

**DEVELOPMENT AGREEMENT
ESTABLISHING DEVELOPMENT STANDARDS
FOR THE KYLE MARKETPLACE SUBDIVISION/DEVELOPMENT**

This Development Agreement Establishing Development Standards for the Kyle Marketplace Subdivision/Development (the "Agreement") is made and entered into, effective as of the 1st day of March 2022, by and between the **City of Kyle, Texas**, a Texas home rule municipal corporation (the "City"), and **CSW KC II LLC**, a Texas limited liability company or its assigns (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) Developer is the owner of that certain +/- 48 acre tract located in Hays County, Texas, being more particularly described in **Exhibits A-1, A-2, A-3, and F** attached hereto and incorporated herein for all purposes (the "Property"). Developer wishes to develop (or cause to be developed by future owners) a portion of the Property for (i) mixed uses in the areas depicted on **Exhibit B-1** attached hereto as "the South Tract" and (ii) mixed uses in area depicted on **Exhibit B-2** attached hereto as the "North MXD Tract", and (iii) commercial uses in the area depicted on **Exhibit B-3** attached hereto as the "North Commercial Tract" (collectively, North MXD Tract and the North Commercial Tract the "North Tract" and the North Tract and the South tract collectively the "Development"). The Developer desires that the City be able to enforce the development standards related to building materials set forth in Section 3 below (the "Development Standards") through its building permit, inspection, and certificate of occupancy processes by this agreement, given that House Bill 2439 adopted in the 86th Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance. The Parties further desire to establish additional requirements for development of the Property as provided herein.
- (b) The Developer and its Designated Successors and Assigns (as defined below) will benefit from the City enforcing the Development Standards addressing building materials as set forth herein because it will be more efficient and cost-effective for compliance to be monitored and enforced through the City's building permit and inspection processes and will help ensure that the Development is built out as planned by the Developer after conveyance to the builder of buildings and structures authorized within the Development by the applicable zoning regulations and this Agreement. The City will benefit from this Agreement by having assurance regarding certain development standards for the Development set forth in this Agreement, having certainty that such Development Standards may be enforced by the City, and preservation of property values within the City.
- (c) 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.

- (d) The Parties have entered into The Chapter 380 Grant Agreement for the Kyle Marketplace Project dated effective December 16, 2021 pursuant to Texas Local Government Code Chapter 380, as it may be amended from time to time (a “380 Agreement”), which provides for certain incentives the City will provide to the Development in return for additional enhancements to the Development.
- (e) It is possible that the Developer will enter into an agreement pursuant to Texas Local Government Code Chapter 381 (a “381 Agreement”) with Hays County, Texas (the “County”), which could provide certain incentives that the County will provide to the Development in return for additional enhancements to the Development.
- (f) Contemporously herewith the South Tract and the North MXD Tract were rezoned to the MXD zoning district by Ordinance No 1185 (the “Zoning Application”). The Parties acknowledge and agree that construction of the Property in accordance with Exhibit D is material consideration for the 380 Agreement.
- (g) The City has come up with a vision and set of design standards for a minimum twelve foot (12’) wide trail and pedestrian access system known as the “The Vybe”. It is intended that both the City and the Developer will construct portions of the Vybe as further described in this Agreement. Developer’s Agreement to construct portions of the Vybe is material consideration for the City’s entering into this Agreement.
- (h) The City and DDRDB Kyle, L.P. entered into that certain Economic Development Agreement dated September 26, 2008 (the “Prior Agreement”), which affected all or portions of the Property. The Parties hereby agree that the development standards attached as Exhibit B to the prior agreement will not apply to any portions of the Property, as the development regulations and standards contained in this Agreement will now apply to the Property. The foregoing shall not affect the remainder of the Prior Agreement as it relates to economic incentive payments to DDR.

Section 2. Term; Termination.

- (a) The terms of this Agreement shall be in full force and effect from the Effective Date hereof, subject to earlier termination as provided in this Agreement, and shall expire forty-five (45) years after the Effective Date, unless earlier terminated.

Section 3. Development Standards.

(a) Development Requirements.

- (i) Developer agrees that it will design and develop (or cause to be designed and developed) the South Tract in accordance with **Exhibit D** attached hereto and

incorporated herein for all purposes.

- (ii) The North Tract located on Kyle Marketplace will be designed and constructed in accordance with **Exhibit D**, and shall include a courtyard design and other enhancements to maximize outdoor seating, lounging and use of space. The courtyard, generally in the location shown in in **Exhibit B-3**, and as generally depicted on **Exhibit G** (the “North Tract Courtyard”), shall be a minimum of 0.3 acres in size, and shall be designed with a water feature or other similar centerpiece approved by the City and vegetative buffer approved by the City along the western boundary of the North Tract Courtyard in substantial compliance with this Agreement. The Developer shall obtain City approval of the plans for the North Tract Courtyard prior to commencing construction of that portion of the improvements covered by a given set of plans for the North Tract, which approval shall not be unreasonably delayed, conditioned, or withheld. The North Tract shall include a minimum of three (3) charging ports for electric vehicles. Completion of the North Tract Courtyard shall be a condition of the City’s issuance of the final Certificate of Occupancy for the first retail building on the North Commercial Tract. The North Tract Courtyard will be owned and maintained initially by the Developer and ultimately by a property owner’s association or other qualified party designated by Developer. Maintenance of the North Tract Courtyard and all public and common areas shall be to a standard consistent with first-class standards found in other commercial Class A, Mixed Use developments in the region. The City may review these maintenance standards and request reasonable adjustments to them from time to time during the term of this Agreement.. Approval by Developer of such requests shall not be unreasonably withheld, conditioned or delayed. Use of the North Tract Courtyard shall always be limited to recreational amenities and open space.

(b) **Use Restrictions.** The following uses are prohibited on any lots within the Development.

- (i) Gas Station
- (ii) Convenience Store
- (iii) Veterinary Hospital
- (iv) Freestanding Medical or Dental Office
- (v) Daycare facility
- (vi) “Second Hand” store or/ “Surplus” Store, however, this provision shall not apply to a Nike Factory Outlet, Last Call, Nordstrom Rack, or a like user
- (vii) Liquor store containing less than 5,000 square feet and having less than 50 locations in the United States
- (viii) Automotive service/repair facility (provided that such restriction shall not apply to automotive service/repair facilities located on the proposed Lot 3A or Lot 4A of the Development on **Exhibit B-3**)
- (ix) Freestanding Financial Institutions
- (x) Freestanding Mattress store
- (xi) Nail Salons larger than 3,000 sq ft.

- (c) [INTENTIONALLY OMITTED]
- (d) **Traffic.** Developer shall not be required to provide traffic studies for the development of the Property.
- (e) **Building Permits.** The Developer acknowledges and agrees that compliance with Section 3 will be a condition of issuance of building permits and certificates of occupancy for the applicable portion of the South Tract or the North Tract. Developer further agrees that the City may use its building permitting, inspection, and enforcement processes and procedures to enforce the requirements of Section 3 governing building materials with respect to each Development, 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 and plans for a building permit must demonstrate compliance with this Agreement in order for a building permit to be issued. Applications for building permits must comply 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.
- (f) **Flag Lots.** Lots within the North Tract with reduced right-of-way (traditionally referred to as “flag lots”) will be allowed to provide physical, fee-simple connection to a public right-of-way. The minimum lot width at the right-of-way shall be a minimum of (twenty) 20 feet. The shape of the flag may vary and may meander for lots stacked behind other lots. As commercial lots, the access will be shared and governed through conditions, covenants, and restrictions in place for the overall Development including cost-sharing and maintenance obligations. Developer shall provide to the City for its review copies of any conditions, covenants and restrictions for its review before recording them in the Hays County records. In order for flag lots to be approved, the Developer must demonstrate that all lots have adequate access and satisfy any requirements of the City to ensure that such access is provided so that this provision will not place any undue burden on the lot owners. The City hereby acknowledges that access may be provided by easements (*i.e.*, not just on land dedicated in fee).
- (g) **Stormwater.** Stormwater drainage infrastructure and detention facilities for the Property have been designed and constructed for up to eighty-five percent (85%) impervious cover for the entire Property. The North Commercial Tract may be permitted, constructed, and occupied prior to pond analysis for Atlas 14 since the overall build-out will be a small portion of the contributing area to the ponds. This includes the following proposed lots: 3A-12A (per Exhibit B-3) and any Vybe trails. Prior to the North Tract MXD and South Tract development, but no later than December 31, 2023, a detention pond and conveyance analysis using the City’s Atlas 14 standards will be provided to the City Engineer. The Developer shall construct such additional stormwater drainage and detention facilities as required to comply with the Atlas 14 standards and the analysis accepted by the City

Engineer.

- (h) **Donation Parcel.** The Developer shall convey approximately 3.6 acres of land in fee simple, described in **Exhibit F**, at no cost to the City, to the City, free of any liens or encumbrances, prior to the issuance of a certificate of occupancy on any building on the North Tract (the “Donation Parcel”). Further, conveyance of the Donation Parcel shall occur on or before expiration of the Performance Deadline (as defined in the 380 Agreement). Prior to conveying the Donation Parcel to the City, Developer shall construct that portion of the Vybe contained within the Donation Parcel, generally in the location. The design of the Vybe shall be approved administratively by the City and be generally in accordance with **Exhibit I** attached hereto and shall be in accordance with the construction plans approved administratively by the City.
- (i) **Pedestrian Tunnel /Use of Developer Contribution**
- a. *Developer Contribution.* The Developer shall pay for three million dollars (\$3,000,000) of improvements on the Property in accordance with this Section (the “Developer Contribution”). The Parties intend that the Developer Contribution shall be used to pay for a pedestrian tunnel that connects the cul-de-sac at Cromwell Drive to the Development, as generally shown in **Exhibit E-1** (“the Pedestrian Tunnel”), unless the City gives the Developer notice that construction of the Pedestrian Tunnel is not feasible. If the City gives the Developer notice that the Pedestrian Tunnel is not feasible, the Development Contribution shall be spent on improvements that benefit the Project as determined by the City, with the agreement of the Developer, (the “Alternative Improvements”) which agreement will not be unreasonably withheld, conditioned, or delayed; provided that the Developer agrees that the Developer Contribution may be spent on the Hawk Signal described herein. The Developer Contribution must begin to be spent on actual design and/or construction costs within five (5) years of the Effective Date and fully spent within six (6) years of the Effective Date.
 - b. *Pedestrian Tunnel.* The Parties intend that the City will obtain any permits and approvals required by a governmental authority, approvals required from the Union Pacific Railroad (the “UPR Approvals”), and any off-site easements required for Pedestrian Tunnel, and that the Parties will address which Party is responsible for the design and construction of the Pedestrian Tunnel in the Tunnel Construction Agreement, described below. The City shall own, operate, and maintain the Pedestrian Tunnel, the Hawk Signal, and any other Alternative Improvements (unless City ordinances or policies require otherwise) after its completion. The City shall further design and construct any offsite trail or paths generally in the locations depicted on **Exhibit E-1** necessary to connect the Pedestrian Tunnel to the Project. Within thirty (30) days after the City determines that the construction of the Pedestrian Tunnel is feasible (which will consist of the City determining that Union Pacific Railroad and any other required governmental authority) will permit the Pedestrian

Tunnel project, the City identifying funding for any required City Contribution, and any other factors determined appropriate by the City), then the City shall give written notice to Developer that construction of the Pedestrian Tunnel is feasible (the “Tunnel Notice”).

- c. *Easements.* The City shall determine during the permitting and/or design phase of the Pedestrian Tunnel project the exact location of the Pedestrian Tunnel, generally in accordance with the depiction on **Exhibit E-1**, subject to the Developer’s consent to the actual location (such consent not to be unreasonably withheld, conditioned, or delayed) and notify the Developer of the location. Developer shall grant to the City an easement for the portion of the Pedestrian Tunnel located on the Property upon the earlier to occur of (i) prior to the commencement of construction of the Pedestrian Tunnel; or (ii) no later than sixty (60) days following written notice from the City requesting conveyance of the easement. The off-site easements, or a suitable right-of-entry, shall be acquired prior to commencement of construction of the Pedestrian Tunnel.
- d. *Tunnel Construction Agreement.* If the City delivers a Tunnel Notice, the Developer and City shall enter into an agreement (the “Tunnel Construction Agreement”) within ninety (90) days of the Tunnel Notice in a form acceptable to the Parties, which addresses the following: (i) release of the Developer Contribution and the City Contribution (if any is required) on a pro-rata basis based upon the percentage of completion of the Pedestrian Tunnel; (ii) the timing of delivery of the Developer Contribution and the City Contribution; (iii) posting of payment and performance bonds; (iv) minimum insurance requirements; (v) compliance with applicable procurement laws; (vi) any required design or construction contract terms; (vii) each Party’s responsibility to design and construct the Pedestrian Tunnel, including timing of commencement and completion of construction; (viii) compliance with any UPR Approvals; and (ix) any other terms determined appropriate by the Parties. The City’s Contribution (if any) shall equal the difference between: (x) the actual cost to design and construct the Pedestrian Tunnel and/or the Alternative Improvements; and (y) the Developer Contribution. Notwithstanding the foregoing, in the event that preliminary or final design of the Pedestrian Tunnel is needed for the UPR Approvals, or other approvals (the “Design Costs”), the Developer agrees that the Developer Contribution shall be used to pay for the Design Costs and shall provide such funds within thirty (30) days of request by the City.
- e. *Limitations.* At no time will the Developer be obligated to pay more than \$3,000,000.00 for design and construction of the Pedestrian Tunnel and/or the Alternative Improvements. Any costs in excess of the Developer Contribution shall be the responsibility of the City. The City’s obligations to design and build the Pedestrian Tunnel are subject to the availability of funds and the appropriation of such funds for that purpose in the City budget, and the City in its sole discretion, may decide that the Pedestrian Tunnel will not be designed and/or built, and in such event, the Developer’s Contribution shall be spent on the Alternative Improvements.

- f. *Use of Developer Contribution for the Alternative Improvements.* In the event the City determines that the Pedestrian Tunnel is not feasible, the City shall give the Developer written notice of such determination, and within ninety (90) days of such determination, and the City and the Developer shall enter into a agreement Alternative Improvments similar to the agreement described in subsection (d) above (the “Alternative Improvments Agreement”). In addition, in the event the Pedestrian Tunnel is constructed and if any portion of the Developer Contribution is not necessary to build the Pedestrian Tunnel, such remaining portion of the Developer Contribution may be used to construct a Hawk Signal on Marketplace Avenue and/or the City Vybe or Alternative Improvements.
- g. *Good Faither Cooperation.* The Parties shall cooperate in good faith to accomplish the requirements of this subsection (i) governing the Pedestrian Tunnel/Use of Developer Contribution and Alternative Improvements.
- (j) *Developer Vybe.* The Developer shall construct and obtain City acceptance of the Vybe on portions of the Project in the location generally depicted on **Exhibits E-2, E-3 and F**, with the final location being established in the plans administratively approved by the City. The phrase “and obtain City acceptance” herein shall refer to compliance with the standard City ordinances, practices, and procedures for acceptance of subdivision infrastructure. The Developer shall construct the Vybe generally in accordance with **Exhibit I** and the construction plans administratively approved by the City. Portions of the Vybe that abut Markeplace Drive shall not be used to provide pedestrian access to the adjacent buildings, and a separate walkway shall be provided to provide access to such buildings. The Developer shall obtain administrative approval from the City of the design and materials for the Vybe before commencing construction. The Developer shall construct different portions of the Vybe as described below:
- a) The Developer shall construct and obtain City acceptance of those portions of the Vybe on the South Tract in the locations depicted on **Exhibit E-2**, which is adjacent to Marketplace Avenue extending from Physicians Way to City Lights Drive, on or before the earlier of:
 - i) The final certificate of occupancy for the mixed-use buildings adjacent to Marketplace Avenue on the South Tract, or
 - ii) Forty-Eight (48) months after the Effective Date hereof.
 - b) The Developer shall construct and obtain City acceptance of those portions of the Vybe on the North MXD Tract in the locations generally depicted on depicted on **Exhibit E-3** attached hereto, which is along the entire length of the eastern boundary of the North MXD Tract abutting Marketplace Drive (the “Eastern Vybe Segment”), and then extending west along the entire northern

boundary of the North MXD Tract connecting to the Offsite Trail and Pedestrian Tunnel (the “Northern Vybe Segment”), on or before the earlier of:

- i) With respect to the Eastern Vybe Segment:
 - a. The final certificates of occupancy for easternmost buildings facing Marketplace Drive located on the North MXD Tract are issued; or
 - b. Forty-eight (48) months after the Effective Date hereof.
- ii) With respect to the Northern Vybe Segment:
 - a. The final certificates of occupancy for two northernmost buildings, which face the Courtyard, located on the North MXD Tract are issued; or
 - b. Forty-eight (48) months after the Effective Date hereof.

- c) The Developer shall construct and obtain City acceptance of that portion of the Vybe on the North Commercial Tract as depicted on **Exhibit E-3**, which is along the entire length of the eastern boundary of the North Commercial Tract abutting Marketplace Drive, on or before twenty-four (24) months after the Effective Date.
- d) The Developer shall construct and obtain City acceptance of a raised speed table between the Vybe and the park and between Lot 6A and the Vybe trail on the North MXD Tract in the location generally shown on **Exhibit E-5** on or before forty-eight (48) months after the Effective Date hereof.

(k) *City Vybe/Hawk Signal.* The City shall construct those portions of the Vybe (including the Hawk Signal) generally in the locations depicted on **Exhibit E-4** attached hereto. The City may use portions of the Developer Contribution to construct its portion of the Vybe in accordance with the terms of Subpart B above regarding the Developer’s Contribution and the City may require the Developer to design and construct the Hawk Signal in a location designated by the City on land owned or controlled by the City or the Developer and agreed to by the Developer, which agreement shall not be unreasonably withheld, conditioned, or delayed.

Section 4. Development of the Property.

- (a) Except as modified by this Agreement, the Development and the Property will be developed in accordance with all applicable local, state, and federal regulations, including but not limited to the City’s ordinances and the zoning regulations applicable to the Property in effect on the date hereof, subject to those exceptions contained in Chapter 245, Texas Local Government Code, City-approved construction plans, as applicable, and good engineering practices; provided that the Development will be subject to the building codes in effect at the time an application for a building permit is submitted to the City (the “Applicable Regulations”). If there is a conflict between the Agreement and the Applicable Regulations, the Agreement

shall control. If there is a conflict between the Applicable Regulations and the Development Standards, the Development Standards shall control.

- (b) Notwithstanding anything to the contrary, the City agrees that applications for plats, site plans, zoning approvals, building permit, and subdivision infrastructure plans may be processed concurrently, as long as the plats are being reviewed under the Alternative Review Procedure described in Section 41-47B, City of Kyle Code of Ordinances, as amended (the “Alternative Review Procedure”). Developer hereby opts to proceed under the Alternative Review Procedure for all permitting which allows for concurrent review of all plans and platting and commencement of construction prior to final permit. Developer understands all work is at risk prior to receipt of final permit.

Section 5. Assignment of Commitments and Obligations; Covenant Running with the Land.

- (a) Developer’s rights and obligations under this Agreement may be assigned by Developer from time to time, to one (1) or more purchasers of all or a portion of the Property; provided (i) the assignment must be in writing; (ii) the assignment must provide that the assignee assumes such assigned rights and obligations without modification or amendment; (iii) the assignment must be executed by Developer and the assignee; (iv) Developer must provide a copy of the fully executed assignment to the City within five (5) business days after the effective date of the assignment and (v) the assignee has the capacity, sophistication, and ability to assume the rights and obligations described herein without modification or amendment. Upon such assignment with respect to all or a portion of the Property, Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement relating to the portion of the Property conveyed to the assignee to which this Agreement is so assigned. A default by any subsequent partial assignee shall not constitute a default by Developer under this Agreement.
- (b) 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.
- (c) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed an assignment under this Section 5 unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is an assignment pursuant to this Section 5. In addition, it is expressly acknowledged that no future Owner of any portion of the Property shall have any rights or obligations with respect to the Developer Contribution, unless specifically set forth in an assignment or conveyance document.
- (d) Developer intends to assign this Agreement to CSW KC II, L.P. It is hereby acknowledged that CSW KC II, L.P. is an affiliate of Developer and a permitted assignee if the property is conveyed to it, the assignment instrument obligates CSW KC II, LP to comply with the terms and conditions of this Agreement, including the obligations regarding the Developer Contribution, and the Developer or CSW KC II, L.P. provide the City with a copy of such

assignment instrument.

Section 6. Default.

(a) Notwithstanding anything herein to the contrary, no party to this Agreement shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of written notice of default from the other party delivered in accordance with the requirements of this Agreement. Upon the passage of thirty (30) 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 thirty (30) 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 ninety (90) 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 subdivision application, site development application, building permit application, or a certificate of occupancy for a structure that does not comply with the Development Standards for such Development, which approval shall be granted upon subsequent compliance with the Development Standards for such Development.

(b) The City acknowledges and understands that the South Tract, the North MXD Tract and North Commercial Tract may be owned by one or more different parties and the City will enforce any breach of the Development Standards only against the party that breached such Development Standard. Thus, if an owner has breached the Development Standards applicable to the South Tract, the City will only seek to enforce its remedies under this Agreement against the owner of the South Tract and not against the owner of the North Tracts. Likewise, if an owner has breached the Development Standards applicable to the North MXD Tract, the City will only seek to enforce its remedies under this Agreement against the owner of the North MXD Tract and not against the owner of the South Tract. Likewise, if an owner has breached the Development Standards applicable to the North Commercial Tract, the City will only seek to enforce its remedies under this Agreement against the owner of the North Commercial Tract and not against the owner of the South Tract.

Section 7. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

Section 8. 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 9. 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 10. Force Majeure Event.

- (a) The term "Force Majeure Event" 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; pandemic; 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 a Force Majeure Event, 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 Event to the other party within ten (10) business days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the Force Majeure Event, 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 11. 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
 J. Scott Sellers
 100 W Center St
 Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

CSW KC II, LLC
1703 W. 5th Street, Suite 850
Austin, Texas 78703
Attn: Robert O'Farrell; Kevin Hunter

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

Owner will provide the City with the contact information of any property owner's association created for the Property.

Section 12. 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. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City that Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

Section 13. 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 14. Agreement and Amendment. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties (including any Designated Successors and Assigns) and dated subsequent to the date hereof, provided that an amendment to this Agreement related solely to the Development Standards may be amended between the Parties to whom the amendment is applicable (e.g., an amendment solely applicable to the Development Standards for the South Tract shall not require the approval of any Party who is not an owner of the South Tract).

Section 15. 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 16. 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 Developer.

Section 17. Effective Date. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

Section 18. 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 19. Statutory Verifications.

- (a) 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.
- (b) To the extent this Agreement constitutes a contract for the purchase of goods or services for which a written verification is required under Section 2274.002, Texas Government Code, (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), as amended, the Developer hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any,
 - (1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and
 - (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19). The Developer understands "affiliate" to mean an entity

that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

- (c) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) as amended, the Developer hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 20. 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 21. 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 22. Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A-1** – South Tract
- Exhibit A-2** – North MXD Tract
- Exhibit A-3** – North Commercial Tract
- Exhibit B-1** – South Tract Concept Plan
- Exhibit B -2** – North MXD Tract Concept Plan
- Exhibit B-3** – North Commercial Tract Concept Plan
- Exhibit C** – [Intentionally Deleted]
- Exhibit D** – Development Standards
- Exhibit E-1** – Pedestrian Tunnel
- Exhibit E-2** – Developer Vybe South Tract
- Exhibit E-3** – Developer Vybe North Tract
- Exhibit E-4** – City Vybe / Hawk Signal
- Exhibit E-5** – Raised Speed Table
- Exhibit F** – Donation Parcel

Exhibit G – North Tract Courtyard
Exhibit H – Multi-Family Building Depictions
Exhibit I – Vybe Construction Standards

[Signature Pages Follow]

EXECUTED in multiple originals this the 4th day of March, 2022.

CITY:

City of Kyle, Texas
a Texas home-rule municipal corporation

Attest:

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

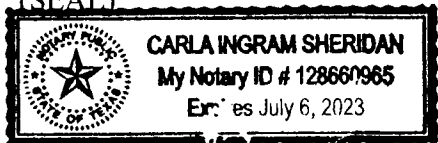
By: Travis Mitchell
Name: Travis Mitchell
Title: Mayor

THE STATE OF TEXAS §
COUNTY OF HAYS §

This instrument was acknowledged before me on this 4th day of March, 2022, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

Carla Ingram Sheridan
Notary Public, State of Texas

(SEAL)



DEVELOPER:

CSW KC II, LLC
a Texas limited liability company

By: [Signature]
Name: Kevin Hunter
Title: Manager

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 29 day of March, 2022, by Kevin Hunter, Manager of CSW KC II, LLC, a Texas limited liability company, on behalf of said entity.

[Signature]
Notary Public, State of Texas

(SEAL)

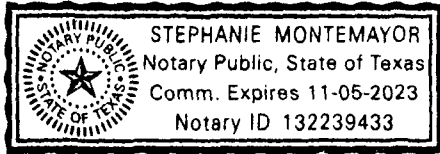


Exhibit A-1 -- South Tract**TRACT 5:**

LOT 1B, BLOCK F, KYLE MARKETPLACE SECTION 2 AMENDING PLAT OF THE REPLAT OF LOTS 1, 2, 3 & 4, BLOCK F, A SUBDIVISION IN HAYS COUNTY, TEXAS, AMENDED PLAT OF LOTS 1, 2, 3 AND 4, BLOCK F, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 17, PAGE 200, PLAT RECORDS OF HAYS COUNTY, TEXAS. (1.5938 ACRES)

TRACT 6:

LOT 1C, BLOCK F, KYLE MARKETPLACE SECTION 2, AMENDING PLAT OF THE REPLAT OF LOTS 1, 2, 3 & 4, BLOCK F, A SUBDIVISION IN HAYS COUNTY, TEXAS, AMENDED PLAT OF LOTS 1, 2, 3 AND 4, BLOCK F, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 17, PAGE 200, PLAT RECORDS OF HAYS COUNTY, TEXAS. (1.6839 ACRES)

TRACT 7:

LOT 1, BLOCK F, KYLE MARKETPLACE SECTION 2, AMENDING PLAT OF THE REPLAT OF LOTS 1, 2, 3 & 4, BLOCK F, A SUBDIVISION IN HAYS COUNTY, TEXAS, AMENDED PLAT OF LOTS 1, 2, 3 AND 4, BLOCK F, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 17, PAGE 200, PLAT RECORDS OF HAYS COUNTY, TEXAS. (3.7667 ACRES)

TRACT 8:

LOT 2, BLOCK F, KYLE MARKETPLACE SECTION 2, AMENDING PLAT OF THE REPLAT OF LOTS 1, 2, 3 & 4, BLOCK F, A SUBDIVISION IN HAYS COUNTY, TEXAS, AMENDED PLAT OF LOTS 1, 2, 3 AND 4, BLOCK F, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 17, PAGE 200, PLAT RECORDS OF HAYS COUNTY, TEXAS. (7.9054 ACRES)

TRACT 9:

LOT 3, BLOCK F, KYLE MARKETPLACE SECTION 2, AMENDING PLAT OF THE REPLAT OF LOTS 1, 2, 3 & 4, BLOCK F, A SUBDIVISION IN HAYS COUNTY, TEXAS, AMENDED PLAT OF LOTS 1, 2, 3 AND 4, BLOCK F, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 17, PAGE 200, PLAT RECORDS OF HAYS COUNTY, TEXAS. (2.2861 ACRES)

TRACT 10:

LOT 4, BLOCK F, KYLE MARKETPLACE SECTION 2, AMENDING PLAT OF THE REPLAT OF LOTS 1, 2, 3 & 4, BLOCK F, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 17, PAGE 200, PLAT RECORDS OF HAYS COUNTY, TEXAS. (2.2501 ACRES)

Exhibit A-2 -- North MXD Tract

EXHIBIT " "

(Zoning Exhibit)
John King Survey, Abstract No. 276Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 8.0695 ACRES (551,114 SQUARE FEET) OUT OF THE JOHN KING SURVEY NO. 10, ABSTRACT NO. 276, IN HAYS COUNTY, TEXAS, BEING A PORTION OF LOT 1, BLOCK "A" OF KYLE MARKETPLACE SECTION 2, RECORDED IN VOLUME 14, PAGE 330 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS (P.R.H.C.T.) CONVEYED TO DDR DB KYLE LP IN VOLUME 3493, PAGE 17 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.), SAID 8.0695 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



BEGINNING, at a 1/2-inch iron rod with "Doucet and Assoc" cap found on a curve in the west right-of-way line of Market Place Avenue (right-of-way varies), at the common corner of Lot 2 and Lot 3, Block "A" of said Kyle Marketplace Section 2, and the POINT OF BEGINNING hereof, from which a 1/2-inch iron rod with "Chaparral" cap was found at the end of said curve to the left, whose radius is 1055.00 feet, whose arc length is 116.26 feet and whose chord bears S70°00'49"W, a distance of 116.20 feet;

THENCE, N60°06'03"W, with the common line of said Lot 2 and Lot 3, a distance of 461.07 feet to a 1/2-inch iron rod found on the north line of said Lot 3, at the common corner of said Lot 2 and Lot 1, Block "A" of said Kyle Marketplace Section 2, for the southwest corner hereof, from which a 1/2-inch iron rod with "Doucet and Assoc" cap found at the southwest corner of said Lot 1 and the northwest corner of said Lot 3, being in the east right-of-way line of the Missouri Pacific Railroad recorded in Volume N, Page 153 of the Deed Record of Hays County Texas (D.R.H.C.T.) bears, N60°06'03"W a distance of 308.04 feet;

THENCE, N00°16'12"E, with the common line of said Lot 1 and Lot 2, a distance of 610.83 feet to a calculated point for an angle point hereof, from which a 1/2-inch iron rod with "4WARD BOUNDARY" cap set at an angle point in said common line of Lot 1 and Lot 2 bears, N00°16'13"E a distance of 213.65 feet;

THENCE, Departing said line, and over and across said Lot 2 the following nine (9) calls and distances;

- 1) S89°54'17"E, a distance of 11.67 feet to a calculated point for an angle point hereof;
- 2) S78°03'03"E, a distance of 89.52 feet to a calculated point for a point of curvature hereof;
- 3) Along the arc of a curve to the right, whose radius is 100.00 feet, whose arc length is 51.06 feet and whose chord bears S69°09'10"E, a distance of 30.34 feet to a calculated point for a point of tangency hereof;
- 4) S60°15'17"E, a distance of 351.66 feet to a calculated point for a point of curvature hereof;
- 5) Along the arc of a curve to the right, whose radius is 100.00 feet, whose arc length is 10.45 feet and whose chord bears S57°15'42"E, a distance of 10.44 feet to a calculated point for a point of tangency hereof;

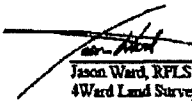
- 6) S54°16'06"E, a distance of 36.10 feet to a calculated point for a point of curvature hereof;
- 7) Along the arc of a curve to the left, whose radius is 100.00 feet, whose arc length is 10.50 feet and whose chord bears S57°16'37"E, a distance of 10.50 feet to a calculated point for a point of tangency hereof;
- 8) S60°17'07"E, a distance of 212.81 feet to a calculated point on the west right-of-way line of said Market Place Avenue, being the east line of said Lot 2, from which a 1/2-inch iron rod found at the south end of a curve return at the intersection of the west right-of-way line of said Market Place Avenue and the south right-of-way line of Kyle Parkway (F.M. 1626 - right-of-way varies), bears N29°54'00"E a distance of 549.04 feet;

THENCE, With the west right-of-way line of said Market Place Avenue, being the east line of said Lot 2 the following two (2) courses and distances:

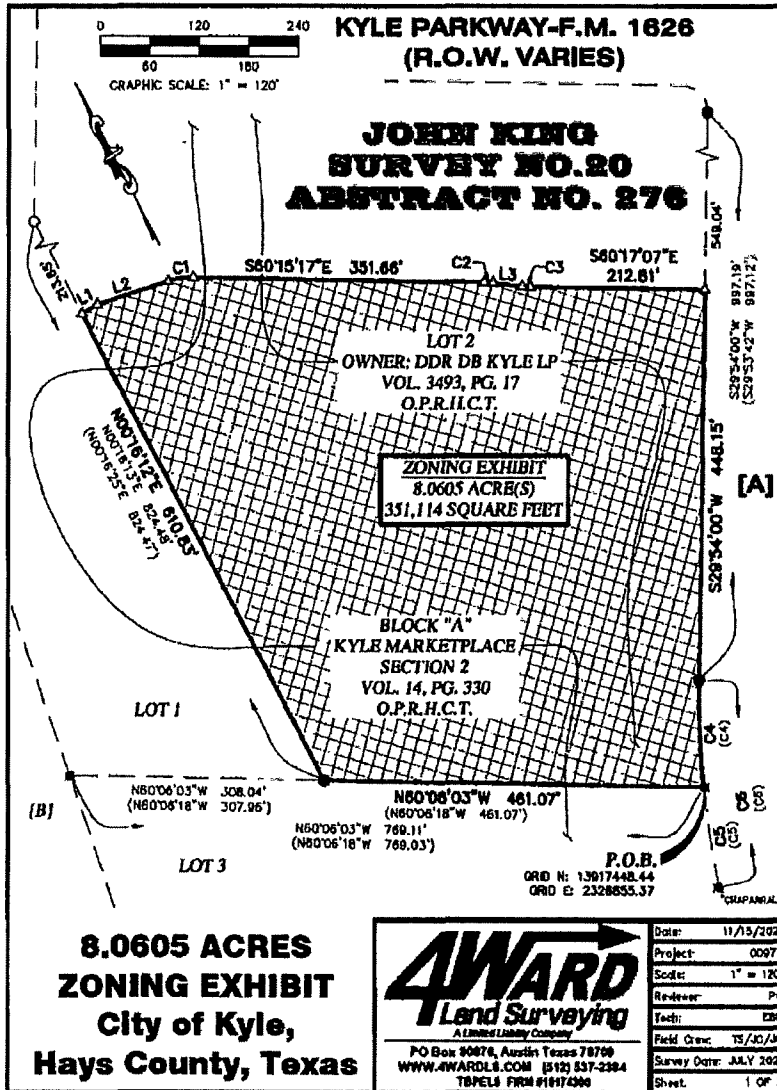
- 1) S29°54'00"W, a distance of 448.15 feet to a calculated point for a non-tangent point of curvature hereof;
- 2) Along the arc of a curve to the left, whose radius is 1055.00 feet, whose arc length is 123.25 feet and whose chord bears S26°31'27"W, a distance of 123.18 feet to the POINT OF BEGINNING and containing 8.0605 Acres (351,114 Square Feet) more or less.

NOTE:

Surveyed on the ground July 21, 2021. All bearings are based on the Texas State Plane Coordinate System, Grid North, South Central Zone (4204), all distances were adjusted to surface using a combined scale factor of 1.0000101329451. See attached survey map (reference drawing: 00977_Zoning.dwg)


 11/15/21
 Jason Ward, RPLS #5811
 4Ward Land Surveying, LLC
 TBPLS Firm #10174300





CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	BEARING	DISTANCE
C1	31.06'	100.00'	17°47'47"	S69°09'10"E	30.84'
C2	10.45'	100.00'	5°59'10"	S57°15'42"E	10.44'
C3	10.50'	100.00'	8°01'00"	S57°18'37"E	10.50'
C4	123.25'	1,055.00'	8°41'37"	S28°31'27"W	123.18'
C5	116.26'	1,055.00'	8°18'51"	S20°00'49"W	116.20'
C6	238.52'	1,055.00'	13°00'28"	S23°21'50"W	238.00'

RECORD CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	BEARING	DISTANCE
(C4)	123.25'	1,055.00'	8°41'33"	S28°32'58"W	123.16'
(C5)	116.18'	1,055.00'	8°18'35"	S20°02'58"W	116.12'
(C6)	238.41'	1,055.00'	13°00'07"	S23°23'38"W	238.90'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S89°54'27"E	21.87'
L2	S78°03'03"E	89.82'
L3	S54°18'08"E	36.10'


[A]
MARKETPLACE AVENUE
(R.O.W. VARIES)

[B]
MISSOURI PACIFIC RAILROAD
INTERNATIONAL & GREAT NORTHERN RAILROAD
VOL. N, PG. 158
D.R.H.C.T.

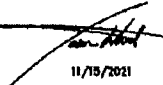
NOTES:

1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, SOUTH CENTRAL ZONE, (4204), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000101329451.


2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.



11/15/2021



8.0605 ACRES
ZONING EXHIBIT
City of Kyle,
Hays County, Texas



4WARD
Land Surveying
A Landmark Company

PO Box 99876, Austin Texas 78709
 WWW.4WARDLS.COM (512) 537-2384
 TSPELS FRM #16174594

Date:	11/15/2021
Project:	06977
Scale:	N/A
Reviewer:	PG
Tech:	EBD
Field Crec:	TS/JC/JD
Survey Date:	JULY 2021
Sheet:	2 OF 2

Exhibit A-3 – North Commercial Tract

TRACT 1:

LOT 1, BLOCK A, KYLE MARKETPLACE SECTION 2, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 14, PAGES 330-333, PLAT RECORDS OF HAYS COUNTY, TEXAS. (6.0119 ACRES)

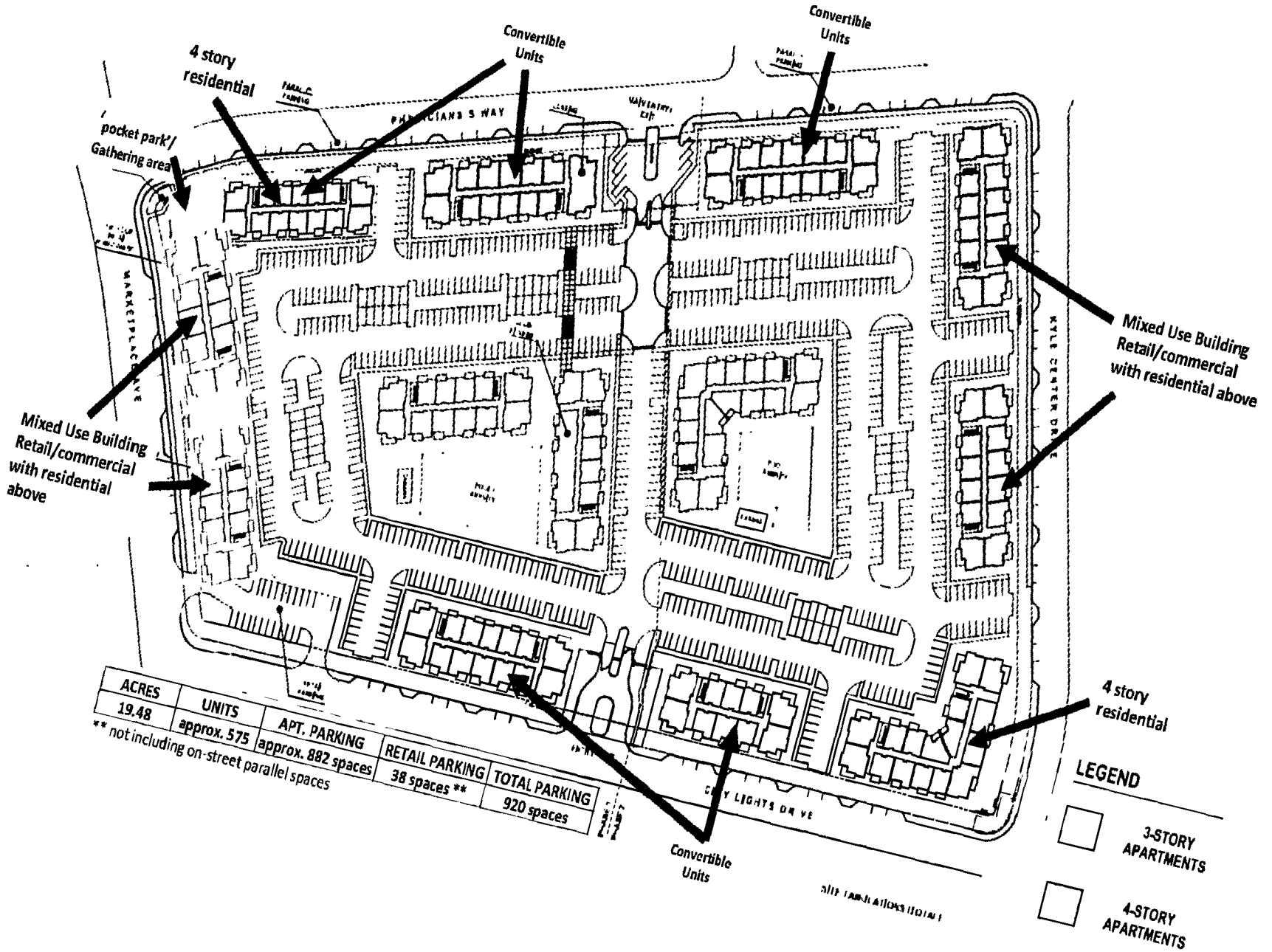
TRACT 2:

LOT 2, BLOCK A, KYLE MARKETPLACE SECTION 2, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 14, PAGES 330-333, PLAT RECORDS OF HAYS COUNTY, TEXAS. (19.1216 ACRES)

Save and except the North MXD Tract (Exhibit A-2).

Illustrative Concept Land Use Plan
 July 21, 2021

EXHIBIT B-1



ACRES	UNITS	APT. PARKING	RETAIL PARKING	TOTAL PARKING
19.48	approx. 575	approx. 882 spaces	38 spaces **	920 spaces

** not including on-street parallel spaces

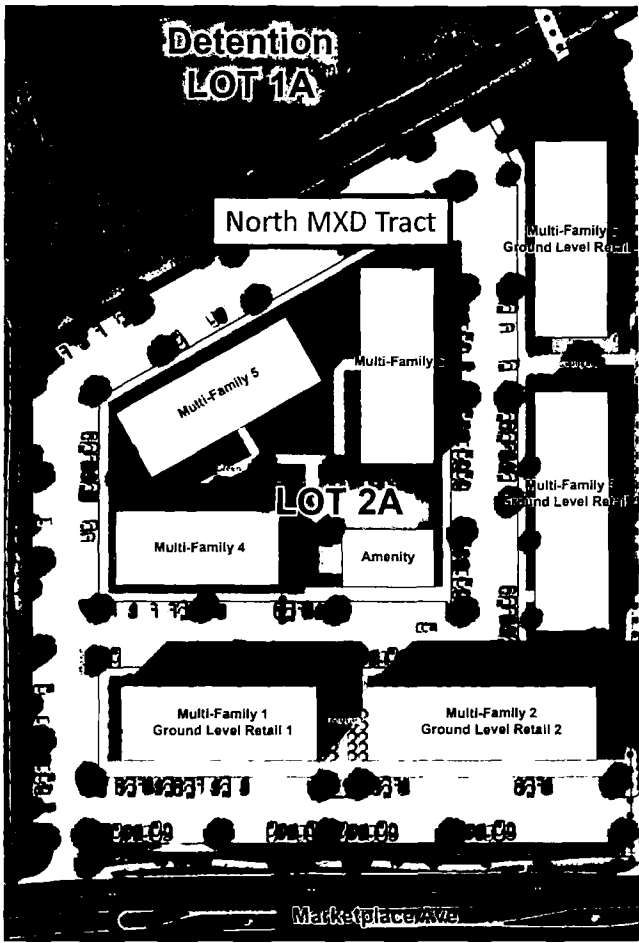


EXHIBIT B-2

EXHIBIT B-3

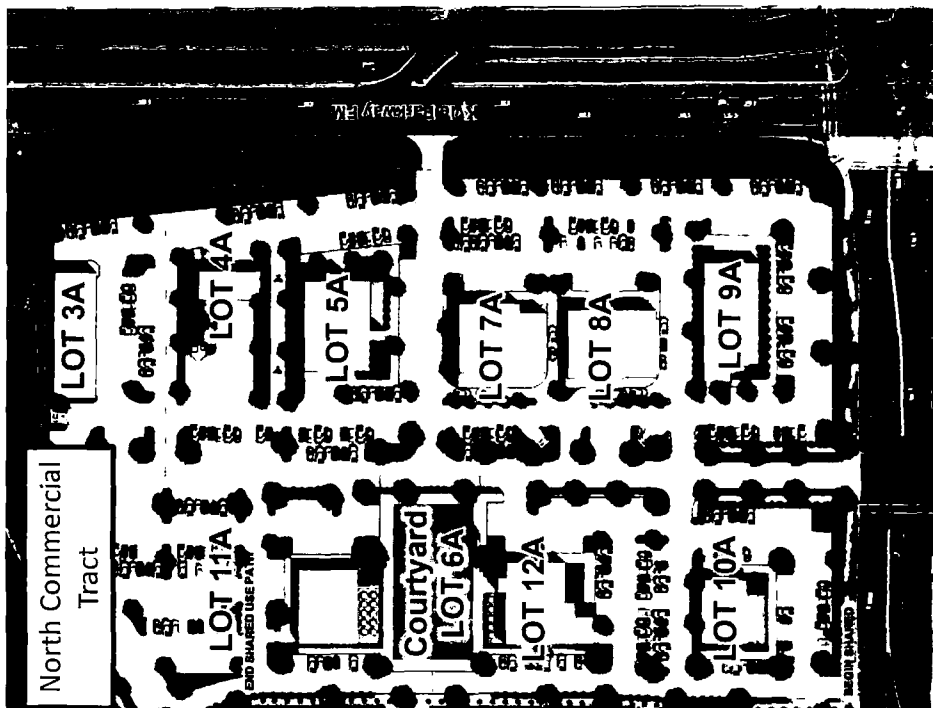


Exhibit D – DESIGN STANDARDS

Development Standards

I. DEVELOPMENT VISION

The South Tract is comprised of a large city block, approximately 19.5 acres in size. It currently sits along Marketplace Avenue and is part of the corridor plan connecting downtown Kyle, and the new urban centers to the north. The North Tract, approximately 25.1 acres, is comprised of a large city block and currently is located at the intersection of Kyle Parkway and Marketplace Avenue.

Vision

Developer shall develop an urban, mixed use style project for the South Tract, an urban mixed used style project for the North MXD Tract (above 25 units per acre), and a commercial/retail project for the North Commercial Tract. The South Tract and North MXD Tract will project an urban style that provides significant street front presence, and will provide a more urban feel for pedestrians. The South Tract and North MXD Tract will be distinguished by the following:

- Urban Architecture - characterized by a comprehensive concept that reflects urban architectural styles that are planned to integrate into a pedestrian friendly street front development.
- Create architectural massing along key street fronts.
- Site Plan will promote buildings and living units being pushed to the street front for the South Tract.
- Develop key pedestrian corridors along designated street fronts.
- Create parallel parking along key streets surrounding the area on the South Tract.
- Ground floor retail on the South Tract fronting Marketplace Avenue and Kyle Center Drive, and space suitable for conversation to retail on the remaining frontage.
- Ground floor retail on the North MXD Tract fronting Marketplace Avenue and the Shared Use Path

Exhibits B-1, B-2 and B-3 are general layouts of what is intended to be constructed on the Project. They are not a final site plans. The Final site plans shall be generally in accordance with **Exhibits B-1, B-2 and B-3**; however building sites, shapes and locations may be adjusted; provided that material adjustments must be approved administratively by the City. (*See Exhibit B-1, B-2 and B-3*). The preliminary site plan must be in substantial compliance with the applicable exhibits.

Urban development and streetscape are to be provided along 4 sides of the property for the South Tract – Marketplace Avenue, Physicians Way, City Lights Drive and Kyle Center Drive.

II. GENERAL DEVELOPMENT STANDARDS

1. Applicability – The standards of this Article II shall apply to the entire Development.
2. Developer agrees to develop the Development in accordance with this Agreement, the Applicable Regulations, and applicable state and federal regulations. Applications for development of the Property shall demonstrate compliance with this Agreement as a condition of approval of such applications.
3. The Developer maintains the right to phase the Development under the criteria agreed to in this Agreement.
4. Replatting The Developer reserves the right to replat the property as per the Developer’s discretion and subject to the Applicable Regulations. All perimeter property lines and easements shall be respected, including setbacks and easements, unless otherwise outlined in this Agreement.

5. Certificate of Occupancy

The Developer will request building inspections and certificates of occupancy (including temporary certificates of occupancy) from the City as buildings achieve substantial completion (in lieu of the entire Development being completed).

In addition, for larger buildings, provided that the building has interior fire walls that comply with all fire and safety guidelines and all required components have been installed and are operational, a temporary certificate of occupancy may be issued for a portion of such building that is substantially complete in accordance with the Applicable Regulations and this Agreement. For purposes of this Section 5.d., substantial completion shall occur when the Developer's architect has issued an AIA G704 certificate for such building.

6. Municipal Utility and Access Easements – The Developer will require the areas designated as municipal utility and access easements, to include property security fencing, sidewalks, signage, lighting, landscaping and site furnishings when appropriate. All design consultants shall coordinate, with utility companies or the city, any constraints regarding said improvements.
7. Security Fencing – Security / Privacy fencing shall be allowed in the setbacks. Developer reserves the right to provide direct access (from the street) to the property, however, Developer may also provide limited access into the property.
8. Buffers – Meter screens shall be buffered from street view with full size panel construction that blends with the architectural design of the buildings.
9. Fencing / Barriers – All fencing at the perimeter, and interior of the project shall be steel tubing (wrought iron) or wire mesh with steel perimeter frame. There may be some areas where contemporary decorative wood slat fencing will be utilized, but this will be minimal.
10. Trash / Dumpster Screens – All dumpster or compactors shall be screened with masonry walls and screened with an opaque metal frame gate system.
11. Public Art – Public art pieces, preferably from local artists, will be included in the Development as appropriate in the discretion of the Developer, with the involvement and reasonable approval of the City.
12. Access – Access to the Development from adjacent public rights-of-way shall generally conform with the terms of this Agreement and exhibits thereto.
13. Doors and Entrances – Doors and entrance points shall generally conform with the terms of this Agreement and exhibits thereto. Section 53-686 of the City's Ordinances shall not apply to interior buildings not fronting Marketplace Avenue or the Shared Use Path.
14. Supplemental Development Regulations - Notwithstanding section 53-960 of the City's Ordinances, the layout attached as exhibits to this Agreement shall govern.
15. Indoor/Outdoor Operations – Notwithstanding anything to the contrary herein, private amenities as indicated in this Agreement and the exhibits thereto shall be permitted.
16. Parking – No maximum parking limits shall apply to the Development.
17. Utility Easements – In the event any utility easements prevent the construction or implementation of tree planting or landscaping as required by the City's Ordinances, Developer will work with the City to achieve alternative compliance per Chapter 54 of the City's Code of Ordinances.

III. SOUTH TRACT DEVELOPMENT STANDARDS

a. General Guidelines

1. Applicability – The standards of this Article III apply solely to the South Tract.
2. Street Front Development/Setbacks
 - a. The buildings along public roadways shall, at a minimum be four (4) story buildings, and a maximum height of 65 feet or five (5) stories. The face of structures may vary, but the predominance of the structure shall be between ten feet (10') and 20 feet (20') from the property line. Final site plan shall be dependent upon location of street front

municipal utility easements. Interior buildings shall have a maximum height of 65 feet or five (5) stories and no minimum height.

- b. Existing Municipal Infrastructure – The City shall help coordinate the use of new lighting fixtures along Marketplace Avenue and any other streets where new fixtures need to be added. Current light fixtures will be deemed unusable with the new style of development.
3. Retail –
 - a. The Developer shall provide ground floor retail fronting Market Place and Kyle Center Drive. The ground floor space fronting City Lights and Physicians Way will be “convertible space”, which the Parties agree to mean space that is initially suitable to residential use, but may be converted to retail space without significant reconstruction, and shall be a minimum of 15,000 square feet.
 - b. The buildings fronting Marketplace Avenue shall have a cumulative minimum of 15,000 square feet of possible first floor commercial space. The building built on the corner of Marketplace Avenue and Physician’s Way or City Lights Drive may include commercial space that satisfies the minimum square footage described in this subsection.
 - c. The buildings fronting Kyle Center Drive shall have a cumulative minimum of 15,000 square feet of possible first floor commercial space. A building that is built on the corner of Kyle Center Drive and City Lights Drive may include commercial space that satisfies the minimum square footage described in this subsection.
 - d. Any unleased commercial space may be “shadowboxed” until leased.
 - e. Any commercial space in a building on the South tract may be converted into a condominium regime.
 4. Signage –
 - a. The Developer, as part of the urban concept, shall be allowed for the use of signage attached to the building – either as a “blade” sign attached to the building, or signage attached to the building. Blade signage may be constructed of metal backlit box to minimize excessive light. The size of these signs may be up to 40 square feet. Signage may be two sided. All signage shall be subject to Applicable Regulations.
 - b. The Developer will construct and install two primary signage monuments (one at each main entrance) with a maximum area of 30 square feet (with respect to the sign panel only). If signage is two-sided, this guideline shall apply to both sides of the sign.
 5. Parking –
 - a. Except as provided otherwise, parking shall be allowed to be structured, surface, or a combination thereof and shall be located in accordance with this Agreement and the exhibits thereto.
 - b. Garages with tilt wall construction or pre cast panels may utilize textured paint in lieu of stucco for purpose of 53-691 of the City’s Ordinances.
 - c. Parking shall have a minimum of 1.1 parking parcels per living unit, and 1 parking space per 300 square feet of commercial area and restaurant uses (excluding any patio square footage). Parallel parking, surface parking, covered parking (which may be in the form of carports or separate detached garages), attached parking, and tandem parking spaces shall be included in calculated the minimum parking spaces. Convertible retail space shall be counted as a living unit for the purposes of determining the required number of parking spaces.
 - d. If the Development is phased, the assessment of parking ratios for the second phase of the Development shall be reviewed to ensure parking requirements are adequate for the Development.
 6. Doors and Entrances – Commercial uses along Marketplace Avenue and Kyle Center Drive shall provide entrances oriented toward the public ROW as feasible, in coordination between the City and the Developer.

7. Interior Buildings - All buildings not fronting public right of ways may be completely residential with no ground floor retail. All buildings shall have a minimum height of three stories provided that the amenity center and leasing office may have a minimum height of one story.
8. Landscaping/Street Trees –The landscape along the street front development will be an important part of creating the aesthetic required to make this project a success. Developer shall plant one shade tree for every 40 linear feet of frontage and use a minimum of 3 tree types. Trees shall be a minimum of 3” caliper and shall be a blend of deciduous and evergreen trees. Extensive planting shall be done around building foundations, along fence lines and to buffer parking zones in accordance with a landscaping plan approved by the City.
9. Parkland Requirements - This South Tract will have extensive street front development as per the requirements of the City and the terms of this Agreement. These street front corridors outlined in this Agreement are essentially public space corridors and are designed to provide an urban concept to the community. Tree Planting will increase to one shade tree for every 30’ of street front and shall be upsized to minimum 5” caliper trees. The Developer shall submit the requests set forth in this section to the Parks Board and comply with the recommendations of the Parks Board that are approved by City Council.
10. Parallel Parking at Street – Developer shall be allowed to develop parallel parking along street in accordance with plans approved by the City. This will require strategic design around existing infrastructure. Part of this design shall include the planting of street trees within the right-of-way as well. All improvements shall be designed and constructed in accordance with the Applicable Regulations. The Developer shall coordinate with the City regarding any construction that occurs within the public right-of-way to minimize disruption of traffic and shall execute a license agreement in a form acceptable to the City prior to commencing construction within the right-of-way.

B. Architectural Guidelines

1. Style – The South Tract shall be designed with an urban style for the portions that front roadways, while interior buildings will comply with R-3-3 standards under the City’s Ordinances and this Agreement. If the Development is phased, Developer reserves the right to develop a similar project but with variances in colors of materials.
2. Materials for Exterior Surfaces
 - a. Street Front Buildings / Front Elevation Materials – Facades along the street front shall be constituted of a variety of materials. On buildings located along street fronts, the material calculation shall be a minimum sixty percent (60%) of either masonry or stucco with a minimum of forty percent (40%) of the façade being masonry (brick or stone).. The balance of façade materials may be cementitious siding or special materials, such as metal or tile. The predominance of cementitious siding may be used as inset materials for patios in order to minimize water proofing issues. This will allow for the predominant materials exposed along the facades to be masonry, stucco, glass, or metals. Metals, or special cladding materials may be used as specialty materials, comprising up to fifteen percent (15%) of the finished façade, but shall not be substituted for masonry or stucco. The elevations of the mixed-use and multi-family structures shall in substantial compliance with the depictions on **Exhibit H**.
 - b. Street Front Buildings / Side Elevation Materials – Façade treatments on side elevations shall be the same as Section B.2.a regarding front elevations.
 - c. Internal Buildings / All Elevations (All Buildings) – Facades not exposed to the street front, or further than 65 feet from any building setback line, materials shall be as follows. On the buildings located along Marketplace Avenue, of the total material calculation, there shall be a minimum of thirty percent (30%) of either masonry or stucco, with a minimum of twenty percent (20%) of the façade being masonry (brick or stone). The balance of façade materials may be cementitious siding. Service buildings and parking structures shall be a minimum of

twenty percent (20%) masonry or stucco. Metals or special cladding may be used as specialty materials, comprising up to fifteen percent (15%) of the finished façade, but shall not be substituted for masonry or stucco.

- d. Calculation of Materials – Calculation of materials is for facades running parallel to the street. Offsets or insets to facades shall be strategically designed to utilize similar adjacent materials – whether they be masonry, stucco, or cementitious siding. All calculations are exclusive of glass, doors, venting or other elements that do not constitute the cladding or finish of the façade.
 - e. Material Selections – Final color and finish specifications shall be at the discretion of the Developer. Developer agrees to provide calculation of proposed materials as part of a building permit application to the City, to ensure compliance with material use as outlined above. The Developer shall provide elevations of buildings facing the street for review by the City to verify use of materials proposed prior to submitting for a building permit.
3. Roofing
- a. Roof profiles along street front buildings shall have a predominantly flat roof. Sloped roof elements may be created for architectural diversification, sloped awnings and variations of sloped roof elements may be utilized in order to create variation in the elevation of the project. Standing seam metal roofs shall be utilized on these facades.
 - b. Roof profiles for all buildings located along the interior of the project shall have a variable or multiple roof system. Flat roofs shall be provided to allow for condensing units to be placed on the rooftop but must be screened. The Developer retains the right to blend the roof system to allow for the use of architectural composite shingles for portions of the roof system that is visible to the façade. Color of the materials shall be consistent with the textures and the colors utilized for other metal roofing materials. Slopes of roofs shall be consistent with the style of the Development and shall convey an urban style for the development.

IV. NORTH MXD TRACT DEVELOPMENT STANDARDS

A. General Guidelines

1. Applicability – The standards provided in this Article IV shall apply solely to the North MXD Tract.
2. Street Front Development / Setbacks
 - a. The buildings along public roadways and the Vybe, at a minimum, be four (4)-story buildings, at a maximum five (5) story or 65 feet high buildings, and shall sit no closer than ten feet (10') from the property line. Final site plan shall be dependent upon location of street front municipal utility easements. Interior buildings shall have a maximum height of 65 feet or five (5) stories, and no minimum height.
3. Retail –
 - a. In the event the North MXD Tract is developed with residential uses, the floor area apportionment of a primary use as defined in Section 53-677 of the City's ordinances. Estimated ground floor retail on the multi-family portion of the North MXD Tract fronting Marketplace Ave is fourteen thousand (14,000) square feet and the estimated ground floor retail on the multi-family portion of the North MXD Tract fronting the Vybe is eight thousand (8,000) square feet.
 - b. Any unleased commercial space may be "shadowboxed" until leased.
 - c. Any commercial space in a building on the North MXD Tract may be converted into a condominium regime.
4. Parking - -
 - a. Except as provided otherwise, parking shall be allowed to be structured, surface, or a combination thereof and shall be located in accordance with this Agreement and the exhibits thereto.
 - b. Garages with tilt wall construction or pre cast panels may utilize textured paint in lieu of stucco for purpose of 53-691 of the City's Ordinances.

- c. Parking shall have a minimum of 1.1 parking parcels per living unit and 1 parking space per 300 square feet of commercial area and restaurant uses (excluding any patio square footage). Parallel parking, surface parking, covered parking (which may be in the form of carports or separate detached garages), attached parking, and tandem parking spaces shall be including in calculated the minimum parking spaces.
 - d. The calculation of parking ratios shall be calculated against the entire North MXD Tract, rather than on a plat by plat or lot by lot basis.
5. Signage
- a. The Developer will construct and install two primary signage monuments (one at each main entrance) with a maximum area of 80 square feet (with respect to sign panels only) per sign. If signage is two-sided, this guideline shall apply to both sides of sign. Secondary signage shall comply with all Applicable Regulations.
6. Interior Buildings
- a. All buildings shall have a minimum height of three stories, provided that the amenity center and leasing office may have a minimum height of one story
- B. Architectural Guidelines**
1. Style – If the North MXD Tract is developed with multi-family residential uses, it shall be designed with an urban style for the portions that front roadways, while interior buildings will comply with R-3-3 standards under the City’s Ordinances with an urban-style architecture. If the Development is phased, Developer reserves the right to develop a similar project but with variances in colors of materials.
2. Materials for Exterior Surfaces
- a. Street Front Buildings / Front Elevation Materials – Facades along the street front shall be constituted of a variety of materials. On buildings located along street fronts, the material calculation shall be a minimum sixty percent (60%) of either masonry or stucco with a minimum of forty percent (40%) of the façade being masonry (brick or stone). The balance of façade materials may be cementitious siding or special materials, such as metal or tile. The predominance of cementitious siding may be used as inset materials for patios in order to minimize water proofing issues. This will allow for the predominant materials exposed along the facades to be masonry, stucco, glass, or metals. Metals, or special cladding materials may be used as specialty materials, comprising up to fifteen percent (15%) of the finished façade, but shall not be substituted for masonry or stucco. The elevations of the mixed use and multi-family structures shall be substantially similar to **Exhibit H**.
 - b. Street Front Buildings / Side Elevation Materials – Façade treatments on side elevations shall be the same as Section B.2.a regarding front elevations.
 - c. Internal Buildings / All Elevations (All Buildings) – Facades not exposed to the street front, or further than 65 feet from any building setback line, materials shall be as follows. On the interior buildings, of the total material calculation, there shall be a minimum of thirty percent (30%) of either masonry or stucco, with a minimum of twenty percent (20%) of the façade being masonry (brick or stone). The balance of façade materials may be cementitious siding. Service buildings and parking structures shall be a minimum of twenty percent (20%) masonry or stucco. Metals or special cladding may be used as specialty materials, comprising up to fifteen percent (15%) of the finished façade, but shall not be substituted for masonry or stucco.
 - d. Calculation of Materials – Calculation of materials is for facades running parallel to the street. Offsets or insets to facades shall be strategically designed to utilize similar adjacent materials – whether they be masonry, stucco, or cementitious siding. All calculations are exclusive of glass, doors, venting or other elements that do not constitute the cladding or finish of the façade.
 - e. Material Selections – Final color and finish specifications shall be at the discretion of the Developer. Developer agrees to provide calculation of proposed materials as part of a building permit application to the City, to ensure compliance with material use as outlined

above. The Developer shall provide elevations of buildings facing the street for review by the City to verify use of materials proposed prior to submitting for a building permit.

3. **Roofing**
 - a. Roof profiles along street front buildings shall have a predominantly flat roof. Sloped roof elements may be created for architectural diversification, sloped awnings and variations of sloped roof elements may be utilized in order to create variation in the elevation of the project. Standing seam metal roofs shall be utilized on these facades.
 - b. Roof profiles for all buildings located along the interior of the project shall have a variable or multiple roof system. Flat roofs shall be provided to allow for condensing units to be placed on the rooftop but must be screened. The Developer retains the right to blend the roof system to allow for the use of architectural composite shingles for portions of the roof system that is visible to the façade. Color of the materials shall be consistent with the textures and the colors utilized for other metal roofing materials. Slopes of roofs shall be consistent with the style of the Development and shall convey an urban style for the development.

V. **NORTH COMMERCIAL TRACT DEVELOPMENT STANDARDS**

1. **Applicability** – The standards of this Article V shall apply solely to the North Commercial Tract.
2. **Street Front Development / Setbacks**
 - a. The buildings along public roadways shall sit no closer than ten feet (10') from the property line. Final site plan shall be dependent upon location of utility easements.
3. **Retail**
 - a. There will be a minimum of 18,000 square feet of commercial space on the North Commercial Tract.
 - i. The Developer shall construct a minimum of 14,000 square feet of commercial space on the North Commercial Tract within 24 months on or before the Performance Date, as that term is defined in the 380 Agreement.
 - b. Any unleased commercial space may be “shadowboxed” until leased. [DISCUSS]
 - c. Any commercial space in a building on the North Commercial Tract may be converted into a condominium regime.
4. **Parking -**
 - a. Except as provided otherwise, parking shall be allowed to be structured, surface, or a combination thereof and shall be located in accordance with this Agreement and the exhibits thereto.
 - b. Garages with tilt wall construction or pre cast panels may utilize textured paint in lieu of stucco for purpose of 53-691 of the City’s Ordinances.
 - c. The calculation of parking ratios shall be calculated against the entire North Commercial Tract, rather than on a plat by plat or lot by lot basis.
 - d. Parking shall have a minimum of 1 parking space per 150 square feet of restaurant uses (excluding any patio square footage), and 1 parking space per 300 square feet of commercial area.

VI. **EXHIBITS**

Exhibits have been provided as part of this Agreement. All exhibits represent a conceptual plan that has been developed to provide the City with a representation of the proposed Development. The site plan and building elevations are conceptual, and do not reflect a final design; however, the final elevations and design shall be substantially similar to the conceptual plan and elevations set forth in this Agreement. Final elevations and site plans shall be submitted to the City for final approval, which approval shall not be withheld to the extent such elevations and plans are in substantial compliance with this Agreement and the Applicable Regulations.

Exhibit E-1 -- Pedestrian Bridge/Tunnel and Offsite Trail

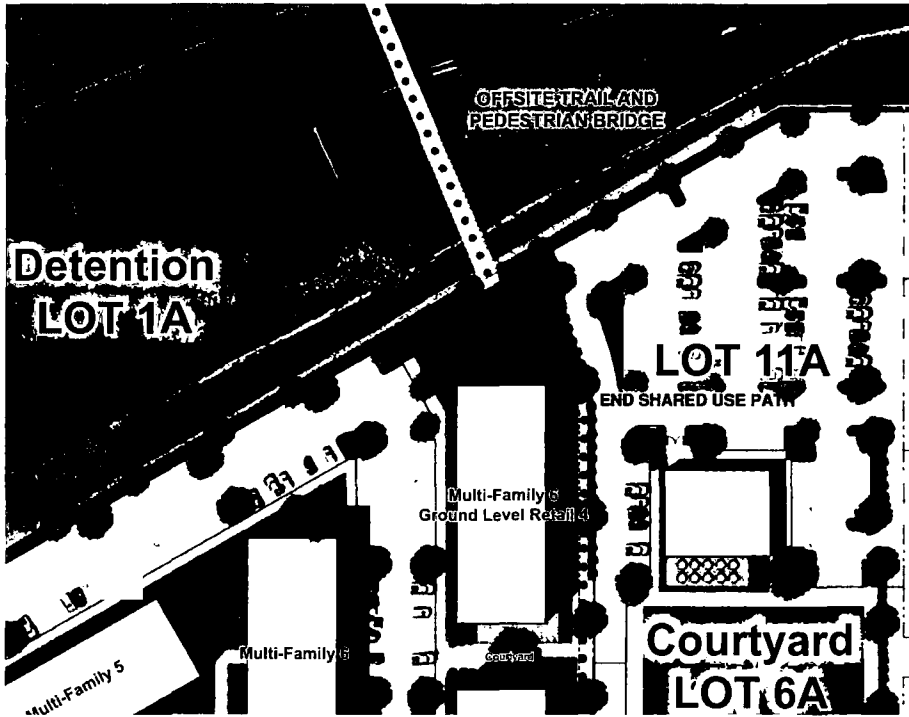
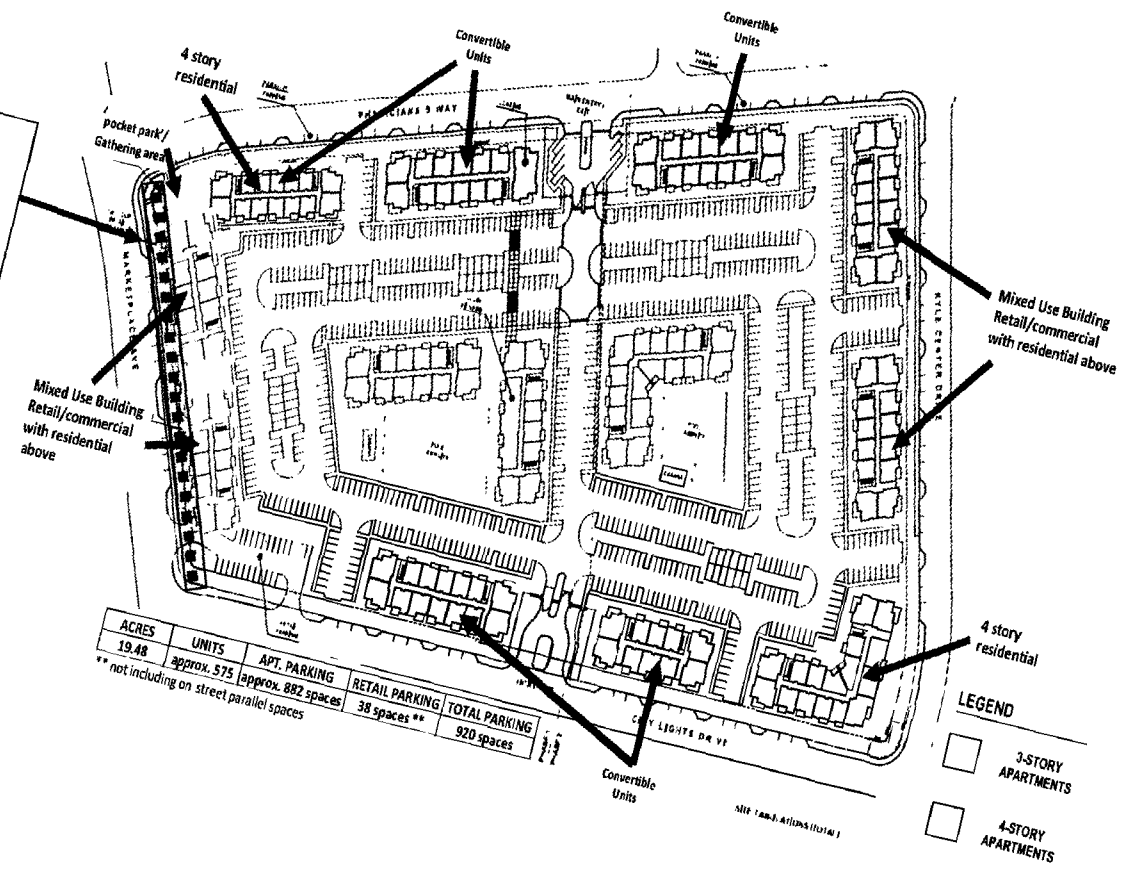


EXHIBIT E2

Illustrative Concept Land Use Plan
July 21, 2021

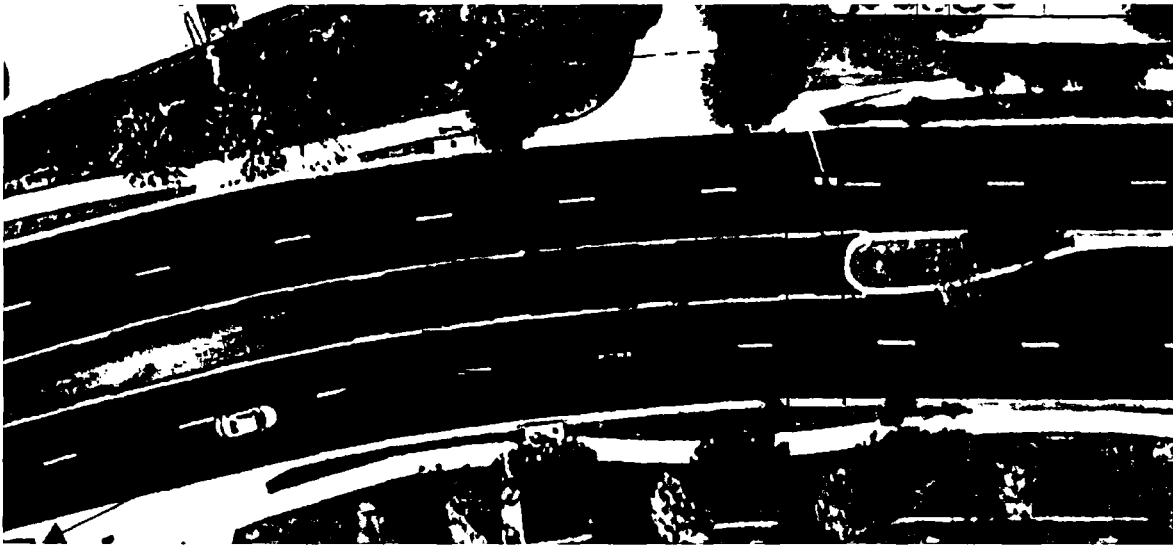
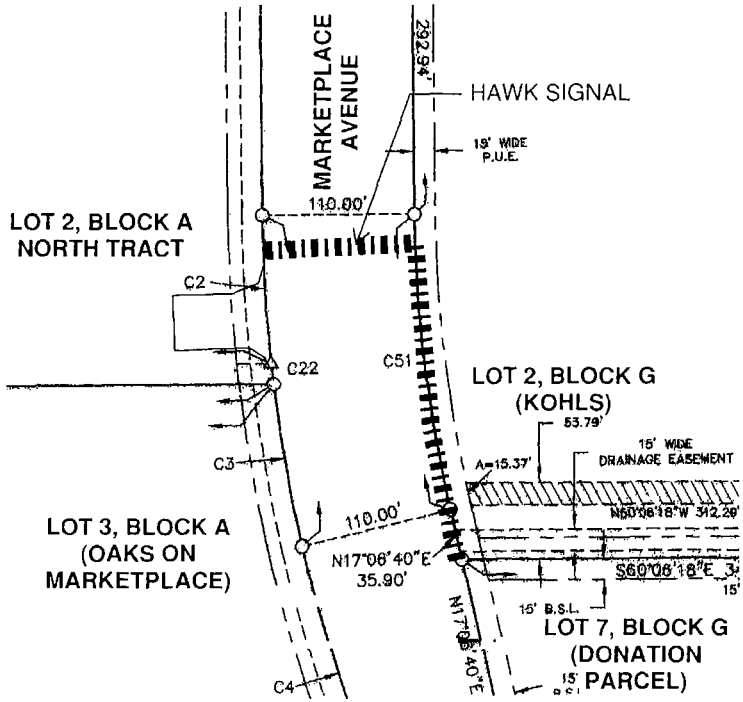
The Vybe to be constructed with the South Tract construction



ACRES	UNITS	APT. PARKING	RETAIL PARKING	TOTAL PARKING
19.48	approx. 575	approx. 882 spaces	38 spaces **	920 spaces

** not including on street parallel spaces

Exhibit E-4



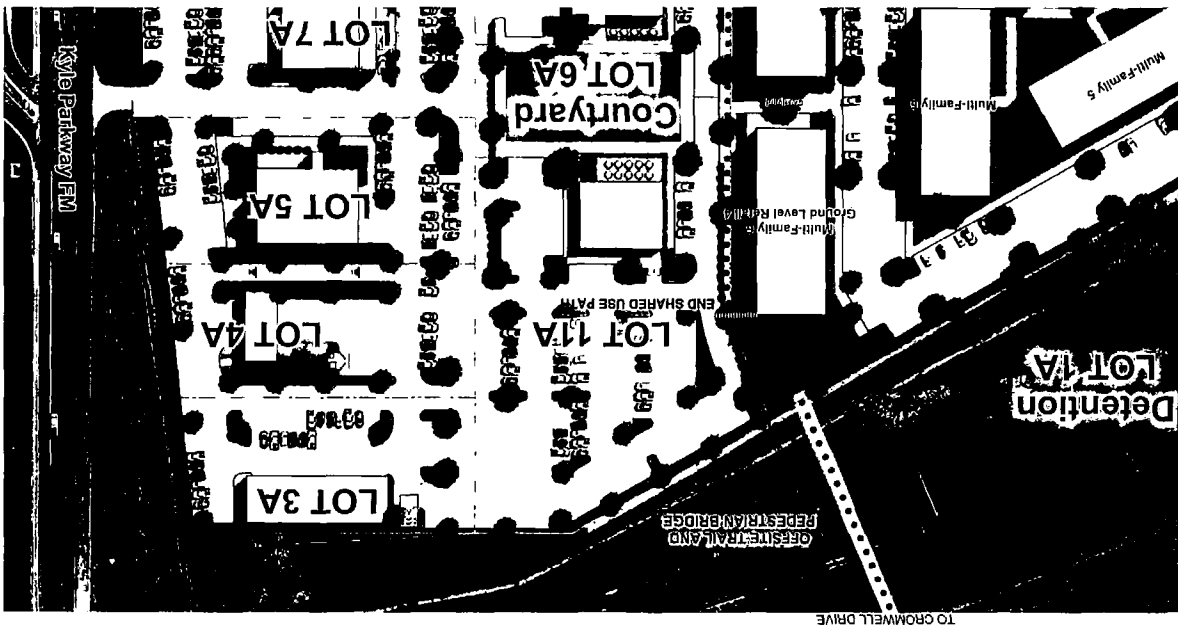
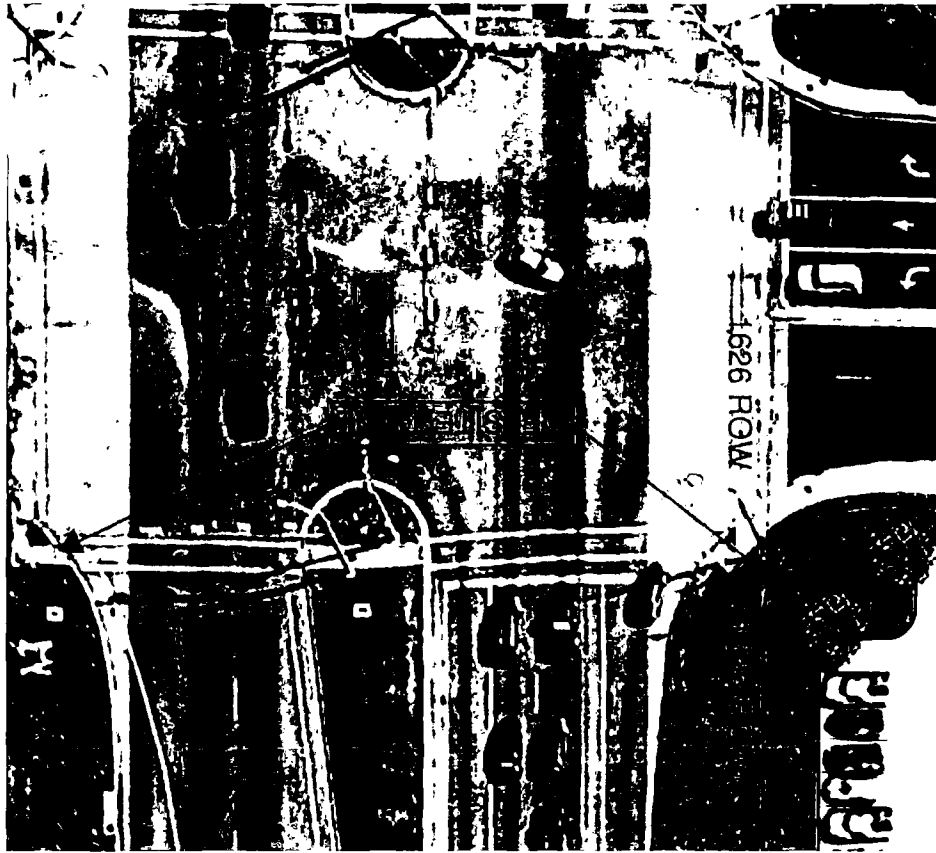


Exhibit E-5

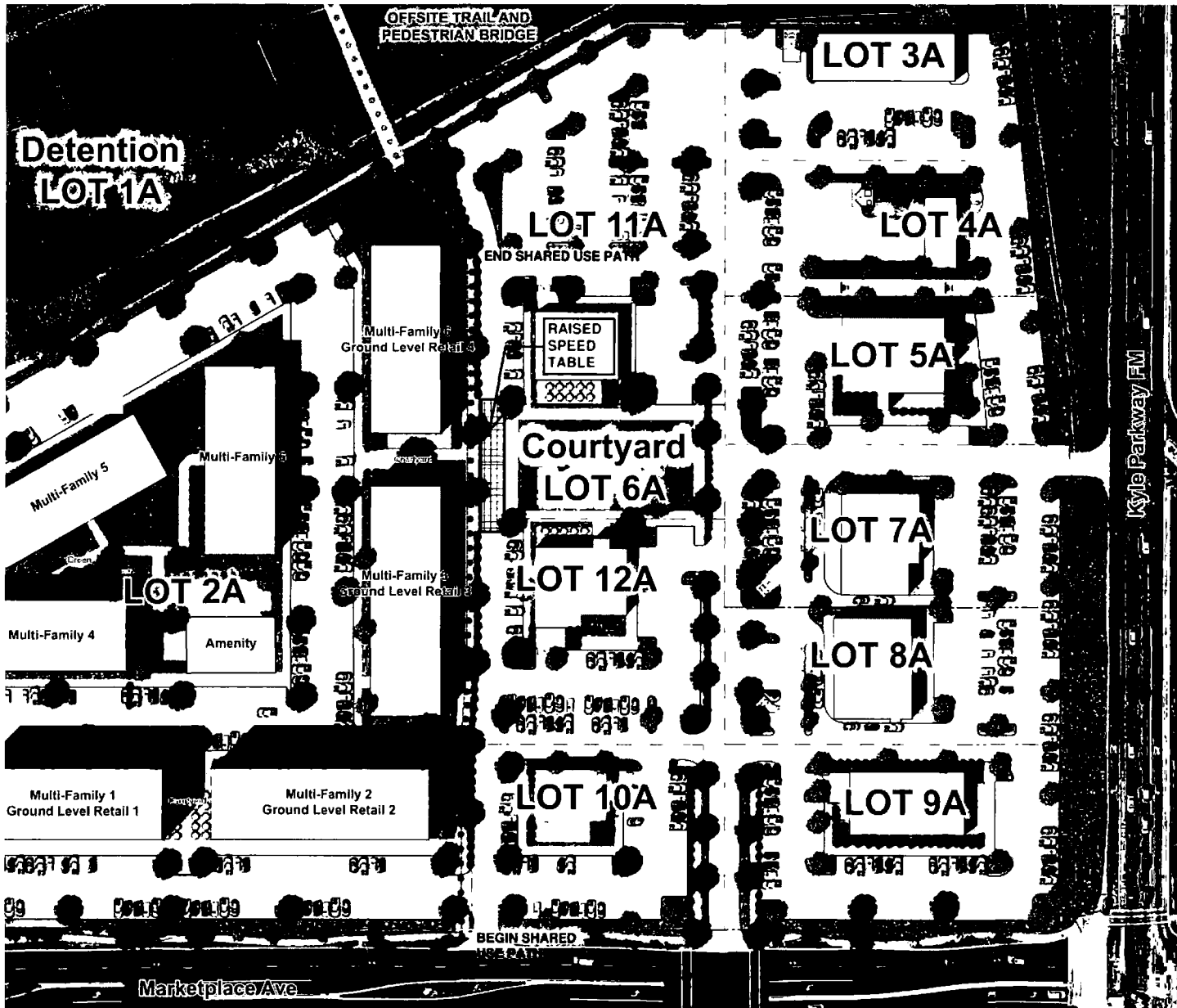
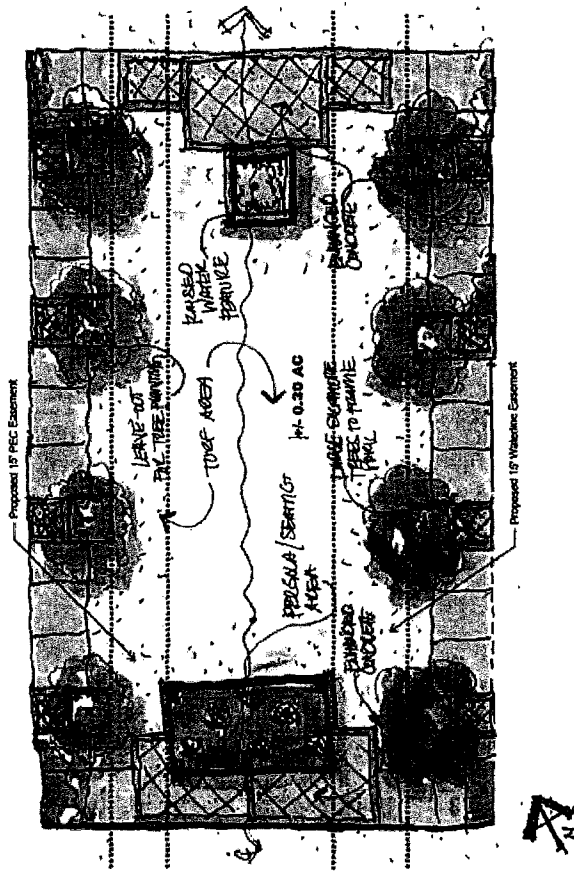


Exhibit G - North Tract Courtyard



6E

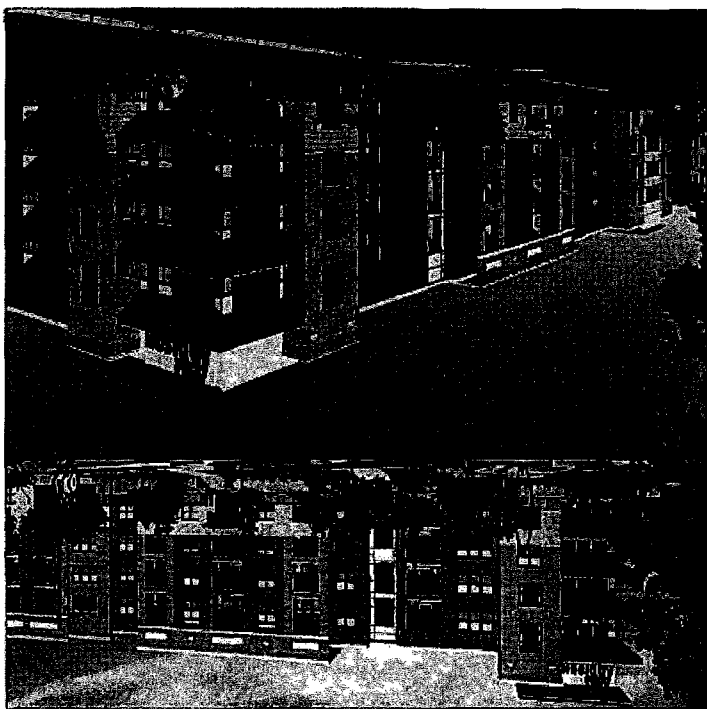
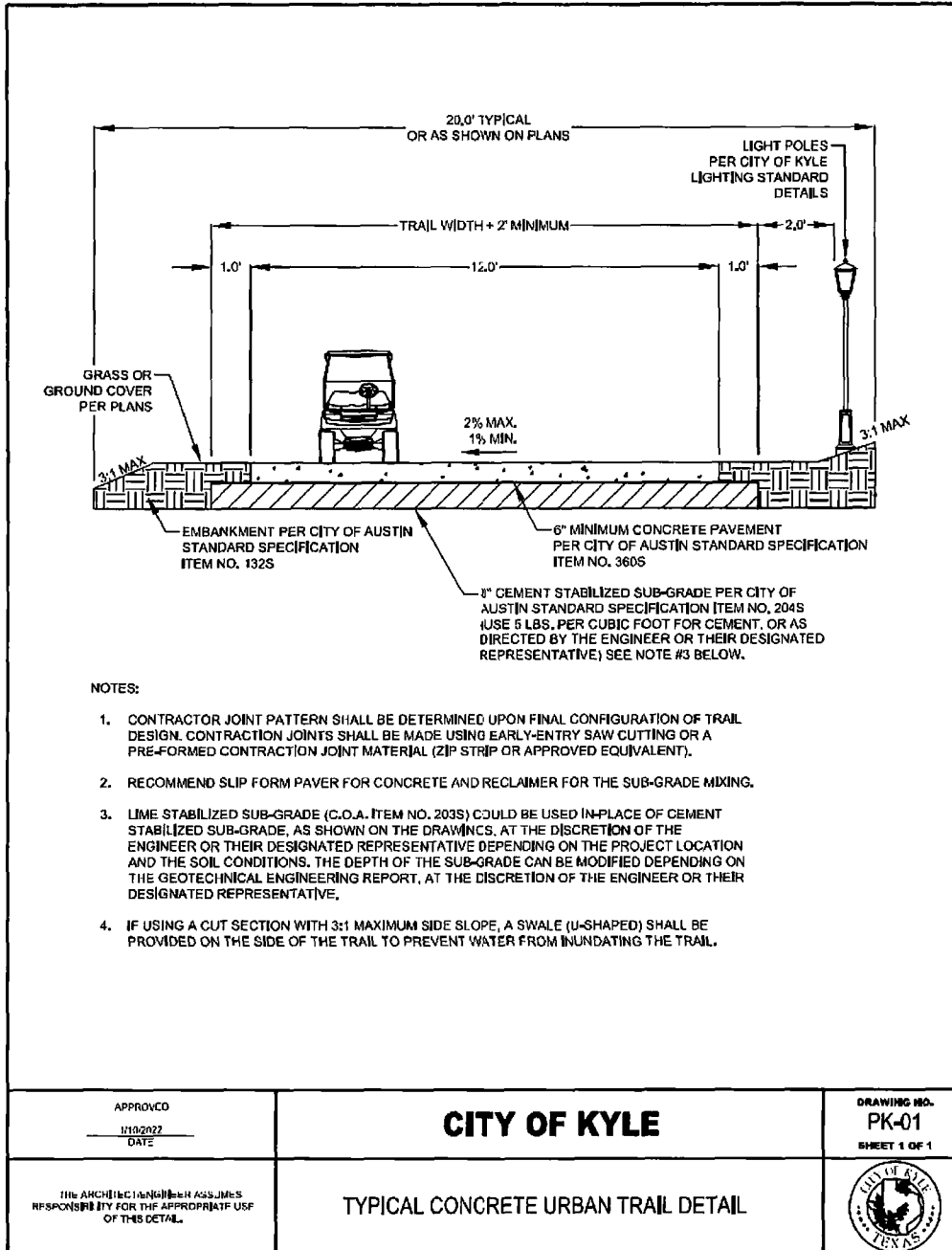


Exhibit H - Multi-Family Building Elevations

Exhibit F



**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.

22019278 AGREEMENT
04/19/2022 01:25:26 PM Total Fees: \$194.00

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

