

STATE OF TEXAS §
 §
COUNTY OF HAYS §

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF KYLE, TEXAS, AND KYLE DACY APARTMENTS, LTD.**

This Development Agreement (“Agreement”) is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the “City”) and Kyle Dacy Apartments, Ltd. (“Developer”). The term “Parties” or “Party” means the City and the Developer collectively or singularly.

RECITALS

WHEREAS, John Kimbro (“Owner”) owns certain Land consisting of approximately 30 acres located on Dacy Lane in Hays County, Texas (“Kimbro Property”);

WHEREAS, Developer intends to purchase a parcel of real property from Owner consisting of approximately 24 acres of the Overall Property located on Dacy Lane (the “Property” or “Parcel”) in Hays County, Texas, which is more particularly described in the attached Exhibit “A”, and Owner intends to develop the remaining approximately 6 acres of the Kimbro Property described in the attached Exhibit “B” (“Six Acre Tract”);

WHEREAS, Developer is organized to provide housing and other services on an affordable basis and Developer’s general partner is intended to be a tax exempt entity pursuant to Chapter 394, Texas Local Government Code;

WHEREAS, the City and Developer, the owner of the Property, desire to enter into this Development Agreement pursuant to the Texas Local Government Code.

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

**ARTICLE 1
PURPOSE, AUTHORITY, TERM AND BENEFITS**

1.01 Purpose. This Agreement sets forth certain agreements regarding the development of the Project as defined below.

1.02 Authority. Authority for Developer and the City to enter into this Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, (“Subchapter G”), Chapter 395 of the Tex. Local Government Code; and such other statutes as may be applicable.

1.03 Project Defined. The Project established by the Agreement includes a multifamily housing project consisting of approximately 324 units intended to qualify for low income housing tax credits. The Project includes the construction of off-site and on-site utility facilities to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (the “Project”). The Parties agree that the front facades of the primary two buildings facing Dacy Lane shall be built with a majority of stone and brick to match and blend with the standards of the surrounding area, as determined in the reasonable discretion of the City Staff and in accordance with the Code of Ordinances or uncodified ordinances of the City (the “Code”) in effect at the time building permits are issued.

1.04 Benefits.

(a) The City desires to enter into this Agreement to provide additional control to the development standards for the Property, to allow Developer to submit preliminary plan and final plan applications to the City for review, and to memorialize the Developer’s agreement to make the payments in lieu of payment of property taxes (“PILOT Payments”) as provided herein. The City furnishes and will furnish improvements, services, and facilities for the Project pursuant to a Municipal Services Plan that will be adopted upon annexation of the Property, and the City is willing to approve and support the Project and to provide municipal services to the Project in exchange for the PILOT Payments as provided in this Agreement.

(b) This Agreement provides: (i) for the submittal and review of preliminary plans and final plans for the Property simultaneously with the Developer’s request for voluntary annexation and rezoning of the Property; (ii) alternative standards under certain City ordinances for the benefit of the Property; (iii) the City’s commitment to provide water and wastewater service to Property based on the Concept Plan; and (iv) the agreement of Developer to make the PILOT Payments. The City’s execution of this Agreement constitutes a valid and binding obligation of the City under State Law. Developer’s execution of this Agreement constitutes a valid and binding obligation of the Developer.

1.05 Term. If Developer acquires title to the Property and delivers a copy of the recorded deed to the City within 360 days of the date of this Agreement, then the term of this Agreement shall be twenty (20) years from the Effective Date, as further described in Section 9.08 of this Agreement (“Term”). If Developer fails to acquire title to the Property and deliver a copy of the recorded deed to the City within 360 days of the date of this Agreement, then the City may terminate this Agreement by giving written notice to the Developer, and termination of the Agreement shall be effective upon the date set forth in such written notice. In the event of termination of the Agreement under this Section, any applications or plans, including but not limited to Concept Plan attached hereto, filed by the Developer pursuant to this Agreement will be deemed withdrawn, and any approvals, determinations of compliance issued under this Agreement, or preliminary approvals shall be deemed withdrawn and or expired. After the first Term, this Agreement may be extended for successive five-year periods up to forty-five (45) years upon written agreement signed by Developer and the City; provided that the PILOT Payments, as adjusted, and the terms of the Agreement citing consideration for the PILOT Payments and Section 4.09, and Articles VI, VII, VIII, and IX shall continue as long as the Property is used for affordable residential housing or is otherwise exempt from taxation of the

Property under the Texas Tax Code.

ARTICLE 2 DEVELOPMENT STANDARDS AND REVIEW PROCEDURES

2.01 Generally. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control.

2.02 Residential. It is the intent of the City to zone the Property to the R-3-3 zoning district. The zoning of the Property shall be subject to the process, notices, hearings and procedures applicable to all other properties within the City, with such process to be commenced upon receipt of a zoning application that complies with this Agreement; accompanied by the required fees, provided that the City Council will not take final action on the zoning application until the Property is annexed into the city limits. If the City does not zone the Property as provided in this Section, then, unless Developer: (a) substantially amends the project as described in the Concept Plan and this Agreement; (b) abandons the project; (c) defaults under this Agreement and fails to cure such default within the applicable cure period set forth in Section 7.01; (d) the Agreement is terminated pursuant to Section 1.05; or (e) permits its Chapter 245 rights to expire; the Developer and the Property shall be and remain entitled to the rights and benefits provided in this Agreement. Except as provided in this Agreement, the Property shall be subject to and developed in accordance with the use and development standards of the City's R-3-3 zoning district, and all codes, ordinances, and regulations of the City that are applicable within the city limits, and this Agreement. In the event of a conflict between this Agreement and a code, ordinance or regulation of the City, this Agreement shall control.

2.03 Concept Plan. Developer has submitted to the City a concept plan for the development of the Property. A copy of the concept plan is attached hereto and incorporated herein for all purposes as Exhibit "C" (the "Concept Plan"). The Concept Plan constitutes a development plan for the Property, as provided in Subchapter G. Subject to the allowable uses set forth herein, a) the total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents ("LUEs") as measured for water and wastewater service connections, and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the intensity of development of the Property shall not exceed the allocated LUEs. So long as Developer does not increase the total level of allowable development, as measured by water and wastewater service connections, Developer may amend the Concept Plan and may amend the layout of buildings and on-site infrastructure to serve the Project in compliance with this Agreement. The City approves the flood plain and building elevations as provided by Developer. The Concept Plan will be effective for the Term of this Agreement.

2.04 Preliminary Plan. Developer may submit to the City an application for a preliminary plan for the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property. The preliminary plan must comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth herein. The preliminary plan may show building layouts different than shown in the Concept Plan so long as the total level of development, as measured by water and wastewater service connections, does not increase above 185 LUEs for water

service and 170 LUEs for wastewater service (the “Project LUEs”). Developer may request the City, including the City’s Planning and Zoning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan. If the preliminary plan application complies with the terms of this Agreement, the City will approve the preliminary plan upon the request of Developer.

2.05 City Review and Approval. This Agreement shall govern the review and approval of preliminary plans, construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. In anticipation of the voluntary annexation of the Property, the City does not require Developer to submit any application to Hays County for review or approval. The City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth herein. After all staff comments have been addressed by Developer to the satisfaction of the City, the City will approve applications for preliminary plans, and site development permits for the Property if Developer has made a request or petition for voluntary annexation pursuant to Sections 5.02(a) or (b) below, and said applications are in accordance with the requirements of this Agreement. Preliminary plans, construction plans, and site development plans hereafter approved pursuant to this Agreement shall expire on the latter of the expiration or termination of this Agreement or the date established by the Code; provided that if the Project is not completed within five (5) years of the Effective Date, the such plans will be deemed expired.

2.06 Parkland Fees. A parkland dedication fee calculated as \$750 x total number of units to be constructed and a parkland improvement fee calculated as \$750 x total number of units to be constructed (for example, if 324 units are to be constructed, the total parkland fees of Four Hundred and Eighty Six Thousand Dollars (\$486,000.00)) will be paid to the City for the Project in satisfaction of Section 41-147 of the Code, on or before the date the first building permit is issued for the Project. No building permit will be issued for the Property until the parkland fees set forth in this section are paid to the City. City acknowledges and agrees that no other park fees or park land dedications are required for the issuance of certificates of occupancy for the Project.

2.07 Adjacent Lane Mile Fee. An adjacent lane mile fee calculated as 6.65 x 81 x total number of units to be constructed (for example, if 324 units are to be constructed, the fee would be One Hundred Seventy Four Thousand Five Hundred Twenty Two and 60/100ths Dollars (\$174,522.60)) will be paid to the City for the Project before final plat approval.

2.08 Impact Fees. Impact fees as set forth on Exhibit “D” attached hereto shall be due and payable upon the issuance of building permits for the Project; City acknowledges and agrees that no other impact fees or land dedications are required for the issuance of certificates of occupancy for the Project.

2.09 Other Fees. Except for fees or expenses otherwise specifically provided for in this Agreement, all fees required by the Code will be paid in accordance with the Code.

Notwithstanding the foregoing, City acknowledges and agrees that Developer shall have no obligation for payments of costs of improvements to Dacy Lane.

2.10 Variances. Pursuant to Section 2.05 above, City agrees to the following variance from the Code: the Project site plan will provide for a parking ratio of 1.8 spaces per residential unit of the Project.

ARTICLE 3 INFRASTRUCTURE

3.01 Satisfactory Completion of Developer Improvements. The term “Developer Improvements” includes Utility Improvements, as defined herein, as well as all required water facilities, wastewater facilities, streets, drainage facilities and other amenities and improvements that are required by regulatory authorities with jurisdiction over the Property to serve individual lots within the Property. Upon completion of construction of each of Developer Improvements, Developer shall provide the City with final “record” drawings of the Developer Improvements, in both hard copy and digital (PDF or CAD, as requested by the City) and meet any other requirements of the City’s codes, ordinances, and regulations required for the City to accept the Developer Improvements as complete. Developer’s engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of Developer Improvements, at no expense to Developer, within ten (10) business days. The City shall within ten (10) business days of conducting the final inspection provide a list of deficiencies found in the inspection so that when the deficiencies are corrected, Developer Improvements will meet the requirements for acceptance by the City for ownership, operation and maintenance. Developer shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect Developer Improvement within ten (10) business days, and if all deficiencies have been remedied to the City’s satisfaction, the City shall furnish a Letter of Satisfactory Completion to Developer stating that Developer Improvement has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept Developer Improvement for ownership, operation and maintenance.

ARTICLE 4 WATER AND WASTEWATER SERVICE

4.01 Intent of the Parties Regarding Utility Services.

(a) Developer agrees to provide, or cause to be provided, a release of the current water certificate of convenience and necessity (“CCN”) with respect to the Property and the Six Acre Tract, at or prior to plat approval. The Property and the Six Acre Tract shall be referred to together as the “Tracts”. The Developer intends to seek release of the Tract pursuant to Section 13.254(a-5), Texas Water Code. The Developer acknowledges and understands that the City will be required to obtain approval from the Public Utilities Commission, or successor agency (the “PUC”), to serve the Tracts after they are released from the current water CCN and that the PUC may order the City to make a payment to the utility from whom the CCN was released. The Developer agrees to pay all costs incurred by the City, including professional and consulting fees and any amounts ordered to be paid by the PUC (the “CCN Release Costs”), in obtaining such

approval from the PUC up to \$250,000. In exchange, the City agrees to make water and wastewater services available to the Project and the improvements located or to be located on the Developer's property; provided that the Developer acknowledges and agrees that the City will not provide water service to the Tracts until the CCN Release Costs have been paid by the Developer to the City. In the event that the CCN Release Costs exceed \$250,000, the Parties shall meet and confer and shall work in good faith to determine whether the Parties wish to continue with the steps required for the City to provide water service to the Tracts or whether water service will be sought from another utility.

(b) As of the Effective Date, the City has sufficient water and wastewater treatment capacity to allow service connections for the Project LUEs water and wastewater service to the Property. The City represents that it has rights to sufficient raw water to meet its overall service obligations, including providing the Project LUEs of water and wastewater service to the Property in accordance with the terms of this Agreement. The Parties acknowledge that the Property will be build out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. Developer acknowledges that it is the City's responsibility to determine if the City's utility system needs to be expanded and how the City will expand its utility system to enable the City to meet its utility service obligations under this Agreement. Developer further acknowledges the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Developer requires certainty regarding the City's plans for meeting the City's utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations in accordance with the terms of this Agreement.

4.02 If the City modifies: (i) the definition of an LUE as compared to the LUE definition incorporated into this Agreement; (ii) water pressure requirements for a service connection to land within the Property; (iii) fire flow requirements for the issuance of building permits and certificates of occupancy without the installation of a sprinkler system; (iv) a Utility or Developer Improvement required for the City to provide water and wastewater service to any portion of the Property; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Agreement, unless such modification by the City is in response to a request for more than the Project LUEs of water and wastewater service. If the modifications described in the preceding sentence are required by federal or state law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications; provided in no event shall the timing of the service connection of the Project or the allowed amount of Project LUEs be reduced from those required to timely complete the Project with 324 multifamily residential units.

4.03 Service Commitment. Subject to the completion of the Off-Site Sewer Force Main or Gravity Line by the Developer as provided in Section 4.05 and construction and installation of the water and wastewater lines on the property required by the City's codes, ordinances, and regulations, and, with respect to water service, release of the current water CCN for the Property and PUC giving approval to the City to serve the Property, the City hereby commits the Project LUEs of water and wastewater service to the Property.

4.04 Service Connections. The City will timely provide water and wastewater service to the Project, and will connect each residential unit or structure for another permitted use to the City's water and wastewater system upon payment of applicable fees and a Certificate of Occupancy being issued for the structure and provide water and wastewater service for the structure on the same terms and conditions as provided to all other areas of the City.

4.05 Utility Improvements Construction Obligations.

Developer shall be solely responsible for the engineering and construction of all water and wastewater lines and facilities within the Property. Developer shall further be solely responsible for the engineering and construction of an Off-Site Sewer Gravity Line or Force Main if necessary (collectively, the "Utility Improvements"), at a cost of up to Two Hundred Fifty Thousand Dollars (\$250,000.00). In the event that the cost of such offsite Utility Improvements exceeds \$250,000, the Parties shall meet and confer and shall work in good faith to determine whether the Parties wish to continue with the steps required for the City to provide water service to the Tracts or whether water service will be sought from another utility.

4.06 Service Units Defined. The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City's applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on Chapter 50 ("Utilities"), Article VI, of the Code, which is incorporated into this Agreement for the limited purposes set forth in this Agreement.

4.07 Use of City Property and Easements. The City hereby consents, at no cost to Developer, by license agreement or otherwise, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Developer Improvement, or for Developer to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements. The City agrees to cooperate and support Owner's acquisition of necessary easements from third parties as determined by the city council.

4.08 Use of Condemnation. If Developer determines that it may be necessary for the City to use its eminent domain powers to acquire property or an interest in property to install a Utility Improvement required by the City pursuant to this Agreement, Developer will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law. The City will act on such a request within sixty (60) calendar days. If the city council makes a finding that such requested easement is necessary to accomplish a public purpose and is otherwise lawful, the city council may exercise its powers of eminent domain to attempt to acquire the requested easement. The Parties agree to work cooperatively toward allowing the initiation of construction of a Developer Improvement on an easement being acquired by the City at the earliest time lawfully permitted. Developer shall be responsible for all costs incurred for the acquisition of the easement or land necessary for the construction of Utility Improvements outside of the Property, whether by condemnation or conveyance in lieu thereof, including the City's attorney's fees, legally-required bonds, and deposits required by the City. If the City

council seeks condemnation, it will use reasonable efforts to pursue such within the minimum time allowed under state law.

4.09 PILOT Payments. During the time the Project is used as affordable housing or is exempt from taxation of the Property under the Texas Tax Code, Developer will pay to the City an annual payment in lieu of property taxes (“PILOT”), to be held in an escrow account for future water and wastewater infrastructure improvements to be used by the City in its discretion, in an amount equal to the City’s portion of applicable property taxes to be determined as set forth in Exhibit “E” attached hereto and made a part hereof. The PILOT payments to be made by Developer or its successors or assigns shall commence on October 1 of the year following the issuance of the first certificate of occupancy which shall occur not less than fourteen (14) months after construction of the Project begins, but no later than 37 months from the date of Developer’s construction mortgage (“PILOT Commencement Date”). The PILOT Payments shall be due and payable on October 1 of each year and shall become past due and delinquent if not paid by February 1 of the following year. The PILOT payment calculation shall be reviewed and reestablished each 15 ½ years, commencing 15 ½ years after the PILOT Commencement Date (“Reestablishment Date”). In the event that the Parties are unable to reach an agreement as to the re-established PILOT Payment on or about the Reestablishment Date, the Parties shall select a neutral mediator and the Parties shall participate in good faith to mediate the dispute, and the PILOT Payments shown in Exhibit “E” shall continue until the new PILOT Payment schedule is re-established. The subsequent PILOT payment calculation shall then be effective, [and due and payable on October 1 of each subsequent year. The calculations shall be in accordance with the appropriate criteria of the State of Texas and the Hays County Appraisal District, based upon the Project’s operations using the same methodology and growth assumptions as provided in Exhibit “E”. In general, such calculation set forth in Exhibit “E” is based on an estimate of the amount of ad valorem taxes the City would receive if the Project and Property were not tax exempt, plus approximately 2%. Payment of the PILOT payment shall be paid from operating revenues of the Project, and shall be subordinate to the payment of operating expenses of the Project and interest and principal on any equity or debt financing encumbering the Project and applicable fees associated therewith, but shall be paid prior to any deferred development fees owed to Developer. If there is not sufficient proceeds available to make any of the required annual PILOT Payment in any year, then such annual PILOT Payment (or portion thereof) shall be deferred, interest and penalty free, and paid out of subsequently received proceeds until all deferred PILOT Payments have been paid in full. The Developer shall maintain adequate books and records at the Project and shall make such books and records, including its audited financial statements, available to the City for inspection, at the City’s expense, during normal business hours to enable verification of compliance with this Section. Should either party hereto institute any action or proceeding in court to enforce any provision of this Section or for damages by reason of an alleged breach of this Section or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all actual and reasonable attorneys’ fees and all court costs in connection with said proceeding.

ARTICLE 5 ANNEXATION

5.01 Involuntary Annexation. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property,

and further agrees not to include the Property in a statutory annexation plan during the term of this Agreement.

5.02 Voluntary Annexation.

(a) Developer desires to voluntarily petition requesting the annexation of all of the Property into the City.

(b) Developer agrees that if a preliminary plan, final plat or related development document is approved by the City, such approval will constitute and be deemed a petition for voluntary annexation by the Developer, and the Property will be subject to annexation at the discretion of the city council. Developer agrees that such annexation shall be deemed voluntary and Developer hereby consents to such annexation as though a petition for such annexation had been tendered by Developer. The Parties agree to use reasonable efforts to complete the annexation prior to the issuance of building permits for the Project. The Developer may request annexation at a time prior to approval of a preliminary plan, final plat, or related development document.

5.03 Municipal Service Plan. The Parties agree to be bound and obligated to a municipal service plan (“Plan”) negotiated by and between the Parties that is sufficient and adequate and hereby binds and obligates Developer, its grantees, successors, purchasers or assigns to install water, wastewater and drainage infrastructure required by this Agreement to service the Property and upon acceptance by the City, the City shall be obligated from such dedication and acceptance to maintain the infrastructure and to provide services. The Plan will be used as the municipal service plan when the City annexes the Property. The City intends to annex the Property within ninety (90) days after the date of the first reading on the ordinance annexing the Property, if such annexation is approved and adopted by the city council. If the Plan conflicts with this Agreement, this Agreement controls.

5.04 Land Use Upon Annexation. On the effective date of the annexation of the Property, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered for the uses and development standards set forth in this Agreement. Developer may make application for the zoning of the Property at any time but not later than thirty (30) days after the effective date of the annexation. Notwithstanding any other provisions of this Agreement, Developer does not waive any rights to use the Property that may arise under Texas Local Government Code Section 43.002.

ARTICLE 6
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

6.01 Assignment of Developer Rights. Developer may assign in whole or part its rights and obligations under this Agreement to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer with the consent of the City, which shall not be unreasonably withheld, to any Developer-affiliated or related entity. Any assignment of Developer's rights and obligations hereunder to an entity that is not affiliated with or related to Developer will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

6.02 Agreement Binding on Assigns. This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

ARTICLE 7
DEFAULT AND NOTICE

7.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period, provided that the cure is completed within ninety (90) days from receipt of the notice to cure the default.

7.02 Remedies for Default. Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever; provided, however, Developer may enforce this Agreement as provided under §245.006 of the Texas Local Government Code

unless the Agreement is terminated pursuant to Section 1.05, in which case any “vested rights” that Developer has for the Project pursuant to Chapter 245, Texas Local Government Code will be deemed expired.

7.03 Enforcement. Except as otherwise provided herein, the Parties may enforce this Agreement by any proceeding at law or equity except the City is not waiving its right to sovereign immunity nor may this paragraph 7.03 be interpreted as or otherwise construed to be a waiver. The City may enforce this Agreement through specific performance. The Developer will not be entitled to obtain any permits or approvals with respect to the Property during such times that the Developer is in default under this Agreement. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter. The remedies described in this Article are in addition to and not in replacement of any other remedies at law or in equity that a Party may have as a result of any breach.

7.04 Litigation. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City’s participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the city council. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City’s processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

7.05 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; or (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section 1.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Kyle Dacy Apartments Ltd.
c/o NRP Properties LLC
ATTN: Noam Magence
1228 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 8
PROPERTY AND MORTGAGEE OBLIGATIONS

8.01 Mortgage Acceptance. Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect, provided the Project is to be constructed, subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement.

8.02 Mortgage Protection. This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property (“Lender”) may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Developer and its Lenders’ representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

(a) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 7.05, provide the Lender with a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.

(b) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.

(c) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender’s acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

8.03 Certificate of Compliance. Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;

- (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and
- (c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

**ARTICLE 9
MISCELLANEOUS**

9.01 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

9.02 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

9.03 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas, within thirty (30) days after its execution.

9.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Venue for any dispute arising out of the terms of this Agreement shall be in Hays County, Texas.

9.05 Termination or Amendment By Agreement. Except as otherwise provided in this Agreement, this Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination.

9.06 No Oral or Implied Waiver. The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

9.07 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

9.08 Effective Date. This Agreement, will become legally effective and binding on the parties upon the date the City Council approves this agreement, subject to the parties executing this Agreement.

9.09. Timely Performance. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

9.10. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9.11. Anti-Boycott Verification. To the extent this Agreement constitute a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of 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.

9.12. Iran, Sudan and Foreign Terrorist Organizations. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, 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.

[Signatures appear on following pages]

DEVELOPER:

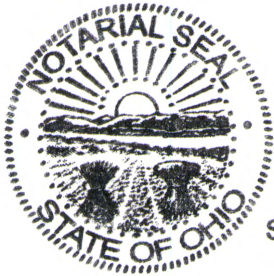
KYLE DACY APARTMENTS, LTD., a Texas limited partnership

By: NRP Affordable Subsidiary II LLC, an Ohio limited liability company, as sole owner

By: _____
Name: Noam Magence
Title: Secretary

THE STATE OF Ohio §
 §
COUNTY OF Cuyahoga §

This instrument was acknowledged before me on February 26, 2019, by Noam Magence, as Secretary of NRP Affordable Subsidiary II LLC, an Ohio limited liability company, as sole owner of Kyle Dacy Apartments, Ltd., on behalf of said limited partnership.

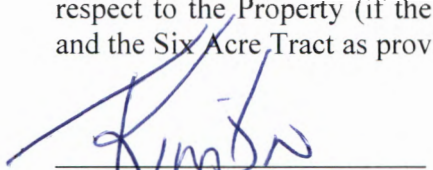


TYLER DAVIS
Attorney at Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

[Signature]
Notary Public in and for the State of Ohio

JOINDER:

John Kimbro, Owner of the Kimbro Property and the Six Acre Tract as of the Effective Date signs this Agreement for the following purposes: (i) to authorize the Developer to file applications for development of the Property in accordance with this Agreement (ii) to acknowledge the terms and conditions under which the City will provide the Six Acre Tract with water service as described in Section 4.01(a) and (iii) to agree to deliver the CCN release with respect to the Property (if the Property remains owned by Kimbro at the time of such release) and the Six Acre Tract as provided herein.



JOHN KIMBRO
Dated: 03.12.19

EXHIBIT “A”

METES AND BOUNDS DESCRIPTION 24.01 ACRES OUT OF THE ELISHA PRUETT SURVEY No. 23, ABS. 376 AND THE JESSE B. EAVES SURVEY No. 5, ABS. 166

ALL THAT CERTAIN PARCEL OR TRACT OF LAND BEING 24.01 ACRES, MORE OR LESS, OUT OF THE ELISHA PRUETT SURVEY No. 23, ABSTRACT No. 376 AND THE JESSE B. EAVES SURVEY No. 5, ABSTRACT No. 166, ALL IN HAYS COUNTY, TEXAS, SAID 24.01 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning for reference at a ½” iron rod found in the east line of County Road 205, also known as Dacy Lane, in the west line of that tract called 27.525 acres in a deed to Mary A. C. Kelly-Dillon et vir David M. Dillon, of record in Volume 394, Page 770 of the Hays County Deed Records, at the southwest corner of a tract called 5.00 acres out of said Dillon 27.525 acre tract described in a deed to the Texas Veterans Land Board, of record in Volume 1389, Page 154 of the Hays County Deed Records (now called 4.776 acres conveyed to FP Oil LLC per Document No. 16010012 of the Official Public Records of Hays County, Texas), at the northwest corner of that certain 0.234 acre tract conveyed to Hays County, Texas right-of-way widening on C.R. 205 (Dacy Lane), of record in Document No. 17011080 of the Official Public Records of Hays County, Texas (OPRHTC), and the westerly northwest corner of that certain 30.458 acres conveyed to John Kimbro of record in Document No. 16013518 of the OPRHCT;

THENCE with the north line of said 0.234 acres, also FP Oil’s south line, N89°42’E for a distance of 41.13 feet to a ½” rebar found, capped “Chaparral” at the northeast corner of said 0.234 acres, for the westerly northwest corner and POINT OF BEGINNING of the herein described 24.01 acres;

THENCE with the common line between Kimbro and FP Oil, N 89°42’ E 910.79 to a ½” iron rod found, taken to mark the southeast corner of said FP Oil tract, for an interior corner hereof

THENCE continuing with the common line between Kimbro and FP Oil, N00°06'W for a distance of 202.67 feet to a galvanized bolt found at FP Oil's northeast corner, also the southwest corner of a tract called 6.809 acres in a deed to Angel Rodriguez, of record in Volume 2109, Page 798 of the Hays County Deed Records, for the northerly northwest corner hereof;

THENCE with Kimbro's north line and the south line of said Rodriguez tract, the following 3 calls:

- 1.) S86°46'E, at a distance of approximately 95 feet passing the east line of the Elisha Pruett Survey and west line of the Jesse B. Eaves survey, and continuing on for a total distance of 120.22 feet to a ½" iron pipe found at an angle point
- 2.) N79°13'E for a distance of 199.90 feet to a ½" iron pipe found at an angle point
- 3.) N21°35'E for a distance of 283.95 feet to a 5/8" iron pipe found at the southeast corner of said Rodriguez tract, in the south line of a tract called 10.44 acres in a deed to Charles J. Holley, of record in Volume 691, Page 724 of the Hays County Deed Records, for an angle point hereof

THENCE continuing with Kimbro's north line and the south line of said Holley tract, the following 2 calls:

- 1.) S66°52'E for a distance of 236.51 feet to a 5/8" iron pipe found at an angle point
- 2.) N66°03'E for a distance of 328.26 feet to a ½" iron pipe found at the northerly northwest corner of a tract called 12.966 acres in a deed to Joseph P. Salmon, of record in Volume 1738, Page 746 of the Hays County Deed Records, for the northeast corner hereof;

THENCE with Kimbro's east line and a west line of said Salmon tract, S20°50'E, at a distance of 163 feet pass the apparent center of a natural gas pipeline, and continuing on for a total distance of 348.02 feet to a ½" iron pipe found at an interior corner of said Salmon tract, for the easterly southeast corner hereof;

THENCE with a northwest line of said Salmon tract and Kimbro's southeast line the following 3 calls:

- 1.) S62°30'W, at a distance of approximately 231 feet passing the apparent center of a natural gas pipeline, and continuing on for a total distance of 459.35 feet to a ½" iron pipe found at an angle point
- 2.) S37°07'W for a distance of 192.95 feet to a ¾" iron pipe found at an angle point
- 3.) S36°26'W 271.78 feet to a ½" iron pipe found at Salmon's southwest corner, and the northeast corner of a tract called 7.44 acres in a deed to Leo Sanchez et ux, of record in Volume 732, Page 163 of the Hays County Deed Record, for an angle point on the southeasterly line hereof;

THENCE with Sanchez' northerly line the following two courses:

- 1.) S 36°26' W 150.64 feet to a ½" rebar set, capped RPLS 3693;
- 2.) S 72°53' w 398.16 feet to a ½" iron rod found at Sanchez' northwest corner, also the northeast corner of that certain tract of land conveyed to Jose and Anna Ayala by deed recorded in Document No. 070005043 of the OPRHCT, for a point on the southeasterly line hereof;

THENCE with Ayala's north line, S 72°53' W 149.84 fee to a ½" iron pipe found at Ayala's northwest corner, for a point on the south line hereof;

THENCE crossing through Kimbro's 30.458 acres, the following three courses:

- 1.) S 89°26'33" W 201.32 feet to a ½" rebar set, capped "RPLS 3693", a southerly southwest corner hereof;
- 2.) N 00°18'00" W 289.44 feet to a ½" rebar set, capped RPLS 3693, for a southwesterly corner hereof;
- 3.) S 89°42'00" W 509.11 feet to a ½" rebar set, capped RPLS 3693, on the east right-of-way line of Dacy Lane, for the southwest corner hereof;

THENCE with the east right-of-way line of Dacy Lane, also Kimbro's west line, N 00°30'50" W 29.31 feet to a ½" rebar found, capped "Chaparral", at the south corner of said 0.234 acre right-of-way widening tract, for an angle point on the west line hereof;

THENCE with the east line of said 0.234 acres, the following 3 calls:

- 1.) With a curve to the left, whose radius is 732.00 feet, arc is 169.62 feet, central angle is $13^{\circ}16'36''$, and whose chord bears N $11^{\circ}22'18''$ E 169.24 feet to a $\frac{1}{2}$ " rebar found, capped "Chaparral", for an angle point;
- 2.) N $04^{\circ}45'39''$ E 66.34 feet to a $\frac{1}{2}$ " rebar found, capped "Chaparral", for an angle point;
- 3.) N $00^{\circ}24'58''$ W 103.86 feet to the POINT OF BEGINNING and containing 24.01 acres of land, more or less.

EXHIBIT B

SIX ACRE TRACT

[See following page]

METES AND BOUNDS DESCRIPTION
6.21 ACRES OUT OF THE
ELISHA PRUETT SURVEY No. 23, ABS. 376
AND THE JESSE B. EAVES SURVEY No. 5, ABS. 166

ALL THAT CERTAIN PARCEL OR TRACT OF LAND BEING 6.21 ACRES, MORE OR LESS, OUT OF THE ELISHA PRUETT SURVEY No. 23, ABSTRACT No. 376 AND THE JESSE B. EAVES SURVEY No. 5, ABSTRACT No. 166, ALL IN HAYS COUNTY, TEXAS, AND BEING PART OF THAT CERTAIN 30.458 ACRES CONVEYED TO JOHN KIMBRO BY DEED RECORDED IN DOCUMENT NO. 16013518 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (OPRHCT), SAID 6.21 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at an iron pipe found on Kimbro's south line, at the northwest corner of Lot 1, Miranda Subdivision, a subdivision in Hays County, Texas as recorded in Volume 5, Page 172 of the Plat Records of Hays County, Texas, for a southerly southwest corner hereof;

THENCE with Kimbro's south line, also the north line of a 60' wide road easement shown on said plat of Miranda Subdivision, N 61°53' W 31.07 feet to a ½" iron rod found, capped "RPLS 3693", at the southeast corner of a 0.06 acre roadway easement described in Volume 394, Page 770 of the OPRHCT, for the most westerly southwest corner hereof;

THENCE with Kimbro's west line, also the east line of said 0.06 acre roadway easement, N 01°25' W 147.45 feet to a ½" iron rod found at the north corner of said easement, on the east right-of-way line of Dacy Lane, also known as County Road 205, for an angle point on the west line hereof;

THENCE continuing with Kimbro's west line, also the east right-of-way line of Dacy Lane, N 00°30'50" W 305.43 to a ½" iron rod found, capped "RPLS 3693", for the northwest corner hereof;

THENCE crossing through said Kimbro tract, and with the southerly line of 24.01 acres conveyed from Kimbro to NRP Properties, LLC, (Sale pending as of October 17, 2018) the following 3 courses:

- 1) N 89°42' E 509.11 feet to a ½" iron rod found, capped "RPLS 3693", for the most northerly northeast corner hereof;
- 2) S 00°18'00" E 289.44 feet to a ½" rebar found, capped "RPLS 3693", for an inside ell corner hereof;
- 3) N 89°26'33" E 201.32 feet to an iron pipe found on Kimbro's south line, at the northwest corner of the Jose and Anna Ayala property described in Document No. 070005043 of the OPRHCT, for the most easterly northeast corner hereof;

THENCE with the common line between Kimbro and Ayala, S 07°42' E 132.90 feet to an iron pipe found at an angle point on Ayala's west line, also the northeast corner of the Francisco Garcia property (Hays County Appraisal District R123425, no deed available), for an angle point hereof;

THENCE with Kimbro's south line, also Garcia's north line the following two calls:

1. S 67°25' W 108.31 feet to an iron pipe found;
2. S 89°02' W 101.73 feet to an iron pipe found at Garcia's northwest corner, also the northeast corner of Lot 1 of the above described Miranda Subdivision for an angle point on the south line hereof;

THENCE with the common line between Kimbro and said Lot 1, S 89°07' W 494.31 feet to the POINT OF BEGINNING and containing 6.21 acres of land, more or less.

EXHIBIT C CONCEPT PLAN

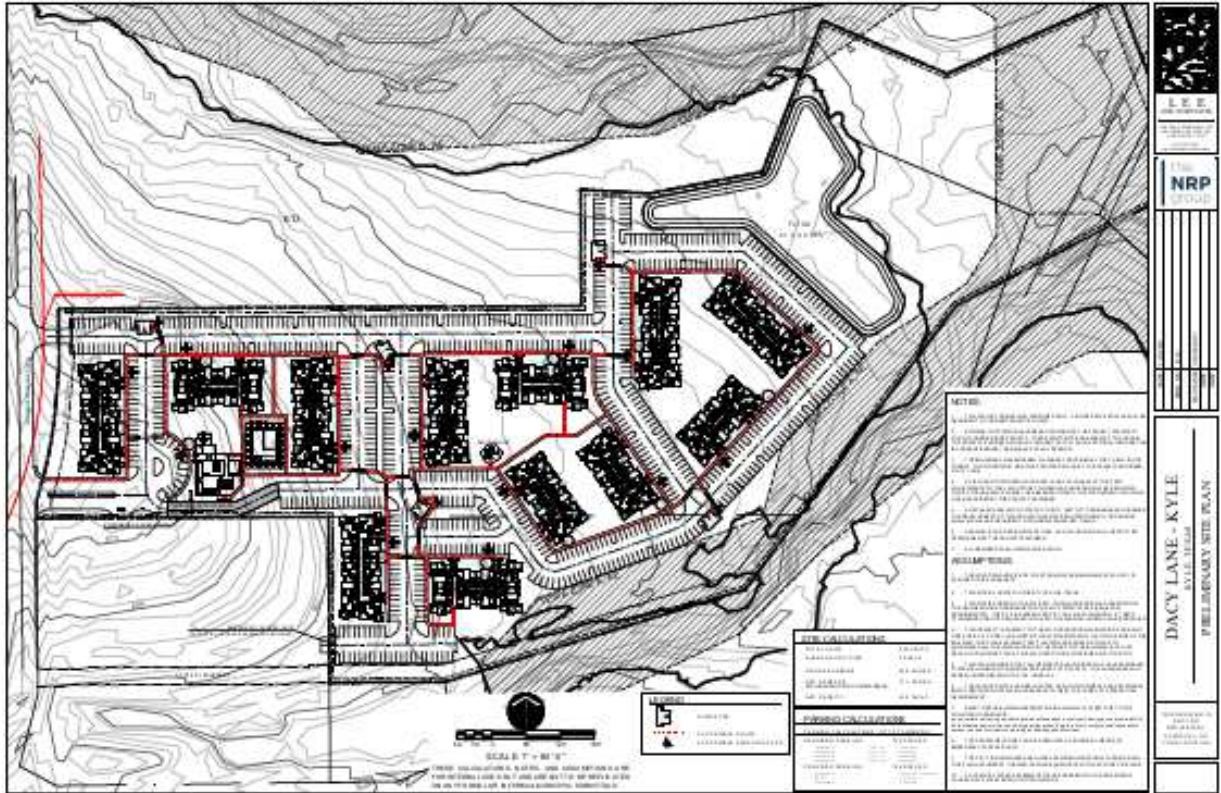


EXHIBIT D IMPACT FEES

NRP - Kyle Dacy Apartments

Impact Fees

Item	Fee/LUE	Number of Units	Number of LUE's	Fee
Sewer Impact fee Multi Family	\$ 2,826.00	324	162.0	\$ 457,812.00
Sewer Impact fee Commercial (< 4,980 SF)	\$ 2,826.00	0	0	\$ -
			Sub Total	\$ 457,812.00
Water Impact Fee Multi Family	\$ 3,535.00	324	162	\$ 572,670.00
Water Impact fee Commercial (< 4,980 SF)	\$ 3,535.00	0	0	\$ -
Irrigation meters (1-2")	\$ 3,535.00	0	8	\$ 28,280.00
			Sub Total	\$ 600,950.00
			Total Impact Fees	\$ 1,058,762.00

Parkland Dedication

Item	Fee/LUE	Number of Units	Number of LUE's	Fee
Land	\$ 750.00	324	162	\$ 243,000.00
Improvements	\$ 750.00	324	162	\$ 243,000.00
		Total		\$ 486,000.00
Multifamily Adjacent Lane Mile Fee	\$ 81.00	6.65	324	\$ 174,522.60
		Total		\$ 174,522.60

EXHIBIT E PILOT CALCULATION

City Taxes

10/12/2018 2:53 PM

THE NRP GROUP LLC
Kyle, Kyle, TX
Scenario: 4% LIHTC

<u>Annual Tax Calculation</u>		<u>City's Portion of Taxes over 15 Years</u>				
			Estimated Taxes	Expense Inflation 2.00%	Estimated Taxes	Discount Factor 10.00%
NOI w/o Tax	2,926,051	Closing	\$ -		-	1
		Construction	-		-	0.909
Cap Rate	10.00%	Lease-up	-		-	0.826
Millage Rate	2.98%	Year 1	122,117		91,748	0.751
Loaded Cap	12.98%	Year 2	124,559		85,076	0.683
		Year 3	127,051		78,888	0.621
Assessed Value	22,547,456	Year 4	129,592		73,151	0.564
Millage Rate	2.98%	Year 5	132,183		67,831	0.513
Total Full Taxes	671,305	Year 6	134,827		62,898	0.467
		Year 7	137,524		58,323	0.424
City Share	0.5416%	Year 8	140,274		54,082	0.386
Total Rate	2.98%	Year 9	143,080		50,149	0.350
% to City	18.19%	Year 10	145,941		46,501	0.319
City Payment	122,117	Year 11	148,860		43,119	0.290
		Year 12	151,837		39,983	0.263
		Year 13	154,874		37,076	0.239
		Year 14	157,971		34,379	0.218
		Year 15	161,131		31,879	0.198
		Total	2,111,821		855,084	Value in Today's \$
					-	Budgeted Payment to City