

DEVELOPMENT AGREEMENT
ESTABLISHING DEVELOPMENT STANDARDS FOR THE AS YET UNNAMED
SUBDIVISION/DEVELOPMENT (LOT __)

This Development Agreement Establishing Development Standards for the As Yet Unnamed Subdivision/Development (Lot __) (the “Agreement”) is made and entered into effective as of the 18th day of August 2020 by and between the City of Kyle, Texas, a Texas home rule municipal corporation (the “City”) and Kalterra Capital Partners LLC, a Texas limited liability corporation (“the Developer”). The City and the Developer are sometimes referred to herein as the “Parties.” The Parties agree as follows.

Section 1. Purposes; Consideration.

- (a) The Developer is under contract to own 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 and Retail 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 successor 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 the agreement given that House Bill 2439 adopted in the 86th 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 the Agreement.
- (b) The Property is located within the area that subject to the I-35 Overlay District Development Standards set forth in Section 53-899. 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 Section 53-891 through 53-897 City of Kyle Code of Ordinances as the same are in effect 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 process 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 the Agreement, 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 Section 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. Base Zoning & Supplemental Zoning Standards.

- (a) Base Zoning – Any zoning, land use requirement or restriction shall conform to those requirements and/or standards of the base zoning detailed in Exhibit B – Zoning Exhibit.
- (b) Comprehensive Zone Standards – The following standard applies to all development within this Planned Development District:
 - a. Where not specified, development shall otherwise comply with the standards outlined in Chapter 53, Article II of the Kyle Texas Code of Ordinances.
- (c) Concept Plans – Development of any property within the boundaries of this Planned Development District shall generally conform with Exhibit C – Site Plan. If there is any conflict between the text of this ordinance and the concept plan, the text of this article controls.
 - a. *Conformance with preliminary plan.* Unless the Developer wishes to resubmit for preliminary plan processing, the final plat shall conform substantially to the preliminary plan as approved.
 - b. *Resubmission because of change or delay.* In the event that any of the following significant change conditions occur during the processing of a subdivision plat, the planning and zoning commission may recommend or council may require resubmission as a preliminary plan or final plat:
 - i. Any change that causes the preliminary plan to be significantly inconsistent with the city's master plan for the property.
 - ii. More than a 20 percent change in the overall concept or design of the development or layout of the lots.
 - iii. Any change in land use categories that total more than 20 percent of the land area.
 - iv. Any change in the total number of residential or nonresidential lots totaling more than 20 percent of the total number of lots for any individual category of lots.
 - v. Any change in classification of arterial or collector streets or in alignment of arterial or collector streets of more than 150 feet.
 - vi. Any change in parkland that totals more than 20 percent of the proposed parkland area.
 - vii. Any change in detention pond or drainage channel location by more than 150 feet.
 - viii. Any change in phase timing by more than one year.
 - ix. Any change that would require a variance from city regulations and/or this agreement.
- (d) Revision of final plat
 - a. If one or more of the following changes to the project has been made between the filing or approval of a preliminary plan and the filing or approval of a final plat, the concept plan and preliminary plan previously submitted to the city shall be submitted to the planning and zoning commission and council to ensure compliance with city regulations and/or this agreement.

The following are deemed substantial changes requiring submission to the city:

- i. Any change that causes the final plat to be significantly inconsistent with the city's master plan.

- ii. Any change in land use categories that total more than five percent of the land area.
- iii. Any change in the total number of residential or nonresidential lots totaling more than five percent of the total number of lots for any individual category of lots.
- iv. Any change in classification of arterial or collector streets or in alignment of arterial or collector streets of more than 75 feet.
- v. Any change in parkland that totals more than five percent of the proposed parkland area.
- vi. Any change in detention pond or drainage channel location by more than 75 feet.
- vii. Any change in drainage channel location by more than 75 feet.
- viii. Any change in phase timing by more than one year.
- ix. Any change that would require a variance from the city's regulations and/or this agreement.

b. *Procedure for submission.*

- i. A concept plan that is required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-48 and 41-108 of the City of Kyle subdivision regulations.
- ii. A preliminary plan that is required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-51 and 41-109 of the City of Kyle subdivision regulations.
- iii. Construction plans and final plats that are required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-53 and 41-110 of the City of Kyle subdivision regulations.
- iv. For cause shown, the city council may waive the requirement for resubmission of a revised plan or plat.
- v. Current regulations govern. If a concept plan or preliminary plan of the project is required to be resubmitted under this section, the subdivision shall be governed by the regulations, ordinances, rules, expiration dates, or other properly adopted requirements of the city in effect at the time of the submission to the city.

- c. *Extended delay in processing.* When the developer does not complete the review process within 12 months from the date of approval of the preliminary plan, extensions may be granted by the planning and zoning commission for good cause, for additional six-month periods.

(e) Detailed Zone Standards

a. Zone A – Retail & Services

- i. Base Zoning – Zone A base zoning is RS (Retail and Services District).
- ii. Specific Use Standards. The following specific uses are not deemed undesirable and Developer consents to the requirement they only be allowed by a Conditional Use Permit.
 - 1. Convenience Store with Fuel Sales
 - 2. Car Wash
 - 3. Mattress Stores
 - 4. Liquor Stores
 - 5. Furniture Stores

6. Pawn Shops
 7. Financial Institutions
 8. Medical Office
- iii. The following review and approval criteria must be used in reviewing and taking action on the specific uses listed in Section 2, (e) (a) (ii):
1. Whether the proposed use is consistent with the policies of the comprehensive plan;
 2. Whether the proposed use complies with the requirements of the zoning ordinance;
 3. Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district;
 4. Whether the proposed use is compatible with adjacent properties and land uses, including consideration of:
 - a. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use;
 - b. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;
 - c. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;
 - d. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use;
 - e. Whether the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings; and
 - f. Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use;
 - g. Whether adequate means of ingress and egress are proposed, with particular reference to nonmotorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access;
 - h. Whether adequate provision has been made for refuse and service areas; and
 - i. Whether the proposed building, as a result of its proposed height, will create a negative shadow impact on any adjoining lot or building.
 - j. Whether the proposed use is over represented within, or near to, the community.
- b. Zone B – Multifamily
- i. Base Zoning – Zone B base zoning is R-3-3 (Apartments Residential 3)

ii. Specific Use Standards

1. Density – The maximum residential density is 40 units per acres.
2. Building Height – Maximum height of any building or structure shall be four stories but not exceed 60 feet.
3. Parking – A minimum of 1.3 off-street parking spaces shall be provide for each living unit.
4. Roof – Roof shall be designed as a flat roof defined as a low-slope roof as having a slope of 3-in-12 or less and shall not be visible from street view.

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, in this Section meaning the I-35 Overlay District Development Standards approval, consistent with existing City of Kyle code, 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 and 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 I-35 Overlay District Development Standards are modified as follows: Horizontal lap siding may be used as exterior cladding (not including interior patios) on up to 20% of a structure 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.
- (d) 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.

Section 4. Building Permits.

The Developer acknowledges and agrees that compliance with Sections 2 and 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 Sections 2 and 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. 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 6. 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 7. 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 7 and 8 through 26 hereof shall remain in full force and effect.
- (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 8.

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. Attorney's 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:

Kalterra Capital Partners, LLC
1701 N Market St, Suite 325
Dallas, Texas 75202
Attn: Clint Nolen Direct: (214) 850-5186
Clint@kalterra.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 constitutes 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 the 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 Section 2290.0201 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 purposed:

Exhibit A – Property Description

Exhibit B – Zoning Exhibit

Exhibit C – Site Plan

EXECUTED in multiple originals in the 8th day of September 2020.

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

Attest:

By: Jennifer Holm
Name: Jennifer Holm
Title: City Secretary

By: Travis Mitchell
Name: Travis Mitchell
Title: Mayor

THE STATE OF TEXAS
COUNTY F HAYS

This instrument was acknowledged before me on this 8th day of September 2020 by Travis Mitchell, the Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)



Hannah-Bea Bickford
Notary Public, State of Texas

DEVELOPER:

Kalterra Capital Partners, LLC
Texas limited liability corporation

By: Kalterra Capital Partners, LLC
By: Clint V. Nolen
Print Name: CLINT V. NOLEN
Title: MANAGER 04

THE STATE OF TEXAS
COUNTY F HAYS

This instrument was acknowledges before me on this 8 day of September 2020, BY Clint Nolen, Manager of Kalterra Capital Partners, LLC, a Texas limited liability corporation.

(SEAL)



Angela K Arrington
Notary Public, State of Texas

EXHIBIT "A"

Property Description

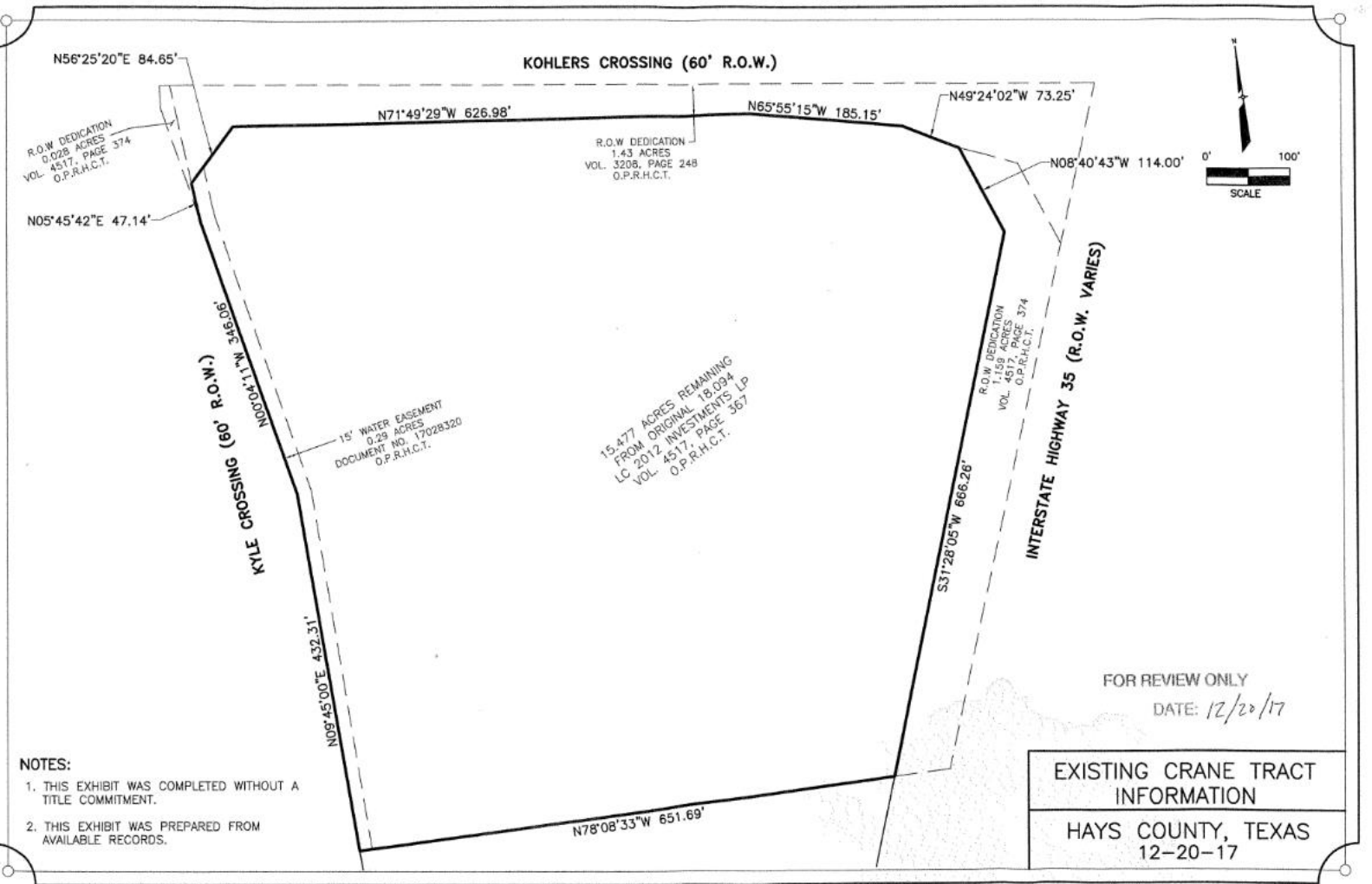
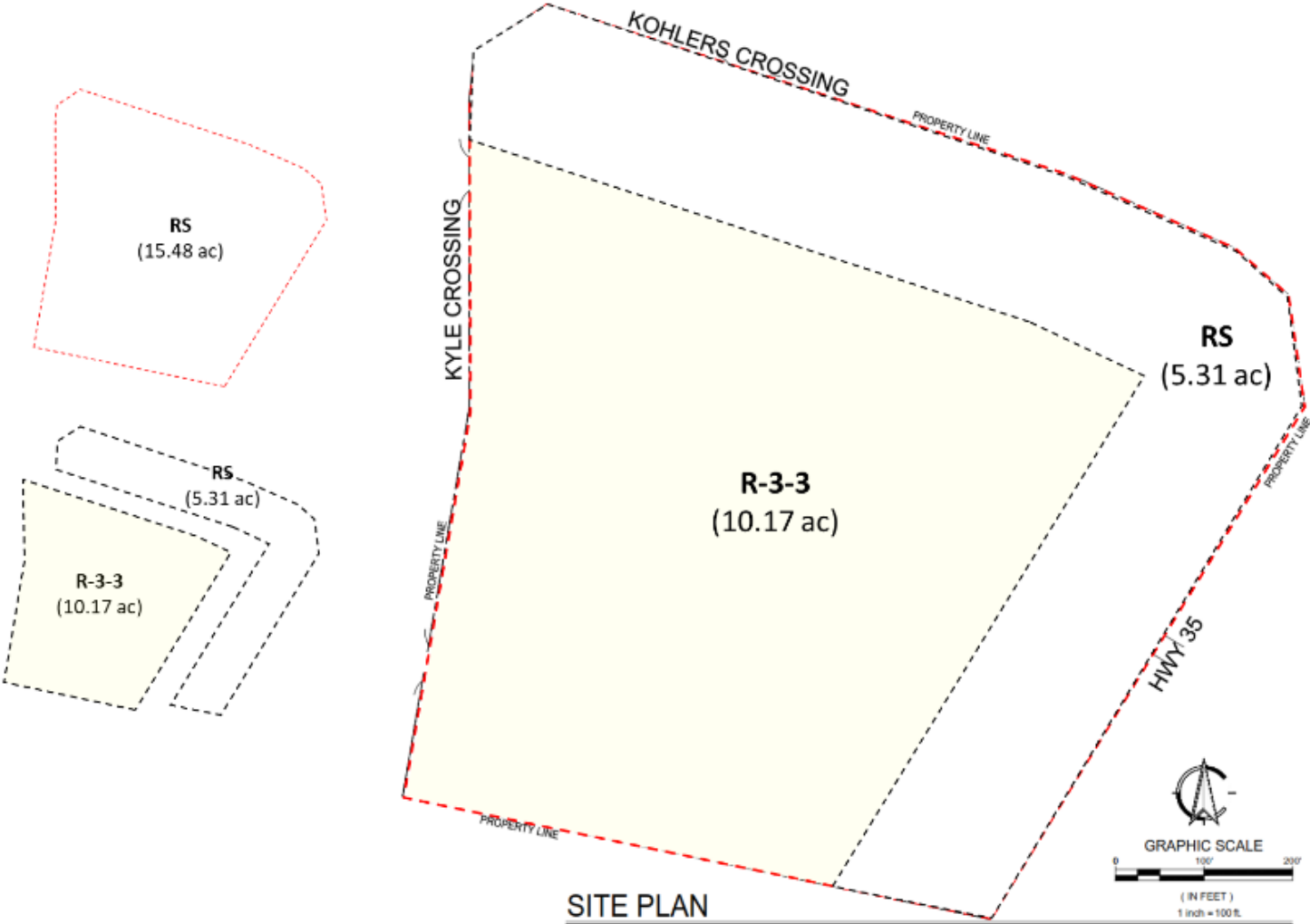


EXHIBIT "B"

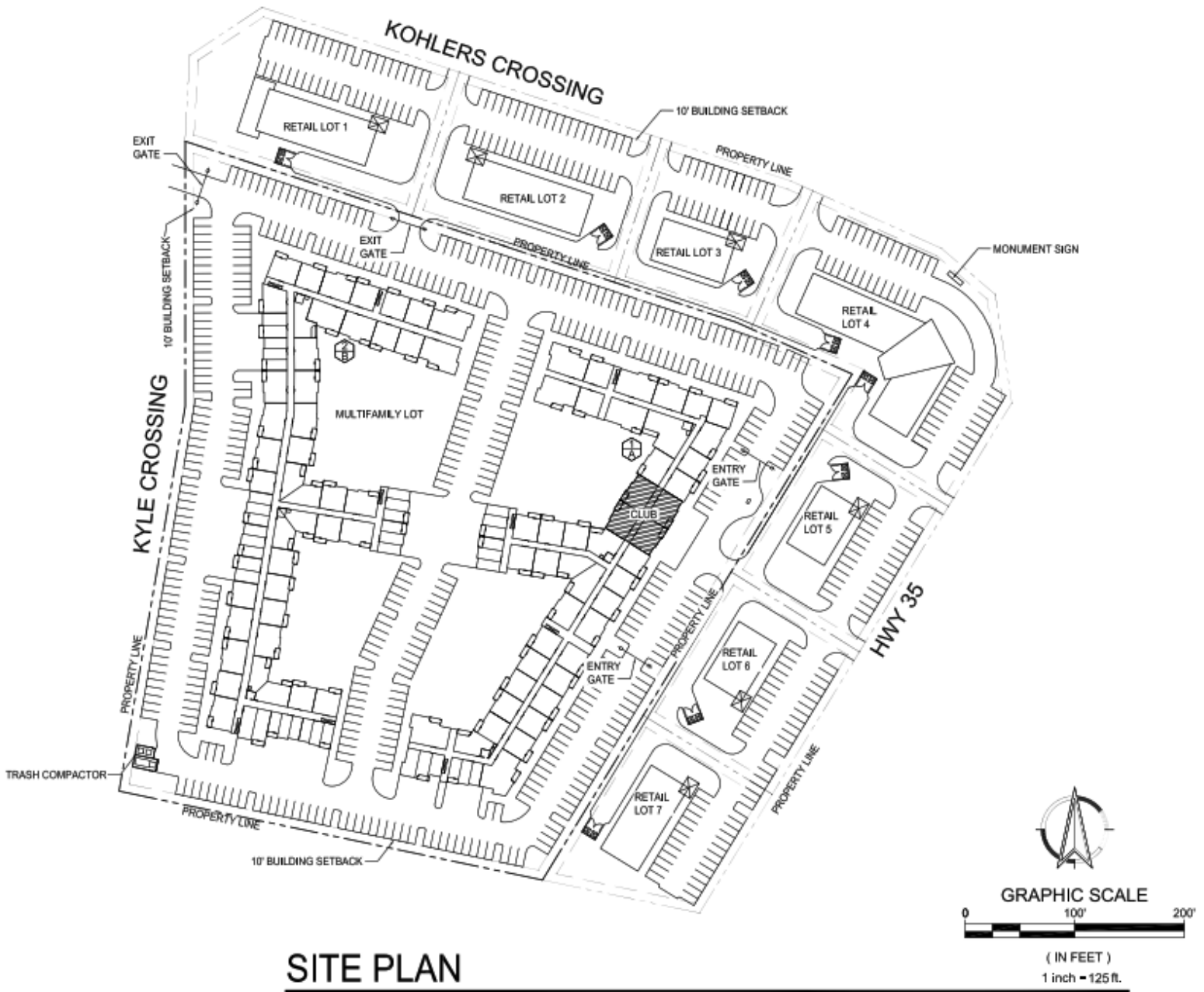
Zoning Exhibit

Exhibit B



SITE PLAN

Exhibit "C"
Site Plan



SITE PLAN