

CITY OF BAYTOWN / KSTX BAYTOWN, LLC
CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Chapter 380 Economic Development Agreement ("Agreement") is made and entered into by and between KSTX Baytown, LLC, a Texas limited liability company qualified to do business in Texas, its successors and assigns ("DEVELOPER") and the CITY OF BAYTOWN, TEXAS, a home rule city and municipal corporation ("CITY").

RECITALS

WHEREAS, as part of the Project, the CITY seeks to induce DEVELOPER to cause the creation and/or retention of at least 135 FTE jobs in connection with the operations of Kroger Marketplace at the Project site in the corporate limits of Baytown, Texas, which jobs will promote state and local economic development and stimulate business and commercial activity within the corporate limits of Baytown; and

WHEREAS, as part of the Project, the CITY seeks to induce DEVELOPER to invest at least \$21,000,000 by December 31, 2015, in real property improvements, new equipment and machinery, at its site or sites within the corporate limits of Baytown; and

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and DEVELOPER agree as follows:

I.
Authority

- 1.01 CITY. The CITY's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the CITY.

- 1.02 DEVELOPER. DEVELOPER'S execution and performance of this Agreement constitutes a valid and binding obligation of DEVELOPER. The CITY acknowledges that DEVELOPER is acting in reliance upon the CITY'S performance of its obligations under this Agreement in making its decision to invest its funds and expand employment in Baytown.

II. Definitions

- 2.01 “Project”: A new shopping center with approximately 170,000 square feet of new retail shops and anchored by a 120,000 square-foot Kroger Marketplace on Garth Road at the approximate location delineated in Exhibit “A,” which is attached hereto and incorporated herein for all intents and purposes.
- 2.02 “Effective Date” is April 10, 2014.
- 2.03 “FTE” means full-time equivalent employee working 35 hours per week at the Kroger Marketplace. FTE’s shall be quotient of the total numbers of hours worked per week by all employees at the Kroger Marketplace divided by 35 hours.
- 2.04 “Program” means the economic development program for this Project established by the CITY pursuant to Texas Local Government Code Chapter 380 to promote local economic development and stimulate business and commercial activity within the CITY.
- 2.05 “HCAD” means the Harris County Appraisal District or its successor.
- 2.06 “Annual Sales Taxes Collected at the Project” means the actual amount of the 1% sales and use taxes authorized by Section 321.101(a) of the Texas Tax Code and received by the City for sales at the Project during the previous twelve months, including those monies received after the collection period because of delinquency or protest.
- 2.07 “Annual Sales Taxes Collected at Previous Site” means the actual amount of the 1% sales and use taxes authorized by Section 321.101(a) of the Texas Tax Code and received by the City for sales at the Kroger located at 4533 Garth Road, Baytown, Harris County, Texas, during the year ending December 31, 2014.
- 2.08 “Incremental Annual Sales Taxes Collected” means the difference between the Annual Sales Taxes Collected at the Project and the Annual Sales Taxes Collected at Previous Site.
- 2.09 “Reimbursement Term” means the ten (10) year period beginning on January 1, 2016 and ending on January 1, 2026. The issuance of the C.O. for the Project is projected to be 4th Quarter, 2015. Thus, the reporting and reimbursement on taxable sales for calendar years of 2016 and 2026 will be pro-rated accordingly and as follows: Four (4) months for calendar year 2015 and four (8) months for calendar year 2025, ending on 4th Quarter, 2026.

III. DEVELOPER Obligations

- 3.01 Creation of Jobs.
Between the Effective Date and one year after the date the certificate of occupancy is issued for the Kroger Marketplace, DEVELOPER will cause the creation and/or retention

of at least 135 FTE jobs at the Kroger Marketplace, which shall be maintained for the term of this Agreement. In the event of a voluntary or involuntary termination or elimination of a job after the date of the issuance of the certificate of occupancy for the project that causes the number of FTE's to fall below 135, DEVELOPER shall continue to receive the incentives set out in Section 5.01 below, provided the required number of FTE's is re-established within one hundred twenty (120) days after the date of the termination or elimination that caused the FTE's to fall below 135. For purposes of this Agreement, the creation of jobs may be completed at the Project by outside parties other than the Developer.

3.02 Creation of Taxable Value. Between the effective date of this Agreement and January 1, 2016, DEVELOPER will cause to be constructed the Project with a taxable value of at least \$15,000,000, as assessed by HCAD. The property must maintain a taxable value of at least \$15,000,000 for the term of this Agreement.

3.03 Certificate of Compliance and Inspection.

(a) DEVELOPER shall annually deliver to the CITY a Certificate of Compliance, at the time that DEVELOPER delivers to the CITY the annual Property Tax Notice, utilizing the form attached as Exhibit B. The form is subject to revision by the CITY in its sole discretion.

(b) In the Certificate of Compliance, DEVELOPER shall warrant to the CITY whether it is in full compliance with each of its obligations under this Agreement, including the number of FTE jobs maintained by DEVELOPER for the preceding year pursuant to Section 3.01 above.

(c) The CITY, and/or its representative(s), has the right to inspect only such pertinent records of DEVELOPER as are reasonably necessary to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two week's notice in writing to DEVELOPER. DEVELOPER shall make copies of the pertinent records available to the CITY at the Project site or deliver them directly to the City.

3.04 Failure to Meet Obligations. In the event that DEVELOPER fails to fulfill its obligations under the performance guidelines contained in this Article III, after receipt of notice and expiration of the cure period described in Section 5.03 below, the CITY may, at its option, terminate this Agreement, whereupon DEVELOPER shall be required, as the City's sole and exclusive remedy, to reimburse the CITY within 30 days for payments made by the CITY pursuant to this Agreement in accordance with the following:

Year of Non-Compliance	Percentage to be Reimbursed
2016	100%
2017	100%
2018	90%

Year of Non-Compliance	Percentage to be Reimbursed
2019	80%
2020	70%
2021	60%
2022	50%
2023	40%
2024	30%
2025	20%
2026	10%

**IV.
CITY Obligations**

4.01 Economic Development Grant.

- (a) The CITY shall pay to the DEVELOPER an economic development grant in the form of periodic payments made solely from Incremental Annual Sales Taxes Collected pursuant to Chapter 380 of the Texas Local Government Code, an amount not to exceed TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00) (the “Economic Development Grant”). The Economic Development Grant is comprised exclusively of the Incremental Annual Sales Taxes Collected, which grant expires ten (10) years from the date of the certificate of occupancy for the Project unless the agreement is earlier terminated. The payments upon termination shall be in accordance with the reimbursement terms set forth in section 3.04. The DEVELOPER understands and agrees that the CITY is not certifying or otherwise encumbering any funds for the Economic Development Grant and does not have any monies for the same. The DEVELOPER agrees not to make any claims against the CITY for any monies other than those from the Incremental Annual Sales Taxes Collected.

- (b) The Incremental Annual Sales Tax Collected shall be paid in annual installments beginning fourteen months after the date the Kroger Marketplace store opens to the public. The CITY shall have the right to pay the Incremental Annual Sales Tax collected more frequently than annually. If this Agreement is not terminated prior to the expiration of the term of this Agreement, the final payment to the DEVELOPER, subject to the maximum amount, shall be that portion of the Incremental Annual Sales Tax Collected paid as of the date of the expiration of this Agreement.

- (c) The DEVELOPER shall use commercially reasonable efforts to provide the CITY with an updated list of the tenants at the Project in order to calculate the Incremental Annual Sales Tax. The tenant list shall be provided to the CITY in writing within 15 days of any change in tenancy. Such list shall contain the full name of the tenant, the term of the lease, the taxpayer number and outlet number if applicable and any other information deemed necessary or advisable by the

CITY in order to calculate the Incremental Annual Sales Tax. If requested by the tenant, the CITY will keep such sales tax data of an individual tenant or landowner confidential to the extent permitted by law.

- 4.02 Waiver of Certain Fees. The CITY will waive the CITY'S building permit, plan review, inspection and platting fees concerning the Project. It is expressly understood and agreed that nothing herein shall be construed to waive the CITY'S impact fees or require the CITY to pay fees charged by other governmental authorities with jurisdiction over the Project.

V. General Terms

- 5.01 Term. This Agreement shall become enforceable upon execution by the City Manager of the CITY and shall be effective on the Effective Date. Unless terminated earlier in accordance with its terms, this Agreement shall terminate on March 1, 2027.
- 5.02 Default. If either the CITY or DEVELOPER should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of ninety (90) days after the receipt of said notice to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.
- 5.03 Termination. In the event DEVELOPER elects not to proceed with the Project as contemplated by this Agreement, DEVELOPER shall notify the CITY in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect. If so terminated, DEVELOPER shall be required to reimburse the CITY for all monies paid and/or waived by the CITY pursuant to Section 4.01 hereinabove prior to the termination being effective.
- 5.04 Mutual Assistance. CITY and DEVELOPER will do the things commercially reasonable, necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of changes in public policy, the law or taxes or assessments attributable to DEVELOPER facilities.
- 5.05 Entire Agreement. This Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties and others relating hereto are superseded by this Agreement. This Agreement may only be amended, altered or revoked by written instrument signed by the CITY and DEVELOPER.
- 5.06 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

- 5.07 Assignment. Except as provided below, DEVELOPER may not assign all or part of its rights and obligations to a third party without prior written approval of the CITY, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary, DEVELOPER may assign all or part of its rights and obligations without the prior consent of the CITY to an affiliate of DEVELOPER and to a third party lender advancing funds for the acquisition, construction or operation of Project.
- 5.08 Release. By this Agreement, the CITY does not consent to litigation or suit, and the CITY hereby expressly revokes any consent to litigation that it may have granted by the terms of this Agreement or any other contract or agreement, any charter, or applicable state law. Nothing contained herein shall be construed in any way so as to waive in whole or part the CITY's sovereign immunity. DEVELOPER assumes full responsibility for its obligations under this Agreement performed hereunder and hereby releases, relinquishes, discharges, and holds harmless the CITY, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character that is caused by or alleged to be caused by, arising out of, or in connection with DEVELOPER'S obligations hereunder. This release shall apply with respect to DEVELOPER'S work regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance.
- 5.09 Force Majeure. Timely performance by the parties is essential to this Agreement. However, neither party is liable for reasonable delay in performing its obligations under this Agreement to the extent the delay is caused by a force majeure that directly impacts the Agreement (excluding monetary obligations); provided that the affected party (i) uses diligence to remove the effects of the force majeure as quickly as possible and (ii) provides the other party with written notice of the force majeure and its possible effects within ten (10) days of the occurrence of the force majeure. For purposes of this section, "force majeure" shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.
- 5.10 Notice. Any notice and/or statement required or permitted to be delivered shall be deemed delivered by actual delivery, by facsimile, with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

DEVELOPER:
KSTX Baytown, LLC
3120 Rogerdale, Suite 150
Houston, TX 77042

CITY:
City of Baytown
P.O. Box 424
Baytown, TX 77522
FAX: 281-420-6586
Attn: City Manager

Either party may designate a different address at any time upon written notice to the other party.

- 5.11 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for, nor against any party.
- 5.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Harris County, Texas.
- 5.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 5.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 5.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 5.16 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The CITY, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with DEVELOPER facilities or the design, construction or operation of any portion of the facilities.
- 5.17 Public Information. Records and information provided to the CITY or its representative(s) to verify compliance with this Agreement shall be available for public inspection.

- 5.18 Exhibits. The following Exhibits "A" and "B" are attached and incorporated by reference for all purposes.
- 5.19 Multiple Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.
- 5.20 Authority to Enter Contract. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.
- 5.21 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements contained herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by an appropriate remedy, strict compliance with any other obligation hereunder to exercise any right or remedy occurring as a result of any future default or failure of performance.

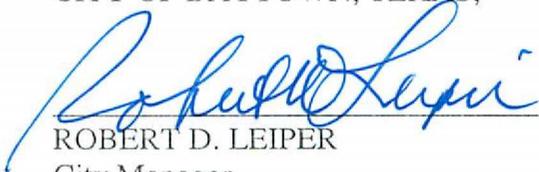
EXECUTED by the authorized representatives of the parties on the dates indicated below.

KSTX Baytown LLC
A Texas limited liability company

By: 
Thomas Lile, Manager

April 7th, 2014
(Date)

CITY OF BAYTOWN, TEXAS,


ROBERT D. LEIPER
City Manager

4-14-14
(Date)

ATTEST:

Leticia Brysch

LETICIA BRYSCH
City Clerk



APPROVED AS TO FORM:

Ignacio Ramirez, Sr.

IGNACIO RAMIREZ, SR.
City Attorney

STATE OF TEXAS §

COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on this 7th day of April, 2014, by Thomas H. Lile, as Manager of KSTX Baytown, LLC, a Texas Limited liability company corporation and Managing Member of KSTX BAYTOWN, LLC, a Texas limited liability company, on behalf of said entities.

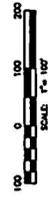
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L. Beddingfield
Notary Public

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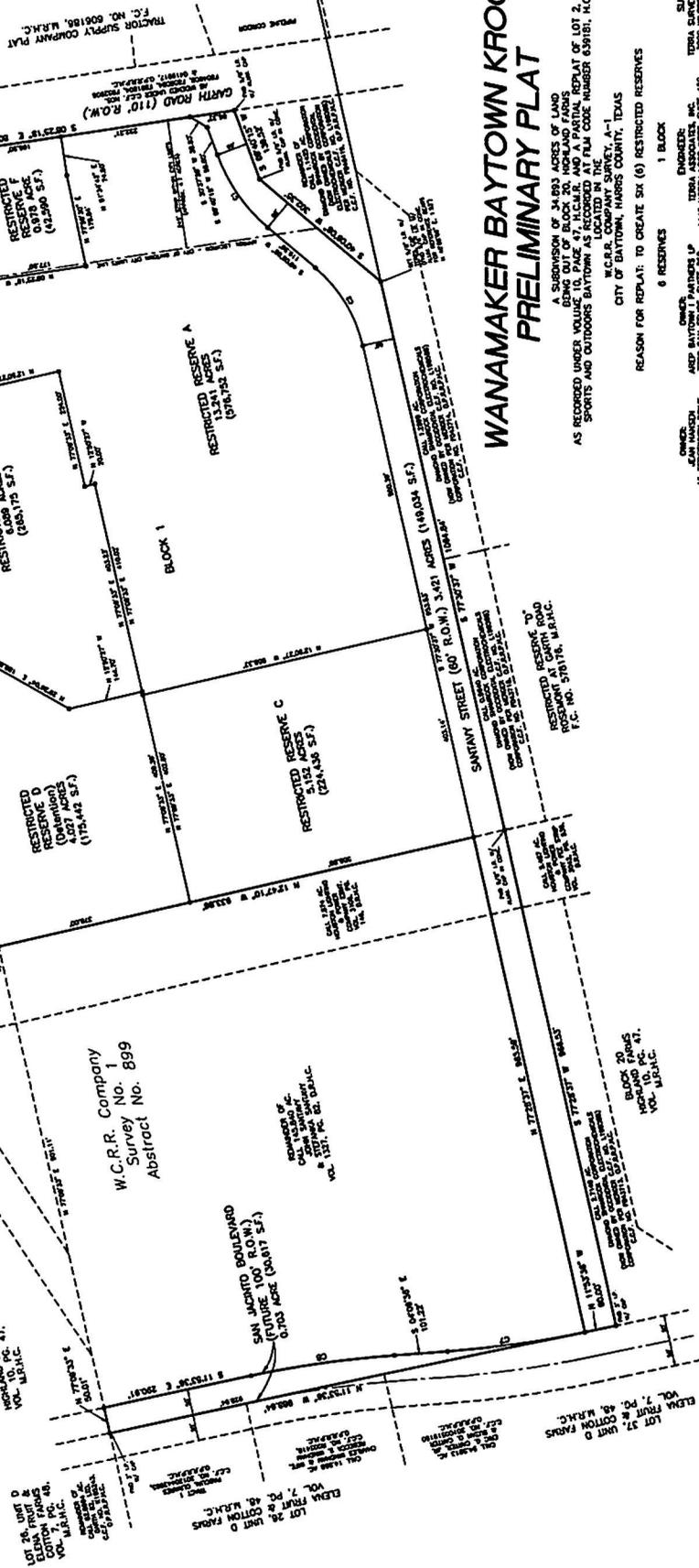
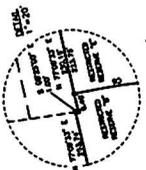
Exhibit “A”
Plat and Drawing of the Kroger Marketplace Shopping Center



0 - 1/4" = 100' SCALE. SEE PLAN FOR DIMENSIONS AND NOTES.

Block	Area (S.F.)	Notes
Block 1	149,034	6,880 Acres (261,710 S.F.)
Block 2	175,442	4,007 Acres (1,754,442 S.F.)
Block 3	224,436	5,122 Acres (224,436 S.F.)
Block 4	149,034	3,421 Acres (149,034 S.F.)

NOTES:
 1. All lots shown on this plan are subject to the restrictions of the W.C.R.R. Survey No. 1, Abstract No. 899.
 2. All lots shown on this plan are subject to the restrictions of the W.C.R.R. Survey No. 1, Abstract No. 899.
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 9. All lots shown on this plan are subject to the restrictions of the W.C.R.R. Survey No. 1, Abstract No. 899.
 10. All lots shown on this plan are subject to the restrictions of the W.C.R.R. Survey No. 1, Abstract No. 899.



WANAMAKER BAYTOWN KROGER PRELIMINARY PLAT

A SUBDIVISION OF 34,893 ACRES OF LAND BEING OUT OF BLOCK 20, MIDLAND FARMS AS RECORDED UNDER VOLUME 10, PAGE 47, H.C.S.A. AND A PARTIAL REPLAT OF LOT 2, ACADEMY SPORTS AND OUTDOORS BAYTOWN, PLAT LOCATED IN THE W.C.R.R. COMPANY SURVEY, A-1 CITY OF BAYTOWN, HARRIS COUNTY, TEXAS

REASON FOR REPLAT: TO CREATE SIX (6) RESTRICTED RESERVES

OWNER: W.C.R.R. COMPANY SURVEY, A-1
 13300 W. 110TH STREET, SUITE 400
 HOUSTON, TEXAS 77036
 (713) 258-6339

ENGINEER: TERRY S. BAYNE, INC.
 1443 NORTH LOOP WEST, SUITE 450
 HOUSTON, TEXAS 77008
 (713) 949-0327

SURVEYOR: TERRY S. BAYNE, INC.
 1443 NORTH LOOP WEST, SUITE 450
 HOUSTON, TEXAS 77008
 (713) 949-0327

PROJ. NO.: 1047-1303-P SCALE: 1" = 100' DATE: MARCH 12, 2014

Exhibit "B"
Economic Development Agreement Reporting Form
City of Baytown

REPORTING YEAR 20__

1.0 Employment

1.1 Number of FTE's at facility for reporting year:

Total _____

2.0 Investment

2.1 Agreement requires a taxable value of _____ by _____ for the Project.

Investment for first year \$ _____

3.0 Value.

Total investment for first year of the agreement: \$ _____

HCAD appraised value for subsequent reporting years: \$ _____

I, the authorized _____ representative, hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement.

DEVELOPER

(Signature)

(Printed Name)

(Title)