

Hays County
Liz Q. Gonzalez
County Clerk
San Marcos, Texas 78666



70 2013 13026615

Instrument Number: 2013-13026615

As

Recorded On: August 07, 2013

OPR RECORDINGS

Parties: SCHULMAN ENTERTAINMENT LLC

Billable Pages: 14

To KYLE CITY OF

Number of Pages: 15

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

OPR RECORDINGS	68.00
Total Recording:	68.00

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AMELIA SANCHEZ
ORIGINAL TO CUSTOMER
SAN MARCOS TX 78666



State of Texas |
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q. Gonzalez
Liz Q. Gonzalez, County Clerk

STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF HAYS §

**CITY OF KYLE and SCHULMAN ENTERTAINMENT, LLC
ECONOMIC DEVELOPMENT AGREEMENT**

This Chapter 380 Economic Development Agreement (“Agreement”) is effective as of the 20th day of June, 2013 (“Effective Date”), by and between SCHULMAN ENTERTAINMENT, LLC (“Company”), and the CITY OF KYLE, TEXAS, a home rule city and municipal corporation (“City”), for the purposes and considerations stated below.

FACTUAL RECITALS AND FINDINGS

WHEREAS, the City has established an economic development program and authorized the City to make economic development grants to prospective companies as an inducement by the City for an economic development project that meets the City’s goals; and

WHEREAS, the City Council of the City of Kyle has authorized the City to provide certain economic development incentives to the Company in recognition of the economic benefits that will occur through the Company’s development of a Destination Multi-faceted Family Entertainment Complex for the purposes of enhancing the local economy and quality of life within the Kyle community and Hays County and reducing retail “leakage” in the entertainment and restaurant sector.

WHEREAS, the Company intends to construct and finish-out approximately 68,000 square feet and develop approximately 8.0 acres located in the City of Kyle, Texas, for the purpose of commercial use at “Kyle Crossing shopping Center” (the “PROJECT”); and

WHEREAS, the City desires to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that providing economic development incentives to the Company in accordance with this Agreement will further the objectives of the City; increase the quality of life of the City; and protect and safeguard the public health, safety and welfare; and

WHEREAS, the City desires and agrees to enter into this Agreement with the Company in order to implement the economic development program defined herein;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS

I. DEFINITIONS

- 1.01 **Anniversary** means the first day of the month following the Opening Date of the Project for commercial operations to the general public, unless that day is the first of a month, in which event that date shall be the Anniversary.
- 1.02 **Company Sales Tax** means .50% of the sales tax rate or 33.33% of the City's share received from the State Comptroller's Office of a one and one half (1.5%) percent municipal sales tax, such as that presented in effect pursuant to Texas Tax Code Chapter 380, Section 380.002, resulting from (i) sales tax collected by the Company, and (ii) the City's share of sales and use tax paid directly by the Company under its sales tax permit. For the purposes of this Agreement, Sales Tax Revenues shall be determined to be the amount remitted by the State Comptroller's Office to the City resulting from the actual sales tax collected by the Company, less applicable administrative charge, as set forth in the records prepared by the Company and submitted to the State Comptroller.
- 1.03 **Property Tax**: The City portion of ad valorem property taxes, at the current annual rate, on real property improvements and business/personal property/equipment rendered at the PROJECT.
- 1.04 **Certificate of Occupancy/C.O.** means the final, unconditional certificate of occupancy issued by the City for the Company at the PROJECT in the City.
- 1.05 **Opening Date** means the day that the PROJECT is complete, the City has issued a C.O., the Company is fully staffed, stocked with merchandise and equipment and open for business to the general public.
- 1.06 **Program** means the economic development program established by the City pursuant to this Agreement.
- 1.07 **Project and Improvements** means the site development of an approximately 8.0 acre tract of land out of the Hays County, Texas ("PROJECT") and the construction and finish-out of approximately 68,000 SF for a new commercial building ("IMPROVEMENTS") by the Company to include a movie theatre with at least 8 screens, a bowling alley, game room/arcade, sports bar and grill, party rooms as more specifically described in "Exhibit A" and "Exhibit B", attached and incorporated as part of this Agreement.
- 1.08 **Term** has the meaning given in Article 3.

II. AUTHORIZATION

- 2.01 City Authority. This Agreement is authorized by State law, including but not limited to, Chapter 380 of the Texas Local Government Code, is within the authority of the City, and constitutes a legal and binding obligation of the City.

- 2.02 The City Council of the City of Kyle, Texas elects to become eligible to participate in tax rebate, under Section 380.001 of the Texas Local Government Code; and
- 2.03 The Company's execution and performance of this Agreement constitutes a valid, legal and binding obligation of the Company in the event the Company proceeds to develop and construct the Project in the City.
- 2.04 The factual recitals and findings set forth above are found to be true and correct for all purposes, and incorporated into the body of the Agreement.

III. TERM

- 3.01 This Agreement shall be effective as of the date of execution ("Effective Date") of both parties. This Agreement shall remain in full force and effect until the City and the Company have completed their respective obligations hereunder, or on the fifteenth (15th) Anniversary date of the Project, or when the City has paid to the Company the maximum amount per Section 4.01; or as otherwise stated, whichever comes first ("Term").

IV. ECONOMIC DEVELOPMENT PROGRAM

The City of Kyle, Texas does hereby establish the following Economic Development Program for development of the Project, as economic development incentives for the Company's respective sales, employment commitment and improvements in the Project;

- 4.01 Sales Tax Rebate/Sharing: The City shall pay to the Company an annual Program sales tax rebate/sharing ("Annual Payment") of a portion of the City's Sales Tax generated at the Project. The City's sales tax shall mean .50% or 33.33% the City's portion of the sales and use taxes that result from the one and one-half percent (1.5%) general City Sales Tax on the sales of taxable items collected on-site by Company and remitted to the Comptroller of the State of Texas during the 12 month reporting period. The rebate to the Company shall be, equal to:
- 100% of City Sales Tax in each Year 1 through 5;
 - 75% of City Sales Tax in Year 6 through 10;
 - 50% of City Sales Tax in Year 11 through 15,
- of the total Company Sales Tax Revenues for each year from the Anniversary date of the Project. The Annual Payment shall occur for fifteen (15) years from the date of execution; however the total amount to be rebated to the Company shall not to exceed Three Hundred Sixty Nine Thousand Dollars (\$369,000). This Agreement will terminate either when i) the Company has received Three Hundred Sixty Nine Thousand Dollars (\$369,000) or ii) fifteen (15) years have passed since the Anniversary date of the Project. Thereafter, all sales tax shall accrue to the City.
- 4.02 Property Tax Rebate/Sharing: The city agrees to rebate a percentage of the City portion of ad valorem property taxes from the PROJECT real property improvements and business/personal property/equipment valuations rendered at the PROJECT; annually determined and assessed by the Chief

Appraiser of the County Appraisal District; for each year of the Agreement, beginning the year of the first annual valuation after the First Anniversary date of the PROJECT; and

a. Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the CITY; said rebate shall amount equal to:

- 100% of ad valorem taxes paid in each Year 1 through 3;
- 75% of ad valorem taxes paid in Year 4-7;
- 50% of ad valorem taxes paid in Year 8 through 10.

Amount of possible rebate shall be determined based on the taxes assessed upon the increased value of the PROJECT and IMPROVEMENTS over the value in the year in which this Agreement is executed and in accordance with the terms of this Agreement and all applicable state and local regulations or valid waiver thereof; actual rebate shall be based on the increased value of ad valorem taxes that are actually paid by the Company and that are not in protest. If Company protests the valuation of the property, City shall not rebate taxes until the appeal of the protest has been resolved or completed. The total amount of ad valorem taxes to be rebated to the Company shall not to exceed Six Hundred Forty Three Thousand Dollars (\$643,000);

b. This said rebate shall extend for a period of ten (10) years beginning January 1st beginning the year of the first annual valuation after **the completion of the entire PROJECT (68,000 sq. ft.) and opening of the PROJECT for business operations;**

c. Existing valuation of real property and business/personal/equipment property located on the Project shall NOT be rebated;

d. All existing and past property taxes must be current and paid to all Taxing Units;

e. The Company shall remain in full operation for at least ten (10) years, or be subject to the terms and conditions of Article VI. DEFAULT; and

f. Provided that the COMPANY shall have the right to protest and/or contest any assessment of the IMPROVEMENTS of the PROJECT and said rebate shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

4.03 The City approved Waivers of all Development Fees required by City rules, regulations and ordinances related to construction of the initial facility leading up to the issuance of C.O. After completion of initial facility, no future development fees shall be waived.

4.04 Submission of Data by the Company to the City: By January 31st of each calendar year after completion of the PROJECT and opening for business operations, the Company shall submit to the City the following documentation ("Data"):

a. A written schedule, certified by the Company as to its accuracy and completeness, detailing the Company's Sales Tax Revenues for the year prior to the Anniversary; or, a copy of all Texas sales tax returns and self-addressed use tax amounts, including amended reports, filed by the

Company for the Project showing sales tax collected and any refund received by the Company for the year prior to the Anniversary.

- b. Copies of the 941 Quarterly Payroll Tax Report for the Company; or equivalent company form, certified by the Company; with sufficient information to document that the minimum number of employee positions were employed as set forth in Section 5.02 in the PROJECT.
 - c. Written proof that the Company has satisfied the requirements of Article V. of this Agreement.
 - d. Current ad valorem real and personal property paid tax receipts, for all Taxing Units, for the prior year, or other governmentally generated report, showing the then current ad valorem real and personal property taxes are paid.
 - e. The Chief Appraiser of the County Appraisal District shall, as a normal consequence of his duties, annually determine an appraisal of the real and business/personal property/equipment comprising the PROJECT and IMPROVEMENTS. Each year, the COMPANY shall furnish the Assessor with such information as may be necessary for the rebate, including the number of employee positions associated with the PROJECT and IMPROVEMENTS. Once the value has been established, the Chief Appraiser shall notify the City which levies taxes of the amount of the appraisal.
 - f. All information provided to the City from the Company, directly or indirectly, that discloses sales revenues, taxes paid, payroll taxes or expenses, employment, and any other business-specific data to that Company, shall remain confidential and not subject to open records.
- 4.05 The City shall review the data for compliance by the Company for the PROJECT with this Agreement, the review and approval of compliance documents submitted to the City and all annual payments by the City will be based on the following schedule as shown under Section 4.05(a) below.
- a. Data Reporting Period: The data to be submitted by the Company to the City shall cover the 12-month period January 1st through December 31st of each calendar year beginning after completion of the entire PROJECT and opening for business operations. Data Submission Date: The Company shall submit all required compliance data to the City for review and approval by January 31st of each calendar year beginning after completion of the entire PROJECT and opening for business operations. Data Review/Verification Date: The City shall review and verify all compliance data submitted by the Company and determine the annual payment amount due to the Company by March 31st of each calendar year beginning after completion of the entire PROJECT and opening for business operations. The City will notify the Company by March 31st if data provided is inaccurate, incomplete, or deficient in any manner in which case the March 31st date will not apply. Annual Payment Date: If all compliance and performance data required of the Company under this agreement is determined to be accurate and verified by the City, the City shall determine the annual payment amount due to the Company and issue a payment to the

Company in the form of a check to be sent by U.S. Mail by April 1st of each calendar year beginning after completion of the entire PROJECT and opening for business operations.

- b. The Annual Rebate and Annual Payment are conditioned on the COMPANY being in compliance with this Agreement. Failure to comply with this Agreement in any one year shall not disqualify the COMPANY from entitlement to future Annual Rebates or Annual Payments. If during the previous calendar year the Company EMPLOYMENT COMMITMENT was not met, the Annual Rebate and Annual Payment percentage the following year shall be reduced (on a pro-rata basis) by the percentage by which the Company EMPLOYMENT COMMITMENT was missed.

V. COMPANY OBLIGATIONS

Within two (2) years from the date hereof (“Effective Date”), the Company shall do the following:

- 5.01 The Company shall expend, through direct and indirect costs related to the construction and IMPROVEMENTS of the PROJECT, including land acquisition, site development and new construction of real property and personal/business property including furniture, fixtures, equipment and other improvements of at least FIFTEEN Million Dollars (\$15,000,000.00) collectively the (“Improvement Cost”) of the Project structure that is appropriate for the City.
 - a. The Company shall make the certain IMPROVEMENTS to construct new structures and develop the property identified as the PROJECT in full compliance with the City’s codes adopted at the time of permit submittal.
 - b. The PROJECT and IMPROVEMENTS shall be completed as defined from the EFFECTIVE DATE, provided, that the COMPANY shall have time to complete the IMPROVEMENTS as may be required in the event of ‘force majeure’ if the COMPANY is diligently and faithfully pursuing completion of the IMPROVEMENTS. For this purpose, ‘force majeure’ shall mean any contingency or cause beyond the reasonable control of COMPANY including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of COMPANY), fires, explosions or floods, and strikes.
 - 5.02 The Project shall Hire and maintain at least fifty (50) full-time equivalent employee positions, (“EMPLOYMENT COMMITMENT”), on average throughout each year of the Agreement. Annual payroll for the fifty (50) full-time equivalent positions shall be for a minimum of One Million One Hundred Ninety One Thousand Dollars (\$1,191,000.00). Company shall provide 941 Quarterly Payroll Tax Report as evidence of the number of employees and payroll. .
 - 5.03 The Company must hold a valid sales tax certificate from the State Comptroller’s office and be current with all filings and payments.
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VI. DEFAULT

- 6.01 If any party should default to any obligations with respect to this Agreement (“Defaulting Party”), any other party (“Complaining Party”) may provide written notice of the alleged default and shall include the actions required to cure such default. If the Defaulting Party cures the alleged default within thirty (30) days after notice of default is received (“Cure Period”), (as to defaults reasonably curable within such period), or commences to cure alleged default within said thirty (30) days and diligently pursues the cure to its conclusion, (as to defaults not reasonably curable within 30 days), then this Agreement shall continue as if no default occurred. If the Defaulting party is the Company, and either fail to cure the default within the Cure Period, the Complaining Party, by action or proceeding at law, or in equity, may be awarded specific performance for such default, provided that if the Company is unable to meet its obligations in Section 4.04 or Article V., then the Company may terminate this Agreement upon thirty (30) days written notice to the City and refund any portion of payments or rebates received from the City to the Company for the period of time the Company was in default. Company may be deemed in default for the following:
- a. Employment of Undocumented Workers. During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall be in Default and repay the amount of the Grant and any other funds received by Company from the City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by the City of such violation, plus interest at the rate of six and three-quarters percent (6.75%) compounded annually from the date of the violation until paid in full. Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company.
 - b. The Company files for or becomes a party to any bankruptcy proceedings (not including as a creditor) or becomes indebted to the City for taxes, utility payments or any other moneys owed to the City.
- 6.02 Notwithstanding the above, the City’s obligation to make the Annual Payment shall immediately terminate in the event the Company or its successors or assigns fails to remain in full operation. Should the Company fail to remain in full operation for at least ten (10) years, as liquidated damages in the event of default, the Company will be subject to Recapture and the repayment of the waived development fees outlined in Section 4.03, rebated value for all prior years of the Agreement as outlined in Sections 4.01 and 4.02, within sixty (60) days of the expiration of the above mentioned applicable cure period and of the termination; or will become a debt to the City, as the sole remedy of the CITY subject to any and all lawful offsets, settlements, deductions, or credits to which COMPANY may be entitled. Interest will be charged at a statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas. The parties ~~acknowledge that actual damages in the event of default and termination would be speculative and~~ difficult to determine.

- 6.03 The Company shall not be entitled to any part of the Annual Payment or rebate should the Company fail to remain in full operation for the full year.
- 6.04 If the Agreement is terminated by reaching the maximum rebated amount per Sections 4.01 and 4.02, the City is required to issue a letter to the Company stating that the maximum rebated amount has been reached.
- 6.05 Notice shall be in writing, and shall be delivered by personal delivery or certified mail to:

COMPANY: Schulman Entertainment, LLC
Mr. Mark Schulman, President
3833 Texas Avenue, Ste. 216
Bryan, TX 77802

CITY: City of Kyle, Texas
Attention: City Manager
P.O. Box 40
Kyle, TX 78640

With copies to: City of Kyle, Texas
Attention: City Attorney
P.O. Box 40
Kyle, TX 78640

VII. MUTUAL ASSISTANCE

- 7.01 The parties shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions. The Company hereby consents to and agrees to cooperate in any request by the City to obtain copies of Sales/Use tax returns from the State, which contain information pertinent to the calculations of Program benefits herein above. The parties shall execute any additional documents and agreement reasonably necessary to implement this Agreement. The Company shall execute a Waiver of Sales Tax Confidentiality or such other form as required by the State Comptroller to allow the City to monitor this Agreement.

VIII. REPRESENTATIONS AND WARRANTIES

- 8.01 The parties each represent and warrant to the other that this Agreement (and as to the City, the Program) are within the scope of their authority and the provisions of each parties' organizational and governance documents, and that they are duly authorized and empowered to enter into this Agreement and perform their obligations. In the event that the City defaults in the performance of this Agreement, City waives governmental, sovereign or other special immunity to suit or liability, but only to the extent such immunity could be used to prevent the Company from enforcing its rights under this Agreement. The City recognizes that the Company has relied upon the validity

and enforceability of this Agreement in selecting the Site for the Project and would not have made that decision, but for the benefits of this Agreement.

IX. HOLD HARMLESS AND INDEMNIFICATION

9.01 The Company agrees to protect, defend, hold harmless and indemnify the City, any member of its government body, its officers, employees and agents, from and against any and all claims, actions, liabilities and damages brought by third parties actually suffered by a person or persons and actually arising out of this Agreement due to the actions of the Company. The City agrees, to the extent permitted by law, to protect, defend, hold harmless and indemnify the Company, its officers, directors, shareholders, employees and agents, from and against any and all claims, actions, liabilities and damages brought by third parties actually suffered by a person or persons and actually arising out of this Agreement due to the direct actions of the City.

X. GENERAL PROVISIONS

- 10.01 If any provisions of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.
- 10.02 This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Hays County, Texas.
- 10.03 This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Company may assign all or part of its rights and obligations hereunder only upon prior written approval of the City, which approval shall not be unreasonably withheld or delayed.
- 10.04 Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other said parties.
- 10.05 Except as otherwise expressly provided herein, this Agreement may only be altered, amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement (or their respective legal representatives, successors or assigns).
- 10.06 This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties.

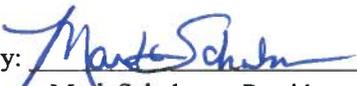
10.07 In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

SIGNED AND EFFECTIVE on the date last set forth below.

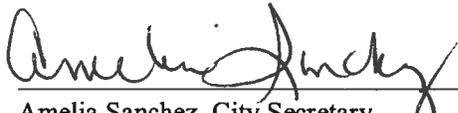
SCHULMAN PARTNERS, LTD., A Texas limited Partnership

By: Schulman City Lights, LLC,
A Texas Limited Liability Company, , Its General Partner
3833 Texas Avenue, Ste. 216
Bryan, TX 77802

By: 
Mark Schulman, President

CITY OF KYLE

ATTEST:


Amelia Sanchez, City Secretary


Lucy Johnson, Mayor

DATE: 7-12-13

APPROVED AS TO FORM:

 w/permission
Frank Garza, City Attorney

STATE OF TEXAS)
)
COUNTY OF McLENNAN)

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the 10th day of July, 2013, by Mark Schulman, President, of Schulman City Lights, LLC, the General Partner of Schulman Partners, Ltd. a Texas limited partnership.



Sheila S. McClellan

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF HAYS)

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the 12th day of July, 2013, by Lucy Johnson, in the capacity as Mayor of the City of Kyle, a Texas home-rule municipality, on behalf of said municipality.



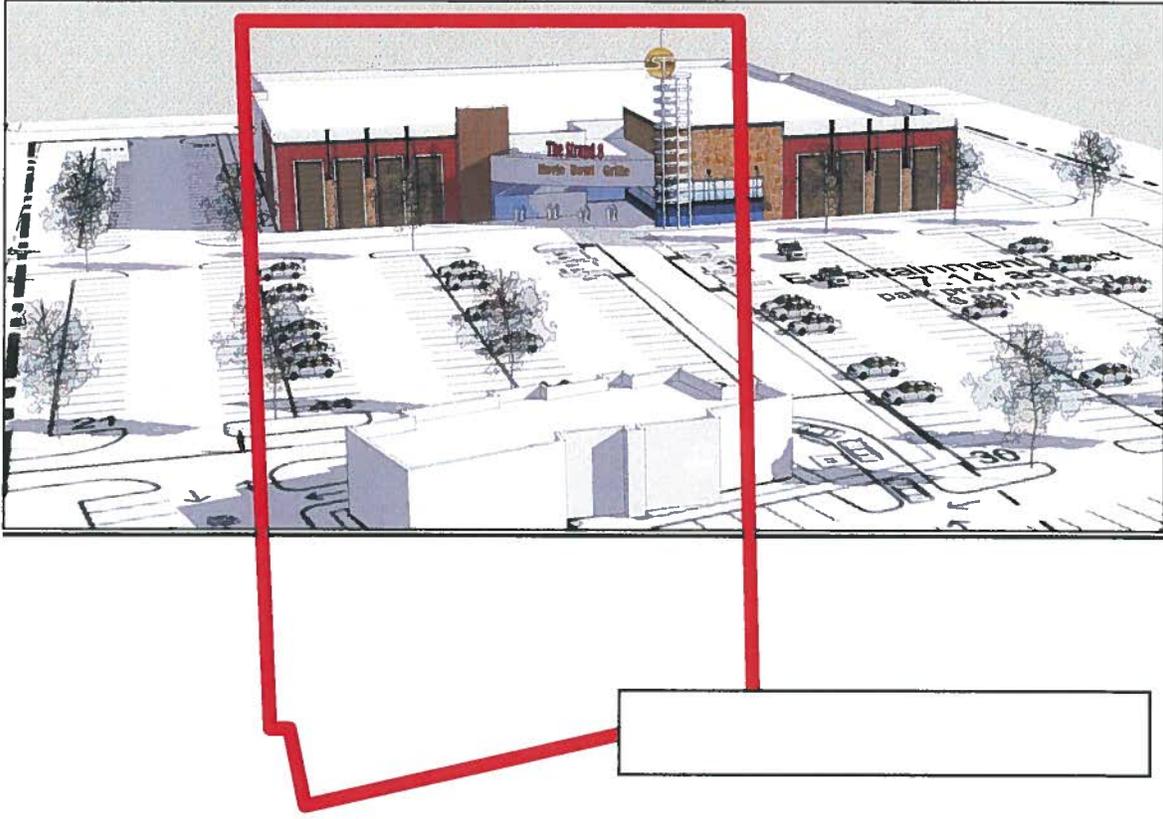
Amelia L. Sanchez

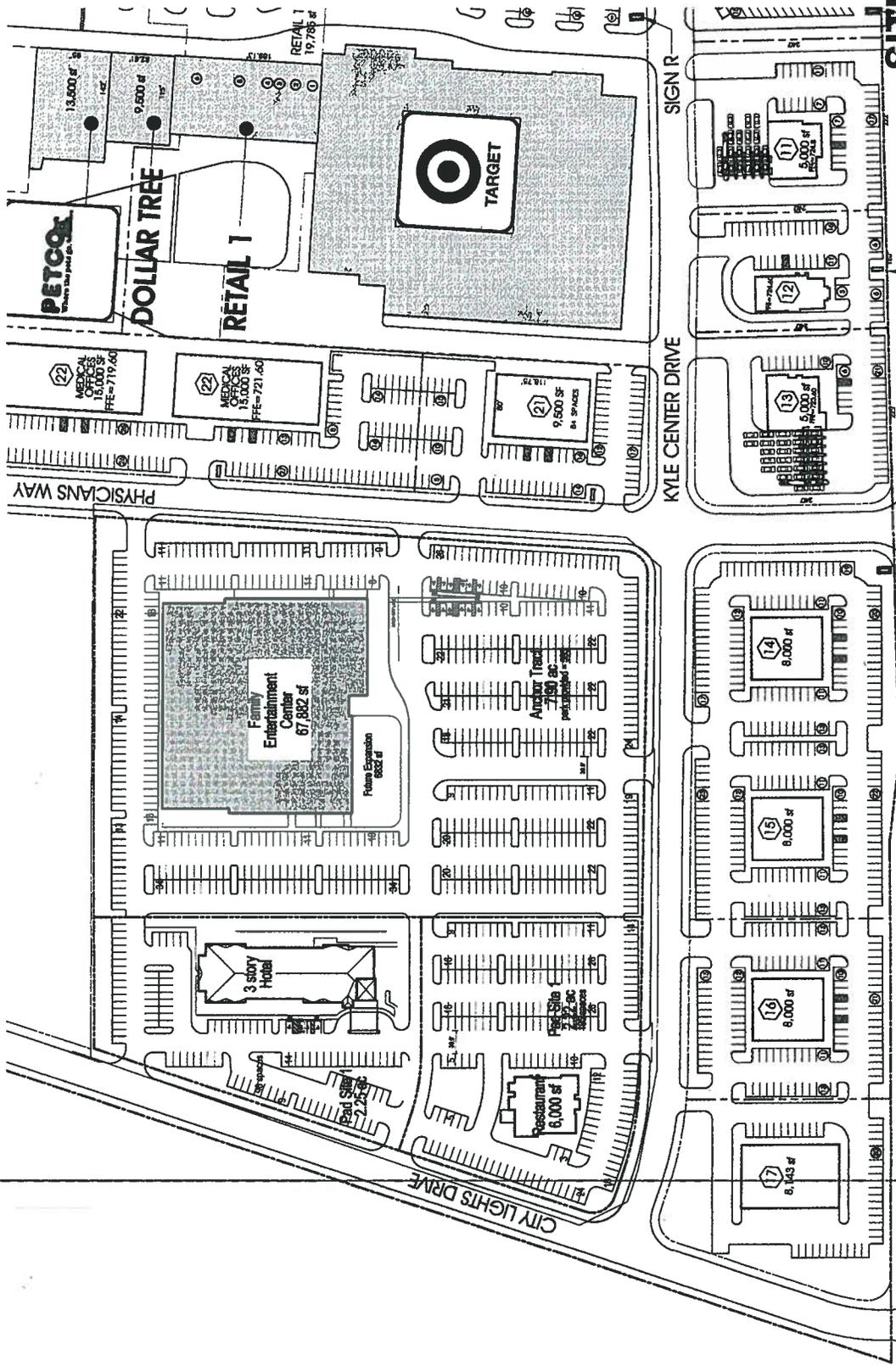
Notary Public in and for
the State of Texas

Exhibit "A" – Project

On an approximately 8.0 acre tract of land the construction of site development, parking and drives, landscaping and approximately 68,000 SF of a new commercial building, furnished and equipped (the "IMPROVEMENTS"); located at 5492 Kyle Center Dr., Kyle, Texas, in the City of Kyle, Texas, (the "PROJECT"); and as more specifically described in "Exhibit B", attached and incorporated as part of this Agreement, and defined collectively as "Schulman Entertainment Multifaceted Family Entertainment Complex".

Exhibit "B" – Project Site Plan & Elevation
Kyle, Texas





SITE PLAN



INTERSTATE 35

SCHEME
 SP-7b
 7-15-13

architecture planning
 11128
 7-15-13

KYLE CROSSING KYLE, TEXAS

THIS PLAN IS PREPARED BY THE ARCHITECT AND ENGINEER FOR THE CLIENT AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT AND ENGINEER. THE ARCHITECT AND ENGINEER SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS PLAN OR FOR ANY CONSEQUENCES ARISING THEREFROM.