

RESOLUTION NO. 1468

A RESOLUTION OF THE CITY OF KYLE, TEXAS, APPROVING A DEVELOPMENT AGREEMENT FOR CARAWAY TRACT DEVELOPMENT BY AND AMONG THE CITY OF KYLE, TEXAS, CARAWAY CATTLE COMPANY FAMILY PARTNERSHIP, LLP, TRANSWESTERN DEVELOPMENT COMPANY, LLC, AND NEWQUEST EQUITY, LC; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS

WHEREAS, the City Council of the City of Kyle, Texas (the "City") desires to enter into in the Development Agreement for the Caraway Tract Development to provide for the development of the Property described therein; and

WHEREAS, the City Council finds that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interests and welfare of the public;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

SECTION ONE: The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

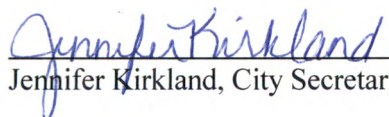
SECTION TWO: The Development Agreement for the Caraway Tract Development by and among the City of Kyle, Texas, Caraway Cattle Company Family Partnership, LLP, Transwestern Development Company, LLC, and Newquest Equity, LC, attached hereto as Exhibit A and incorporated herein for all purposes is hereby approved, and the City Manager is authorized to execute said Agreement.

SECTION THREE: Should any section or part of this Resolution be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Resolution are declared severable.

SECTION FOUR: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

PASSED AND APPROVED this the 19th day of December, 2023.

ATTEST:


Jennifer Kirkland, City Secretary

CITY OF KYLE, TEXAS:

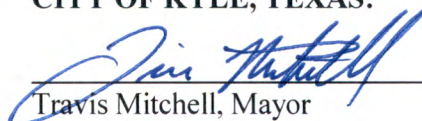

Travis Mitchell, Mayor

Exhibit A

DEVELOPMENT AGREEMENT FOR THE CARAWAY TRACT DEVELOPMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the 19th day of December, 2023 (the “Effective Date”) by and between the **City of Kyle, Texas**, a home rule municipality located in Hays County, Texas (the “City”), **Caraway Cattle Company Family Partnership, LLP**, a Texas limited liability partnership (the “Owner”) and **Transwestern Development Company, L.L.C.**, a Delaware limited liability company and **NewQuest Equity, L.C.**, a Texas limited liability (collectively, the “Developer”). Owner and Developer are sometimes referred to, collectively, herein as the “Owners and Developers”. The City and Developer are hereinafter sometimes referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. The City is a home-rule municipality of the State of Texas located within Hays County, Texas (the “County”).

B. Developer owns (or is under contract to purchase) that certain tract or parcel of land consisting of approximately 101.8 acres of land, more or less, comprised of 63.81 acres in the City’s corporate limits and 38.0493 acres in the City extraterritorial jurisdiction (ETJ Tract) all of which is planned to be developed within the municipal boundaries of the City, in Hays County, Texas, as more particularly described in Exhibit “A” attached hereto (the “Property”).

C. Developer intends to develop and improve, in one or more phases, all or a portion of the Property as a mixed-use development consisting of commercial, retail and multifamily uses as the Caraway Tract development (the “Project”).

D. Prior to the Effective Date, Owner petitioned to have the ETJ Tract annexed into the City, and it is intended that concurrently with the due authorization and execution of this Agreement and the additional actions of the City provided for herein the Property will be annexed into the full purpose jurisdiction of the City.

E. Prior to the Effective Date, Developer, as Owner’s representative, submitted a Planned Unit Development (“**PUD**”) zoning application to the City covering the Property and it is intended that concurrently with the annexation of the Property and the execution of this Agreement, the Property will be zoned PUD in accordance with the terms and conditions contained in the PUD Code modifications attached hereto as **Exhibit “C”**.

F. Developer shall seek the City’s approval of the Project as generally depicted on the concept plan attached hereto as Exhibit “B” (the “Concept Plan”).

G. The Developer has requested that a Tax Increment Reinvestment Zone (TIRZ) be created and include the Property within the TIRZ boundaries and that the TIRZ provide tax increment revenue generated from the TIRZ to in order to finance, construct, operate and maintain certain Public Improvements (as defined in the TIRZ Project and Finance Plan) related to the Project and to provide Economic Development Grants (as defined in the TIRZ Project and Finance Plan and, together with the Public Improvements, the “TIRZ Projects”) as further described in this Agreement and the final TIRZ Project and Finance Plan.

H. The City, subject to the consent and approval of the City Council, will consider creation of

a TIRZ that includes the Property that will make the Project financially feasible and allow the Developer to construct certain infrastructure which will serve the Property as well as other citizens of the City.

I. Developer will initially fund the costs to design and construct various infrastructure within the Project as further described in this Agreement.

J. Subject to the terms of this Agreement, the City will pay for and/or reimburse the Developer for all or a portion of the Project Costs of the TIRZ Projects from tax increment revenue generated from the TIRZ.

K. The Parties intend to enter into an agreement related to the Project (a "Chapter 380 Agreement") [substantially in the form attached as Exhibit "J," with such changes as agreed to by the Parties], in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, as amended. The Chapter 380 Agreement provides that grants will be paid to the Developer from certain tax increment revenue generated in the TIRZ.

L. The Developer and Hays County, Texas intend to enter into an agreement related to the Project (a "Chapter 381 Agreement") in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 381 of the Texas Local Government Code, as amended. The 381 Agreement provides grants to the Developer that will be paid from Hays County sales tax revenue generated from the Project.

M. The City, after due and careful consideration, has concluded that the development of the Property, as provided for herein, will further the growth of the City, provide public recreational spaces, increase the assessed valuation of the real estate situated within the City, foster increased economic activity within the City, upgrade public infrastructure within the City, and otherwise be in the best interests of the City by furthering the health, safety, and welfare of its residents and taxpayers.

N. This Agreement is entered pursuant to the laws of the State of Texas, the City Charter, and the City Code of Ordinances.

O. The Parties desire to establish certain restrictions and commitments to be imposed and made in connection with the development of the Property; to provide increased certainty to the City and Developer concerning development rights, entitlements, arrangements, and commitments, including the obligations and duties of the Developer and the City, for a period of years; and to identify planned land uses and permitted intensity of development of the Property as provided in this Agreement. The Parties acknowledge that they are proceeding in reliance upon the purposes, intent, effectiveness and enforceability of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; INCORPORATION OF RECITALS; TERM

1.1 **Incorporation of Recitals.** The representations, covenants and recitations set forth in the above recitals (the "Recitals") are material to this Agreement and are hereby found and agreed to be true

and correct and are incorporated into and made a part hereof as though they were fully set forth in this Article.

1.2 Definitions. Capitalized terms used in this Agreement shall have the meanings set forth in this section, unless otherwise defined, or unless the context clearly requires another definition.

“Agreement” shall have the meaning set forth in the preamble hereof and includes any subsequent written amendments or modifications made pursuant to Section 11.5 hereof.

“Annexation Ordinance” means Ordinance No. 1298 covering the Property and including the Property within the City’s full purpose jurisdiction, adopted on even date herewith.

“Applicable Rules” shall have the meaning set forth in Section 4.1(c)(1) hereof.

“City” means the City of Kyle, Texas, a home rule municipality located in Hays County, Texas.

“City Regulations” means the City’s Charter, City’s Code of Ordinances and the other regulations, standards, codes and ordinances of the City governing the platting or re-platting of land into subdivisions and development of said land in effect as of the Effective Date.

“Code of Ordinances” means the applicable code or ordinances adopted by the City which regulate development or subdivision of real property within the City in effect as of the Effective Date.

“Concept Plan” shall have the meaning set forth in the Recitals hereof and is attached as Exhibit “B.”

“County” means Hays County, Texas.

“Developer” means Transwestern Development Company, L.L.C., a Delaware limited liability company and NewQuest Equity, L.C., a Texas limited liability company, and includes any subsequent Developer, whether one or more and whether or not related to the Developer or otherwise a related party of the Developer or a partnership or other entity in which the Developer is a partner or participant, of all or any portion of the Property that specifically acquires by whole or partial assignment, by operation of law or otherwise, the rights and obligations of the Developer under this Agreement.

“Effective Date” means the date on which this Agreement is entered into by both Parties, as provided above.

“Owner” means Caraway Cattle Company Family Partnership, LLP, a Texas limited liability partnership.

“Party” or “Parties” means all or any of the City, Owner and the Developer, as applicable, and their respective successors and/or permitted assigns.

“Person” means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

“Project” means the real estate development planned for the Property known as “Caraway Tract.”

“Property” means the approximately 101.8-acre tract legally described on Exhibit “A” attached

hereto and made a part hereof.

"Public Improvements" shall have the same definition reflected in the TIRZ Project and Finance Plan.

"Subdivision Ordinance" means Chapter 41 of the City's Code of Ordinances.

"Tax Increment Reinvestment Zone" or "TIRZ" means a tax increment reinvestment zone as described in the TIRZ Act with boundaries that include the Property.

"TIRZ Act" means Chapter 311 of the Texas Tax Code, as amended.

"TIRZ Fund" means a fund held by the City, separate and apart from all other City funds, for the deposit and management of revenues collected by the TIRZ.

"TIRZ Project and Finance Plan" means a final project and finance plan, approved by the City Council, as described in the TIRZ Act.

"TIRZ Projects" means the actual costs of the Public Improvements and the Economic Development Grants.

1.3 Term. The term of this agreement shall commence on the Effective Date and continue for twenty-five (25) years from the Effective Date, subject to earlier termination as provided for in this Agreement.

ARTICLE II

BENEFITS; SEQUENCE OF EVENTS; COOPERATION

2.1 Concept Plan. The Property is proposed for development as a mixed-use development consisting of commercial, retail and multifamily uses, with up to 426 multi-family dwelling units and approximately 450,000 square feet of commercial and retail and includes private parkland with public access, open space and other public and private amenities as shown in the Concept Plan. Developer will subdivide and develop the Property and construct the infrastructure, including the Public Improvements, at the Developer's initial expense in accordance with this Agreement, the plans and specifications approved by the City, good engineering practices, and the Applicable Rules, as defined in Section 4.1 of this Agreement. Additionally, the TIRZ Projects shall also comply with the final TIRZ Project and Finance Plan.

2.2 General Benefits. Developer will benefit from the certainty and assurance of the development regulations applicable to the development of the Property and by virtue of the services that will be made available to the Property pursuant to the terms of this Agreement. The City will provide wastewater service to the Property on the same terms and conditions as such services are provided to similarly situated properties within the City. The wastewater collection system shall be provided by the City to the point of connection to serve the Property as shown on Exhibit "G." Developer has voluntarily elected to enter into and accept the benefits of this Agreement and will benefit from: (a) the certainty and assurance of the development and use of the Property in accordance with this Agreement; (b) the establishment of regulations applicable to the development of the Property; (c) the wastewater services that will be made available to the Property; and (d) the reimbursements set forth herein. The City will benefit from this Agreement by virtue of its control over the development standards for the Property, by virtue of

construction of roadways, by virtue of expanding its public amenities, and by virtue of extension of its wastewater system by Developer as herein provided. The Parties expressly confirm and agree that development of the Property will be best accomplished through this Agreement and will substantially advance the legitimate interests of the City. The City, by approval of this Agreement, further finds the execution and implementation of this Agreement is not inconsistent or in conflict with any of the policies, plans, or ordinances of the City.

2.3 Contemplated Sequence of Events. The sequence of events contemplated by this Agreement is as follows:

- (a) Review and approval of the preliminary TIRZ Project and Finance Plan;
- (b) Designation of the TIRZ, by the City and Developer;
- (c) Creation of the TIRZ, subject to the approval by City Council;
- (d) Annexation into the City for full purposes of a portion of the Property consisting of the ETJ Tract (approximately 38.0493 acres);
- (e) City and Developer's agreement on the terms of the PUD zoning ordinance and beginning of public hearings and process to adopt the PUD zoning ordinance;
- (f) Second and final reading of the PUD zoning ordinance of the Property;
- (g) Approval of this Agreement by the City, Owner and the Developer;
- (h) Approval of the Chapter 380 Agreement attached as Exhibit "K."
- (i) Approval of the Chapter 381 Agreement.
- (j) Submittal and review of preliminary plats for the various phases of the Property; and
- (k) City and Developer's negotiation and execution of various agreements to effectuate the terms of the TIRZ and review and approval of the final TIRZ Project and Finance Plan, all subject to the approval by City Council.

2.4 Necessary and Appropriate Actions. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the City's case, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent, subject to the terms and conditions of this Agreement and subject to applicable processes, procedures, and findings that are required by state law, City ordinances, or the City Charter related to actions taken by the City Council.

ARTICLE III

OBLIGATIONS AND CONDITIONS

3.1 City's obligations. The City will reasonably cooperate with Developer and use its commercially reasonable efforts, in good faith, to:

(a) Complete City staff review and schedule for approval of the concept plan, preliminary plat, and construction plans for the Project, subject to the Developer timely submitting applications and responding to comments, as further described and agreed to in Section 8.1;

(b) Create the TIRZ, subject to approval by City Council, to assist in the reimbursement of various infrastructure costs to be incurred by Developer in its development of the Project and the TIRZ Projects;

(c) Negotiate with the County to contribute fifty percent (50%) of the County's sales tax generated by sales within the TIRZ (the "County Sales Tax Participation") through the Chapter 381 Agreement; and

(d) Negotiate with the County to contribute fifty percent (50%) of the County's ad valorem tax generated with the TIRZ (the "County TIRZ Increment"). The County TIRZ Increment, if any, will be deposited into the Tax Increment Fund and will be used in accordance with the Final Project and Finance Plan.

(e) Finance and construct, or cause the construction, of the infrastructure listed on Exhibits G and H (the "City Infrastructure Requirements") on the delivery schedule provided for herein as Exhibit "L".

3.2 Developer's obligations. The Developer shall:

(a) Use its commercially reasonable efforts, in good faith, to submit concept plan, preliminary plat, and construction plan applications, as may be required, to the City and respond to City comments, subject to the City timely commenting on such applications;

(b) Reasonably cooperate with the City and use its commercially reasonable efforts, in good faith, to provide the City with information needed to approve the preliminary TIRZ Project and Finance Plan and, when appropriate, the final TIRZ Project and Finance Plan;

(c) Develop the Property and construct all infrastructure, including the Public Improvements, required for the proposed multi family, retail and commercial uses in compliance with the Applicable Rules;

(d) Pay to the City such fees and charges for or with respect to the development of the Property, but not limited to, subdivision application fees, building permit fees, wastewater impact fees, and fees as incurred by the Developer, its grantees, successors and assigns agreeing that the City's fees and charges are currently provided for in the Applicable Rules which such fees may be amended by the City from time to time;

(e) Pay to the City the reasonable costs and expenses incurred by the City for legal services in connection with the negotiation of this Agreement; and

(f) Agree that this Agreement does not waive the requirements of any Applicable Rules, except as specifically provided herein.

ARTICLE IV

DEVELOPMENT OF THE PROPERTY

4.1 Applicable Rules.

(a) The Property shall be developed and all infrastructure, including the Public Improvements constructed in compliance with the Applicable Rules, as herein defined, this Agreement and pursuant to the Concept Plan once approved and as it may be amended from time to time, and good engineering practices.

(b) The City Development Rules, as herein defined, that apply to the Property are the City ordinances, rules, and regulations governing subdivision, land use, site development, and building and utility construction. If there is any conflict between the Project Approvals, as herein defined, and the City Development Rules, the Project Approvals shall prevail. If there is a conflict between this Agreement and the City Rules, this Agreement shall prevail.

(c) For the purpose of establishing development standards for the Property, the following definitions, shall apply:

(1) “Applicable Rules” means the City Rules, the City Charter, and other local, state, and federal laws and regulations that apply to the Property and the development thereof, as they exist on the Effective Date.

(2) “City Rules” means the City’s ordinances, rules and regulations (including the City Development Rules).

(3) “City Development Rules” means the ordinances and regulations defined in Section 4.1(b) in effect on the Effective Date, as modified by the Code Modifications attached hereto as Exhibit “C”, with amendments to such regulations applicable to the Property as provided herein.

(4) “Project Approvals” means all variances, waivers, and exceptions to the City Development Rules and the City Rules approved by the City, and all properly-granted approvals required under the City Rules for the Project, including the Concept Plan, plat approval, site development plans, and building permits; which shall not be unreasonably withheld, delayed or conditioned.

4.2 Phased Development. Developer may develop the Project in one or more phases.

4.3 Zoning. The zoning of the Property shall be subject to the process, notices, hearings and procedures applicable to all other properties within the City. It is hereby acknowledged that any re-zoning that is subsequently approved for the Property shall allow the Property to be developed in accordance with terms and conditions of this Agreement.

4.4 Vested Rights. The City acknowledges that the Developer shall be deemed vested from the Effective Date of this Agreement to develop the Project in accordance with this Agreement, the City Regulations, and the Code of Ordinances to the extent and for such matters as vesting is applicable pursuant to Chapter 245 of the Texas Local Government Code. The Developer's vesting shall expire (1) on the fifth (5th) anniversary from the date a concept plan is filed with the City if no progress has been made towards completion of the Project; or (2) if this Agreement is terminated by reason of Developer's default beyond any applicable notice and cure periods (the "Vested Rights"). Progress toward completion of the Project shall be defined as set forth in Section 245.005(c), Texas Local Government Code. To the extent any criteria specified in this Agreement which are in conflict with any other current or future City Regulations, then this Agreement shall prevail unless otherwise agreed to by the Developer in writing. For the avoidance of doubt, the Parties acknowledges and agree that this paragraph shall not apply to fees imposed in conjunction with development permits.

4.5 Developer's Rights to Continue Development. In consideration of Developer's agreements, the City agrees that it will not, during the term of this Agreement, impose or attempt to impose: (a) any moratorium on building or development within the Project or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting subdivision plats, site development permits or other necessary approvals, within the Project except for moratoria imposed pursuant to Texas Local Government Code Subchapter E, Section 212.131 et. seq. This Agreement on the part of the City will not apply to temporary moratoriums imposed on similarly situated property due to an emergency constituting a threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

4.6 Parkland and Trails.

(a) Parkland and Trail Improvements. The Developer shall design, permit, and construct approximately 2,500 linear feet of trails throughout the Project (the "Vybe Trail") within public right of way and shall generally comply with the layout depicted in Exhibit "D". Trails within the Project ("Internal Trails") as further described in Exhibit "D" will be owned and maintained by the Developer or an associated property owners association. The City will not be responsible for the maintenance of the Internal Trails.

(b) Access. Any HOA or private open spaces, trails or parks in the Project, except within the multifamily development, shall have a connection to a publicly dedicated right of way. Developer shall provide a public access easement in a form acceptable to the City for the public to access any HOA or private open spaces, trails or parks in the Project, except within the multifamily development.

4.7 Exterior and Design Requirements.

(a) Exterior Standards. The exterior wall standards set forth in this section shall apply to the structures located on the Property. The combined exterior surface area of all walls, including all stories of buildings / structures, shall consist of stone, brick, painted or tinted stucco, and factory tinted (not painted) split faced concrete masonry unit or similar material approved by the Director of Planning, will conform to the PUD zoning ordinance, as may be amended, and as further described in Exhibit "F".

(b) Design Requirements. The design standards set forth in this section shall apply to the structures located on the Property. Design and construction materials will conform to the PUD zoning ordinance, as may be amended, and as further described in Exhibit "F".

4.8 Retail Space. The Developer will reserve up to ten percent (10%) of the square footage of

the commercial space located around the Urban District Park Tract, the term as defined in the Chapter 380 Agreement, to be leased at market rates for qualified small business for a period of one (1) year following execution of this Agreement. The Developer will utilize commercially reasonable efforts to market and promote to small businesses in the Urban District Park Tract. A small business shall be defined as a corporation, partnership, sole proprietorship or other entity that is privately held with an annual operating income below \$5 million.

4.9 Prohibited Uses. After the expiration of the 10-year period for the prohibited uses listed in Exhibit “A” of the PUD zoning ordinance, the development must comply with the land use restrictions of the City’s Development Code in place at that time.

ARTICLE V

PROPERTY OWNERS ASSOCIATION

5.1. Property Owners Association. Developer will create a Property Owners Association (“Association”), and shall establish bylaws, rules, regulations, and restrictive covenants (collectively the “Association Regulations”) to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Agreement. The owner of each lot in the Subdivision shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Association Regulations will establish periodic Association dues and assessments, to be charged and paid by the lot owners in the Project, that are and will be sufficient to maintain (a) any part or portion of the Property that is dedicated to the Association (the “Dedicated Property”); and (b) maintenance and operation of the parkland and all of the trails and public amenities identified in Exhibit “D” (the “Public Amenities”) in accordance with Section 4.6 above and if necessary, through a form of Maintenance and Operations Agreement provided in Exhibit “E”. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the drainage, Dedicated Property and Public Amenities, and to provide funds required for the management and operation of the Association.

ARTICLE VI

WATER SERVICE AND WASTEWATER INFRASTRUCTURE

6.1 Water Service. The Property is located in the water certificate of convenience and necessity (the “CCN”) of Texas Water Utilities, L.P. (“TWU”). The Parties agree that water service shall be provided by TWU.

6.2 Wastewater Infrastructure. Developer shall design, permit and construct all on-site wastewater infrastructure necessary to serve the Project in accordance with the Applicable Rules. Developer agrees to tie into the City’s wastewater system. The City will extend wastewater collection lines along Kohlers Crossing to serve the Project as further depicted in Exhibit “G”. The City will construct and deliver wastewater collection lines per the timing referenced in Section 3.1(e).

6.3 Stormwater Drainage and Detention. The City will construct storm water collection and detention facilities along Kohlers Crossing and Bebee Road to serve the Project as further depicted in Exhibit “H” (the “Water Collection and Detention Facilities”). The City or its contractor will deliver an anticipated 5,000 cubic yds of detention excavation from the construction site of the Water Collection and Detention Facilities to the multi-family parcel site within an agreed to construction schedule by the Parties

after the ROW dedication and conveyance referenced in Article VII 7.1. Developer will be responsible for providing labor, materials, and equipment for stockpiling the excavated materials delivered by the City or its contractor. Developer will also be responsible for designing, installing, and maintaining the required erosion controls. If the City delivers less than the anticipated 5,000 cubic yds of excavated material, the additional excavation material needed for the multi-family parcel site shall be the responsibility of the Developer and not the City. The City will construct and deliver storm water collection and detention per the timing referenced in Section 3.1(e).

ARTICLE VII

ROADWAYS

7.1 Dedication and Conveyance of Right-of-Way. Within thirty (30) days of Developer closing on the Property but no later than 180 days from the Effective Date of this Agreement, the Developer shall dedicate and convey the right of way depicted in Exhibit "I" for the City's extension of Kohlers Crossing and reconstruction of Bebee Road through the City's road bond program (the "Road Bond Program ROWs"). The Road Bond Program ROWs shall be dedicated and conveyed to the City in return for a payment equal to \$5,500,000 payable thirty (30) days after the right of way dedication and conveyance to the City. The Parties shall enter into an earnest money contract within thirty (30) days of the Effective Date of this Agreement for the dedication and conveyance of the Road Bond Program ROWs.

7.2 Construction of Roadways. Upon the dedication and conveyance of the Road Bond Program ROWs, the City shall construct the extension of Kohlers Crossing and the reconstruction of Bebee Road on the timing as provided in Section 3.1(e). The Parties will work to provide access to the Project during construction of the roadways and will approve a construction schedule for completion of the roadways once construction begins.

7.3 Undergrounding of Electric Lines. Developer agrees to undergrounding new electric lines within the Project in accordance with the City's Code. Developer further agrees to cover the costs of undergrounding existing electric lines that are above ground along I-35 and in the City's right of ways located within the Project.

ARTICLE VIII

PLAN REVIEW/APPROVAL AND BIDDING OF PROJECT FACILITIES

8.1 Plan Review and Approval. The Developer elects and agrees that the Concept Plan, preliminary plans, construction plans (the "Plans"), and final plat for the Project shall be reviewed under the City's alternative review process to allow for concurrent review. The City shall have fourteen (14) days from its receipt of the first submittal of the Plans and final plat to approve or deny the Plans and final plat or to respond back to Developer and/or its authorized representative with comments citing the deficiencies of the Plans and final plat. After Developer receives any comments to the Plans and final plat, the Developer shall revise the Plans and final plat accordingly to address such comments and resubmit to the City. The City shall have seven (7) days from its receipt of such resubmittal and subsequent resubmittals, if needed, to respond back to Developer and/or its authorized representative with comments citing the deficiencies of the Plans and final plat. The foregoing process shall repeat until the City determines the Plans and final plat meet the minimum requirements of the City's Subdivision Ordinance, and Applicable Rules. After the City has determined the Plans and final plat meet the minimum requirements of the City's Subdivision Ordinance, and Applicable Rules, the Plans and final plat will be heard before the applicable governing

body for approval. Reviews of the Plans and final plat may occur concurrently, but approvals with the applicable governing body must follow the sequence set forth in the City's Subdivision Ordinance.

ARTICLE IX

TAX INCREMENT REINVESTMENT ZONE

9.01 Tax Increment Reinvestment Zone.

(a) The City, subject to the consent and approval of the City Council, has designated a TIRZ that includes the Property. The City has provided tax increment revenue generated from the TIRZ as follows: fifty percent (50%) of the City's ad valorem tax increment generated by the TIRZ and fifty percent (50%) of the City sales tax increment generated from the TIRZ (i) for a period of up to twenty five years (25) from the Property in the TIRZ (the "City Participation") which will be collected by the City in accordance with the applicable TIRZ Project and Finance Plan. The general terms of the TIRZ are further set forth in Exhibit "J", attached hereto.

(b) In accordance with the TIRZ Project and Finance Plan, the City Participation and the County TIRZ Increment, if any, shall be placed into a TIRZ Fund. At all times in accordance with the TIRZ Project and Finance Plan, after the payment of administrative expenses related to the TIRZ and the payment of any principal and interest on any public securities issued by the City to acquire the Public Improvements, monies in the TIRZ Fund shall be distributed to Developer in accordance with the provisions of the Chapter 380 Agreement. Amounts in the TIRZ Fund shall not be comingled with any other fund and shall be separate and apart from all other funds held by or on behalf of the City.

(c) To the extent allowed by the TIRZ Act, the final TIRZ Project and Finance Plan shall include, as TIRZ Projects, the projects listed on Exhibit "C" of the TIRZ Project and Finance Plan. The total estimated costs of the Project Costs (as defined in the TIRZ Project and Finance Plan) is \$27,506,804.

(d) The Project Costs shall be paid from the revenues deposited by the City in the TIRZ Fund in accordance with the TIRZ Project and Finance Plan and the Chapter 380 Agreement or, at the option of the City, with any lawfully available funds of the City, including proceeds of eligible public securities issued by the City.

(e) Upon the Developer both achieving the Ongoing Performance Criteria in Section IV.A.2(a) of the Chapter 380 Agreement and upon the TIRZ generating annual tax increment receipts in an amount sufficient to support debt service of the contemplated public securities (as determined by the City's financial advisor), the City agrees to issue public securities to pay the Developer for the actual costs of the Public Improvements in a par amount not greater than the actual costs of the Public Improvements for which the public security is issued to acquire.

(f) The Developer shall provide the City with a request for payment of actual costs of the Public Improvements upon achieving the Ongoing Performance Criteria as provided in the Chapter 380 Agreement with supporting documents including bid tabulations, pay applications, change orders and construction plan and specifications. The City shall grant such a request if, in addition to the Ongoing Performance Criteria, the debt service coverage ratio in the immediately preceding paragraph is met.

(g) The City will use best efforts to negotiate with the County to contribute fifty percent (50%) of the County's ad valorem tax increment generated by the TIRZ. Upon successful negotiations between the City and the County, the City will use best efforts to enter into an interlocal agreement with the County for the County's TIRZ contribution. The County TIRZ Increment shall be used for the same purposes as the City Participation, as set out in subsections (b) and (c) of this section.

(h) To the extent that anything in this Agreement is inconsistent or in conflict with the TIRZ Project and Finance Plan, the TIRZ Project and Finance Plan will control.

ARTICLE X
AUTHORITY; COVENANTS; PROPERTY RIGHTS

10.1 Powers.

(a) The City hereby represents and warrants to Developer that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the terms and conditions of this Agreement and subject to applicable processes, procedures, and findings that are required by state law, City ordinances, or the City Charter related to actions taken by the City Council, and all of the foregoing have been 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 Developer hereby represents and warrants to the City that Developer has full lawful right, power and authority 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 actions of Developer. Concurrently with Developer's execution of this Agreement, Developer has delivered to the City copies of the resolutions or other corporate actions authorizing the execution of this Agreement and evidencing the authority of the persons signing this Agreement on behalf of Developer to do so. Accordingly, this Agreement constitutes the legal, valid and binding obligation of Developer, and is enforceable in accordance with its terms and provisions.

10.2 Authorized Parties. Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreements, any request, demand, approval, notice or consent of the City or Developer is required, or the City or Developer is required to agree or to take some action at the request of the other, such request, demand, approval, notice or consent, or agreement shall be given for the City, unless otherwise provided herein or inconsistent with applicable law, the City Charter, or City Regulations, by the City Manager and for Developer by any officer of Developer so authorized (and, in any event, the officers executing this Agreement are so authorized); and any party shall be authorized to act on any such request, demand, approval, notice or consent, or agreement.

ARTICLE XI
GENERAL PROVISIONS

11.1 Time of the Essence. Time is of the essence in all things pertaining to the performance of

this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

11.2 Default.

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially 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 thirty (30) days of the receipt of such notice. Upon a breach of this Agreement for which cure has not commenced as provided above, 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.

11.3 Personal Liability of Public Officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

11.4 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed by registered or certified mail, return receipt requested, or personally delivered to an officer of the receiving party at the following addresses:

If to the City:

City of Kyle
Attn: City Manager
1700 Kohlers Crossing
Kyle, Texas 78640

with a copy to:

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

If to the Developer:

NewQuest Properties

Attn: Steven D. Alvis
8827 W. Sam Houston Pkwy. N, Suite 200
Houston, Texas 77040

with a copy to:

NewQuest Properties
Attn: Legal Department
8827 W. Sam Houston Pkwy. N., Suite 200
Houston, Texas 77040
lhammill@newquest.com

If to the Developer:

Transwestern Development Company
Attn: Jeff Knowles
1900 West Loop South
Suite 1300
Houston, Texas 77027

with a copy to:

DLA Piper
Attn: J. Pieratt
303 Colorado Street
Suite 3000
Austin, Texas 78701-4653

Each Party may change its address by written notice in accordance with this Section, Any communication addressed and mailed in accordance with this Section shall be deemed to be given when deposited with the United States Postal Service, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of the City or the Developer, as the case may be.

11.5 Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the City Council and the Developer. No course of dealing on the part of the City or the Developer nor any failure or delay by the City or the Developer with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

11.6 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

11.7 Beneficiaries. This Agreement shall bind and inure to the benefit of the Parties and their successors and permitted assigns.

11.8 Successors and Assigns.

(a) Except as expressly provided in this Section, neither party to this Agreement shall have the right to convey, transfer, assign, mortgage, pledge or otherwise encumber all or any part of its right, title and interest under this Agreement to any party without the prior written consent of the other party to this Agreement, which consent shall not be unreasonably withheld, conditioned, delayed or denied.

(b) Developer may, from time to time, effectuate a transfer of its rights under this Agreement, in whole or in part, with the consent of City Council, which shall not be unreasonably withheld, conditioned, delayed, or denied, to any party, provided such party agrees in writing to assume all of Developer's duties, obligations, and liabilities so assigned hereunder, and provided further that any such assignment shall not become effective until the City receives notice of the assignment and a copy of the assignment instrument.

(c) Developer may pledge, assign or transfer its right, title and interest under this Agreement, in whole or in part, without the consent of the City, to any third party lender of the Project (each, a "Lender") as security for the performance of Developer's loan obligations; and in relation thereto, the City will execute reasonable acknowledgements of this Agreement as may be requested by such Lender, including confirmation whether this Agreement is valid and in full force and effect, whether either party is in default of any duty or obligation under this Agreement, and agreeing to provide notice and opportunity to cure to such Lender.

(d) Developer may pledge, assign or transfer its right, title and interest under this Agreement, in whole or in part, to any affiliate, shareholders, subsidiary, or intercompany entity of the Developer; and in relation thereto, the City Manager is authorized to approve and consent to such assignment by the Developer, which consent shall not be unreasonably withheld, conditioned, or delayed, and the City Manager is further authorized to execute reasonable acknowledgements of this Agreement as may be requested by such affiliate, subsidiary, or intercompany entity, including confirmation whether this Agreement is valid and in full force and effect, whether either party is in default of any duty or obligation under this Agreement, and agreeing to provide notice and opportunity to cure to such affiliate, subsidiary, or intercompany entity; provided that the affiliate, shareholders, subsidiary, or intercompany entity of the Developer agrees in writing to assume all of Developer's duties, obligations, and liabilities so assigned hereunder.

(e) Any attempted transfer of a portion of the Property or of any right or beneficial interest under this Agreement shall not be effective with respect to such interest unless the instrument purporting to carry out such transfer expressly states that the right or beneficial interest subject to the transfer is deemed a transfer to the proposed party and is acknowledged by the City in writing.

(f) Notwithstanding anything to the contrary, this Agreement shall not be binding upon any purchaser of a platted lot or reserve in the Project.

11.9 Exhibits, titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the Parties and shall not be construed to have any effect or meaning as to the agreement between the Parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

11.10 Applicable Law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any

actions concerning this Agreement shall be brought in either the Texas State District Courts of Hays County, Texas or the United States District Court for the Western District of Texas.

11.11 Entire Agreement. This written agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

11.12 No Waiver of City Standards. Except as may be specifically provided in this Agreement, the City does not waive or grant any exemption to the Property or the Developer with respect to City Regulations.

11.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

11.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

11.15 Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

11.16 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby.

11.17 Anti-Boycott Verification. Owner and Developer represent that neither Owner nor Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner and Developer (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

11.18 Verification under Chapter 2252, Texas Government Code. Owner and Developer represent that Owner nor Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner and Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

11.19 No Discrimination Against Fossil-Fuel Companies. The Owner and Developer hereby verify that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section 2276.002, Texas Government Code, as amended. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (b) does business with a company

described by (a) above.

11.20 No Discrimination Against Firearm Entities and Firearm Trade Associations. The Owner and Developer hereby verify that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the City to comply with such Section 2274.002, Texas Government Code, as amended. As used in the foregoing verification, (a) ‘discriminate against a firearm entity or firearm trade association’ means, with respect to the firearm entity or firearm trade association, to: (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; and (b) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (A) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (B) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association. As used in the foregoing verification, (a) ‘firearm entity’ means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code); and (b) ‘firearm trade association’ means a person, corporation, unincorporated association, federation, business league, or business organization that: (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

11.21 Affiliates. As used in Sections 11.17 – 11.20 hereof, each of the Developers understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. Section 230.405, and exists to make a profit.

11.22 Exhibits. The following Exhibits to this Agreement are incorporated herein by reference for all purposes:

Exhibit A	Description of Property
Exhibit B	Concept Plan
Exhibit C	Code Modifications
Exhibit D	Parkland and Public Amenities
Exhibit E	Form of Maintenance and Operations Agreement
Exhibit F	Design Standards
Exhibit G	Wastewater Infrastructure
Exhibit H	Storm Sewer and Detention
Exhibit I	Road Bond Program Right of Ways
Exhibit J	TIRZ Term Sheet
Exhibit K	Form of Chapter 380 Agreement
Exhibit L	City Infrastructure Delivery Schedule

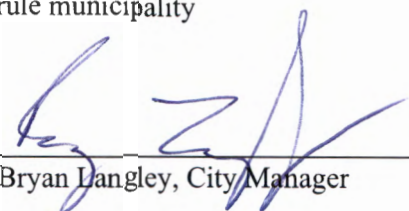
[Signature pages follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY:

CITY OF KYLE, TEXAS,
a home rule municipality

By:



Bryan Langley, City Manager

ATTEST:



Jennifer Kirkland, City Secretary


DEVELOPER:

Transwestern Development Company,
a Delaware limited liability company

By: 
Name: JEFF KNOWLES
Title: CEO

DEVELOPER:

NewQuest Equity, L.C.,
a Texas limited liability company

By: 
Name: STEVEN D. ALVIS
Title: MANAGER

OWNER:

Jack W. Caraway
Name: JACK W. CARAWAY for myself and as
President of the company

OWNER:

Luanna Caraway
Name: Luanna Caraway

EXHIBIT "A"
Description of Property

EXHIBIT “ A ”

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 101.8289 ACRES (4,435,666 SQUARE FEET) PARTIALLY OUT OF THE THOMAS G. ALLEN SURVEY, ABSTRACT NO. 26 IN HAYS COUNTY, TEXAS, AND PARTIALLY OUT OF THE DAN DOWNER SURVEY NO. 22, ABSTRACT NO. 151 IN HAYS COUNTY, TEXAS, BEING THE REMNANT PORTION OF A CALLED 104.08 ACRE TRACT CONVEYED TO CARAWAY CATTLE COMPANY FAMILY, IN VOLUME 4516, PAGE 661 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.), SAID 101.8289 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



PO Box 90876
Austin, TX 78709
(512) 537-2384
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod with “4Ward Boundary” cap set at the intersection of the east right-of-way line of South IH 35 (right-of-way varies) and the north right-of-way line of Bebee Road (right-of-way varies), being the southwest corner of said 104.08 acre tract, for the southwest corner and **POINT OF BEGINNING** hereof, from which a 1/2-inch iron rod found for the intersection of the east right-of-way line of said IH 35 and the south right-of-way line of said Bebee Road, being the northwest corner of a called 45.64 acre tract (described as “Tract 1”) conveyed to Sunrise Village Investment, LLC in Document No. 20032482 of the Official Public Records of Hays County, Texas (O.P.R.H.C.T.), bears, S31°37’13”W, a distance of 79.98 feet;

THENCE, with the east right-of-way line of said IH 35 and the west line of said 104.08 acre tract, the following three (3) courses and distances:

- 1) **N31°24’32”E**, passing at a distance of 1,908.08 feet a TxDot type II Brass Disc found for a point on line hereof, and continuing for a total distance of **3,067.92** feet to a calculated point for an angle point hereof, from which a TxDot Type I concrete monument found bears, S73°31’45”E, a distance of 1.21 feet,
- 2) **N53°13’03”E**, a distance of **107.88** feet to a calculated point for an angle point hereof, from which a TxDot Type I concrete monument found bears, N59°56’12”W, a distance of 1.01 feet, and
- 3) **N31°24’07”E**, a distance of **284.23** feet to an 1/2-inch iron rod with illegible cap found for the north corner hereof, said point being the north corner of said 104.08 acre tract, and being the west corner of Lot 2, Amberwood Commercial Section 1, a subdivision recorded in Volume 14, Page 129 of the Plat Records of Hays County, Texas (P.R.H.C.T.), said Lot 2 having been conveyed to SPI Strand 160 EX, LLC in Document No. 1830726 (O.P.R.H.C.T.), from which a 1/2-inch iron rod found for an angle point in the north line of said Lot 1, Amberwood Commercial, being in the south right-of-way line of Amberwood South (right-of-way varies), bears, N31°24’07”E a distance of 398.05 feet, and N72°48’46”E, a distance of 44.66 feet;

THENCE, leaving the east right-of-way line of said IH 35, with the northeast line of said 104.08 acre tract, in part with the southwest line of said Lot 2, Amberwood Commercial, and in part with the southwest line of Lot 1 of said Amberwood Commercial (no ownership information provided for Lot 1 per Hays County Appraisal District), the following two (2) courses and distances:

- 1) **S16°50’22”E**, passing at a distance of 724.16 feet a 1/2-inch iron rod with illegible cap found for the common south corner of said Lot 1 and said Lot 2, Amberwood Commercial, and continuing for a total distance of **752.15** feet to a 1/2-inch iron rod with “4Ward Boundary” cap found for an angle point hereof, and

- 2) **S16°53'19"W**, a distance of **610.34** feet to a 1/2-inch iron rod found for an angle point hereof;

THENCE, with the northeast line of said 104.08 acre tract, in part with the southwest line of said Lot 1, Amberwood Commercial, in part with the southwest line of a called 25.98 acre tract (described as "Tract 2") conveyed to Kyle Business Park, L.P. in Volume 2835, Page 819 (D.R.H.C.T.), and in part with the southwest lines of Lots 21 through 23, Block A, Kyle Business Park, Section One, a subdivision recorded in Volume 12, Page 395 (P.R.H.C.T.), said Lots 21 through 23 (described as part of "Tract 2") having been conveyed to Kyle Business Park, L.P. in Volume 2835, Page 819 (D.R.H.C.T.), the following three (3) courses and distances:

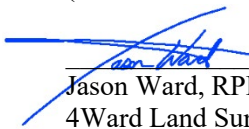
- 1) **S00°13'08"W**, passing at a distance of 5.71 feet a calculated point for the common west corner of said Lot 1, Amberwood Commercial and said 25.98 acre tract, and continuing for a total distance of **567.81** feet to a 3/8-inch iron rod found for an angle point hereof,
- 2) **S24°24'03"E**, passing at a distance of 431.92 feet a 1/2-inch iron rod with "Bryn" cap found for the common west corner of said 25.98 acre tract and said Lot 21, passing at a distance of 853.52 feet a calculated point for the common west corner of said Lot 21 and said Lot 22, from which a 1/2-inch iron rod with "Bryn" cap found bears **S37°03'32"W**, a distance of 0.39 feet, and continuing for a total distance of **1,009.62** feet to a 1/2-inch iron rod found for an angle point hereof, said point being in the west line of said Lot 22, and
- 3) **S18°33'49"E**, passing at a distance of 294.69 feet a 1/2-inch iron rod with "Bryn" cap found for the common west corner of said Lot 22 and said Lot 23, and continuing got a total distance of **935.60** feet to a 1/2-inch iron rod with illegible cap found for a point of curvature hereof, said point being in the northwest right-of-way line of said Bebee Road, for the southeast corner of said Lot 23, and being an angle point in the north line of a called 2.305 acre tract conveyed to Hays County, Texas for right-of-way purposes in Volume 1206, Page 472 (O.P.R.H.C.T.),

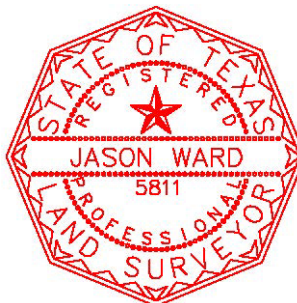
THENCE, with the north right-of-way line of said BeBee Road, with the north line of said 2.305 acre tract, and over and across said 104.08 acre tract, the following two (2) courses and distances:

- 1) Along a curve to the right, whose radius is **418.37** feet, whose arc length is **522.20** feet, and whose chord bears **S76°32'18"W**, a distance of **488.96** feet to a 1/2-inch iron rod with illegible cap found for a point of tangency hereof, and
- 2) **N67°41'19"W**, a distance of **2,281.99** feet to the **POINT OF BEGINNING** and containing 101.8289 Acres (4,435,666 Square Feet) of land, more or less.

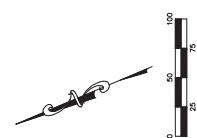
NOTE:

All bearings are based on the Texas State Plane Coordinate System, Grid North, South Central Zone (4204), all distances were adjusted to surface using a combined scale factor of 1.000098675586. See attached sketch (reference drawing: 01480.dwg).


9/2/2022
Jason Ward, RPLS #5811
4Ward Land Surveying, LLC



NO.	DATE	DESCRIPTION
0001	1/4	WELLS
0002	1/4	WELLS
0003	1/4	WELLS
0004	1/4	WELLS
0005	1/4	WELLS
0006	1/4	WELLS
0007	1/4	WELLS
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0027	1/4	WELLS

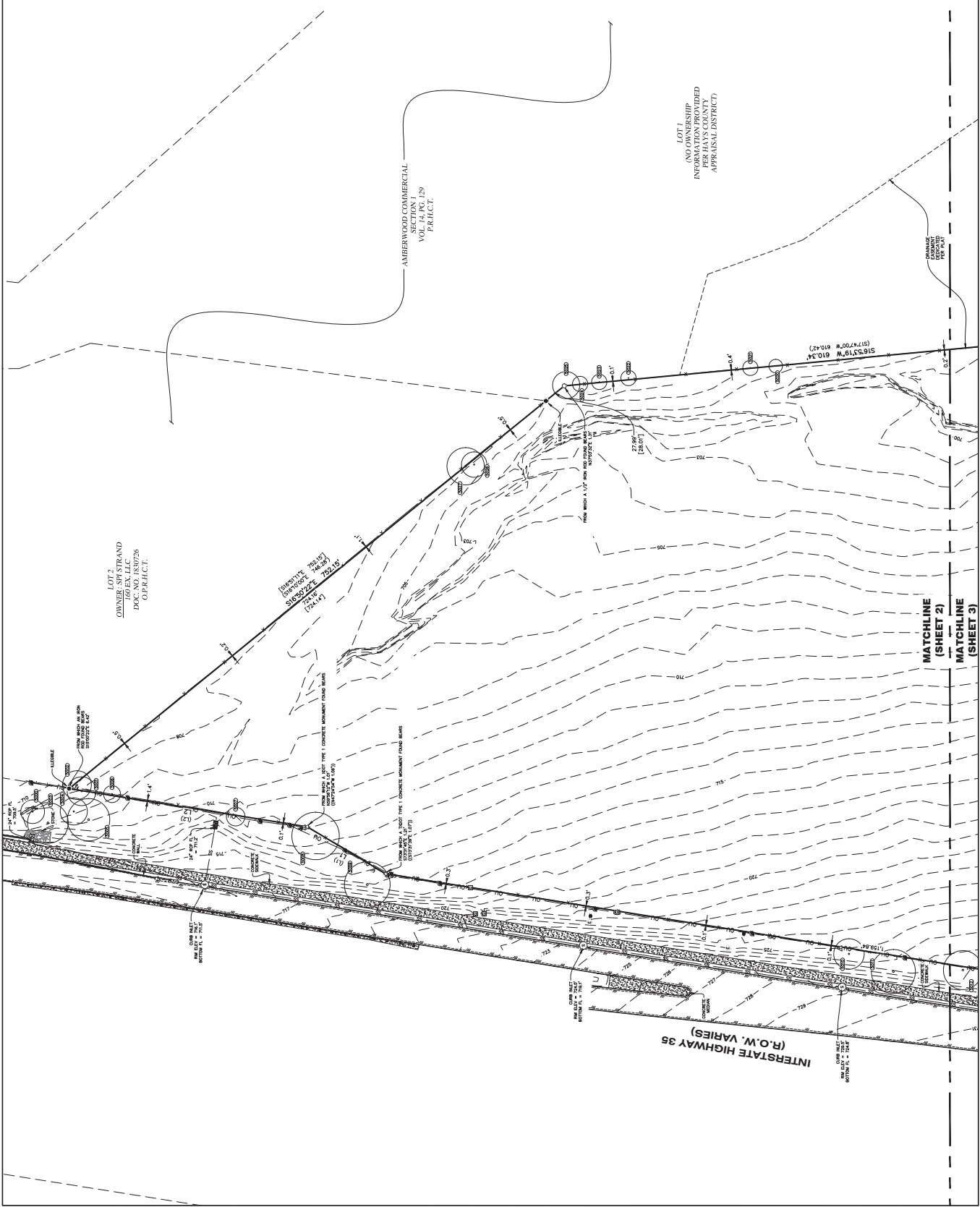


GRAPHIC SCALE: 1" = 50'

AWARD
Land Surveying

PO Box 30576, Austin, Texas 78709
 INFO@AWARDLANDSURVEYING.COM (512) 357-2334
 License No. 27793
 Expires 12/31/2024

Date:	07/2022
Project:	01460
Drawn:	T. W. BOY
Checked:	TE
Scale:	1" = 50'
Sheet:	2 of 3



OWNER: STRAND
 LLC, LLC
 DOC. NO. 1830726
 O.P.R. H.C.T.

2025/07/20
 51653.31'W 610.24'
 74.64' (74.64')
 752.10'

LOT 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

MATCHLINE
(SHEET 2)

MATCHLINE
(SHEET 3)

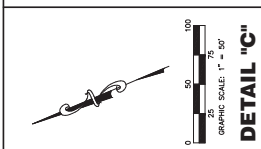
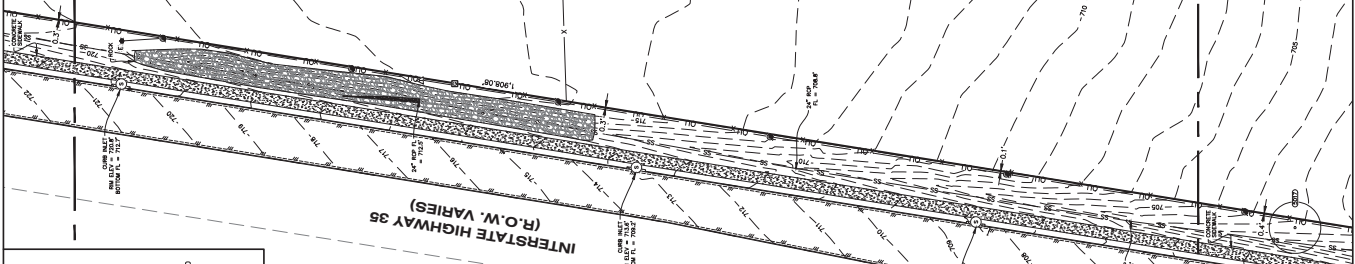
INTERSTATE HIGHWAY 35
 (R.O.W. VARIES)

101,829 ACRES
 4,455,666 SQUARE FEET
 CARAWAY CATTLE COMPANY FAMILY
 100% INTEREST
 REMAINDER OF
 CALLED 100% ACRES
 VOLUME 18, PAGE 101
 DEED

MATCHLINE
 (SHEET 3)
 MATCHLINE
 (SHEET 4)

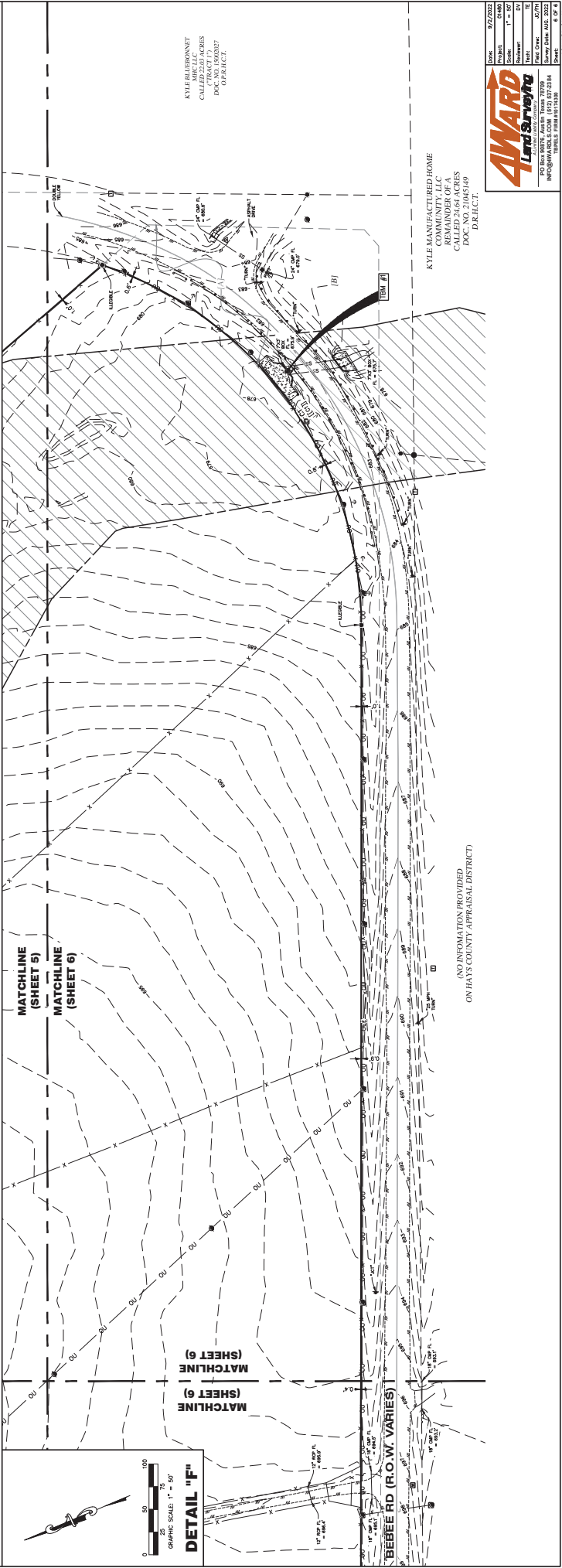
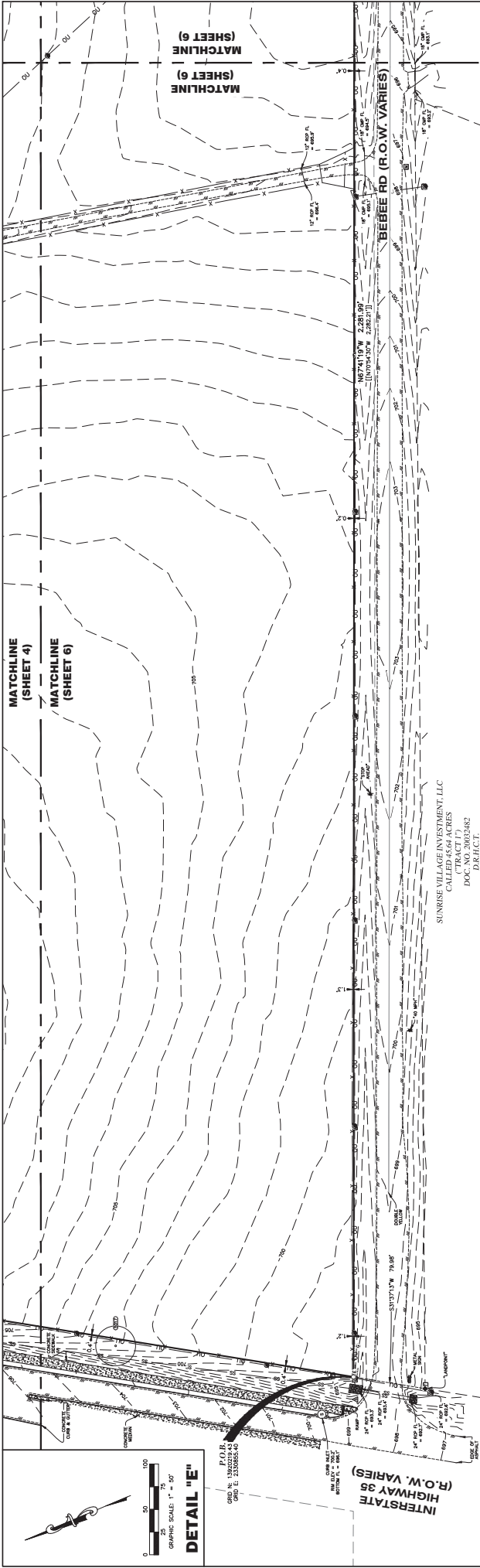
MATCHLINE
 (SHEET 4)
 MATCHLINE
 (SHEET 5)

MATCHLINE
 (SHEET 4)
 MATCHLINE
 (SHEET 6)



AWARD
 Land Surveying
 101 BOX 3075, AUSTIN, TEXAS 78709
 INFO@AWARDLANDSURVEYING.COM (512) 357-2334
 License No. 10121
 Survey No. 4 of 4

Date:	07/20/22
Project:	01460
Sheet:	1 of 4
Drawn:	BT
Check:	TE
Scale:	AS SHOWN
File No.:	2270
Project No.:	01460



SUNRISE VILLAGE INVESTMENT, LLC
 CALLED "TRACT 17"
 DOC. NO. 20032482
 DEH.C.T.

KYLE BERGONNET
 H.R.L.L.C.
 CALL "TRACT 17"
 DOC. NO. 150007
 DEH.C.T.

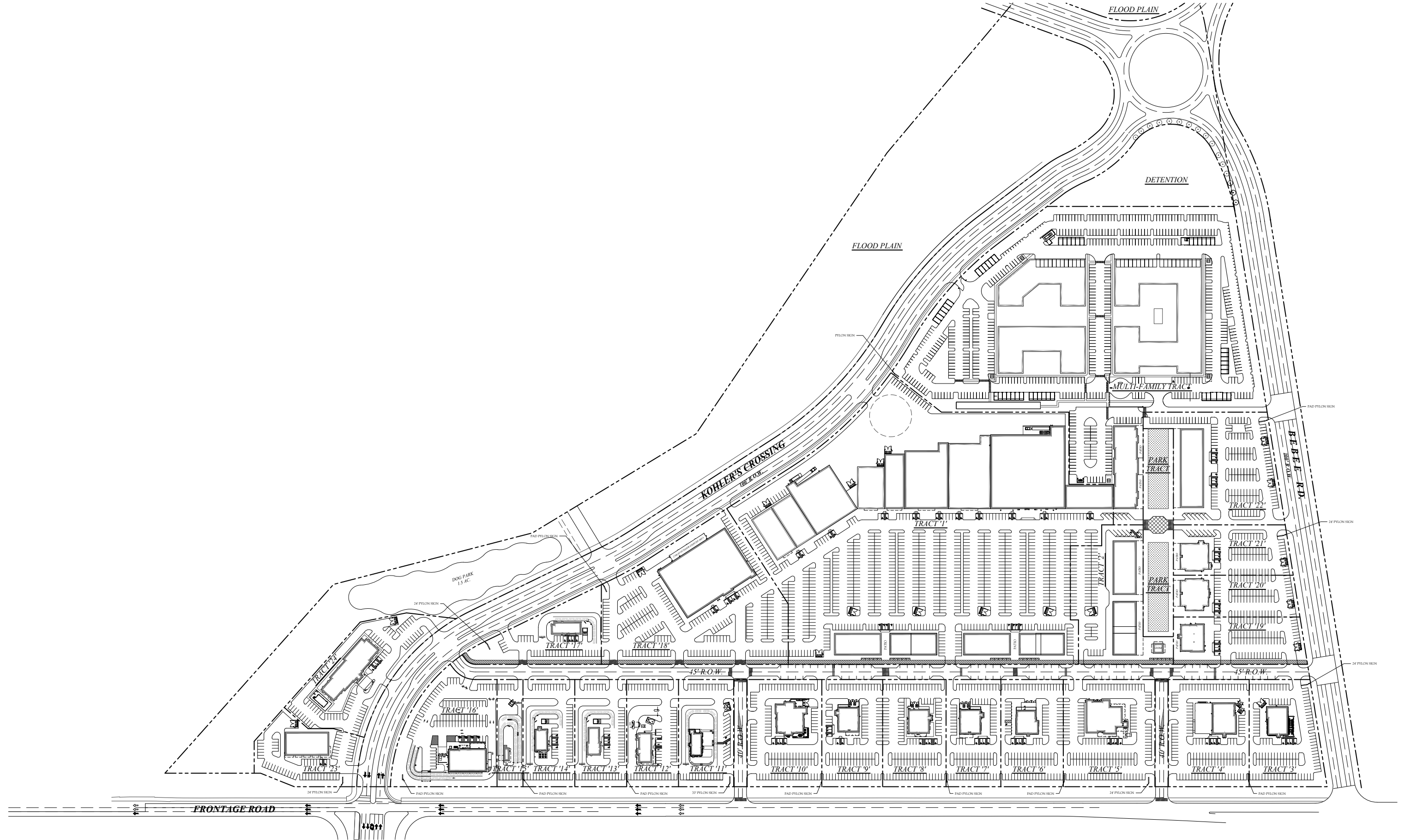
KYLE MANUFACTURED HOME
 COMMUNITY, LLC
 CALLED "TRACT 17"
 DOC. NO. 21045149
 DEH.C.T.

NO INFORMATION PROVIDED
 ON HAYS COUNTY APPRAISAL DISTRICT

AWARD
 Land Surveying
 PO Box 1075, Awarit, Texas 75709
 INFO@AWARDLANDSURVEYING.COM (817) 397-2154
 License No. 20170
 Surveyor's Seal No. 6 & 7

Date:	07/2022
Project:	0460
Scale:	1" = 50'
Sheet:	17
Drawn:	TE
Check:	TE
Field Date:	07/20
Field Book:	2022
Drawn:	6 & 7

EXHIBIT "B"
CONCEPT PLAN



HWY I-35

 VYBE TRAIL - TOTAL 2515 LINEAR FOOT

EXHIBIT B - CONCEPTUAL SITE PLAN



PARTIAL ELEVATION 1



PARTIAL ELEVATION 2



OVERALL BUILDING ELEVATION

EXHIBIT B - CONCEPTUAL BUILDING ELEVATIONS

EXHIBIT "C"

CODE MODIFICATIONS

**CURRENT CITY CODE
PROVISION**

CODE MODIFICATION

Sec 17-24 - Methods of reducing flood losses and nuisance conditions	
(d) Stream buffer setback	Development shall be permitted within 100' of the centerline of the FEMA Zone A and Non-FEMA Stream with an approved drainage study
Sec 41-135 - Blocks	
(b) Length	Block lengths shall exceed 1,000 feet in length, as long as comply with fire code.
Sec 41-141 - Municipal Utility Easements	
(a) Rear and side lots	Municipal Utility Easements not required with administrative waiver and request from Developer
(b) Rear and side lots	Municipal Utility Easements not required along public streets with administrative waiver and request from Developer.
Sec 41-137 - Streets	
(k) Pavement and right-of-way width	Pavement and Right-of-way widths to comply with the modified road sections provided within the PUD.
(p) Adjacent streets fee	Adjacent streets fee will not apply within this development.
Sec 41-147 - Parkland Dedication	
(b)	<p>For 426 Units:</p> <p>Parkland Dedication Fee = \$102,960.00</p> <p>Parkland Improvement Fee = \$312,000.00</p> <p>Total = \$414,960.00</p>
Sec 50-1 - Utilities	

Utilities to be installed underground	Electric infrastructure to be allowed above ground.
Sec 53-33 - General Requirements and limitations	
(b) Signs and Billboards	Signage within PUD boundaries for businesses located within the development is allowed regardless of location of tenant, leasee, or business. Offsite signage is allowed if located on permitted billboard for advertisement or other signage approved by another governmental entity within its ROW, ex. commercial center or tenant signage by TxDOT.
(f) Conformity to parking and loading space requirements	Parking shall conform to rates establish per proposed modifications to n(2) Parking Regulations/Chart 4
(h) Conformity to building setback requirements	Per lot and Staff waiver after Site Plan Review
Chart 1 - R-3-3	<p>Front setback: Along Kohler's Crossing-, 10' Along Bebee Rd and Hwy I-35 - 25' Along right of ways internal to the development – 5'</p> <p>There shall be a minimum 5' setback from the rearmost wall of any garage, and from the curblineline of any parking area, to the nearest property line.</p> <p>Side setback- 5'</p> <p>Rear setback: Along Kohler's Crossing-, 10' Along Bebee Rd and Hwy I-35 - 25' Along right of ways internal to the development – 5'</p> <p>Minimum lot width: 90'</p> <p>Minimum lot size: Lot size shall be a minimum of 12,000 square feet plus 1,300 square feet per residential unit.</p> <p>Density: The maximum dwelling units per acre is 35. However, the maximum number of dwelling units shall not exceed 426 units total.</p> <p>Height: There shall be a maximum height of 6 stories or 65'.</p>

Chart 1 - RS	<p>Front setback: Along Kohler's Crossing, Bebee Rd and Hwy I-35 - 25' Along right of ways internal to the development - 0'</p> <p>Side setback- 0'</p> <p>Rear setback: Along Kohler's Crossing, Bebee Rd and Hwy I-35 - 10' Along right of ways internal to the development - 5'</p> <p>Minimum lot width: 50' (30' for flag lots)</p> <p>Minimum lot size: Lot size shall be a minimum of 6,000 square feet.</p> <p>Height: There shall be a maximum height of 65' for VMU building. A variance shall be required to exceed 65'.</p> <p>Height: There shall be a maximum height of 90' for a hotel building. A variance shall be required to exceed 90'.</p>
Chart 2 - RS	90% Maximum Impervious per Entire Development
(n)(2) Parking Regulations	Reference Chart 4 - RS below
Chart 4 - R-3-3	Multifamily Parking requirement 1.50 per unit + 5% guest Parking
Chart 4 - RS	Minimum Requirements Shopping Center: 3 per 1000sf of floor area Restaurants (All types): 8 per 1000sf of floor area
r(3)b. Accessory Uses and Structures. Location	Min 5-foot setback, for anything over 8'
DIVISION 10 - APARTMENTS RESIDENTIAL 3, DISTRICT R-3-3	
SEC. 53-292 - Purpose and Permitted Uses	

Sec. 53-292	6 Stories or 65'
Sec. 53-292 –	35 Units per Acre not to exceed 426 units total
SEC 53-293 - Conditions and Limitations	
Sec 53-293 – (See 53-239) (2)	This shall not apply to accessory buildings, or only buildings with living units required to comply with this provision. Must Comply with Fire Code
Sec 53-293 – (See 53-239) (3)	Min distance between buildings 35' in R-3-3 zoning. Must Comply with Fire Code
Sec 53-293 – (See 53-239) (5)	Parkland Dedication Fee = \$102,960.00 Parkland Improvement Fee = \$312,000.00 Total = \$414,960.00
Sec 53-293 – (See 53-239) (6)	a. There shall be a minimum 5-foot setback from the rearmost wall of any garage, and from the curblines of any parking area, to the nearest property line. Parking garages excluded.
Sec 53-293 – (See 53-239) (6)	Multifamily Parking requirement 1.50 per unit + 5% guest Parking
Sec 53-293 – (See 53-239) (7)	Traffic Studies not required

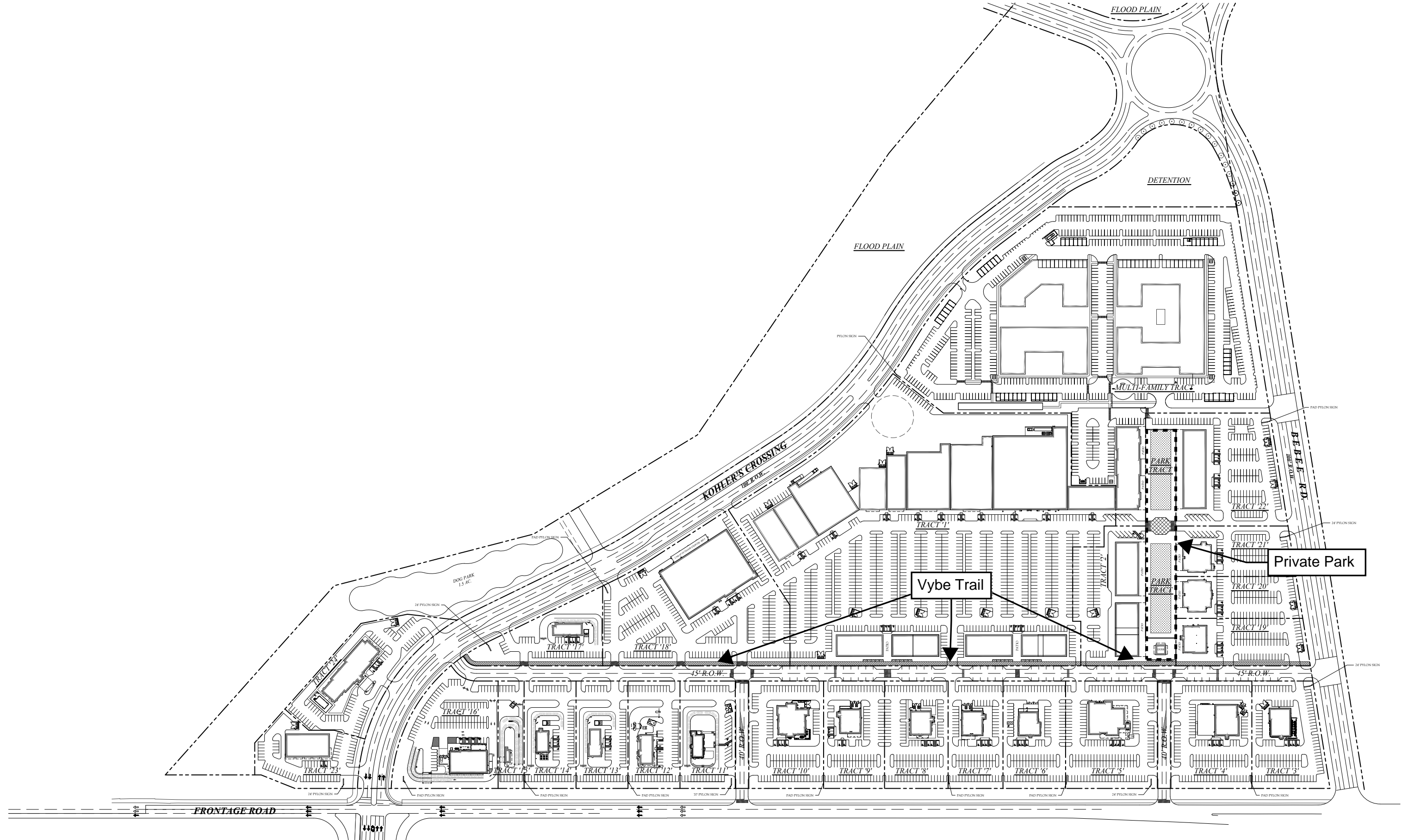
<p>Sec 53-293 – (See 53-239) (8)</p>	<p>Front setback: Along Kohler’s Crossing-, 10’ Along Bebee Rd and Hwy I-35 - 25’ Along right of ways internal to the development – 5’</p> <p>There shall be a minimum 5’ setback from the rearmost wall of any garage, and from the curblines of any parking area, to the nearest property line.</p> <p>Side setback- 5'</p> <p>Rear setback: Along Kohler’s Crossing-, 10’ Along Bebee Rd and Hwy I-35 - 25’ Along right of ways internal to the development – 5’</p> <p>Minimum lot width: 90'</p> <p>Minimum lot size: Lot size shall be a minimum of 12,000 square feet plus 1,300 square feet per residential unit.</p> <p>Density: The maximum dwelling units per acre is 35. However, the maximum number of dwelling units shall not exceed 426 units total.</p> <p>Height: There shall be a maximum height of 6 stories or 65’.</p>
<p>Sec 53-293 – (See 53-239) (9)</p>	<p>Multifamily Parking requirement 1.50 per unit + 5% guest Parking</p>
<p>Sec 53-293 – (See 53-239) (10)</p>	<p>Multifamily Buildings B, C, and D per exhibits "Building Callouts Multifamily" with modifications allowance (10% per building). The VMU building located in the Urban District architectural materials will cohesively blend with the Urban District</p> <p>Staff Approval required for additional variances or modifications.</p>
<p>SEC 53-294 - Ste Development Regulations</p>	

Sec 53-294	<p>The maximum height of buildings within the multifamily development shall be whichever is greater of 6 stories or 65 feet.</p> <p>The minimum living area for units within the multifamily development shall be 450 square feet.</p> <p>Not more than 30% of the units in any such multifamily development or project shall have less than 750 square feet of living area.</p> <p>No exterior walls of any two buildings, any one of which buildings contains an apartment or living unit shall be closer together than 35 feet.</p> <p>Parking garages are permitted within 10' from the property line.</p> <p>Garages shall not be required to face courtyards.</p>
SEC 53-295 - Exceptions for low and moderate income	
DIVISION 16 - RETAIL AND SERVICES DISTRICT RS	
SEC. 53-480 - Purpose and Permitted Area	
General	Any use permitted under MXD (VMU) to be included in RS
SEC. 53-481 - Conditions and Limitations	
(1)	Add to uses allowed not in an enclosed building: Outdoor music venues, Farmer's Markets, Events to benefit/encourage economic benefit to retailers, restaurants, and/or City of Kyle. No additional screening adjacent to VMU.
SEC. 53-482 - Site development Regulations	
(1)	Street crosswalks/parking lot walkways may be asphalt or primary material of paved area.
(2)	Per Examples in PUD Development Standards
SEC . 53-483 - Building Façade Requirements	
(1)	Per Examples in PUD Development Standards
SEC. 53-484 - Special Screening Requirements	
Entire Section	No additional screening for VMU development
SEC. 53-893 - Conditional Use Permit Required	

Entire Section	Not required if elevations generally match examples in PUD Development Standards. Approvals will be completed by Administrative Approval
Sec 53-899 - I-35 Overlay District Development Standards	
e(1) Sidewalks - width	Sidewalk or Vybe trail required along all public streets
e(1) Sidewalks - Treeplanting	Street Trees required every 50' or in clusters. Locate between sidewalk/Vybe and street or on other side of sidewalk/Vybe Trail
e(2) Screening	Per Examples in PUD Development Standards
e(3) Utilities	Per Examples in PUD Development Standards
e(4)	Per Examples in PUD Development Standards
f(1)	Per Examples in PUD Development Standards
f(2)	Per Examples in PUD Development Standards
f(3)	Per Examples in PUD Development Standards
f(5)	Per Examples in PUD Development Standards
g	Per Examples in PUD Development Standards
h(1)	Per Examples in PUD Development Standards
j(1)	Per Examples in PUD Development Standards
j(2)	Per Examples in PUD Development Standards
j(3)	Per Examples in PUD Development Standards
j(4)a Retail	Per Examples in PUD Development Standards
j(4)b Non-Retail/office building	Per Examples in PUD Development Standards
j(4)k Walkway Width and Design	Per Examples in PUD Development Standards
J(4)m Open Space	Per Examples in PUD Development Standards
ARTICLE IV- ELECTRICAL FRANCHISE	
Division 2 - Sec. 4A - Facilities Located in Urban Development Districts	
(a)	Developer will construct underground power in Kohlers ROW.
Sec 54-7 - Placement	
(a)	Per Examples in PUD Development Standards

EXHIBIT "D"

PARKLAND AND PUBLIC AMENITIES
[attached]



HWY I-35

 VYBE TRAIL - APPROXIMATELY 2500 LINEAR FEET

EXHIBIT D - TRAIL IMPROVEMENTS "VYBE TRAIL" & PRIVATE PARK

EXHIBIT “E”

FORM OF MAINTENANCE AND OPERATIONS AGREEMENT
[attached]

MAINTENANCE AND OPERATIONS AGREEMENT

This Maintenance and Operations Agreement (the "Agreement") is entered into by the City of Kyle, a Texas home rule municipal corporation and political subdivision of the State of Texas situated in Hays County, Texas (the "City"), and _____, a _____ ("Licensee"), effective as of the _____, 20__ (the "Effective Date"), upon the terms and conditions set forth below.

I. DEFINED TERMS

A. "Development Agreement" means the Development Agreement for _____ dated effective _____.

B. "Public Amenities" means the "Public Amenities", as defined in the Development Agreement and as listed on Exhibit "D" of the Development Agreement, and attached hereto as Exhibit "A."

C. "Development" means the "Project", as defined in the Development Agreement, that is being developed on the "Property" (as defined in the Development Agreement) as a master planned community in the city limits of Kyle, Hays County, Texas.

II. PURPOSE OF LICENSE AGREEMENT

A. The City grants to Licensee permission to use those portions of the _____ Development more particularly described on Exhibit "A" (collectively, the "Licensed Property") solely to operate and maintain the Public Amenities; provided that this Agreement is not intended to prevent Licensee from entering and using land dedicated to the City as parkland in the same manner as the general public. The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

B. Licensee agrees that all maintenance and operations permitted by this Agreement with respect to the Licensed Property shall be done in compliance with the "Applicable Rules", as such term is defined in Article IV of the Development Agreement.

III. ANNUAL FEE

No annual fee shall be due to the City in connection with this Agreement, and the City will not compensate Licensee for the maintenance and operation of the Licensed Property or any Public Amenities.

IV. CITY'S RIGHT TO LICENSED PROPERTY

This Agreement is expressly subject and subordinate to the present and future right of the City to use the Licensed Property and the Public Amenities for any purpose not inconsistent with the Development Agreement.

V. INSURANCE

A. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company reasonably acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The City may require the Licensee to increase

the combined single limit of such coverage from time to time in the reasonable discretion of the City. Such insurance coverage shall specifically name the City as an additional insured. The insurance shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee may satisfy the insurance requirement herein by blanket policies covering property in addition to the Licensed Property. Licensee shall be responsible for any deductibles stated in the policy. A certificate of insurance evidencing such coverage shall be delivered to the Kyle City Manager on or before the Licensee's use or occupancy of the Licensed Property.

B. Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse and shall provide the City where possible thirty (30) days written notice as evidenced by a return receipt of registered or certified mail of any anticipated cancellation, reduction, restriction, or other limitation thereafter established under such policy of insurance.

VI. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless the City and its officers, agents, and employees against all claims, suits, demands, judgments, damage, costs, losses, expenses, including reasonable attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by Licensee's use of the Licensed Property under this Agreement. This indemnification provision, however, shall not apply to any claims, suits, demands, judgments, damage, costs, losses, expenses or other liability for personal injury, death, or damage to any person or property (i) for which the City shall have been compensated by insurance provided under Paragraph V, above, (ii) arising out of any acts or omissions by the City under Paragraph IV, above, or (iii) arising solely from the negligence or willful acts or omissions of the City; provided that for the purposes of the foregoing, the City's entering into this Agreement shall not be deemed to be a "negligent or willful act."

VII. CONDITIONS

A. Licensee's Responsibilities. Licensee will be responsible for any and all damage to the Licensed Property unless such damage is as a result of acts or omissions by the City.

B. Maintenance. Licensee shall maintain the Licensed Property by keeping the area free of material amounts of debris and litter and keeping the Licensed Property mowed such that grass and weeds do not exceed the height limits established by City ordinances and regulations. Licensee shall maintain all Public Amenities in good repair, working order, and condition and in compliance with this Agreement and the Development Agreement, as applicable. The City may require Licensee to take action to maintain the Licensed Property and the Public Amenities in compliance with this Agreement, including, but not limited to, the removal of dead or dying vegetation placed by Licensee within the Licensed Property and rebuilding and reconstructing trails or any other Public Amenities, save and except removal or repairs due to normal wear and tear such action shall be completed within thirty (30) days (or such reasonable period of time if thirty (30) days is not feasible) following receipt of a written request from the City. Licensee shall have no obligation to maintain any improvements placed upon the Licensed Property by the City.

C. Operation. Licensee shall operate the Licensed Property in accordance with applicable City regulations and in accordance with Section 4.6 of the Development Agreement.

D. Removal or Modification. No Public Amenities may be modified or removed from the Licensed Property without the prior written consent of the City.

E. Default. In the event that Licensee fails to maintain the Licensed Property as provided in this Agreement and the Development Agreement, or otherwise comply with the terms or conditions as set forth herein, the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and if Licensee does not satisfactorily remedy the same within the thirty (30) day period (provided that the City shall allow such additional time as may be reasonably necessary for Licensee to cure any failure as long as Licensee commences such cure within the thirty (30) day period provided and diligently pursues such cure thereafter and as long as such additional time does not exceed ninety (90) days from the date of the notice) the City may pursue its remedies under Paragraph XI below.

City Address:

City of Kyle
Attention: City Manager

Kyle, Texas _____

Licensee Address:

Attn: _____

VIII. COMMENCEMENT

This Agreement shall begin on the Effective Date and continue thereafter for as long as the Licensed Property is used as parkland in accordance with Section 4.6 of the Development Agreement.

IX. TERMINATION

Notwithstanding any other term, provision, or condition of this Agreement and the Development Agreement, subject only to prior written notification to Licensee, this Agreement is revocable by the City if Licensee fails to comply with the terms and conditions of this Agreement beyond applicable notice and cure periods, including but not limited to the insurance requirements specified herein. The City agrees that if the City terminates this Agreement, the City will operate and maintain the Public Amenities in the manner contemplated by the Development Agreement with reimbursement by Licensee of City's costs to operate and maintain the Public Amenities. The City may further terminate and revoke this Agreement if:

- A. Use of the Licensed Property becomes necessary for another public purpose;
- B. The Public Amenities, or a portion of them, constitute a danger to the public which the City deems not to be remediable by alteration or maintenance of such Public Amenities; or
- C. Maintenance or alteration necessary to alleviate a danger to the public has not been made after the notice and cure periods provided herein have elapsed.

X. FUNDING MAINTENANCE OBLIGATION

Licensee will establish periodic homeowner's association dues and assessments, to be charged and paid by the lot owners within the property under the jurisdiction of Licensee pursuant to such bylaws, rules, regulations and restrictive covenants established by Licensee (collectively, "Association Regulations"), in order to maintain and operate the Public Amenities as provided in this Agreement. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance and operation of the Public Amenities, and to provide funds required for the management and operation of Licensee.

XI. REMEDIES

The City will be entitled to judicially enforce Licensee's obligations under this Agreement pursuant to the Association Regulations. Licensee also agrees that, in the event of any default on its part under this Agreement, the City shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or an injunction, or to seek specific performance against Licensee to enforce Licensee's obligations under this Agreement.

XII. EMINENT DOMAIN

If any portion of the Licensed Property is taken by eminent domain by a governmental authority other than the City, this Agreement shall terminate as to the affected portion of the Licensed Property so condemned.

XIII. INTERPRETATION

This Agreement shall, in the event of any dispute over its intent, meaning, or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

XIV. APPLICATION OF LAW

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, in a manner that is consistent with the intent of the parties as evidenced by this Agreement.

XV. SPECIFIC PERFORMANCE

If either party materially breaches the terms of this License Agreement, such material breach shall be an event of default. In that event, the non-defaulting party to this License Agreement may pursue the remedy of specific performance.

XVI. VENUE

Venue for all lawsuits concerning this Agreement will be in the Hays County, Texas.

XVII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT

This Agreement and all of the covenants herein shall run with the Licensed Property; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time by written instrument, without affecting or impairing any right arising from any subsequent or other default.

XVIII. AMENDMENT

This License Agreement may be amended only by an instrument in writing signed and approved by both parties.

XIX. ASSIGNMENT

Licensee shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City Council.

XX. POWER AND AUTHORITY

A. The City hereby represents and warrants to Licensee that the City has full constitutional and lawful right, power, and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the terms and conditions of this Agreement and subject to applicable processes, procedures, and findings that are required by state law, City ordinances, or the City Charter related to actions taken by the City Council, and all of the foregoing have been 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. Licensee hereby represents and warrants to the City that Licensee has full lawful right, power, and authority 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 actions of Licensee. Concurrently with Licensee's execution of this Agreement, Licensee has delivered to the City copies of the resolutions or other corporate actions authorizing the execution of this Agreement and evidencing the authority of the persons signing this Agreement on behalf of Licensee to do so. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of Licensee, and is enforceable in accordance with its terms and provisions.

* * *

[SIGNATURE PAGE FOLLOWS]

TERMS AND CONDITIONS ACCEPTED, this the ___ day of _____, 20__.

LICENSOR:
City of Kyle

By: _____
Name: _____
Title: City Manager

LICENSEE:

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on this the ___ day of _____, 20__, by Bryan Langley, City Manager, City of Kyle, Texas, on behalf of the City.

Notary Public - State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on this the ____ day of _____, 20__ , by _____, of _____, a _____, on behalf of said _____.

Notary Public - State of Texas

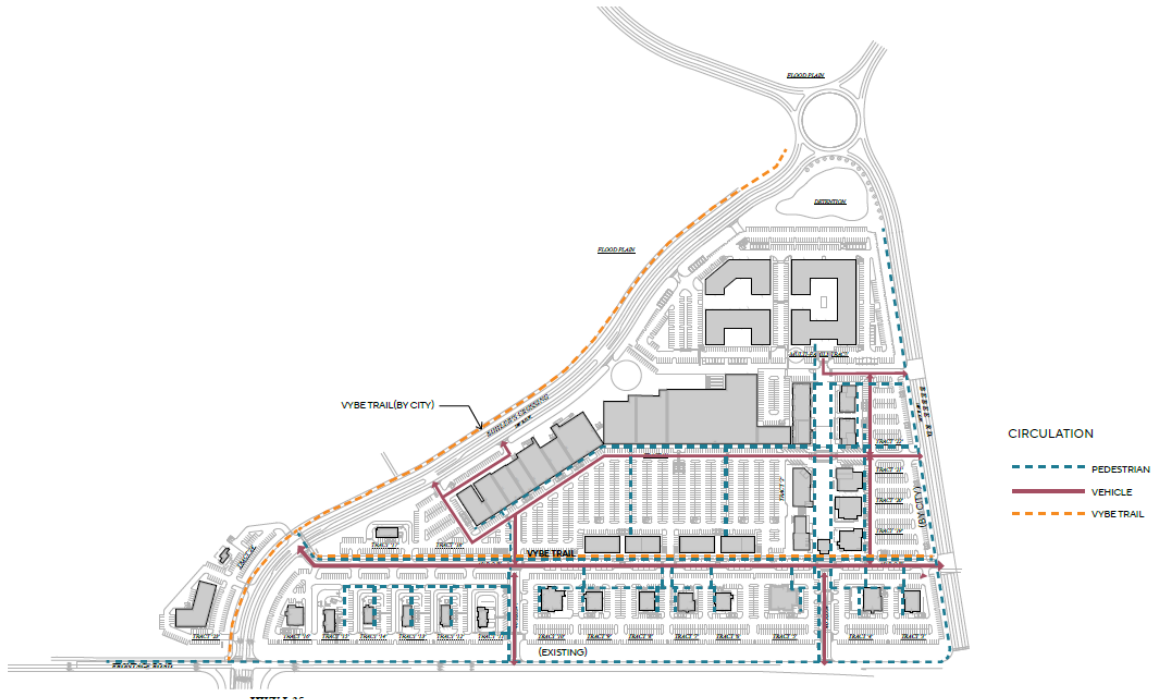
AFTER RECORDING RETURN TO:
City of Kyle
Attn: City Secretary
1700 Kohlers Crossing
Kyle, Texas 78640

Exhibit "A"
Licensed Property
[attached]

Exhibit E

(Page 9 of 9)

EXHIBIT "F"
DESIGN STANDARDS



NewQuest
PROPERTIES

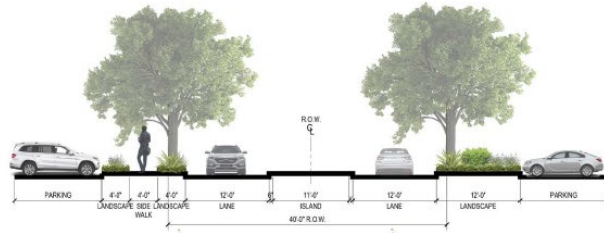
KYLE TOWN CENTER
KYLE, TX

VEHICULAR, VYBETRIL AND PEDESTRIAN CIRCULATION

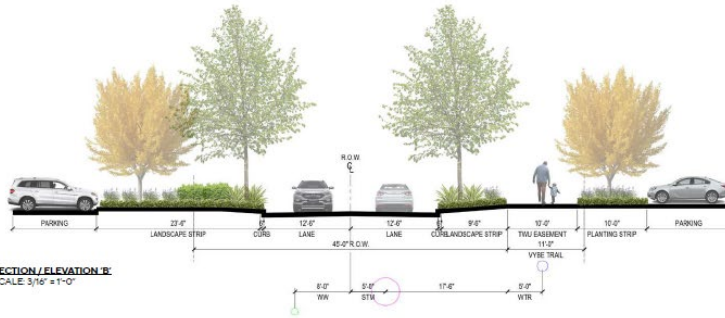


AO Architecture.
Design.
Relationships.

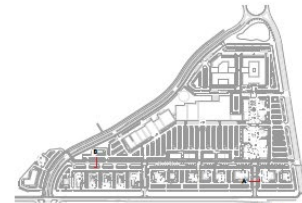
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PROJECT: KYLE TOWN CENTER



SECTION / ELEVATION 'A'
SCALE 3/16" = 1'-0"



SECTION / ELEVATION 'B'
SCALE 3/16" = 1'-0"



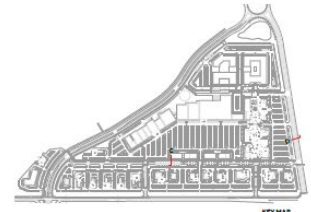
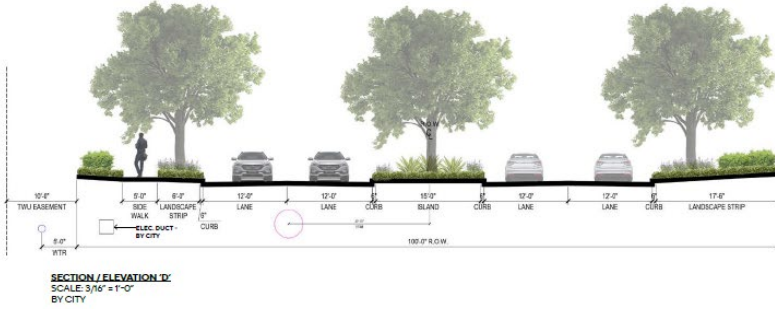
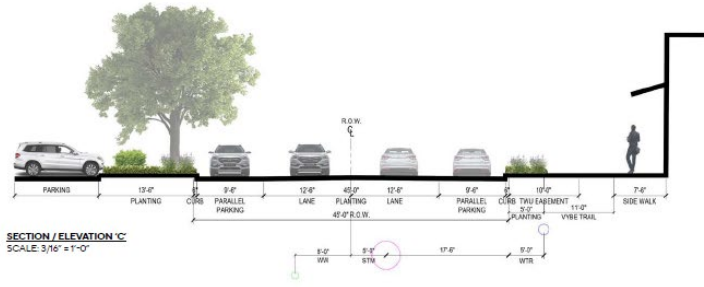
KEY PLAN

NewQuest PROPERTIES
KYLE TOWN CENTER
KYLE, TX

AO Architecture.
Design.
Relationships.

L2

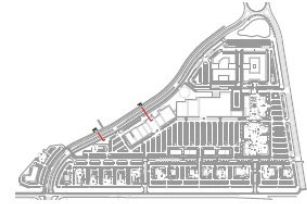
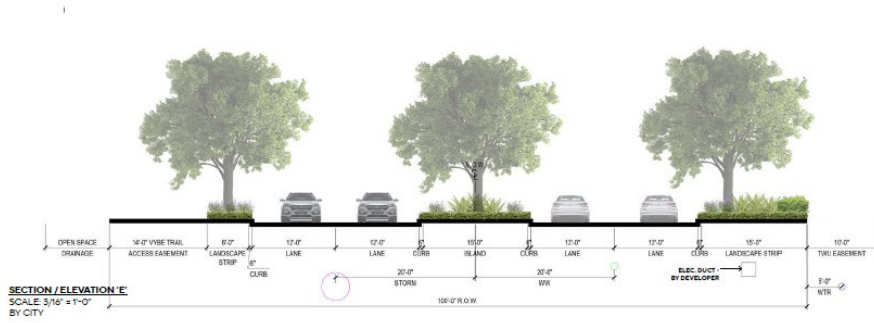
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TIME: 10:00 AM



NewQuest PROPERTIES
KYLE TOWN CENTER
KYLE, TX

LANDSCAPE SECTIONS / ELEVATIONS

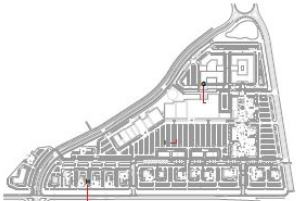
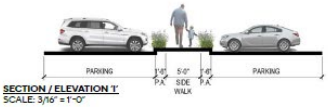
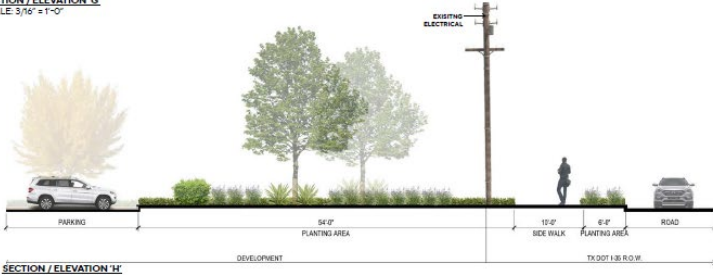
AO Architecture. Design. Relationships.
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DATE: 08/11/19
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NewQuest PROPERTIES KYLE TOWN CENTER
KYLE, TX

AO Architecture. Design. Relationships.

L4
Date: 08/20/2024
Time: 10:00 AM



NewQuest PROPERTIES
KYLE TOWN CENTER
KYLE, TX

AO Architecture. Design. Relationships.
L5
DATE: 02/01/20
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PAINTED TILTWALL

SEC 53-899 e(4), f(1), f(2), j(1)
SEC 53-483

PAINTED UTILITIES

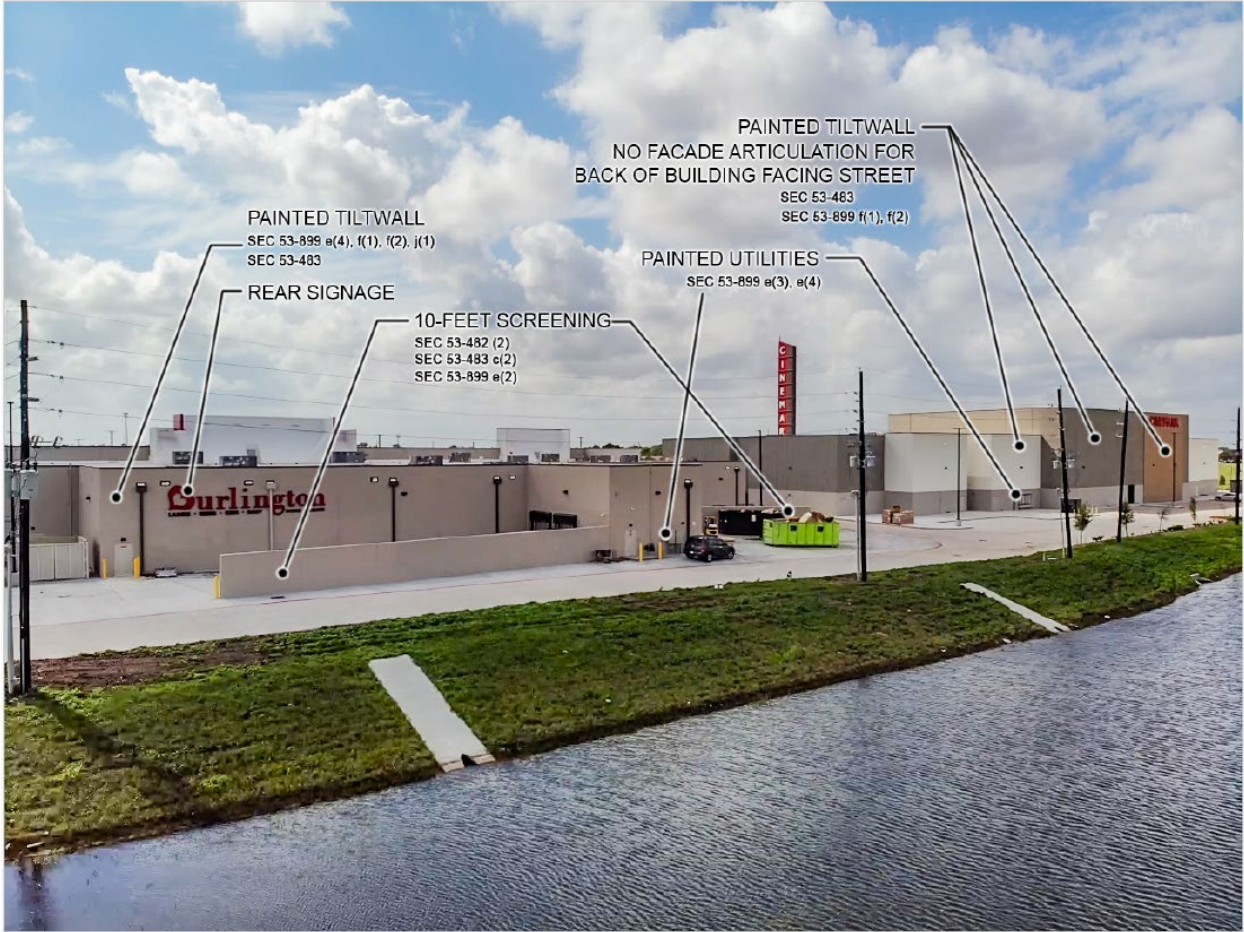
SEC 53-899 e(3), e(4)

PAINTED DOWNSPOUTS

**8-FEET DUMPSTER
SCREENING**

SEC 53-482 (2)
SEC 53-483 e(2)
SEC 53-899 e(2)







The image shows the elevations for the “big box” retail, compliant with the I-35 Overlay.



The image shows an example of anticipated elevations for the VMU courtyard/urban district.

Conditional Use Permits will be required, but will be reviewed and approved by Staff, pursuant to the requirements outlined in the PUD and this Agreement. These requirements are consistent with the existing I-35 Overlay for materials.

4545
 The Preston Partnership, LLC
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027

1515
 Tri-County Development Co.
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027

1515
 Construction
 Kelly-Pom
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027

1515
 The Preston Partnership, LLC
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027

1515
 Structural Engineers
 Richardson Rogers
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027

1515
 Mechanical
 Schmidt & Stacy
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027

1515
 Electrical
 Schmidt & Stacy
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328
 Tel: 770.491.8027



1 VIEW AT MIXED-USE RESIDENTIAL BUILDING
 02/22/17 01:12



2 VIEW AT RESIDENTIAL BUILDING
 02/22/17 01:12

1515

Beebe Road
 1000 Westwood Center, Suite 100
 Atlanta, Georgia 30328

NO.	DESCRIPTION	DATE
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29		
30		

DATE: 02/22/17

PROJECT: ARCHITECTURAL RENDERING

AR-01

© The Preston Partnership, LLC

RENDERING



RENDERING



RENDERING



RENDERING



RENDERING



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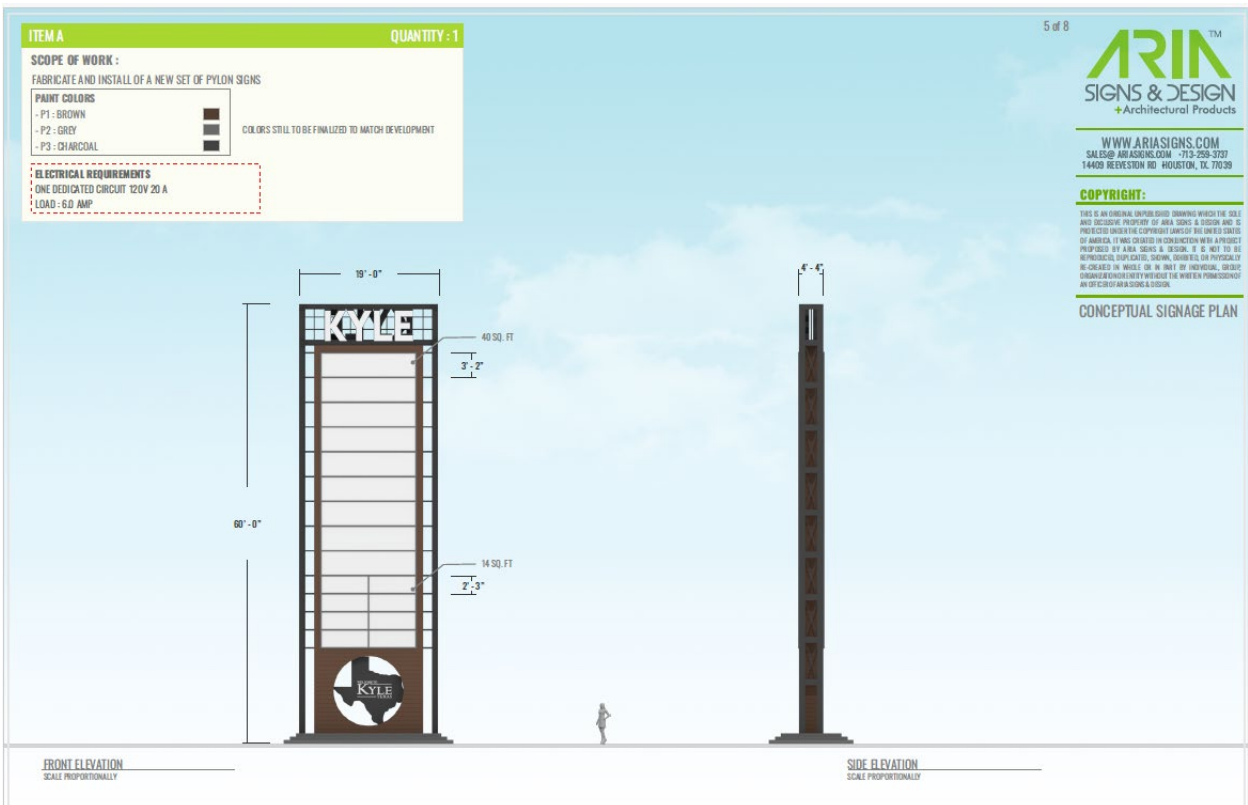
CONCEPTUAL SIGNAGE PLAN



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CONCEPTUAL SIGNAGE PLAN



ITEM B

QUANTITY : 6

6 of 8



WWW.ARIASIGNS.COM
SALES@ARIASIGNS.COM 713-258-3727
14408 REVERDEN RD HOUSTON, TX 77039

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CONCEPTUAL SIGNAGE PLAN

SCOPE OF WORK :
FABRICATE AND INSTALL OF A NEW SET OF PYLON SIGNS

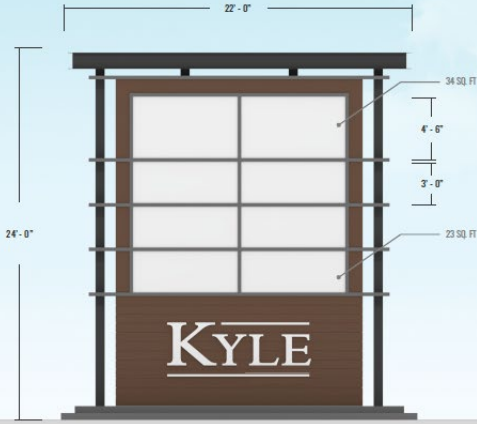
PAINT COLORS

- P1 - BROWN
- P2 - GREY
- P3 - CHARCOAL

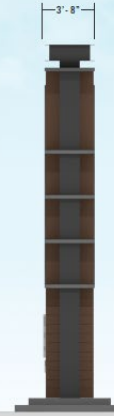
COLORS STILL TO BE FINALIZED TO MATCH DEVELOPMENT

ELECTRICAL REQUIREMENTS

- ONE DEDICATED CIRCUIT 120V 20 A
- LOAD : 60 AMP



FRONT ELEVATION
SCALE PROPORTIONALLY



SIDE ELEVATION
SCALE PROPORTIONALLY

ITEM C

QUANTITY : 8

7 of 8



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SALES@ARIASIGNS.COM 713-258-3727
14408 REVERDEN RD HOUSTON, TX 77039

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CONCEPTUAL SIGNAGE PLAN

SCOPE OF WORK :
FABRICATE AND INSTALL OF A NEW SET OF PYLON SIGNS

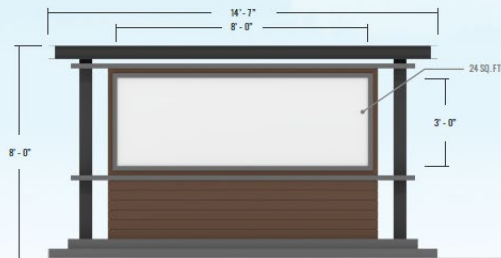
PAINT COLORS

- P1 - BROWN
- P2 - GREY
- P3 - CHARCOAL

COLORS STILL TO BE FINALIZED TO MATCH DEVELOPMENT

ELECTRICAL REQUIREMENTS

- ONE DEDICATED CIRCUIT 120V 20 A
- LOAD : 60 AMP



FRONT ELEVATION
SCALE PROPORTIONALLY



SIDE ELEVATION
SCALE PROPORTIONALLY

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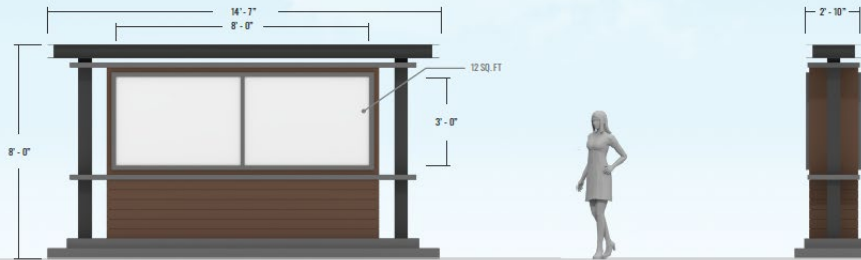
CONCEPTUAL SIGNAGE PLAN

ITEM D QUANTITY: 5

SCOPE OF WORK:
FABRICATE AND INSTALL OF A NEW SET OF PYLON SIGNS

PAINT COLORS
- P1 - BROWN
- P2 - GREY
- P3 - CHARCOAL
COLORS STILL TO BE FINALIZED TO MATCH DEVELOPMENT

ELECTRICAL REQUIREMENTS
ONE DEDICATED CIRCUIT 120V 20 A
LOAD: 60 AMP



FRONT ELEVATION
SCALE PROPORTIONALLY

SIDE ELEVATION
SCALE PROPORTIONALLY



 **NEWQUEST**
PROPERTIES

KYLE TOWN CENTER
KYLE, TX

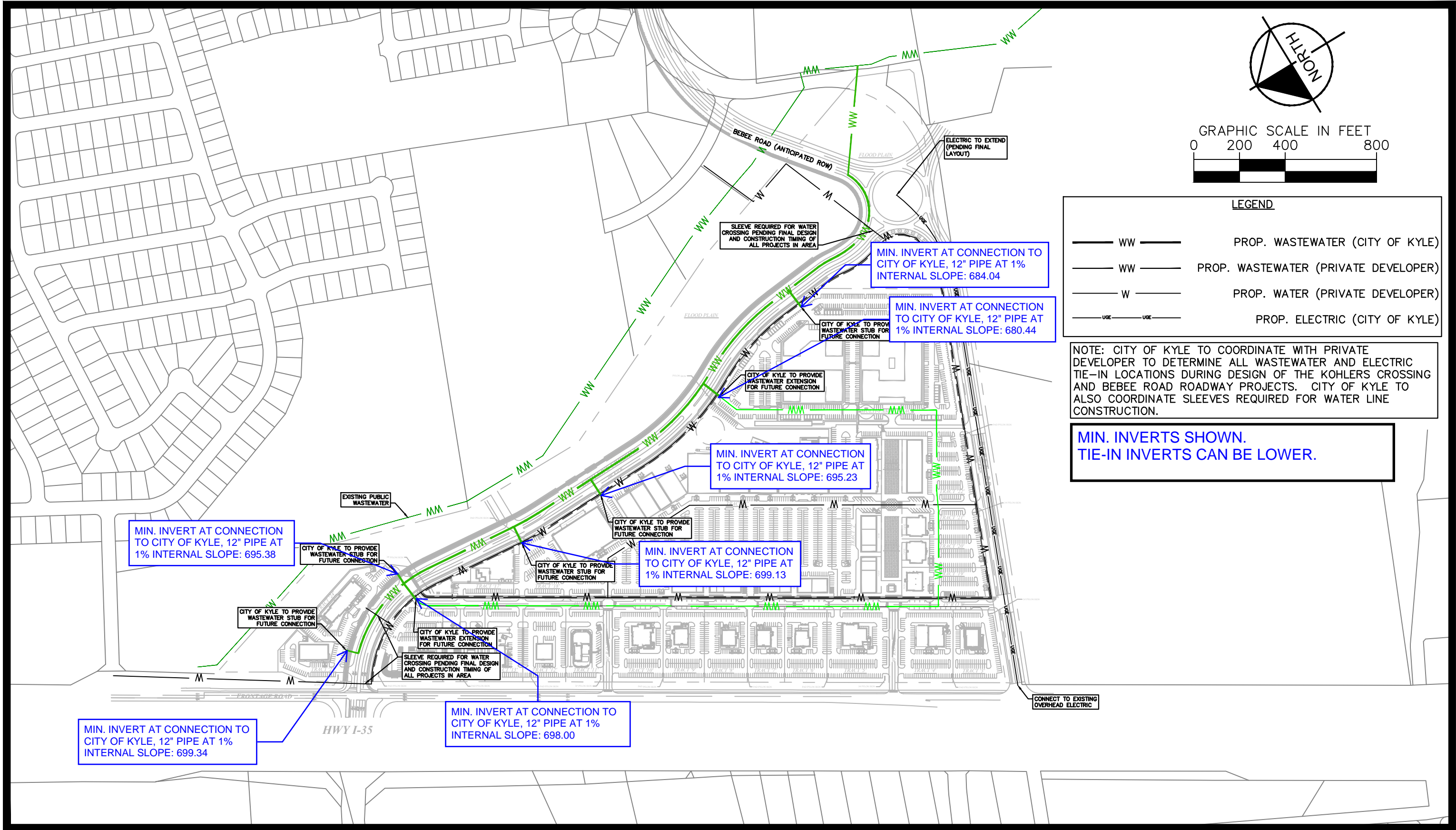
SIGNAGE IMAGERY

 **AO** Architecture.
Design.
Relationships.

L6
L6
L6

EXHIBIT "G"

WASTEWATER INFRASTRUCTURE



Caraway Tract

Preliminary Utility Exhibit (SP44a)

Kyle, Texas
December 12, 2023



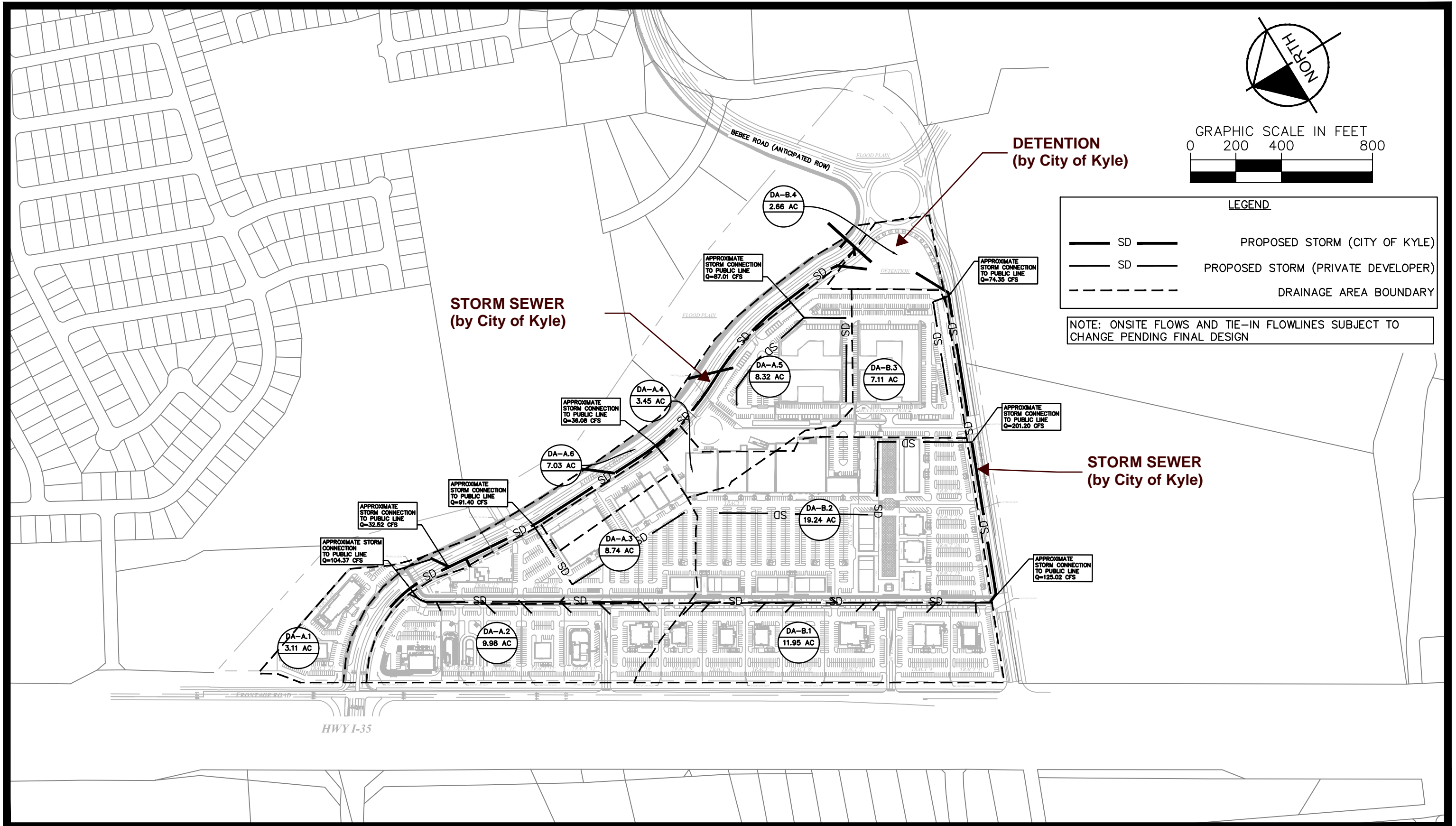
5301 Southwest Parkway, Uplands II
Suite 100
Austin, Texas 78735
512-646-2237
State of Texas Registration No. F-928

EXHIBIT "H"

STORM SEWER AND DETENTION

Exhibit H

(Page 1 of 1)



Caraway Tract

Preliminary Drainage Area Exhibit (SP44a)

Kyle, Texas
November 13, 2023

EXHIBIT H- STORM SEWER AND DETENTION

Kimley»Horn

5301 Southwest Parkway, Uplands II
Suite 100
Austin, Texas 78735
512-646-2237
State of Texas Registration No. F-928

EXHIBIT "I"

ROAD BOND PROGRAM RIGHT OF WAYS

Exhibit I

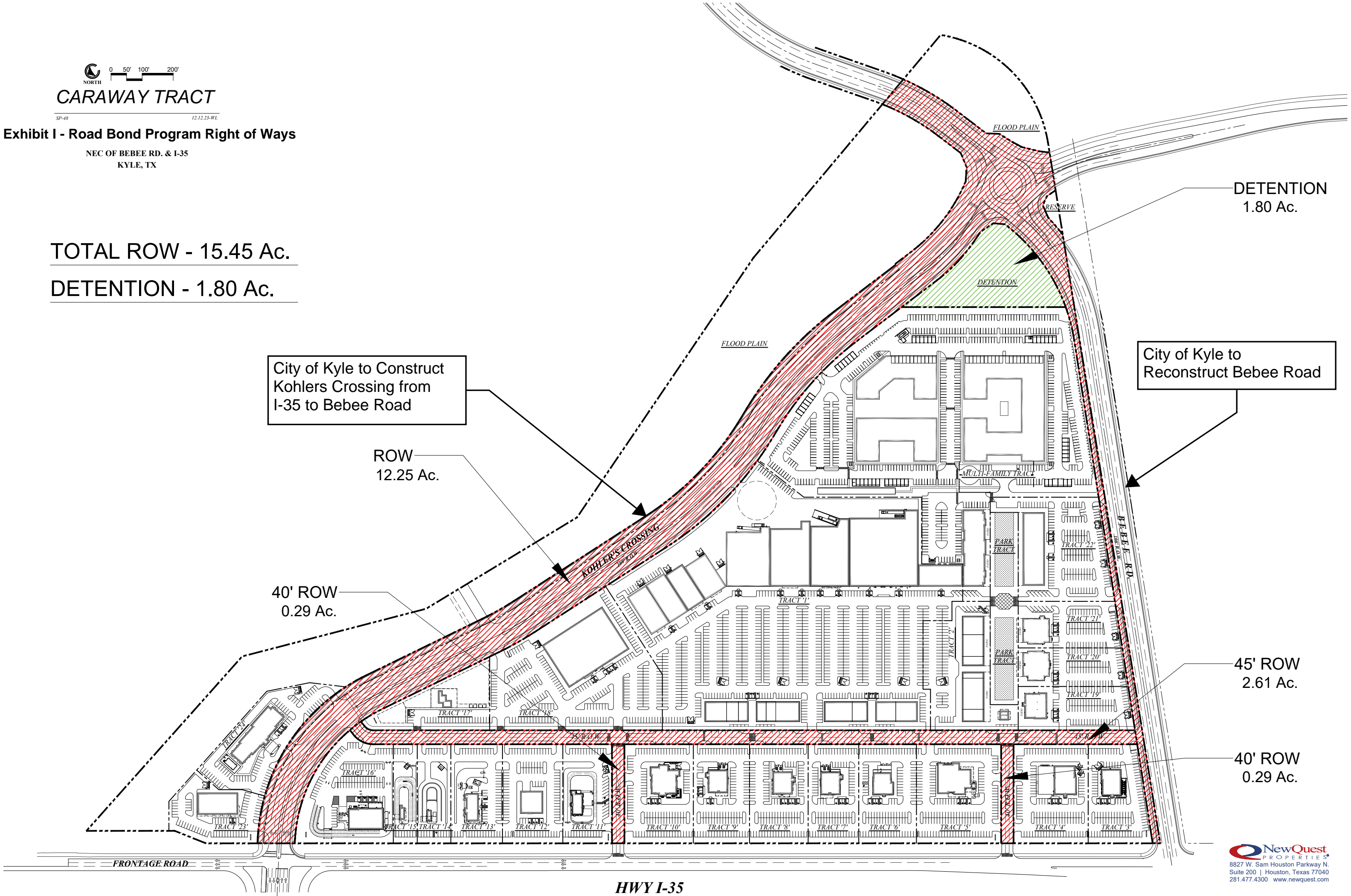
(Page 1 of 1)

Exhibit I - Road Bond Program Right of Ways

NEC OF BEBEE RD. & I-35
KYLE, TX

TOTAL ROW - 15.45 Ac.

DETENTION - 1.80 Ac.



City of Kyle to Construct
Kohlers Crossing from
I-35 to Bebee Road

ROW
12.25 Ac.

40' ROW
0.29 Ac.

City of Kyle to
Reconstruct Bebee Road

45' ROW
2.61 Ac.

40' ROW
0.29 Ac.

DETENTION
1.80 Ac.

EXHIBIT “J”

TIRZ TERM SHEET

CITY OF KYLE, TEXAS
TAX INCREMENT REINVESTMENT ZONE NUMBER FIVE

It is requested that the following terms shall apply to Tax Increment Reinvestment Zone Number Five agreed to by Developer and the City in connection with the development of the proposed Project.

Financing Criteria

1. Participating Entities: City of Kyle, Texas and Hays County, Texas
2. City Ad Valorem Contribution Rate: 50%
3. County Ad Valorem Contribution Rate: 50% (if any)
4. City Sales Tax Contribution Rate: 50% (if any)
5. Base value of TIRZ: 2023 values
6. Term of TIRZ: 25 years

Miscellaneous

1. The TIRZ revenues shall be used to pay administrative expenses of the TIRZ and to reimburse Developer for its costs in developing the Property, constructing public infrastructure required for the proposed multi family, retail and commercial uses, and to provide an economic development grant.
2. To the extent there are TIRZ revenues remaining after such uses, any such excess revenues will be returned to the City’s general fund.
3. TIRZ administrative costs shall be determined annually by the City in its sole discretion.

EXHIBIT "K"

FORM OF CHAPTER 380 AGREEMENT

Exhibit K

(Page 1 of 1)

THE STATE OF TEXAS

§
§
§
§
§

**Chapter 380 Incentives Agreement
Project Hot Pursuit**

COUNTY OF HAYS

THIS Chapter 380 Incentives Agreement – Project Hot Pursuit (this “Agreement”) is executed by and between **NEWQUEST EQUITY, L.C.**, a Texas limited liability company duly authorized to do business in the State of Texas (hereafter referred to as “Developer”), the **CITY OF KYLE, TEXAS**, a home rule municipality located in Hays County, Texas (hereafter referred to as “City”), and the **BOARD OF REINVESTMENT ZONE NUMBER FIVE, CITY OF KYLE, TEXAS** (the “TIRZ”). The City, the Developer and the Board are sometimes collectively referenced in this Agreement as “Parties” or, each individually, as a “Party”.

WITNESSETH:

WHEREAS, the City and Developer entered into that certain “Development Agreement for the Caraway Tract Development” dated December 19, 2023 (the “Development Agreement”); and

WHEREAS, the TIRZ was created pursuant to Ordinance No. 1294, adopted by the City Council of the City (the “City Council”) on December 5, 2023, pursuant to the Act (the “TIRZ Ordinance”); and

WHEREAS, on December 19, 2023, pursuant to Ordinance No. _____, the City Council approved a Final Project and Finance Plan for the TIRZ (the “TIRZ Plan”) and granted the Zone Chapter 380 powers pursuant to Section 311.010(h), Texas Tax Code; and

WHEREAS, the TIRZ is comprised of the Property (approximately 101.8283 acres) as defined in the TIRZ Plan and as more particularly described in Exhibit “A” attached hereto; and

WHEREAS, the TIRZ Plan and the TIRZ Ordinance provide for the collection of fifty percent (50%) of the City’s ad valorem tax increment attributable to the Property within the TIRZ, based on the City’s tax rate each year and as authorized by law (the “City Property Tax Increment”); and

WHEREAS, the TIRZ Plan and the TIRZ Ordinance provide for the collection of fifty percent (50%) of the City’s sales taxes collected and received by the City on the Property located in the TIRZ (the “City Sales Tax Increment”); and

WHEREAS, the TIRZ Plan and the County Participation Agreement (as defined in the TIRZ Plan) provide for the collection of fifty percent (50%) of Hays County’s ad valorem tax increment attributable to the Property within the TIRZ, excluding the portion of real property taxes collected and received associated with road and bridge maintenance and operations, based on the County’s tax rate each year and as authorized by law, subject to annual appropriations (the “County TIRZ Increment”) and, together with the City Property Tax Increment and the City Sales Tax Increment, the “TIRZ Increment Receipts”); and

WHEREAS, the Development Agreement and the TIRZ Plan address the issuance of Bonds (hereinafter defined) and the payment of Debt Service (hereinafter defined) from the revenues deposited in the TIRZ Fund; and

WHEREAS, the City and the Board intend for the TIRZ Increment Receipts collected from the Property on an annual basis to be used in the following priority: (i) to pay Administrative Costs (but only with the City Property Tax Increment and the City Sales Tax Increment); as defined in the TIRZ Plan), (ii) to pay the Debt Service, (iii) to pay Chapter 380 Incentives to the Developer pursuant to the terms in this Agreement, (iv) any excess of the TIRZ Fund revenue may be used in any other matter as authorized by the City and as allowed pursuant to the Act, and (v) after eligible Project Costs have been paid, any excess of the TIRZ Fund revenue shall be returned to the General Fund of the City and the County on a pro rata basis; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings given to them in the TIRZ Plan; and

WHEREAS, the City established an economic development program pursuant to Chapter 380, Texas Local Government Code (the “Program”), to provide for the grant of economic development incentives to the Developer under the terms and conditions of this Agreement; and

WHEREAS, the City has determined that the Project (hereinafter defined) qualifies for economic development incentives under the Program, subject to the terms and conditions of this Agreement; and

WHEREAS, the Developer has entered into or anticipates entering into a Chapter 381 economic incentive agreement with Hays County (which will provide for the payment to the Developer of a portion of the County’s sales tax revenues from the commercial properties located on the Property); and

WHEREAS, the Project is located within the Zone, and the Chapter 380 Incentives (hereinafter defined) will be paid solely from the City ad valorem and sales tax revenues deposited in the TIRZ Fund (hereinafter defined); and

WHEREAS, the Chapter 380 Incentives and the Chapter 381 Incentives paid to the Developer, combined with the ROW Acquisition Amount and the principal amount paid on any Debt Service (hereinafter defined), will not exceed the Total Payments (herein defined); and

WHEREAS, construction of the Project 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, sales tax, and employment; and

WHEREAS, the Parties agree that the Developer must fulfill its obligations under this Agreement in order for the City to pay the Chapter 380 Incentives; and

WHEREAS, Chapter 380, Texas Local Government Code, as amended, and Chapter 311, Texas Tax Code, as amended, provide statutory authority for granting the economic incentives and administering the Program; and

WHEREAS, the City Council of the City (the “City Council”) finds that it is in the public interest to provide the agreements set forth herein subject to the terms and conditions of this Agreement.

NOW THEREFORE, the City, the Developer, and the Board, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant and contract as set forth below:

I.
Definitions

- A. **Administrative Costs** means the actual, direct costs paid or incurred by or on behalf of the City to administer the Zone, including planning costs, engineering costs, legal services, organizational costs, publicizing costs, or implementation costs paid by or on behalf of the City that are directly related to the administration of the Zone.
- B. **Annual City Property Tax Increment** means fifty percent (50%) of the City’s ad valorem real property taxes collected and received by the City on the Captured Appraised Value on the Property in the Zone for the Calendar Year and deposited into the TIRZ Fund. The Annual City Property Tax Increment shall not include rollback taxes.
- C. **Annual City Sales Tax Increment** means fifty percent (50%) of the City’s sales taxes collected above the Sales Tax Base (as defined in the TIRZ Plan) and received by the City on the commercial properties located on the Property in the Zone for the Calendar Year and deposited into the TIRZ Fund.
- D. **Appraisal District** means the Hays Central Appraisal District.

- E. **Calendar Year** means any twelve month period of time that begins on January 1st and ends on December 31st of the same numbered year.
- F. **Captured Appraised Value** means the new taxable value generated in addition to the Tax Increment Base within the Zone on a parcel-by-parcel basis for each year during the term of the Zone, as calculated and confirmed annually by the Appraisal District.
- G. **Certificate of Occupancy** means the final certificate(s) of occupancy issued by the City for vertical structures pursuant to applicable City regulations, or, for non-vertical improvements, City acceptance of the improvement or approval of the improvement following final inspection by the City.
- H. **Chapter 380 Incentives** means the economic incentive payments described in Article V.
- I. **Chapter 381 Incentives** means the economic incentive payments made to the Developer pursuant to that certain Chapter 381 Economic Incentive Agreement between the County and the Developer dated effective _____, as amended.
- J. **County** means Hays County, Texas.
- K. **Development Agreement** means that certain Development Agreement for the Caraway Tract Development between the City of Kyle and Caraway Cattle Company Family Partnership, LLP, NewQuest Equity, L.L.C. and Transwestern Development Company, L.L.C. dated effective December 19, 2023 as amended.
- L. **Debt Service** means an amount equal to the total principal and interest payments on any TIRZ Bond, plus any amounts carried over from the prior year which were not paid by an amount equal to any prior year principal and interest on the TIRZ Bond that was not paid from revenues on deposit in the TIRZ Fund due to insufficient funds being available in the TIRZ Fund.
- M. **Effective Date** means December 19, 2023.
- N. **HCISD** means the Hays Consolidated Independent School District.
- O. **Ongoing Performance Criteria Documentation** means copies of the following documents for each year in which an annual Chapter 380 Incentives payment is sought: (1) proof of compliance with the Ongoing Performance Criteria; (2) proof of payment of ad valorem taxes; and (3) the 380 Incentive Certification described in Article VI. The City may reasonably request additional records to support the information shown in the Ongoing Performance Criteria Documentation and compliance with the applicable Ongoing Performance Criteria.
- P. **Ongoing Performance Criteria** means the criteria the Developer is required to meet for payment of Chapter 380 Incentives after Year 1, which are set forth in Section IV.A(2).

- Q. **Performance Criteria** means the criteria set forth in Article IV that the Developer must meet to receive the Chapter 380 Incentives.
- R. **Project** means the mixed used development to be located and operating on the Property, consisting of approximately 450,000 square feet of commercial retail, restaurant, hotel, and office space, the Urban District Park Tract, and multi-family uses constructed and installed in accordance with the Development Agreement, the PUD, applicable local, state, and federal regulations, and good engineering practices.
- S. **Property** means that a certain 101.8283-acre parcel, more or less, being more particularly described in **Exhibit A**.
- T. **Public Improvements** means the proposed public improvements to be financed by the Zone, which includes but not limited to, roads, water, public utilities, and soft costs related thereto, as described in the TIRZ Plan.
- U. **PUD** means the ____ Planned Unit Development District established by Ordinance No. _____, as amended.
- V. **Road Bonds** means any general obligation bonds issued by the City pursuant to voter authorization obtained at an election held on November 8, 2022.
- W. **ROW Acquisition Amount** means the purchase price in the amount of Five Million Five Hundred Thousand Dollars (\$5.5 million) for the purchase of land for public right-of-way pursuant to the terms of the Development Agreement.
- X. **Tax Increment Base** means total appraised value of taxable real property in the Zone on January 1, 2023, the year the Zone was created, as calculated and certified by the Appraisal District.
- Y. **TIRZ Increment Receipts** means the cumulative amount of the City Property Tax Increment, the City Sales Tax Increment, and the County TIRZ Increment.
- Z. **Threshold Performance Criteria Documentation** means copies of the following documents: (1) proof of compliance with the Threshold Performance Criteria; (2) proof of payment of ad valorem taxes; and (3) the 380 Incentive Certification described in Article VI. The City may request additional records to support the information shown in the Threshold Performance Criteria Documentation or compliance with this Agreement.
- AA. **Threshold Performance Criteria** is defined as the criteria the Developer is required to meet for payment of Chapter 380 Incentives to commence being paid, which are set forth in Section IV. A(1).

- BB. **TIRZ Bonds** means any public securities, other than Road Bonds, issued by the City to acquire the Public Improvements, which Debt Service therefor may be paid from the TIRZ Increment Receipts.
- CC. **TIRZ Fund** means the tax increment fund created by the City and segregated from all other funds of the City.
- DD. **TIRZ Plan** means that certain “Reinvestment Zone Number Five, City of Kyle, Texas Final Project and Finance Plan” as finally adopted by the Board of Directors for the Zone and the City Council of the City on December 19, 2023, as amended.
- EE. **Total Payments** means the cumulative amount of payments made to the Developer pursuant to this Agreement, the Development Agreement, and the TIRZ Plan, which shall not exceed \$38,970,938, and which is made up of the sum of the Chapter 380 Incentives, the Chapter 381 Incentives, the ROW Acquisition Amount, and the net proceeds of TIRZ Bonds, if any, on any series of bonds issued to finance the Public Improvements, less interest amounts on paid TIRZ Bonds, if any.
- FF. **Urban District Park Tract** means the portion of the Project consisting of approximately 1.28 acres of private park space to which the general public shall have access (the “Private Park”) and the adjacent retail and mixed used buildings located adjacent to the private park (the “Vertical Structures”), as generally shown in **Exhibit ”B”** , constructed and installed in accordance with the Development Agreement, the PUD, applicable local, state and federal regulations, and good engineering practices.
- GG. **Year 1** means the Calendar Year (which is anticipated to be 2029) following the date on which the Developer complies with the Threshold Performance Criteria.
- HH. **Zone** means Reinvestment Zone Number Five, City of Kyle, Texas.

II. **General Provisions**

- A. The Project is not in an improvement project initially financed by tax increment bonds. The Public Improvements may be financed by tax increment bonds as provided in the TIRZ Plan and the Development Agreement.
- B. The Property is not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City.
- C. It is acknowledged and agreed by the parties that the completion of the Project is consistent with the purposes of encouraging state and local economic development and to stimulate business and commercial activity within the City.

III.
Representations and Warranties

- A. The City hereby represents and warrants to the Developer that the City has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the City, is enforceable in accordance with its terms and provisions, and does not require the consent of any other governmental authority.
- B. The Developer hereby represents and warrants to the City that the Developer has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all actions necessary. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of Developer, 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. **Performance Criteria.**
1. **Threshold Performance Criteria.** The following events must occur for the Developer to receive the Chapter 380 Incentives described in Article V:
 - a. The Developer completes construction and obtains a Certificate of Occupancy for a minimum of 100,000 square feet of shell or finished (or a combination thereof) retail space on or before five (5) years from the Effective Date. Site development permits for the initial 100,000 square feet of retail space must be issued within two (2) years after the Effective Date.
 - b. The Developer is in compliance with Sections IV.C-E.
 2. **Ongoing Performance Criteria.** After the first Chapter 380 Incentives payment is made to the Developer, the Developer must comply with the following requirements in order to seek and be paid a subsequent Chapter 380 Incentives payment:
 - a. Site development permits for at least 200,000 square feet of shell or finished (or a combination thereof) retail, hotel, restaurant, or office space must be issued within four (4) years after the Effective Date. Developer must complete construction of and obtain a Certificate of

Occupancy for 200,000 square feet of retail, hotel, restaurant, or office space within seven (7) years after the Effective Date.

- b. Site development permits for at least 300,000 square feet of shell or finished (or a combination thereof) retail, restaurant, hotel, or office space must be issued within six (6) years after the Effective Date. Developer must complete construction and obtain a Certificate of Occupancy for 300,000 square feet of retail, hotel, restaurant, or office space within nine (9) years after the Effective Date.
 - c. The Developer shall obtain the site development permits for the Urban District Park Tract within six (6) years of the Effective Date and shall complete construction and obtain a Certificate of Occupancy for the Private Park and 30,000 square feet of retail, restaurant, or office space within the Vertical Structures within the Urban District Park Tract by December 31, 2031.
 - d. The Vertical Structures do not count towards and are in addition to the square footage requirements set forth in Sections IV.A.2.a. and b. For the purposes of determining compliance with the square footage requirements set forth in Sections IV.A.2.a. and b., shell space or finished space shall be counted only once. For example, if a shell space is used to satisfy compliance with a square footage requirement, that same space when finished out may not be used to satisfy a subsequent square footage requirement.
 - e. The Developer is in compliance with Section IV.C-E.
- B. Developer shall not allow a site development permit for the phases of the Project described in Section IV.A.1 and 2 to expire once issued, unless otherwise granted an extension as provided in Section V.B.(3).
- C. The Project shall conform to the PUD, the Development Agreement, applicable local, stated, and federal regulations, and good engineering practices.
- D. The Developer shall not allow the ad valorem taxes owed to the City, the County, or the HCISD on any real property owned by the Developer and located within the City of Kyle or the HCISD to become delinquent beyond the last day they can be paid without assessment of penalty. Notwithstanding the foregoing the Developer may contest and appeal any and all taxes/ad valorem taxes associated with the Property and owed to the City, County, District, or any other applicable governmental entity, and during such appeal/contest the Developer shall not be required to pay taxes/ad valorem taxes associated with the Property to the City, County, 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 Incentives until the contest/appeal is finally and fully resolved.

- E. The Developer covenants and certifies that the Developer does not and will not knowingly and directly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if the Developer is convicted of a violation under 8 U.S.D. Section 132(a)(f), the Developer shall repay to the City the full amount of Chapter 380 Incentives made under Article V of this Agreement. Repayment shall be paid within 120 days after the date following an unappealable conviction of the Developer, provided, however, the Developer shall not be liable for a violation by a subsidiary, affiliate, or franchisee of the Developer or by a person with whom the Developer contracts.

V.

Economic Development Grants

A. **Chapter 380 Incentives.**

- 1) **Time Period for Chapter 380 Incentive Payments.** Subject to the terms and limitations of this Agreement, and Developer's full and timely performance of, and compliance with, each of the applicable Performance Criteria set forth in Article IV, the City agrees to pay to Developer the Chapter 380 Incentives commencing in Year 1 and continuing for each subsequent year up to the earlier to occur of the following:
 - (a) the expiration of the term of this Agreement;
 - (b) the termination of this Agreement; or
 - (c) the Total Payments being paid.
- 2) **Chapter 380 Incentives Amount.** The Chapter 380 Incentives shall be an annual amount equal to the sum of the Annual City Property Tax Increment plus the Annual City Sales Tax Increment; provided that there are sufficient funds in the TIRZ Fund to pay the Administrative Costs and the Debt Service payments. The priority of payments from the TIRZ Fund are as follows: (i) payment of Administrative Costs (ii) payment of Debt Service, and (iii) payment of Chapter 380 Incentives to the Developer pursuant to the terms in this Agreement. In the event that there are insufficient funds to pay the Administrative Expenses, the Debt Service, and the Chapter 380 Incentives for the year in full, the Chapter 380 Incentive for the year shall be reduced. The annual Chapter 380 Incentive shall be reduced by an amount equal to the amount, if any, needed to pay in full the Administrative Costs and the Debt Service for the year.

B. **Payment of Semi-Annual Chapter 380 Incentives**

- 1) **Performance Criteria.** The City shall pay the Chapter 380 Incentives semi-annually as provided in this Subsection B. To be eligible to receive the Chapter 380 Incentives in the Year 1, the Developer must meet the Threshold Performance Criteria. To be eligible to receive the Chapter 380 Incentives in the years following Year 1, the Developer must meet the Ongoing Performance Criteria and Threshold Performance Criteria.
- 2) **Suspension and Forfeiture of Payments.** In the event that Developer fails to comply with the Ongoing Performance Criteria, payment of the Chapter 380 Incentives will be suspended until the Developer is in compliance with the applicable Ongoing Performance Criteria. All suspended payments for up to twenty-four (24) months of non-compliance will be paid to the Developer upon compliance with the applicable Ongoing Performance Criteria. In the event the Developer fails to come into compliance with the applicable Ongoing Performance Criteria within twenty-four (24) months after the original deadline for the Ongoing Performance Criteria (as extended pursuant to Section V.B(3)), the Chapter 380 Incentives which were suspended shall be forfeited, and the Developer will not be paid Chapter 380 Incentives for those years which the Ongoing Performance Criteria were not met.
- 3) **Extensions.**
 - a) The City Manager may, but shall in no way be obligated to, grant reasonable extensions to the deadlines set forth in this Agreement or expiration dates for site development permits set forth in City ordinance. A request for a deadline or expiration date extension shall be submitted in writing and shall state the reason for the request. The City Manager may elect to submit any request for an extension to the City Council. Any extension granted hereunder will not be effective until approved in writing and signed by both the City Manager and the Developer. New deadlines or expiration dates approved in accordance with this subsection shall be incorporated into this Agreement and shall be used to determine compliance with the Performance Criteria and payment of Chapter 380 Incentives.
 - b) The timing for Developer's performance as provided in Article IV shall be extended one day for each day the City fails to complete the infrastructure provided in Section 3.1(e) of the Development Agreement.
- 4) **Time for Payment of Chapter 380 Incentives.** Each year on or before February 28, the Developer shall provide the City the applicable Performance

Criteria Documentation. The City shall pay the Chapter 380 Incentives semi-annually with the first payment being made within forty-five (45) days following the date the Performance Criteria Documentation is received by the City and the second payment being made by August 31; provided that the applicable Performance Criteria have been met.

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

VI. **Reports, Audits and Inspections**

- A. **Annual Certification and Reports.** The Developer shall certify in writing to the City that the Developer is in compliance with the terms of this Agreement, and shall provide the City with reports and records reasonably necessary to demonstrate fulfillment of the Performance Criteria as follows (collectively, the "**Performance Criteria Documentation**"):
1. **Certification.** Developer shall complete and certify a 380 Incentive Certification in a form substantially similar to that set forth in **Exhibit "C"**, which shall include the Threshold or Ongoing Performance Criteria Documentation, as appropriate. Such documentation and certification shall be submitted no later than February 28th of each year during the term of this Agreement.
 2. **Sales Tax Reports.** The Developer shall use commercially reasonable efforts to provide or cause to be provided to the City the sales tax identification numbers for tenants on the Property to allow the City to verify the amount of Chapter 380 Incentives to be paid to the Developer under this Agreement. The City will request a sales tax report from the Texas Comptroller for all tenants on the Property. The City shall not be required to pay the Annual City Sales Tax Increment portion of the Chapter 380 Incentives until the City has received access to such information from the Texas Comptroller, and the Annual City Sales Tax Increment portion of the Chapter 380 Incentives 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, Developer shall furnish the City any additional records and information reasonably requested to support the Performance Criteria and the reports required by this Agreement. The Developer shall further furnish the City with copies of or access to additional information reasonably required to verify the information set forth in the Threshold or Ongoing Performance Criteria Documentation.

- B. **Right to Audit Books and Records.** The City shall have the right to audit the books and records of the Developer related to the Property and the Project. The City shall notify the Developer in advance in writing of its intent to audit in order to allow the Developer adequate time to make such books and records available (in no event shall the Developer have less than ten (10) business days in order to make such books and records available).

- C. **Inspection.** At all times throughout the term of this Agreement, the City shall have reasonable access to the Property (subject to the rights of tenants in possession) upon providing at least 48 hours' written notice to the Developer for the purpose of inspecting the Property to ensure that the Project 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 Project or the rights of tenants in possession of any portion 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 Developer falsely certifies that the performance criteria in the Threshold or Ongoing Performance Criteria Documentation submitted to the City has been met.
 2. City fails to timely make payments to the Developer 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 Incentives.**

In the event that the Developer commits a breach of this Agreement according to Section VII.A, the Developer shall pay back to the City the Chapter 380 Incentives 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.

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 Incentives 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

DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND DIRECTLY RELATING TO DEVELOPER'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 DEVELOPER OR DEVELOPER'S AFFILIATE'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S AFFILIATE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'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. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE 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 ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CITY, OR ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES. 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, 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 any party designates in writing, by certified mail postage prepaid or by hand delivery:

DEVELOPER: c/o NewQuest Properties
Attn: Steven D. Alvis
8827 W. Sam Houston Pkwy. N, Suite 200
Houston, Texas 77040

With a copy to: NewQuest Properties
Attn: Legal Department
8827 W. Sam Houston Pkwy. N., Suite 200
Houston, Texas 77040
lhammill@newquest.com

CITY: City of Kyle
Attn: City Manager
1700 Kohlers Crossing
Kyle, TX 78640
blangley@cityofkyle.com

With a copy to: Paige H. Saenz
The Knight Law Firm, LLP
223 West Anderson Lane, Suite A-105
Austin, Texas 78752
paige@cityattorneytexas.com

TIRZ Tax Increment Reinvestment Zone Number 5, City
of Kyle
Attn: Board President
1700 Kohlers Crossing
Kyle, TX 78640

IX.
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.

X.
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.

XI.
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 Developer, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the eligible grants and such other matters reasonably requested by the party(ies) to receive the certificates.

XII.
Standing

Developer, 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 Developer shall be entitled to intervene in said litigation.

XIII.
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.

XIV.
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.

XV.
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.

XVI.
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.

XVII.
Successors and Assigns

(a) 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.

(b) Developer may, from time to time, effectuate a transfer of its rights under this Agreement, in whole or in part, with the consent of City Council, which shall not be unreasonably withheld, conditioned, delayed, or denied, to any party, provided such party agrees in writing to assume all of Developer's duties, obligations, and liabilities so assigned hereunder, and provided further that any such assignment shall not become effective until the City receives notice of the assignment and a copy of the assignment instrument.

(c) Developer may pledge, assign or transfer its right, title and interest under this Agreement, in whole or in part, without the consent of the City, to any third party lender of the Project (each, a "Lender") as security for the performance of Developer's loan obligations; and in relation thereto, the City will execute reasonable acknowledgements of this Agreement as may be requested by such Lender, including confirmation whether this Agreement is valid and in full force and effect, whether any party has been declared to be in default of any duty or obligation under this Agreement, and agreeing to provide notice

and opportunity to cure to such Lender.

(d) Developer may pledge, assign or transfer its right, title and interest under this Agreement, in whole or in part, to any affiliate, shareholders, subsidiary, or intercompany entity of the Developer; and in relation thereto, the City Manager is authorized to approve and consent to such assignment by the Developer, which consent shall not be unreasonably withheld, conditioned, or delayed, and the City Manager is further authorized to execute reasonable acknowledgements of this Agreement as may be requested by such affiliate, subsidiary, or intercompany entity, including confirmation whether this Agreement is valid and in full force and effect, whether any party has been declared to be in default of any duty or obligation under this Agreement, and agreeing to provide notice and opportunity to cure to such affiliate, subsidiary, or intercompany entity; provided that the affiliate, shareholders, subsidiary, or intercompany entity of the Developer agrees in writing to assume all of Developer's duties, obligations, and liabilities so assigned hereunder.

XVIII. **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.

XIX. **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 among 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 the City or the Developer; 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 the City or the Developer.

XX. **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 any party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

XXI.

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) this Agreement’s “Expiration Date”. The “Expiration Date” shall be the earlier to occur of: (a) the date that an amount equal to the Total Payments is paid to the Developer, or (b) December 31, 2048; provided that the following shall survive termination of this Agreement for any reason: Article III, 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 Developer commit a breach of this Agreement according to the Sections VII.A(1) the City may terminate this Agreement after providing written notice and opportunity to cure as set forth in Section VII.B.

XXII.

Statutory Verifications

- A. In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a Developer for goods and services unless the contract contains a written verification from the Developer 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 Developer verifies that the Developer does not boycott Israel and will not boycott Israel during the term of this Agreement.
- B. The Developer represents that the Developer and any wholly owned subsidiary, majority-owned subsidiary, parent of Developer and affiliates of Developer 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 Developer represents that the Developer and any wholly owned subsidiary, majority-owned subsidiary, parent of Developer and affiliates of Developer 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. The Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent of Developer or affiliate of Developer (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. The Developer represents that Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent of Developer or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code. Further, Developer represents that Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

XXIII.
Effective Date

This Agreement shall be effective on December 19, 2023 (the “Effective Date”).

[Signature pages follow]

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

DEVELOPER:

NEWQUEST EQUITY, L.C., a Texas limited liability company

By: [Signature]

Name: Steven D. AWIS

Title: MANAGER

DATE: December 22, 2023

WITNESS:

[Signature]
H. PAUL DODD

THE STATE OF TEXAS §
COUNTY OF HARRIS §

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Steven D. AWIS known to me (or proved to me on the oath of Affirmation or through known to me (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 **NEWQUEST EQUITY, L.C.**, a Texas limited liability company, such entity duly authorized to do business in the State of Texas, and as the 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 22nd day of December, 2023.

[Signature]

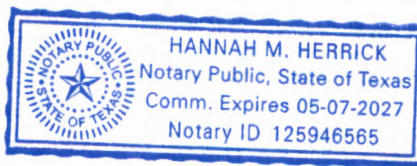
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Hannah Herrick

NOTARY'S PRINTED NAME

05-07-2027

My COMMISSION EXPIRES:



CITY OF KYLE, TEXAS

By: [Signature]

CITY MANAGER

Date: 12/28/23

ATTEST:

Jennifer Kirkland

Jennifer Kirkland
CITY SECRETARY

APPROVED AS TO FORM:

By: [Signature]
Paige Saenz

CITY ATTORNEY

Date: 11/21/2024

THE STATE OF TEXAS

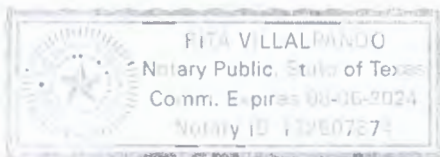
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COUNTY OF HAYS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Bryan Langley, 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 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 28th day of December, 2023.



06/06/2024
MY COMMISSION EXPIRES:

Rita Villalpando
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Rita Villalpando
NOTARY'S PRINTED NAME

**REINVESTMENT ZONE NUMBER 5,
CITY OF KYLE**

By: Travis Mitchell

Travis Mitchell
BOARD CHAIRMAN

Date: 12/28/2023

ATTEST:

Jennifer Kirkland
Jennifer Kirkland
CITY SECRETARY

THE STATE OF TEXAS

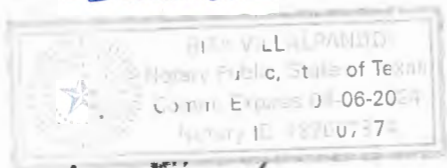
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COUNTY OF HAYS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Travis Mitchell, 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 **BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER FIVE, CITY OF KYLE**, a reinvestment zone created by the City of Kyle, Texas pursuant to Chapter 311, Texas Tax Code, as amended, and as chairman 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 28th day of December, 2023.



08/06/2024
MY COMMISSION EXPIRES:

Rita Villalpando
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Rita Villalpando
NOTARY'S PRINTED NAME

EXHIBIT A
The Property

EXHIBIT “ A ”

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 101.8289 ACRES (4,435,666 SQUARE FEET) PARTIALLY OUT OF THE THOMAS G. ALLEN SURVEY, ABSTRACT NO. 26 IN HAYS COUNTY, TEXAS, AND PARTIALLY OUT OF THE DAN DOWNER SURVEY NO. 22, ABSTRACT NO. 151 IN HAYS COUNTY, TEXAS, BEING THE REMNANT PORTION OF A CALLED 104.08 ACRE TRACT CONVEYED TO CARAWAY CATTLE COMPANY FAMILY, IN VOLUME 4516, PAGE 661 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.), SAID 101.8289 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



PO Box 90876
Austin, TX 78709
(512) 537-2384
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod with “4Ward Boundary” cap set at the intersection of the east right-of-way line of South IH 35 (right-of-way varies) and the north right-of-way line of Bebee Road (right-of-way varies), being the southwest corner of said 104.08 acre tract, for the southwest corner and **POINT OF BEGINNING** hereof, from which a 1/2-inch iron rod found for the intersection of the east right-of-way line of said IH 35 and the south right-of-way line of said Bebee Road, being the northwest corner of a called 45.64 acre tract (described as “Tract 1”) conveyed to Sunrise Village Investment, LLC in Document No. 20032482 of the Official Public Records of Hays County, Texas (O.P.R.H.C.T.), bears, S31°37’13”W, a distance of 79.98 feet;

THENCE, with the east right-of-way line of said IH 35 and the west line of said 104.08 acre tract, the following three (3) courses and distances:

- 1) **N31°24’32”E**, passing at a distance of 1,908.08 feet a TxDot type II Brass Disc found for a point on line hereof, and continuing for a total distance of **3,067.92** feet to a calculated point for an angle point hereof, from which a TxDot Type I concrete monument found bears, S73°31’45”E, a distance of 1.21 feet,
- 2) **N53°13’03”E**, a distance of **107.88** feet to a calculated point for an angle point hereof, from which a TxDot Type I concrete monument found bears, N59°56’12”W, a distance of 1.01 feet, and
- 3) **N31°24’07”E**, a distance of **284.23** feet to an 1/2-inch iron rod with illegible cap found for the north corner hereof, said point being the north corner of said 104.08 acre tract, and being the west corner of Lot 2, Amberwood Commercial Section 1, a subdivision recorded in Volume 14, Page 129 of the Plat Records of Hays County, Texas (P.R.H.C.T.), said Lot 2 having been conveyed to SPI Strand 160 EX, LLC in Document No. 1830726 (O.P.R.H.C.T.), from which a 1/2-inch iron rod found for an angle point in the north line of said Lot 1, Amberwood Commercial, being in the south right-of-way line of Amberwood South (right-of-way varies), bears, N31°24’07”E a distance of 398.05 feet, and N72°48’46”E, a distance of 44.66 feet;

THENCE, leaving the east right-of-way line of said IH 35, with the northeast line of said 104.08 acre tract, in part with the southwest line of said Lot 2, Amberwood Commercial, and in part with the southwest line of Lot 1 of said Amberwood Commercial (no ownership information provided for Lot 1 per Hays County Appraisal District), the following two (2) courses and distances:

- 1) **S16°50’22”E**, passing at a distance of 724.16 feet a 1/2-inch iron rod with illegible cap found for the common south corner of said Lot 1 and said Lot 2, Amberwood Commercial, and continuing for a total distance of **752.15** feet to a 1/2-inch iron rod with “4Ward Boundary” cap found for an angle point hereof, and

- 2) **S16°53'19"W**, a distance of **610.34** feet to a 1/2-inch iron rod found for an angle point hereof;

THENCE, with the northeast line of said 104.08 acre tract, in part with the southwest line of said Lot 1, Amberwood Commercial, in part with the southwest line of a called 25.98 acre tract (described as "Tract 2") conveyed to Kyle Business Park, L.P. in Volume 2835, Page 819 (D.R.H.C.T.), and in part with the southwest lines of Lots 21 through 23, Block A, Kyle Business Park, Section One, a subdivision recorded in Volume 12, Page 395 (P.R.H.C.T.), said Lots 21 through 23 (described as part of "Tract 2") having been conveyed to Kyle Business Park, L.P. in Volume 2835, Page 819 (D.R.H.C.T.), the following three (3) courses and distances:

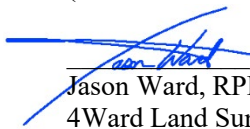
- 1) **S00°13'08"W**, passing at a distance of 5.71 feet a calculated point for the common west corner of said Lot 1, Amberwood Commercial and said 25.98 acre tract, and continuing for a total distance of **567.81** feet to a 3/8-inch iron rod found for an angle point hereof,
- 2) **S24°24'03"E**, passing at a distance of 431.92 feet a 1/2-inch iron rod with "Bryn" cap found for the common west corner of said 25.98 acre tract and said Lot 21, passing at a distance of 853.52 feet a calculated point for the common west corner of said Lot 21 and said Lot 22, from which a 1/2-inch iron rod with "Bryn" cap found bears **S37°03'32"W**, a distance of 0.39 feet, and continuing for a total distance of **1,009.62** feet to a 1/2-inch iron rod found for an angle point hereof, said point being in the west line of said Lot 22, and
- 3) **S18°33'49"E**, passing at a distance of 294.69 feet a 1/2-inch iron rod with "Bryn" cap found for the common west corner of said Lot 22 and said Lot 23, and continuing got a total distance of **935.60** feet to a 1/2-inch iron rod with illegible cap found for a point of curvature hereof, said point being in the northwest right-of-way line of said Bebee Road, for the southeast corner of said Lot 23, and being an angle point in the north line of a called 2.305 acre tract conveyed to Hays County, Texas for right-of-way purposes in Volume 1206, Page 472 (O.P.R.H.C.T.),

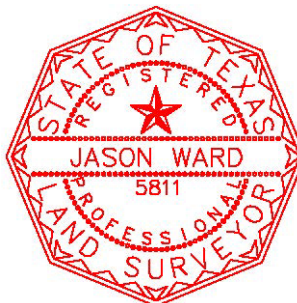
THENCE, with the north right-of-way line of said BeBee Road, with the north line of said 2.305 acre tract, and over and across said 104.08 acre tract, the following two (2) courses and distances:

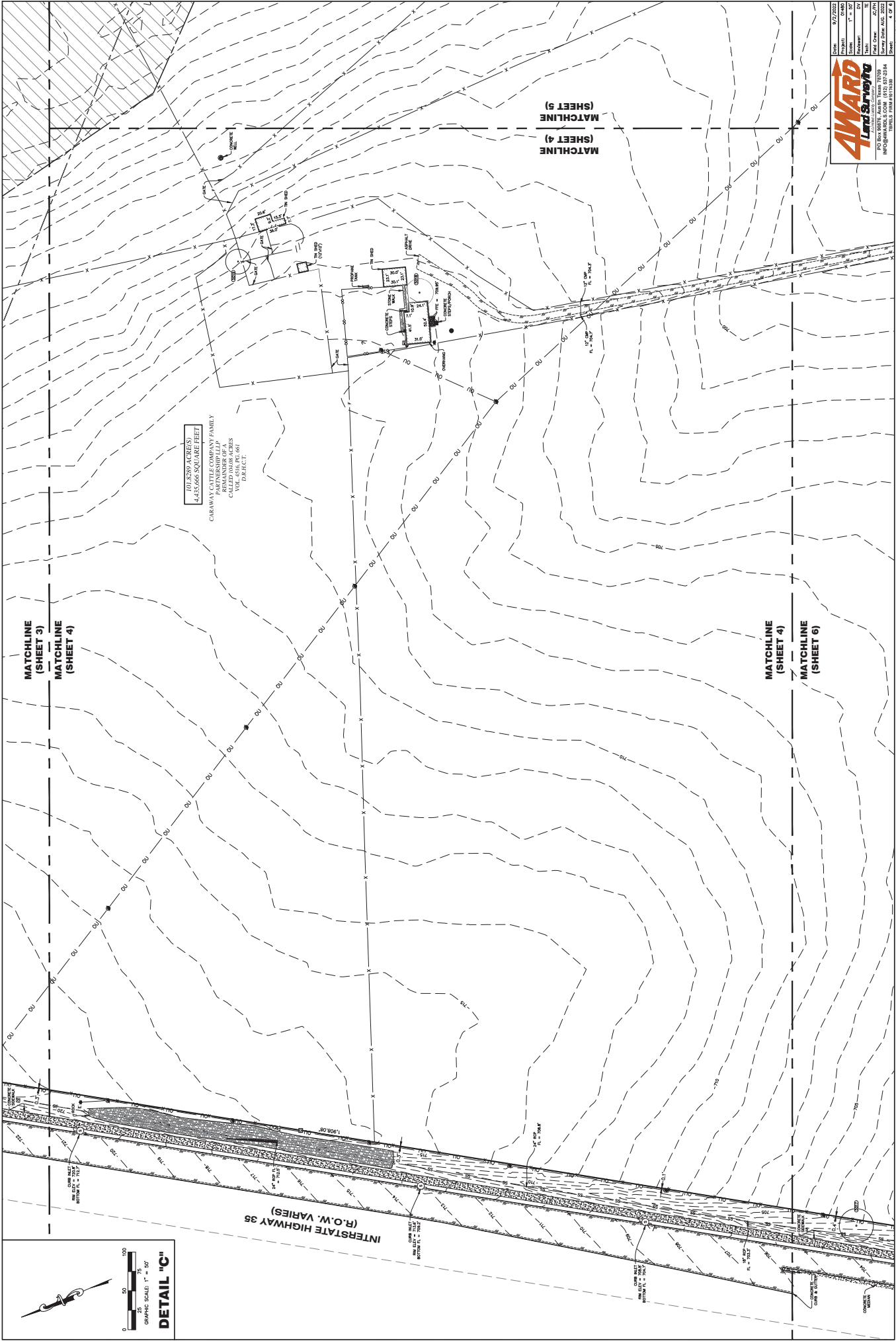
- 1) Along a curve to the right, whose radius is **418.37** feet, whose arc length is **522.20** feet, and whose chord bears **S76°32'18"W**, a distance of **488.96** feet to a 1/2-inch iron rod with illegible cap found for a point of tangency hereof, and
- 2) **N67°41'19"W**, a distance of **2,281.99** feet to the **POINT OF BEGINNING** and containing 101.8289 Acres (4,435,666 Square Feet) of land, more or less.

NOTE:

All bearings are based on the Texas State Plane Coordinate System, Grid North, South Central Zone (4204), all distances were adjusted to surface using a combined scale factor of 1.000098675586. See attached sketch (reference drawing: 01480.dwg).


9/2/2022
Jason Ward, RPLS #5811
4Ward Land Surveying, LLC





AWARD
Land Surveying

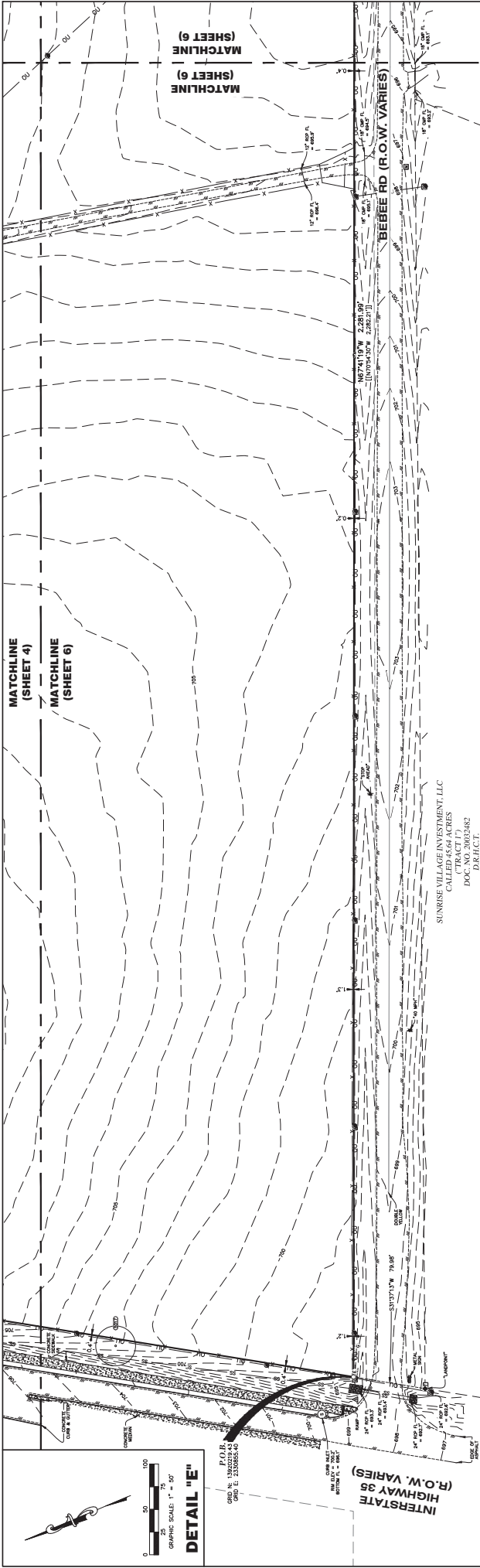
DATE: 07/20/22
PROJECT: C-1460
SHEET: 1 OF 6
DRAWN BY: JTB
CHECKED BY: JTB
DATE: 07/20/22
SCALE: AS SHOWN
PROJECT NO.: 2270
AWARD SURVEYING, INC.
100 BOX 3075, AUSTIN, TEXAS 78709
PH: 512.835.1111 FAX: 512.835.2134
WWW.AWARDLANDSURVEYING.COM

DETAIL "C"

GRAPHIC SCALE: 1" = 50'

0 50 100

0 25 50 75 100

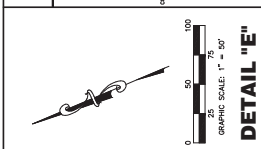


MATCHLINE
(SHEET 4)
MATCHLINE
(SHEET 6)

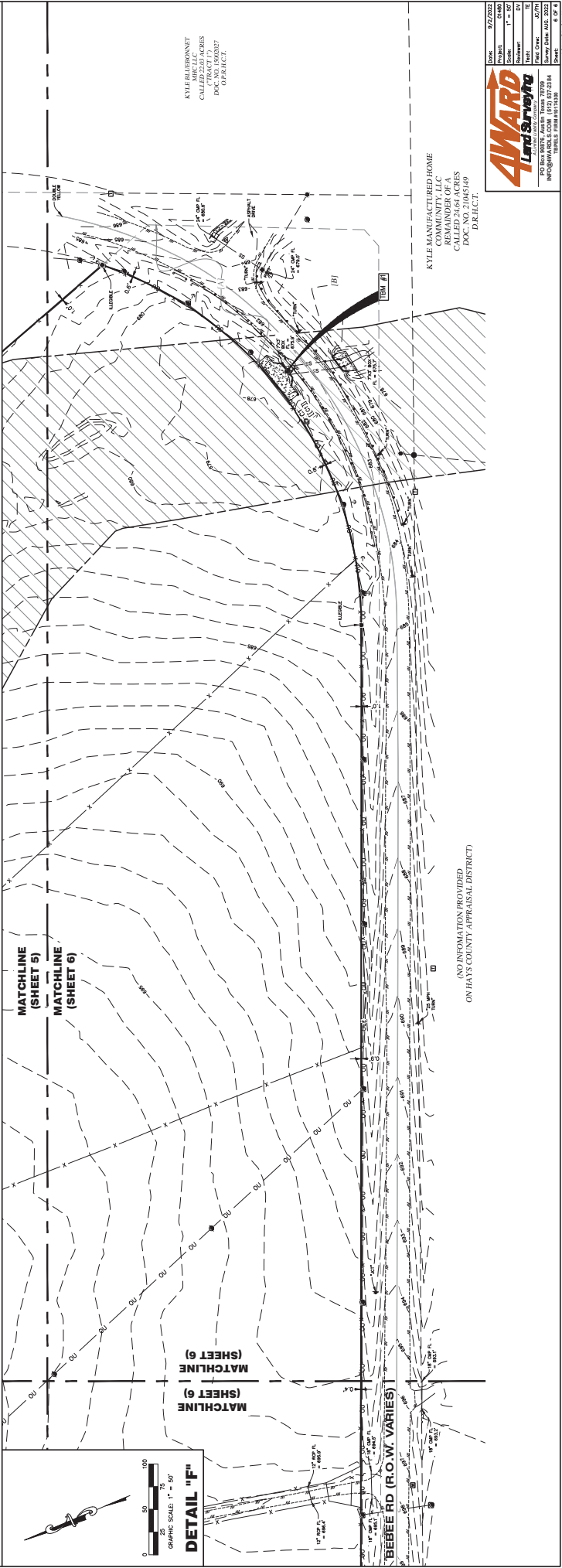
MATCHLINE
(SHEET 6)
MATCHLINE
(SHEET 6)

BEBEE RD (R.O.W. VARIES)

SUNRISE VILLAGE INVESTMENT, LLC
CALLED TO ATTENTION
(TRACT 17)
DOC. NO. 20032482
DEH.C.T.



DETAIL "E"



MATCHLINE
(SHEET 5)
MATCHLINE
(SHEET 6)

MATCHLINE
(SHEET 6)
MATCHLINE
(SHEET 6)

BEBEE RD (R.O.W. VARIES)

NO INFORMATION PROVIDED
ON HAYS COUNTY APPRAISAL DISTRICT

KYLE MANUFACTURED HOME
COMMUNITY, LLC
MANUFACTURED HOME TRACT
CALLED 24.64 ACRES
DOC. NO. 21045149
D.R.H.C.T.

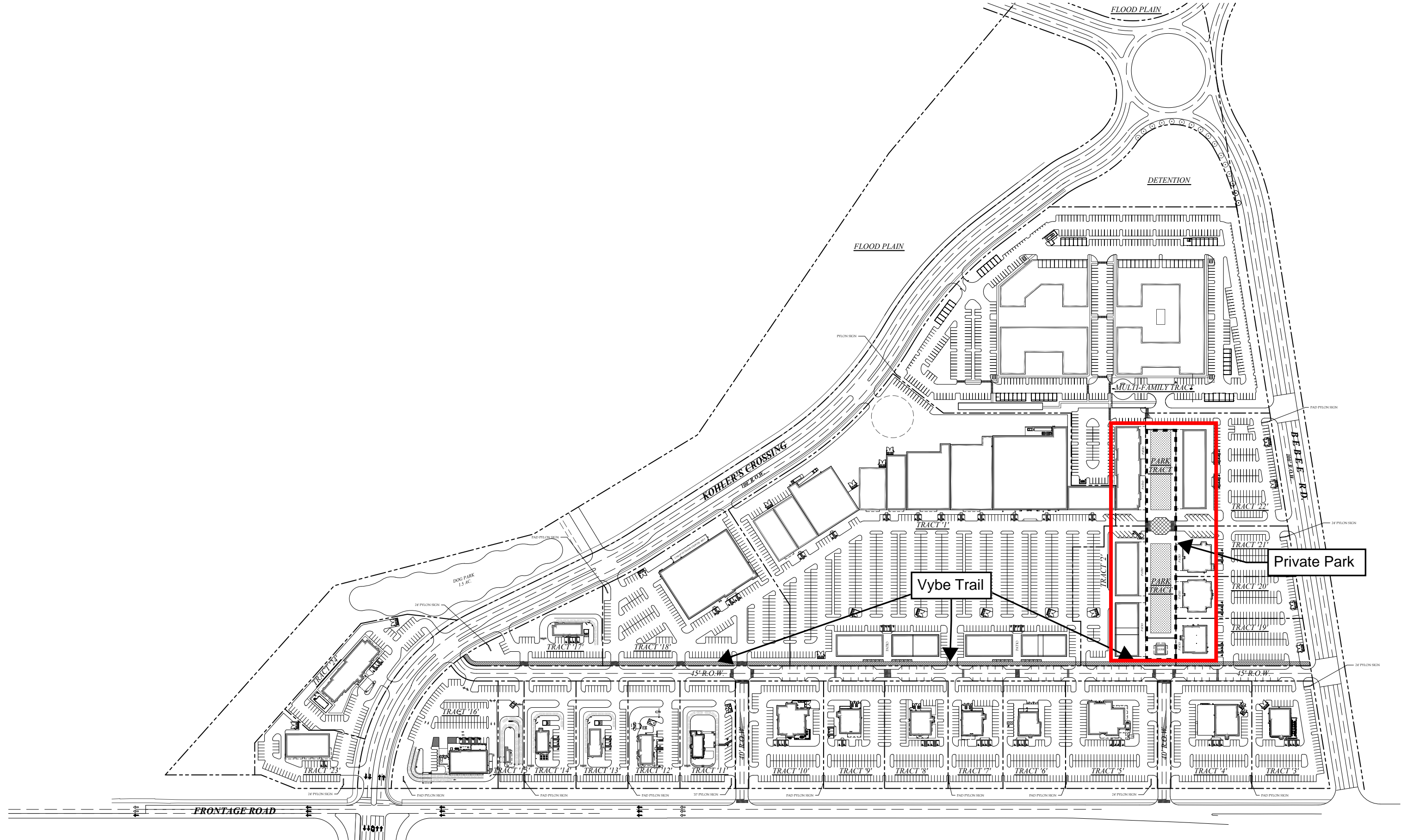
KYLE BLUESONNET
HRC, LLC
CALL TO ATTENTION
(TRACT 17)
DOC. NO. 1500027
D.P.F.A.C.T.

AWARD
Land Surveying

PO Box 1075, Austin, Texas 78709
PH: 512.424.1111 FAX: 512.424.1112
INFO@AWARDLANDSURVEYING.COM (512) 597-2154

Date:	07/20/22
Project:	03465
Sheet:	1 of 6
Scale:	1" = 50'
Drawn:	TE
Check:	TE
Plot Date:	07/20
Plot Time:	10:00 AM
Drawn By:	TE
Checked By:	TE
Scale:	1" = 50'

EXHIBIT B
URBAN DISTRICT PARK TRACT



HWY I-35

EXHIBIT B - URBAN DISTRICT PARK TRACT

EXHIBIT C

**CITY OF KYLE
CHAPTER 380 AGREEMENT (THE “AGREEMENT”) PERFORMANCE
CRITERIA REPORT FORM**

Chapter 380 Incentives Performance Certification

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

- Copies of documentation showing issuance of site development permits and certificates of occupancy for the square footage required by the 380 Agreement.
- Proof of compliance with Sections IV.C-E of the 380 Agreement.

PROJECT STATUS – ONGOING PERFORMANCE CRITERIA (for years following Year 1)

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

- Copies of documentation showing issuance of site development permits and certificates of occupancy for the square footage required by the 380 Agreement.
- Proof of compliance with Sections IV.C-E of the 380 Agreement.

CERTIFICATION

I certify that to the best of my knowledge and belief, the information and attached documents provided in this Chapter 380 Incentives 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 am have met the requirements of the Performance Criteria, as that terms is defined in the Agreement applicable to the Developer.

Printed Name and Title of Certifying Officer

Signature of Certifying Officer

Date

Telephone Number

Email Address

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

EXHIBIT “L”

CITY INFRASTRUCTURE DELIVERY SCHEDULE

EXHIBIT L

City Infrastructure Requirements

The City will work with all parties to complete the following infrastructure in an expedited manner that will deliver quality results and not jeopardize long-term viability of the infrastructure.

INFRASTRUCTURE

DELIVERY DATE

Sanitary Sewer described in VI, 6.2; Ex. "G"

12 Months Following ROW Conveyance

Storm Sewer/Detention

12 Months following ROW Conveyance

described in VI,6.3, Ex. "H"

Kohlers Crossing extension*

24 Months following ROW Conveyance

Bebbee Road reconstruction*

24 Months following ROW Conveyance

*The City shall use its reasonable efforts to construct Kohlers Crossing and Bebee Road within the timeframe provided in the above schedule and the Parties agree to approve a final construction schedule for completion of the roadways once construction begins as provided for in Article VII of this Agreement.