

THE STATE OF TEXAS

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**Chapter 380 Grant Agreement  
Project Jasmine**

COUNTY OF HAYS

**THIS CHAPTER 380 GRANT AGREEMENT** – Project Jasmine (hereinafter, this “Agreement”) is executed by and between, Flavor Profile LLC, a Texas limited liability company duly authorized to do business in the State of Texas, dba Spoon + Fork Thai Kitchen (hereafter referred to as “COMPANY”) and the **CITY OF KYLE, TEXAS**, a home- rule city and municipal corporation of Hays County, Texas (hereinafter, the “CITY”).

**WITNESSETH:**

**WHEREAS,** the CITY has established the Restaurant Incentive Program (hereinafter, the “Program”) pursuant to Chapter 380, Texas Local Government Code, to provide for a grant of economic development incentives to qualifying restaurants new or expanding in Kyle under the terms and conditions of this Agreement; and

**WHEREAS,** the City has determined that the COMPANY qualifies for economic development incentives under the Program, subject to the terms and conditions of this Agreement; and

**WHEREAS,** the Property is located within a tax increment financing district;

**WHEREAS,** the COMPANY leases the following described property: approximately 2,000 square feet located at Retail Building 2, Lot 7A, 5160 S FM 1626, Suite #100 at Kyle Crossing Phase II in Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (hereinafter, the “Property,” and further defined herein); and

**WHEREAS,** the COMPANY will install or cause to be installed approximately \$485,000 in capital improvements on the Property; and

**WHEREAS,** the COMPANY made application to the CITY for an economic incentive related to the finish-out of an approximately 2,000 square foot space on the Property (hereinafter, the “Facility,” and further defined herein) and operation of a dine-in restaurant operating under the name, “Spoon + Fork Thai Kitchen”; and

**WHEREAS,** the construction of the Facility, the relocation of the COMPANY to the Property, and operation of the Business Operations on the Property will promote economic development of the CITY, encourage businesses to locate and expand in the CITY, and increase opportunities for increased property tax and employment; and

**WHEREAS,** the Parties agree that the COMPANY must fulfill its obligations under this Agreement in order for the CITY to pay the Chapter 380 Grant (herein defined); and

**WHEREAS**, Chapter 380 of the Texas Local Government Code provides statutory authority for granting the economic incentives and administering the Program provided herein; and

**WHEREAS**, the City Council finds that it is in the public interest to provide the economic incentives set forth herein subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, the CITY and the COMPANY, for and in consideration of the mutual premises and promises contained herein, the receipt and sufficiency thereof is hereby acknowledged, do hereby agree, covenant and contract as set forth below:

**I.**  
**Definitions**

- A. **“Business Operations”** refers to the COMPANY’S dine-in restaurant business operating under the name, “Spoon + Fork Thai Kitchen,” located and conducted on the Property.
- B. **“Business Personal Property”** is defined as tangible personal property, materials, supplies, equipment, inventory, fixtures, or other personal property that are attributable to the Business Operations and located at the Premises and to the structures and uses present on the Property subject to ad valorem taxes, and that are not included in the definition of real property is Section 1.04(2) of the Texas Tax Code, as amended.
- C. **“Calendar Year”** means the twelve-month period of time that begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup> of the same numbered year.
- D. **“Chapter 380 Grant”** is defined as the economic incentive payment further described in Article V.
- E. **“Certificate of Occupancy”** means the final certificate of occupancy issued by the City for the Facility.
- F. **“Eligible Property”** is defined as the Property, all real property improvements affixed to the Property and business property located thereon.
- G. **“Facility”** means the approximately 2,000 square foot space, suitable for the Business Operations, constructed on the Property in accordance with the CITY-approved plans, and applicable local, state, and federal regulations, out of which the Business Operations will be conducted.
- I. **“Full-time Employee or FTE”** is defined as an employee of the COMPANY whose assigned work location is at the Property in the City of Kyle and is working at least a thirty (30)-hour work week.
- J. **“Grant Criteria”** is defined as the criteria set forth in Article IV that the COMPANY must meet to receive the Chapter 380 Grant defined in Article V.

- K. **“Ongoing Documentation”** is defined as copies of the following documents for the tax year for which a Chapter 380 Grant is sought: (1) proof of compliance with Section IV.A(2); (3) proof of payment ad valorem and business personal property taxes; and (4) the 380 Grant Certification described in Article VI. The CITY may reasonably request additional records to support the information shown in the Ongoing Documentation and compliance with the applicable Grant Criteria.
- L. **“Ongoing Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants after Year 1, which are set forth in Section IV.A(2).
- M. **“Premises”** are defined as the real property (land and improvements) located on the Property.
- N. **“Project”** is defined to mean the Facility, together with all other accessory and permitted uses on the Property, upon which the Business Operations will be conducted.
- O. **“Property”** is defined as that certain 2,000 square foot space, being more particularly described in **Exhibit A**.
- P. **“Quarterly Incentive Payment(s)”** means the quarterly Sales Tax Rebate for the four calendar quarters in each of the three (3) full Calendar Years that follow the first Sales Tax Rebate Payment.
- Q. **“Real Property Improvements”** are defined as improvements to the Property, which shall include the Project and any other buildings, structures or fixtures erected or affixed to land on the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code as amended.
- R. **“Real Property Taxes”** shall mean the ad valorem tax assessed on the Eligible Property or a portion thereof, as appropriate, appraised by the Hays Central Appraisal District.
- S. **Sales Tax** means, as of the Effective Date, the levied 1.5% sales tax for commercial activity on the Property less the 0.5% sales tax enacted by the City of property tax reduction, equaling a total of 1.0% sales tax.
- T. **Sales Tax Rebate** means the percentage of Sales Tax received by the City and paid to the COMPANY pursuant to Section V.A.1.
- U. **“Threshold Documentation”** is defined as copies of the following documents: (1) proof of compliance with Section IV.A(1); (2) proof that \$485,000 in Real Property Improvements were constructed on the Property; (3) proof that the Certificate of Occupancy for the Facility and documentation acceptable to the CITY demonstrating that the Facility was installed and completed on the Property by December 31, 2023 and (4) the 380 Grant Certification described in Section VI.A. The CITY may request additional records to support the information shown in the Threshold Documentation or compliance with this Agreement.

- V. **“Threshold Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants to be paid, which are set forth in Section IV A(1).
- W. **“Year 1”** is defined as the tax year (which is anticipated to be 2024) following the date on which the Facility is constructed and completed on the Property, a Certificate of Occupancy is issued for the Facility, and the COMPANY begins Business Operations.

**II.**  
**General Provisions**

- A. The Eligible Property is not in an improvement project financed by tax increment bonds.
- B. The Eligible Property is not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of 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 COMPANY 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 provisions, and does not require the consent of any other governmental authority.
- B. The COMPANY hereby represents and warrants to the CITY that the COMPANY 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 the COMPANY’s governing body or authority by all actions necessary to bind the Company to his Agreement. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of COMPANY, is enforceable in accordance with its terms and provisions, and does not require the consent of any other authority or entity.

**IV.**  
**Performance Criteria**

- A. **Grant Criteria.**
  - 1. **Threshold Grant Criteria.** The following events must occur for the COMPANY to receive the Chapter 380 Grant described in Article V:

- a. The COMPANY constructs at least \$485,000 in Real Property Improvements on the Property.
  - b. The COMPANY completes and obtains a Certificate of Occupancy for the Facility or before December 31, 2023.
  - c. The COMPANY is in compliance with Sections IV.B-D.
2. **Ongoing Grant Criteria.** After the first Chapter 380 Grant payment made to the COMPANY, the COMPANY must comply with the following requirements for each year in which the COMPANY seeks a Chapter 380 Grant payment:
- a. The Facility is continuously open for business during regular business hours and Business Operations are conducted at the Facility.
  - b. The COMPANY is in compliance with Section IV.B-D.
- B. The Project shall conform to the applicable building codes, zoning ordinances, plans and elevations approved by the jurisdiction (attached hereto as **Exhibit C** and incorporated by reference herein) issuing permits for the Project, and all other applicable Federal and State Laws, ordinances, and regulations.
- C. The COMPANY shall not allow the ad valorem taxes or business personal property owed to CITY or the Hays Consolidated Independent School District (hereinafter, the “District”) on any real property or business personal property owned by COMPANY and located within the City of Kyle or the District to become delinquent beyond the last day they can be paid without assessment of penalty. Notwithstanding the foregoing the COMPANY may contest and appeal any and all taxes/ad valorem taxes associated with the Property and owed to the District or any other applicable governmental entity, and during such appeal/contest the COMPANY shall not be required to pay taxes/ad valorem taxes associated with the Property to the District or any other applicable governmental entity until such time as the contest/appeal is finally and fully resolved, and in such event the City shall not be required to pay the Chapter 380 Grant until the contest/appeal is finally and fully resolved.
- D. The COMPANY covenants and certifies that the COMPANY 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 COMPANY is convicted of a violation under 8 U.S.D. Section 132(a)(f), the COMPANY shall repay to the CITY the full amount of Chapter 380 Grants made under Article V of this Agreement. Repayment shall be paid within 120 days after the date following an un appealable conviction of the COMPANY, provided, however, the COMPANY shall not be liable for a violation by a subsidiary, affiliate, or franchisee of the COMPANY or by a person with whom the COMPANY contracts.

## V.

### **Economic Development Grants**

#### A. **Chapter 380 Grants.**

1. Subject to the terms and of this Agreement, and COMPANY's full and timely performance of, and compliance with, each of the applicable Grant Criteria set forth in Article IV, the CITY agrees to pay to COMPANY the following Chapter 380 Grant commencing in Year 1 and continuing for each subsequent year up to two additional years.

Year 1: An amount equal to 100% of the Sales Tax received by the City on a quarterly basis.

Year 2: An amount equal to 100% of the Sales Tax received by the City on a quarterly basis.

Year 3: An amount equal to 100% of the Sales Tax received by the City on a quarterly basis.

**B. Payment of Annual Chapter 380 Grants**

1. The City shall pay the Sales Tax Rebate quarterly as provided in this Subsection B. To be eligible to receive the Chapter 380 Grant in the years following Year 1, the terms of V.A.1 must be met each year. The COMPANY will not be paid the 380 Grant payment for those tax years in which the Ongoing Grant Criteria are not met.
2. Each year on or before April 30, the COMPANY shall provide the City the Documentation described in Article VI.
3. After receipt for the Documentation for a particular year, the City shall pay the COMPANY 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 twelve (12) calendar quarters of the three Calendar Years beginning with Year 1 will be deposited and paid out to the COMPANY, in arrears. The City shall pay each respective Quarterly Incentive Payment to the COMPANY on or before the thirtieth (30<sup>th</sup>) day of the month that follows the receipt by the City from the State of Texas of the Sales Tax for the previous calendar quarter within each Calendar Year each year in which the applicable Grant Criteria are met.

B.

**VI.**  
**Reports, Audits and Inspections**

- A. **Annual Certification and Reports.** The COMPANY shall certify in writing to the CITY that the COMPANY 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 IV as follows:

1. **Certification.** COMPANY shall complete and certify a 380 Grant Certification in a form substantially similar to that set forth in **Exhibit B**, which shall include the COMPANY Threshold or Ongoing Documentation, as appropriate. Such Documentation and Certification shall be submitted at the time the COMPANY pays its respective Sales Property Taxes.
  2. **Sales Tax Reports.** The COMPANY 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 the COMPANY 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 COMPANY 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.
  3. **Additional Reports.** The, COMPANY shall furnish CITY any additional records and information reasonably requested to support the Grant Criteria and the reports required by this Agreement. The COMPANY shall further furnish the CITY with copies of or access to additional information reasonably required to verify the information set forth in the Threshold or Ongoing Documentation.
- B. **Right to Audit Books and Records.** CITY shall have the right to audit the books and records of the COMPANY related to the Eligible Property. CITY shall notify the COMPANY in advance in writing of their intent to audit in order to allow the COMPANY, as applicable, adequate time to make such books and records available (in no event shall the COMPANY, as applicable, have less than five (5) business in order to make such books and records available).
- C. **Inspection.** At all times throughout the term of this Agreement, CITY shall have reasonable access to the Property upon providing at least 48 hours' written notice to the COMPANY for the purpose of inspecting the Property to ensure that the Facility is designed, constructed and installed in accordance with the terms of this Agreement. Notwithstanding the foregoing, the CITY's inspection of the Property shall not interfere with the operation of the Property.

## **VII.** **Breach**

- A. **Breach.** A breach of this Agreement may result in termination or modification of this Agreement as provided herein. The following conditions shall constitute a breach of this Agreement:
1. The Company fails to meet the performance criteria as specified in Article IV above.
  2. The Company falsely certifies that the performance criteria in the Threshold Documentation submitted to the CITY under Article VI has been met.

3. CITY fails to timely make payments to the COMPANY under the terms of this Agreement.

B. **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 sixty (60) business days after receipt by such Party of notice of default from the other Party (“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 reasonably be 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 cure 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 in writing (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 cure, then the non-defaulting Party may terminate this Agreement, pursue the remedies set forth in this Agreement, as well as any other remedies available in equity or law.

C. **Repayment of Chapter 380 Grants.**

In the event that the COMPANY commits a breach of this Agreement according to Section VII.A(2), the COMPANY shall pay back to the CITY the Chapter 380 Grant for the tax year for which false certification was submitted within thirty (30) days of written demand by the CITY.

D. **Tax Lien Not Impaired.** It is expressly agreed and acknowledged between the parties to this Agreement 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 Code. For purposes of this Subsection, “property” refers to the Premises and Eligible Property described herein.

E. **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 recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty or governmental immunity on the part of the CITY.

- F. **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 Chapter 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.

## VIII.

### Indemnification

COMPANY 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 RELATING TO COMPANY'S ACTIONS UNDER THIS AGREEMENT, 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 COMPANY OR COMPANY'S AFFILIATE'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY'S AFFILIATE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S AFFILIATE, 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, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO 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. COMPANY SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF COMPANY OR COMPANY'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT COMPANY'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 COMPANY 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 COMPANY TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY

**ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. COMPANY 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.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE COMPANY 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 THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.**

**IX.**  
**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 delivery:

**COMPANY:** Flavor Profile LLC, 166 Hargraves Dr., Ste. B200, Austin, TX 78737

**With a copy to:**

**CITY:** City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, TX 78640

**With a copy to:**

Paige H. Saenz  
The Knight Law Firm, LLP  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

**X.**  
**City Council Authorization**

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

**XI.**  
**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.

**XII.**  
**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. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of COMPANY, 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.

**XIII.**  
**Standing**

COMPANY, as a party to 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 COMPANY shall be entitled to intervene in said litigation.

**XIV.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas without regarding to its conflict of laws provisions. Venue for any action under this Agreement shall be the State's District Court of Hays County, Texas. This Agreement is performable in Hays County, Texas.

**XV.**  
**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 war, Act of God, fire, pandemic, material or labor shortage, strike, civil unrest, governmental action, or any other reason beyond the reasonable control of the respective party, or other casualty or event of a similar nature.

**XVI.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out 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 parties.

**XVII.**  
**Headings**

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

**XVIII.**  
**Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

**XIX.**  
**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 of the parties hereto have executed at least one counterpart.

**XX.**  
**No Third-Party Beneficiaries**

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) the agreement only affects matters/disputes between the parties to 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 entities may be in a contractual relationship with CITY or the COMPANY; 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 the COMPANY.

**XXI.**  
**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 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.

## **XXII.**

### **Term and Termination**

#### **A. Term.**

Unless terminated earlier as provided herein, this Agreement shall terminate upon the earliest occurrence of any one or more of the following: (1) the written agreement of the Parties; or (2) The Agreement's Expiration Date. The Expiration Date shall be three years from the Effective Date (defined hereunder) of this Agreement; provided that the following shall survive termination of this Agreement for any reason: the obligation of the CITY to pay the Chapter 380 Agreement if the performance criteria and applicable terms and conditions of the Agreement are met; Article III; Article V; Article VI.B; Article VII; Article VIII; Article XIII, Article XIV, Article XV, Article XVI, Article XVIII, Article XX, and Article XXI.

#### **B. Termination.**

During the term of this Agreement, should the COMPANY commit a breach of this Agreement according to the Sections VII.A(1) or (2), the CITY may terminate this Agreement, subject to Section VII.B. In addition, the CITY may terminate the Agreement in the event that the COMPANY fails to obtain a Certificate of Occupancy for the Project by December 31, 2023 by giving thirty (30) days' written notice to the COMPANY.

## **XXVII.**

### **Statutory Verifications**

- A. In accordance with Chapter 2270, Texas Government Code, the CITY may not enter into a contract with a COMPANY for goods and services unless the contract contains a written verification from the COMPANY that it: (a) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of the COMPANY verifies that the COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement.
  
- B. To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the COMPANY represents that the COMPANY and all wholly owned subsidiary, majority-owned subsidiary, parent COMPANY and affiliates of COMPANY do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. Further, the COMPANY represents that the COMPANY and all wholly owned subsidiary, majority-owned subsidiary, parent COMPANY and affiliates of COMPANY do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. The phrase "Discriminates Against a Firearm Entity or Firearm Trade Association" as used in this paragraph have the meanings assigned to the phrase "Discriminate Against a Firearm Entity or Firearm Trade Association" in Section 2274.001(3) of the Texas Government Code, as amended.

- C. To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the COMPANY represents that neither the COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY (i) boycotts energy companies or (ii) will boycott energy companies through the term of this Agreement. The phrase "Boycott Energy Companies" as used in this paragraph have the meanings assigned to the phrase "Boycott Energy COMPANY" in Section 809.001 of the Texas Government Code, as amended.
- D. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY is a COMPANY listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code. Further, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY is a COMPANY listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**XXVIII.**  
**Effective Date**

This Agreement shall be effective on 12/30/22 (the "Effective Date").

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the day and year written above.

**COMPANY**

**By:**



SIGNATURE

THANANUCH TREPETCH

PRINTED NAME AND TITLE

12/30/2022.

DATE

THE STATE OF TEXAS  
COUNTY OF HAYS

§  
§

Acknowledgment

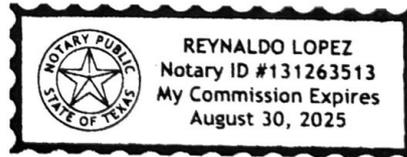
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Reynaldo Lopez known to me (or proved to me on the oath of) \_\_\_\_\_ or through T x D L (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of Tangerine Cooking Company LLC, a Texas corporation such entity duly authorized to do business in the State of Texas, and as the President (Title of company representative) thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30 day of December, 2022

Reynaldo Lopez  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

08/30/2025  
MY COMMISSION EXPIRES:

Reynaldo Lopez  
NOTARY'S PRINTED NAME



CITY OF KYLE, TEXAS

By: [Signature]  
CITY MANAGER

Gerald J. Hendrix  
PRINTED NAME

Date: 12/21/2022

ATTEST:

[Signature]  
CITY SECRETARY

Jennifer Kirkland  
PRINTED NAME

APPROVED AS TO FORM:

By: [Signature]  
CITY ATTORNEY

Paige Saenz  
PRINTED NAME

Date: 12/21/2022

THE STATE OF TEXAS §  
COUNTY OF HAYS §

CITY OF KYLE, TEXAS  
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Gerald J. Hendrix, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF KYLE, TEXAS**, a municipal corporation of Hays County, Texas, and as the Interim City Manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

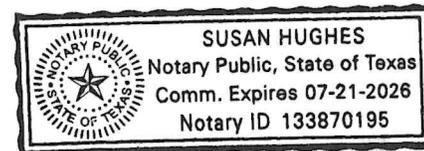
GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 21<sup>st</sup> day of December, 20 22.

[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Susan Hughes  
NOTARY'S PRINTED NAME

7/21/2026  
MY COMMISSION EXPIRES:

(16)



**EXHIBIT A**  
**The Property**

Retail Building 2, Lot 7A, 5160 S FM 1626, Suite #100 at Kyle  
Crossing Phase II in Hays County, Texas,

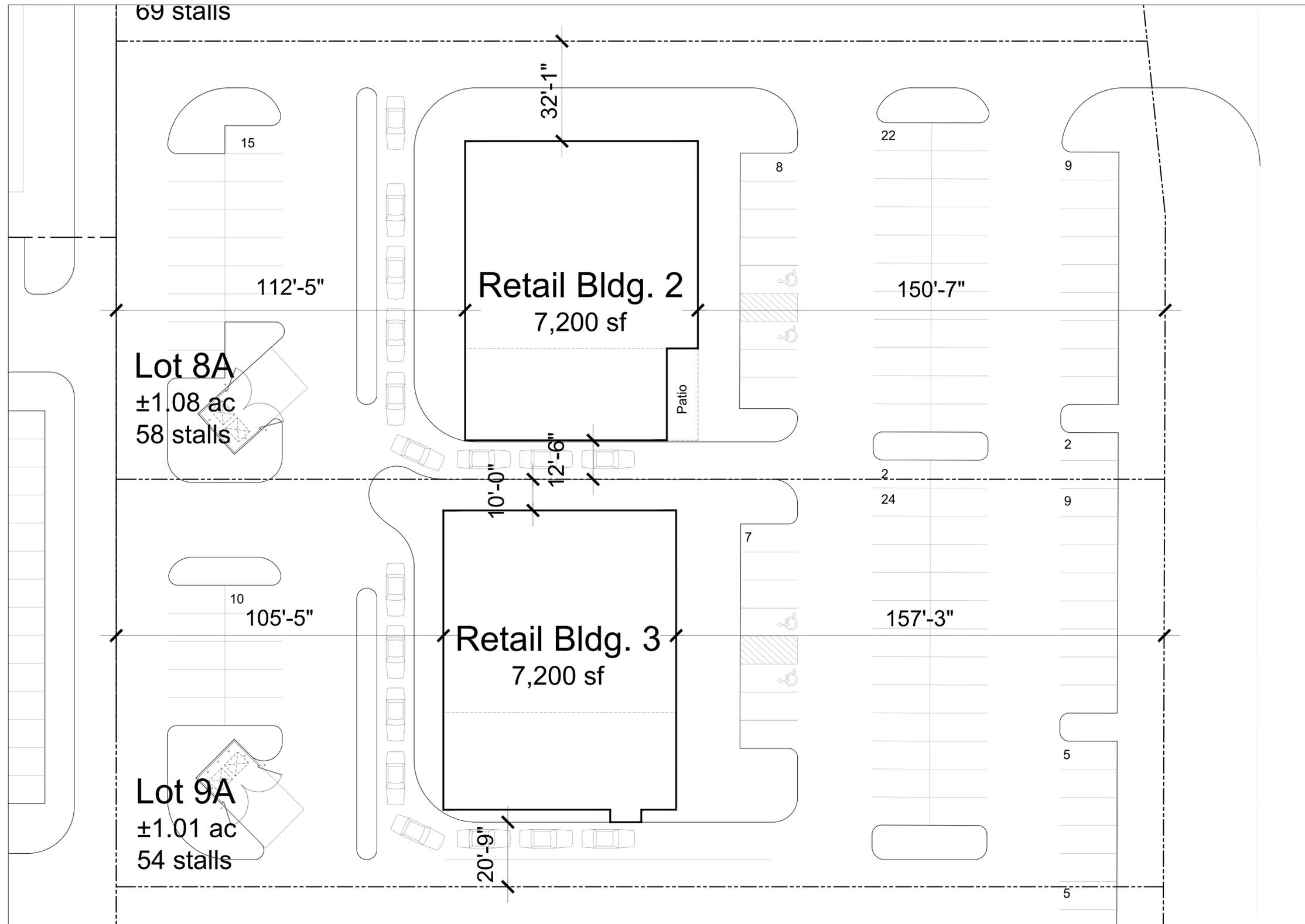
# KYLE CROSSING PHASE 2

RETAIL 2 & 3

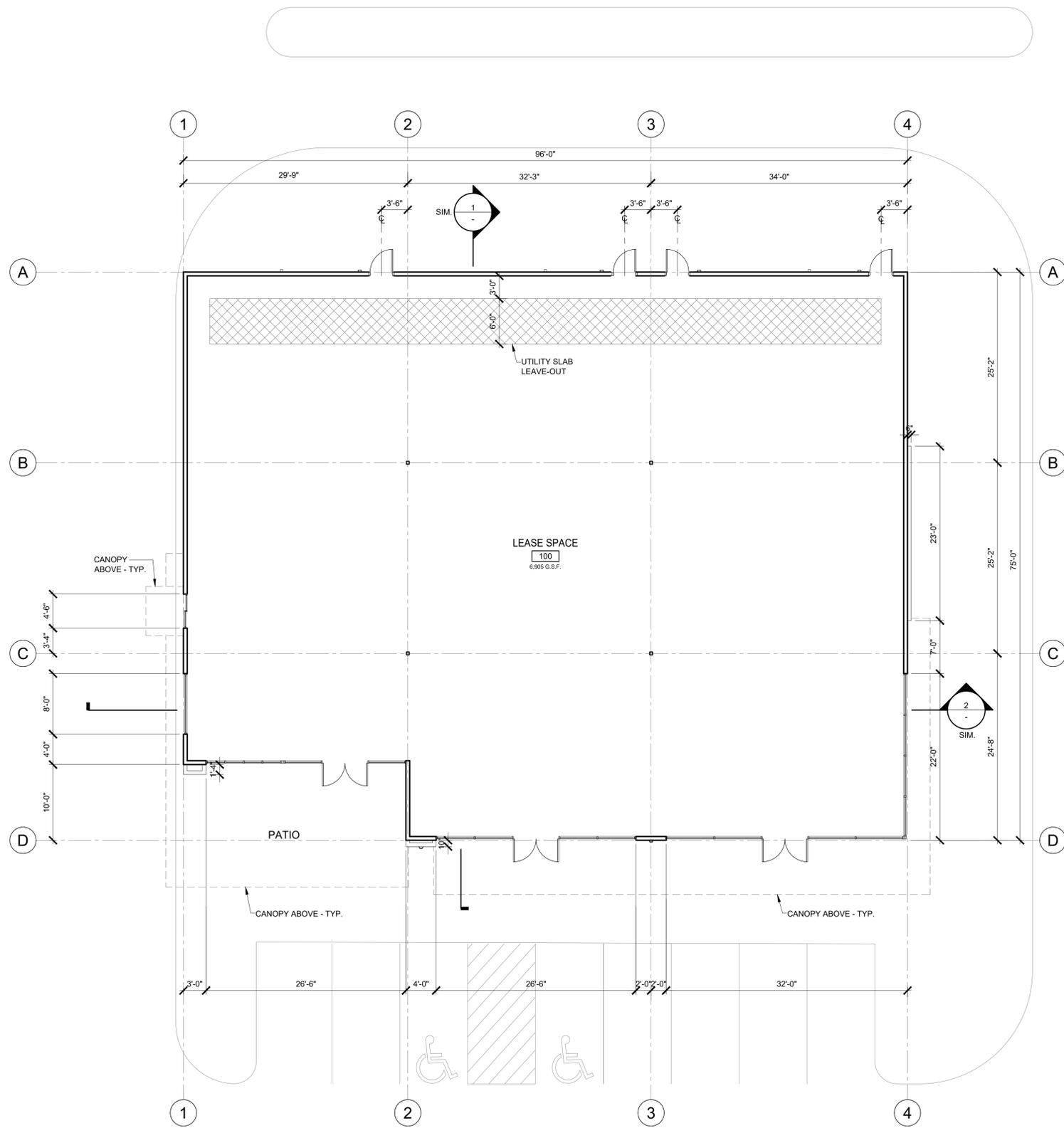
CONDITIONAL USE PERMIT DESIGN PACKAGE

SEPTEMBER 30, 2021

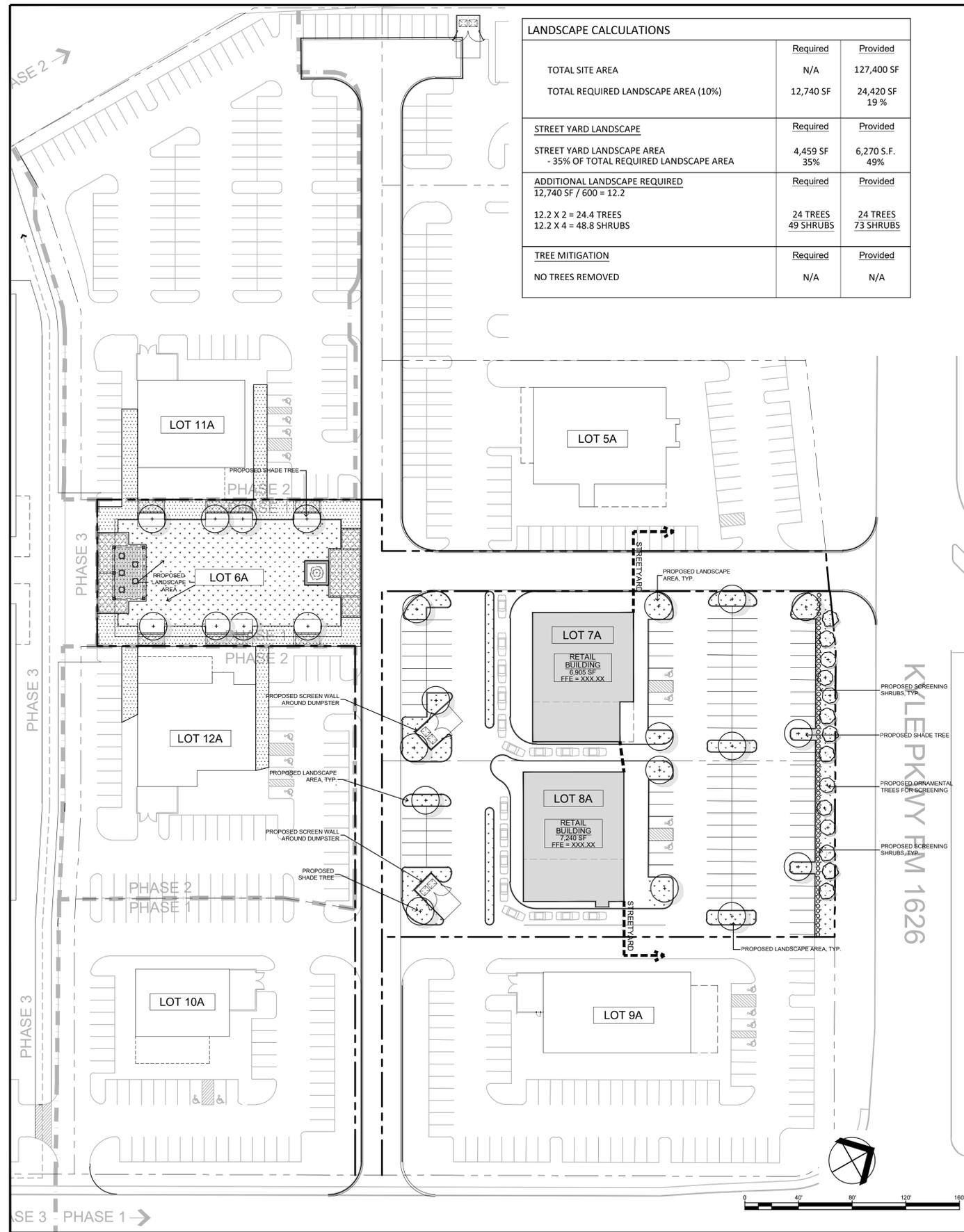




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LANDSCAPE CALCULATIONS		
	Required	Provided
TOTAL SITE AREA	N/A	127,400 SF
TOTAL REQUIRED LANDSCAPE AREA (10%)	12,740 SF	24,420 SF 19 %
<b>STREET YARD LANDSCAPE</b>		
STREET YARD LANDSCAPE AREA - 35% OF TOTAL REQUIRED LANDSCAPE AREA	4,459 SF 35%	6,270 S.F. 49%
<b>ADDITIONAL LANDSCAPE REQUIRED</b> 12,740 SF / 600 = 12.2		
12.2 X 2 = 24.4 TREES	24 TREES	24 TREES
12.2 X 4 = 48.8 SHRUBS	49 SHRUBS	73 SHRUBS
<b>TREE MITIGATION</b>		
NO TREES REMOVED	N/A	N/A

LARGE SHADE TREES				
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
+	24	Cedar Elm	Ulmus crassifolia	4" caliper / 10' height minimum
		Live Oak	Quercus virginiana	4" caliper / 10' height minimum
		Mexican Sycamore	Platanus mexicana	4" caliper / 10' height minimum
		Texas Red Oak	Texas shumardi 'Buckley'	4" caliper / 10' height minimum

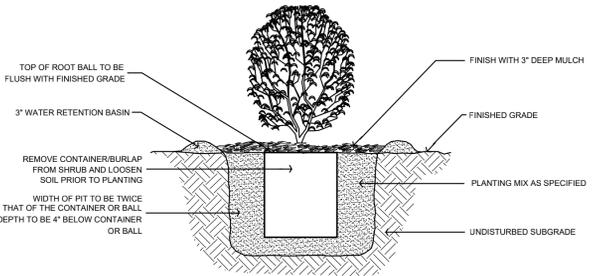
ORNAMENTAL TREES				
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
+	8	Texas Redbud	Cercis canadensis 'Texensis'	2" caliper / 6' height minimum
+	6	Tree Yaupon	Ilex vomitoria	2" caliper / 6' height minimum

LARGE SHRUBS				
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
○	73	Bicolor Iris	Diets bicolor	5 gallon, minimum
		Big Muntly	Muhlenbergia lindheimeri	5 gallon, minimum
		Dwarf Wax Myrtle	Myrica pusilla	5 gallon, minimum
		Knockout Rose 'Red'	Rosa spp. 'Radrazz'	5 gallon, minimum
		Mexican Bush Sage	Salvia leucantha	5 gallon, minimum
		Texas Sage	Leucophyllum frutescens	5 gallon, minimum

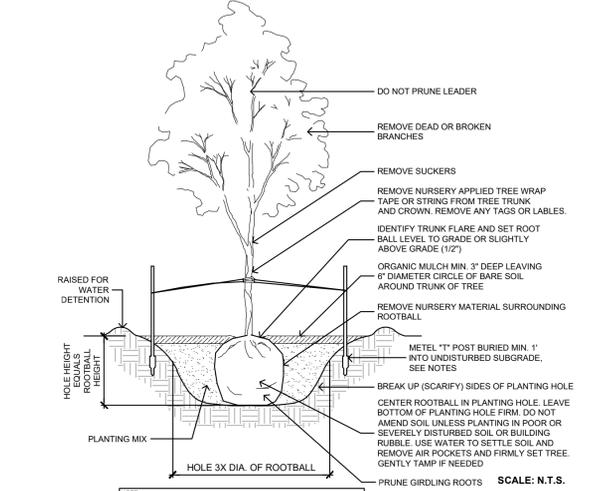
MISCELLANEOUS		
QUANTITY	SYMBOL	DESCRIPTION
24,000 +/-	[Symbol]	Bermuda Tiff, Solid Sod, for all disturbed areas
	[Symbol]	SF 4" depth native hardwood mulch, in all planting areas

- ### LANDSCAPE CONSTRUCTION NOTES
- Contractor shall provide all labor and materials necessary to complete the work shown on the plans.
  - All proposed landscaping is to be installed as per local city ordinances and codes. Notify owner's representative and landscape architect of any discrepancies prior to construction.
  - All plant material shall comply with plant size per container as stated by the American Association of Nurseryman.
  - Plants are subject to inspection and approval by the landscape architect. Plants required for the site may be inspected and tagged at growing site before delivery.
  - Groundcover bed preparation shall be 2 inches of planting mix tilled 8 inches into bed areas.
  - Shrubs and trees shall be pocket planted. Excavate planting hole 1-1/2 times the width and height of the root ball. Backfill with 1/2 planting mix, 1/3 native soil and 1/3 sandy loam.
  - Grading shall provide positive drainage away from buildings and other structures. Fine grade for positive drainage to prevent ponding.
  - Quantities provided in the plant list are for general use only, contractor is responsible for verification of all plant quantities.
  - Contractor is responsible for quality of workmanship, superintendence and scheduling of work.
  - Contractor is responsible for removal of trash and job safety conditions
  - Contractor to provide (1) year warranty on all plant material.
  - Pre and Post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities including disturbance of the critical zone. Fertilizers must be phosphate free.

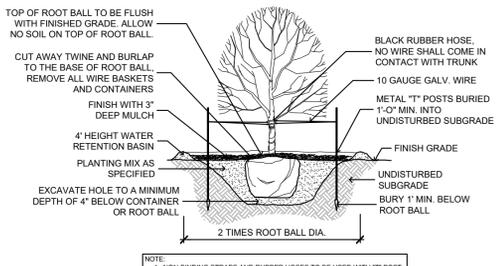
- ### GENERAL LANDSCAPE MAINTENANCE NOTES
- The owner shall be responsible for (unless otherwise specified herein):
- Regular maintenance of all required landscaped areas and plant materials in a vigorous and healthy condition, free from diseases, pests, weeds, and litter. This maintenance shall include weeding, watering, fertilization, pruning, mowing, edging, mulching, or other necessary maintenance in accordance with generally accepted horticultural practice;
  - The repair or replacement of required landscape structures (walls, fences, etc.) to a structurally sound condition;
  - The regular maintenance, repair, or replacement, where necessary, of any screening or buffering;
  - Replacing planted trees if they die or become diseased beyond repair within five (5) years after planting; and
  - Repairing damage to landscaped areas, structures, screening, buffering, or trees as a result of ingress or egress from site easements by authorized or unauthorized parties.



**A SHRUB PLANTING DETAIL** SECTION SCALE: N.T.S.



**B TREE PLANTING DETAIL** SECTION SCALE: N.T.S.



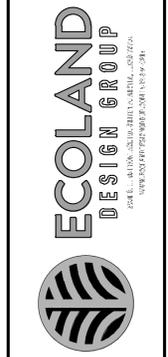
**C ORNAMENTAL TREE PLANTING DETAIL** SECTION SCALE: N.T.S.

REVISIONS	Description	Date



**KYLE CROSSING 1626 @ MARKET PLACE AVE**  
**KYLE, TEXAS 78640**  
**LANDSCAPE SUBMITTAL PLAN**

DATE: 10-18-21  
 SCALE: 1" = 40'



Sheet:  
**L1 of L1**

JOB#: E125-33

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**EXHIBIT B**

**CITY OF KYLE  
CHAPTER 380 AGREEMENT (THE "AGREEMENT") GRANT REPORT FORM**

**Chapter 380 Grant Certification**

**PROJECT STATUS – THRESHOLD GRANT CRITERIA (provide in Year 1 only)**

Certificate of Occupancy for the Project issued \_\_\_\_\_.

Business Operations commenced on \_\_\_\_\_.

Provide documentation of expenditure of at least \$485,000 in Real Property Improvements.

**Please provide each of the following documents as an attachment to this Certification:**

- Proof of payment of the sales tax.

**CERTIFICATION**

I certify that to the best of my knowledge and belief, the information and attached documents provided in this Chapter 380 Grant Certification are true and accurate and in compliance with the terms of the Chapter 380 Agreement with the City of Kyle. I further certify that to the best of my knowledge and belief, I have met the requirements of the Threshold Grant Criteria, as that terms is defined in the Agreement applicable to the RESTAURANT.

\_\_\_\_\_  
Printed Name and Title of Certifying Officer

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

NOTE: This Chapter 380 Grant Certification shall be filed with the City prior to the payment of the Chapter 380 Grant.

EXHIBIT C







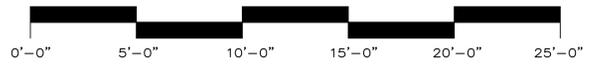
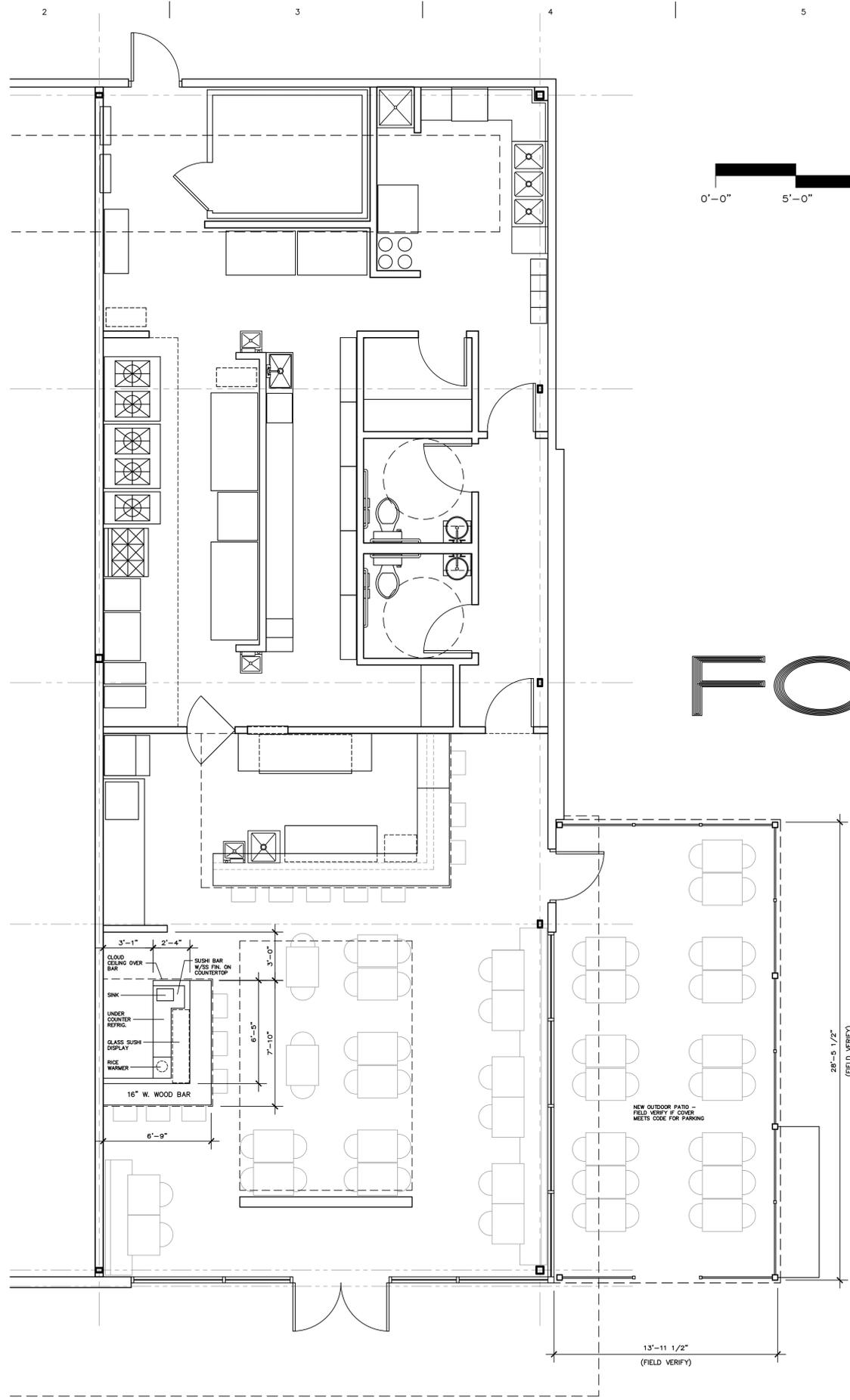












WALL LEGEND	
	EXISTING EXTERIOR OR INTERIOR WALL
	NEW INTERIOR WALL - 2x4 OR 2x8 WD. STUDS @ 16" O.C. W/ 5/8" GYP. BD. EA. SIDE. TAPE, BED, TEXTURE, AND PAINT TO 4" ABOVE CEILING LINE - REFER TO WALL TYPES FOR HEIGHTS
	NEW ALUMINUM STOREFRONT PROVIDE STRUCTURAL SUPPORT TO ROOF EXISTING ROOF STRUCTURE

NOTE:  
MTL. STUDS CAN BE USE IN LIEU OF WOOD STUDS WITH CITY OF KYLE APPROVAL

- | NEW CONSTRUCTION NOTES: |  |
|-------------------------|--|
| 1.                      | CONTRACTOR TO VERIFY ALL DIMENSIONS and EXISTING CONDITIONS AT SITE BEFORE BEGINNING CONSTRUCTION.                 |
| 2.                      | ALL NEW CONSTRUCTION TO COMPLY WITH ALL ACCESSIBILITY REQUIREMENTS.  |
| 3.                      | PROVIDE SIGNAGE TO NEW ROOMS AS REQUIRED AND TO COMPLY WITH ALL ACCESSIBILITY REQUIREMENTS - REFER TO SHEET CS2.0. |

FOR REVIEW



① **SUSHI BAR + OUTDOOR DINING FLOOR PLAN**  
SCALE: 1/4"=1'-0"



ARCHITECTURE  
PLANNING / INTERIORS  
P.M. BOX 115  
5605 FM 423 - SUITE 500  
FRISCO, TX 75036  
PHONE: (214) 244-1919

INTERIOR FINISH OUT  
**SPOON + FORK RESTAURANT**  
20160 MARKETPLACE AVENUE - SUITE 100  
BUILDING 2 - KYLE, TEXAS 78640

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REVISIONS:


PRELIMINARY ISSUES:


PROJECT ARCHITECT:  
BEN CORTEZ

ISSUE DATE:  
09-30-22

APPROVED BY:  
BC

DRAWN BY:  
BC

JOB AND SHEET NO.:  
3855a1-0.DWG

SHEET TITLE:  
FLOOR PLAN

SHEET NO.:

**A1.0**