

ECONOMIC DEVELOPMENT AGREEMENT

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this 4th day of October, 2017 by and between the **CITY OF KYLE, TEXAS**, a home rule city of the State of Texas ("City") and **PGI INVESTMENT LLC**, a Texas limited partnership ("Developer"). Collectively, the City and Developer may be referred to as "Parties/" and individually as a "Party," acting by and through their respective authorized officers.

RECITALS

WHEREAS, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State's economy and the elimination of unemployment or underemployment;

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City of Kyle;

WHEREAS, the Developer owns that certain 47.74-acre tract of land ("Property") located within the corporate limits of the City, as further described in "Exhibit A," attached and incorporated herein. The Property is currently undeveloped, and the Developer wishes to develop the Property by designing and constructing infrastructure improvements within and outside the boundaries of the Property necessary to prepare the Property for retail commercial, offices and mixed-use purposes, proposed to be commonly known as the KYLE GATEWAY ("Project");

WHEREAS, the Developer shall construct on the Property, a retail development which will include at least one major retail department store having a minimum of 50,000 square feet (the "Department/Grocery Store Anchor"), a national flag chain hotel (excluding extended stay uses) having a minimum of 81 rooms and additional retail and other non-residential facilities (with the exception of city approved vertical mixed use development) having an aggregate square footage totaling approximately 300,000 square feet which will occur in multi-phases and comply substantially with the Development Standards of the City of Kyle I-35 overlay and front pad sites will be reserved for sales tax generating retail and non-drive through restaurants;

WHEREAS, these development(s) will require construction of common public infrastructure which provide enhanced mobility to the citizens of the greater Kyle area;

WHEREAS, the Developer is willing to construct and pay for the Project, including the public works and improvements necessary to serve the Project, in exchange for the City reimbursing a portion of the costs of the Project in accordance with the terms and conditions of this Agreement.

WHEREAS, for and in consideration of the incentive payments described herein, the Developer and its successors and assigns, will commence and diligently pursue the completion of the Eligible Road Improvements, beginning construction within one hundred and eighty (180) days of final approval of the construction plans by the City;

WHEREAS, the City of Kyle wishes to encourage and to assist the above described economic development by providing economic development financial assistance to the Developer so that the retail development and the related off-site infrastructure developments will be complete;

WHEREAS, the City has the authority to enter this Agreement and this Agreement sets up a structured arrangement wherein annual payments will be made to Developer exclusively from sales tax revenues collected by City from the sales tax revenue created by Developer on the Property.

NOW, THEREFORE, for and in consideration of the terms, conditions and covenants set forth herein, the parties agree as follows:

RECITALS INCORPORATED. The representations, covenants and recitations set forth in the recitals to this Agreement are material to this Agreement and are hereby found and agreed to be true and correct, and are incorporated into and made a part of this Agreement for all purposes.

ARTICLE I **DEFINITIONS**

“Annual Incentive Payment” and “Annual Incentive Payments” mean annual incentive payments as described hereafter in Paragraph 3.01 of this Agreement.

“Certificate of Occupancy” shall mean the final document issued by the City of Kyle, Texas entitled *Certificate of Occupancy* indicating that all building codes, regulations, and ordinances have been officially unconditionally, completely complied, within in all respects, and specifically shall not include any temporary or conditional document authorizing temporary or conditional occupancy.

“City” means the City of Kyle, a municipal corporation of the State of Texas.

“City Sales Tax” means the portion of such taxes are remitted to the State of Texas by the Retail Occupants based on one percent (1%)’ of sales of taxable items and reimbursed to the City of Kyle by the State of Texas. For purposes of the Agreement, City Sales Tax shall be determined to be the amount remitted by a company or person to the State of Texas Comptroller of Public Accounts Office (the “Comptroller”) for the benefit of the City, up to 1% of sales, as set forth in the records prepared by a company or person and submitted to the Comptroller for sales within the Development.

“Code” shall mean the City of Kyle Code of Ordinances.

“Commercial/Retail Tracts” shall mean the real property designated on the attached Exhibit “A” attached hereto.

“Comply” and “compliance” means timely, full, and complete performance of each requirement, obligation, duty, condition, or warranty as stated in this agreement. “Comply” and “compliance” mean complete compliance in all material respects and do not mean substantial compliance, unless otherwise specifically stated.

“Construct” and “construction” mean construction in a good and workmanlike manner and in compliance with applicable State and local laws, codes and regulations or valid waivers thereof or variances thereunder.

“Development” means the multi-phased development of retail and non-residential improvements as generally described in the forth recital above to be located on the Property.

“Default” and “Act of Default” means failure in some material respect to comply timely, fully and completely with one or more requirements, obligations, duties, terms, conditions or warranties set forth in this Agreement.

“Finance Department” means the Finance Department of the City of Kyle.

“Full-Time Equivalent Employees” or “FTEs” shall mean the aggregate number of hours paid to employees in a week divided by forty (40).

“Hard Costs” shall mean the actual, substantiated costs of real estate dedicated for public rights of way, construction, labor, and materials incurred by the Developer in developing and constructing the Project and supporting infrastructure.

"Improvements" means all, water, sewer, drainage, road, right-of-way and sidewalks to serve the Project and that meet the City's standards and requirements in effect on the effective date of this Agreement.

"Incentive" means the Economic Development Incentive established in Section 3.01 of this Agreement that is based on the amount of sales tax generated on the property to the City due to sales tax generated within the Property because of Developer's investment.

“Maximum Reimbursement Amount” shall mean the total Hard Costs for the Project to be reimbursed by City not to exceed \$5,250,000.00 per Section 3.01.

“On-site” means on the Property and at the Development.

“Property” means the real property described on Exhibit “A” attached hereto.

“Retail Occupants” means all owners tenants and occupants of the Development and the additional retail and non-residential space uses conducting business in the Development.

ARTICLE II **IMPROVEMENTS**

Section 2.01 Construction of Improvements.

Developer agrees to design and construct the Improvements as and when needed. A preliminary list of the Improvements and their costs is set forth in Exhibit "B," which may be modified only by mutual written agreement. The dollar amounts listed in Exhibit "B" are estimates of probable costs including hard costs; actual costs may be higher or lower. The Project and the Improvements may be constructed in phases, in the sole discretion of Developer. The plans and specifications for the Improvements shall be subject to the review and approval of all governmental entities with jurisdiction.

Section 2.02 Funding of Improvements. Developer shall pay all Improvements Costs.

ARTICLE III
ECONOMIC INCENTIVES

Section 3.01 Economic Development Incentive:

Annual Incentive Payment. Subject to the full and timely performance of each of the requirements and conditions precedent set forth in the paragraph 3 below and compliance, in all material respects with this Agreement, the City of Kyle agrees to pay to the Developer, an economic development incentive which shall not exceed the lesser of \$5,250,000.00 or the actual documented costs of constructing the Eligible Infrastructure Improvements, whichever amount is less (the “Maximum Total Reimbursement”) to be paid as follows:

- a) *Fifty percent (50%)* of the City’s portion of the sales and use taxes that result from the one percent general City Sales Tax on the sales of taxable items collected on-site by the Retail Occupants and remitted to the Comptroller of the State of Texas for the sales occurring from January 1, 2020 through December 31, 2020; and
- b) *Fifty percent (50%)* of the City’s portion of the sales and uses taxes that result from the one percent general City Sales Tax on the sales of taxable items collected on-site by the Retail Occupants and remitted to the Comptroller of the State of Texas for the sales occurring from January 1st through December 31st for each year thereafter for a period of nine (9) additional years; and
- c) In the event that fifty percent (50%) of the City Sales Tax generated during the foregoing initial ten (10) year period is not sufficient to pay the Developer the Maximum Total Reimbursement, the remaining unpaid balance of the unpaid Maximum Total Reimbursement shall be calculated as of January 1, 2030, Simple interest shall accrue and be added to such remaining unpaid balance at an annual rate that does not exceed the rate paid by the City in its last debt issue sold prior to January 1, 2030. Annual Incentive Payments thereafter shall equal *forty percent (40%)* of the City’s portion of the sales and use taxes that result from the one percent general City Sales Tax on the sales of result from the one percent general City Sales Tax on the sales of taxable items collected on-site by the Retail Occupants and remitted to the Comptroller of the State of Texas for the sales of taxable items collected on-site b the Retail Occupants and remitted to the Comptroller of the State of Texas for the sales occurring from the Comptroller of the State of Texas for the sales occurring from January 1st through December 31st of 2030 and each year thereafter for a total period of five (5) additional years or until such remaining balance (including interest as described above) is paid, whichever occurs first. No Annual Incentive Payments shall be made with respect to any sales occurring after the expiration of such five (5) year period.
- d) The City shall not exceed the Maximum Reimbursement Amount, for all Hard Costs associated with the improvements on the Project. The City shall not, as a condition precedent to the payment of any Annual Incentive Payments, make payment until a sales and use tax generating Retailer subject to this Agreement has commenced operations and Consummated the sale of Taxable Items within the Property.
- e) **Payment of Annual Incentive Payments.** The City of Kyle, by and through its Finance Department, shall pay each Annual Incentive Payment to the Developer by each March 31st which follows the end of each respective Annual Incentive Payment year. As an example, the City of Kyle Annual Incentive Payment related to the sales and use taxes reimbursed to the City for the sales occurring during the period beginning January 1, 2020 and ending December 31st 2020 is due on March 31st, 2021.

- f) City Sales Tax Reporting. The Developer shall cooperate with the City and assist the City in any manner required by the Comptroller to release all information related to City Sales Tax collected within the Development. The City will request quarterly, or monthly if available, from the Comptroller all sales tax reports for City Sales Taxes collected within the Development. The Developer shall use reasonable efforts to ensure that agreements with Retail Occupants provide for the timely submission of City Sales Taxes to the Comptroller and execution of any document reasonably required for the release of such information to the City, including registering the Development and the address of the various properties therein as the point of sale for all products sold on-site at the Development, and to take such action with the Comptroller, and such other entities as necessary, to assure that the City Sales Tax is legally billed and payable, as provided by law for sales within the City, on all products that are sold on-site at the Development.
- g) Reimbursement Amount Limitations. The City shall not be obligated to pay any monies above the Maximum Reimbursement Amount, unless otherwise agreed to in writing by the Parties, and are only obligated to pay Annual Incentive Payments from Sales Tax Receipts received by the City. Developer represents that it understands that any contributions by the Developer in anticipation of reimbursement from Annual Incentive Payments shall never be obligations of the general funds of the City, but are only obligations of the applicable Sales Tax Proceeds fund, and are subject to the extent of the Project's capacity to reimburse the Developer through Sales Tax Proceeds.
- h) No Bonds or Notes. The City and Developer represent that they understand and agree that the City shall not issue any bonds or notes to cover any Project costs directly or indirectly related to this Agreement. The City understands that Developer may choose to issue notes utilizing Reimbursement Request Amount reimbursements for eligible costs directly or indirectly related to this Agreement. The City will not be a party to the Developer's notes.

ARTICLE IV
PERFORMANCE CRITERIA AND DEFAULT

Section 4.01 Performance Criteria. The Developer agrees and covenants that it shall:

- a) Construct or cause to be constructed the "Eligible Road Improvements" as depicted on Exhibit "C," with construction to commence by the one hundred and eightieth (180th) day from the date the City of Kyle provides final approval of construction plans therefor;
- b) Construct or cause to be constructed the "Eligible Utility and Drainage Improvements" as described in Exhibit "B," with construction to commence by the one hundred and eightieth (180th) day from the date the City of Kyle provides final approval of construction plans therefor;
- c) Sell or lease or cause the sale or lease to Retail Occupants on the Property that will, in aggregate, employ not less than 100 Full-time Equivalent Employees within the Development no later than January 1, 2025.
- d) Cause a Department/Grocery Store Anchor to open for business by December 31, 2025.

Section 4.02 Plans and Specifications.

The plans, specifications and construction of the Eligible Road Improvements, the Eligible Utility Improvements and the Eligible Drainage Road Improvements (collectively, the “Eligible Infrastructure Improvements”) shall be reviewed and approved by the City before construction and are described on Exhibit “B” attached hereto. The Developer or the Developer’s authorized representative will document to the City the hard costs and expenses of such improvements. The itemized cost and expenses of such improvements attached hereto as Exhibit “B” shall be reviewed and approved by the City before any hard costs are expended for the project and as a condition upon any hard cost reimbursement. The Development shall be designed, approved and constructed in compliance with the standard City ordinance requirements which are in effect as of the date of the approval of this Agreement.

Section 4.03 Sales Tax Disclosure.

Developer shall use commercially reasonable efforts to include in each lease and/or document of sale executed after the execution date of this Agreement, as a condition precedent to the payment of any Reimbursement Amount Requests, language which requires Developer, Retailers, and their successors and assigns to sign or cause to be signed any documentation necessary to authorize the State Comptroller’s Office to release and disclose to the City, for the term of this Agreement, any and all Sales and Use Tax information relating to any Retailer generating Sales and Use Tax proceeds within the Property,

Section 4.04 Forfeiture.

The Developer shall forfeit all rights to the Annual Incentive Payments set forth in Section 2 of this Agreement if the Developer fails to meet the Performance Criteria set forth in Section 4 (a) (b) (c) and (d) above. The Developer will further partially forfeit the Annual Incentive Payments if the Retail Occupants located on the Property do not, in the aggregate, employ at least 200 FTEs to work and be employed in the retail and other non-residential establishments during the Annual Incentive Payment year in question (this requirement shall begin as of January 1 of the year following the issuance of the final Certificate of Occupancy by the City for 50,000 square feet or more Retail Occupants within the Development). The partial forfeiture of any Annual Incentive Payment resulting from the failure of the Development to sustain the required 200 FTEs shall be calculated by decreasing such Annual Incentive Payment proportionately by the same percentage, if any that the average number of FTEs of the Retail Occupants is less than 200 FTEs monthly for the twelve (12) month Annual Incentive Payment period.

Section 4.05 Remedies.

The Parties expressly recognize and acknowledge that a breach of this Agreement by either Party may cause damage to the non-breaching Party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either Party, the other Party shall be entitled but not limited to the equitable remedy of specific performance or a writ of mandamus to compel any necessary action by the breaching Party.

Section 4.06 Recapture.

In the event of default by Developer under this Agreement, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture Annual Incentive Payments, pursuant to this Agreement provided to Developer for the Project costs pursuant to this Agreement.

Section 4.07 Audit.

The City shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer’s records, books, and all other relevant records related to

Reimbursable Amounts under this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

Section 4.08 Notice of Default or Breach.

The complaining Party must give the non-complaining Party written notice of default or breach, including specification of the alleged default(s) or breach(es), and a cure period of at least 30 days. Notice must be sent by certified mail, return receipt requested, but may also be sent by other methods; notice, however, is effective only as of the date delivery of the certified mail correspondence is initially attempted. The Parties' addresses for notice are:

City of Kyle:

Attn: City Manager
100 W Center St Kyle, TX 78640

PGI INVESTMENT, LLC:

Attn: Kamlesh Shah
19511 S Comal River Drive
Cypress, TX 77433

ARTICLE V
COVENANTS AND DUTIES

Section 5.01 Developer's Covenants and Duties.

Developer makes the following covenants and warranties to the City, and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

- a) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
- b) The execution of this Agreement has been duly authorized by the Developer, and the individual signing this Agreement on behalf of the Developer is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's company agreement, by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.
- c) The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.
- d) The funds herein granted shall be used solely for the purpose of the reimbursement of and/or construction of the Project within the property and associated with the Project, including all Hard Costs.
- e) Developer shall make diligent efforts to timely and fully comply with all of the terms and conditions of this Agreement. Developer shall use commercially reasonable efforts to confirm project improvements are completed, as required under the applicable contracts, by providing the City with the contractor or subcontractor's completion certificate. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of Project improvements on the Property which lie within the City limits.

- f) Developer shall require approval of plans and specifications for the Project improvements prior to starting any construction as and if required by City Code.
- g) Developer agrees to require in sale and/or lease documents into which it enters that Tenants or their contractors shall be responsible for paying, or causing to be paid, as applicable, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project, to the extent same are under the jurisdiction of the City. Developer, in its sole discretion, may choose to comply with any or all City ordinances and rules adopted after the Effective Date of this Agreement. Developer shall require in sale or lease documents into which it enters that Tenants are to agree to comply with all City ordinances and rules in effect at the time this Agreement is executed.
- h) Developer shall have a continuing duty to cooperate with the City in providing all necessary information to assist City in complying with this Agreement; and to execute such other and further documents as may be reasonably required to comply therewith.

Section 5.02 Representation and Warranties by the City of Kyle.

The City of Kyle represents and warrants that this Agreement is within the scope of its authority, and that it has been duly authorized and empowered to enter this agreement.

ARTICLE VI
TERMINATION

Section 6.01 Termination.

This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) The written agreement of the Parties; (b) The Agreement's Expiration Date; or (c) An uncured Default by the Developer.

Section 6.02 Termination by Payment of Maximum Reimbursement Amount.

If the Agreement is terminated by reaching the Maximum Reimbursement Amount, the City is required to issue a letter to the Developer stating that the Maximum Reimbursement Amount has been reached and showing detailed payments.

ARTICLE VII
GENERAL PROVISIONS

Section 7.01 Default.

- a) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.
- b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within fifteen (15) days of the receipt of such notice. Upon a breach of this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance

of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

Section 7.02 No Personal Liability of Public Officials.

No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 7.03 Liability of the Developer, its Successors and Assignees.

Any obligation or liability of the Developer whatsoever that may arise at any time under this Agreement or any obligation or liability which may be incurred by the Developer pursuant to any other instrument transaction or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Developer only. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders or agents of the Developer, regardless of whether such obligation or liability is contract, tort or otherwise.

Section 7.04 Mediation.

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. All costs of negotiation and mediation collectively known as alternate dispute resolution (“ADR”) shall be assessed equally between the City and Developer with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 8.01 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 on the part of the City.

Section 8.02 Force Majeure.

In the event either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice

and the full of such force majeure to the other Party. Such cause, as far as possible, shall be remedied with all reasonable diligence.

The term “force majeure” as employed herein shall mean and refer, without limitation, to acts of God; strikes and/or lockouts; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority (other than the City): insurrections; riots; lightning, earthquakes, fires, hurricanes, storms, floods and other natural disasters; washouts and other weather-related delays’ restraint of government and people; civil disturbance; explosions; or other causes not reasonably within the control of the party claiming such inability.

If, because of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed except as hereinafter provide, but of no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

It is understood and agreed that the settlement of strikes and lockouts shall entirely within the discretion of the party having the difficulty, and that the above requirement and any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Section 8.03 Independent Contractors.

It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, the Developer or its subcontractors or tenants at no time will be acting as agents of the City or and that all consultants or contractors engaged by the Developer, its subcontractors or tenants will be independent contractors. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Developer under this Agreement, unless any such claims are due to the fault of the City.

Section 8.04 Interpretation.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

Section 8.05 Section or Other Headings.

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.06 Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein. Any Exhibits attached hereto are incorporated by reference for all purposes.

Section 8.07 Amendment.

This Agreement may only be amended, altered, or revoked by written instrument signed by the parties and as approved by the City Council of the City of Kyle, Texas.

Section 8.08 Successors and Assigns.

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns; provided however (i) the benefits of this Agreement in favor of the Developer may not be assigned to any party without the written consent of the City of Kyle (which consent shall not be unduly withheld, provided the City is satisfied that any remaining obligations under the Agreement will be met); and (ii) notwithstanding the foregoing and any other provision of the Agreement to the contrary, any successor owner, occupant, tenant, licensee or invitee of any such portion of the Property (including, without limitation, any business that may operate from time to time thereon).

Section 8.09 Applicable Law and Venue.

This Agreement is made and all obligations arising hereunder shall be construed and interpreted under the laws of the State of Texas and the venue for any action arising from the Agreement shall be Hays County, Texas.

Section 8.10 Counterparts.

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

Section 8.11 No Additional Waiver Implied.

The failure of either Party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other Party.

Section 8.12 Parties in Interest.

This Agreement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any rights upon any third parties.

Section 8.13 Merger.

This Agreement embodies the entire understanding between the Parties and there are no other representations, warranties or agreements between the Parties covering the subject matter of this Agreement.

Section 8.14 Captions.

The captions of each section of this Agreement are inserted solely for convenience.

Section 8.15 Severability.

If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

Section 8.16 Indemnification.

DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR 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 DEVELOPER'S ACTIONS ON THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF

DEVELOPER OR DEVELOPER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S TENANTS, 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. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S TENANTS' 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 THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

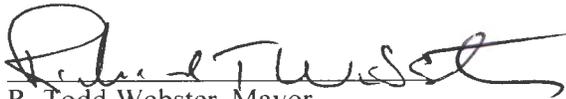
IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR 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. 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.

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

IN WITNESS, WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, to be effective on the latest date of execution. Any party may change the address which notices are to be sent by giving the other parties written notice in the manner provided in Section 4.08.

EXECUTION PAGE FOLLOWS:

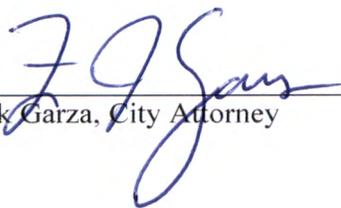
THE CITY OF KYLE, TEXAS


R. Todd Webster, Mayor

ATTEST/SEAL:


Jennifer Vetrano, City Secretary

APPROVED AS TO FORM:


Frank Garza, City Attorney

Agreed to and accepted on October 4, 2017.

PGI INVESTMENT, LLC

Sign: K v Shah

Name: KAMLESH SHAH

Title: Managing member

Agreed to and accepted on Nov 02, 2017.

- Exhibit A: Property Description Tracts 1, 2, and 3
- Exhibit B: Improvements and Cost Estimates
- Exhibit C: Concept Plan

EXHIBIT A

FIELD NOTE DESCRIPTION FOR A 38.67-ACRE TRACT OF LAND, HAYS COUNTY, TEXAS, TRACT 1:

BEING A 38.67 ACRE TRACT OF LAND, LYING PARTIALLY WITHIN THE W. WARD SURVEY, ABSTRACT NO. 467 AND THE JAMES W. WILLIAMS SURVEY, ABSTRACT NO. 473, AND BEING OUT OF THAT CERTAIN 47.74 ACRE TRACT CONVEYED BY GENERAL WARRANTY DEED TO PGI INVESTMENT, LLC, AS RECORDED IN DOCUMENT NO. 2012-12002993, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½ inch iron steel stake found marking the intersection of the north right-of-way line of Yarrington Road (Hays County Road 159), a public street, and the west right-of-way line of Interstate Highway 35, same being the south corner of that certain 47.74 acre tract conveyed to PGI Investment, LLC, as recorded in Document No. 2012-12002993, of the Official Public Records, Hays County, Texas, for the south corner of this described 38.67 acre tract;

THENCE northwest along the said north right-of-way line of Yarrington Road (Hays County Road No. 159), the following five (5) courses:

- 1). North 45°18'08" West, a distance of 83.29 feet to a ½ inch stake found at a point of curvature of a curve to the right;
- 2). Along said curve to the right, an arc length of 366.36 feet; said curve having a radius of 6,000.63 feet, a delta angle of 3°29'53", and a chord which bears North 42°11'18" West, a distance of 366.30 feet to a ½ inch steel stake found at a point of reverse curvature of a curve to the left;
- 3). Along said curve to the left, an arc length of 256.59 feet; said curve having a radius of 6,100.64 feet, a delta angle of 2°24'35", and a chord which bears North 41°38'30" West, a distance of 256.57 feet to a ½ inch steel stake found at its point of tangency along the north line of this tract;
- 4). North 33°21'32" West, a distance of 486.62 feet to a ½ inch steel stake found for an angle point;
- 5). North 53°01'29" West, a distance of 172.81 feet to a ½ inch steel stake found marking the west corner of said 47.74 acre tract, same being at the intersection of the north right-of-way line of Yarrington Road and the east line of Post Road (Hays County Road No. 140), a public street, for the west corner of the herein described 38.67 acre tract;

THENCE along the west line of this tract common with said east right-of-way line of Post Road and the west line of said 47.74 acre tract, the following five (5) courses:

EXHIBIT A

- 1). North 37°13'25" East, a distance of 85.38 feet to a ½ inch steel stake found for an angle point hereof;
- 2). North 40°30'37" East, a distance of 63.93 feet to a ½ inch steel stake found for an angle point;
- 3). North 43°21'19" East, a distance of 355.33 feet to a ½ inch steel stake found for an angle point;
- 4). North 44°08'43" East, a distance of 445.78 feet to a ½ inch steel stake found for an angle point;
- 5). North 44°05'17" East, a distance of 53.44 feet to a calculated point for an angle corner of this tract;

THENCE departing from said east line of Post Road, along the north line of this tract, the following four (4) courses:

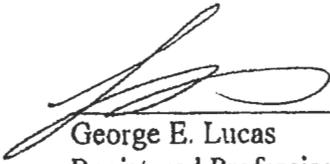
- 1). South 80°56'28" East, a distance of 508.82 feet to a calculated point at an interior corner;
- 2). North 12°13'17" East, a distance of 323.06 feet to a calculated point at an angle point;
- 3). North 20°56'10" East, a distance of 227.05 feet to a calculated point for the northwest corner of the herein described tract;
- 4). South 69°03'50" East, a distance of 250.00 feet to a calculated point lying in the west right-of-way line of Interstate Highway 35 for the northeast corner hereof;

THENCE along the east line of this described tract common with the said west right-of-way line of Interstate Highway 35 and east line of said 47.74 acre tract, the following eight (8) courses:

- 1). South 20°56'10" West, a distance of 208.00 feet to a ½ inch steel stake for an angle point;
- 2). South 12°13'17" West, a distance of 290.20 feet to a ½ inch steel stake for an angle point;
- 3). South 09°03'32" West, a distance of 291.79 feet to a concrete monument for an angle point;
- 4). South 01°48'59" West, a distance of 300.31 feet to a ½ inch steel stake for an angle point;
- 5). South 04°15'20" West, a distance of 301.31 feet to a concrete monument for an angle point;
- 6). South 18°22'34" West, a distance of 294.77 feet to a ½ inch steel stake for an angle point;

EXHIBIT A

- 7). South $32^{\circ}16'49''$ West, a distance of 300.47 feet to a $\frac{1}{2}$ inch steel stake for an angle point;
- 8). South $44^{\circ}50'04''$ West, a distance of 314.81 feet to the POINT OF BEGINNING, and containing 38.67 acres of land, more or less.



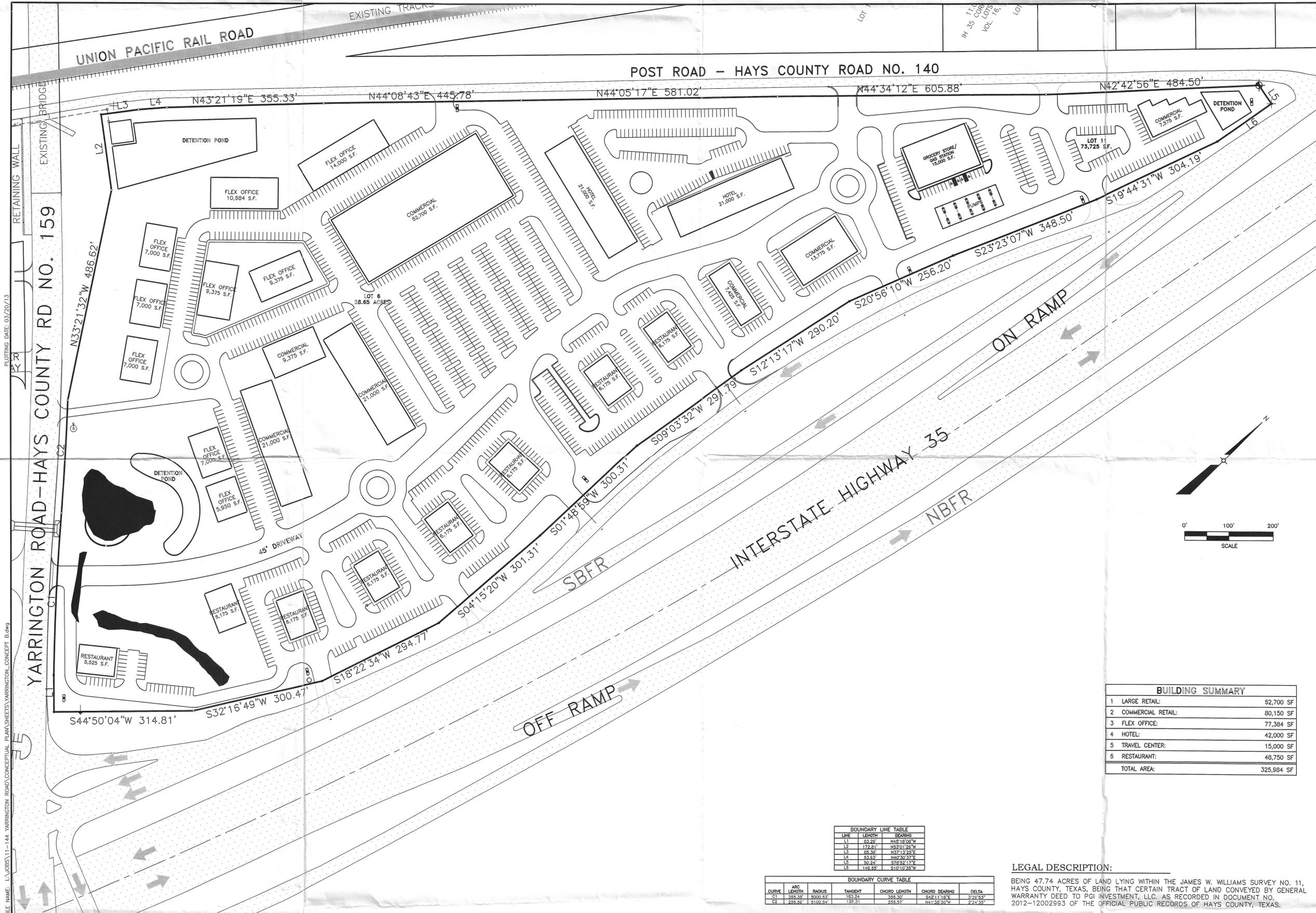
George E. Lucas
Registered Professional
Land Surveyor No. 4160
State of Texas
Date: December 18, 2012



EXHIBIT B

KYLE GATEWAY PRELIMINARY COST ESTIMATE
Sept 17

HARD COSTS	
Roadway:	
3,500 linear ft. (Spine and Cross Rd from Yarrington to Post Rd)	\$4,500,000
Traffic Signal	\$350,000
Water:	
2,400 linear ft. 8" line	
400 linear ft. 12" line	
10 Fire Hydrants	
Wastewater:	
2,300 linear ft. 12" line	
10 manholes	
	\$400,000
TOTAL	\$ 5,250,000.00



PLOT DATE: 03/20/13

FILE NAME: L:\JOBS\11-144 YARRINGTON ROAD\CONCEPTUAL PLAN SHEETS\YARRINGTON_CONCEPT_B.dwg

BOUNDARY CURVE TABLE				
CURVE	ARC LENGTH	RADIUS	TANGENT	CHORD LENGTH
C1	355.33'	5000.53'	183.24'	355.30'
C2	235.85'	3100.24'	120.31'	235.87'

BUILDING SUMMARY	
1 LARGE RETAIL:	62,700 SF
2 COMMERCIAL RETAIL:	80,150 SF
3 FLEX OFFICE:	77,384 SF
4 HOTEL:	42,000 SF
5 TRAVEL CENTER:	15,000 SF
6 RESTAURANT:	48,750 SF
TOTAL AREA:	325,984 SF

LEGAL DESCRIPTION:
 BEING 47.74 ACRES OF LAND LYING WITHIN THE JAMES W. WILLIAMS SURVEY NO. 11, HAYS COUNTY, TEXAS, BEING THAT CERTAIN TRACT OF LAND CONVEYED BY GENERAL WARRANTY DEED TO PGI INVESTMENT, LLC. AS RECORDED IN DOCUMENT NO. 2012-12002993 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

DATE	BY	DESCRIPTION

QUATRO
 consultants,
 Registration No. 1-5324
 Kyle Crossing, Suite 15, P.O. Box 612, Kyle, TX 78149
 Kyle, Texas 78149

CONCEPT PLAN
 KYLE TRAVEL CENTER
 CITY OF KYLE
 HAYS COUNTY, TEXAS

OWNER:
 PGI INVESTMENT, LLC.
 19511 S COMAL RIVER DR.
 CYPRESS, TX 77433
 (832) 858-0389

DATE:	MARCH, 2013
PROJECT:	JOB # 11-144
DRAWING'S NAME:	YARRINGTON_CONCEPT B
DESIGN:	CHECKED:
HE,jr.	HE,jr.
DRAWN:	APPROVED:
AS	HE,jr.
SHEET:	1 OF 1

