

RESOLUTION NO. 2016-139R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN 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 TO, AMONG OTHER THINGS, ALLOW MULTIFAMILY RESIDENTIAL USES ON THE PROJECT SITE; AND DECLARING AN EFFECTIVE DATE.

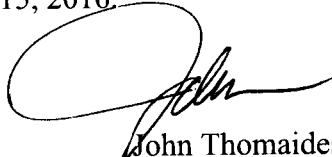
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

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

PART 2. The City Manager is authorized to execute the Agreement on behalf of the City.

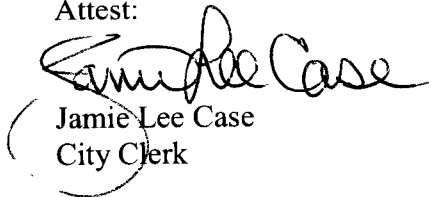
PART 3. This resolution shall be in full force and effect from and after its passage.

ADOPTED on November 15, 2016.



John Thomaides
Mayor Pro Tem

Attest:



Jamie Lee Case
City Clerk

**ADDENDUM TO CHAPTER 380 ECONOMIC
DEVELOPMENT INCENTIVE AGREEMENT**

THE STATE OF TEXAS §
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COUNTY OF HAYS §

This Addendum to Consent and Development Agreement (this “Addendum”) is entered into between the between the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and Humpty Dumpty SSM, Ltd. (the “Owner”).

RECITALS

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

B. Owner may seek a rezoning for all or a portion of the Site to the City’s “Vertical Mixed Use (VMU)” zoning designation so that different land uses are permitted in Springtown.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are 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 all or a portion of the Site in the event City approves “Vertical Mixed Use (VMU)” zoning for all or a portion of the Site and Owner sends written notification to City for the terms and conditions of this Addendum to apply to such portion of the Site. In the event of any conflict between the 380 Agreement and this Addendum, the terms of this Addendum will control.
3. **Site Redevelopment.** *Section 3.01* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

3.01 Site Redevelopment. Owner shall redevelop the site as a Class “A” mixed-use center with compatible architectural, landscaping and signage standards throughout the project. A Class “A” development is commonly known to include new or refurbished buildings with modern infrastructure located in prime locations with good access and professionally managed. Permitted land uses for the project include but are not limited to: multifamily, office, and retail. The redeveloped site will have a tenant mix and finished building, landscape, parking and site improvements designed to attract a tenant mix of users, similar in character to that within the existing developments at 1890 Ranch in Cedar Park, Texas, University Oaks in Round Rock, Texas, and Southpark Meadows in Austin, Texas.

Storage rental facilities shall be permitted at Springtown, within the former Target building, provided that access to such facility is taken only from the building frontage adjacent to the railroad right-of-way. No outside storage shall be permitted.

The south- and west-facing exterior façades of the building used for storage rental facilities shall include substantial material change; windows or doors; or architectural expression features that mitigate the visibility of large, monotonous expanses of undifferentiated building mass (blank wall areas greater than 35 feet in either a vertical or horizontal direction) from the public right-of-way, provided that such material change shall not be required for portions of the building more than 53 feet from the south-west corner of the building.

4. **Capital Investment.** *Section 3.02* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

3.02 Capital Investment. The Owner, or an affiliate that is wholly owned or controlled by Endeavor Real Estate Group, shall make a capital investment for redevelopment of the Site, including land acquisition cost, and all land development costs, of at least \$52,500,000.00 if the project includes a purpose-built student housing component, or at least \$27,500,000.00 if the project does not include a purpose-built student housing component. This investment shall be verified by actual receipts for costs expended by the Owner, together with associated invoices or other documentation, such as HUD-1 Settlement Statements, provided to the City by the Owner. For purposes of this Agreement, land development costs are customary costs and expenses incurred by the Owner for land acquisition, architectural, engineering and construction management services, building demolition and demising, new construction, exterior improvements, parking lot improvements, landscape improvements, signage, and the Owner contribution to interior and exterior improvements for tenants within the Site. For purposes of this Agreement, land development costs shall not include, inventory, leasing or real estate sales commissions or interest carry.

5. **Tenant Capital Investment.** *Section 3.03* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

3.03 Tenant Capital Investment. The Owner shall facilitate capital investment by tenants on the Site, including all land development costs, currently estimated to be approximately \$3,500,000.00. The tenants on the Site are not parties to this Agreement and the Owner does not have access to or control over each tenant's capital investment expenditures.

6. **Sign Installation.** The following language is hereby added to the end of *Section 3.04* of the 380 Agreement:

For the avoidance of any doubt, the provisions of Section 3.04 shall apply equally to the portion of the site zoned VMU. Commercial tenants within the VMU portion of the site shall have the ability to occupy space on one or more of the signs in Exhibit "B," provided that the installation of such signs shall comply with the requirements of all City of San Marcos processes, approvals, procedures, ordinance, rules, regulations and standards governing the installation of signs.

7. **Ten Year Payment Period.** *Section 4.02* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

Beginning as soon as the calendar year 2016, but not later than calendar year 2020, the Owner may apply for up to ten (10) consecutive annual Grant Payments. Upon application by the Owner, the City shall make such Grant Payments to the Owner, in accordance with the following schedule:

Year	Additional Property Taxes %	Additional Sales Taxes %
1	100	90
2	100	90
3	80	80
4	80	80
5	60	60
6	60	60
7	40	40
8	40	40
9	20	20
10	20	20

As an example, if Year 1 is 2019, the Owner could apply for and receive a Grant Payment in an amount equal to 100 percent of the Additional Property Taxes and 90 percent of the Additional Sales Taxes generated on the Site in 2018, with subsequent Grant payments similarly being made according to the percentages above. With each application for a Grant Payment, the Owner shall provide to the City a compliance certificate, as described in the 380 Agreement.

8. **Reduction in Grant Payments.** *Section 4.03* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

4.03 Reduction in Grant Payments. In the event that the Owner's capital investment, as defined in Section 3.02, is less than \$52,500,000.00, the annual Grant Payments to the Owner will be reduced proportionate to the percentage of capital investment that can be verified by actual receipts provided to the City by the Owner. For example, if the maximum possible Grant Payment in Year 1 was \$1,000,000.00 and the Owner met the target capital investment of \$52,500,000.00, then the maximum possible Grant Payment to the Owner would be \$1,000,000.00. If, however, the Owner's capital investment was only \$49,875,000.00, which is 95 percent of the required capital investment, then the Grant Payment to the Owner would be reduced by five percent resulting in a Grant Payment of \$950,000.00. If the Owner subsequently meets the minimum capital investment requirement, the Owner will be eligible to receive the maximum possible annual Grant Payment for any years after the year in which the capital investment target is satisfied (but, there shall be no retroactive payments to offset any prior reduced Grant Payments).

Notwithstanding the requirements of Section 4.02, Owner shall not be eligible to receive Grant Payments for that portion of the property developed and used as purpose built student

housing. In the event purpose built student housing is constructed within a building with one or more other uses, then the uses other than student housing shall be eligible to receive Grant Payments proportionate to the ad valorem and sales tax revenues associated with the other uses. Similarly, Owner shall not be eligible to receive Grant Payments for any improvements within any area having a VMU zoning designation associated with a Bar, defined as a facility that prepares and sells food and drink that has alcoholic beverage sales in excess of 50% of total annual sales.

9. Waiver of Certain Land Development Code Site Development Requirements. *Section 4.07* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

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	GC	Existing conditions on Site are permitted to continue. VMU portion of the Site will meet code requirements. If existing buildings or structures are demolished or damaged in an amount that exceeds 50 percent of the value of the building or structure, then the building or structure must be rebuilt in accordance with then current ordinances.
Minimum Rear Yard	4.2.2.7(d)3	GC	Waive rear yard setback for Lot D only (Chuy's).
Minimum Rear Yard	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.
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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.

10. Student Leases. Residential leases for occupancy in any purpose built student housing development within the Site that are executed and effective before issuance of certificates of occupancy enabling the tenant to occupy the premises shall include a Late Delivery Provision clause providing as follows: “In the event the Leased Premises are unavailable for occupancy on or before the commencement date of this Lease, Landlord shall offer Tenant the choice of: a) accepting temporary, safe, decent, and sanitary housing, provided by Landlord, at an alternate location within the City of San Marcos, or within a seven mile radius of the Site, with Tenant remaining bound by the terms of the Lease, or b) terminating the Lease with no financial penalty and with full reimbursement to Tenant of all deposits and pre-paid items within 10 days.” Before execution of any such leases, Owner or Owner’s assignee operating the residential development shall first provide a copy of its form lease to the City for review and approval consistent with this paragraph.

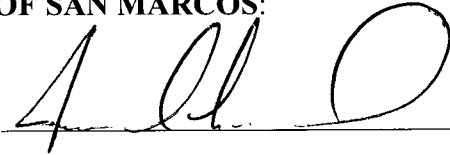
11. Assignment. *Section 8.03* of the 380 Agreement is hereby deleted in its entirety and replaced with the following:

8.03. Assignment; Successors. Owner may assign this Agreement in whole or in part only with the advance written consent of the City, except that Owner may assign this Agreement in whole or in part to an affiliate that is wholly owned or controlled by Endeavor Real Estate Group (“EREG”) by providing written notice to the City. Upon such assignee’s written assumption of such assignment, Owner shall be released from any further obligations arising from that assignment.

[SIGNATURES ON NEXT PAGE]

EXECUTED to be effective as of the Effective Date.

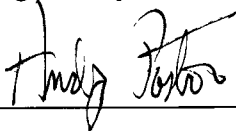
CITY OF SAN MARCOS:

By: 

Jared Miller, City Manager

HUMPTY DUMPTY SSM, LTD.:

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

By: 

Name: Andy Pastor

Title: EVP

ACKNOWLEDGMENTS

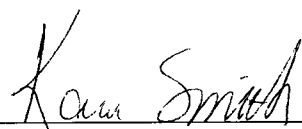
THE STATE OF TEXAS §

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COUNTY OF HAYS §

This instrument was acknowledged before me on the 22 day of November, 2016, by Jared Miller, City Manager of the City of San Marcos, in such capacity, on behalf of said municipal corporation.



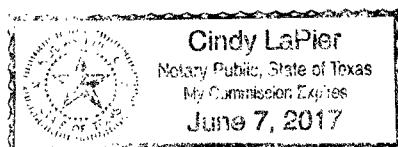

Notary Public, State of Texas


THE STATE OF TEXAS §

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COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 5 day of December, 2016, by Andy Pastor, EVP of EGP Retail Management, L.L.C., general partner of Humpty Dumpty SSM, Ltd., in such capacity, on behalf of said entity.




Notary Public, State of Texas



December 8, 2016

Ms. Elizabeth Trevino
c/o City of San Marcos City Clerk's Office
630 East Hopkins Street
San Marcos, TX. 78666

Re: Addendum to 380 Economic Development Agreement

Dear Ms. Trevino,

Enclosed you will find a fully executed copy of the agreement between the City of San Marcos and Humpty Dumpty SSM, Ltd that was adopted by the San Marcos City Council on November 15, 2016. Please give me a call with any questions or comments. Otherwise enjoy your holiday season.

Best regards,

A handwritten signature in black ink that reads "Buck A. Cody".

Buck A. Cody
Endeavor Real Estate Group
512.682.5574
bcody@endeavor-re.com