

## COMPLETION AGREEMENT

**THIS COMPLETION AGREEMENT** (herein, this “**Agreement**”) is made effective May 17, 2022, by and between **Kyle 57 Development, Inc.**, a Texas Corporation (the “**Developer**”), and the **CITY OF KYLE, TEXAS** (the “**City**”).

### RECITALS

**WHEREAS**, the Developer is the owner and developer of lands within the boundary of the Kyle 57 Public Improvement District (the “**District**”) established by the City pursuant to Resolution No. 1249, as more particularly described in **Exhibit A** attached hereto and incorporated by referenced herein (the “**Property**”);

**WHEREAS**, the Property is subject to that certain Kyle 57 Public Improvement District Financing Agreement dated October 4, 2021 between the Developer and the City (the “**PFA**”);

**WHEREAS**, pursuant to the PFA, the City and the Developer have agreed to certain terms relating to the construction and funding of certain public improvements, including the parks and landscaping improvements described in **Exhibit B** attached hereto (the “**Designated Improvements**”);

**WHEREAS**, in order to ensure that the Designated Improvements are completed and funding is available to provide for their completion, the Developer has agreed to enter into this Agreement to provide further assurances to the City that the Designated Improvements will be constructed and Developer has Evidence of Available Funds (hereinafter defined) to complete the Designated Improvements; and

**NOW, THEREFORE**, based upon the above recitals and other good and valuable consideration, the receipt of which and sufficiency of which is hereby acknowledged, the Developer and the City, agree as follows:

**1. Incorporation of Recitals; Capitalization.** The recitals stated above are true and correct and are incorporated by reference as a material part of this Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the PFA.

**2. Completion of Authorized Improvements.** Prior to drawing down on funds in the PID Improvements Account of the Project Fund created under the Indenture for the PID Bonds, Developer shall expend \$[ESTIMATED TO BE APPROXIMATELY \$1.1 MILLION, FINAL AMOUNT TO BE FILLED IN AT BOND PRICING] (the “**Prior Expended Funds**”) on constructed Authorized Improvements in the District and provide evidence to the City of such constructed Authorized Improvements and expenditures. It is hereby acknowledged that it is not intended that Developer will be reimbursed out of Assessments or Bond Proceeds for the Prior Expended Funds unless funds remain in the Project Fund created under the Indenture for the PID Bonds after all other Actual Costs of Authorized Improvements have been reimbursed to Developer.

**3. Completion of Designated Improvements.** To assure the completion of the Designated Improvements, as further described in **Exhibit B**, the Developer shall provide a set

aside letter from a lender or financial institution or other evidence acceptable to the City prior to pricing of the PID Bonds (“**Evidence of Available Funds**”), that sufficient funds are available to the Developer to fund the completion of the Designated Improvements.

**4. Developer Default; Protection Against Third Party Interference.** In the event the Developer does not comply with the terms of this Agreement, the City or its designee shall have the right to seek specific performance from a court of competent jurisdiction in order to ensure the Designated Improvements are completed as soon thereafter as reasonably possible.

**5. Amendments.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the City and the Developer.

**6. Authorization; Consent.** The execution of this Agreement has been duly authorized by the City and the Developer, and both the City and the Developer have full power and authority to comply with the terms and provisions of this instrument.

**7. Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by prepaid express overnight courier or messenger service, facsimile or, or mailed (airmail if international) by registered or certified (postage prepaid), return receipt requested with delivery via email confirming mailing thereof, to the following addresses:

City:

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

With copy to:

The Knight Law Firm, LLP  
Attn: Paige Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

Developer:

Kyle 57 Development, Inc.  
Attn: Garrett Martin, President  
2100 Northland Drive  
Austin, Texas 78756

With a copy to:

Winstead PC

Attn: Ross Martin  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201

Except as otherwise provided in this Agreement, any mailed notice sent in the manner provided above shall be deemed received three (3) business days after delivery or mailing. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day shall be deemed received the next business day. If any time for giving notice contained in this Agreement would otherwise expire on a non-business day, the notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom notices are to be sent or copied may notify the other parties and addressees of any changes in name or address to which notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

**8. Third Party Beneficiaries.** This Agreement is solely for the benefit of the City, and the Developer, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation, other than the City and the Developer, any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the City and the Developer and their respective representatives, successors, and assigns.

**9. Successors.** The rights and obligations created by this Agreement shall be binding upon and inure to the benefit of Developer, and its successors and assigns, subject to Section 15 below.

**10. Assignment.** This Agreement may be assigned in whole or in part by Developer to a party who is acquiring all or a majority of the Property owned by Developer provided that the Developer first obtains the prior written approval of the City Council, such consent not to be unreasonably withheld. Notwithstanding the foregoing, this Agreement may be assigned in whole or in part without the prior written approval of the City Council (but with notice to the City within thirty (30) days of the assignment) to an affiliate or entity under common control of Developer.

**11. Construction of Terms; Conflict with Financing Agreement.** Whenever used the singular number shall include the plural, the plural the singular; the use of any gender shall include all genders, as the context requires; and the disjunctive shall be construed as the conjunctive, the conjunctive as the disjunctive, as the context requires. To the extent there is a conflict between the terms of this Agreement and the PFA, this Agreement shall control.

**12. Controlling Law.** This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Texas.

**13. Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

**14. Headings for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

**15. Covenant and Recordation.** The Developer, as the developer and the owner of the lands within the District at the time of the execution of this Agreement, agrees that the obligations imposed upon it by this Agreement are valid and enforceable and shall be covenants running with the lands described in Exhibit A hereto, creating an obligation and one which is binding upon successor owners and assigns. The City shall record this Agreement in the Public Records of Hays County, Texas. Once the Developer has completed the Designated Improvements pursuant to the terms of this Agreement and the PFA, the Developer shall notify the City, the City shall record, in the public records, a release and satisfaction of its obligations under this Agreement (the “**Completion Agreement Release**”). The form of the Completion Agreement Release is attached hereto as Exhibit C. This Agreement, when recorded, shall be binding upon the Developer and the City and their successors and assigns as permitted by this Agreement and upon the lands described in Exhibit A; **however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-user or unaffiliated homebuilder except for land use and development regulations that apply to such lots.**

**16. Anti-Boycott Verification.** To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Developer represents that neither 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.

**17. 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 Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**18. Anti-Boycott Verification – Energy Companies.** 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).

**19. Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations.** 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.

**20. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties hereto execute this Agreement and further agree that it shall take effect as of the date first above written.

*[signature pages follow]*

**CITY:**

**CITY OF KYLE, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                   §  
  §  
COUNTY OF HAYS               §

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of the City of Kyle, on behalf of the  
City.

[SEAL]

\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_

**DEVELOPER:**

**KYLE 57 DEVELOPMENT, INC.,**  
a Texas corporation

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: President

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on May \_\_\_\_, 2022 by Garrett S. Martin as President of Kyle 57 Development, Inc., a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING PLEASE RETURN TO:**

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

## METES AND BOUNDS DESCRIPTION OF THE PROPERTY

STATE OF TEXAS  
REGISTERED  
ROBERT J. BERTSON  
8367  
PROFESSIONAL  
LAND SURVEYOR





## **EXHIBIT B**

### **DESIGNATED IMPROVEMENTS**

#### ***Parks and Landscaping***

- Streetscape improvements include landscaped median and roundabout on main entry drive, street trees throughout the project, and roadway lighting.
- Park and open space improvements include approximately 3,000 LF of 12'-wide concrete trails, additional 4-6' concrete trails interconnecting the site's park spaces, playground, picnic areas, dog park, tree plantings, trail lighting, and landscaping throughout the District's approximately 5.5 acres of parkland area. The Developer will work with City staff on the design of the 12' wide trail to ensure no damage is done to preserved heritage trees.
- Entry features, screening walls, and landscaping improvements include enhanced entry signage at 2 locations, 6' masonry wall along RM 150, buffering for the existing utility installation as well as new water quality ponds, and enhanced landscaping along the RM 150 frontage, which will be publicly owned and privately maintained.

**EXHIBIT C**

**COMPLETION AGREEMENT RELEASE**

The **CITY OF KYLE, TEXAS** (the “**City**”), hereby acknowledges receipt of notification of the completion of the Designated Improvements in accordance with Sections \_ and \_ of the Completion Agreement (the “**Completion Agreement**”) by and between the City and **KYLE 57 DEVELOPMENT, INC.**, a Texas corporation (the “**Developer**”).

The Completion Agreement was recorded in the Public Records of Hays County, Texas under Instrument No. \_\_\_\_\_ against the real property more particularly described therein and incorporated by referenced herein.

Developer and its successors and assigns shall have no further obligations, duties or liabilities under the Completion Agreement, the City hereby releases, waives and forever discharges the Developer and its successors and assigns from all obligations, duties or liabilities of whatever nature arising under or in connection with the Completion Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**CITY:**

**CITY OF KYLE, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS

§  
§  
§

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of the City of Kyle, on behalf of the  
City.

[SEAL]

\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_