvd.
 Bryan, Texas 77807

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

17. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
18. Employment of Undocumented Workers. During the term of this Agreement, TAP agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), TAP shall repay to City all Incentives received under this Agreement as of the date of such violation within 120 days after the date TAP is notified by City of such violation, plus interest at the rate of 5% simple interest from the date of TAP's receipt of the Incentive until repaid.

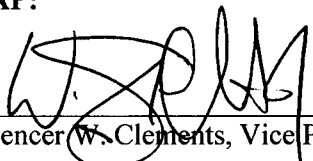
Executed and effective on this the 20 day of November, 2014.

CITY OF BRYAN:



Jason P. Bienski, Mayor

TAP:



W. Spencer W. Clements, Vice President

ATTEST:



Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:



Janis Hampton, City Attorney

EXHIBIT "A"

**METES AND BOUNDS DESCRIPTION
OF A
36.092 ACRE TRACT
JOHN H. JONES SURVEY, A-26
BRYAN, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE JOHN H. JONES SURVEY, A-26, BRYAN, BRAZOS COUNTY, TEXAS. SAID TRACT BEING ALL OF A CALLED 12.487 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO BRYAN COMMERCE AND DEVELOPMENT, INC. RECORDED IN VOLUME 7874, PAGE 166 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALLED 21.401 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO BRYAN COMMERCE AND DEVELOPMENT, INC. RECORDED IN VOLUME 9462, PAGE 14 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, THE REMAINDER OF A CALLED 25.01 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO BRYAN COMMERCE AND DEVELOPMENT, INC. RECORDED IN VOLUME 3989, PAGE 201 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS AND THE REMAINDER OF A CALLED 12.500 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO BRYAN COMMERCE AND DEVELOPMENT, INC. RECORDED IN VOLUME 7874, PAGE 163 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND ON THE SOUTHWEST LINE OF SOUTH TRADITIONS DRIVE (R.O.W. VARIES - 4787/167) MARKING THE EAST CORNER OF COMMON AREA NO. 1, THE TRADITIONS SUBDIVISION, PHASE 10 ACCORDING TO THE PLAT RECORDED IN VOLUME 6838, PAGE 81 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE COMMON LINE OF SOUTH TRADITIONS DRIVE AND SAID REMAINDER OF 25.01 ACRE TRACT FOR THE FOLLOWING CALLS:

S 59° 04' 09" E FOR A DISTANCE OF 103.28 FEET (DEED CALL: S 59° 06' 35" E - 103.46 FEET, 4787/167) TO A 1/2 INCH IRON ROD FOUND;

S 47° 57' 51" E FOR A DISTANCE OF 645.97 FEET (DEED CALL AND MEASURED, 4787/167) TO A 1/2 INCH IRON ROD SET;

S 42° 04' 55" E FOR A DISTANCE OF 117.08 FEET (DEED CALL AND MEASURED, 4787/167) TO A 1/2 INCH IRON ROD SET;

S 57° 57' 21" E FOR A DISTANCE OF 69.15 FEET (DEED CALL AND MEASURED, 4787/167) TO A 1/2 INCH IRON ROD SET;

S 47° 57' 51" E FOR A DISTANCE OF 198.86 FEET (DEED CALL AND MEASURED, 4787/167) TO A 1/2 INCH IRON ROD SET;

S 01° 37' 12" E FOR A DISTANCE OF 27.64 FEET (DEED CALL AND MEASURED, 4787/167) TO A 5/8 INCH IRON ROD FOUND ON THE NORTHEAST LINE OF SAID 12.487 ACRE TRACT;

THENCE: S 47° 57' 54" E ALONG THE NORTHEAST LINE OF SAID 12.487 ACRE TRACT FOR A DISTANCE OF 80.14 FEET (DEED CALL: S 47° 57' 51" E - 80.01 FEET, 4787/167) TO A 1/2 INCH IRON ROD FOUND;

THENCE: CONTINUING ALONG THE COMMON LINE OF SOUTH TRADITIONS DRIVE AND SAID REMAINDER OF 25.01 ACRE TRACT FOR THE FOLLOWING CALLS:

N 86° 32' 01" E FOR A DISTANCE OF 27.81 FEET (DEED CALL: N 86° 32' 04" E - 28.04 FEET, 4787/167) TO A 1/2 INCH IRON ROD SET;

S 47° 59' 17" E, AT 140.15 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID REMAINDER OF 25.01 ACRE TRACT AND SAID 21.401 ACRE TRACT, CONTINUE ON ALONG THE COMMON LINE OF SOUTH TRADITIONS DRIVE AND SAID 21.401 ACRE TRACT FOR A TOTAL DISTANCE OF 168.06 FEET (DEED CALL: S 47° 57' 51" E - 167.99 FEET, 4787/167) TO A 1/2 INCH IRON ROD FOUND MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 455.00 FEET;

THENCE: CONTINUING ALONG THE COMMON LINE OF SOUTH TRADITIONS DRIVE AND SAID REMAINDER OF 21.401 ACRE TRACT FOR THE FOLLOWING CALLS:

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14° 31' 10" FOR AN ARC DISTANCE OF 115.30 FEET (CHORD BEARS: S 40° 47' 10" E - 114.99 FEET) (DEED CALL CHORD: S 40° 42' 34" E - 114.92 FEET, 4787/167) TO A 1/2 INCH IRON ROD FOUND MARKING THE END POINT OF SAID CURVE;

S 33° 26' 50" E FOR A DISTANCE OF 269.76 FEET (DEED CALL: S 33° 27' 40" E - 269.92 FEET, 4787/167) TO A 1/2 INCH IRON ROD FOUND MARKING THE BEGINNING OF A COUNTER-CLOCKWISE CURVE HAVING A RADIUS OF 2045.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08° 23' 48" FOR AN ARC DISTANCE OF 299.69 FEET (CHORD BEARS: S 37° 37' 43" E - 299.43 FEET) (DEED CALL CHORD: S 37° 39' 34" E - 299.42 FEET, 9462/14) TO A 1/2 INCH IRON ROD FOUND MARKING THE EAST CORNER OF SAID 21.401 ACRE TRACT AND A NORTHEAST CORNER OF THE REMAINDER OF A CALLED 198.0559 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM RECORDED IN VOLUME 7988, PAGE 209 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS. SAID IRON ROD FOUND MARKING THE END POINT OF SAID CURVE;

THENCE: S 48° 08' 49" W ALONG THE COMMON LINE OF SAID 21.401 ACRE TRACT AND SAID REMAINDER OF 198.0559 ACRE TRACT FOR A DISTANCE OF 659.11 FEET (DEED CALL: S 48° 08' 32" W - 659.40 FEET, 9462/14) TO A 1/2 INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF SAID 21.401 ACRE TRACT;

THENCE: N 47° 56' 05" W ALONG THE SOUTHWEST LINE OF SAID 21.401 ACRE TRACT, AT

1804.87 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE WEST CORNER OF SAID 21.401 ACRE TRACT AND THE SOUTH CORNER OF SAID REMAINDER OF 12.500 ACRE TRACT, CONTINUE ON ALONG THE SOUTHWEST LINE OF SAID REMAINDER OF 12.500 ACRE TRACT FOR A TOTAL DISTANCE OF 2004.92 FEET TO A 1/2 INCH IRON ROD SET MARKING THE WEST CORNER OF SAID REMAINDER OF 12.500 ACRE TRACT AND THE SOUTHEAST CORNER OF THE REMAINDER OF A CALLED 151.398 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO BRYAN COMMERCE AND DEVELOPMENT, INC. RECORDED IN VOLUME 7874, PAGE 169 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS. FOR REFERENCE, A 1/2 INCH IRON ROD FOUND MARKING THE ORIGINAL WEST CORNER OF SAID 12.500 ACRE TRACT BEARS: S 41° 10' 12" W FOR A DISTANCE OF 49.24 FEET;

THENCE: N 41° 10' 12" E ALONG THE COMMON LINE OF SAID REMAINDER OF 12.500 ACRE TRACT AND SAID REMAINDER OF 151.398 ACRE TRACT FOR A DISTANCE OF 100.35 FEET (DEED CALL BEARING: N 41° 09' 49" E, 7874/163) TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF SAID COMMON AREA NO. 1;

THENCE: N 41° 07' 07" E ALONG THE SOUTHEAST LINE OF SAID COMMON AREA NO. 1 FOR A DISTANCE OF 669.99 FEET (PLAT CALL: N 41° 08' 40" E - 670.07 FEET, 6838/81) TO THE **POINT OF BEGINNING** CONTAINING 36.092 ACRES OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND FEBRUARY, 2014. SEE PLAT PREPARED FEBRUARY, 2014 FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED BY GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502