

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND
CAPITOL FLOORING SERVICE, LLC**

This Chapter 380 Economic Development Agreement (“Agreement”) entered into on this the 9th day of September, 2020 (“Effective Date”) by and between **THE CITY OF BRYAN**, a Texas home rule municipal corporation, acting herein by and through its duly elected City Council, (“City”), and **CAPITOL FLOORING SERVICE, LLC**, a Texas limited liability company (“Company”). Company and City may be referred to herein collectively as “Parties” and individually as a “Party.”

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, article III, section 52–a of the Texas Constitution (“52-a”) expands the constitutional definition of public purpose to include economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce; and

WHEREAS, Chapter 380 of the Texas Local Government Code (“Chapter 380”) was passed to implement the provisions of 52-a; accordingly Chapter 380 permits the governing body of a municipality to establish and provide for the administration of one or more programs, to promote state or local economic development and to stimulate business and commercial activity within the city limits of the municipality; and

WHEREAS, Company has acquired three (3) adjoining parcels of real property in central Bryan, comprising approximately seven (7) acres located at 407 W. 31st St. with Brazos Central Appraisal District (“BCAD”) property ID Numbers 22728, 82057, and 102533 (collectively the “Property”), as more particularly described and depicted on Exhibit A; and

WHEREAS, Company desires to redevelop the Property, by converting the existing, approximately 6,500 square foot warehouse into an event space which may be rented for social functions, and the adjacent single family residence into an accessory facility (providing kitchen, bathrooms, waiting room, etc.) as well as constructing a parking lot (collectively the “Project”); and

WHEREAS, Company shall be required to construct and install certain public infrastructure improvements to serve the Project, listed in Exhibit “B” (collectively, the “Infrastructure Improvements”), including installation of a fire hydrant and upgrading the existing waterline; and

WHEREAS, City shall require oversizing of the existing waterline serving the Property from a (6”) line to an eight-inch (8”) line to improve waterline infrastructure in the area, increase fire protection,

and to better accommodate the proposed development and other future infill redevelopment in the area; and

WHEREAS, to make the Project viable, Company is seeking incentives from the City to include (i) a grant in the form of a reimbursement of fifty percent (50%) of the Company's actual Infrastructure Improvement costs in a total not-to-exceed amount of Thirty-Seven Thousand, Seven Hundred Thirty-Five Dollars (\$37,735.00) (the "Infrastructure Reimbursement Grant"), and (ii) an annual grant in an amount equal to fifty percent (50%) of the tax revenue generated by the increase in ad valorem tax value of the Property and collected by the City in a total aggregate, not to exceed amount of Thirty Thousand Dollars (\$30,000.00) ("Ad Valorem Tax Rebate Grant"); and

WHEREAS, the City Council has determined that it is in the best interests of the City to enter into this Agreement to encourage the redevelopment of the Property, improve public safety, and promote future infill redevelopment in the surrounding area; and

WHEREAS, the City Council finds the Project will expand the ad valorem and sales tax base, create jobs, stimulate business and commercial activity, and spur economic development in the City of Bryan; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional ad valorem tax revenues to the City and additional jobs resulting from the construction of the Project, the City desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code, and other applicable law, as an economic incentive for Developer to develop, finance, and construct the Project; and

WHEREAS, the City Council hereby establishes a Chapter 380 economic development program whereby, subject to the terms and conditions of the Agreement, City will provide economic development incentives to Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement; and

WHEREAS, the City Council has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; 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:

ARTICLE I. TERM

1.1 The term of this Agreement ("Agreement Term") shall commence on the Effective Date and continue through December 31, 2025, unless terminated earlier in accordance with the terms of this Agreement. The Effective Date of this Agreement shall be the date the authorized representative for the City countersigns this Agreement.

ARTICLE II. INFRASTRUCTURE IMPROVEMENTS.

2.1 Company's Obligations:

2.1.1 **Infrastructure Improvements.** Company agrees to design, construct, and install the Infrastructure Improvements in accordance with the City of Bryan Code of Ordinances and the City's Engineering Design Standards and Specifications, at its sole cost and expense, subject to Company's right to a partial reimbursement under the terms and conditions of this Agreement.

2.1.2 **Payment Bond.** Company shall provide or require its construction contractor to provide City with a payment bond for one hundred percent (100%) of the amount of the construction contract for the Infrastructure Improvements, and naming the Company and City as dual obligees (Payment Bond). The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation.

2.1.3 **Performance Bond.** Company shall provide or require its construction contractor to provide City with a performance bond for one hundred percent (100%) of the amount of the construction contract, for the Infrastructure Improvements and naming the Company and City as dual obligees (Performance Bond). The Performance Bond shall remain in full force and effect until acceptance of the Infrastructure Improvements by the City.

2.1.4 **Insurance.** Until final completion and acceptance of the Infrastructure Improvements by the City, Company shall comply with the insurance requirements set forth in **Exhibit "D"**. If Company's policy does not cover the contractor or subcontractor, Company shall require in each construction contract that each contractor comply with the insurance requirements set forth in **Exhibit "D"**.

2.1.5 **Permits and Necessary Approvals.** Prior to commencement of construction of the Infrastructure Improvements, the Company will obtain all permits, licenses, authorizations, variances, and plan approvals necessary to commence construction of the Infrastructure Improvements, including but not limited to the right-of-way work permit; and all requirements in regard to payment and performance bonds and insurance as required in this Agreement must be satisfied. No modification to the design or construction plans shall be made without approval by the City.

2.1.6 **Commencement of Construction of Infrastructure Improvements.** Company shall obtain a right-of-way work permit and commence construction of the Infrastructure Improvements within three (3) months of the Effective Date of this Agreement.

2.1.7 **Final Completion of Infrastructure Improvements.** Company shall complete the construction and installation of the Infrastructure Improvements in accordance with the applicable plans and specifications therefore (the "Final Completion"), within twelve (12) months of the Effective Date of this Agreement.

2.1.8 **Title to Vest.** Upon Final Completion, receipt by the City of an affidavit of all bills paid from Company, and letter of acceptance of the Infrastructure Improvements by the City Engineer, the Infrastructure Improvements shall become the property of the City. Company shall execute such bills of

sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence the City's ownership of such Infrastructure Improvements. 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.

2.1.8 Warranty. Company agrees to provide a warranty in the City's favor for the repair and replacement of faulty work or defective work or materials for a period of one (1) year following the completion of the Infrastructure Improvements.

2.2 **City's Obligations:**

2.2.1 Grant Payment for Infrastructure Improvements. Upon acceptance of the Infrastructure Improvements by the City, Company shall submit a written request to the City for the Infrastructure Reimbursement Grant in an amount equal to fifty percent (50%) of the actual cost of the construction and installation of the Infrastructure Improvements, but in no event shall it exceed Thirty-Seven Thousand, Seven Hundred Thirty-Five Dollars (\$37,735.00), which is fifty percent (50%) of the cost shown in the engineer's estimate attached hereto as **Exhibit "C"**. The written request shall include invoices evidencing the actual cost or it will not be deemed complete. The City shall have the right to require the Company to submit additional information, documents, invoices, receipts or other records to verify the costs of the construction and installation of the Infrastructure Improvements. The City shall pay the Infrastructure Reimbursement Grant within thirty (30) days of receiving a complete request.

ARTICLE I. THE PROJECT

3.1 **Company's Obligations:**

3.1.1 Replat Required. Company shall be required to replat the Property, at its sole cost and expense, prior to commencement of any work on the Project which would require a building permit pursuant to City Ordinances and Codes, as amended, specifically Chapter 110 of the City of Bryan Code of Ordinances.

3.1.2 Project Plans. While specific plans for the Project may change, at a minimum, the Company shall repair and convert the approximately 6,500 square foot warehouse into an event space which may be rented for social functions and the adjacent single family residence into an accessory facility (providing kitchen, bathrooms, waiting room, etc.) as well as constructing a parking lot.

3.1.3 Applicable Rules, Regulations, and Policies. Company shall construct the Project in accordance with all terms of this Agreement and all applicable City ordinances, rules, regulations, policies, and applicable state and federal laws; and

3.1.4 Project Completion. Company shall "Complete Construction of the Project", meaning obtain a final certificate of occupancy for the Project, which shall include both the warehouse and accessory facility renovation, and the construction of the parking lot, within twenty-four (24) months of the Effective Date of this Agreement.

3.1.5 Required BCAD Taxable Value. The Property must achieve an assessed taxable value, excluding onsite business personal property, as certified by the Brazos County Appraisal District (hereinafter "BCAD Taxable Value"), of at least Five Hundred Thousand Dollars (\$500,000.00) in any given tax year during the Agreement Term, to be eligible for an Ad Valorem Tax Rebate Grant for that tax year.

3.1.6 No Tax Delinquency. During the Agreement Term, Company shall not allow the ad valorem taxes owed to City on the Property, or any property owned by Company 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 Company fail to render for taxation any property owned by Company and located within the City of Bryan.

3.2 City's Obligations:

3.2.1 Ad Valorem Tax Rebate Grant. After Completion of Construction of the Project and acceptance of the Infrastructure Improvements by the City, each year in which the Property achieves a BCAD Taxable Value of at least Five Hundred Thousand Dollars (\$500,000.00), and after ad valorem taxes on the Property are paid, the Company may submit a written request for an Ad Valorem Tax Rebate Grant, in an amount equal to fifty percent (50%) of the ad valorem tax revenue generated from the Increased Value on the Property. The term Increased Value means the BCAD appraised value of the Property for a given year, less the One Hundred Thirty-Five Thousand, Five Hundred Eighty-Nine Dollar (\$135,589.00) 2019 base line year BCAD Assessed Taxable Value.

3.2.2 Deadline To Request Annual Grant. Company shall submit its written request and supporting documentation for an Ad Valorem Tax Rebate Grant no later than October 1st, following the end of the tax year for which the Ad Valorem Tax Rebate Grant applies, or the grant payment for that given year is waived. City is not obligated to request an application or the required supporting documentation, and will not issue the grant payment without same.

3.2.3 Grant Payment. City shall pay the Ad Valorem Tax Rebate Grant within thirty (30) days of receipt of a complete and valid application. The total aggregate amount of the Ad Valorem Tax Rebate Grant payments during the Agreement Term shall not exceed Thirty Thousand Dollars (\$30,000.00).

ARTICLE IV. INDEMNIFICATION.

4.1 **Company does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City, and all of its 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 Company, its officers, agents, or employees arising out of or in connection with the performance of this Agreement, and Company will at its own cost and expense defend and protect the City from any and all such claims and demands. Such indemnities shall apply whether the claims, losses, damages, suits, demands or**

causes of action arise in whole or in part from the negligence (but not the gross negligence or intentional misconduct)of the City, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by Company to waive all claims, release, indemnify, defend and hold harmless the City from the consequences of the City's own ordinary negligence (but not gross negligence or intentional misconduct), whether that negligence is a sole or concurring cause of the injury, death or damage. 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 Company or any contractor or subcontractor under workman's compensation or other employee benefit acts

ARTICLE V. ACCESS TO BOOKS AND RECORDS

5.1 Company agrees to provide the City, or its designees, reasonable access during business hours to examine the books and records related to the costs and the construction of the Infrastructure Improvements and any considerations, incentives, and performance requirements stated in this Agreement. Company shall maintain all books and records related to the Company's performance of its obligations under this Agreement for a period of four years from the termination of this Agreement.

ARTICLE VI. DEFAULT, REMEDIES & TERMINATION

6.1 Breach. In the event of a breach of the terms of this Agreement by either Party, the non-breaching Party may tender written notice of such breach.

6.2 Cure Period. The breaching Party shall have thirty (30) days from the date of receipt of such notice in which to cure the breach. The Parties may agree to extend this time, but such agreement must be in writing, signed by both Parties.

6.3 Remedies and Termination. If a breach is not cured as provided above, the breaching Party is in default. The non-defaulting Party may, at its option, pursue any remedies it may be entitled to, at law or in equity, in accordance with applicable law, without the necessity of future notice to or demand upon the defaulting Party. Without limiting the forgoing, if a defaulting Party fails to cure a default within the thirty (30) day cure period, then the non-defaulting Party shall have the right to terminate this Agreement effective immediately by delivering written notice on the defaulting Party,

ARTICLE VII. MISCELLANEOUS

7.1 Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Company agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("*Undocumented Worker*"). During the term of this Agreement, Company shall notify City of any complaint brought against Company alleging that Company has employed Undocumented Workers. If Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Company to the City not later than the 120th day after

the date the City notifies Company of the violation. Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Company contracts.

7.2 HB 1295 Compliance. Section 2252.908 of the Texas Government Code requires that for certain types of contracts, you must fill out a conflict of interest form ("Disclosure of Interested Parties") at the time you submit your signed contract to the District. For further information please go to the Texas Ethics Commission website via the following link.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

7.3 No Boycotts of Israel. Company represents and warrants, for purposes of Chapter 2270 of the Texas Government Code, that at the time of execution and delivery of this Agreement, neither the Company, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Company, boycotts Israel. Company agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Company, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Company, will boycott Israel during the term of this Indenture. The terms "boycotts Israel" and "boycott Israel" as used in this clause has the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code.

7.4 Foreign Business Engagements. Company represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the Company, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Company, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is an Owner listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

7.5 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. Company shall not assign this Agreement without the written approval of the City Council.

7.6 Severability. If any term of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such term shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining terms of this Agreement shall not be affected thereby, and in lieu of such deleted terms, there shall be added as part of this Agreement a term that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted term.

7.7 Texas Law to Apply. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Brazos

County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Brazos County, Texas.

7.8 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.

7.9 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.

7.10 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.

7.11 No Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

7.12 Notices. Any notices required to be provided pursuant to this Agreement are deemed provided within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested, or on the day of transmission by email, provided the sender has received a confirmation of such electronic transmission, or when hand delivered to the address provided herein; subject to the right of either Party to designate a different address by notice given in the manner just described. City and Company 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
300 S. Texas Avenue
Bryan, Texas 77803
Email:

COMPANY
Roger Villanueva, Owner
100 E. 32nd St.
Bryan, Texas 77803
Email:

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

7.14 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.

7.15 Duplicate Originals. The Parties may execute this Agreement in duplicate originals, each of equal dignity.

7.16 Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

7.17 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.

7.18 Current Revenues. The payment obligations of the City pursuant to this Agreement are subject to annual appropriation for same by the City Council, and in the event that the City Council fails to appropriate funds, this Agreement shall terminate automatically at the beginning of the fiscal year for which funds are not appropriated.

7.19 Authority of Signatory. The persons signing on behalf of each of the Parties to this Agreement represent that they each have the authority to bind their respective Party to this Agreement.

7.20 Exhibits. Each of the following exhibits is attached hereto and incorporated herein by this reference:

- Exhibit "A" The Property.
- Exhibit "B" Infrastructure Improvements
- Exhibit "C" Engineer's Estimate
- Exhibit "D" Insurance Requirements

[Signature Page to Follow]

Executed to be effective as of the 9th day of September, 2020.

CITY OF BRYAN, TEXAS

CAPITOL FLOORING SERVICES, LLC.

Andrew Nelson
Andrew Nelson, Mayor

Roger Villanueva
Roger Villanueva, Managing Member

ATTEST:

Mary L. Stratta
Mary Lynne Stratta, City Secretary



APPROVED AS TO FORM:

Janis Hampton
Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF BRAZOS }

This instrument was acknowledged before me on the 24th day of July, 2020 by Roger Villanueva, the managing member of Capitol Flooring Services, LLC, a Texas limited liability company, on behalf of said limited liability company.

Melanie Tigerina
Notary Public, State of Texas

My Commission expires:
01/08/2024



