

**DEVELOPMENT AGREEMENT
ESTABLISHING DEVELOPMENT STANDARDS
FOR THE SETON PARKWAY SUBDIVISION/DEVELOPMENT**

This Development Agreement Establishing Development Standards for the Seton Parkway Subdivison/Development (the "Agreement") is made and entered into, effective as of the 6 day of September, 2022, by and between the **City of Kyle, Texas**, a Texas home rule municipal corporation (the "City"), and **SCC Kyle Partners, Ltd.**, a Texas limited liability partnership (the "Developer"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

Section 1. Purpose; Consideration.

- (a) The Developer owns that certain +/- 15.4 acre tract 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 (or cause to be developed by future owners) the Property for mixed uses including multifamily apartments and commercial uses (the "Development"). The Developer desires that the City be able to enforce the Development Standards set forth herein through its building permit, inspection, and certificate of occupancy processes by this agreement, given that House Bill 2439 adopted in the 86th Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance.
- (b) The Developer and its Designated Successors and Assigns (as defined below) will benefit from the City enforcing the Development Standards 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 homes or other 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) On or prior to the Effective Date hereof, the Property has considered or will consider rezoning the Property to Planned Unit Development – Mixed Use by Ordinance No 1222 (the "PUD MXD Zoning").

Section 2. Term; Termination.

- (a) The term of this Agreement shall be in full force and effect from the Effective Date hereof,

subject to earlier termination as provided in this Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the issuance of the final certificate of occupancy for the final structure in the Development.

Section 3. Development Standards.

(a) Development Requirements.

- (i) Developer agrees that it will design and develop (or cause to be designed and developed) the Development in accordance with **Exhibit B** attached hereto and incorporated herein for all purposes. Developer shall complete construction of the Seton Parkway/Kyle Parkway traffic signal improvements, the Vybe Trail and other shared use path improvements, and other public improvements provided herein and shall dedicate the future Seton Parkway extension (collectively, the “Public Improvements”) prior to the final certificates of occupancy for the Development. Notwithstanding anything herein to the contrary, Developer shall have no obligation to commence construction of the Public Improvements prior to the issuance of the first building permit for the Development.

- (b) **Building Permits.** The Developer acknowledges and agrees that compliance with this Agreement will be a condition of issuance of building permits and certificates of occupancy. Developer further agrees that the City may use its building permitting, inspection, and enforcement processes and procedures to enforce the requirements of Section 3(a) 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 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 be in 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.

- (c) **Stormwater.** No onsite detention at the Property is required. The existing Bunton Branch Creek regional detention pond immediately north of the Property was developed for the entire Seton Hays County Subdivision (including the subject Property) planning for ninety-five percent (95%) impervious cover with Pre-ATLAS 14 rainfall. City recognizes that Developer’s project will be less than ninety-five percent (95%) impervious cover. However, in light of ATLAS 14, it is possible that the Development may model to show a slight increase in flow as compared to the Pre-ATLAS 14 rainfall calculations. It is possible that capacity in Bunton Branch Creek regional detention pond may require expansion to accommodate detention outflow from the Development. If so, Developer shall have the right to expand capacity of the Bunton Branch Creek regional detention, but shall not be

required to expand the capacity of the regional detention pond beyond the excess runoff delta of the Property.

- (d) **Traffic.** Developer will provide a Traffic Assessment Technical Memorandum for the purposes of assessing estimated vehicle trip generation by the Development compared to prior zoning and trip distribution along proximate roadways, produced by a professional licensed engineer based on the approved Concept Site Plan attached hereto and incorporated herein as **Exhibit C**.
- (e) **Seton Parkway / Kyle Parkway Traffic Signal Improvements.** In lieu of paying any Adjacent Lane Mile fees, the Developer shall be responsible for paying for the design and construction of signalized traffic lights at the intersection of Kyle Parkway and Seton Parkway as shown on **Exhibit J** attached hereto and incorporated herein and referenced in the Traffic Assessment Technical Memorandum attached hereto and incorporated herein as **Exhibit L**. The required improvements shall be materially consistent with the existing traffic lights located at the intersection of Kyle Parkway and Philomena Drive located ~800 feet to the southeast. Additionally, the west corner of the intersection is required to have the curb radius softened (5896 Kyle Parkway). To avoid vehicles from frequently hitting the curb, an appropriate ADA compliant design will be constructed within existing City right of way. The Developer shall not be required to make any other major roadway improvements, such as construction of a roundabout.
- (f) **Shared Use Path Improvements.** Developer is required to comply with the Development Standards established in the PUD MXD Zoning, Section 2(B)(3) and Section 2(B)(4) regarding the Vybe Trail and other shared use paths. City of Kyle and Developer will work in good faith to design the shared use path specifically detailed in the PUD MXD Zoning, Section 2(B)(3)(b) running along/within the east-west private access drive as shown in **Exhibit C** and **Exhibit D** attached hereto and incorporated herein.
- (g) **Dedication of Future Seton Parkway Extension.** At such time a replat occurs, pursuant to Ordinance No. _____ as enumerated in Exhibit B, Section 1 (B)(2), the Developer will dedicate approximately 18,240 square feet of land (80'x228') for public right of way for the future Seton Parkway extension. The City of Kyle agrees that Developer shall be allowed to have a crosswalk with to-be-determined traffic control measures to protect pedestrian access to and from the planned dog park and parking area conceptually shown on **Exhibit I** attached hereto and incorporated herein. The City of Kyle will allow the Developer to landscape/hardscape (but only shrubs and ground cover) the 18,240 square feet area in the event that the development is built but the future Seton Parkway extension is in the design stage.
- (h) **Bunton Branch Creek Easements.** The City of Kyle acknowledges certain easements benefiting the City of Kyle exist at the northern property boundary along Bunton Branch Creek and agrees to cooperate in good faith to assist Developer in design coordination to allow for construction of the Green Space Food & Beverage Destination (defined herein) in the event easements need to be relocated or encroached upon.
- (i) **Alcohol Sales & Food Trucks.** The City of Kyle hereby waives any City of Kyle ordinances

that may or may not exist prohibiting the use of mobile food vendors (i.e. "Food Trucks") or sale of alcohol, wine, or beer on the property. The City of Kyle acknowledges that the right to utilize Food Trucks and to sell alcohol, wine, and beer at the property is a material consideration for Developer entering into this Agreement and will be required for the success of the Green Space Food & Beverage Destination (defined herein).

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, and such amendments to City ordinances and regulations that may be applied to the Development and the Property under Chapter 245, Texas Local Government Code, and good engineering practices (the "Applicable Regulations"). If there is a conflict between this Agreement and Applicable Regulations, this 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 its own 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 and approval of such assignment by the City Manager, 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. It is hereby acknowledged that Developer is under contract to sell the Property to CTC Residential, LLC, a Texas limited liability company ("CTC"). CTC acted as Developer's Applicant

Representative in negotiations with the City to obtain the PUD MXD Zoning. The City hereby attests that CTC and its affiliates have the capacity, sophistication, and ability to assume the rights and obligations described herein without modification or amendment. CTC and its affiliates are hereby pre-approved as an assignee.

- (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) It is hereby acknowledged that any affiliate of the Developer having common ownership as Developer, in part or in whole, or any affiliate controlled by Developer (the “Developer Affiliate(s)”) shall be a permitted assignee regardless of the conditions required for an assignee in Section 6(a). Such an assignment may occur prior to the Effective Date. If Property is conveyed to a Developer Affiliate, the assignment instrument shall obligate the Developer Affiliate to comply with the terms and conditions of this Agreement and the Developer or Developer Affiliate shall provide the City with a copy of such assignment instrument within five (5) business days after the effective date of the assignment.

Section 6. Default. 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.

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

Section 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.

- (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 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
 Jerry Hendrix
 100 W Center St.
 Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

SCC Kyle Partners, Ltd.
 c/o Mr. Phillip M. Plant
 Herndon Plant Oakley Ltd.
 800 N. Shoreline Blvd. #2200S
 Corpus Christi, Texas 78401
 E Mail: Phil@hpo.com

With copy to:

CTC Residential, LLC
 Attn. Sean Ratterree
 854 Sprucewood Lane
 Houston, TX 77024

With copy to:

Jackson Walker LLP
 Attn. Pam McClain Madere
 100 Congress Avenue, Suite 1100
 Austin, TX 78701

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 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.

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 shall be the defined date set forth in the first paragraph of the Agreement.

Section 18. 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 20. 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 21. 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 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.
- (c) 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, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

- (d) The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Section 22. 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 23. Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A – Property Description

Exhibit B – Development Standards

Exhibit C – Concept Site Plan

Exhibit D – Public Access Roadways

Exhibit E – Concept Shared Use Path Vybe Trail & Vybe Spot

- Exhibit F** – Vybe Spot Conceptual Renderings
- Exhibit G** – Building Conceptual Elevation Renderings
- Exhibit H** – Boulevard Section Detail
- Exhibit I** – Crosswalk through ROW for Seton Parkway Extension
- Exhibit J** – Seton Parkway / Kyle Parkway Traffic Signal Improvements
- Exhibit K** – Apartment Unit Interiors
- Exhibit L** - Traffic Assessment Technical Memorandum

EXECUTED in multiple originals this the day of , 2022.

CITY:

City of Kyle, Texas

a Texas home-rule municipal corporation

Attest:

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

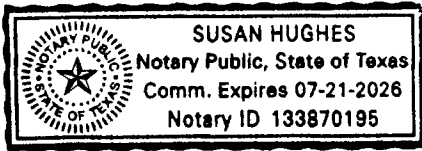
By: Travis Mitchell
Name: Travis Mitchell
Title: Mayor

THE STATE OF TEXAS §
COUNTY OF HAYS §

This instrument was acknowledged before me on this 6th day of September, 2022, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)


Susan Hughes
Notary Public, State of Texas



DEVELOPER:

SCC Kyle Partners, Ltd.,
a Texas limited partnership

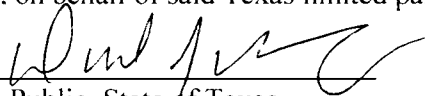
By: KIF-GP, LLC.
a Texas limited liability company.
its general partner

By: 
Phillip Plant, Manager

THE STATE OF TEXAS §
COUNTY OF Nueces §

This instrument was acknowledged before me on this 15 day of SEP, 2022. by Phillip Plant, as Manager of KIF-GP, LLC, a Texas limited liability company, as general partner of SCC Kyle Partners, Ltd., a Texas limited partnership, on behalf of said Texas limited partnership.

(SEAL)


Notary Public, State of Texas

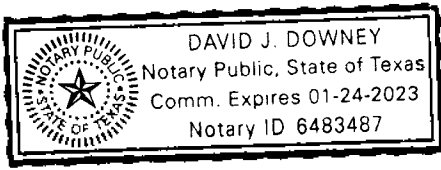


EXHIBIT "A"

Description of Property

Lot 1-L of the SETON HAYS COUNTY SUBDIVISION REPLAT OF LOT 1, BLOCK "B", a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 14, Page(s) 395-399 of the Plat Records of Hays County, Texas.

Exhibit B – DEVELOPMENT STANDARDS

I. DEVELOPMENT VISION

The subject Property totaling approximately 15.4 acres is located in the City of Kyle Super Regional Node on the east side of Interstate 35 directly across the street from Ascension Seton Hospital. The Property is bound to the south by raw land and a minor access road that runs parallel to Kyle Parkway roughly 400 feet to the south; to the west by raw land planned for retail discount store development; to the east by Seton Parkway with approximately 600 linear feet of frontage; and to the north by Bunton Branch Creek. According to the Kyle Comprehensive Plan, “The Super Regional Node should contain large-scale institutional, commercial, retail and where appropriate, high-density multifamily land uses to create the highest classification activity center in Kyle;” with Apartments Residential (“R-3-3”) as a recommended zoning use.

The Developer shall develop an urban, mixed-use project for the Property consisting of high-density multifamily residences, commercial uses, and an activated open “green space” connecting the Property to The Vybe trail network. The project’s urban style shall provide significant street front presence and shall be distinguished by the following:

- Green Space Food & Beverage Destination – As further specified herein, the Development shall contain a freestanding food and beverage building overlooking Bunton Branch Creek connected to a 1-acre park or “green space” that is activated with playgrounds and shaded seating and connected to the Vybe trail with golf car access and parking.
- 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 the southern property line to create visibility from Kyle Parkway and along the southern portion of the Property’s frontage along Seton Parkway.
- Site Plan will promote an urban interior boulevard creating flow through vehicular and pedestrian traffic; and living units pushed to the street front where possible.
- Develop key pedestrian corridors along designated street fronts.
- Create parallel or pull-up parking along key streets where possible.
- Ground floor office and/or retail in certain buildings as further specified herein.

Exhibit C is a general layout of what is intended to be constructed on the Property. It is not a final site plan. The Final site plans shall be generally in accordance with Exhibits C; however building sites, shapes and locations may be adjusted; provided that material adjustments must be approved administratively by the City. (See Exhibit C). The preliminary site plan must be in substantial compliance with the applicable exhibits.

II. DEVELOPMENT STANDARDS:

A. General Guidelines:

1. Applicability - The standards of this Article II shall apply to the entire

Development. Article II is intended to be supplemental to the Development Standards established for the Property by Ordinance No. [____]. 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.

2. Commercial Use Construction Timeline / No Phases. All commercial uses required to be developed by this Agreement and the corresponding PUD MXD Zoning (Ordinance No. [____]) shall be constructed at the same time as all other uses contemplated herein.
3. 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 provision, substantial completion shall occur when the Developer's architect has issued an AIA G704 certificate for such building. Substantial completion of the Vybe Trail and Vybe Spot shall be a condition to receiving a certificate of occupancy on the first building in the Development.
4. Replating – The Developer reserves the right to replate 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. Signage:
 - i. 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. 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. Access. Access to the Development from adjacent public rights-of-way shall generally conform with the terms of this Agreement and exhibits thereto.
8. Supplemental Development Regulations. Notwithstanding section 53-690 of the City's Code of Ordinances, the layout attached as exhibits to this Agreement shall govern.
9. Building Façade Requirements. Notwithstanding section 53-691 of the City's Code of Ordinances, the Architectural Guidelines established herein and attached exhibits to this Agreement shall govern.

10. 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.

B. Architectural Guidelines:

1. Style - The Development 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.
2. Materials for Exterior Surfaces
 - i. 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 facade being masonry (brick or stone). The balance of facade 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 facade, but shall not be substituted for masonry or stucco. The elevations of the mixed-use and multi-family structures shall be in substantial compliance with the conceptual renderings on Exhibit G.
 - ii. Street Front Buildings / Side Elevation Materials - Facade treatments on side elevations shall be the same as Section B.2.i regarding front elevations.
 - iii. 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. 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 facade being masonry (brick or stone). The balance of facade 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 facade, but shall not be substituted for masonry or stucco.
 - iv. F&B Building – The exterior façade of the 7,500 SF food and beverage building shall be 100% masonry and glass, excluding doors and entrances.
 - v. 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 facade.

- vi. 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:

- i. 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.
- ii. 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 facade. 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.

4. Boulevard:

- i. The internal public access boulevard (the "Boulevard") identified on Exhibit D connecting the shopping center to the Vybe Spot shall be constructed in accordance with the following:
 - a) As depicted in the Boulevard Section Detail (Exhibit H), the total boulevard width shall be a minimum of 56 ft. and consist of (i) a two-lane street that is 24 ft. wide, (ii) parallel parking on each side, with each lane being 9 ft. wide; and (iii) a pedestrian sidewalk on each side that is a minimum of 7 ft. wide. Additionally, a series of landscaping "punchouts" shall be constructed within the parallel parking lanes along the entire length of the boulevard approximately every ~90 feet on each side. Developer shall plant one shade tree in each landscape "punchout" with a minimum of 2" caliper and shall be either a deciduous or evergreen tree (but not fir tree).
 - b) As depicted in the conceptual boulevard rendering in Exhibit G, the Developer shall (i) construct pedestrian sidewalks out of pavers or stamped concrete, or a combination thereof; (ii) add light poles and string lights down the entire length of the boulevard; and (iii) shall provide for bench seating areas.

5. Vybe Spot (i.e "Event Lawn" or "Food & Beverage Green Space"):

- i. Exhibit F depicts the Developer's design intent for the 38,000 SF park and

connected 7,500 SF food and beverage building. The following features are required within the park:

- a) Developer shall coordinate with the City of Kyle Art Commission on public art within the Vybe Spot aimed at celebrating the history and culture of Kyle, TX. Developer shall spend \$100,000 within the park and F&B building on items to include but not limited to art, murals, telescopes for looking into Bunton Branch Creek Reservoir, etc.
- b) Boardwalk – A boardwalk shall run parallel to Bunton Branch Creek along the northern Property line connecting the Vybe Trail to the western edge of the park. Design of the boardwalk will allow for easy access to the underlying wet utility lines (i.e. paneling). A fence shall be constructed to protect pedestrians from the edge of the boardwalk. Boardwalk shall include an observation telescope.
- c) A food truck pad shall be constructed using pavers that can accommodate no less than three food trucks.
- d) Designated area for temporary event and/or live performance stage equipped with access to power.
- e) A splash pad and/or water-feature play area.
- f) Modern playground structure for children.
- g) Two sand volleyball and/or pickleball courts.
- h) Developer shall professionally landscape the park to a “Class A” standard.

6. Gym/Fitness & Café/Coffee Buildings:

- i. The Developer shall construct separate entrances for each of the Gym/Fitness and Café/Coffee suites labeled “D” and “E” respectively on Exhibit C.

7. Apartment Unit Interiors:

- i. The apartment unit interiors features and finishes shall be “Class A” in nature. Exhibit K are representative photos of the intended design features and quality.

C. Public Access to Park & Vybe Trail; Maintenance:

1. The Developer shall construct public access roadways as shown on Exhibit D, which include the Boulevard, providing direct walkability and vehicular flow from the balance of the existing shopping center to the Vybe Spot and immediate access from Seton Parkway at two entry points. The Developer is not permitted to close access through these roadways by way of fencing or any other obstruction of access to the public, and the Developer is not allowed to place any fencing or any other obstruction of access to the public in the event lawn/park.
2. Developer shall work with the City of Kyle, Chamber of Commerce, and Parks Board to coordinate and facilitate the use of the open event lawn for various special events, including farmer’s markets, live music performances, movie nights, sports centric events utilizing the volleyball/pickleball courts, and use of the food truck pad.

3. The Vybe Spot and Vybe Trail will be maintained at all times by owner of the Property or a property owner's association or other qualified party designated by the Property owner. Maintenance of the Vybe 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.

III. 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 C – CONCEPT SITE PLAN

LEGEND:		
Non-Residential Use:	Label	Area (SF)
F&B Building	A	7,500
General Commercial / Retail	B	7,500
Office/Co-Working	C	5,000
Gym/Fitness	D	3,000
Café/Coffee	E	1,000
Total		24,000

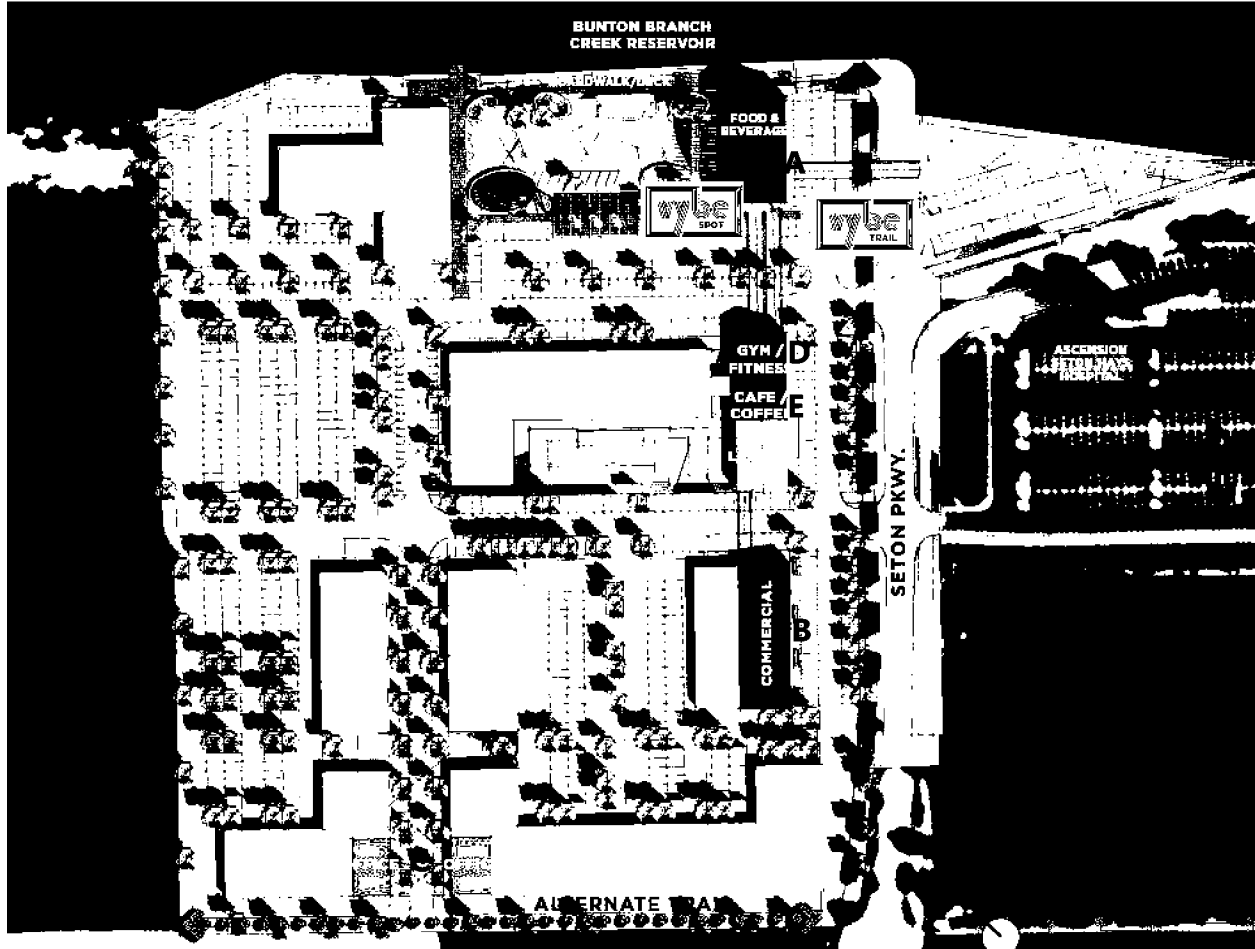


Exhibit D – Public Access Roadways

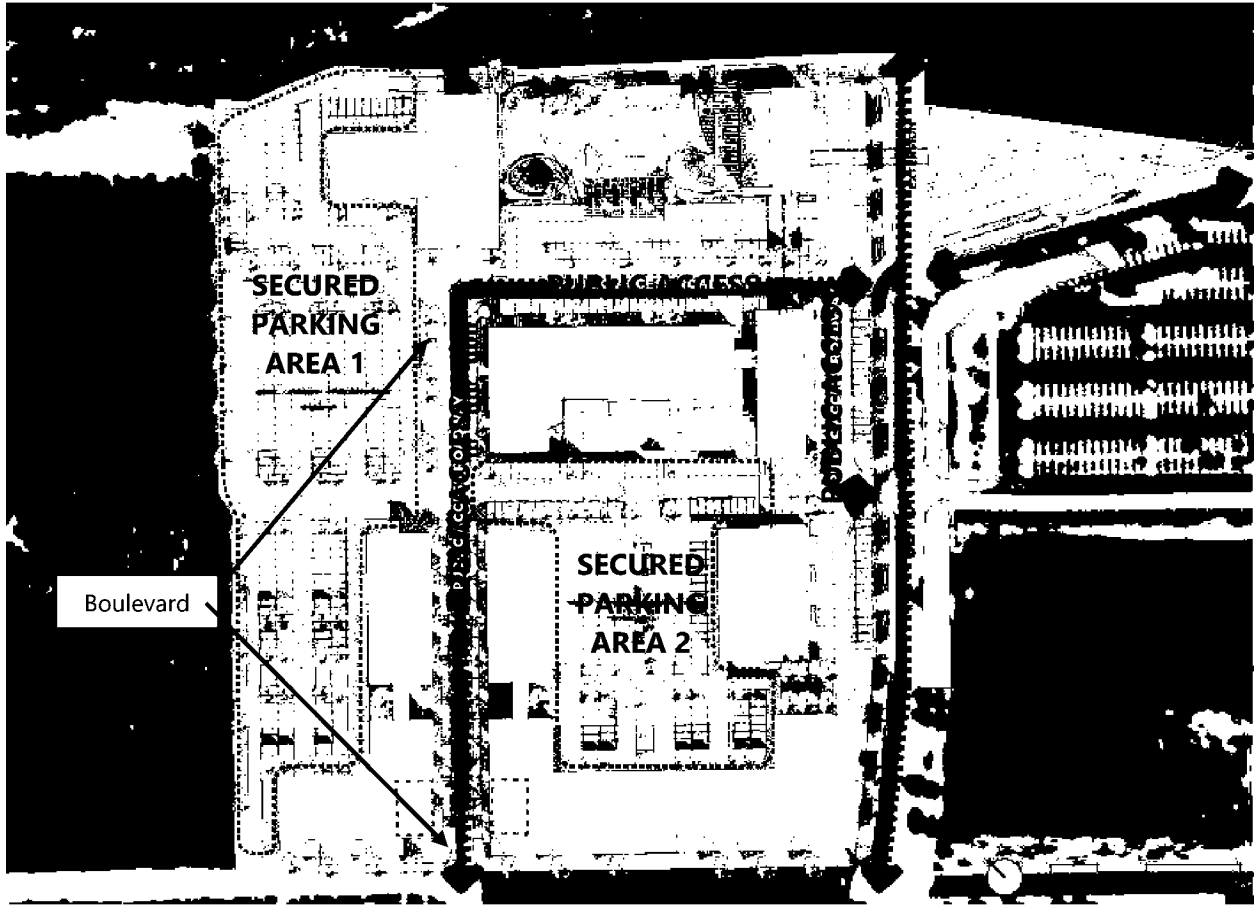


Exhibit E – Concept Shared Use Path Vybe Trail & Vybe Spot

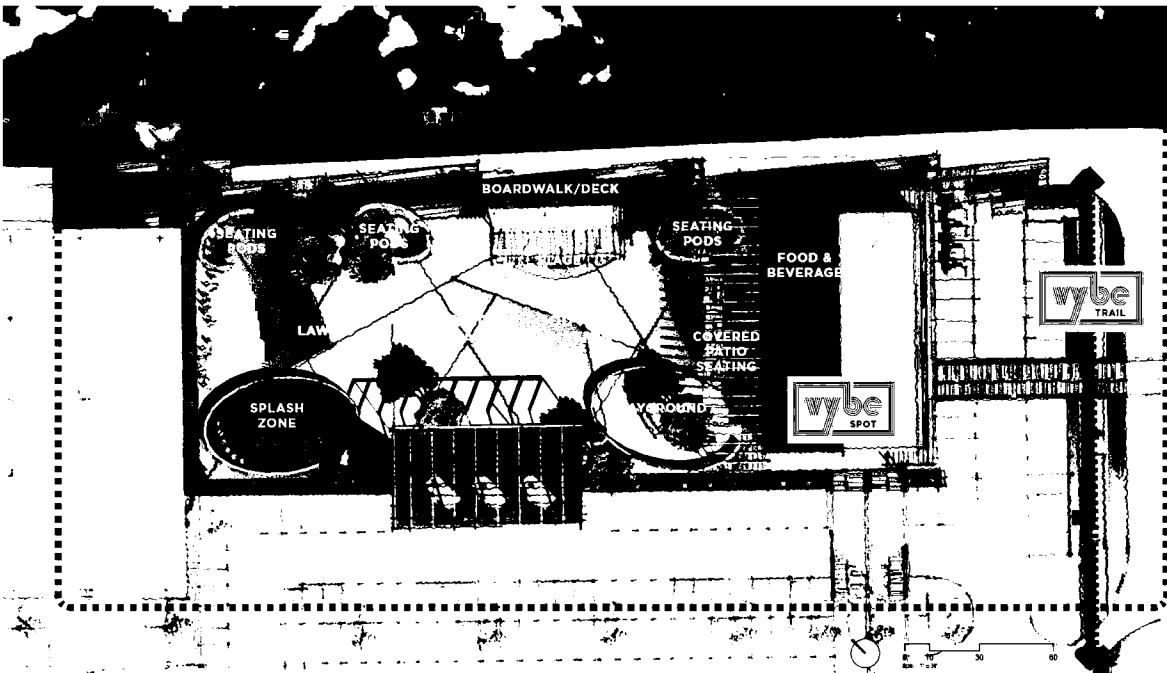
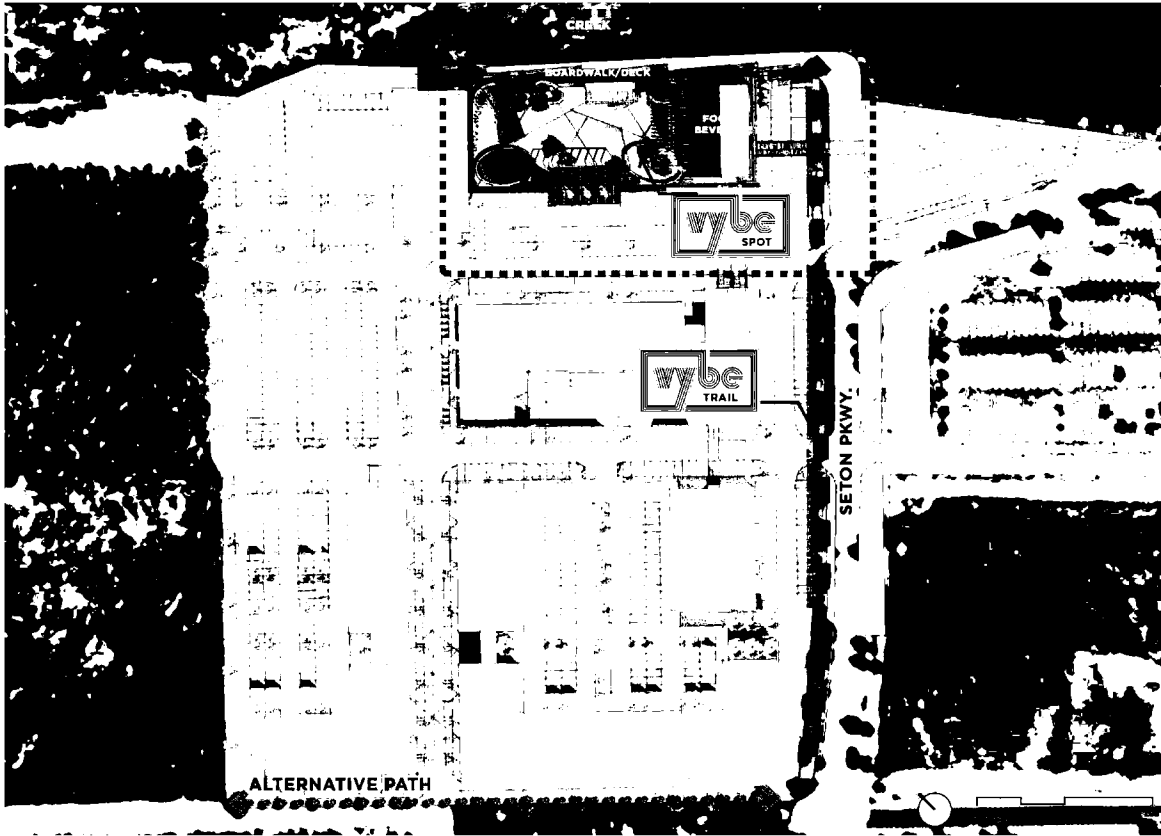




Exhibit F – Vybe Spot Conceptual Renderings

Exhibit F – Vybe Spot Conceptual Renderings

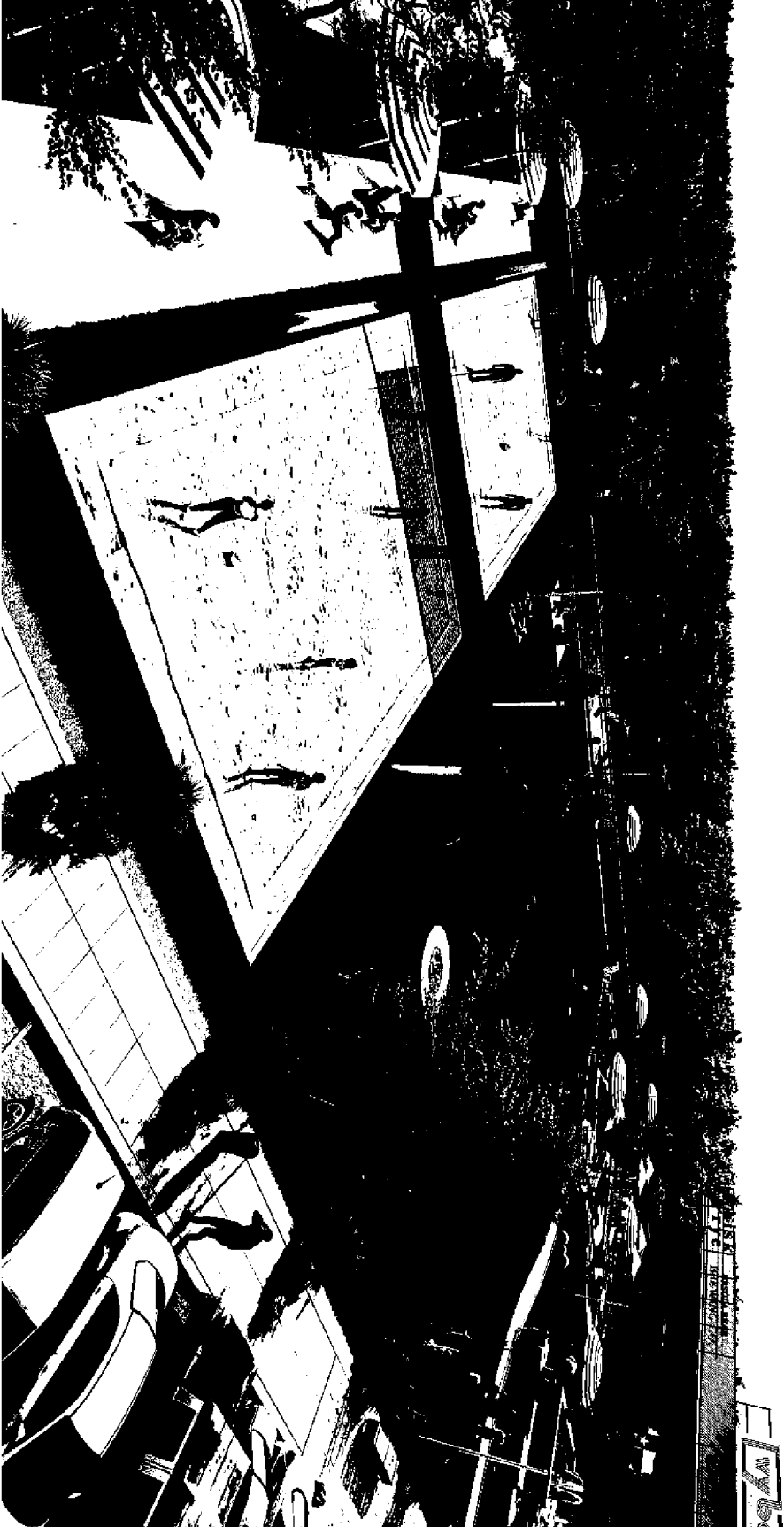


Exhibit G – Building Conceptual Elevation Renderings

Southern Façade (from Kyle Parkway):



Exhibit G – Building Conceptual Elevation Renderings

Southern Facade (from Kyle Parkway):



Exhibit G – Building Conceptual Elevation Renderings

Southern Facade (from Kyle Parkway), entering Boulevard:



Exhibit G – Building Conceptual Elevation Renderings

Boulevard interior:



Exhibit H – Boulevard Section Detail

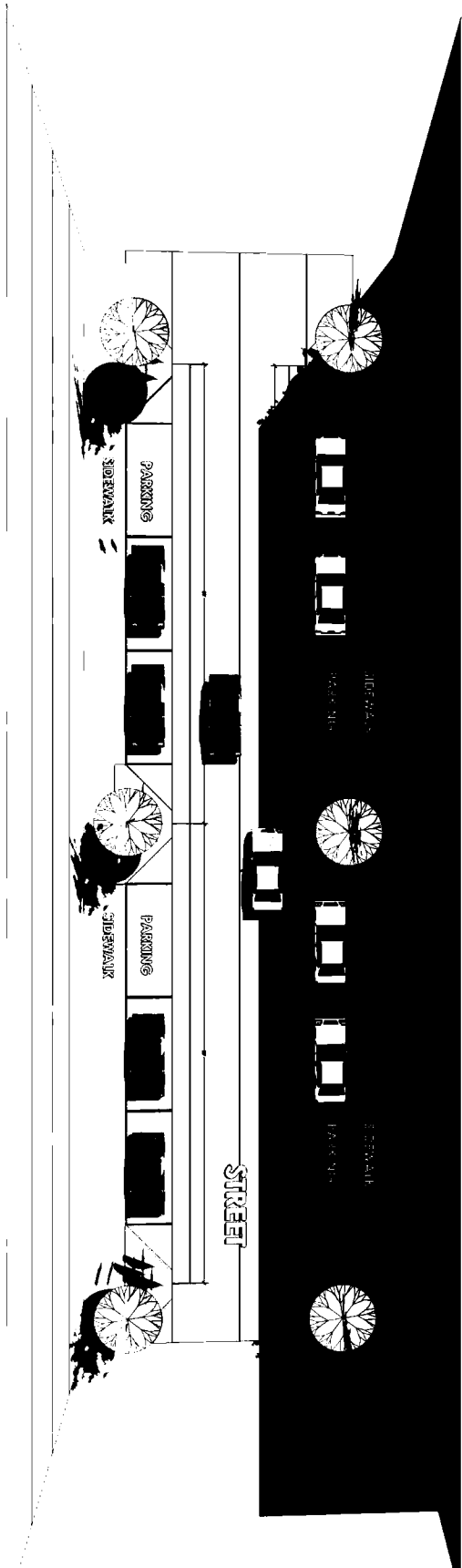


Exhibit H – Boulevard Section Detail

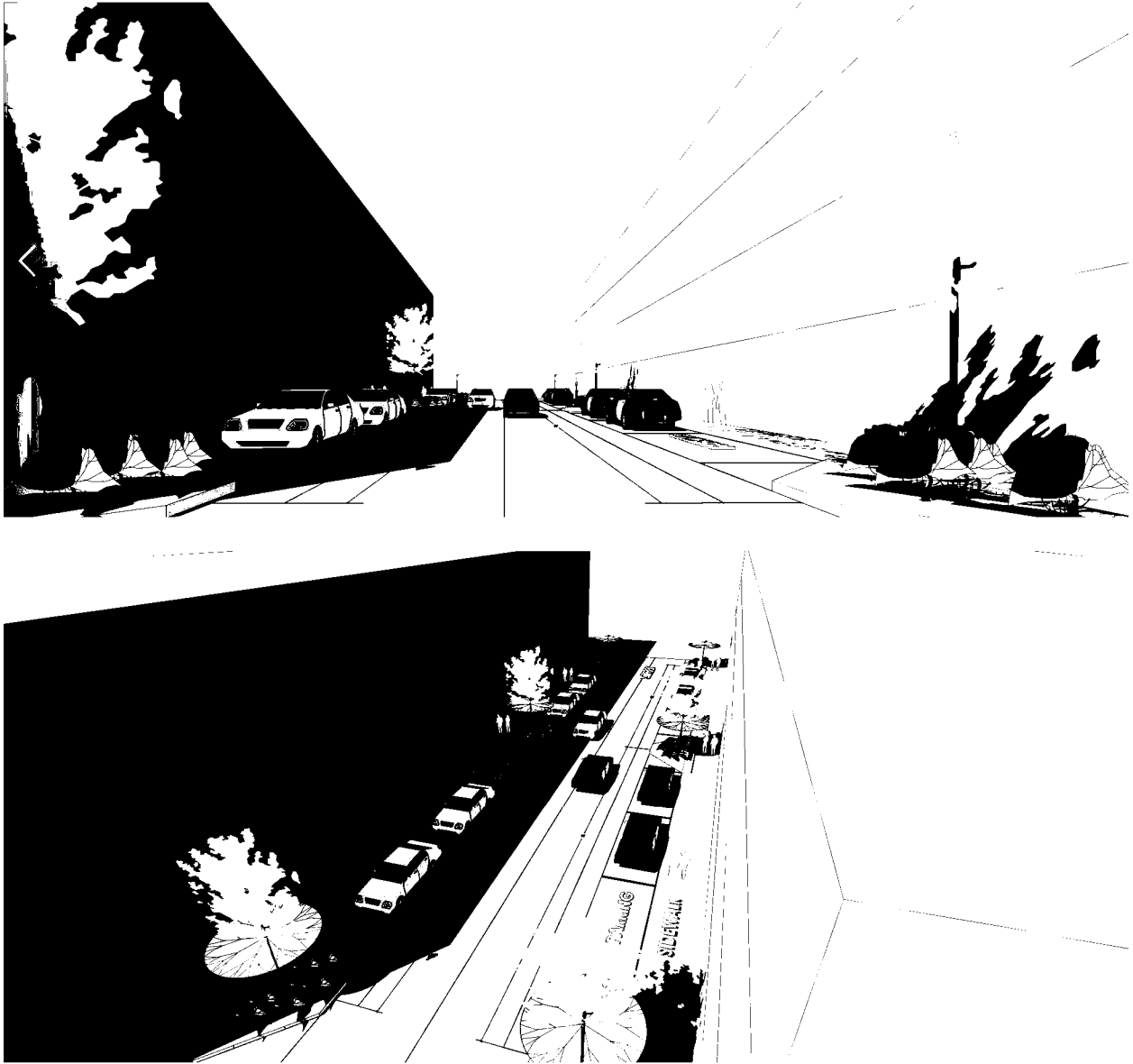


Exhibit I – Crosswalk through ROW for Seton Parkway Extension

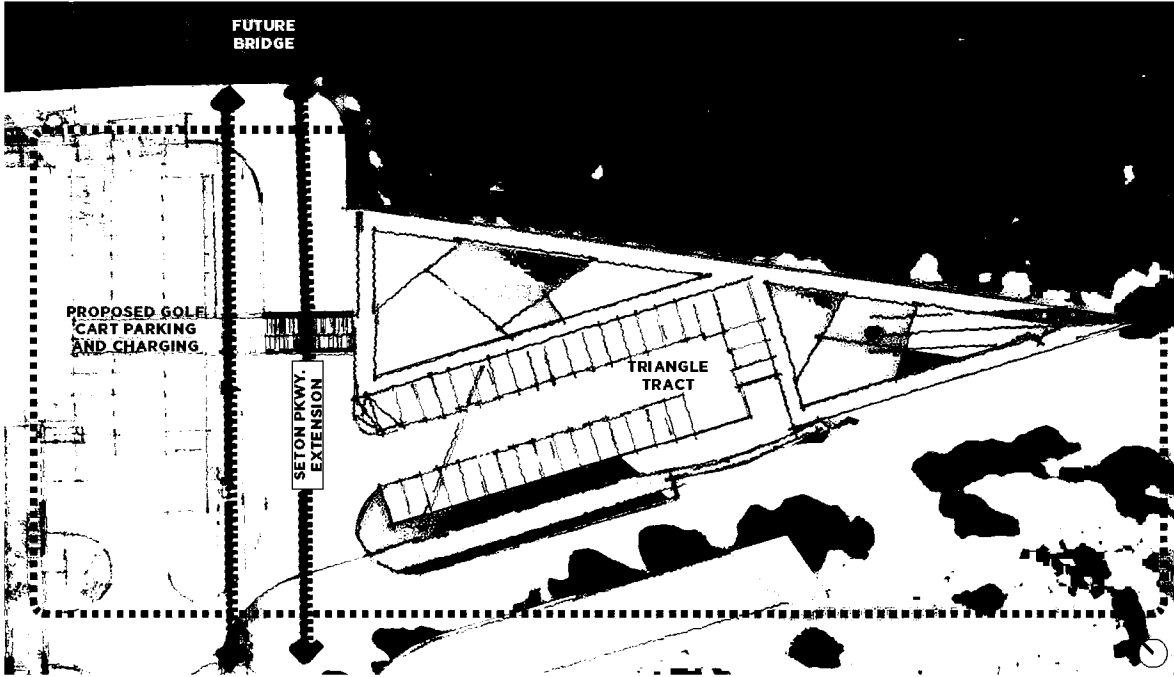


Exhibit J – Seton Parkway / Kyle Parkway Traffic Signal Improvements

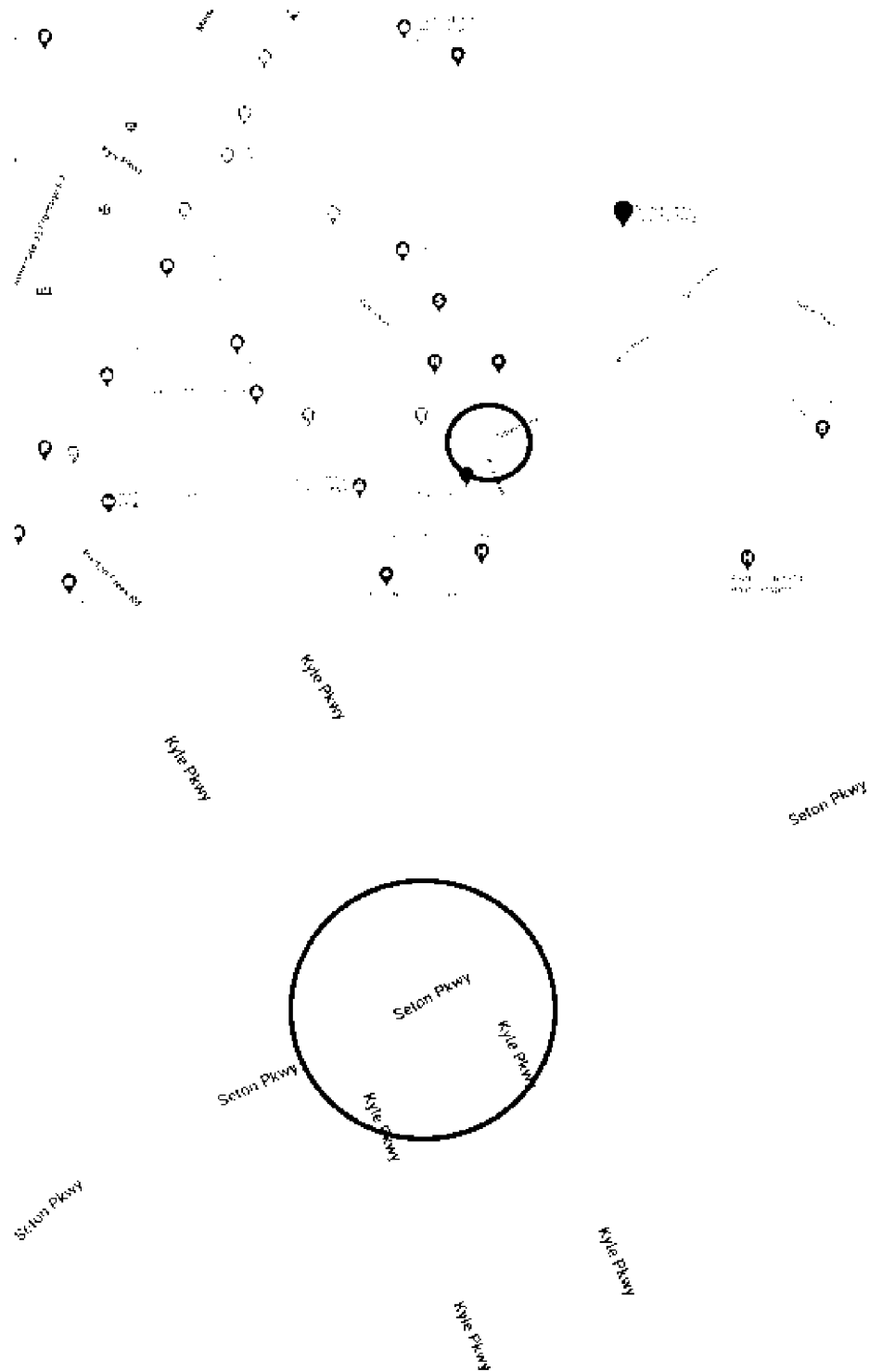


Exhibit K – Apartment Unit Interiors

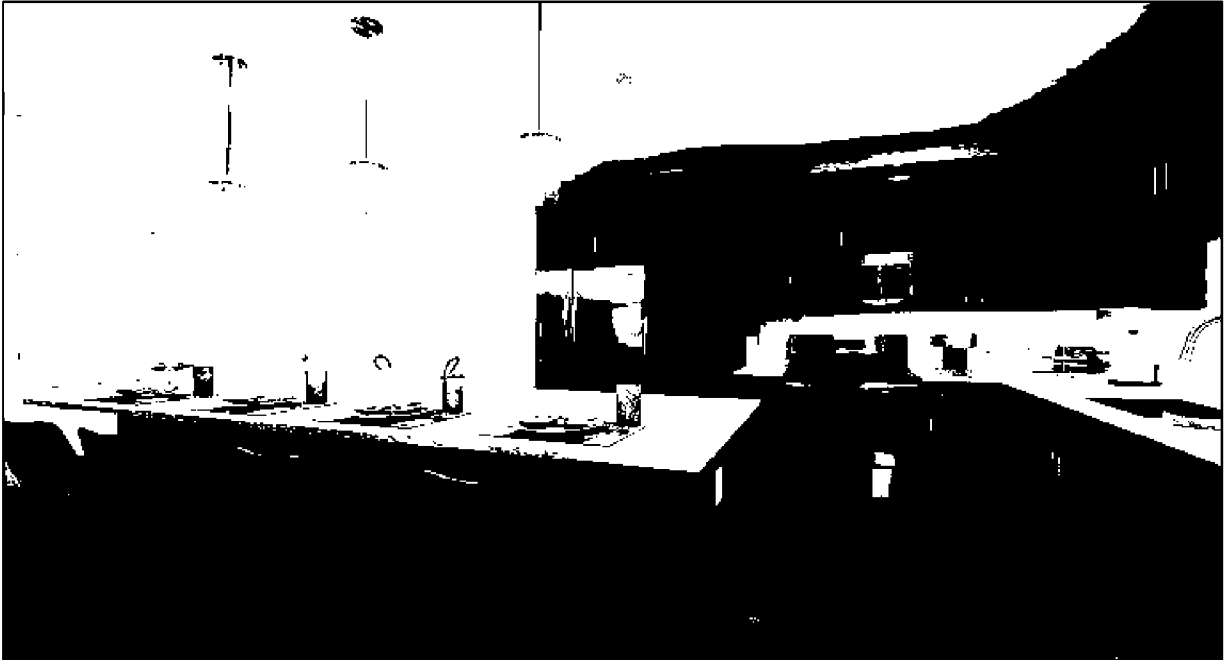


Exhibit L – Traffic Assessment Technical Memorandum



August 8, 2022

Mr. Sean Ratterree
 CTC Residential, LLC
 854 Sprucewood Lane
 Houston, Texas 77024

RE: Traffic Assessment Technical Memorandum
 Kyle Parkway Multi-Family Development
 Kyle, Texas

The purpose of this traffic assessment was to determine the difference in trip generation associated with the proposed zoning (and land use) changes at the property located north of the Seton Parkway and Kyle Parkway intersection in Kyle, Texas. The site is currently zoned for Retail/Service (R/S) and proposed for Residential Multi-Family (R-3) use, as shown in Figure 1 below. The previously proposed 195,000 square feet of commercial retail (aka Village at Kyle Shopping Center) is to be replaced with a 384 unit multi-family residential apartment complex, 7,500 square feet of sit-down restaurant, 7,500 square feet of commercial retail space, and 5,000 square feet of general office space. The site will have a primary and secondary access driveway along Seton Parkway as well as an emergency access driveway within the existing development.

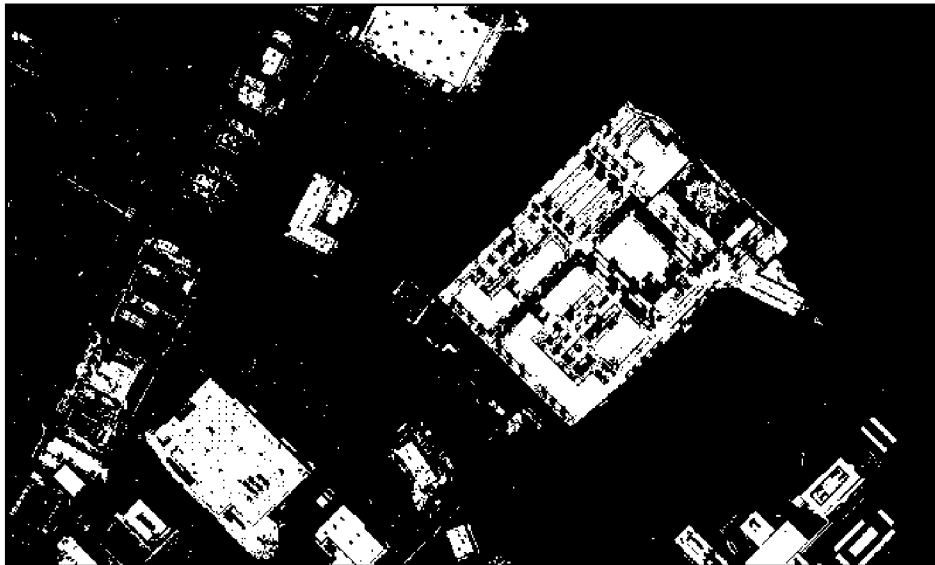


Figure 1. Location of Proposed Kyle Parkway Multi-Family Development



Exiting Roadways

The proposed Kyle Parkway Multi-Family Development is to be located along Seton Parkway between Kyle Parkway and Dacy Lane. The subsequent sections discuss each of the adjacent roadways.

Seton Parkway

Seton Parkway is a 32' wide, curbed roadway with one 11' lane in each direction of travel, a 12' continuous two-way, left-turn lane, and no shoulders. Seton Parkway is shown as a Proposed Collector (2-3 Lane) on the City of Kyle Transportation Master Plan (2021 Update). Traffic volume data was not available for Seton Parkway on the TxDOT Traffic Count Data System (TCDS). The intersection of Kyle Parkway and Seton Parkway is also shown as a potential roundabout location. Pavement is in relatively good condition with some sealed longitudinal failures.



Figure 2. Seton Parkway – Adjacent to the Proposed Kyle Pkwy Multi-Family Development

Kyle Parkway

Kyle Parkway is an 86' wide, curbed roadway with three 12' lanes in each direction of travel, a 14' grassy median with left-turn lanes at major intersections and no shoulders. Kyle Parkway is shown as a Proposed Minor Arterial (4 Lane) on the City of Kyle Transportation Master Plan (2021 Update). Kyle Parkway had an average daily traffic (ADT) volume of 18,955 vehicles per day in 2015 and 16,306 vehicles per day in 2020. The intersection of Kyle Parkway and Seton Parkway is also shown as a potential roundabout location. Pavement is in relatively good condition with some transversal failures and visible pavement markings.

Dacy Lane

Dacy Lane is a 52' wide, curbed roadway with two 12' lanes in each direction of travel and 2' shoulders. Dacy Lane is shown as a Proposed Minor Arterial (4 Lane) on the City of Kyle Transportation Master Plan (2021 Update). Traffic volume data was not available for Dacy Lane on the TxDOT Traffic Count Data System (TCDS). Pavement is in relatively good condition with some longitudinal failures and visible pavement markings.

5828 Sebastian Place, Suite 108, San Antonio, Texas 78249 ● 210.535.3558 ● TBPE Registration No. F-11727



Figure 3. Kyle Parkway – East of Seton Parkway



Figure 4. Dacy Lane – North of Kyle Parkway



Trip Generation

Using the Eleventh Edition of the ITE *TRIP GENERATION MANUAL* reference, trip generation calculations for the currently zoned commercial retail land use (ITE Code: 820) was shown to have a projected trip generation of 560 morning peak hour trips and 798 evening peak hour trips, as shown on Table 1. Trip generation for the proposed multi-family (MF) residential zoning (ITE Code: 220) with commercial retail space was shown to have a projected trip generation of 261 morning peak hour trips and 335 evening peak hour trips, as shown on Table 2.

Trip Distribution

Trip distribution for the proposed Kyle Parkway Multi-Family Development would be based on projected distributions along the existing arterial roadway and highway system, specifically Kyle Parkway, Seton Parkway, Dacy Lane, and Interstate Highway 35. Global trip distributions were forecasted as 60% towards Interstate Highway 35 and 40% towards Dacy Lane via Seton Parkway. Residential land uses along Kyle Parkway would be anticipated to attract and generate trips towards the nearest highway system (i.e., Interstate Highway 35) and away from other residential subdivisions with the exception of trips to the nearest area elementary (i.e., Fuentes Elementary south of Kyle Parkway), middle (i.e., Chapa Middle School north of Kyle Parkway), and high (i.e., Lehman High School south of Kyle Parkway) school campuses. Exhibits A and B illustrate the global trip distribution percentages and volume projections.

As shown on Table 3, the change in land use from commercial retail to multi-family residential would be expected to have a significantly lower trip generation with 3,600 lower daily trips, 299 lower morning peak hour trips and 463 lower evening peak hour trips.

**Table 1. Trip Generation for the Village at Kyle Shopping Center Development
(Construction of 2007 Shopping Center)**

TRIP GENERATION										
ITE Code	Weekday 24 Hour		Weekday AM Peak		Weekday PM Peak		Saturday 24 Hour		Saturday Peak	
820	Shopping Center									
Rate / KSF	37.01		2.87		4.09		46.60		4.40	
KSF	195.000		195.000		195.000		195.000		195.000	
Trips	7,217		560		798		9,087		858	
% Enter/Exit	50%	50%	55%	45%	50%	50%	50%	50%	52%	48%
# Enter/Exit	3,608	3,609	308	252	399	399	4,543	4,544	446	412

Source: *ITE Trip Generation Manual, Eleventh Edition*



Table 2. Trip Generation for the Proposed Kyle Parkway Multi-Family Development

TRIP GENERATION										
ITE Code	Weekday 24 Hour		Weekday AM Peak		Weekday PM Peak		Saturday 24 Hour		Saturday Peak	
220	Multifamily Housing (Low-Rise) – Residential Section									
Rate / Unit	6.74		0.47		0.57		4.55		0.41	
Units	384		384		384		384		384	
Trips	2,588		180		219		1,747		157	
% Enter/Exit	50%	50%	24%	76%	62%	38%	50%	50%	50%	50%
# Enter/Exit	1,294	1,294	43	137	136	83	873	874	78	79
710	General Office Building – Office Section									
Rate / KSF	9.74		1.47		1.42		2.21		0.53	
KSF	5.000		5.000		5.000		5.000		5.000	
Trips	49		7		7		11		3	
% Enter/Exit	50%	50%	88%	12%	18%	82%	50%	50%	54%	46%
# Enter/Exit	24	25	6	1	1	6	5	6	2	1
820	Shopping Center – Retail Section									
Rate / KSF	37.01		2.87		4.09		46.60		4.40	
KSF	7.500		7.500		7.500		7.500		7.500	
Trips	278		22		31		350		33	
% Enter/Exit	50%	50%	55%	45%	50%	50%	50%	50%	52%	48%
# Enter/Exit	139	139	12	10	15	16	175	175	17	16
932	High-Turnover Sit-Down Restaurant – Food and Drink Section									
Rate / KSF	112.18		14.04		17.41		122.40		11.19	
KSF	7.500		7.500		7.500		7.500		7.500	
Trips	841		105		131		918		84	
% Enter/Exit	50%	50%	57%	43%	52%	48%	50%	50%	51%	49%
# Enter/Exit	420	421	60	45	68	63	459	459	43	41
Total Trips	1,877	1,879	121	193	220	168	1,512	1,514	140	137
	3,756		314		388		3,026		277	

Source: ITE Trip Generation Manual, Eleventh Edition



Table 3. Trip Generation Difference for the Proposed Kyle Parkway Multi-Family Development

TRIP GENERATION										
ITE Code	Weekday 24 Hour		Weekday AM Peak		Weekday PM Peak		Saturday 24 Hour		Saturday Peak	
Trip Difference	-1,731	-1,730	-187	-59	-179	-231	-3,031	-3,030	-306	-275
	-3,461		-246		-410		-6,061		-581	

Source: ITE Trip Generation Manual, Eleventh Edition

Table 4. Trip Distribution for the Proposed Kyle Parkway Multi-Family Development

TRIP DISTRIBUTION								
	AM Peak				PM Peak			
Enter	EB Kyle	NB Dacy	SB Dacy		EB Kyle	NB Dacy	SB Dacy	
	60%	20%	20%		60%	20%	20%	
	73	24	24		132	44	44	
	121				220			
Exit	WB Kyle	NB Dacy	SB Dacy		WB Kyle	NB Dacy	SB Dacy	
	60%	20%	20%		60%	20%	20%	
	115	39	39		100	34	34	
	193				208			

Intersection Observation

The proposed residential and commercial retail development would be expected to increase peak hour traffic demand at the Kyle Parkway and Seton Parkway intersection, currently a stop-controlled intersection with seven approach lanes along Kyle Parkway (three through and one left-turn lane in each direction of travel) and two approach lanes along Seton Parkway (one through and one left-turn lane in each direction of travel). The intersection would be expected to have a significant increase in cross-street (Seton Parkway) delay and may benefit, in both efficiency and safety, from traffic signalization. A traffic signal warrant analysis would be recommended to assess MUTCD (Manual on Uniform Traffic Control Devices) traffic signal warranting conditions and overall intersection safety.



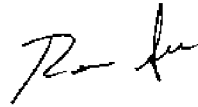
Conclusions

The change in zoning from the current Retail/Service district to Residential Multi-Family district is expected to lessen the traffic demand on the surrounding roadway system, specifically along Seton Parkway, Kyle Parkway, and Dacy Lane. During the evening peak hour, the original retail/service land use would generate as many as 798 vehicles per hour whereas the proposed residential multi-family (with some commercial retail) would generate as many as 388 vehicles per hour, approximately 50% less traffic to be generated by the proposed site.

It would also be anticipated that trip attraction from the proposed multi-family complex to the existing residential subdivisions along Dacy Lane would be lessened as residential trips from the proposed multi-family complex would not travel towards other residential areas, specifically those along Dacy Lane. The change in land use would not have a significant increase in commercial attraction from the existing residential subdivisions along Dacy Lane.

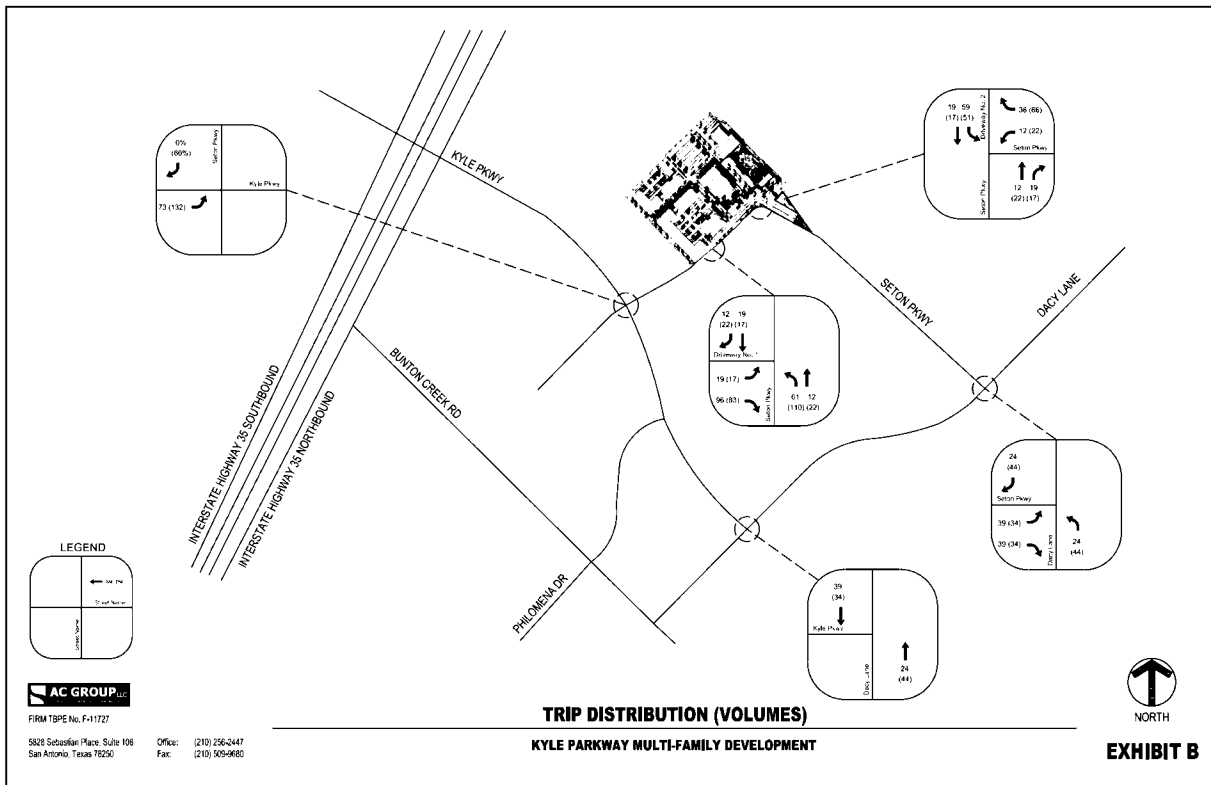
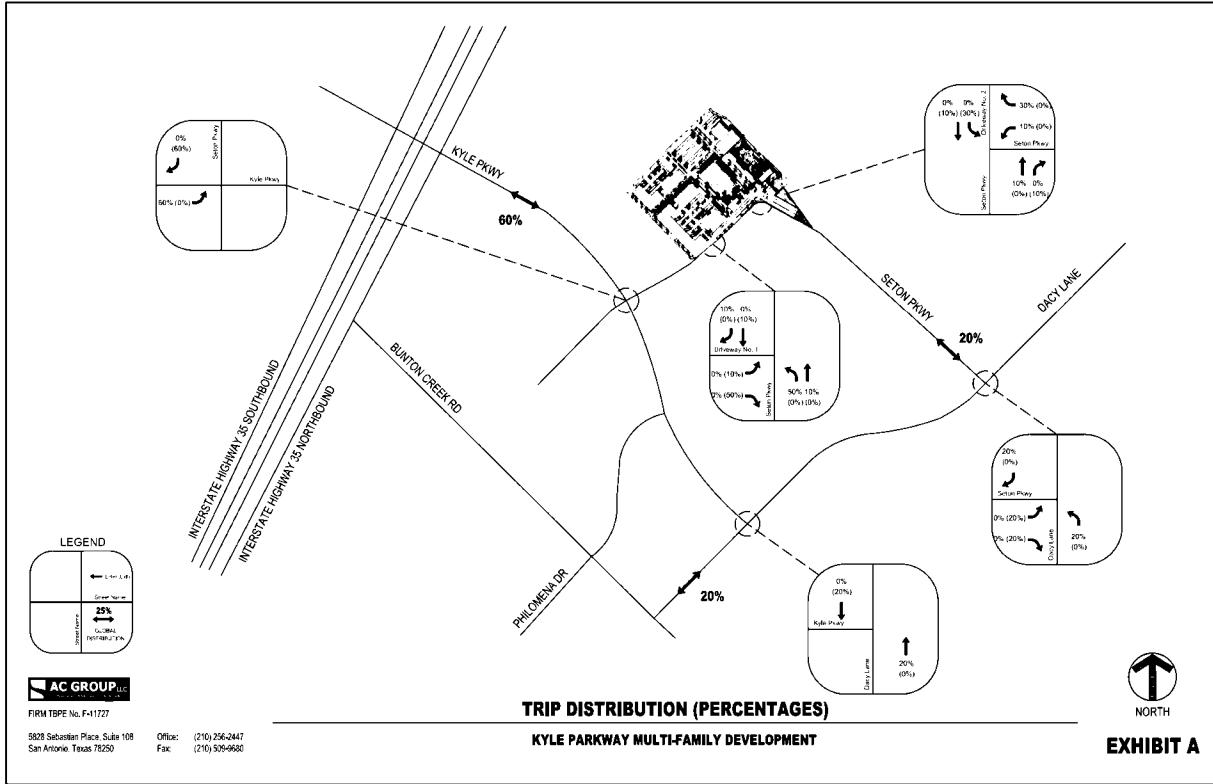
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If you have any questions regarding this Traffic Assessment Memorandum, please feel free to contact me by phone at 210.535.3558 or by e-mail at r-arredondo@acgroupllc.com.


Rene Arredondo, P.E., PTOE
Traffic Engineer



Attachments: Trip Distribution Exhibits (Percentages and Volumes)



**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.

22045066 AGREEMENT
09/22/2022 02:36:00 PM Total Fees: \$186.25

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

