

THE STATE OF TEXAS

COUNTY OF HAYS

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**Chapter 380 Grant Agreement
Kyle Two Step Project**

THIS Chapter 380 Grant Agreement - Kyle Two Step Project (this "Agreement") is executed by and between **Kyle Retail/Office, LLC**, a Texas limited liability company, and/or its assigns (collectively, the "Developer"), and the **CITY OF KYLE, TEXAS**, a Texas home-rule city and municipal corporation of Hays County, Texas, acting by and through its City Manager or their designee (the "City"). The City and Developer, for and in consideration of the mutual premises and promises described below, agree as follows:

I. RECITALS AND FINDINGS

A. As of the Effective Date, the Developer owns the Property.

B. The Property is comprised approximately +/- 45 acres of land located in Hays County, Texas, being more particularly described in **Exhibit A**, attached hereto and incorporated herein for all purposes (the "Property"). The Developer wishes to develop (or cause to be developed by future owners): (i) as commercial that portion of the Property labeled as Parcel 1 ("Parcel 1") and Parcel 2 ("Parcel 2") as depicted on **Exhibit B**, attached hereto and incorporated herein, with the option to include multi-family flats in Parcel 1 and/or Parcel 2, and (ii) as mixed use that portion of the Property labeled as Parcel 3 and depicted on **Exhibit B** ("Parcel 3") (Parcel 1, Parcel 2, and Parcel 3 are each referred to herein as a "Parcel", and collectively referred to herein as the "Development" or the "Project").

C. Contemporarily herewith, the City and the Developer are entering into that certain Development Agreement for Establishing Development Standards for the Kyle Two Step Subdivision/Development (as the same may be amended from time to time the "Development Agreement") to establish certain development standards for the development of the Property.

D. The City has found that providing the economic incentives to the Developer in exchange for the Developer's construction of an urban style, mixed-use project and compliance with the other terms and conditions of this Agreement and the Development Agreement (the "Program") will promote local economic development, stimulate business and commercial activity, provided services to the residents of the City, and will create and retain jobs within the City.

E. The City has determined that the economic incentives provided herein will directly serve a public purpose, being the promotion of the economic welfare of the City and surrounding areas, and that this Agreement contains controls likely to ensure that the public purpose is accomplished.

F. Chapter 380 of the Texas Local Government Code provides statutory authority

for granting the economic incentives and administering the Program described in this Agreement.

G. The use of the Eligible Property, and other terms hereof, are consistent with encouraging economic development within the City.

H. The City has determined that the terms of this Agreement meet the goals of the City and its policies relating thereto.

I. The City has determined that it is in the public interest to provide the economic incentives set forth herein subject to the terms and conditions of this Agreement.

II. DEFINITIONS

A. **380 Grant(s)** means the Real Property Tax Rebate Amount and Sales Tax Rebates, described in Article VI.

B. **Added Taxable Value** means the taxable value of the Eligible Property, as appraised by the Hays Central Appraisal District, above the Base Year Value.

C. **Base Year Value** means the taxable value of the Property as appraised by the Hays Central Appraisal District for the tax year 2024.

D. **Business Days** means any day other than a Saturday, Sunday or legal holiday in the State of Texas observed as such by the City of Kyle.

E. **City Manager** means the City Manager of the City.

F. **Calendar Year** means the twelve-month period of time that begins on January 1st and ends on December 31st of the same numbered year.

G. **Certificate of Occupancy** means a series of certificates of occupancy issued by the City for the Project/Initial Commercial Space. With respect to the Initial Commercial Space, if there are multiple certificates of occupancy issued for the Initial Commercial Space in order to achieve the required minimum of 37,000 square feet of commercial space, the term "Certificate of Occupancy" shall mean all of the temporary or permanent certificates of occupancy issued for the Initial Commercial Space pursuant to the terms of Article 2 Section A.5 of Exhibit C to the Development Agreement.

H. **Development Agreement** has the meaning given in the recitals.

I. **Documentation** means the reports, records, and documents the Developer is required to submit to the City under this Agreement.

J. **Eligible Property** means the Property, and all Real Property Improvements, and all business personal property located thereon.

- K. **Force Majeure Event** has the meaning ascribed in the Development Agreement.
- L. **Grant Criteria** means the criteria the Developer is required to meet for payment of 380 Grants associated with a given Phase in question, which are set forth in Section V.A.1.
- M. **Grant Documentation** means (i) the Certificate of Occupancy, (ii) documentation acceptable to the City demonstrating that the Certificate of Occupancy was issued by the Performance Deadline (Phase 1 only), (iii) documentation acceptable to the City demonstrating that the applicable Project Amenity/Infrastructure Improvements for a given Phase have been completed to the City's reasonable satisfaction by the applicable Performance Deadline for the Phase in Question; and (iv) such additional information as may be reasonably requested by the City to support the information shown in items (i) - (iii) above.
- N. **Initial Commercial Space** means any of the commercial space in the Project as described in the Development Agreement. The Initial Commercial Space shall not be less than 37,000 square feet.
- O. **Maximum Grant Amount** means the maximum amount the City will pay to the Developer under this Agreement, if applicable, which includes the Sales Tax Rebate, and the Real Property Tax Rebate Amount. The Maximum Grant amount shall be \$14,856,100.
- P. **Ongoing Documentation** means copies of the following documents for the tax year in which a 380 Grant is sought: (i) proof of compliance with Section V.A.2, and (ii) such additional information as may be reasonably requested by the City to support the information shown in item (i) above and the Ongoing Grant Criteria.
- Q. **Ongoing Grant Criteria** means the criteria the Developer is required to meet for payment of 380 Grants after Year 1, which are set forth in Section V.A(2).
- R. **Performance Deadline** means for each Phase of Improvements, the date which is one (1) year after the Estimated Completion Date for that improvement shown on Exhibit C, subject to the right to extend the deadline up to twelve months for Force Majeure Events (as defined in the Development Agreement) verified by the City Manager in accordance with Section VI.B.2.
- S. **Phase** means Phase 1 and/or Phase 2, as applicable.
- T. **Phase 1 Improvements** means those Project Amenities/Infrastructure Improvements associated with Phase 1 as shown on Exhibit C.
- U. **Phase 2 Improvements** means those Project Amenities/Infrastructure Improvements associated with Phase 2 as shown on Exhibit C.
- V. **Project** means the development to be constructed on the Property, in accordance with the Development Agreement, the City-approved plans, and applicable local, state, and

federal regulations, together with all other accessory and permitted uses on the Property.

W. **Project Amenities/Infrastructure Improvements** means those improvements described in **Exhibit C** attached hereto.

X. **Property** has the meaning given in the recitals.

Y. **Real Property Improvements** means the improvements to the Property, which shall include the Project as to the Property and any other buildings, structures, or fixtures erected or affixed to the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code as amended.

Z. **Real Property Tax Rebate Amount** means the number equal to the percentage of Real Property Taxes received by the City that is paid to the Developer pursuant to Section VI.A and VI.B.

AA. **Real Property Taxes** means the ad valorem tax assessed on the Added Taxable Value of the Eligible Property or a portion thereof, as appropriate, appraised by the Hays Central Appraisal District.

BB. **Sales Tax** means, as of the Effective Date, the levied 1.5% sales tax for commercial activity in the Property less the 0.5% sales tax enacted by the City of property tax reduction, equaling a total of 1.0% sales tax.

CC. **Sales Tax Rebate** means the percentage of Sales Tax received by the City and paid to the Developer pursuant to Section VI.A.1b.

DD. **Semi-Annual Incentive Payment(s)** means the Semi-Annual Sales Tax Rebate for the twenty (20) full Calendar Years that follow the first Sales Tax Rebate Payment.

EE. **Year 1** means the tax year following the date on which the Grant Criteria for Phase 1 is met.

II. GENERAL PROVISIONS

A. The Eligible Property is not an improvement project financed by tax increment bonds.

B. The Eligible Property is not, as of the effective date of this Agreement, owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City.

C. It is acknowledged and agreed by the parties that the completion of the Project is consistent with the purposes of encouraging state and local economic development and to stimulate business and commercial activity within the City.

III. REPRESENTATIONS AND WARRANTIES

A. The City hereby represents and warrants to the Developer that the City has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the City, is enforceable in accordance with its terms and provision, represents a proprietary action of the City, and does not require the consent of any other governmental authority.

B. The Developer hereby represents and warrants to the city that the Developer has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all the foregoing have been or will be duly and validly authorized and approved by all actions necessary. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the Developer, is enforceable in accordance with its terms and provisions, and does not require the consent of any other authority or entity.

IV. TIRZ

The Property is expected to be in the Reinvestment Zone Number Six, City of Kyle, Texas (the "Zone"), and fifty percent (50%) of the property taxes from the captured appraised value of the property located within the Zone is expected to be deposited in the Zone's Tax Increment Fund. The Eligible Property is not an improvement project financed by tax increment bonds.

V. PERFORMANCE CRITERIA

A. Grant Criteria

1. **Grant Criteria.** In order for the Developer to receive the 380 Grant described in Article VI for a given Phase in question, the following are required; (i) Developer completes and obtains the Certificate of Occupancy for the Initial Commercial Space on or before the Performance Deadline (for Phase 1 only), (ii) the Developer completes and provides the City with the Grant Criteria Documentation for Phase 1 Improvements or Phase 2 Improvements, as applicable, on or before the Performance Deadline for the applicable phase (subject to delays caused by a Force Majeure Event); (iii) the Developer shall be in compliance with Sections V.B-D; (iv) any temporary Certificate of Occupancy used for purposes of (i) above, except for a temporary Certificate of Occupancy that is for lack of landscaping due to water restrictions) must be replaced by a permanent Certificate of Occupancy within six (6) months after approval of any 380 Grant payments in accordance with (i) above.
2. **Ongoing Grant Criteria.** After the Phase 2 Grant Criteria is met, the Developer must comply with Section V.B-D for each year in which the

Development seeks a 380 Grant payment.

3. **Suspension of Grant Payments.** If after the City begins to make 380 Grant payments following the completion of a Phase of the Development, the Developer fails to complete Improvements for a subsequent Phase prior to the Performance Deadline for the applicable Phase (subject to delays caused by a Force Majeure Event), the City may, upon thirty (30) days' written notice, suspend all payments under this Agreement until such time as Developer completes the applicable Phase. If payments are suspended, once the Developer completes the Phase in question, payments by the City shall be resumed including any payments that were due during the time payments were suspended. The Parties acknowledge and agree that the right to suspend payments under this provision does not extend to any work to be performed by Pedernales Electric Cooperative ("PEC") so long as Developer has timely provided all necessary information to PEC for the completion of the work.

B. The Developer shall not allow the ad valorem taxes owed to the City, County or Hays Consolidated Independent School District (the "District") on any real property owned by Developer and located within the City of Kyle to become delinquent beyond the last day they can be paid without assessment of penalty.

C. The Developer agrees to develop the Property and the Project in compliance with the Development Agreement including any benchmarks or deadlines for building improvements, the City-approved plans, and the applicable local, state, and federal regulations.

D. The Developer covenants and certifies that it does not and will not knowingly and directly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government code. In accordance with Section 2264.052 of the Texas Government Code, if the Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the City the full amount of 380 Grants made under Article VI of this Agreement. Repayment shall be paid within 120 days after the date following an un-appealable conviction of Developer, provided, however, that Developer shall not be liable for a violation by a subsidiary, parent entity, affiliate, or franchisee of the Developer or by a person with whom Developer contracts.

VI. ECONOMIC DEVELOPMENT GRANTS

A. 380 Grants

1. Subject to the terms and limitations of this Agreement, and the Developer's full and timely performance of, and compliance with, each of the applicable Grant Criteria set forth in Article V above, the City agrees to pay to the Developer annual 380 Grants as provided in this Article VI. The annual amount of the 380 Grants shall be equal to the sum of (a) and (b) below, calculated on an annual basis for (a), and calculated on a semi-annual basis for (b), and commencing in Year 1 and expiring upon the earlier of: (i) the twentieth (20th) anniversary of the date the first 380 Grant payment is made or (ii) the date on which Developer is paid 380 Grant payments equal to the

Maximum Grant Amount (the "Grant Period").

- (a) An amount equal to fifty percent (50%) of Real Property Taxes for the Property received by the City on an annual basis.
- (b) An amount equal to fifty percent (50%) of the Sales Tax received by the City on a semi-annual basis.

2. Notwithstanding anything to the contrary contained herein, Developer shall not be entitled to 380 Grants for a given Phase of Improvements until the Grant Criteria for that Phase are met. In other words, until the Phase 1 Improvements are complete and the applicable Grant Criteria Documentation is provided to the City, Developer shall not be entitled to 380 Grant payments in the amount shown on Exhibit C for Phase 1 Improvements; and the same shall apply to Phase 2. Following completion of all Project Amenities/Infrastructure Improvements for any Phase shown on Exhibit C and approval by the City as described above, if the actual project costs for a specific Improvement are less than the budgeted costs shown on Exhibit C (a "Cost Underrun"), then such Cost Underrun may be applied to reimburse the Developer for a cost overrun on another Project Amenity/Infrastructure Improvement in that Phase or another Phase, so long as the total reimbursement paid to the Developer under this Agreement does not (i) exceed the Maximum Grant Amount and (ii) no payment for any specific Project Amenity/Infrastructure Improvement shall be made until such Project Amenity/Infrastructure Improvement is complete.

3. The City acknowledges and agrees that should any portion of the Project be sold or assigned to another entity or entities during the Grant Period, the City's obligations to pay the 380 Grant to the Developer shall be unaffected; all rights of Developer under this Agreement being personal rights of Developer unless such right to payment is assigned in accordance with Article XXI.

B. Payment of the 380 Grants.

1. The City shall pay the Real Property Tax Rebate Amount annually, in arrears, and the Sales Tax Rebate semi-annually, in arrears, as provided in this Subsection B. 380 Grants shall be payable annually for the period of time indicated above, commencing in Year 1; provided that the terms of Section V.A.1 or V.A.2, as applicable, are met. To be eligible to receive the 380 Grant in the years following Year 1, the terms of V.A.2 must be met each year. The Developer will not be paid the 380 Grant payment for those tax years in which the Ongoing Grant Criteria are not met; provided that in the event that the Developer is not in compliance with the Ongoing Grant Criteria described in Section V.C due to a Force Majeure Event, the Developer shall have up to twelve months to comply if Developer receives City- approval of an extension to come into compliance in accordance with Section VI.B.2.

2. In the event a Force Majeure Event prevents the Developer from complying with the Development Agreement and certifying compliance with this Agreement by April 30 of a year in which a 380 Grant is sought, the Developer

may request that the City Manager approve up to a twelve-month extension to come into compliance by submitting a written request (the "***Extension Request***") to the City Manager describing the Force Majeure Event and the extension period (the "***Extension Period***"). The Developer shall provide the City Manager or designee any information reasonably requested to verify the Force Majeure Event. The City Manager, at his or her reasonable discretion, may approve the Extension Period, which may not extend past April 30 of the following year. If the Extension Request is granted, the 380 Grant for that year will be suspended and paid the next year, provided that compliance with the Development Agreement is achieved during the Extension Period and the Developer is otherwise in compliance with this Agreement. If the non-compliance described in the Extension Request is not cured within the Extension Period, the 380 Grant for the year in which the non-compliance occurred will be forfeited.

3. Each year on or before April 30, the Developer shall provide the City the Documentation described in Article VII. The City shall pay the Real Property Tax Rebate Amount annually, in arrears, upon the later to occur of: (i) thirty (30) days following the date the Documentation is received by the City; or (ii) within thirty (30) days following the date the Real Property Taxes for a particular Parcel are received by the City and the Developer has notified the City that the taxes have been paid; provided that the applicable Grant Criteria as set forth in Article V have been met. The Developer will not be paid the 380 Grant payments for those years in which the Ongoing Grant Criteria, as applicable, have not been met.

4. After receipt of the Documentation for a particular year, the City shall pay the Developer the Sales Tax Rebates for the Calendar Year in which the Documentation was provided; provided that the applicable Grant Criteria as set forth in Article V have been met. The Sales Tax received by the City for the twenty (20) Calendar Years following Year 1 will be deposited and paid out to the Developer, in arrears. The City shall pay each respective Semi-Annual Incentive Payment to the Developer on or before the thirtieth (30th) day of the month that follows the receipt by the City from the State of Texas of the Sales Tax for a particular Parcel for the previous semi-annual period within each Calendar Year each year in which the applicable Grant Criteria are met, provided that the Semi-Annual Payment for the first semi-annual period each year shall be the deadline set forth in Section VI.B.2.

5. Once the applicable performance criteria provided in Article V for a particular tax year are met, the City's commitment to pay the 380 Grant for that tax year from the City ad valorem taxes on the Property actually received by the City is an unconditional obligation of payment by the City. Such payments of the 380 Grant are not subject to any reduction, whether offset or otherwise except as explicitly provided herein.

C. Maintenance of Books and Records. The City shall maintain complete books and records showing ad valorem taxes received by the City on the Eligible Property, and Sales Tax received by the City on the Eligible Property, and disbursements to the Developer, which books

and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such Books and records shall be available for examination by the duly authorized officers or agents of the Developer during normal business hours upon request made not less than five (5) business days prior to the date of the examination. The City shall maintain such books and records throughout the term of this Agreement and store the same for four (4) years thereafter.

VII REPORTS, AUDITS, AND INSPECTIONS

A. Annual Certification and Reports. The Developer shall certify in writing annually to the City that the Developer is in compliance with the terms of this Agreement, and shall provide the City with reports and records reasonably necessary to demonstrate fulfillment of the performance criteria set forth in Article V for each year of the Agreement, as follows.

1. Certification. The Developer shall complete and certify a 380 Grant Certification to be provided by the City for each year of this Agreement, to be due annually not later than April 30, in a form reasonably acceptable to the City, which shall include the Documentation in the first year that a 380 Grant is sought, and the applicable Ongoing Documentation for subsequent years for which 380 Grants are sought.

2. Additional Reports. Additionally, throughout the term of this Agreement, the Developer shall furnish the City with any additional records and information reasonably requested to support the reports required by this Agreement. The Developer shall further furnish the City with copies of or access to additional information reasonably required to verify the information set forth in the Documentation.

3. Sales Tax Reports. The Developer shall provide or cause to be provided to the City any required permission to access information filed with the State of Texas related to sales taxes collected and remitted to the State of Texas by entities conducting commercial activity on the Property promptly upon request by the City to allow the City to verify the amount of Sales Tax Rebate to be paid to the Developer under this Agreement. The City shall not be required to pay the Sales Tax Rebate until the City has received all permissions required to access such information, and the Sales Tax Rebate shall be calculated solely on sales tax receipts that can be verified based on records held by the State of Texas.

B. Right to Audit Books and Records. The City shall have the right to audit the books and records related to the design and construction of the items required by the Development Agreement throughout the development of the Project and one year from the completion of construction. The City shall notify the Developer in advance in writing of their intent to audit in order to allow the Developer adequate time to make such books and records available.

VIII. BREACH

A. Breach. The following conditions shall constitute a breach of this Agreement:

1. The Developer falsely certifies that it has met the performance criteria submitted to the City under Article VII.
2. The Developer fails to meet the performance criteria as specified in Article V above, subject to extensions for Force Majeure Events

granted in connection with Section VI.B.2.

3. The City fails to timely make payments to the Developer under the terms of this Agreement.

a. Notice of Breach. Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default under this Agreement until the passage of thirty (30) business days after receipt by such Party of notice of default from the other Party (the "Cure Period"), which notice shall specify, in reasonable detail, the nature of the default. Upon the passage of the Cure Period without cure of the default, such Party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot be reasonably cured within the Cure Period, the Party receiving the notice of default may, during such Cure Period, give the other Party written notice that it has commenced curing the default within the Cure Period and will diligently and continuously prosecute the cure to completion as soon as reasonably possible, and such written notice together with diligent and continuous prosecution of the cure shall extend the Cure Period for up to an additional ninety (90) calendar days so long as the cure is being diligently and continuously pursued during such time; and provided further that, if the cure cannot be reasonably accomplished within the additional ninety (90) calendar day period but the applicable facts, circumstances, and progress establish that a cure will be obtained within a reasonable period of time following the expiration of the ninety (90) calendar day period, the time for cure will be extended for an additional period of time as mutually agreed by the Parties (such agreement not to be unreasonably withheld); provided, further, that if a default is not cured within the applicable Cure Period, or, as applicable, written notice having been given and cure being commenced and diligently and continuously prosecuted, within the additional ninety (90) calendar days after the giving of the written notice, or, as otherwise applicable within the time mutually agreed by the Parties due to the defaulting Party not being able to obtain a cure within the additional ninety (90) calendar days after the defaulting Party gives written notice that it is commencing the cure, then the non-defaulting Party may pursue the remedies set forth in this Agreement, as well as any other remedies available in equity or law, subject to Article IX below.

b. Repayment of 380 Grants. In the event that the Developer commits a breach of this Agreement according to Section VIII.A.1, the Developer shall pay back to the City the 380 Grant for the tax year for which false certification was submitted within thirty (30) days of written demand by the City.

c. Tax Lien Not Impaired. It is expressly agreed and acknowledged between the Parties that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the Property established by Section 32.01 of the Texas Tax Code. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the Property. Any such lien may be fully enforced pursuant to the provisions of the Texas Tax Code.

d. Limitations on Liability. The City shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City shall be limited to

amounts actually due under the Agreement at the date of default or amounts recoverable under Section 271.153 of the Texas Local Government Code, whichever is less. The Parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty on the part of the City for any cause of action not directly related to this Agreement and the enforceability thereof.

e. Personal Liability of Public Officials: No Debt Created. No employee of the City, nor any councilmember or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement. The 380 Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

IX. TERMINATION

A. Termination for Failure to Complete Phase 1. Subject to the notice of breach and the Cure Period detailed in Article VIII above and Force Majeure Events, the City may terminate the Agreement in the event that, by the Performance Deadline for Phase 1, the Developer fails to: (a) complete and obtain a Certificate of Occupancy for the Initial Commercial Space; or (b) complete the Phase 1 to the City's reasonable satisfaction.

B. Termination After Phase 1. If the Developer fails to complete all of the Project Amenities/Infrastructure Improvements by December 31, 2029 (subject to a Force Majeure Event), such failure will be considered an act of default under this Agreement, and the City may provide written notice of default. If Developer fails to complete construction of all of the Project Amenities/Infrastructure Improvements within one year following the City's notice of default, the City may terminate this Agreement. Upon termination, the City will have no further obligation to make any payments under this Agreement

X. INDEMNIFICATION

DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATED TO DEVELOPER'S ACTIONS DURING CONSTRUCTION OF THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO DEVELOPER'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF

DEVELOPER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER AND EXCEPT AS PROVIDED OTHERWISE, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF DEVELOPER ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT BE AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT, AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT OR INTENTIONAL ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT OR INTENTIONAL ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. DEVELOPER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE WITH COUNSEL REASONABLY ACCEPTABLE TO THE CITY ATTORNEY.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY BY THE DEVELOPER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND/OR ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.

XI. NOTICE

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand deliver:

If to Developer: Todd Dailey
 Kyle Retail/Office,
 LLC 317 Grace Lane,
 Suite 240
 Austin, TX 78746

With a Copy to: Steven C. Metcalfe
 Metcalfe Wolff Stuart &
 Williams 221 W. 6th Street,
 Suite 1300
 Austin, TX 78701

If to City: City of Kyle, Texas
 Attn: Jennifer Kirkland, City
 Secretary
 100 W. Center Street
 Kyle, TX 78640

With a Copy to: City Attorney
 1700 Kohlers Crossing
 Kyle, TX 78640

XII. CITY COUNCIL AUTHORIZATION

This Agreement was authorized by motion and vote of the City Council recorded in the minutes authorizing the City Manager or their designee to execute this Agreement on behalf of the City.

XIII. SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

XIV. ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose and is reasonably acceptable to the party providing the certificate. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of the Developer, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and

remaining term of the eligible grants and such other matters reasonably requested by the Party(ies) to receive the certificates.

XV. DEVELOPER'S STANDING

Developer, as part of this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and Developer shall be entitled to intervene in said litigation.

XVI. APPLICABLE LAWS

This Agreement shall be construed under the laws of the State of Texas without regard to its conflicts of laws provisions. Venue for any action under this Agreement shall be the appropriate state court of Hays County, Texas. This Agreement is performance in Hays County, Texas.

XVII. FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of a Force Majeure Event.

XVIII. OTHER AGREEMENTS

This Agreement and the Development Agreement embody all the agreements of the parties relating to their subject matters as specifically set out therein and herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the authorized representative of the party in question.

XIX. RECORDATION OF AGREEMENT

At Developer's request, a certified copy of this Agreement in recordable form shall be recorded in the Deed Records of Hays County, Texas.

XX. HEADINGS

The headings in this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXI. SUCCESSORS AND ASSIGNS

A. Subject to Section XXI.D below, this Agreement and Developer's rights and obligations under this Agreement may be assigned by Developer from time to time, wholly or partially, upon written approval of the City Manager, which approval shall not be unreasonably withheld. Any request to assign this Agreement must be in writing and must be sent to the City in accordance with Article XI. If the City Manager fails to approve or disapprove of such assignment within thirty (30) days of their receipt thereof, the assignment shall be deemed

approved. Once an assignment has been approved or deemed approved with respect to all or a portion of the Property, Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement relating to the portion of the Property conveyed to the assignee to which this Agreement is so assigned. A default by any subsequent partial assignee shall not constitute a default by Developer under this Agreement.

B. Any requested assignment must be in writing, set forth the assigned rights and obligations and be executed by the proposed assignee.

C. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment of Developer's rights under this Agreement unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is of all or a specified portion of Developer's rights under this Agreement and is approved by the City Manager, except as provided in Section XXI.D below, which approval shall not be unreasonably withheld.

D. Notwithstanding the foregoing, Developer shall have the right to assign its rights under this Agreement without the City Manager's consent to (i) any entity that controls, is controlled by, or is under common control with Developer, or (ii) with regard to receiving payments, a lender pursuant to a collateral assignment.

XXII. EXCLUSIVE RIGHTS OF DEVELOPER

Developer's right, title, and interest in and to the payments of the 380 Grants, as described herein, shall be the sole and exclusive property of Developer, and no other owner of any portion of the Property or third party shall have any claim or right to such funds unless Developer transfers its rights to the 380 Grants to a Transferee in writing and otherwise in accordance with the requirements set forth herein.

XXIII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all the parties hereto have executed at least one counterpart.

XXIV. NO THIRD-PARTY BENEFICIARIES

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) this Agreement only affects matters/disputes between the parties of this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with the City or Developer or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Developer.

XXV. REMEDIES

Except as provided in this Agreement, no right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the consent of the Parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

XXVI. BOYCOTTS AND FOREIGN BUSINESS ENGAGEMENTS

A. Verifications of Statutory Representations and Covenants. The Developer makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the “Government Code”), in entering into this Agreement. As used in such verifications, “affiliate” means an entity that controls, is controlled by, or is under common control with the Owner within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations, and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.

(i). Not a Sanctioned Company. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Owner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(ii). No Boycott of Israel. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.

(iii). No Discrimination Against Firearm Entities. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.

(iv). No Boycott of Energy Companies. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this

Agreement. As used in the foregoing verification, “boycott energy companies” has the meaning provided in Section 2276.001(1), Government Code.

XXVII. 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 City. 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

The City has no obligation under this Agreement until such form is accurately completed and properly submitted, and any City obligation is conditioned on such proper completion and submission.

XXVIII. EFFECTIVE DATE

This Agreement shall be effective on the later of the date the last party signs or city council approval whichever is later (the "Effective Date").

XXIX. EXHIBITS

- | | | |
|------------------|---|---|
| Exhibit A | – | Legal Description of the Property |
| Exhibit B | – | Land Plan |
| Exhibit C | – | Project Amenities/Infrastructure Improvements |

[Signature Pages Follow]

EXECUTED in multiple originals this the 17 day of July, 2024.

DEVELOPER:

KYLE RETAIL/OFFICE, LLC
a Texas limited liability company

By: [Signature]

Name: Todd Dailey

Title: Managing Member

THE STATE OF TEXAS

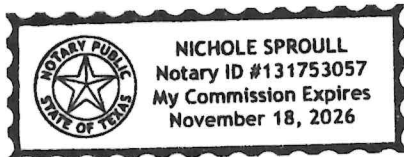
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COUNTY OF Travis §

This instrument was acknowledged before me on this 17 day of July, 2024, by Todd Dailey, Managing Member of **KYLE RETAIL/OFFICE, LLC**, a Texas limited liability company, on behalf of said entity.

(SEAL)

[Signature]
Notary Public, State of Texas



EXECUTED in multiple originals this the 20th day of June, 2024.

CITY:

City of Kyle, Texas
a Texas home-rule municipal corporation

By: [Signature]
Name: Bryan Langley
Title: City Manager

Attest:

By: Jennifer Kirkland
Name: Jennifer Kirkland
Title: City Secretary

THE STATE OF §
TEXAS COUNTY OF §
HAYS

This instrument was acknowledged before me on this 20th day of June, 2024, by Bryan Langley, City Manager of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said municipal corporation.

(SEAL)

Cynthia Gonzales
Notary Public, State of Texas

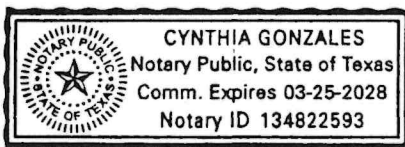


Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

TRACT 1: Lot 2, KYLE 150/I-35 SUBDIVISION, a subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 11, Page 375 of the Plat Records of Hays County, Texas.

TRACT 2: Lot 3, KYLE 150/I-35 SUBDIVISION, a subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 11, Page 375 of the Plat Records of Hays County, Texas.

TRACT 3: Lots 4 and 5, REPLAT OF LOTS 4, 5, 6, 7 AND 8, KYLE 150/I-35
SUBDIVISION,
a subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 12, Page 163 of the Plat Records of Hays County, Texas.

TRACT 4: Lot 6, REPLAT OF LOTS 4, 5, 6, 7 AND 8, KYLE 150/I-35
SUBDIVISION, a
subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 12, Page 163 of the Plat Records of Hays County, Texas; SAVE AND EXCEPT that portion thereof conveyed to Hays County by the deed recorded in Volume 4361, Page 243 of the Official Public Records of Hays County, Texas.

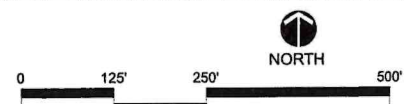


Exhibit C**Project Amenities/Infrastructure Improvements**

Amenity/Improvement	Description	Estimated Cost	Estimated Completion Date	Phase
1. 12' Vybe Trail (Parcel 2)	2,002 LF of Vybe trail referenced in Figure 1.	\$480,480	Dec, 2027	I
2. 12' Vybe Trail Lighting (Parcel 2)	Lighting along Vybe trail spaced every 100'.	\$100,000	Dec, 2027	I
3. Concrete Hike and Bike Trails (Parcel 2)	Meandering concrete trail referenced in Figure 1.	\$46,230	Dec, 2027	I
4. Park benches (Parcel 2)	Park benches along Vybe trail in Parcel 2 per City standards.	\$30,000	Dec, 2027	I
5. 12' Vybe Trail (Parcel 3)	1700 LF of Vybe trail referenced in Figure 1.	\$408,000	Dec, 2027	I
6. 12' Vybe Trail Lighting (Parcel 3)	Lighting along Vybe trail spaced every 100'.	\$85,000	Dec, 2027	I
7. Concrete Hike and Bike Trails (Parcel 3)	Meandering concrete trail referenced in Figure 1.	\$19,500	Dec, 2027	I
8. Park benches (Parcel 3)	Park benches along Vybe trail in Parcel 3 per City standards.	\$22,500	Dec, 2027	I
9. Monument signs	Monument signs per specs referenced in Figure 2.	\$60,000	Dec, 2027	I
10. Silo/digital board	Silo referenced in Figure 3.	\$145,000	Dec, 2027	I
11. Traffic Improvements	Turning lanes and other traffic improvements per TxDOT approved exhibit referenced in Figure 4.	\$945,000	Dec, 2027	I
12. (1) Traffic Lights on FM 150	Traffic Light on FM 150 in front of shared driveway referenced in Figure 5.	\$555,000	Dec, 2027	I
13. Extension of waterline	2,869 LF of 12" waterline extension along IH-35 from common property line with Dairy Queen to Hill Street.	\$430,350	Dec, 2027	I

	An additional 12-inch pressure loop will be provided between the new 12-inch water line and the existing water line in Mikey Court referenced in Figure 6. Line to be dedicated to City after construction.			
14. Waterline Bores at FM 150	Waterline bores located per Figure 7.	\$150,000	Dec, 2027	I
15. PEC Poles	All PEC poles along IH-35 and Hill Street will be replaced with a new poles.	\$400,000	Dec, 2027	I
16. Burying Telecom Lines	All Telecom lines along IH-35 and Hill Street will be buried, leaving only PEC lines on the poles.	\$750,000	Dec, 2027	I
17. Southern Pond (Parcel 1)	19,047 sq. ft. pond referenced in Figure 8.	\$150,000	Dec, 2027	I
18. Northern Pond (Parcel 1)	7,618 sq. ft. pond referenced in Figure 9.	\$75,000	Dec, 2027	I
19. Parking garage	Pre-cast 4 story parking garage.	\$8,010,360	Dec, 2027	I
20. Amphitheatre	Amphitheatre referenced in Figure 10.	\$319,700	Dec, 2027	I
21. Art/murals/statues	Art/murals/statues referenced in Figure 11.	\$75,000	Dec, 2027	I
22. Large Pond (Parcel 2)	60,260 sq. ft. pond that also serves as a detention pond referenced in Figure 12. Filling of this pond shall not be a condition to reimbursement.	\$400,000	Dec, 2028	II
23. Large Pond Pier (Parcel 2)	20' x 20' dock referenced in Figure 13.	\$76,000	Dec, 2028	II
24. Parkland	13.5 acres of parkland referenced in Figure 14.	\$612,980	Dec, 2028	II
25. Dog Park (Parcel 2)	Dog park referenced in Figure 15.	\$75,000	Dec, 2028	II
26. Fountain (Parcel 2)	Fountain referenced in Figure 16.	\$175,000	Dec, 2028	II

27. Pickleball courts (Parcel 2)	(4) Pickleball courts referenced in Figure 17 (excludes building).	\$260,000	Dec, 2028	II
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Phase I Improvements

Figure 1. 12' Vybe Trails, and Concrete Hike and Bike Trails (Parcel 2 and Parcel 3)

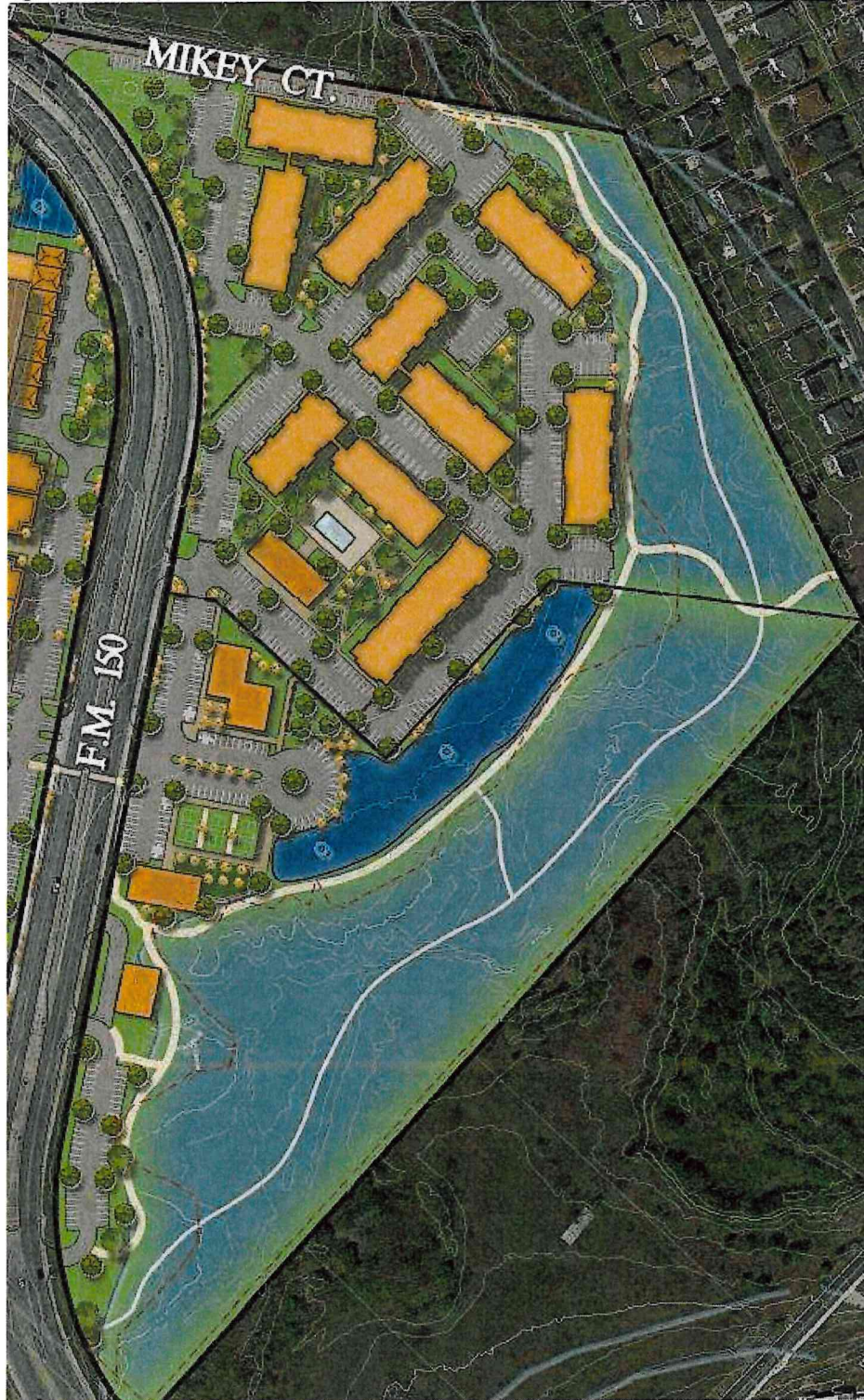
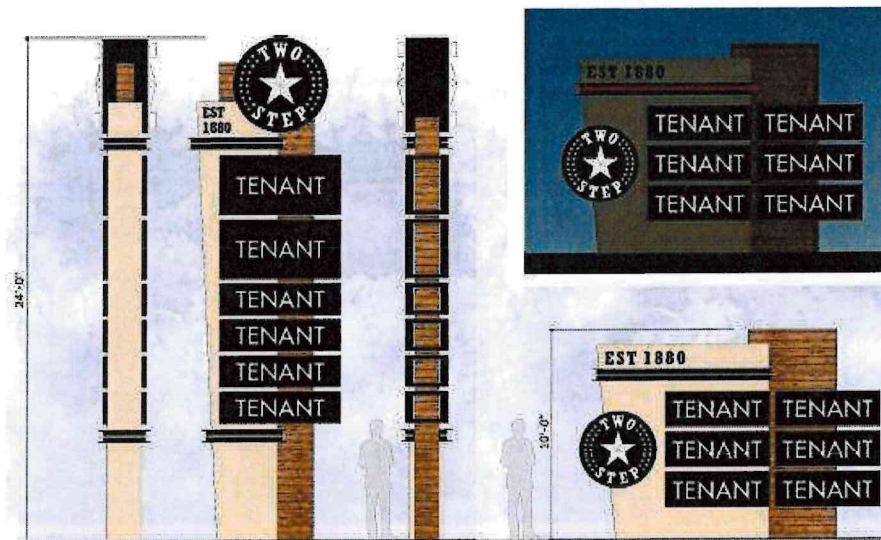
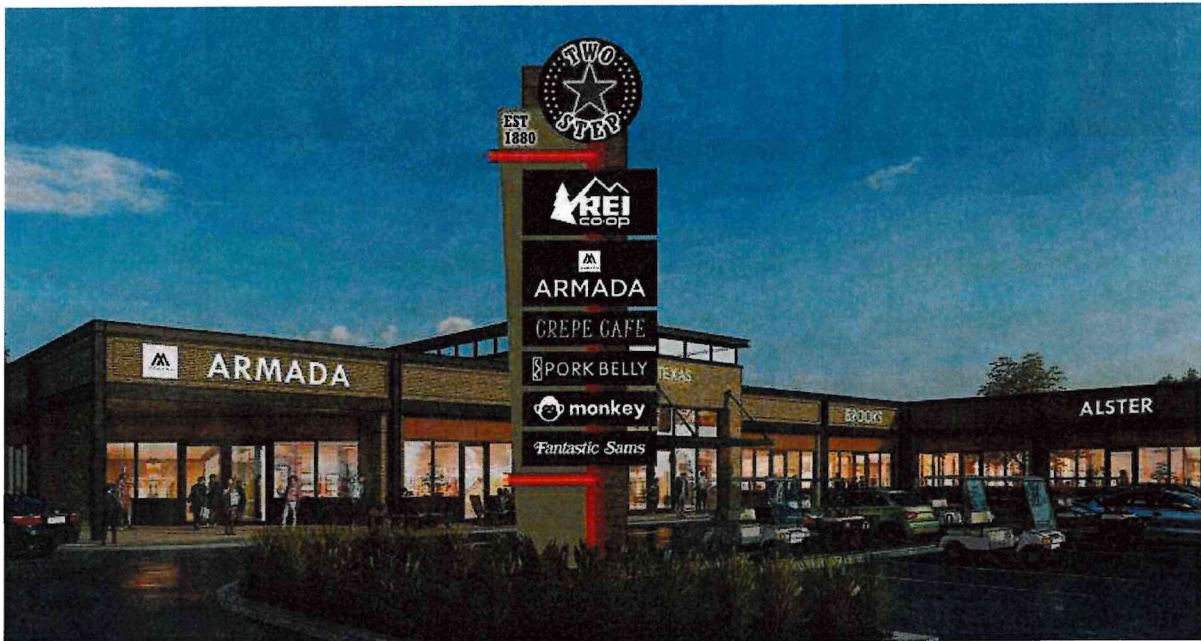


Figure 2. Monument signs



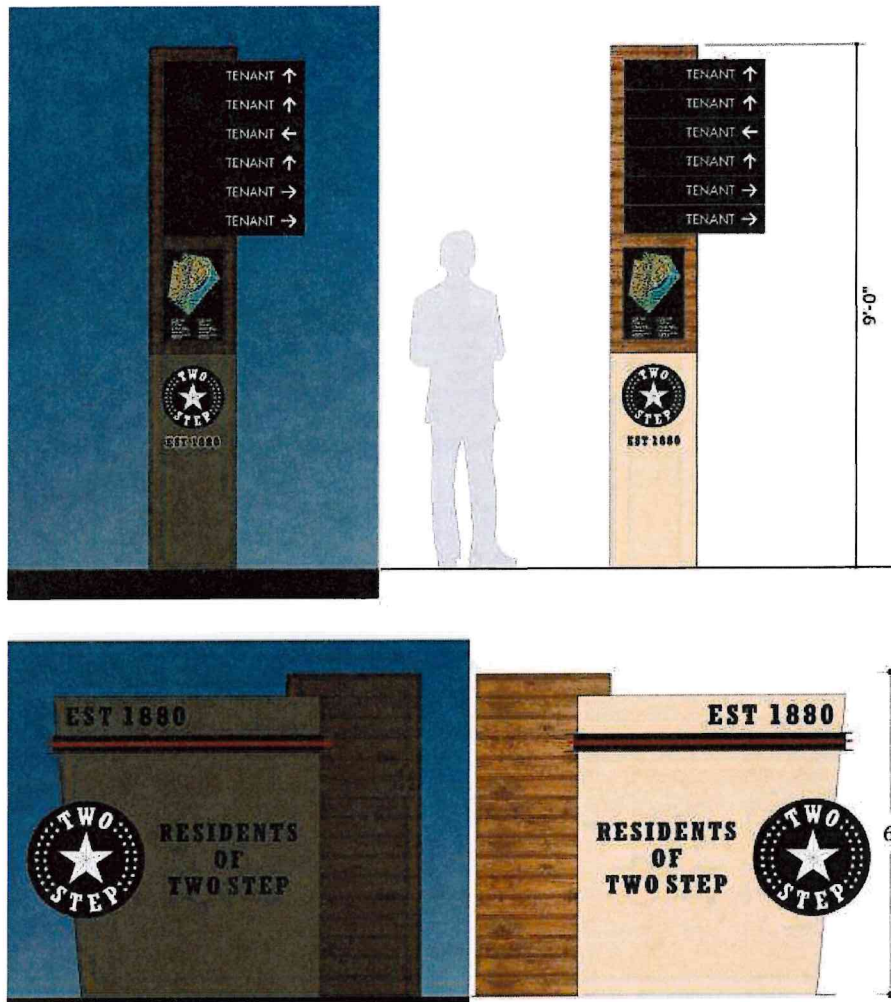


Figure 3. Silo/digital board



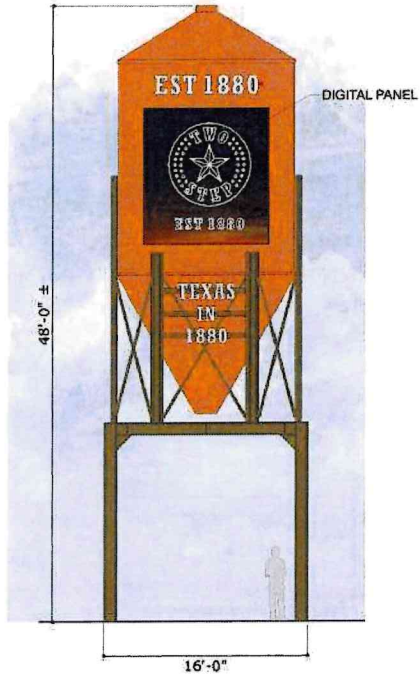
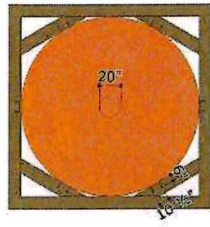


Figure 4. Traffic Improvements

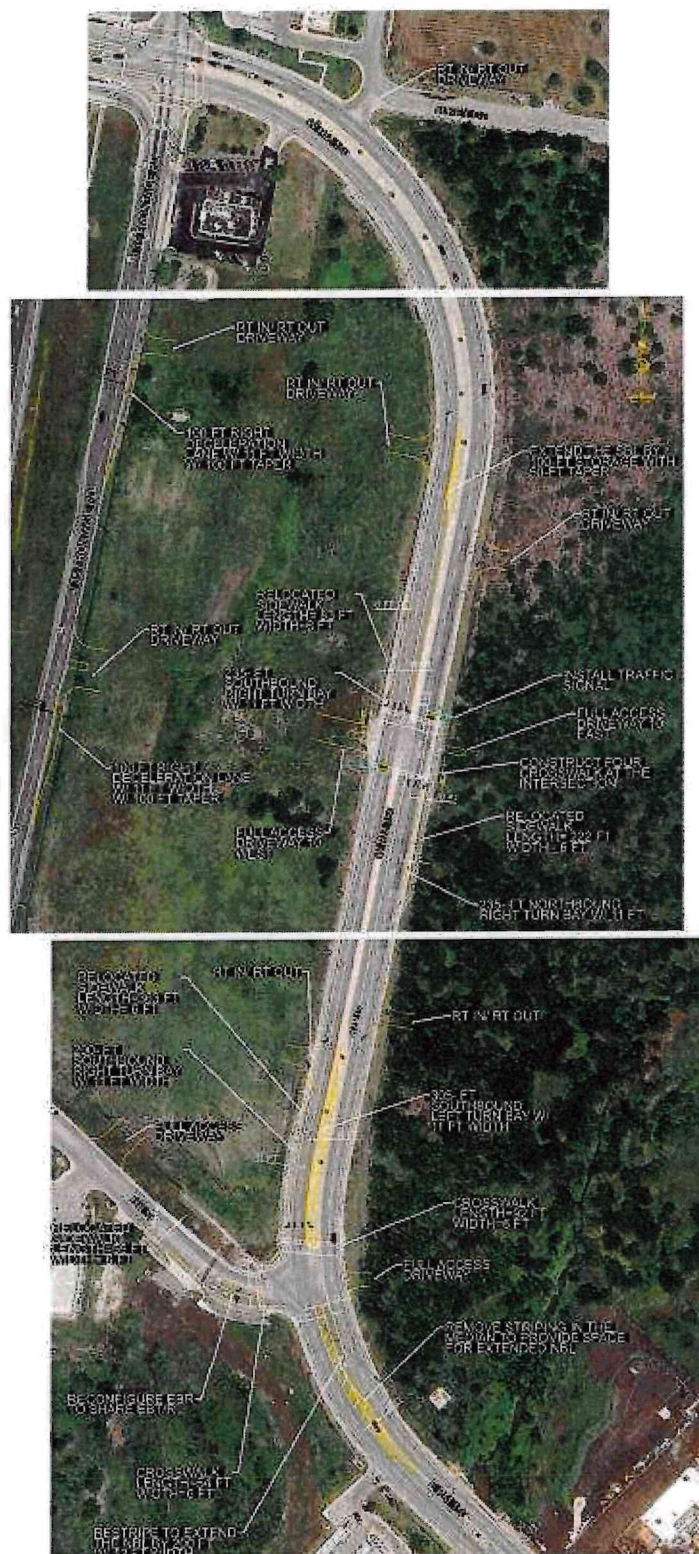


Figure 5. Traffic Light



Figure 6. Extension of water line



Figure 7. Waterline Bores

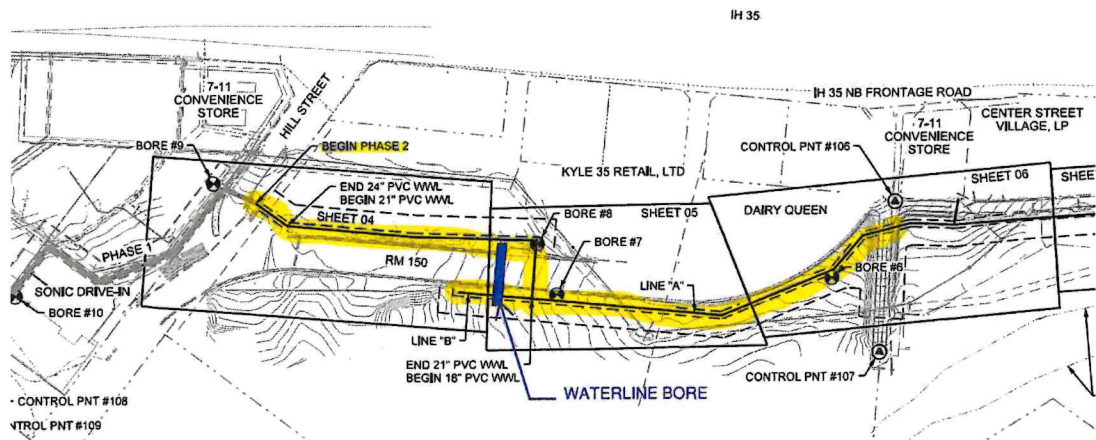


Figure 8. Southern Pond (Parcel 1)



Figure 9. Northern Pond (Parcel 1)



Figure 10. Amphitheatre



Figure 11. Art/murals/statues





Phase II Improvements

Figure 12. Large Pond (Parcel 2)



Figure 13. Large Pond Pier (Parcel 2)



Figure 14. Parkland (Parcel 2 and Parcel 3)

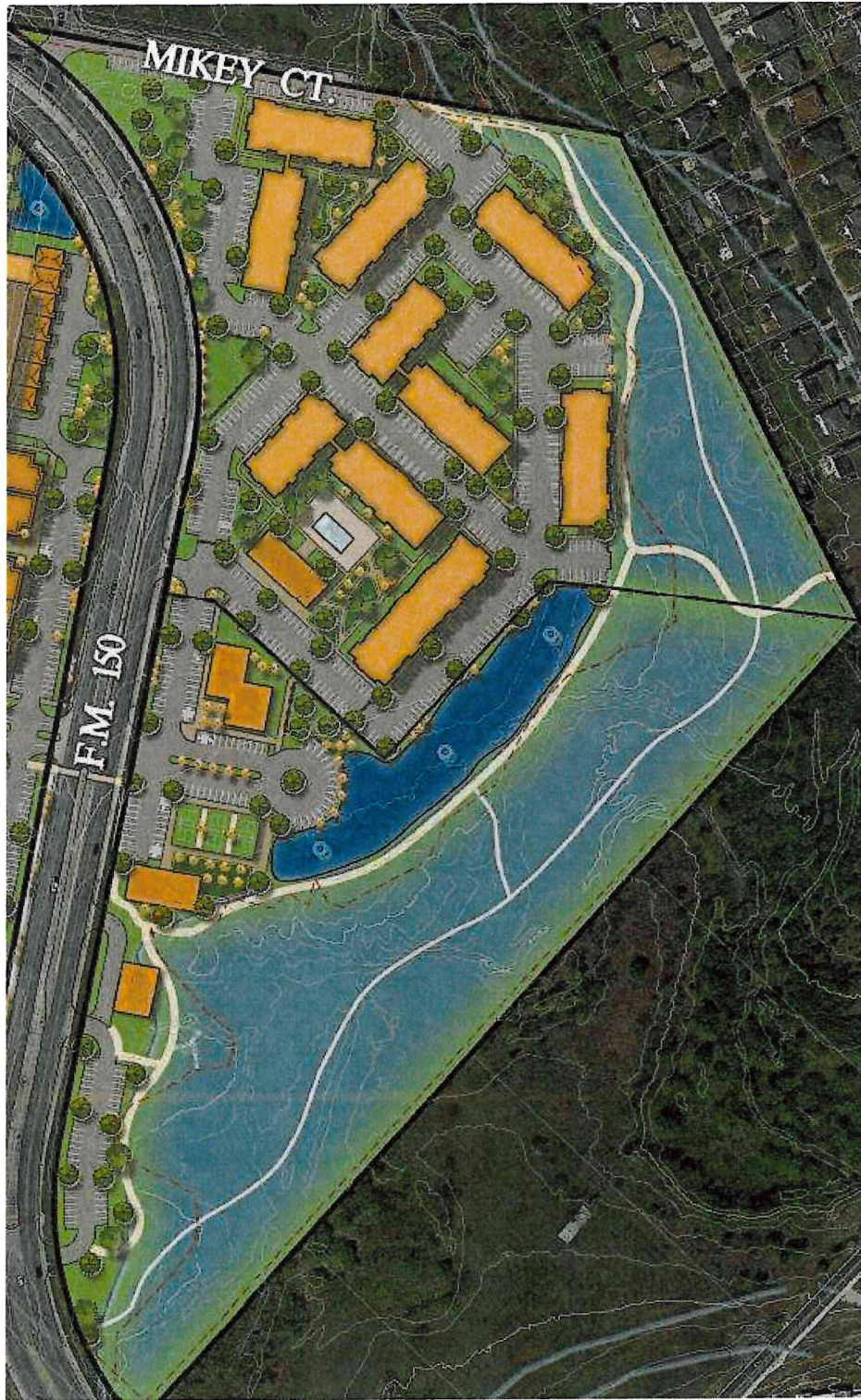


Figure 15. Dog Park



Figure 16. Fountain



Figure 17. Pickleball courts

