

RESOLUTION NO. 2017-119R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A THIRD ADDENDUM TO THE CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH HUMPTY DUMPTY SSM, LTD. IN CONNECTION WITH THE REDEVELOPMENT OF SPRINGTOWN SHOPPING CENTER WHICH AMENDS THE AGREEMENT BY PROVIDING WAIVERS OF CERTAIN EXTERIOR BUILDING MATERIAL AND DESIGN STANDARDS FOR THE VERTICAL MIXED USE (VMU) PORTION OF THE DEVELOPMENT AND ALLOWING CERTAIN DEVELOPMENT WAIVERS TO EXTEND BEYOND THE TERM OF THE AGREEMENT; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE THIRD ADDENDUM; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Third Addendum to Chapter 380 Economic Development Incentive Agreement with Humpty Dumpty SSM, Ltd. (the "Third Addendum") is hereby approved.

PART 2. The Interim City Manager is authorized to execute the Third Addendum on behalf of the City.

PART 3. This resolution shall be in full force and effect from and after its passage.

ADOPTED on August 1, 2017.



John Thomaides
Mayor

Attest:



Jamie Lee Case
City Clerk

THE STATE OF TEXAS §
COUNTY OF HAYS §

RECITALS

A. City and Owner entered into a Chapter 380 Economic Development Incentive Agreement dated effective as of July 21, 2015 ("**Original 380 Agreement**") related to the redevelopment of the Springtown Shopping Center bounded by IH-35 North, Thorpe Lane, and Springtown Way (the "**Site**") within the full purpose limits of the City.

B. City and Owner subsequently executed that certain (i) Addendum to Chapter 380 Economic Development Incentive Agreement, acknowledged by the City on November 22, 2016, and (ii) Second Addendum to Chapter 380 Economic Development Incentive Agreement acknowledged by the City on December 29, 2016 (the Original 380 Agreement, the Addendum and the Second Amendment are referred to herein collectively as the “**380 Agreement**”).

C. City and Owner desire to further amend and supplement the 380 Agreement as further set forth in this Addendum.

AGREEMENT

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated herein and made a part of this Addendum for all purposes.
2. **Effect of Addendum.** City and Owner agree that the provisions of the 380 Agreement, as supplemented by this Addendum, will apply to the entire Site. In the event of any conflict between the 380 Agreement and this Addendum, the terms of this Addendum will control. It is understood and agreed that upon the mutual execution and delivery of this Addendum, the provisions hereof shall be incorporated into and made part of the 380 Agreement. City and Owner further ratify and confirm that the 380 Agreement, as modified by this Addendum, is in full force and effect.

3. **Owner.** The term “**Owner**” in the 380 Agreement means **HUMPTY DUMPTY SSM, LTD.**, a Texas limited partnership. The rights, benefits, interests, duties, and obligations of Owner in the 380 Agreement will not automatically transfer upon the conveyance of all or a portion of the Site and may only be transferred in accordance with an assignment permitted pursuant to Section 8.03 of the 380 Agreement.
4. **Amendment of Section 4.07.** Section 4.07 is hereby amended to read as follows:

Section 4.07. Waiver of Certain Land Development Code Requirements. The City waives certain standards of the LDC as set forth in the table below:

Standard	Section	Applicable Zoning Designation	Intent
Impervious Cover, Max %	Table 4.1.6.1	GC, VMU	Existing conditions on Site are permitted to continue.
Required Landscape Area	6.1.1.4	GC, VMU	Existing conditions on Site are permitted to continue.
Sidewalks	7.4.2.3	GC, VMU	Existing conditions permitted to continue. Enhanced pedestrian connectivity shall be provided throughout the Site.
Parking Area Screening	6.1.2.2	GC	Existing conditions on Site are permitted to continue. VMU portion of the Site will meet code requirements.
Lighting and Glare Standards	6.5.2.1(d)	GC	Existing conditions on Site are permitted to continue. VMU portion of the Site will meet code requirements.
Material Standards	4.4.2.1(c),	GC	Existing conditions on Site are permitted to continue.
<u>Material Standards</u>	<u>4.4.2.1(c).</u> <u>4.4.3.2(2)</u>	<u>VMU</u>	VMU portion of the Site will meet code requirements, except that the requirements under Section 4.4.2.1(c) and Section 4.4.3.2(2)(b) are partially waived for the limited purpose of allowing exterior metal panels and tile in strict conformance with the plans and specifications in Exhibit “D.” The Director of Planning and Development Services, however, may approve minor deviations of up to 10 feet or 10 percent, as applicable, from the quantities, placement or dimensions of exterior materials or architectural features shown in Exhibit “D” when the deviation is necessary, in the Director’s sole opinion, to satisfy applicable building codes.

			Additionally, Section 4.4.3.2(2) is waived for the limited purpose of allowing the pre-cast parking structure to be designed and constructed in substantial conformance with the elevations shown in Exhibit "E."
Minimum Rear Yard Setback	4.2.2.7(d)3	GC	Waive rear yard setback for Lot D only (Chuy's).
Minimum Rear Yard Setback	4.2.2.2(d)(1)	VMU	Waive rear yard setback for VMU portion of site only (<i>IH 35 frontage designated as front of lot</i>).
Parking Locations	4.2.2.2(d)(5) 4.4.3.2(1)(c)(ii) 6.2.1.2(f) 6.2.1.2(i)	VMU	Existing conditions on Site are permitted to continue. Waive location requirements to facilitate shared parking between GC and VMU portions of the Site.
Site Design	4.4.3.2(1)(a) 4.4.3.2(1)(b)	VMU	Waive MF Design Standards for block structure and building location.
Lighting	4.4.3.2(1)e	VMU	Waive lighting standards only for VMU portion of the Site where existing conditions will not be changed. If existing lighting structures are demolished or damaged in an amount that exceeds 50 percent of the value of the structure, then the lighting structure must be rebuilt or replaced in accordance with then current ordinances.
<u>Protruding Balcony</u>	<u>4.4.3.2(2)(d)</u>	<u>VMU</u>	Waive requirement that balcony must be within the footprint of the building, but only to allow eight balconies to project no more than three and one-half feet beyond the building footprint along the west facade of the building as shown in Exhibit "D."

Except as specifically stated above, the City grants no other waivers of requirements under the LDC, including the Multifamily Residential Design Standards under Section 4.4.3.1.

Notwithstanding the foregoing waivers, it is understood and agreed by the Owner that: (i) existing sidewalks shall either remain, subject to periodic repair and replacement, or may be realigned as necessary to facilitate development of the Site; (ii) the total existing landscaped area within the Site may be rearranged, but shall not be decreased; (iii) a minimum of 1,000 vehicular parking spaces shall be provided on the Site.

The Site will be redeveloped in a similar manner to the Class "A" projects referenced in Section 3.01. Enhanced vehicular and pedestrian connectivity will be provided throughout the Site as well as other features including but not limited to: bicycle

parking, street furniture, trash and recycling receptacles, landscape planters and trees at regular intervals.

5. **Addition of Exhibit Regarding Exterior Materials.** A new Exhibit “D” and Exhibit “E” are hereby added to the 380 Agreement for the purpose of providing the specifications and plans that establish the parameters under which specific exterior building materials may be used and dimensions adjusted pursuant to the waiver of Section 4.4.2.1(c) and Sections 4.4.3.2(2) of the LDC added by paragraph 4 of this Addendum. The new Exhibit “D” and Exhibit “E” are attached to this Addendum and incorporated herein.
6. **Amendment of Section 5.07 to Clarify Duration of Waivers.** Section 5.07 is amended to read as follows:

Section 5.07. Status of Signs and Waivers Upon Termination.

a. Generally. Upon expiration of the Term, or earlier termination of this Agreement, the Owner agrees that, except as otherwise provided herein, the waivers of standards under the LDC granted by this Agreement shall automatically expire and all uses, signs or improvements occurring or installed after the date of termination shall be in accordance with the provisions of the LDC or successor ordinances and regulations then in effect. However, any active land uses, including conditional uses, together with any existing improvements on the Site originally allowed under this Agreement, if inconsistent with the zoning ordinances and standards in effect on or after the date of expiration of the Term or earlier termination, will be allowed to continue or remain as legally nonconforming uses and structures, subject to then applicable ordinances regarding changes to legally nonconforming uses and structures and applicable terms of any associated conditional use permits.

b. Continuation of Certain Waivers in VMU Lot. Notwithstanding the limitations on waivers in subsection a immediately above, the waivers for Site Design, Impervious Cover, Max %, and Minimum Rear Yard Setback set forth in the table under Section 4.07 will continue to run with the land beyond the end of the Term or earlier termination of this Agreement, in the portion of the Site presently zoned as Vertical Mixed Use District (VMU)._

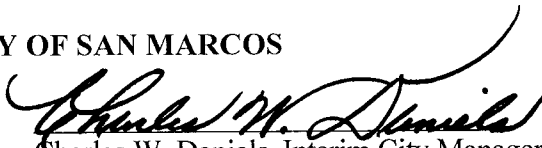
[SIGNATURES FOLLOW ON NEXT PAGE]

EXECUTED to be effective as of the Effective Date set forth above.

CITY:

CITY OF SAN MARCOS

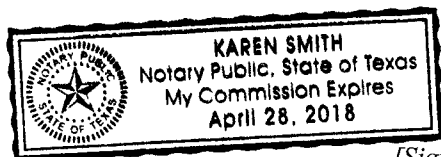
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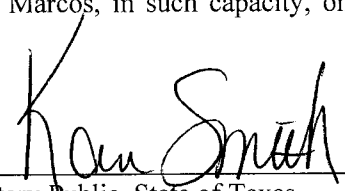

Charles W. Daniels, Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF HAYS §

This instrument was acknowledged before me on this 3rd day of August, 2017, by Charles Daniels, Interim City Manager of the City of San Marcos, in such capacity, on behalf of said municipal corporation.





Notary Public, State of Texas

[Signatures continue on next page]

OWNER:

HUMPTY DUMPTY SSM, LTD.,
a Texas limited partnership

By: EGP Retail Management, L.L.C.,
its general partner

By: *[Signature]*

Name: Bryce Miller

Title: EVP

ACKNOWLEDGMENT

STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on this 3 day of AUGUST, 2017, by BRUCE MILLER, EVP of EGP Retail Management, L.L.C, general partner of Humpty Dumpty SSM, Ltd., a Texas limited partnership, on behalf of said entities.



Kelly Malley

Notary Public, State of Texas

8/1/18