

**DEVELOPMENT AGREEMENT  
ESTABLISHING DEVELOPMENT STANDARDS  
FOR THE AS YET UNNAMED SUBDIVISION/DEVELOPMENT (LOT 1-A)**

This Development Agreement Establishing Development Standards for the As Yet Unnamed Subdivision/Development (Lot 1-A) (the "Agreement") is made and entered into, effective as of the 11<sup>th</sup> day of January 2020, by and between the **City of Kyle, Texas**, a Texas home rule municipal corporation (the "City"), and **NADG LFI KYLE LP**, a Texas limited partnership (the "Developer"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

**Section 1. Purpose; Consideration.**

- (a) The Developer owns that certain property located in Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Property") and wishes to develop all or a portion of the Property for multi-family uses (the "Development"). The Developer desires to construct the Property as part of a master-planned mixed-use development with cohesive architectural materials and styles and desires that such development standards for the Development be binding on Developer's successors' and assigns. The Developer wishes to have certainty regarding the regulations that govern the development of the property and desires that the City be able to enforce the development standards set forth herein through its building permit, inspection, and certificate of occupancy processes by this agreement, given that House Bill 2439 adopted in the 86<sup>th</sup> Legislative Session may limit the ability of cities to enforce certain development standards governing building materials by ordinance. The Developer agrees that the Property is an area of architectural significance and agrees to develop the Property in accordance with the I-35 Overlay District Development Standards (defined below), as modified by this Agreement.
- (b) The Property is located within the area that is subject to the I-35 Overlay District Development Standards set forth in Section 53-899, Chapter 53, City of Kyle Code of Ordinances, as the same are in effect as of the date hereof (the "I-35 Overlay District Development Standards"), which is an area of architectural importance and significance to the City.
- (c) The Developer will benefit from the City enforcing the Development Standards and the process for enforcing such Development Standards set forth in Sections 53-891 through 53-897, City of Kyle Code of Ordinances, as the same are in effect as of the date hereof (the "CUP Approval Process"), because it will be more efficient and cost-effective for compliance with such standards to be monitored and enforced through the City's building permit, site development, and inspection processes and will help ensure that the Development is built out as planned by the Developer. The Developer will further benefit from assurance as to the development standards for the Development. The City will benefit from this Agreement by having assurance regarding certain development standards for the Development, having certainty that such Development Standards may be enforced by the City, preservation of areas of architectural significance in the City, and preservation of property values within the City.

- (d) The benefits to the Parties set forth in this Article 1, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

**Section 2. Term; Termination.**

- (a) The term of this Agreement shall be in full force and effect from the Effective Date hereof, subject to earlier termination as provided in this Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the issuance of the final certificate of occupancy for the final structure in the Development; provided that Sections 5, 7, and 8 through 25 hereof shall remain in full force and effect until the Quarry permanently ceases operations.
- (b) The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer defaults under the terms of this Agreement, subject to the notice and cure provisions in Section 7.

**Section 3. Development Standards.**

- (a) The Development and the structures constructed and located therein (notwithstanding whether such structures are used for residential, multi-family, commercial, or mixed-uses) shall be constructed and developed in accordance with the I-35 Overlay District Development Standards, which are incorporated herein for all purposes, except as modified by this Agreement (referred to herein as the “Development Standards”).
- (b) The CUP Approval Process is hereby incorporated herein for all purposes and shall apply to the development of the Property. The Developer shall obtain approval of a conditional use permit pursuant to the CUP Process. The development details and standards approved by through the CUP Approval Process shall become part of the Development Standards, and in the event of a conflict between the approved conditional use permit and the Development Standards, the approved conditional use permit shall control.
- (c) The Developer agrees not to build, market, or operate the project with the name “Kyle Towne Center” or similar working and/or operating project name.
- (d) The I-35 Overlay District Development Standards are modified as follows:
  - (1) Horizontal lap siding may be used as exterior cladding on structures designed and utilized for residential uses, so long as (i) that siding is a fiber cement or cementitious siding product, such as James Hardie siding and panels, or similar material, and (ii) the use of other materials are utilized, such as red brick and limestone. At a minimum, such other materials shall be used in the public facing exterior cladding of the ground floor.

**Section 4. Building Permits.** The Developer acknowledges and agrees that compliance with Section 3 will be a condition of issuance of building permits, site development permits, and certificates of occupancy for structures on the Property. Developer further agrees that the City may use its building permitting, site development permitting, inspection, and enforcement processes and procedures to enforce the requirements of Section 3 above, including but not limited to

rejection of applications and plans, stop work orders, and disapproval of inspections for applications and/or work that does not comply with this Agreement. Applications for building permits and site development permits, as applicable, must reasonably demonstrate compliance with this Agreement, as well as the Applicable Regulations, in order for such application to be approved and a building permit issued. Plans demonstrating compliance with this Agreement must accompany a building permit application and will become a part of the approved permit. Any structure constructed on the Property must comply with this Agreement and the Applicable Regulations for a certificate of occupancy to be issued for such structure. Structures built in compliance with the Applicable Regulations and the approved plans will be entitled to receive a certificate of occupancy; provided that the structure complies with the Applicable Regulations.

**Section 5. Notice of Quarry Operations; Compatibility.** The Developer acknowledges that the Texas Lehigh Cement Company Quarry is located west and northwest of the Property (the “Quarry”). Any owner of multi-family developments located on the Property must include an addendum in the form attached hereto as Exhibit B (the “Lease Addendum”) in each residential lease. Such obligation will terminate in the event the Quarry permanently ceases operations. Upon request by the City, the owner of the multi-family development shall deliver to the City a copy of the form of the Lease Addendums being used by the owner. Such owner shall further keep on file at the leasing office on the Property copies of signed Lease Addendums, and shall allow the City to inspect the Lease Addendums during regular business hours up request by the City, unless disclosure thereof is prohibited under laws governing confidentiality, and in such event the owner shall produce those records that are not made confidential by law and will redact the confidential portions of such documents that are confidential by law. In the event that such owner fails to comply with this Section, then if requested by the City, such owner shall post signage on the Property, in locations approved by the City, giving tenants and occupants of the Property notice of the Quarry operations, including notice that the Quarry produces noise, vibration, sand and dust. The number, location, and content of signs must be approved by the City.

The City agrees that the City shall not require the owner or developer of the property located at 3730 Kyle Crossing, Kyle, Texas 78640 (further identified by tax identification number R113906, and referred to as Kyle Town Center, Block A, Lot 2, being 13.21 acres, more or less) to install or construct buffering or screening improvements or comply with lighting requirements that are required due to the property being located adjacent to the Development; provided that the owner or developer of said property will comply with buffering, screening, and lighting requirements that apply to said property regardless of its location adjacent to the Development.

**Section 6. Development of the Property.** Except as modified by this Agreement, the Development and the Property will be developed in accordance with the Development Standards, this Agreement, and all applicable local, state, and federal regulations, including but not limited to the City’s ordinances and the zoning regulations applicable to the Property and amendments thereto that may be applied to the Development and the Property not in contravention of Chapter 245, Texas Local Government Code, thereto (the “Applicable Regulations”); provided that notwithstanding Chapter 245, the Developer shall develop the Property in accordance with the Development Standards. If there is a conflict between the Applicable Regulations and the Development Standards, the Development Standards shall control. The City agrees that the Development Standards shall govern the Property with respect to any standards relating to building materials and, accordingly, no

Applicable Regulation now existing or hereafter promulgated shall regulate building materials other than the Development Standards, unless approved in writing by the owner of the affected portion of the Property; provided that this sentence is not intended to waive compliance with the City's adopted international building codes.

**Section 7. Assignment of Commitments and Obligations; Covenant Running with the Land.**

This Agreement shall constitute a covenant that runs with the Property and is binding on future owners of the Property, and a copy of this Agreement shall be recorded in the Official Public Records of Hays County, Texas. The Developer and the City acknowledge and agree that this Agreement is binding upon the City and the Developer and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.

**Section 8. Default.** Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days 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 that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy. In addition to the other remedies set forth herein, the City may withhold approval of a building permit application or a certificate of occupancy for a structure that does not comply with the Development Standards. Notwithstanding anything to the contrary herein, each owner of a parcel or lot located within the Property shall be severally responsible to the City for the obligations hereunder relating to such owner's parcel or lot and shall be severally entitled to the benefits granted to Developer hereunder with respect to such owner's parcel or lot. By way of example, if an owner of a parcel or lot fails to comply with the terms of this Agreement, the City's remedies hereunder shall be limited to such owner and such owner's parcel or lot that is failing to comply with the terms of this Agreement and the owners of other lots or parcels within the Property shall not be affected thereby.

**Section 9. Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, including, without limitation, Chapter 245, Texas Local Government Code, and neither party waives any legal right or defense available under law or in equity.

**Section 10. Attorneys Fees.** In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

**Section 11. Waiver.** Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement

must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

**Section 12. Force Majeure.**

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

**Section 13. Notices.** Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

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

with copy to:

The Knight Law Firm, LLP  
City Attorney  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed:

c/o NADG LFI KYLE LP  
2718 Fairmount Street  
Dallas, Texas 75201  
Attn: Stephen Preston  
Direct: (214) 850-5186  
spreston@nadgus.com

With Copy To:

North American Development Group  
Suite One  
2851 John Street,  
Markham, Ontario, L3R 5R7  
Attn: Gilbert J. Weiss, LL.B.  
Vice President and General Counsel  
Direct: (905) 968-3206  
gweiss@nadg.com

and

Chris Fuller  
Wick Phillips Gould & Martin, LLP  
3131 McKinney Avenue, Suite 100  
Dallas, Texas 75204  
Direct: 214.740.4023  
cfuller@wickphillips.com

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

**Section 14. Waiver of Alternative Benefits.** The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. The Developer may not seek monetary damages against the City in connection with a default by the City under this Agreement.

**Section 15. Severability.** Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

**Section 16. Agreement and Amendment.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties. This Agreement may not be amended with respect to all of the Property except by a writing approved by the City Council of the City that is signed by all owners of the Property and with respect to a portion of the Property by a writing approved by the City Council of the City that is signed by all owners of the portion of the Property affected by the amendment.

**Section 17. No Joint Venture.** The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

**Section 18. No Third Party Beneficiaries.** 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 provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

**Section 19. Effective Date.** The Effective Date of this Agreement is the defined date set forth in the first paragraph.

**Section 20. Recordation.** This Agreement or a memorandum of Agreement acceptable to the City and Developer shall be recorded in the Official Public Records of Hays County, Texas.

**Section 21. Texas Law Governs.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

**Section 22. Anti-Boycott Verification.** To the extent this Agreement constitutes 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.

**Section 23. 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.

**Section 24. Time is of the Essence.** It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

**Section 25. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

**Exhibit A** – Property Description

**Exhibit B** – Lease Addendum

EXECUTED in multiple originals this the 16<sup>th</sup> day of January, 2020.

**CITY:**  
**City of Kyle, Texas**  
a Texas home-rule municipal corporation

Attest:

By: Jennifer A. Vetrano  
Name: Jennifer Vetrano  
Title: City Secretary

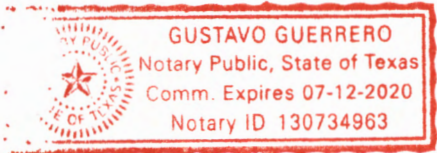
By: Travis Mitchell  
Name: Travis Mitchell  
Title: Mayor

THE STATE OF TEXAS           §  
COUNTY OF HAYS           §

This instrument was acknowledged before me on this 16<sup>th</sup> day of January, 2020, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

Gustavo Guerrero  
Notary Public, State of Texas

(SEAL)





**DEVELOPER:**

**NADG LFI KYLE LP,**  
Texas limited partnership

By: NADG LFI KYLE GP LLC, a Texas limited liability company, its general partner

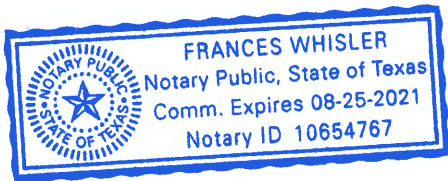
By: M  
Print Name: Stephen Preston  
Title: ASO

**THE STATE OF TEXAS** §  
**COUNTY OF** Dallas §

This instrument was acknowledged before me on this 14<sup>th</sup> day of January, 2020, by Stephen Preston, ASO of NADG LFI KYLE GP LLC, a Texas limited liability company, the general partner of NADG LFI KYLE LP, a Texas limited partnership.

(SEAL)

Frances Whisler  
Notary Public, State of Texas



# EXHIBIT "A"

## Description of Property



Exhibit " " "  
14.360 Acres

### FIELD NOTE DESCRIPTION

DESCRIPTION OF A 14.360 ACRES TRACT OF LAND BEING A PART OF LOT 1-A, BLOCK A, SECOND REPLAT OF KYLE TOWNE CENTER, LOT 1, BLOCK A, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 17, PAGE 317, PLAT RECORDS OF HAYS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod found in the east right of way line of Kyle Crossing (County Road No. 210) and west line of said SECOND REPLAT OF KYLE TOWNE CENTER, LOT 1, BLOCK A, at an interior corner of said Lot 1-A and the northwest corner of Lot 1-B, Block A of said SECOND REPLAT OF KYLE TOWNE CENTER, LOT 1, BLOCK A;

**THENCE**, with the common line of said east right of way line and west line of said lot 1-A, the following three (3) courses and distances:

1. North 17°08'28" East, a distance of 29.69 feet to a 1/2 inch iron rod found at the beginning of a curve to the left;
2. With said curve to the left, having a radius of 5040.00 feet, an arc length of 798.57 feet, a delta angle of 09°04'42" and a chord bearing and distance of North 12°35'59" East, 797.73 feet, to a 1/2 inch iron rod found at the end of said curve;
3. North 08°03'39" East, a distance of 296.26 feet to a 1/2 inch iron rod found in the south line of that tract of land conveyed to 3700 Kyle Crossing LLC in a deed recorded in Volume 4204, Page 678, of the Official Public Records of Hays County, Texas, for the northwest corner of said Lot 1-A;

**THENCE**, with the north line of said Lot 1-A the following three (3) courses and distances:

1. South 82°08'50" East, a distance of 583.51 feet to a 1/2 inch iron rod found;
2. South 07°35'15" West, a distance of 61.38 feet to a 1/2 inch iron rod found;
3. South 82°20'33" East, a distance of 24.52 feet to a point;

**THENCE**, South 17°10'22" West, departing the north line of and over and across said Lot 1-A, a distance of 1139.76 feet to a point in the westerly line of said Lot 1-A and north line of said Lot 1-B;

**THENCE**, North 74°37'28" West, with the common line of said Lot 1-A and Lot 1-B, a distance of 499.92 feet to the POINT OF BEGINNING containing 14.360 acres of land within these metes and bounds.

Cunningham | Allen, Inc. • Engineers • Surveyors

3103 Bee Cave Road, Suite 202 • Austin, Texas 78746-6819 Tel: (512) 327-2946 • Fax: (512) 327-2973 •

TBPE FIRM #: F-284 / TBPLS FIRM #: 10000900

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*Handwritten:*  
5/3/18





**EXHIBIT B**

**Form of Lease Addendum**

**Addendum to Residential Lease Agreement**

The undersigned tenant is aware of the existence and proximity of the Texas Lehigh Cement Company Quarry, located west and northwest of the apartment development. The undersigned tenant is aware that there may be noise, vibration, sand, and dust emanating from such quarry to the apartment development and the undersigned tenant's unit located therein.

**Tenant hereby acknowledges receipt of this Addendum.**

DATE: \_\_\_\_\_ Tenant: \_\_\_\_\_

THE STATE OF TEXAS

COUNTY OF HAYS

I hereby certify that this instrument was FILED on the  
date and the time stamped hereon by me and was duly  
RECORDED in the Records of Hays County, Texas.

**20002400**      **AGREEMENT**  
01/21/2020 03:53:06 PM Total Fees: \$74.00

 Elaine H. Cárdenas

Elaine H. Cárdenas, MBA, PhD, County Clerk  
Hays County, Texas