

# CITY OF KYLE

## PLANNING & ZONING COMMISSION REGULAR MEETING



Kyle City Hall, 100 W. Center Street, Kyle, TX 78640  
The public can watch remotely at: Spectrum 10;  
<https://www.cityofkyle.com/kyletv/kyle-10-live>. One or more members of the governing body may participate in the meeting by videoconference pursuant to Section 551.127, Texas Government Code, provided that a quorum of the governing body will be present at Kyle City Hall.

Notice is hereby given that the Planning and Zoning Commission of the City of Kyle, Texas will meet at 6:30 PM on December 14, 2021, at Kyle City Hall, 100 W. Center Street, Kyle, TX 78640, for the purpose of discussing the following agenda.

**NOTE: There may be a quorum of the City Council of Kyle, Texas present at the meeting who may participate in the discussion. No official action will be taken by the City Council members in attendance.**

Posted this 10th day of December, 2021, prior to 6:30 pm

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**1. Call Meeting To Order**

**2. Roll Call**

**3. Minutes**

A.Planning and Zoning Commission Meeting Minutes for November 9, 2021.

**4. Citizen Comments**

A.Citizen Comment Period. The Planning and Zoning Commission welcomes comments from Citizens early in the agenda of regular meetings. Speakers are provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit. Members of the public that wish to provide citizen comment have the following options:

- In-Person at Kyle City Hall, 100 W. Center Street

## 5. Public Hearing

A. The Planning and Zoning Commission of the City of Kyle, Texas, will hold two public hearings for the purpose of receiving testimony, comments, and written evidence from the public regarding a comprehensive plan amendment to amend approximately 535 acres of land from 'Farm District' to 'East FM 150 Employment District' and 42 acres of land to the 'Regional Node' for certain parcels located northwest of the intersection of SH-21 and E FM 150. (City of Kyle)

- Public Hearing

## 6. Consent

A. Plum Creek Phase 2, Section 2 - Final Plat (SUB-21-0211) 55.026 acres; 201 single family lots, 2 public utility easements., 1 public utility easement - open space - landscape easement lot, 4 open space lots, 2 open space - landscape easements, 1 drainage easement - open space and landscape easement lot for property located off Kohler's Crossing and Jack C. Hays Trails.

Staff Proposal to P&Z: Approve the plat.

B. Plum Creek Phase 1, Section 6A, Block B - Site Plan (SD-21-0107) 1.62 acres; 1 Multi-Family Residential lot for property located at 5711 FM 2770.

Staff Proposal to P&Z: Approve the site plan.

C. Sage Hollow - Final Plat (SUB-21-0176) 57.293 acres; 222 residential lots, 8 greenbelt lots located at 1915 W. FM 150.

Staff Proposal to P&Z: Approve the plat.

D. Replat of Lots 14, 15 and 16, Block 4, Original Town of Kyle Establishing Lots 15A and 15B, Block 4 (SUB-21-0221) 0.1973 acres; 2 lots located at 111 S. Main Street.

Staff Proposal to P&Z: Approve the plat.

E. Plum Creek Phase II, Section 10, Lot 2 - Final Plat (SUB-21-0225) 5.246 acres; 1 Lot for property located off FM 1626 and Rikardson.

Staff Proposal to P&Z: Approve the plat.

F. Plum Creek Phase II, Section 10 - Final Plat (SUB-21-0226) 171.05 acres; 6 commercial lots located off FM 1626 and Rikardson.

Staff Proposal to P&Z: Approve the plat.

G. Kalterra Addition Lots 6-8 - Final Plat (SUB-21-0217) 8.994 acres; 3 lots located on the southwest corner of Kohler's Crossing and IH-35.

Staff Proposal to P&Z: Approve the plat.

H. Ky-Tex Downtown - Concept Plan (SUB-21-0207) 47.07 acres; 230 lots for property located near the northwest intersection of Veterans Drive and Gregg Road.

Staff Proposal to P&Z: Approve the concept plan.



**7. Consider and Possible Action**

A. Consider a request to construct an approximately 4,416 square foot Denny's free standing restaurant and site plan for property located at 19020 IH-35, within the I-35 overlay district. (Denny's Restaurant - CUP-21-0031)

B. Consider a request to construct an approximately 4,500 square foot free standing restaurant and site plan for property located at 18920 IH-35, within the I-35 overlay district. (Z Tejas - CUP-21-0038)

C. Consider a request to construct two (2) single-story, multi-tenant retail buildings. Each building will be approximately 7,200 square feet located south of FM 1626 and west of Marketplace Avenue within the FM 1626 overlay district. (Kyle Marketplace Section 2, Block A, Lot 2 - CUP-21-0039)

**8. General Discussion**

A. Discussion only regarding Planning and Zoning Commission request for future agenda items.

**9. Staff Report**

A. Staff Report by William Atkinson, Senior Planner.

**10. Adjournment**



# CITY OF KYLE, TEXAS

Minutes - November 9, 2021

Meeting Date: 12/14/2021

Date time:6:30 PM

**Subject/Recommendation:** Planning and Zoning Commission Meeting Minutes for November 9, 2021.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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**ATTACHMENTS:**

**Description**

- ☐ Minutes - November 9, 2021

## **REGULAR CALLED MEETING OF THE PLANNING AND ZONING COMMISSION**

The Planning and Zoning Commission of the City of Kyle, Texas met in a regular meeting on November 9, 2021, at 6:30 P.M. in a hybrid setting with the following people present:

Acting Chair, Alex Guerra  
Commissioner, Megan McCall  
Commissioner, Patricia Snidow  
Commissioner, Matt Chase  
Commissioner, Brandon James  
City Planner, William Atkinson  
Planning Technician, Debbie A. Guerra

### **CALL MEETING TO ORDER**

Acting Chair Guerra called the meeting to order at 6:30 P.M.

### **ROLL CALL OF COMMISSION**

Acting Chair Guerra called for a roll call. Commissioners No one was absent.

### **MINUTES**

#### **PLANNING AND ZONING COMMISSION MINUTES – OCTOBER 12, 2021 (REGULAR MEETING).**

Commissioner James moved to approve the minutes. Commissioner Chase seconds the motion. All votes' aye. Motion carried.

### **CITIZENS COMMENTS**

Acting Chair Guerra opened the citizens comment period at 6:31 P.M. and called for comments on items not on the agenda or posted for public hearing. There were no comments. Acting Chair Guerra closed the citizens comment period at 6:31 P.M.

### **CONSENT**

**TRAILS AT WINDY HILL PHASE 6 – FINAL PLAT (SUB-20-0146) 28.573 ACRES; 127 RESIDENTIAL LOTS, 1 OPEN SPACE LOT, 1 DRAINAGE EASEMENT, RIGHT-OF-WAY AND RIGHT-OF-WAY DEDICATION FOR PROPERTY LOCATED OFF WINDY HILL ROAD AND MATHIAS.**

**TRAILS AT WINDY HILL PHASE 7 – FINAL PLAT (SUB-20-0148) 18.412 ACRES; 86 RESIDENTIAL LOTS, 1 OPEN SPACE LOT, 1 UTILTIY LOT, RIGHT-OF-WAY AND RIGHT-OF-WAY DEDICATION FOR PROPERTY LOCATED OFF WINDY HILL ROAD AND MATHIAS.**

**COOL SPRINGS SUBDIVISION PHASE 3 – FINAL PLAT (SUB-21-0208) 26.82 ACRES; 102 RESIDENTIAL LOTS FOR PROPERTY LOCATED OFF COOL SPRINGS BOULEVARD.**

**6 CREEKS PHASE 1, SECTION 13A, 13B, 14A & 14B – PRELIMINARY PLAN (SUB-21-0194) 99.37 ACRES; 295 SINGLE FAMILY LOTS LOCATED NORTHWEST OF SIX CREEKS BOULEVARD AND N. OLD STAGECOACH ROAD.**

Commissioner Chase moved to approve the consent agenda. Commissioner James seconds the motion. All votes' aye. Motion carried.

#### **CONSIDER AND POSSIBLE ACTION**

**CONSIDER AN AMENDMENT TO SECTION 41-136 TO ALLOW UTILITY LOTS AND AN AMENDMENT TO SECTION 53-143 (TOWNHOMES) WITHIN THE CITY OF KYLE, IN HAYS COUNTY, TEXAS.**

Acting Chair Guerra opened the public hearing at 6:32 P.M. and called for comments. There were no comments. Acting Chair Guerra closed the public hearing at 6:32 P.M.

Commissioner Chase moved to approve. Commissioner Snidow seconds the motion. All votes aye. Motion carried.

**CONSIDER A REQUEST TO REMOVE 2 SPECIMEN LIVE OAK TREES (#206 & 207) AND REPLACE ON SITE WITH 36.3” CALIPER OAK TREES IN ADDITION TO THE MINIMUM REQUIRED TREES PER CHAPTER 54. THE PROJECT IS LOCATED AT 1081 FOUR SEASONS FARM BOULEVARD AND IS ZONED R-2 (DUPLEX ZONING).**

Commissioner Snidow moved to approve the removal but coordinate with staff regarding tree placement or fee in lieu of trees. Commissioner Chase seconds the motion. All votes aye. Motion carried.

**CONSIDER A REQUEST TO REMOVE 1 SPECIMEN LIVE OAK TREE (#1344, 37” Caliper) and replace on alternate site with 25, 3” caliper Live Oak trees per Chapter 54. The project is located at the southwest corner of IH-35 and Kohler’s Crossing and is zoned both R-3-3 and RS (dual zoning).**

Commissioner Chase recused himself at 6:47 p.m.

Commissioner James moved to approve. Commissioner Snidow seconds the motion. All votes aye. Motion carried.

Commissioner Chase returned at 6:52 p.m.

#### **GENERAL DISCUSSION**

**DISCUSSION ONLY REGARDING PLANNING AND ZONING COMMISSION REQUEST FOR FUTURE AGENDA ITEMS.**

Commissioner Snidow would like to have conversation relating to the definitions for manufactured housing, M-2 and M-3 zoning districts.

## **STAFF REPORT**

### **Commissioner Snidow -**

- **Attended the APA conference (virtually).**
- **HUD Manufactured Housing and HUD Certified Products.**
- **Subdivision criteria – Traffic calming, texture pedestrian crossings, and decrease speed limits.**

### **STAFF REPORT BY WILLIAM ATKINSON, CITY PLANNER.**

- **Attended the APA conference (virtually).**
- **Interviews for P&Z Commissioner vacancies possibly by December.**

## **ADJOURN**

With no further business to discuss, Commissioner Chase moved to adjourn. Commissioner James seconds the motion. All votes' aye. Motion carried.

The Planning and Zoning Commission regular called meeting adjourned at 7:04 P.M.

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Prepared by Debbie A. Guerra

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Acting Chair Alex Guerra



# CITY OF KYLE, TEXAS

## Citizen Comment Information

**Meeting Date: 12/14/2021**

**Date time:6:30 PM**

**Subject/Recommendation:** Citizen Comment Period. The Planning and Zoning Commission welcomes comments from Citizens early in the agenda of regular meetings. Speakers are provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit. Members of the public that wish to provide citizen comment have the following options:

- In-Person at Kyle City Hall, 100 W. Center Street

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available

# CITY OF KYLE, TEXAS



Comprehensive plan amendment to amend approximately 535 acres of land from 'Farm District' to 'East FM 150 Employment District' and 42 acres of land to the 'Regional Node' for certain parcels located northwest of the intersection of SH-21 and E FM 150.

**Meeting Date: 12/14/2021**  
**Date time:6:30 PM**

**Subject/Recommendation:** The Planning and Zoning Commission of the City of Kyle, Texas, will hold two public hearings for the purpose of receiving testimony, comments, and written evidence from the public regarding a comprehensive plan amendment to amend approximately 535 acres of land from 'Farm District' to 'East FM 150 Employment District' and 42 acres of land to the 'Regional Node' for certain parcels located northwest of the intersection of SH-21 and E FM 150. (City of Kyle)

- Public Hearing

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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## **ATTACHMENTS:**

### **Description**

- Staff Memo
- E FM 150 Employment District - Summary & Intent
- Comprehensive Plan Map
- Ordinance



# CITY OF KYLE

## Community Development Department

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### MEMORANDUM

**TO:** Planning & Zoning Commission

**FROM:** Will Atkinson – Senior Planner

**DATE:** Tuesday, December 14, 2021

**SUBJECT:** Comprehensive Plan Amendment – E FM 150 Employment District & Regional Node Land Use District

#### **Request**

The City of Kyle is pursuing a comprehensive plan amendment create a new land use district (E FM 150 Employment District) and amend the comprehensive plan to expand the “Regional Node” into the west corner of the intersection of SH-21 and E FM 150.

#### **City Charter Comprehensive Plan Ordinance**

##### Sec. 10.03. - Comprehensive Plan Adoption and Amendment.

“The comprehensive plan, or elements or portions thereof, shall be initially prepared and drafted by personnel and/or consultants authorized by the council, under the supervision of the city manager who shall coordinate development of the plan with the planning commission and the council. A draft of the comprehensive plan shall be submitted to the planning commission which shall hold a minimum of two public hearings on such plan and make recommendations for the approval of the plan, with or without amendments. The planning commission shall then forward the proposed comprehensive plan or element or portion thereof to the city manager, who shall thereupon submit such plan, or element or portion thereof, to the council with the planning commission's and the city manager's recommendations thereon. If the proposed comprehensive plan has not been adopted within two years from the effective date of this charter, the proposed plan as it then exists will automatically become the City's comprehensive plan.

“The council may adopt, or adopt with changes or amendments, the proposed comprehensive plan or any element or portion thereof, after one or more public hearings. The council shall act on such plan, element or portion thereof, within ninety (90) days following its submission. If such plan or element or portion thereof is not adopted by the council, the council shall, with policy direction, return such plan or element thereof to the



planning commission, which may modify such plan or element or portion thereof, and again forward it to the city manager for submission in like manner to the council. Amendments to the comprehensive plan may be initiated by the council, the planning commission, or the city manager; provided that all amendments shall be reviewed, considered and recommended for adoption in the same manner as for the original adoption of the comprehensive plan.

“Upon the adoption of a comprehensive plan or element or portion thereof by the council, all land development regulations including zoning and map, subdivision regulations, roadway plan, all public improvements, public facilities, public utilities projects and all city regulatory actions relating to land use, subdivision and development approval shall be consistent with the comprehensive plan, element or portion thereof as adopted, except to the extent, if any, as provided by law. For purposes of clarity, consistency and facilitation of comprehensive planning and land development process, the various types of local regulations or laws concerning the alteration, development and use of land may be combined in their totality in a single ordinance or code.”

## **Comprehensive Plan Text**

### E FM 150 Employment District

“Recommended: C/M, W, T/U

“Conditional: O/I, RS

‘Character’: The E FM 150 Employment District is primarily comprised of large, undeveloped parcels used for agricultural purposes and associated residential homesteads. This area is located just northwest of the intersection of SH-21 & E FM 150 and spans both sides of E FM 150, to the northern and southern edges of the City of Kyle’s jurisdiction. The E FM 150 Employment District is a further refinement, but separate district to the existing New Settlement District, a large, diverse area spanning both sides of IH-35. Nestled between large, single-family residential neighborhoods to the northwest and the as of yet undeveloped intersection of SH-21 & E FM 150, the E FM 150 Employment District is an ideal area for employment and logistic land uses. Given the ongoing development pressures of both the City of Kyle, and Austin region as a whole, the City of Kyle should look for areas to employ residents in a primarily non-retail, non-office manner.

‘Intent’: This largely undeveloped area is relatively flat, and in close proximity to the intersection of two state highways. SH-21 serves as a secondary north/south route between San Marcos and Austin for both commuters and commercial trucking. E FM 150 serves the primary gateway into Kyle for the southeast portion of the city, connecting SH-21 and IH-35. Future city plans to coordinate wastewater infrastructure along E FM 150 will compliment existing water availability. Additionally, the San Marcos Regional Airport is located approximately 5-miles south of this district. Building and site design relating to large scale warehousing and logistics, should be Class A construction, show case modern

design and set the standard for related development. These key factors will help create opportunities for larger scale warehousing, logistics and light manufacturing uses.

### Regional Node

“Recommended: R-1-C, R-3-2, R-3-3, CC, NC, R/S, MXD

“Conditional: CBD-1, CBD-2, E, HS, R-3-1, O/I

‘Character’: Regional Nodes should have regional scale retail and commercial activity complimented by regional scale residential uses. These Nodes should represent the character and identity of Kyle, and signal these traits to the surrounding community. Regional Nodes have a radius of approximately 1/3 of a mile so that they are walkable, but are able to contain a greater range of uses at a larger scale than those found in Local Nodes. Appropriate uses may include grocery stores, retail shopping centers, multi-family housing, and municipal services, such as libraries and recreation centers. Regional Nodes are scaled and designed as activity centers where users not only secure goods and services, but also congregate and remain for extended periods, unlike Local Nodes which are designed around quick turnaround convenience retail. The Regional Nodes located along I-35 at the northern and southern boundaries of Kyle should be designed as entryways into Kyle with elements that are symbolic of Kyle and serve to attract I-35 travelers into Kyle. Transitions between Regional Nodes and surrounding districts must be carefully constructed to avoid abrupt shifts in land uses. Trails and sidewalks should be present throughout all Regional Nodes and should connect to surrounding neighborhoods.

‘Intent’: The primary goal of the Regional Nodes is to capture commercial opportunities necessary to close Kyle’s tax gap. To achieve this goal, these Nodes should draw down upon anticipated regional growth and aggregate density to enhance value and activity levels in a concentrated and visible location. Regional Nodes should provide a mixture of uses that compliment regional commercial activity, as well as encourage high density residential development. These Nodes should respond to other regional areas of growth, specifically along I-35 and FM 1626, and to grow toward Hwy 21, SH 45 and SH 130. The anchor of each Regional Node should be regional commercial uses, and Regional Nodes should have a high level of development intensity.

### **Analysis**

Recently, Planning staff received direction from Administration to begin the process of establishing a new land use district to encapsulate primary job creators in the warehousing, logistics and light manufacturing areas of the economy. Administration wanted to see this area away from IH-35, as City Council specifically does not want additional warehouses and manufacturing along the IH-35 corridor. In the course of the conversations, the +/- 535 - acres immediately west of SH-21 along E FM 150 was found to be a good area to consider.

From an infrastructure perspective, SH-21 is a secondary north/south route, parallel to IH-35. It is used for both commuters and commercial traffic between San Marcos and Austin. TxDOT is currently upgrading the corridor to better handle traffic, and is receiving input for future improvements. E FM 150 is also a TxDOT highway that connects SH-21 and IH-35. Both corridors are significant and should be utilized to handle commercial traffic (eastbound). Proximity to SH-21 also allows for commercial traffic to utilize both Austin-Bergstrom International Airport and San Marcos Regional Airport.

Water availability is provided by County Line Special Utility District. Wastewater is currently non-existent, however this area does not have a wastewater provider. The City of Kyle is currently discussing plans to implement a regional wastewater solution to support this portion of the E FM 150 corridor (Waterleaf Blvd to SH-21). Construction of the wastewater facilities will increase the land value of the corridor and cause this area to be more attractive to developers. This comprehensive plan amendment is the first step to capture the value increase.

Relating to the “Regional Node” amendment, landowner(s) south of E FM 150 and west of SH-21, have been patiently waiting on a comprehensive plan amendment that enables the “Regional Node” on the west corner of this intersection. As the City is pursuing the “E FM 150 Employment District” amendment, it was found appropriate to incorporate the remainder of the “Regional Node” for the portion of the intersection that is within the City of Kyle’s jurisdiction (concurrently).

This amendment will take into account approximately 42-acres, and will allow said landowner(s) to rezone to districts that are appropriate for major intersections (retail, offices, restaurants, vertical mixed use, etc.).

**\*The first meeting considering this amendment will be a public hearing only, with no presentations or discussion on the amendment.**

### **RECOMMENDATION**

Staff recommends approval of the creation of the “E FM 150 Employment District” and expanding the “Regional Node” as shown in the request. Staff asks the Planning & Zoning Commission to vote in affirmative, supporting Staff’s recommendation.

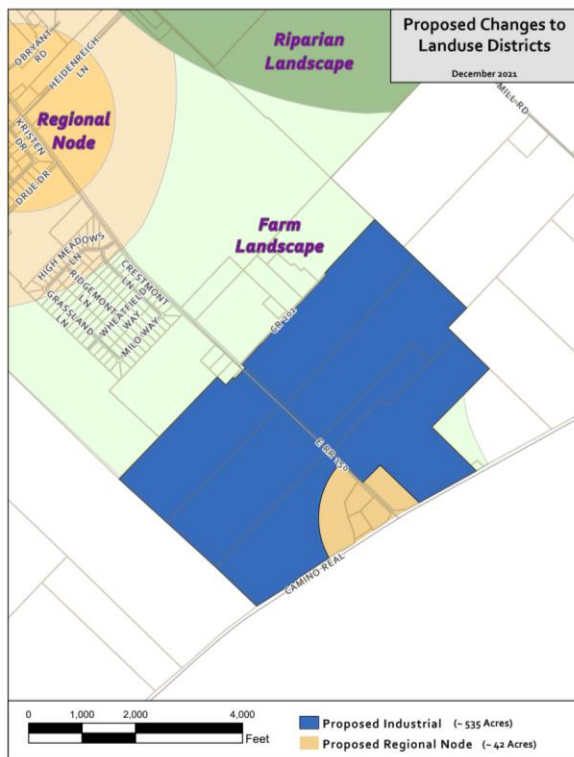
# E FM 150 EMPLOYMENT DISTRICT

## CHARACTER

The E FM 150 Employment District is primarily comprised of large, undeveloped parcels used for agricultural purposes and associated residential homesteads. This area is located just northwest of the intersection of SH-21 & E FM 150 and spans both sides of E FM 150, to the northern and southern edges of the City of Kyle’s jurisdiction. The E FM 150 Employment District is a further refinement, but separate district to the existing New Settlement District, a large, diverse area spanning both sides of IH-35. Nestled between large, single-family residential neighborhoods to the northwest and the as of yet undeveloped intersection of SH-21 & E FM 150, the E FM 150 Employment District is an ideal area for employment and logistic land uses. Given the ongoing development pressures of both the City of Kyle, and Austin region as a whole, the City of Kyle should look for areas to employ residents in a primarily non-retail, non-office manner.

## INTENT

This largely undeveloped area is relatively flat, and in close proximity to the intersection of two state highways. SH-21 serves as a secondary north/south route between San Marcos and Austin for both commuters and commercial trucking. E FM 150 serves the primary gateway into Kyle for the southeast portion of the city, connecting SH-21 and IH-35. Future city plans to coordinate wastewater infrastructure along E FM 150 will compliment existing water availability. Additionally, the San Marcos Regional Airport is located approximately 5-miles south of this district. Building and site design relating to large scale warehousing and logistics, should be Class A construction, show case modern design and set the standard for related development. These key factors will help create opportunities for larger scale warehousing, logistics and light manufacturing uses.



## JURISDICTION

The E FM 150 Employment District is approximately 535-acres and located in the southeastern portion of the City of Kyle.



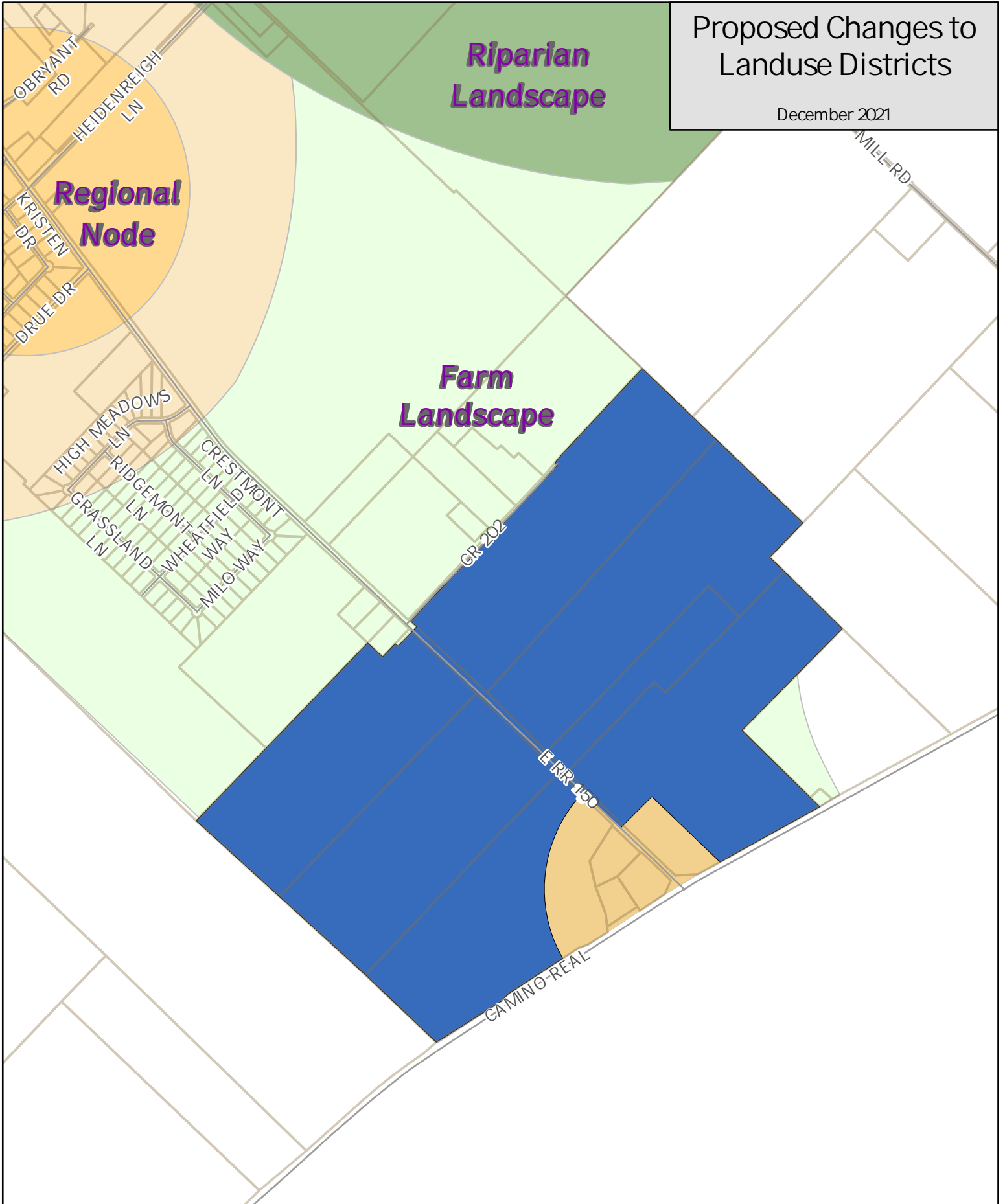
APPLICATION

The following chart displays existing zoning categories and their applicability to the E FM 150 Employment District.

<b>Zoning Category</b>	<b>Abbreviation</b>	<b>Use Qualification</b>
Agricultural District	A	Not Recommended
Central Business District 1	CBD-1	Not Recommended
Central Business District 2	CBD-2	Not Recommended
Community Commercial	CC	Not Recommended
Construction/Manufacturing	C/M	Recommended
Entertainment	E	Not Recommended
Hospital Services	HS	Not Recommended
Manufactured Home	M-1	Not Recommended
Manufactured Home Subdivision	M-2	Not Recommended
Manufactured Home Park	M-3	Not Recommended
Mixed-Use	MXD	Not Recommended
Multi-family Residential 1	R-3-1	Not Recommended
Multi-family Residential 2	R-3-2	Not Recommended
Multi-family Residential 3	R-3-3	Not Recommended
Neighborhood Commercial	NC	Not Recommended
Office/Institutional	O/I	Conditional
Residential Condominium	R-1-C	Not Recommended
Residential Townhouse	R-1-T	Not Recommended
Residential Two-family	R-2	Not Recommended
Recreational Vehicle Park	RV	Not Recommended
Retail/Service	R/S	Conditional
Single-family Residential 1	R-1-1	Not Recommended
Single-family Residential 2	R-1-2	Not Recommended
Single-family Residential 3	R-1-3	Not Recommended
Single-family Attached	R-1-A	Not Recommended
Transportation/Utilities	T/U	Recommended
Urban Estate District	UE	Not Recommended
Warehouse	W	Recommended

# Proposed Changes to Landuse Districts

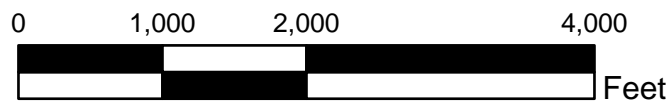
December 2021



**Riparian Landscape**

**Regional Node**

**Farm Landscape**



**Proposed Industrial** (~ 535 Acres)

**Proposed Regional Node** (~ 42 Acres) # 3

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, ADOPTING AN AMENDMENT TO THE CITY'S 2017 MID-TERM COMPREHENSIVE PLAN BY TO AMEND APPROXIMATELY 535 ACRES OF LAND FROM 'FARM DISTRICT' TO 'EAST FM 150 EMPLOYMENT DISTRICT' AND 42 ACRES OF LAND TO THE 'REGIONAL NODE' FOR CERTAIN PARCELS LOCATED NORTHWEST OF THE INTERSECTION OF SH-21 AND E FM 150; PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, it is necessary and reasonable for the City of Kyle, Texas, a Texas home rule municipality, (herein the "City") to provide for, modify and amend a Comprehensive Plan for the City in accordance with Chapters 211 and 213 of the Texas Local Government Code and the City Charter;

**WHEREAS**, the City in anticipation of growth and expansion desires to plan for the orderly and efficient growth of the City;

**WHEREAS**, the City desires to facilitate the lessening of congestion in the streets; the securing of its citizens and visitors from fire, panic and other dangers; the promotion of the general health and welfare; the provision of adequate light and air; the prevention of the overcrowding of property and undue concentrations of populations; and the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

**WHEREAS**, the City recognize the existing Comprehensive Plan contains data that needs to be reviewed and updated where appropriate, commensurate with the City's growth and expansion in both population and land area. The update will include creation of the "E FM 150 Employment District" (+/- 535 acres) and expanding the "Regional Node" to fully encompass +/- 42 acres) at the intersection of and west of SH-21 & E FM 150.

**WHEREAS**, the Planning & Zoning Commission, after conducting two (2) Public Hearings, recommended adoption of an Update to the existing Comprehensive Plan; and

**WHEREAS**, after review, inquiry and the opportunity for the public to give testimony and present written evidence at Public Hearings, and after review and recommendation by the Planning & Zoning Commission, the City Council has found the amendment of the Comprehensive Plan hereinafter set forth and listed in this ordinance is reasonable and necessary for the public health, safety, morals and welfare.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:**

**Section 1. Findings.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made part hereof for all purposes as findings of fact.

**Section 2. Comprehensive Plan.** Having held a Public Hearing and after receiving a recommendation from the Planning & Zoning Commission, the City Council hereby adopts and approves this Amendment to the 2010 Comprehensive Plan, as periodically amended, spread upon the minutes of this meeting. The Comprehensive Plan shall be kept in the office of the City Secretary and shall be available for public inspection during normal office hours. Zoning uses, as amended from time to time at the request of the landowner or on motion of the City, shall be amended to be made consistent with the Comprehensive Plan. The City may further amend the Comprehensive Plan at the discretion of the City Council to plan for the changing plans for the City.

**Section 3. Repeal of Comprehensive Plan.** Portions of the existing Comprehensive Plan are repealed, to be replaced with text and renderings as indicated in Exhibit 'A' & Exhibit 'B'.

**Section 4. Severability.** If any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision herein shall become inoperative or fail by reason of any unconstitutionally or invalidity of any other portion or provision.

**Section 5. Effective Date.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov 't. Code.

**Section 6. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meeting Act, Chapt. 551 Tex. Gov't Code.

**PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

**FINALLY PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

**The City of Kyle, Texas**

\_\_\_\_\_  
Jennifer A. Holm, City Secretary

\_\_\_\_\_  
Travis Mitchell, Mayor



**Exhibit “A”**

**E FM 150 Employment District Summary**

## E FM 150 EMPLOYMENT DISTRICT

### CHARACTER

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### JURISDICTION

The E FM 150 Employment District is approximately 535-acres and located in the southeastern portion of the City of Kyle.

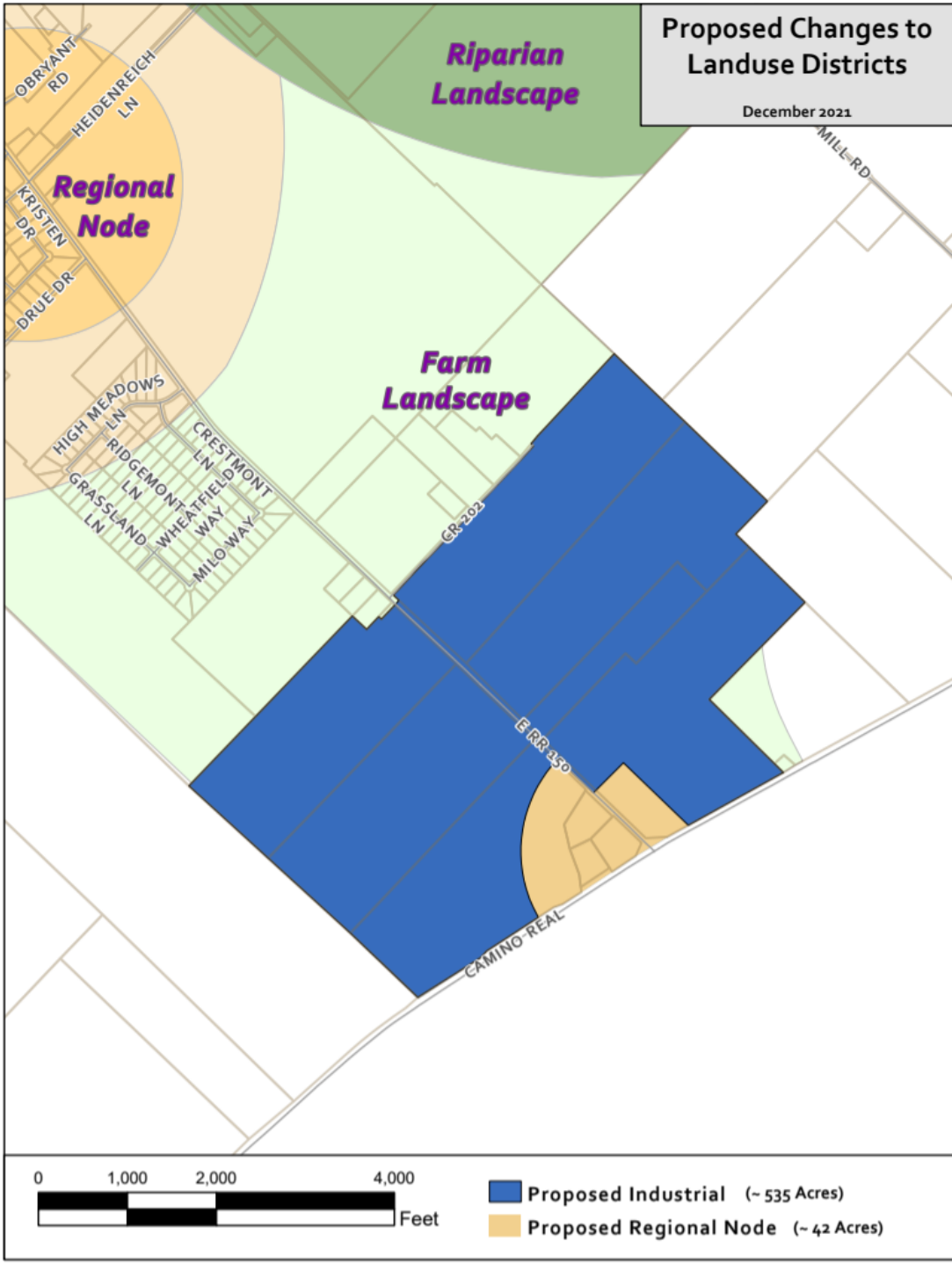


## APPLICATION

The following chart displays existing zoning categories and their applicability to the E FM 150 Employment District.

Zoning Category	Abbreviation	Use Qualification
Agricultural District	A	Not Recommended
Central Business District 1	CBD-1	Not Recommended
Central Business District 2	CBD-2	Not Recommended
Community Commercial	CC	Not Recommended
Construction/Manufacturing	C/M	Recommended
Entertainment	E	Not Recommended
Hospital Services	HS	Not Recommended
Manufactured Home	M-1	Not Recommended
Manufactured Home Subdivision	M-2	Not Recommended
Manufactured Home Park	M-3	Not Recommended
Mixed-Use	MXD	Not Recommended
Multi-family Residential 1	R-3-1	Not Recommended
Multi-family Residential 2	R-3-2	Not Recommended
Multi-family Residential 3	R-3-3	Not Recommended
Neighborhood Commercial	NC	Not Recommended
Office/Institutional	O/I	Conditional
Residential Condominium	R-1-C	Not Recommended
Residential Townhouse	R-1-T	Not Recommended
Residential Two-family	R-2	Not Recommended
Recreational Vehicle Park	RV	Not Recommended
Retail/Service	R/S	Conditional
Single-family Residential 1	R-1-1	Not Recommended
Single-family Residential 2	R-1-2	Not Recommended
Single-family Residential 3	R-1-3	Not Recommended
Single-family Attached	R-1-A	Not Recommended
Transportation/Utilities	T/U	Recommended
Urban Estate District	UE	Not Recommended
Warehouse	W	Recommended

**Exhibit B**  
**Comprehensive Plan Amendment Map**





# CITY OF KYLE, TEXAS

## Plum Creek Phase 2, Section 2 - Final Plat (SUB-21-0211)

**Meeting Date: 12/14/2021**  
**Date time: 6:30 PM**

**Subject/Recommendation:** Plum Creek Phase 2, Section 2 - Final Plat (SUB-21-0211) 55.026 acres; 201 single family lots, 2 public utility easements., 1 public utility easement - open space - landscape easement lot, 4 open space lots, 2 open space - landscape easements, 1 drainage easement - open space and landscape easement lot for property located off Kohler's Crossing and Jack C. Hays Trails.

Staff Proposal to P&Z: Approve the plat.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

---

### ATTACHMENTS:

#### **Description**

Final Plat

# FINAL PLAT PLUM CREEK PHASE 2 SECTION 2

55.026 ACRES OF LAND OUT OF THE M.M. McCARVER SURVEY, ABSTRACT NO. 10,  
HAYS COUNTY, TEXAS,

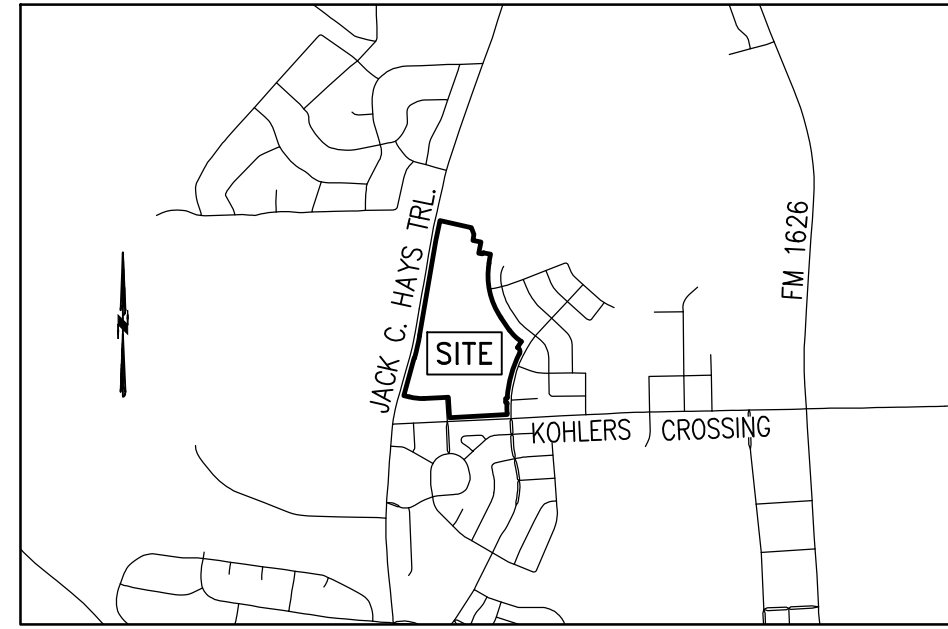
**SHEET INDEX:**

SHEET 1: COVER, VICINITY MAP, SHEET INDEX, STREETS TABLE, LEGEND  
SHEET 2: PLAT 1 OF 2, RECORD DEED TABLES  
SHEET 3: PLAT 2 OF 2, AREA TABLES  
SHEET 4: LINE AND CURVE TABLES  
SHEET 5: PLAT NOTES AND DEDICATIONS

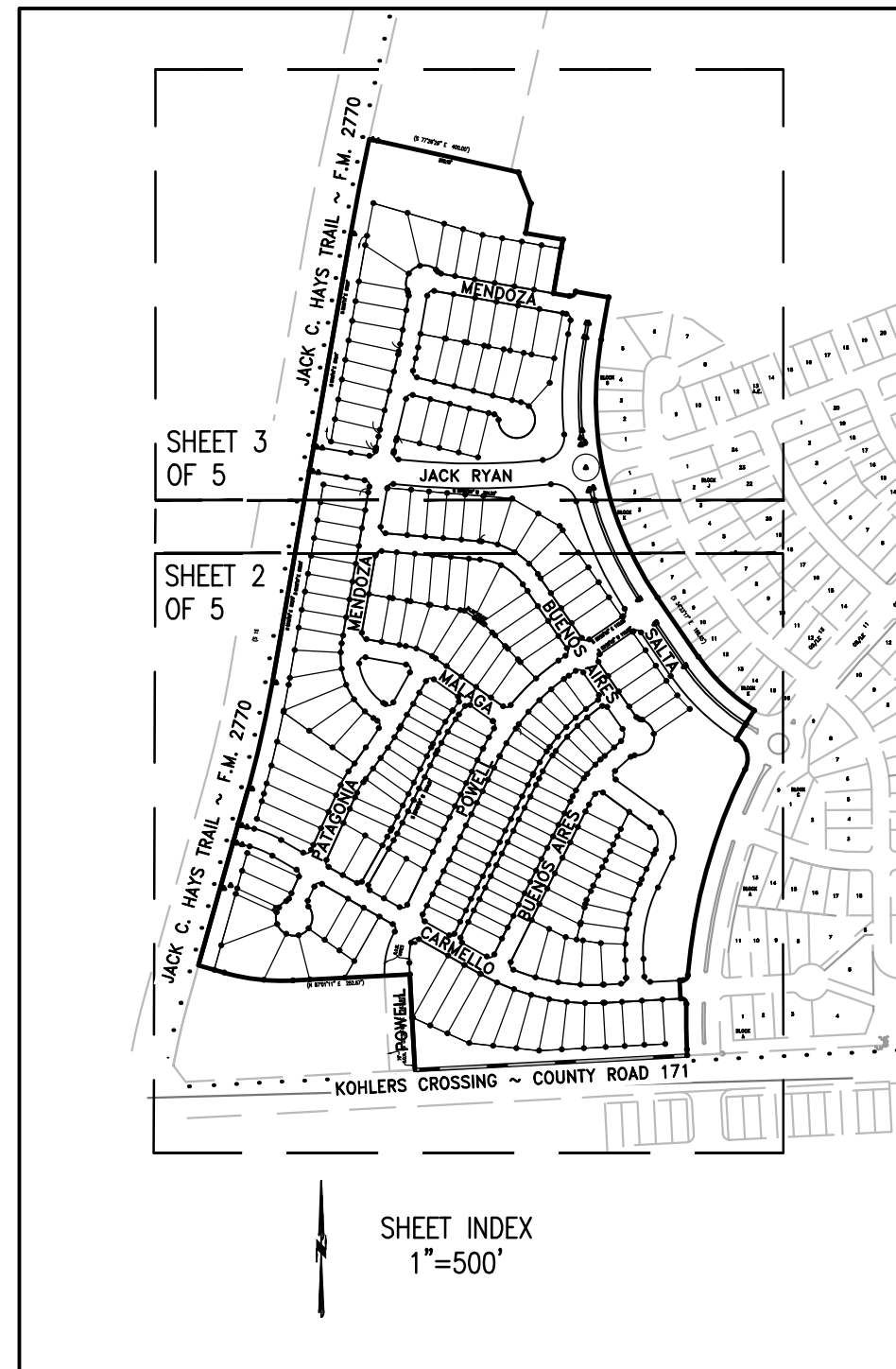
**OWNER:** LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.  
13620 N FM 620 BLDG D SUITE 150  
AUSTIN, TRAVIS COUNTY, TX 78759  
512.418.0258  
KEVIN.PAPE@LENNAR.COM

**SURVEYOR:** ERNESTO NAVARRETE, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6642 - STATE OF TEXAS  
LANDDEV CONSULTING, LLC  
5508 HWY 290 WEST, SUITE 150  
AUSTIN, TEXAS 78735  
512.872.6696  
ERNESTO.NAVARRETE@LDCTEAMS.COM  
TBPLS FIRM NO. 1019410

**ENGINEER:** SHERVIN NOOSHIN, P.E.  
REGISTERED PROFESSIONAL ENGINEER  
NO. 96807 - STATE OF TEXAS  
LANDDEV CONSULTING, LLC  
5508 HWY 290 WEST, SUITE 150  
AUSTIN, TEXAS 78735  
512.872.6696  
SHERVIN.NOOSHIN@LDCTEAMS.COM  
TBPE FIRM NO. F-16384



VICINITY MAP  
1"=2500'



SHEET INDEX  
1"=500'

STREET NAME	LINEAR FEET
<u>PUBLIC</u>	
BUENOS AIRES:	1,750
CARMELLO:	1,330
JACK RYAN:	860
MALAGA:	495
MENDOZA:	1,737
PATAGONIA:	795
POWELL:	1,258
SALTA:	1,330
SANTA JULIA:	702
SANTIAGO:	342

TOTAL LINEAR FEET OF NEW PUBLIC STREETS: 10,599

TOTAL LINEAR FEET OF NEW PRIVATE STREETS: 1,463

TOTAL LINEAR FEET OF ALL NEW STREETS: 12,062

TOTAL AREA: 55.026 ACRES  
AREA OF SMALLEST LOT: 105 Sq. Ft.

TOTAL NUMBER OF BLOCKS: 12  
TOTAL NUMBER OF LOTS: 211

SINGLE FAMILY/RESIDENTIAL LOTS: 201  
PUBLIC UTILITY EASEMENT LOTS: 2  
PUBLIC UTILITY EASEMENT/OPEN SPACE/LANDSCAPE EASEMENT LOTS: 1  
OPEN SPACE LOTS: 4  
OPEN SPACE/LANDSCAPE EASEMENT LOTS: 2  
DRAINAGE EASEMENT/OPEN SPACE/LANDSCAPE EASEMENT LOTS: 1

**LEGEND**

⊠	TxDOT TYPE II R.O.W. MARKER FOUND
●	1/2" IRON ROD W/PLASTIC CAP STAMPED FOUND (AS NOTED)
○	1/2" IRON ROD W/ PLASTIC CAP STAMPED "LANDDEV" SET OR PREVIOUSLY SET
△	CALCULATED POINT
●	BENCHMARK
( )	ADJOINER INFORMATION
P.R.H.C.TX.	PLAT RECORDS OF HAYS COUNTY, TEXAS
O.P.R.H.C.TX.	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
P.U.E.	PUBLIC UTILITY EASEMENT
OS	OPEN SPACE
LE	LANDSCAPE EASEMENT
TYP	TYPICAL
T.C.E.	TEMPORARY CONSTRUCTION EASEMENT

**BENCHMARK INFORMATION:**

**BM#1:**  
SQUARE CUT FOUND ON THE TOP OF A CONCRETE INLET, ALONG THE SOUTH LINE OF KOHLERS CROSSING, APPROXIMATELY 50' WEST OF THE INTERSECTION OF KOHLERS CROSSING AND POWELL LANE, AND APPROXIMATELY 625' EAST OF THE INTERSECTION OF KOHLERS CROSSING AND COUNTY ROAD 2770 (JACK C. HAYS TRAIL).  
ELEVATION = 797.12'  
VERTICAL DATUM: NAVD 88

**BM#2:**  
SQUARE CUT FOUND ON THE TOP OF A CONCRETE HEADWALL ALONG THE NORTH LINE OF KOHLERS CROSSING, APPROXIMATELY 1260' WEST OF THE INTERSECTION OF KOHLERS CROSSING AND BENNER ROAD, AND APPROXIMATELY 2050' EAST OF THE INTERSECTION OF KOHLERS CROSSING AND COUNTY ROAD 2770 (JACK C. HAYS TRAIL).  
ELEVATION = 773.96'  
VERTICAL DATUM: NAVD 88

**SURVEY NOTES:**

1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS, TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999902.

FILE No: 1373 CITY PROJECT NUMBER 2021-FP-\_\_

PLAT PREPARATION DATE	JULY, 2021
APPLICATION SUBMITTAL DATE	
1 ADDRESS CITY COMMENTS AND ADD P.U.E. STUB-OUTS	JH 10-15-2021
No: REVISION:	BY: DATE:



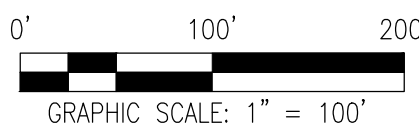
TBPE NO: 16384 · TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAMS.COM

**FINAL PLAT  
PLUM CREEK PHASE 2, SECTION 2  
55.026 ACRES  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS**



M.M. McCARVER SURVEY,  
ABSTRACT NO. 10

MATCHLINE SHEET 3 OF 5



(0.535 ACRES)  
DISTRICT NATURAL GAS EASEMENT  
CENTERPOINT ENERGY  
DOCUMENT NO. O.P.R.H.C.T.X.

JACK C. HAYS TRAIL ~ F.M. 2770  
(VARYING WIDTH R.O.W.)  
N 15°43'39" E 504.22' (S 15°44'17" W 504.10')

MATCHLINE SHEET 3 OF 5  
PLUM CREEK PHASE 2, SECTION 17  
DOCUMENT NO. 20042677  
O.P.R.H.C.T.X.

BARCELONA

SALTA

BUENOS AIRES

DE/LE/OS

SANTA JULIA

CARMELLO

PLUM CREEK PHASE 2, SECTION 1  
DOCUMENT NO. 20042677  
O.P.R.H.C.T.X.

CARMELLO

(0.621 AC.)  
WASTEWATER LINE EASEMENT  
CITY OF KYLE, TEXAS  
DOCUMENT NO. 19024117  
O.P.R.H.C.T.X.

BLOCK A, LOT 1  
(3.551 ACRES)  
PLUM CREEK PHASE II,  
NORTHWEST BUSINESS PARK  
DOCUMENT NO. 17042348  
O.P.R.H.C.T.X.

(0.421  
OF ONE ACRE)  
STREET DEED  
CITY OF KYLE, TEXAS  
DOCUMENT NO. 20000733  
O.P.R.H.C.T.X.

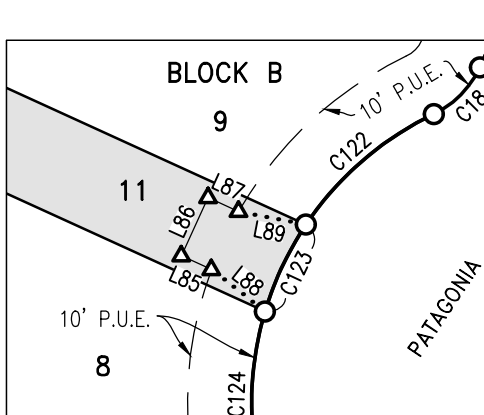
(1.663 ACRES)  
PARCEL NO. 1  
DEED  
STATE OF TEXAS  
VOL. 1076, PG. 211  
O.P.R.H.C.T.X.

(2.163 ACRES)  
(TRACT 1 - 1.171 AC.)  
DEDICATION OF RIGHT-OF-WAY  
CITY OF KYLE, TEXAS  
VOL. 3220, PG. 508  
O.P.R.H.C.T.X.

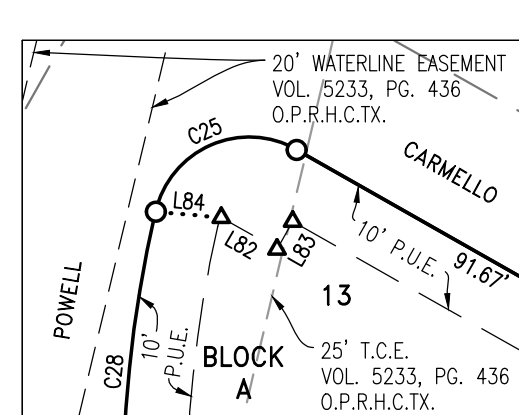
KOHLERS CROSSING ~ COUNTY ROAD 171  
(VARIABLE WIDTH R.O.W.)

APPROXIMATE LOCATION  
OF SURVEY LINE

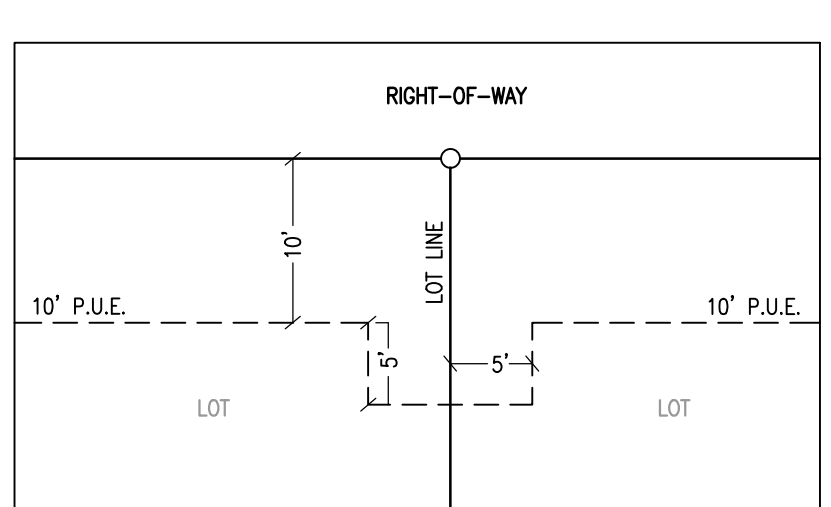
JOHN COOPER SURVEY,  
ABSTRACT NO. 100



P.U.E. DETAIL "A"  
1"=30'



P.U.E. DETAIL "B"  
1"=30'



TYPICAL P.U.E. STUB-OUT  
N.T.S.

FILE No: 1373	CITY PROJECT NUMBER 2021-FP--
PLAT PREPARATION DATE	JULY, 2021
APPLICATION SUBMITTAL DATE	
1 ADDRESS CITY COMMENTS AND ADD P.U.E. STUB-OUTS	JH 10-15-2021
NO: REVISION:	BY: DATE:

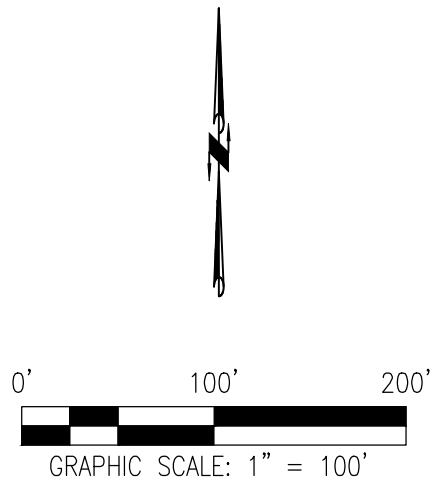


TBPE NO: 16384 - TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6896  
LDCTEAMS.COM

FINAL PLAT  
PLUM CREEK PHASE 2, SECTION 2  
55.026 ACRES  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS

L:\Projects\1373-Plum Creek Phase 2\1600-Survey\1607-CADD\Plots\Phase 2 Section 2\1373-Plum Creek Ph2 2 Final Plat.dwg  
PLOT DATE: 06/28/2021-10:46am





M.M. McCARVER SURVEY,  
ABSTRACT NO. 10

TRACT 1  
(324.250 ACRES)  
SPECIAL WARRANTY DEED WITH VENDOR'S LIEN  
LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.  
DOCUMENT NO. 16029226  
O.P.R.H.C.T.X.

(1.121 ACRES)  
DISTRICT NATURAL GAS EASEMENT  
CENTERPOINT ENERGY  
DOCUMENT NO. 19018269  
O.P.R.H.C.T.X.

PORTION OF  
(983.99 ACRES) ~ TRACT 2  
DEED WITHOUT WARRANTY  
MOUNTAIN PLUM, LTD.  
VOL. 2047, PG. 139  
O.P.R.H.C.T.X.

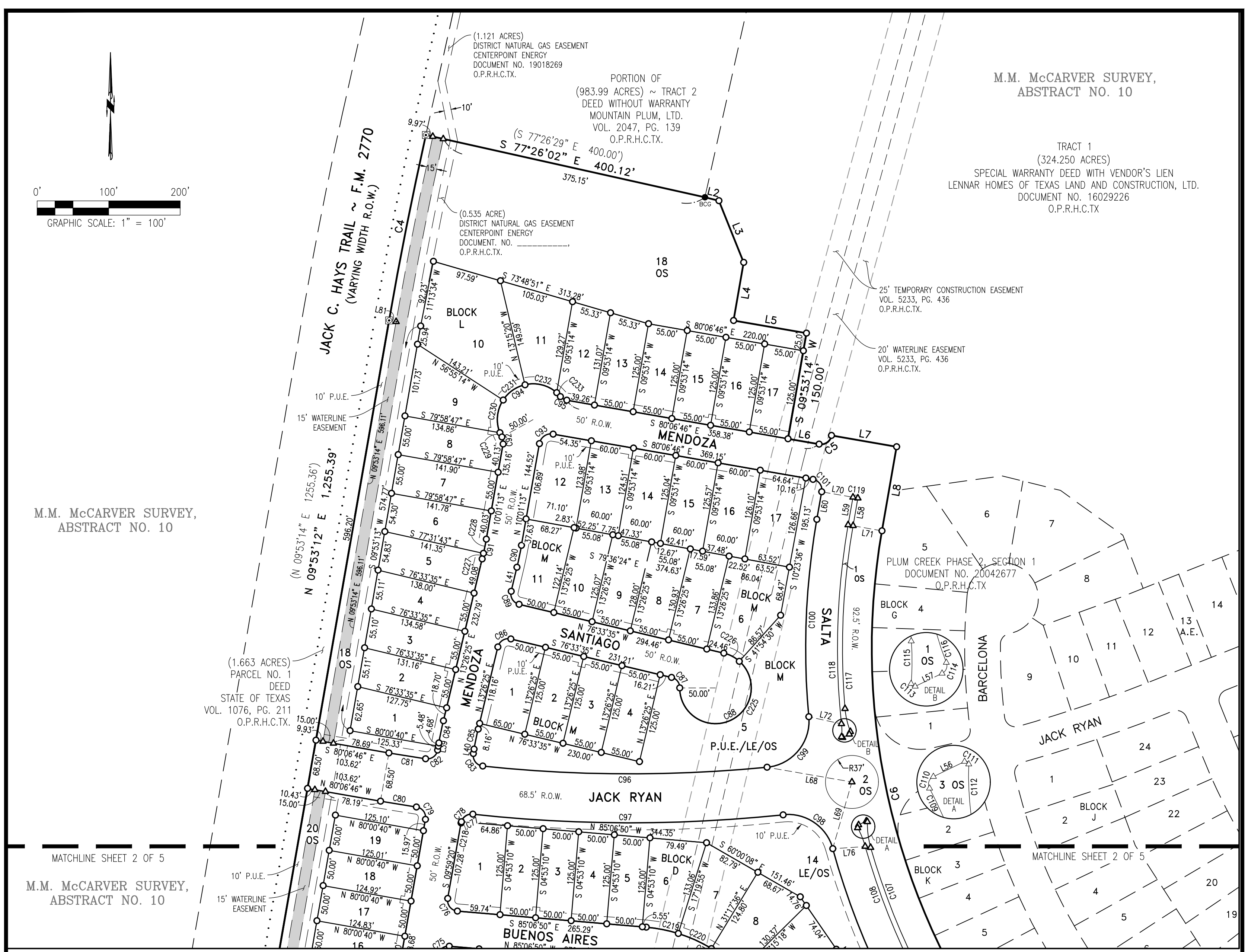
(0.535 ACRE)  
DISTRICT NATURAL GAS EASEMENT  
CENTERPOINT ENERGY  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.T.X.

25' TEMPORARY CONSTRUCTION EASEMENT  
VOL. 5233, PG. 436  
O.P.R.H.C.T.X.

20' WATERLINE EASEMENT  
VOL. 5233, PG. 436  
O.P.R.H.C.T.X.

M.M. McCARVER SURVEY,  
ABSTRACT NO. 10

M.M. McCARVER SURVEY,  
ABSTRACT NO. 10



BLOCK A		BLOCK B		BLOCK C		BLOCK D		BLOCK E		BLOCK F		BLOCK G		BLOCK G		BLOCK H		BLOCK H		BLOCK J		BLOCK K		BLOCK L		BLOCK M	
Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres	Lot	Acres
1	0.160	1	0.265	1	0.201	1	0.201	1	0.178	1	0.166	1	0.102	22	0.123	1	0.157	21	0.089	1	0.173	1	0.273	1	0.170	1	0.185
2	0.153	2	0.159	2	0.210	2	0.143	2	0.146	2	0.151	2	0.082	23	0.135	2	0.182	22	0.089	2	0.153	2		2	0.163	2	0.158
3	0.146	3	0.152	3	0.220	3	0.143	3	0.146	3	0.158	3	0.082	24	0.089	3	0.140	23	0.089	3	0.164	3		3	0.168	3	0.158
4	0.155	4	0.233	4	0.269	4	0.143	4	0.144	4	0.172	4	0.082	25	0.096	4	0.103	24	0.089	4	0.175	4		4	0.172	4	0.158
5	0.162	5	0.294	5	0.336	5	0.143	5	0.132	5	0.218	5	0.083	26	0.106	5	0.136	25	0.089	5	0.188	5		5	0.179	5	0.999
6	0.176	6	0.233	6	0.201	6	0.190	6	0.144	6	0.144	6	0.083	27	0.037	6	0.099	26	0.127	6	0.199	6		6	0.186	6	0.248
7	0.190	7	0.419	7	0.197	7	0.195	7	0.144	7	0.131	7	0.083	28	0.110	7	0.094	27	0.175	7	0.160	7		7	0.179	7	0.167
8	0.205	8	0.264	8	0.248	8	0.197	8	0.144	8	0.122	8	0.083	29	0.092	8	0.095	28	0.159	8	0.141	8		8	0.178	8	0.163
9	0.228	9	0.160	9	0.237	9	0.181	9	0.144	9	0.120	9	0.083	30	0.087	9	0.091	29	0.159	9	0.161	9		9	0.220	9	0.160
10	0.245	10	0.175	10	0.186	10	0.143	10	0.144	10	0.120	10	0.084	31	0.086	10	0.085	30	0.159	10	0.173	10		10	0.416	10	0.156
11	0.227	11	0.477	11	0.158	11	0.143	11	0.143	11	0.119	11	0.084	32	0.084	11	0.081	31	0.159	11	0.148	11		11	0.221	11	0.181
12	0.231			12	0.143	12	0.143	12	0.143	12	0.119	12	0.084	33	0.084	12	0.081	32	0.159	12	0.153	12		12	0.168	12	0.200
13	0.281			13	0.143	13	0.185	13	0.143	13	0.152	13	0.084	34	0.084	13	0.082	33	0.159	13	0.158	13		13	0.162	13	0.171
14	1.101			14	0.143	14	0.143	14	0.143	14	0.158	14	0.084	35	0.084	14	0.114	34	0.159	14	0.163	14		14	0.158	14	0.172
				15	0.143	15	0.143	15	0.143	15	0.118	15	0.095	36	0.084	15	0.114	35	0.159	15	0.218	15		15	0.158	15	0.173
				16	0.143	16	0.143	16	0.143	16	0.122	16	0.101	37	0.084	16	0.092	36	0.159	16	0.230	16		16	0.158	16	0.173
				17	0.143	17	0.143	17	0.143	17	0.133	17	0.036	38	0.084	17	0.088	37	0.159	17	0.169	17		17	0.158	17	0.186
				18	0.143	18	0.143	18	0.143	18	0.132	18	0.096	39	0.084	18	0.089	38	0.159	18	0.159	18		18	2.748	18	
				19	0.144	19	0.144	19	0.144	19	0.138	19	0.096	40	0.083	19	0.089	39	0.159	19	0.150	19		19		19	
				20	1.214	20	1.214	20	1.214	20	0.140	20	0.096	41	0.083	20	0.089	40	0.159	20	0.160	20		20		20	
												21	0.097	42	0.143			41	0.159								

FILE No: 1373 CITY PROJECT NUMBER 2021-FP-

SHEET 3 OF 5

PLAT PREPARATION DATE	JULY, 2021
APPLICATION SUBMITTAL DATE	10-15-2021
1 ADDRESS CITY COMMENTS AND ADD P.U.E. STUB-OUTS	JH
NO: REVISION:	BY: DATE:



TBPE NO: 16384 · TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAMS.COM

FINAL PLAT  
PLUM CREEK PHASE 2, SECTION 2  
55.026 ACRES  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS

L:\Projects\1373-Plum Creek Phase 2\600-Survey\607-CADD\Plots\Phase 2 Section 2\1373-Plum Creek Ph 2 Final Plat.dwg  
PLOT DATE: 07-28-2021-1047am

\* SEE TABLES BELOW FOR RECORD DEED CALLS

LINE TABLE with columns: LINE #, BEARING, DISTANCE. Rows L1 to L46.

LINE TABLE with columns: LINE #, BEARING, DISTANCE. Rows L47 to L91.

RECORD LINE TABLE with columns: LINE #, BEARING, DISTANCE. Rows L1 to L12.

RECORD CURVE TABLE with columns: CURVE #, RADIUS, ARC DISTANCE, CHORD BEARING, CHORD DISTANCE. Rows C1 to C12.

CURVE TABLE with columns: CURVE #, RADIUS, ARC DISTANCE, CHORD BEARING, CHORD DISTANCE. Rows C1 to C81.

CURVE TABLE with columns: CURVE #, RADIUS, ARC DISTANCE, CHORD BEARING, CHORD DISTANCE. Rows C82 to C162.

CURVE TABLE with columns: CURVE #, RADIUS, ARC DISTANCE, CHORD BEARING, CHORD DISTANCE. Rows C163 to C243.

FILE No: 1373 CITY PROJECT NUMBER 2021-FP--

PLAT PREPARATION DATE, APPLICATION SUBMITTAL DATE, ADDRESS CITY COMMENTS AND ADD P.U.E. STUB-OUTS table.



TBPE NO: 16384 - TBPLS NO: 10194101 5508 HIGHWAY 290 WEST, SUITE 150 AUSTIN, TX 78735 512.872.6666 LDC TEAMS.COM

FINAL PLAT PLUM CREEK PHASE 2, SECTION 2 55.026 ACRES M.M. McCARVER SURVEY, ABSTRACT NO. 10 HAYS COUNTY, TEXAS

# FINAL PLAT PLUM CREEK PHASE 2 SECTION 2

55.026 ACRES OF LAND OUT OF THE M.M. McCARVER SURVEY, ABSTRACT NO. 10,  
HAYS COUNTY, TEXAS,

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS

THAT LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., ACTING BY AND THROUGH ITS GENERAL PARTNER, U.S. HOME CORPORATION, THE SOLE OWNER OF 55.026 ACRES IN THE M. M. McCARVER SURVEY NO. 4, ABSTRACT NO. 10, HAYS COUNTY, TEXAS, BEING A PORTION OF A CERTAIN CALLED 324.250 ACRE TRACT DESIGNATED AS TRACT 1, AND A PORTION OF A CERTAIN CALLED 10.869 ACRE TRACT DESIGNATED AS TRACT 3, BOTH DESCRIBED IN DOCUMENT NO. 2016029226, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND DOES HEREBY SUBDIVIDE 55.026 ACRES OUT OF SAID 324.250 ACRE TRACT AND SAID 10.869 ACRE TRACT, AS SHOWN HEREON, DOES HEREBY CONSENT TO ALL PLAT NOTES AND REQUIREMENTS SHOWN HEREON, AND DOES HEREBY DEDICATE TO THE CITY OF KYLE, TEXAS, THE STREETS, RIGHT-OF-WAY, EASEMENTS, AND OTHER PUBLIC PLACES SHOWN HEREON FOR SUCH PUBLIC PURPOSES AS THE CITY OF KYLE MAY DEEM APPROPRIATE.

PLUM CREEK PHASE 2, SECTION 2

TO CERTIFY WHICH, WITNESS BY MY HAND THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.,  
A TEXAS LIMITED PARTNERSHIP

BY: U.S. HOME CORPORATION, A DELAWARE CORPORATION, ITS GENERAL PARTNER

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED \_\_\_\_\_, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING DOCUMENT OF AND HAS ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE CAPACITY FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

NOTARY PUBLIC IN AND FOR \_\_\_\_\_ COUNTY, TEXAS.

#### ENGINEER'S CERTIFICATION:

I, SHERVIN NOOSHIN, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

SHERVIN NOOSHIN, P.E.  
REGISTERED PROFESSIONAL ENGINEER  
NO. 96807 - STATE OF TEXAS  
SHERVIN.NOOSHIN@LDCTEAMS.COM  
LANDDEV CONSULTING, LLC.  
FIRM# F-16384  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TEXAS 78735  
(512) 872-6696

#### SURVEYOR'S CERTIFICATION:

I, ERNESTO NAVARRETE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

ERNESTO NAVARRETE, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6642 - STATE OF TEXAS  
ERNESTO.NAVARRETE@LDCTEAMS.COM  
LANDDEV CONSULTING, LLC.  
FIRM# 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TEXAS 78735  
(512) 872-6696

#### GENERAL NOTES:

1. TOTAL ACREAGE: 55.026 ACRES

THE TOTAL AREA OF STREET RIGHTS-OF-WAY (BUENOS AIRES, CARMELLO, JACK RYAN, MALAGA, MENDOZA, PATAGONIA, POWELL, SALTA, SANTA JULIA, SANTIAGO) TO BE DEDICATED IN THIS SUBDIVISION IS 14.103 ACRES.

211	TOTAL NUMBER OF LOTS
201	SINGLE FAMILY LOTS
2	PUBLIC UTILITY EASEMENT LOTS
1	PUBLIC UTILITY EASEMENT/OPEN SPACE/LANDSCAPE EASEMENT LOTS
4	OPEN SPACE LOTS
2	OPEN SPACE/LANDSCAPE EASEMENT LOTS
1	DRAINAGE EASEMENT/OPEN SPACE/LANDSCAPE EASEMENT LOTS

2. PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. ORDINANCE 311, PLUM CREEK SUBDIVISION ORDINANCE 308, & ORDINANCE 690.

3. ALL UTILITIES WITHIN THE SUBDIVISION WILL BE UNDERGROUND.

4. ALL STREETS, ALLEYS, PEDESTRIAN RIGHTS-OF-WAY, PARK/DRAINAGE EASEMENT LOTS, ACCESS EASEMENTS, AND ALL LANDSCAPE EASEMENT AREAS SHOWN ON THIS PLAT SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION (HOA) OR ASSIGNS. IT SHALL BE THE HOA'S RESPONSIBILITY FOR KEEPING SAID RIGHTS-OF-WAY, LOTS AND LANDSCAPE EASEMENT AREAS NEATLY CUT, FREE OF DEBRIS, AND FREE OF ALL TREE/BRUSH REGROWTH.

5. FOR ALL RESIDENTIAL LOTS, A 10' PUBLIC UTILITY EASEMENT IS HEREBY DEDICATED ADJACENT TO ALL ROW, EXCEPT ALLEYS.

6. ACCESS TO ALL PRIVATE RIGHTS-OF-WAY HEREON IS GRANTED TO CITY OF KYLE FOR THE PURPOSE OF ACCESSING AND MAINTAINING CITY OWNED FACILITIES CONTAINED THEREIN.

7. THE FINISHED FLOOR ELEVATION (FFE) OF ALL BUILDINGS IN THIS SUBDIVISION SHALL BE THE HIGHEST OF THE FOLLOWING CRITERIA:

- EIGHT INCHES ABOVE FINAL FINISHED ADJACENT GRADE, EXCLUDING DRIVEWAYS, OR
- THE MINIMUM FINISHED FLOOR ELEVATION SHOWN ON THE INDIVIDUAL LOT

#### PUBLIC UTILITY INFORMATION:

THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES:

**WATER:**  
CITY OF KYLE  
100 W. CENTER ST.  
KYLE, TEXAS 78640

**WASTEWATER:**  
CITY OF KYLE  
100 W. CENTER ST.  
KYLE, TEXAS 78640

#### FLOOD NOTE:

BY GRAPHIC PLOTTING ONLY, PLUM CREEK PHASE 2, SECTION 2 LIES WITHIN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN), AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, AS SHOWN ON MAP NO. 48209C0270F, DATED SEPTEMBER 2, 2005, FOR HAYS COUNTY, TEXAS AND INCORPORATED AREAS.

THE ABOVE STATEMENT IS MEANT FOR FLOOD INSURANCE DETERMINATION ONLY AND THIS SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAPS.

#### HAYS COUNTY CLERK

I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING DOCUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON

THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS UNDER

CLERK'S FILE NUMBER \_\_\_\_\_. WITNESS MY HAND AND SEAL OF OFFICE OF HAYS

COUNTY ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

FILED FOR RECORD AT \_\_\_\_ O'CLOCK \_\_\_\_M. THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

ELAINE H. CARDENAS, COUNTY CLERK  
HAYS COUNTY, TEXAS

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: \_\_\_\_\_  
CHAIRPERSON

THIS PLAT (PLUM CREEK PHASE 2, SECTION 2) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COMMISSION.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

THIS PLAT (PLUM CREEK PHASE 2, SECTION 2) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: \_\_\_\_\_  
ATTEST:

SECRETARY

FILE No: 1373 CITY PROJECT NUMBER 2021-FP-\_\_

SHEET 5 OF 5

PLAT PREPARATION DATE	JULY, 2021
APPLICATION SUBMITTAL DATE	
1 ADDRESS CITY COMMENTS AND ADD P.U.E. STUB-OUTS	JH 10-15-2021
No: REVISION:	BY: DATE:



TBPE NO: 16384 · TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAMS.COM

FINAL PLAT  
PLUM CREEK PHASE 2, SECTION 2  
55.026 ACRES  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS



# CITY OF KYLE, TEXAS

Plum Creek Phase 1, Section 6A,  
Block B - Site Plan (SD-21-0107)

Meeting Date: 12/14/2021  
Date time: 6:30 PM

**Subject/Recommendation:** Plum Creek Phase 1, Section 6A, Block B - Site Plan (SD-21-0107) 1.62 acres; 1 Multi-Family Residential lot for property located at 5711 FM 2770.

Staff Proposal to P&Z: Approve the site plan.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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**ATTACHMENTS:**

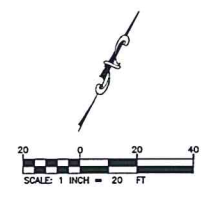
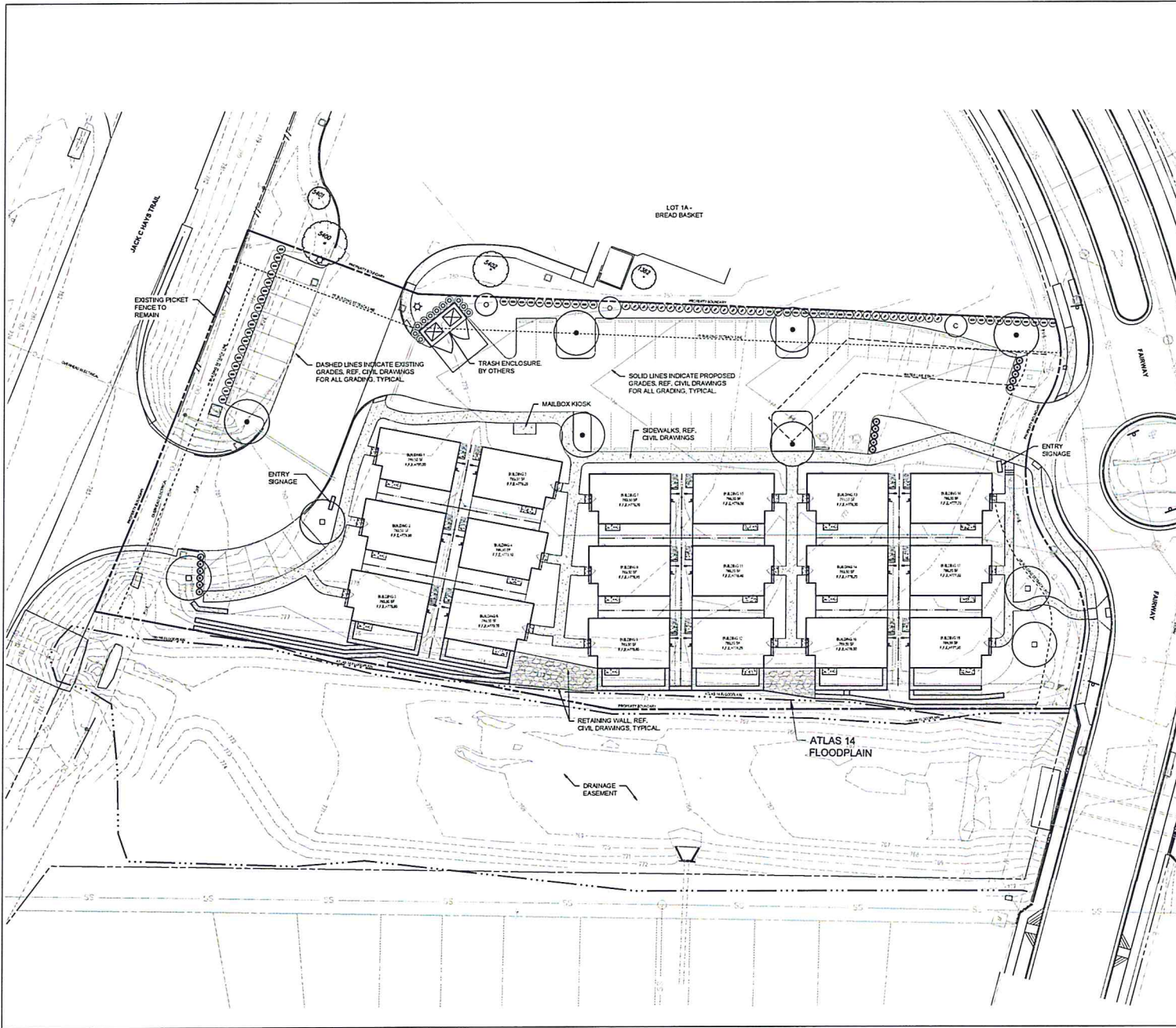
**Description**

- Site and Landscape Plan









**PROPOSED TREE LEGEND**

SYMBOL	QTY	SPECIES
	6	LIVE OAK Cedrus repens MIN. 3" CAL. MIN. 6 FT. MEASURED 1" ABOVE THE ROOT FLARE IMMEDIATELY AFTER PLANTING
	4	CEDAR ELM Ulmus crassifolia MIN. 3" CAL. MIN. 6 FT. MEASURED 1" ABOVE THE ROOT FLARE IMMEDIATELY AFTER PLANTING
<b>SUBTOTAL:</b>	<b>10</b>	

**PROPOSED SCREENING SHRUBS LEGEND**

SYMBOL	QTY	SPECIES
	3	WAX MYRTLE Myrica caroliniana 2" CAL. MIN. 4 FT.
	50	TEXAS SAGE Artemisia tridentata MIN. 30" HT. PLANT MIN. 42" O.C.
	25	THRIFALLIS Germplasm plants MIN. 30" HT. PLANT MIN. 42" O.C.
	31	RED YUCCA Yucca rostrata MIN. 30" HT. PLANT MIN. 42" O.C.
	16	UPRIGHT ROSEMARY Rosmarinus officinalis MIN. 30" HT. PLANT MIN. 42" O.C.
<b>SUBTOTAL:</b>	<b>105</b>	

**Plum Creek MF - Lot 6A**  
 Kyle, Hays County, Texas  
 CVLA Project Number: CV2108

**LANDSCAPE CALCULATIONS**

	REQUIRED	PROVIDED
TOTAL SITE AREA	10988	70,549
REQUIRED LANDSCAPE AREA (15%)	1648	10,588
REQUIRED PLANTINGS	10	10
TREES	10	10
Per City of Kyle Code of Ordinances, Section 54-9.01(a)		
EVERGREEN VEGETATIVE SCREEN	10	10
SMALL TREES	30	3
SHRUBS	30	106
Per City of Kyle Code of Ordinances, Section 54-9.02(d)		

NO MITIGATION REQUIRED. REFERENCE CIVIL DRAWINGS



**CIRCLE V**  
 Landscape Architecture, LLC  
 P.O. Box 118822 Austin, Texas 78717  
 816.565.1821 circlevtx.com



THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN FOR INFORMATION ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE INCURRED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PROTECT ANY AND ALL UNDERGROUND UTILITIES.

**Bowman**  
 1818 E. First Street, Suite 114, Austin, Texas 78724  
 P: 512.476.1100  
 F: 512.476.1100  
 www.bowmanlandscape.com

REVISIONS	DATE	DESCRIPTION

REASON:  

L-1  
 LANDSCAPE PLAN  
 PLUM CREEK MF  
 LOT 6A, PLUM CREEK PHASE 1  
 KYLE, TEXAS, 78640

11-29-2021

**STATE OF TEXAS**  
 NICHOLAS G. WEHR  
 104450  
 LICENSED LANDSCAPE ARCHITECT

DESIGN: [Signature]  
 DRAWN: [Signature]  
 HD: [Signature]  
 JOB No. 005549-18-001

SHEET 18 OF 19

PRELIMINARY NOT FOR CONSTRUCTION

**GENERAL NOTES:**

- CONTRACTOR IS RESPONSIBLE FOR BEING FAMILIAR WITH ALL EXISTING SITE CONDITIONS INCLUDING UTILITIES, PIPES, AND STRUCTURES BEFORE EXCAVATION. CONTRACTOR IS RESPONSIBLE FOR CONTRACTING LINE LOCATION SERVICES BEFORE EXCAVATION. COSTS INCURRED DUE TO BODILY INJURY AND/OR DAMAGE OF OWNER'S PROPERTY OR SAID UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR. EXTREME CARE SHALL BE TAKEN IN EXCAVATING AND WORKING NEAR EXISTING UTILITIES.
- THE CONTRACTOR IS RESPONSIBLE FOR PAYING ALL FEES ASSOCIATED WITH TEMPORARY UTILITIES AND SERVICES NECESSARY TO FULFILL THE WORK SPECIFIED IN THE CONTRACT DOCUMENTS.
- CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING EXISTING SITE IMPROVEMENTS ON SITE AND ADJACENT SITES PRIOR TO COMMENCEMENT OF WORK INCLUDING IRRIGATION AND LANDSCAPE. CONTRACTOR SHALL NOTIFY LANDSCAPE ARCHITECT OF ANY CONFLICTS IMMEDIATELY. REPAIR OF DAMAGES ARE THE RESPONSIBILITY OF THE CONTRACTOR.
- ANY DISCREPANCIES THAT ARISE BETWEEN PLANS AND SITE CONDITIONS SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT AND OWNER. CONFLICTS ARISING DUE TO LACK OF COORDINATION SHALL BE THE RESPONSIBILITY AND EXPENSE OF THE CONTRACTOR. THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ALL NECESSARY REVISIONS DUE TO FAILURE IN GIVING SUCH NOTIFICATIONS.
- CONTRACTOR SHALL BE RESPONSIBLE FOR ALL COORDINATION WITH PROJECT CIVIL ENGINEER, ARCHITECT AND SUBCONTRACTORS TO ACCOMPLISH THE WORK SPECIFIED IN THE CONTRACT DOCUMENTS.
- CONTRACTOR SHALL NOTIFY THE OWNER AND LANDSCAPE ARCHITECT 48 HOURS PRIOR TO COMMENCEMENT OF WORK TO COORDINATE PROJECT INSPECTION SCHEDULES.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR PERFORMING FIELD MEASUREMENTS PRIOR TO FABRICATION AND/OR PURCHASE OF ANY MATERIALS.
- ANY SUBSTITUTIONS OR CHANGES TO THE DRAWINGS SUGGESTED BY THE CONTRACTOR SHALL BE SUBMITTED TO THE LANDSCAPE ARCHITECT AND OWNER FOR APPROVAL PRIOR TO COMMENCEMENT OF THE WORK.
- THE CONTRACTOR SHALL COORDINATE STORING OF MATERIALS.

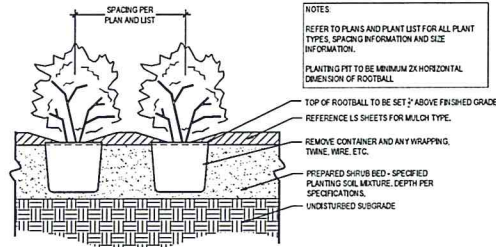
**LANDSCAPE MAINTENANCE NOTES:**

- THE OWNER OF THE LANDSCAPED PROPERTY SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL LANDSCAPE AREAS. SAID AREAS SHALL BE MAINTAINED SO AS TO PRESENT A HEALTHY, NEAT AND ORDERLY APPEARANCE AT ALL TIMES AND SHALL BE KEPT FREE OF REFUSE AND DEBRIS. ALL PLANTED AREAS SHALL BE PROVIDED WITH A READILY AVAILABLE WATER SUPPLY AND WATERED AS NECESSARY TO ENSURE CONTINUOUS HEALTHY GROWTH AND DEVELOPMENT. MAINTENANCE SHALL INCLUDE THE REPLACEMENT OF ALL DEAD PLANT MATERIAL IF THAT MATERIAL WAS USED TO MEET THE REQUIREMENTS OF THIS ARTICLE. LANDSCAPE MATERIAL MUST BE TRIMMED AND MAINTAINED FOR ROADWAY VISIBILITY.
- ALL PROPERTY WITHIN THE CITY LIMITS WILL ADHERE TO CITY DROUGHT MANAGEMENT PROGRAM WHEN WATERING.

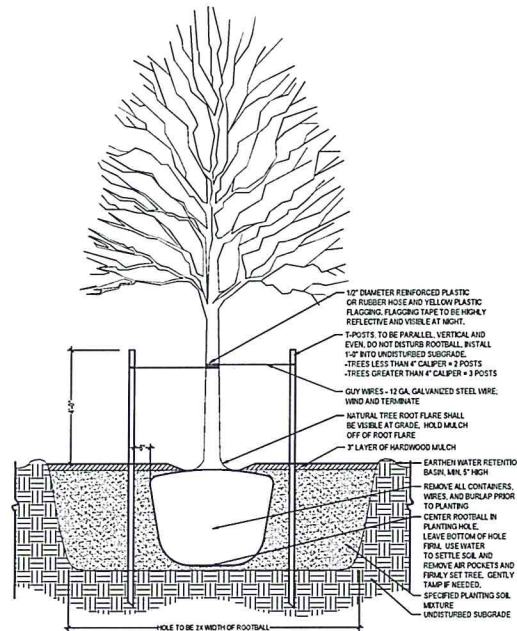
**IRRIGATION NOTES:**

AN AUTOMATIC IRRIGATION SYSTEM SHALL BE INSTALLED TO PROPERLY IRRIGATE ALL LANDSCAPE AREAS AND SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS.

- A NEW COMMERCIAL SYSTEM MUST BE DESIGNED AND INSTALLED SO THAT:
  - THERE IS NOT DIRECT OVERSPRAY ON TO NONIRRIGATED AREAS.
  - THE SYSTEM DOES NOT INCLUDE SPRAY IRRIGATION ON AREAS LESS THAN SIX (6) FEET WIDE (SUCH AS MEDIANS, BUFFER STRIPS, AND PARKING LOT ISLANDS)
  - ABOVE-GROUND IRRIGATION EMISSION DEVICES ARE SET BACK AT LEAST SIX (6) INCHES FROM IMPERVIOUS SURFACES.
  - THE IRRIGATION SYSTEM HAS A MASTER VALVE.
  - IRRIGATION DESIGN TO BE DESIGNED BY A STATE OF TEXAS LICENSED IRRIGATOR
  - AN AUTOMATIC RAIN SHUT-OFF DEVICE SHUTS OFF THE IRRIGATION SYSTEM AUTOMATICALLY AFTER NOT MORE THAN A ONE-HALF INCH (1/2) RAINFALL.
  - ZONE VALVES AND CIRCUITS ARE SEPARATED BASED ON PLANT WATER REQUIREMENTS
  - AN IRRIGATION EMISSION DEVICE (SUCH AS SPRAY, ROTOR, OR DRIP EMITTER) DOES NOT EXCEED THE MANUFACTURER'S RECOMMENDED OPERATING PRESSURE. AND
  - NO COMPONENT OF THE IRRIGATION SYSTEM DEVIATES FROM THE MANUFACTURER'S RECOMMENDED USE OF THE PRODUCT.
  - IRRIGATION SYSTEM AND PLAN TO FOLLOW AND ABIDE BY ALL TCEQ, STATE, LOCAL AND ANY OTHER APPLICABLE CODES
- THE IRRIGATION INSTALLER SHALL DEVELOP AND PROVIDE AN AS-BUILT DESIGN PLAN AND WATER BUDGET TO THE CITY AT THE TIME THE FINAL PLUMBING INSPECTION IS PERFORMED. THE WATER BUDGET SHALL INCLUDE:
  - A CHART CONTAINING ZONE NUMBERS, PRECIPITATION RATE, AND GALLONS PER MINUTE. AND
  - THE LOCATION OF THE EMERGENCY IRRIGATION SYSTEM SHUT-OFF VALVE. A LAMINATED COPY OF THE WATER BUDGET SHALL BE PERMANENTLY INSTALLED INSIDE THE IRRIGATION CONTROLLER DOOR.
- CONTRACTOR TO COORDINATE ALL IRRIGATION SLEEVE LOCATIONS WITH CIVIL CONTRACTOR PRIOR TO ANY PROJECT CONSTRUCTION. CONTRACTOR TO VERIFY EXACT QUANTITY, SIZES AND LOCATIONS IN FIELD WITH CIVIL CONTRACTOR PRIOR TO ANY SITEWORK. CONTRACTOR RESPONSIBLE FOR ENSURING AND COORDINATING ANY SLEEVING NEEDED IS INSTALLED TO PROVIDE AUTOMATIC IRRIGATION ON ALL VEGETATIVE AREAS.



**2 SHRUB PLANTING**  
SECTION VIEW  
SCALE: 1" = 1'-0"



**1 TREE PLANTING**  
SECTION VIEW  
SCALE: 3/4" = 1'-0"



REVISIONS	DATE	DESCRIPTION

**L-2 LANDSCAPE DETAILS AND NOTES**  
PLUM CREEK ME  
LOT 6A, PLUM CREEK PHASE 1  
KYLE, TEXAS, 78640



**CIRCLE V**  
Landscape Architecture, LLC  
P.O. Box 110822 Austin, Texas 78711  
816.565.1021 circlevtx.com



THE LOCATION OF UTILITIES INDICATED ON THESE PLANS IS AN APPROXIMATE ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE OCCURRED BY THE CONTRACTOR FAILURE TO EXACTLY LOCATE AND PROTECT ANY AND ALL UNDERGROUND UTILITIES.



DESIGN	DRAWN	CHECKED

JOB No. 005549-18-001  
SHEET  
19 OF 19

PRELIMINARY NOT FOR CONSTRUCTION



# CITY OF KYLE, TEXAS

Sage Hollow - Final Plat (SUB-21-0176)

Meeting Date: 12/14/2021  
Date time: 6:30 PM

**Subject/Recommendation:** Sage Hollow - Final Plat (SUB-21-0176) 57.293 acres; 222 residential lots, 8 greenbelt lots located at 1915 W. FM 150.

Staff Proposal to P&Z: Approve the plat.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

---

**ATTACHMENTS:**

**Description**

☐ Final Plat



STATE OF TEXAS :  
COUNTY OF HAYS :

KNOW ALL MEN BY THESE PRESENTS:

THAT, MILESTONE COMMUNITY BUILDERS, OWNER OF 57.293 ACRES OUT OF THE SAMUEL PHARASS SURVEY, ABSTRACT 360 IN HAYS COUNTY, TEXAS, AS CONVEYED BY DEED OF RECORD IN \_\_\_\_\_ OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 57.293 ACRES OF LAND IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT TO BE KNOWN AS:

"SAGE HOLLOW"

SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC USE OF THE STREETS AND EASEMENTS HEREON.

WITNESS MY HAND THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D.

AUSTIN, TEXAS 78746

BY: \_\_\_\_\_  
GARRETT MARTIN, CEO  
MILESTONE COMMUNITY BUILDERS

STATE OF TEXAS :  
COUNTY OF HAYS :

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED GARRETT MARTIN KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR HAYS COUNTY, TEXAS

STATE OF TEXAS :  
COUNTY OF HAYS :

I HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACCURATE AND ON-THE-GROUND SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF HAYS COUNTY, TEXAS.

\_\_\_\_\_  
ROBERT J. GERTSON, RPLS 6367  
ATWELL-GROUP, LLC  
805 LAS CIMAS PARKWAY, SUITE 310  
AUSTIN, TEXAS 78704

\_\_\_\_\_  
DATE

STATE OF TEXAS :  
COUNTY OF HAYS :

I, CONNOR OVERBY, P.E., A LICENSED PROFESSIONAL ENGINEER, DO HEREBY CERTIFY THAT NO PORTION OF THIS FINAL PLAT IS LOCATED WITHIN A DESIGNATED 100-YEAR FLOOD ZONE AREA, AS DELINEATED ON THE FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANEL NO. 48209C0270F, EFFECTIVE DATE OF SEPTEMBER 2, 2005. ADDITIONALLY, STORM WATER RUNOFF FROM THE 100-YEAR STORM EVENT SHALL BE CONTAINED WITHIN THE DRAINAGE FACILITIES TO BE LOCATED WITHIN THE RIGHTS-OF-WAY AND/OR GREENBELT/DRAINAGE LOTS OR EASEMENTS SHOWN ON THE ATTACHED PLAT.

\_\_\_\_\_  
CONNOR OVERBY, P.E. 108799  
ATWELL-GROUP, LLC  
805 LAS CIMAS PARKWAY, SUITE 310  
AUSTIN, TEXAS 78704

\_\_\_\_\_  
DATE

SAGE HOLLOW IS LOCATED ENTIRELY WITHIN THE BOUNDARIES AND SERVICE AREA OF THE CITY OF KYLE, TEXAS. WATER AND WASTEWATER SERVICE, AS REGULATED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, WILL BE PROVIDED TO ALL LOTS REQUIRING SERVICE THROUGH THE CITY OF KYLE'S WATER AND WASTEWATER SYSTEM.

\_\_\_\_\_  
HARPER WILDER, PUBLIC WORKS DIRECTOR  
CITY OF KYLE, TEXAS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
LEON BARBA, CITY ENGINEER  
CITY OF KYLE, TEXAS

\_\_\_\_\_  
DATE

STATE OF TEXAS :  
COUNTY OF HAYS :

I, ELAINE HANSON CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D., THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS PASSED AN ORDER AUTHORIZING THE FILING FOR RECORD OF THIS PLAT AND SAID ORDER HAS BEEN DULY ENTERED IN THE MINUTES OF SAID COURT RESOLUTION NUMBER \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D.

\_\_\_\_\_  
ELAINE HANSON CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS

CONSIDERED AND APPROVED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
MICHELLE CHRISTIE  
CITY OF KYLE PLANNING AND ZONING COMMISSION CHAIRPERSON

\_\_\_\_\_  
DATE

OWNERS: MILESTONE COMMUNITY BUILDERS  
9111 JOLLYVILLE ROAD SUITE 111  
AUSTIN, TX 78759

ACREAGE: 57.293

SURVEY: SAMUEL PHARASS SURVEY,  
ABSTRACT 360

NUMBER OF LOTS: 222: RESIDENTIAL  
8: GREENBELT

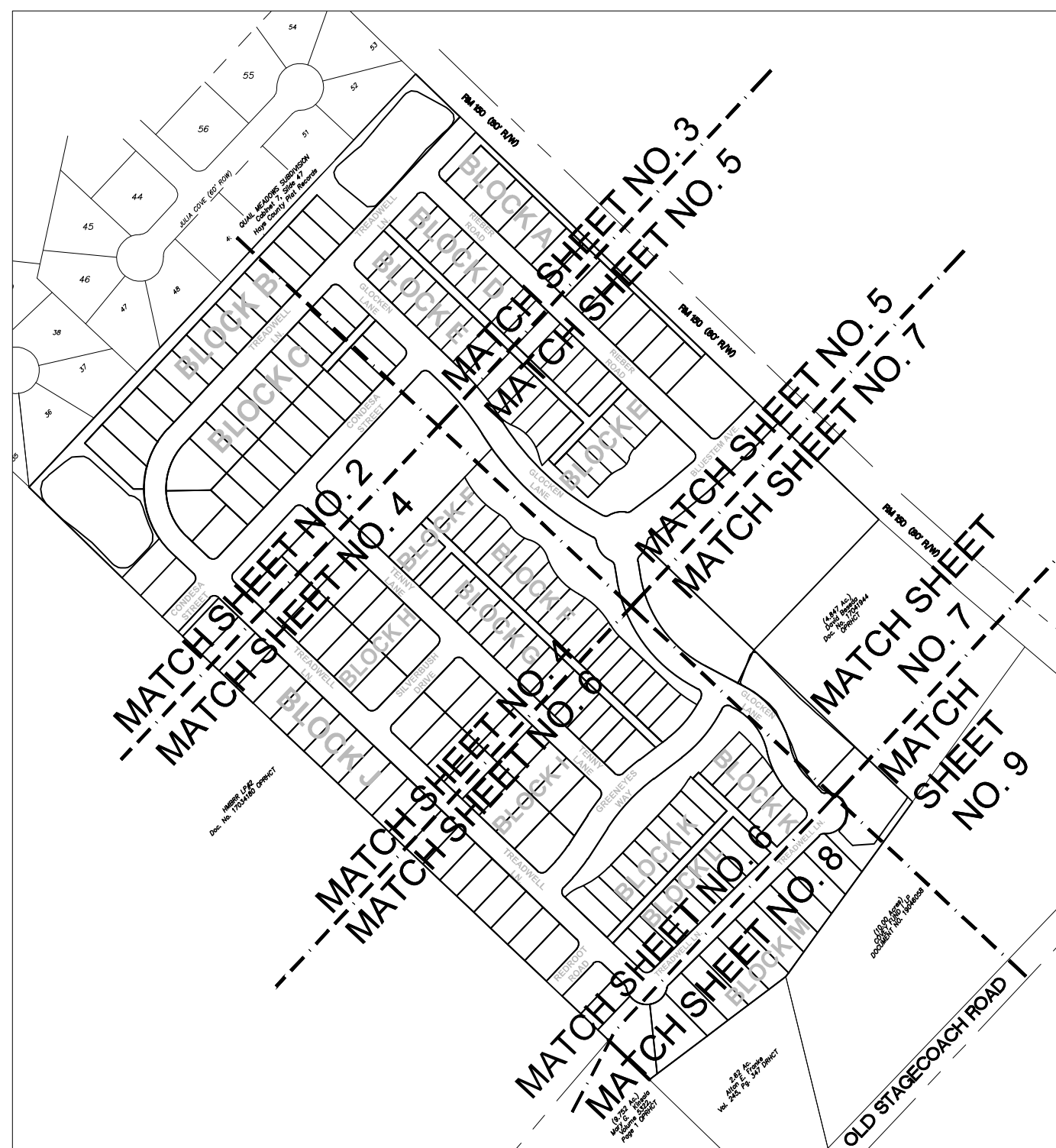
DATE: FEBRUARY 25, 2021

SURVEYOR: ROBERT J. GERTSON, RPLS 6367  
ATWELL-GROUP, LLC  
805 LAS CIMAS PARKWAY, SUITE 310  
AUSTIN, TEXAS 78704  
PHONE 512-963-3409

ENGINEER: CONNOR J. OVERBY, P.E. 108799  
ATWELL-GROUP, LLC  
805 LAS CIMAS PARKWAY, SUITE 310  
AUSTIN, TEXAS 78704  
PHONE 512-750-5282



LOCATION MAP  
NOT TO SCALE



SHEET INDEX MAP LAYOUT

**FINAL PLAT NOTES:**

- NO PORTION OF THIS PLAT LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE.
- A PORTION OF THIS PLAT LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER CONTRIBUTING ZONE.
- THIS PLAT IS LOCATED WITHIN THE BOUNDARY OF THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
- NO PORTION OF THIS PROPERTY IS LOCATED WITHIN A DESIGNATED 100-YEAR FLOODPLAIN AS DELINEATED ON THE FLOOD INSURANCE RATE MAP NO. 48209C 0270 F, EFFECTIVE DATE OF SEPTEMBER 2, 2005, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- ALL STREETS SHALL BE DESIGNED IN ACCORDANCE WITH APPLICABLE CITY OF KYLE REQUIREMENTS AND APPROVED BY THE CITY OF KYLE AND UPON ACCEPTANCE SHALL BE DEDICATED TO THE CITY FOR MAINTENANCE.
- STREETS TO BE ACCESSED WILL BE CONSTRUCTED WITH CURB AND GUTTER.
- LINEAR FOOTAGE OF STREET IMPROVEMENTS: 12,268 L.F.
- THIS PLAT HAS BEEN PREPARED IN ACCORDANCE WITH THE CITY OF KYLE REQUIREMENTS AS APPLICABLE TO THIS DEVELOPMENT.
- NO OBJECT INCLUDING FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH CONVEYANCE OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN DRAINAGE EASEMENTS.
- GREENBELT/DRAINAGE EASEMENTS SHALL BE MAINTAINED BY THE HOME OWNERS ASSOCIATION.
- SIDEWALKS ARE REQUIRED ON BOTH SIDES OF THE STREETS, AND ALONG RM 150 AND MAINTAINED BY ADJACENT PROPERTY OWNER, PER CITY OF KYLE ORDINANCE.
- THIS SUBDIVISION IS WITHIN THE CITY OF KYLE, TEXAS.
- GAS IS PROVIDED BY CENTERPOINT ENERGY.
- TELEPHONE/CABLE PROVIDED BY SPECTRUM.
- ELECTRICITY PROVIDED BY PEDERNALES ELECTRIC COMPANY.
- THE WASTEWATER TREATMENT PLANT IS OWNED AND OPERATED BY THE CITY OF KYLE, TEXAS.
- WASTEWATER SERVICES IS PROVIDED BY THE CITY OF KYLE, TEXAS (SEE NOTE ABOVE).
- WATER IS PROVIDED BY THE CITY OF KYLE, TEXAS.
- THE REQUIREMENT CONCERNING CONSTRUCTION STANDARDS FOR MAILBOXES INSTALLED WITHIN THE RIGHT-OF-WAY OF STREETS AND HIGHWAYS AND REQUIRING ALL SUCH MAILBOXES TO BE MADE OF COLLAPSIBLE MATERIALS, AS DEFINED IN THE ORDINANCE, COMMUNITY MAILBOXES SHALL HAVE A SEPARATE LIGHT/STREET LIGHT TO ILLUMINATE THE MAILBOX AREA.
- FOR ALL RESIDENTIAL LOTS LESS THAN 60 FEET WIDE, SAID LOTS SHALL HAVE A 10-FOOT WIDE FRONT MUNICIPAL UTILITY EASEMENT. FOR ALL LOTS AT OR WIDER THAN 60-FEET, A 15' FRONT MUNICIPAL UTILITY EASEMENT IS REQUIRED. SIDE LOT LINE MUNICIPAL UTILITY EASEMENTS SHALL BE 5' WIDE UNLESS A REAR YARD, DETACHED GARAGE IS BUILT ON THE LOT LINE, AND THEN THE SIDE MUNICIPAL UTILITY EASEMENT IS ONLY REQUIRED ON ONE SIDE LOT LINE. ALL RESIDENTIAL LOTS WITH FRONT LOADED, DETACHED GARAGES WILL HAVE A 5-FOOT REAR MUNICIPAL UTILITY EASEMENT. ALL OTHER RESIDENTIAL LOTS WILL HAVE A REAR 10-FOOT MUNICIPAL UTILITY EASEMENT, EXCEPT FOR ALLEY LOADED LOTS WHICH WILL NOT REQUIRE ANY REAR MUNICIPAL UTILITY EASEMENT.
- FOR THE TWO (2), TEN (10), TWENTY-FIVE (25), AND ONE HUNDRED (100) YEAR, TWENTY-FOUR (24) HOUR STORM EVENTS, POST DEVELOPED CONDITION RUNOFF RATES SHALL BE LESS THAN OR EQUAL TO THE PRE-DEVELOPED CONDITION RUNOFF RATES. PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION.
- THIS SITE IS LOCATED WITHIN HAYS COUNTY ESD #5.
- NO RESIDENTIAL LOT WITHIN SAGE HOLLOW SUBDIVISION SHALL BE PERMITTED DIRECT ACCESS TO W. RM150.

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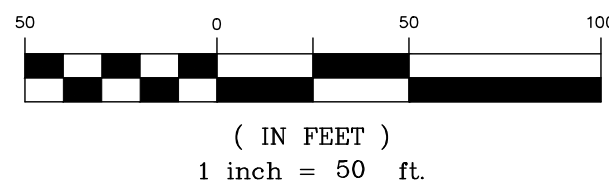
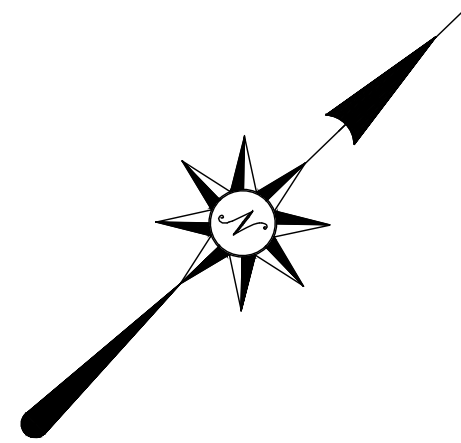
PROJECT:	SAGE HOLLOW SITE LAYOUT
JOB NUMBER:	20002007
SURVEY DATE:	NOVEMBER, 2020
SCALE:	1" = 50'
SURVEYOR:	ROBERT J. GERTSON, RPLS 6367
TECHNICIAN:	AY, JBW
DRAWING:	
DESCRIPTION:	
PARTYCHIEF:	
FIELDBOOKS:	



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TBPE LS 10193726

SAGE HOLLOW

SHEET  
1  
OF 10



**LEGEND**

- IRON ROD SET WITH CAP "ATWELL LLC"
- 1/2" IRON ROD FOUND UNLESS OTHERWISE NOTED
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- M.U.E. MUNICIPAL UTILITY EASEMENT

**SETBACK NOTES:**

#1. PER APPROVED PUD AGREEMENT:

\*THE MINIMUM FRONT SETBACK FOR LOTS UNDER SIXTY FEET (60') WIDE SHALL BE TEN FEET (10') AND MUNICIPAL UTILITY EASEMENTS LOCATED ON FRONT LOT LINES SHALL BE A MINIMUM OF TEN FEET (10') WIDE.

\*THE MINIMUM FRONT SETBACK FOR LOTS SIXTY FEET (60') WIDE OR GREATER SHALL BE TWENTY FEET (20')

\*THE MINIMUM SIDE SETBACK FOR LOTS UNDER SIXTY FEET (60') WIDE WITH DETACHED SINGLE-FAMILY STRUCTURES SHALL BE FIVE FEET (5') AND MUNICIPAL UTILITY EASEMENTS LOCATED ON SIDE LOT LINES SHALL BE A MINIMUM OF FIVE FEET (5') WIDE.

\*THE MINIMUM REAR SETBACKS FOR RESIDENTIAL LOTS WITH FRONT-LOADED DETACHED GARAGES SHALL BE FIVE FEET (5'). THE MINIMUM REAR SETBACK FOR ALL OTHER RESIDENTIAL LOTS SHALL BE TEN FEET (10').

\*THE MINIMUM SIDE SETBACK FOR DETACHED GARAGES CONSTRUCTED ON RESIDENTIAL LOTS SHALL BE ZERO FEET (0'). MUNICIPAL UTILITY EASEMENTS SHALL NOT BE REQUIRED ON SIDE LOT LINES FOR LOTS ON WHICH A DETACHED REAR GARAGE WILL BE CONSTRUCTED. DETACHED SINGLE-FAMILY LIVING STRUCTURES MUST COMPLY WITH SECTION 2(A)(7) ABOVE

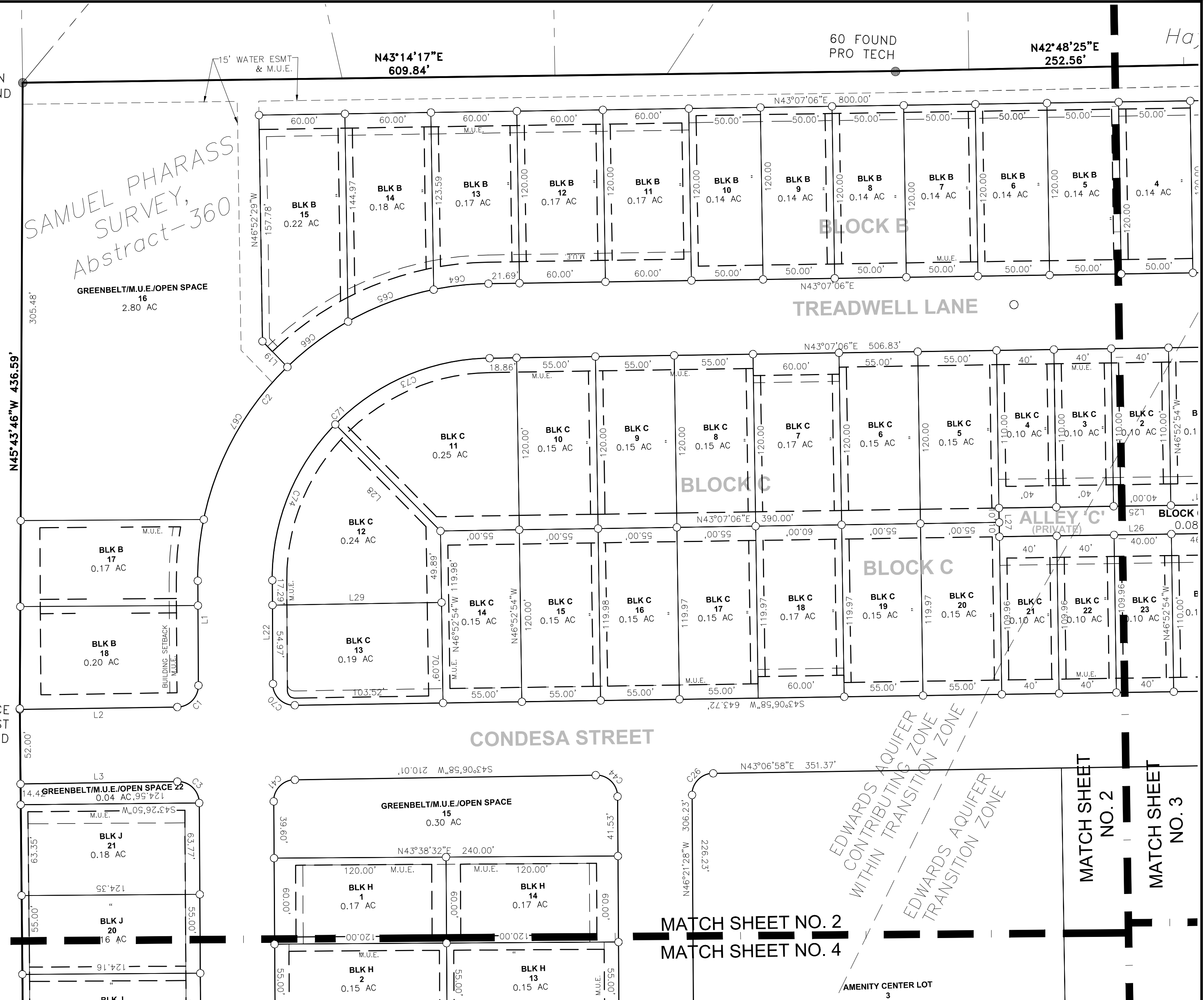
\*ALL OTHER LOTS NOT MODIFIED TO PUD STANDARDS WILL HAVE 15' FRONT M.U.E., 5' SIDE M.U.E., AND 10' REAR M.U.E.

#2. MUNICIPAL UTILITY EASEMENTS SHALL BE IN ACCORDANCE WITH CITY CODE, SECTION 41-141. A TEN (10) FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ADJACENT TO ALL STREET RIGHT OF WAY

NOTES: ALL ALLEYS SHALL BE PRIVATELY OWNED AND MAINTAINED BY THE ESTABLISHED HOME OWNERS ASSOCIATION FOR THE SUBDIVISION OR ITS SUCCESSORS.

1/2" IRON ROD FOUND

HMBRR LP#2  
Doc. No. 17034180 OPRHCT



EDWARDS AQUIFER CONTRIBUTING ZONE WITHIN TRANSITION ZONE  
EDWARDS AQUIFER TRANSITION ZONE

MATCH SHEET NO. 2  
MATCH SHEET NO. 4

MATCH SHEET NO. 2  
MATCH SHEET NO. 3

AMENITY CENTER LOT 3

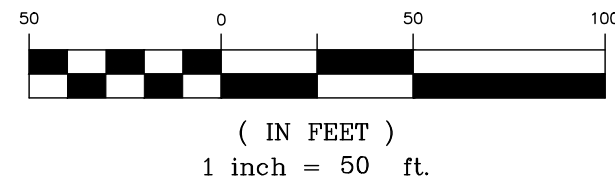
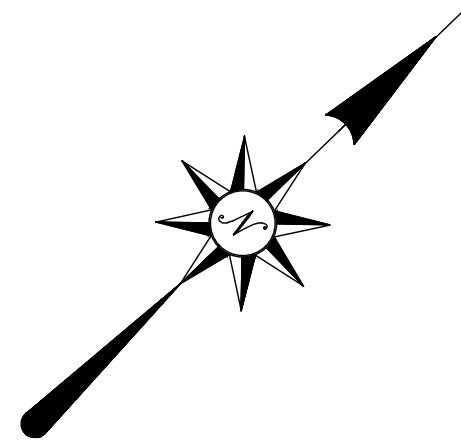
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PROJECT:	SAGE HOLLOW SITE LAYOUT
JOB NUMBER:	20002007
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SCALE:	1" = 100'
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TECHNICIAN:	AY, JBW
DRAWING:	
DESCRIPTION:	
PARTYCHIEF:	
FIELDBOOKS:	

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SAGE HOLLOW

SHEET  
**2**  
OF 10



**LEGEND**

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- R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
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- M.U.E. MUNICIPAL UTILITY EASEMENT

**SETBACK NOTES:**

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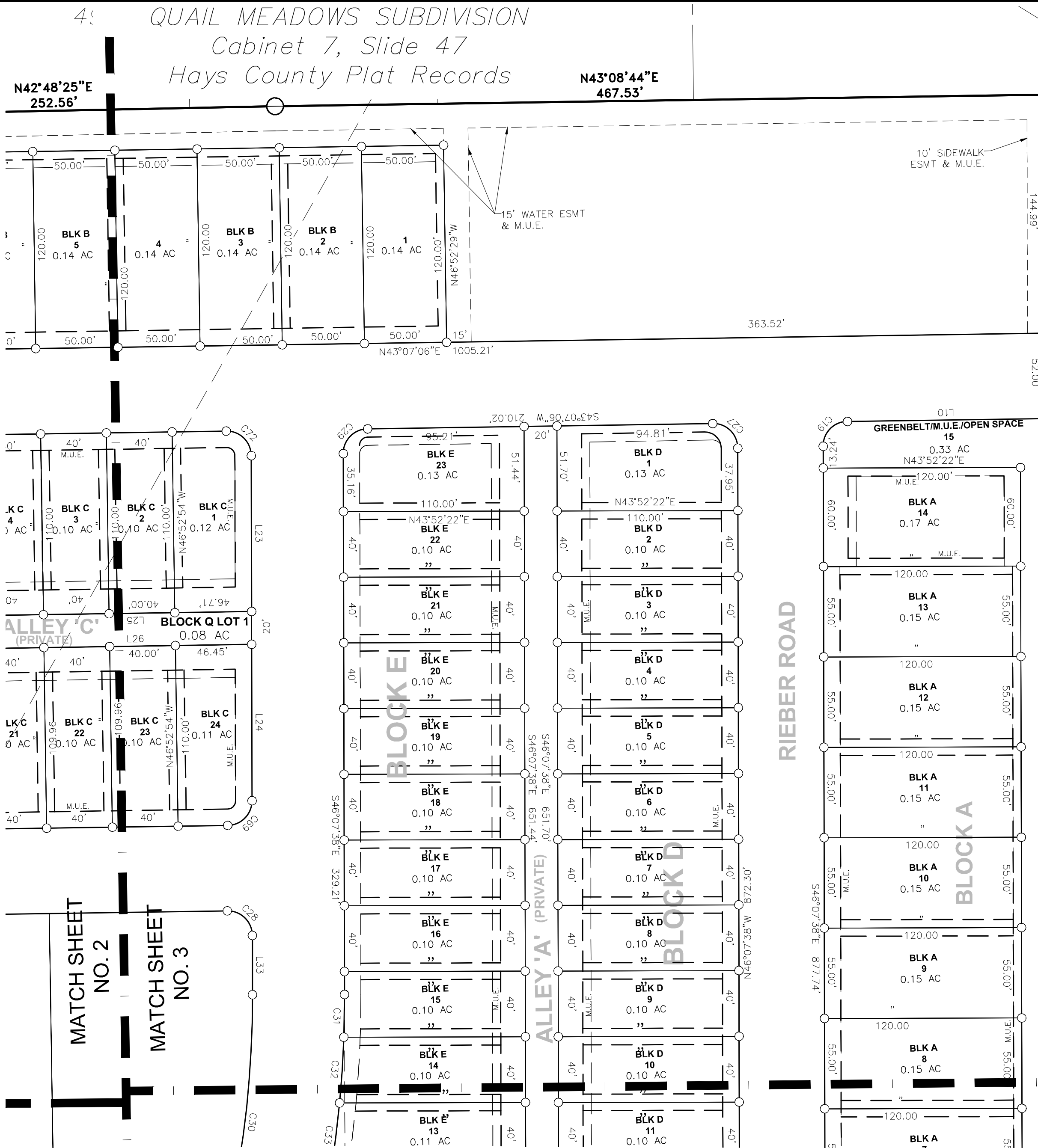
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NOTES: ALL ALLEYS SHALL BE PRIVATELY OWNED AND MAINTAINED BY THE ESTABLISHED HOME OWNERS ASSOCIATION FOR THE SUBDIVISION OR ITS SUCCESSORS.



IRON ROD FOUND WITH CAP STAMPED PRO TECH ENG

10' SIDEWALK ESMT & M.U.E.

15' WATER ESMT & M.U.E.

RIEBER ROAD

RM 150 (80' R/W)

MATCH SHEET NO. 2

MATCH SHEET NO. 3

MATCH SHEET NO. 3

MATCH SHEET NO. 5

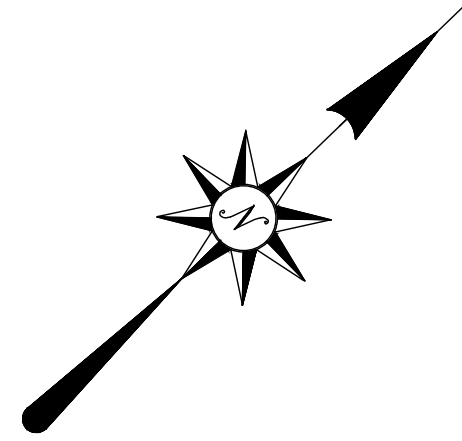
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<b>PROJECT:</b>	SAGE HOLLOW SITE LAYOUT
<b>JOB NUMBER:</b>	20002007
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<b>SURVEYOR:</b>	ROBERT J. GERTSON, RPLS 6367
<b>TECHNICIAN:</b>	AY, JBW
<b>DRAWING:</b>	
<b>DESCRIPTION:</b>	
<b>PARTYCHIEF:</b>	
<b>FIELDBOOKS:</b>	

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SAGE HOLLOW

SHEET  
**3**  
OF 10



**LEGEND**

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- 1/2" IRON ROD FOUND UNLESS OTHERWISE NOTED
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- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- M.U.E. MUNICIPAL UTILITY EASEMENT



( IN FEET )  
1 inch = 50 ft.

**SETBACK NOTES:**

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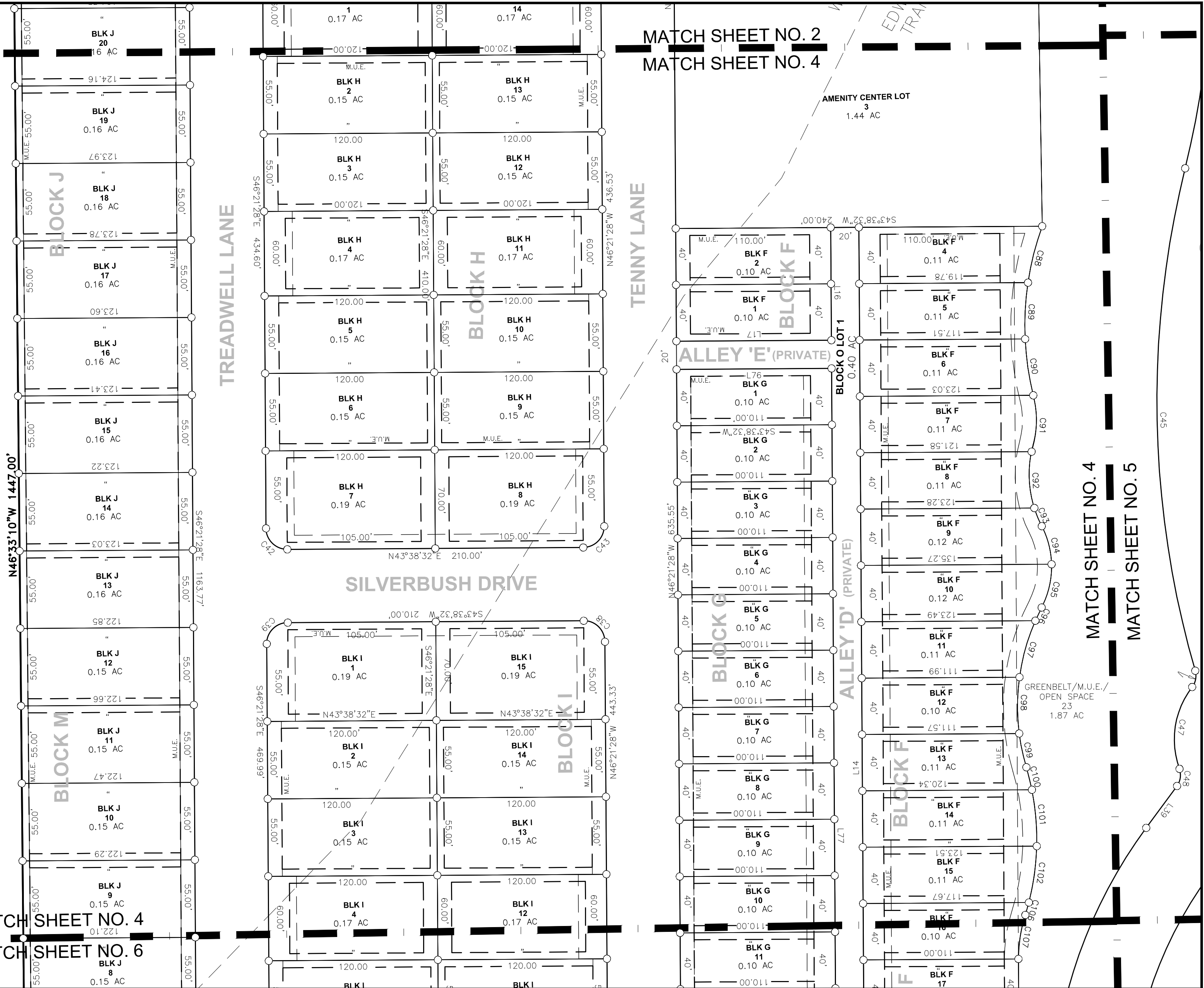
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MATCH SHEET NO. 4

MATCH SHEET NO. 6

MATCH SHEET NO. 2  
MATCH SHEET NO. 4

MATCH SHEET NO. 4  
MATCH SHEET NO. 5



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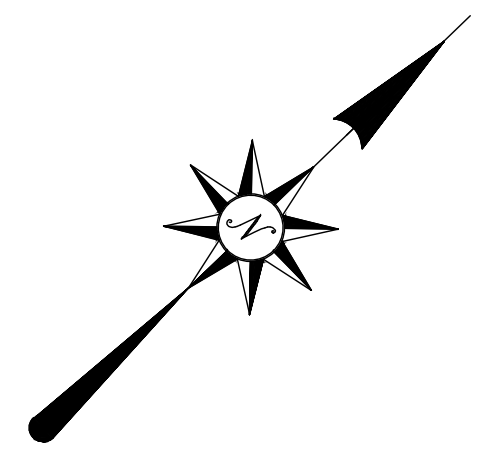
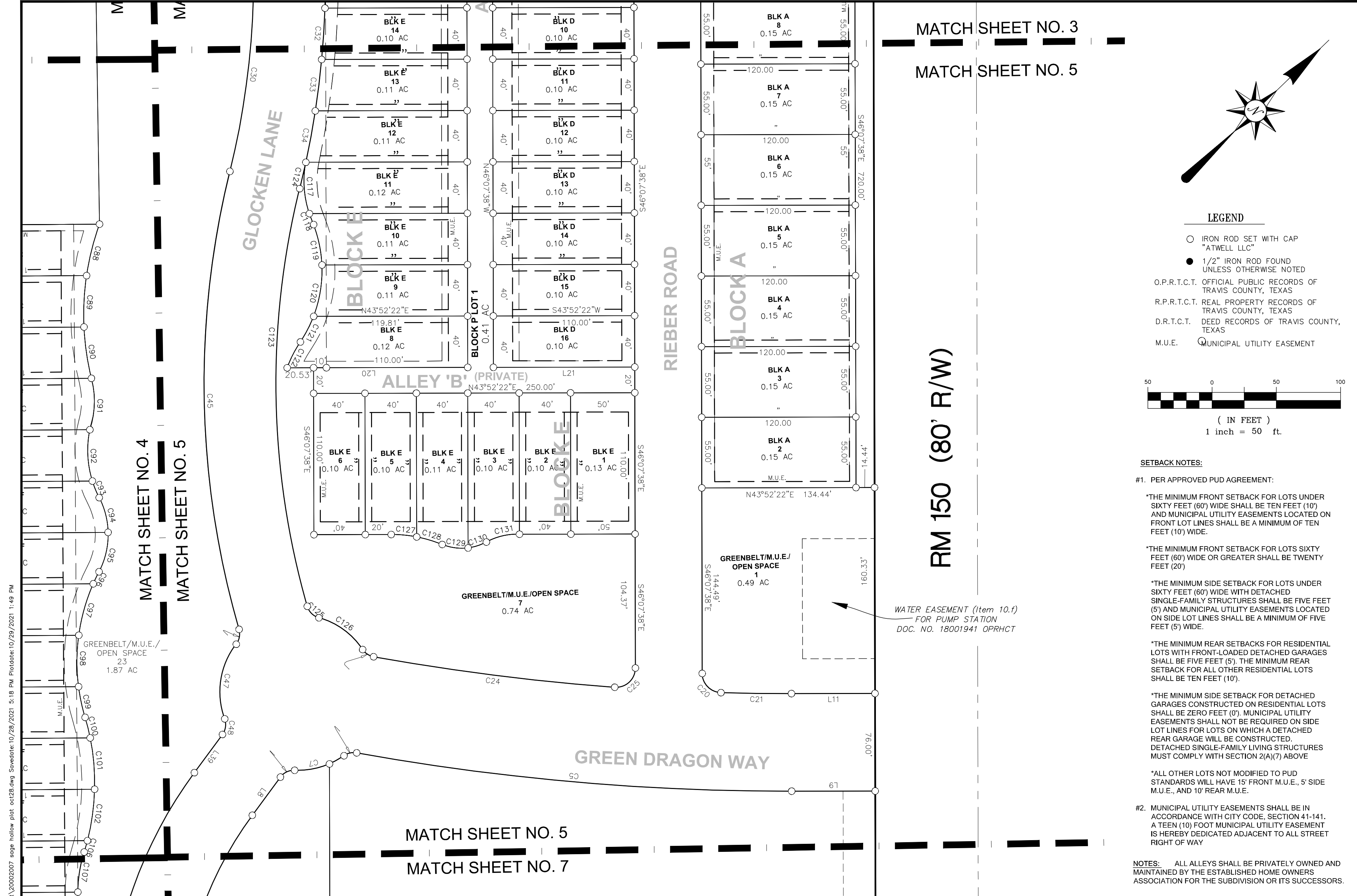
PROJECT:	SAGE HOLLOW SITE LAYOUT
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SAGE HOLLOW

SHEET  
4  
OF 10





**LEGEND**

- IRON ROD SET WITH CAP "ATWELL LLC"
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( IN FEET )  
1 inch = 50 ft.

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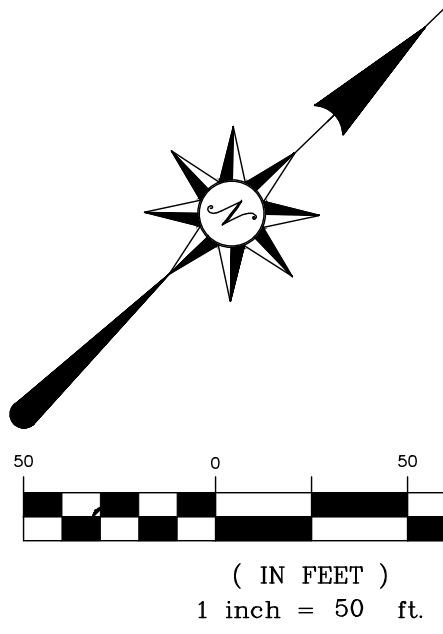
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<b>PROJECT:</b>	SAGE HOLLOW SITE LAYOUT
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<b>SURVEYOR:</b>	ROBERT J. GERTSON, RPLS 6367
<b>TECHNICIAN:</b>	AY, JBW
<b>DRAWING:</b>	
<b>DESCRIPTION:</b>	
<b>PARTYCHIEF:</b>	
<b>FIELDBOOKS:</b>	

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**SAGE HOLLOW**

**SHEET 5 OF 10**



**LEGEND**

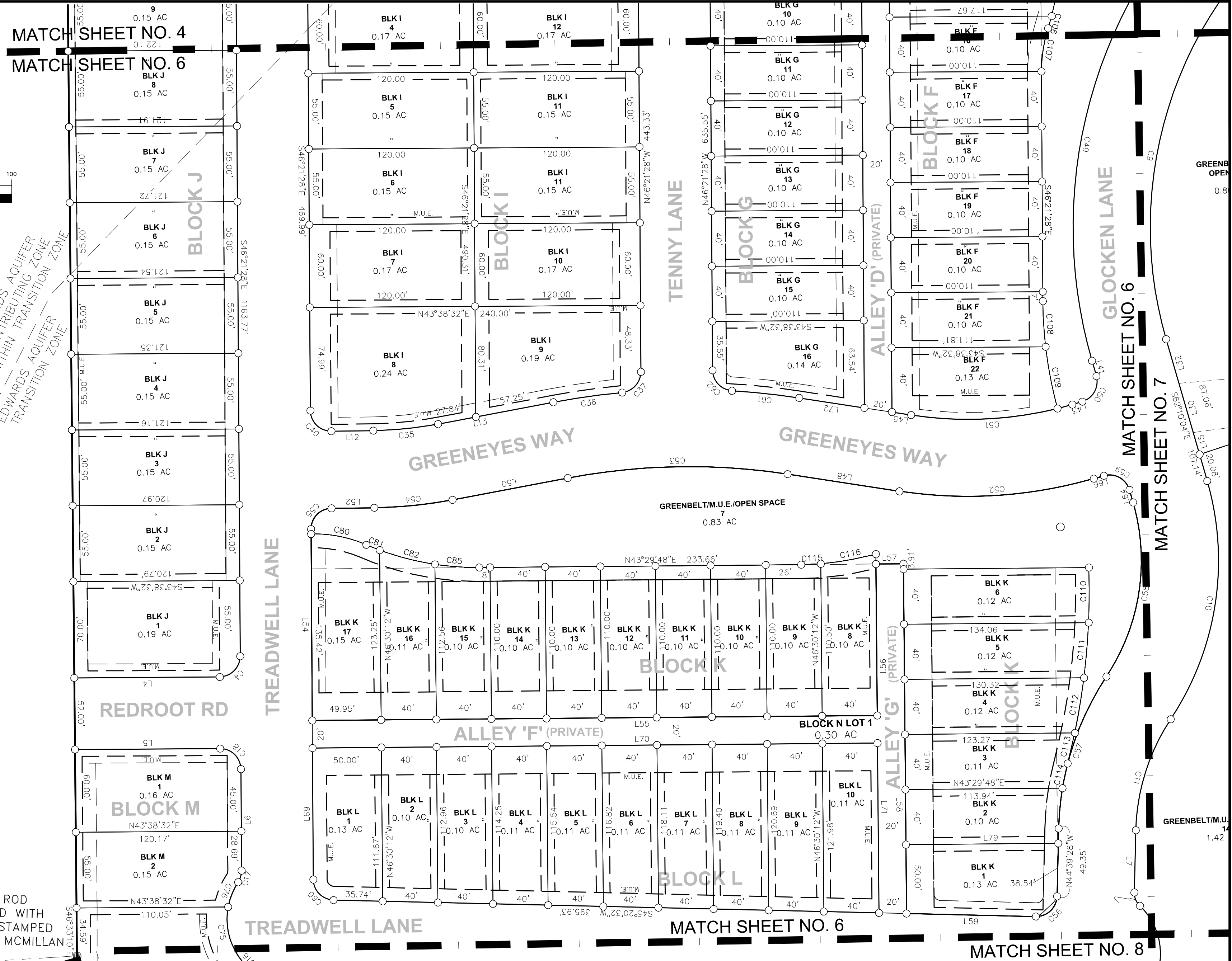
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IRON ROD FOUND WITH CAP STAMPED KENT MCMILLAN



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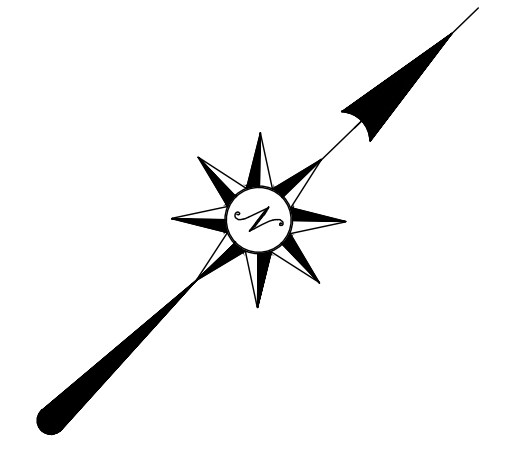
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**SAGE HOLLOW**

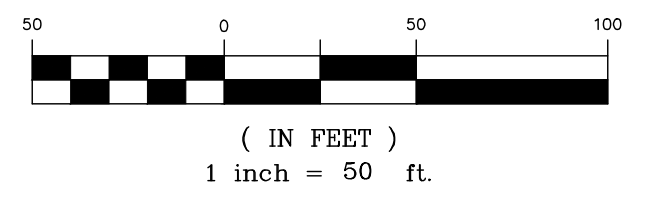
SHEET	6
OF 10	

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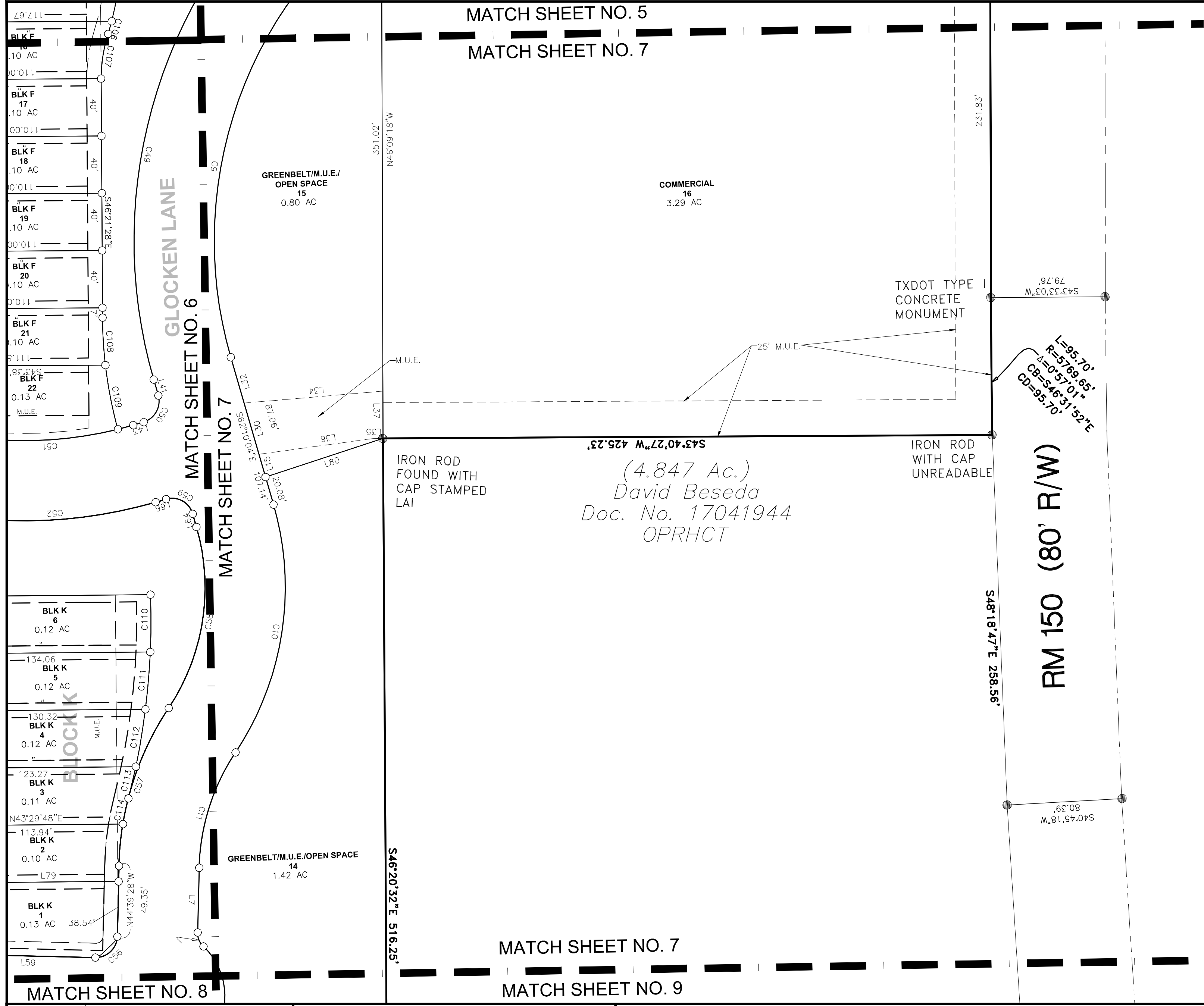
**LEGEND**

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## SAGE HOLLOW

SHEET

# 7

OF 10

**SETBACK NOTES:**

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\*THE MINIMUM SIDE SETBACK FOR LOTS UNDER SIXTY FEET (60') WIDE WITH DETACHED SINGLE-FAMILY STRUCTURES SHALL BE FIVE FEET (5') AND MUNICIPAL UTILITY EASEMENTS LOCATED ON SIDE LOT LINES SHALL BE A MINIMUM OF FIVE FEET (5') WIDE.

\*THE MINIMUM REAR SETBACKS FOR RESIDENTIAL LOTS WITH FRONT-LOADED DETACHED GARAGES SHALL BE FIVE FEET (5'). THE MINIMUM REAR SETBACK FOR ALL OTHER RESIDENTIAL LOTS SHALL BE TEN FEET (10').

\*THE MINIMUM SIDE SETBACK FOR DETACHED GARAGES CONSTRUCTED ON RESIDENTIAL LOTS SHALL BE ZERO FEET (0'). MUNICIPAL UTILITY EASEMENTS SHALL NOT BE REQUIRED ON SIDE LOT LINES FOR LOTS ON WHICH A DETACHED REAR GARAGE WILL BE CONSTRUCTED. DETACHED SINGLE-FAMILY LIVING STRUCTURES MUST COMPLY WITH SECTION 2(A)(7) ABOVE

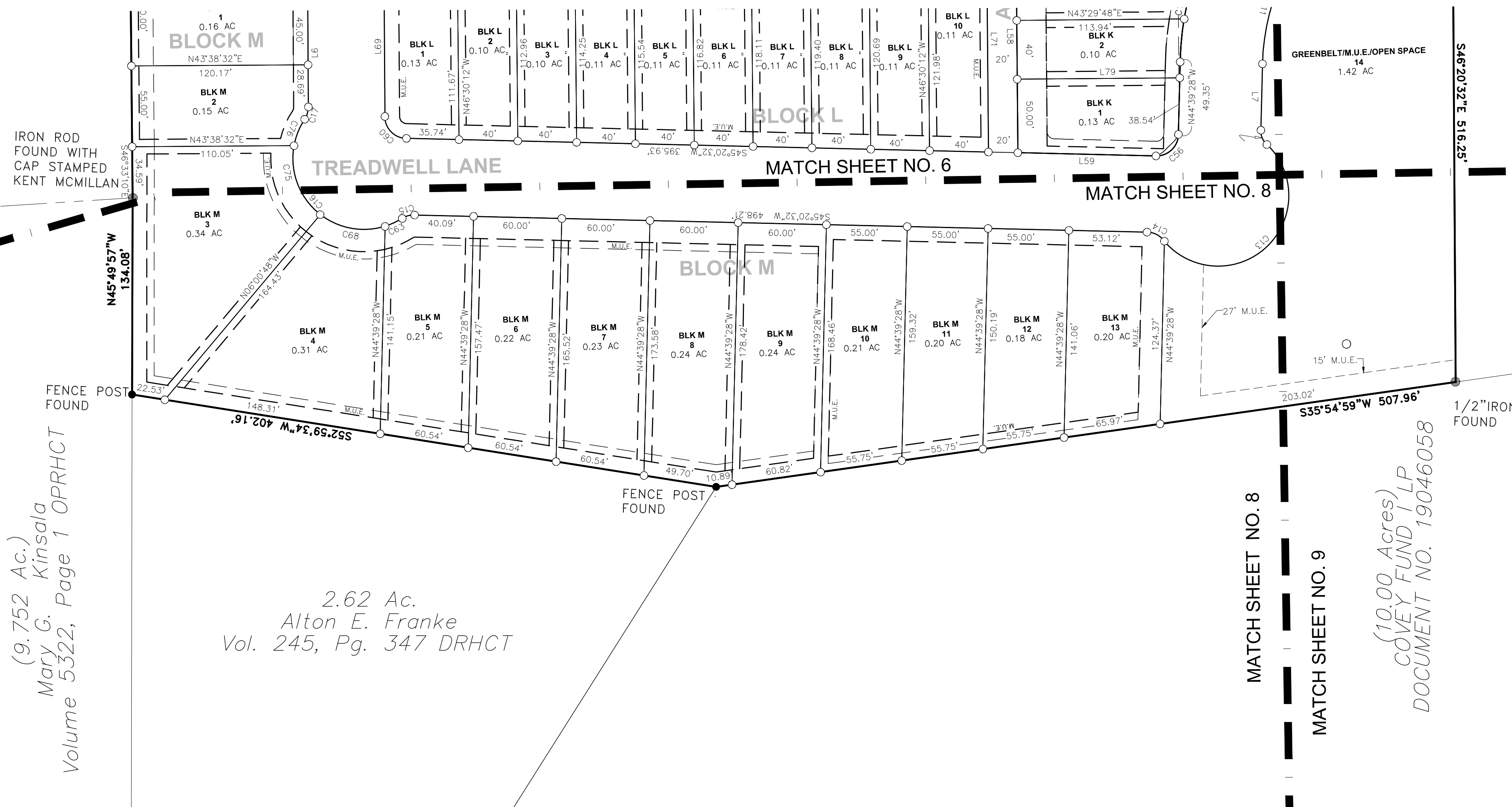
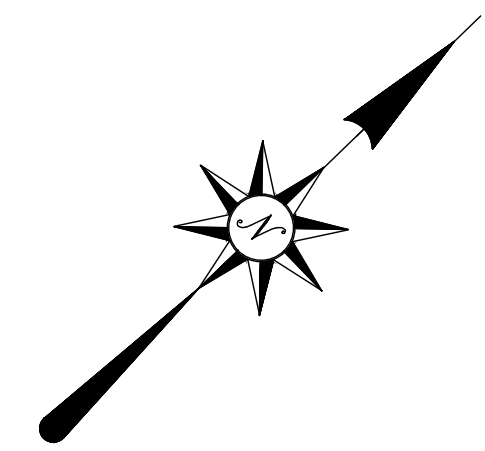
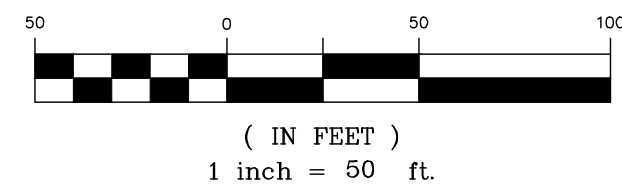
\*ALL OTHER LOTS NOT MODIFIED TO PUD STANDARDS WILL HAVE 15' FRONT M.U.E., 5' SIDE M.U.E., AND 10' REAR M.U.E.

**#2. MUNICIPAL UTILITY EASEMENTS SHALL BE IN ACCORDANCE WITH CITY CODE, SECTION 41-141. A TEN (10) FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ADJACENT TO ALL STREET RIGHT OF WAY**

**NOTES:** ALL ALLEYS SHALL BE PRIVATELY OWNED AND MAINTAINED BY THE ESTABLISHED HOME OWNERS ASSOCIATION FOR THE SUBDIVISION OR ITS SUCCESSORS.

**LEGEND**

- IRON ROD SET WITH CAP "ATWELL LLC"
- 1/2" IRON ROD FOUND UNLESS OTHERWISE NOTED
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- M.U.E. MUNICIPAL UTILITY EASEMENT



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<b>PROJECT:</b>	SAGE HOLLOW SITE LAYOUT
<b>JOB NUMBER:</b>	20002007
<b>SURVEY DATE:</b>	NOVEMBER, 2020
<b>SCALE:</b>	1" = 50'
<b>SURVEYOR:</b>	ROBERT J. GERTSON, RPLS 6367
<b>TECHNICIAN:</b>	AY, JBW
<b>DRAWING:</b>	
<b>DESCRIPTION:</b>	
<b>PARTY CHIEF:</b>	
<b>FIELDBOOKS:</b>	



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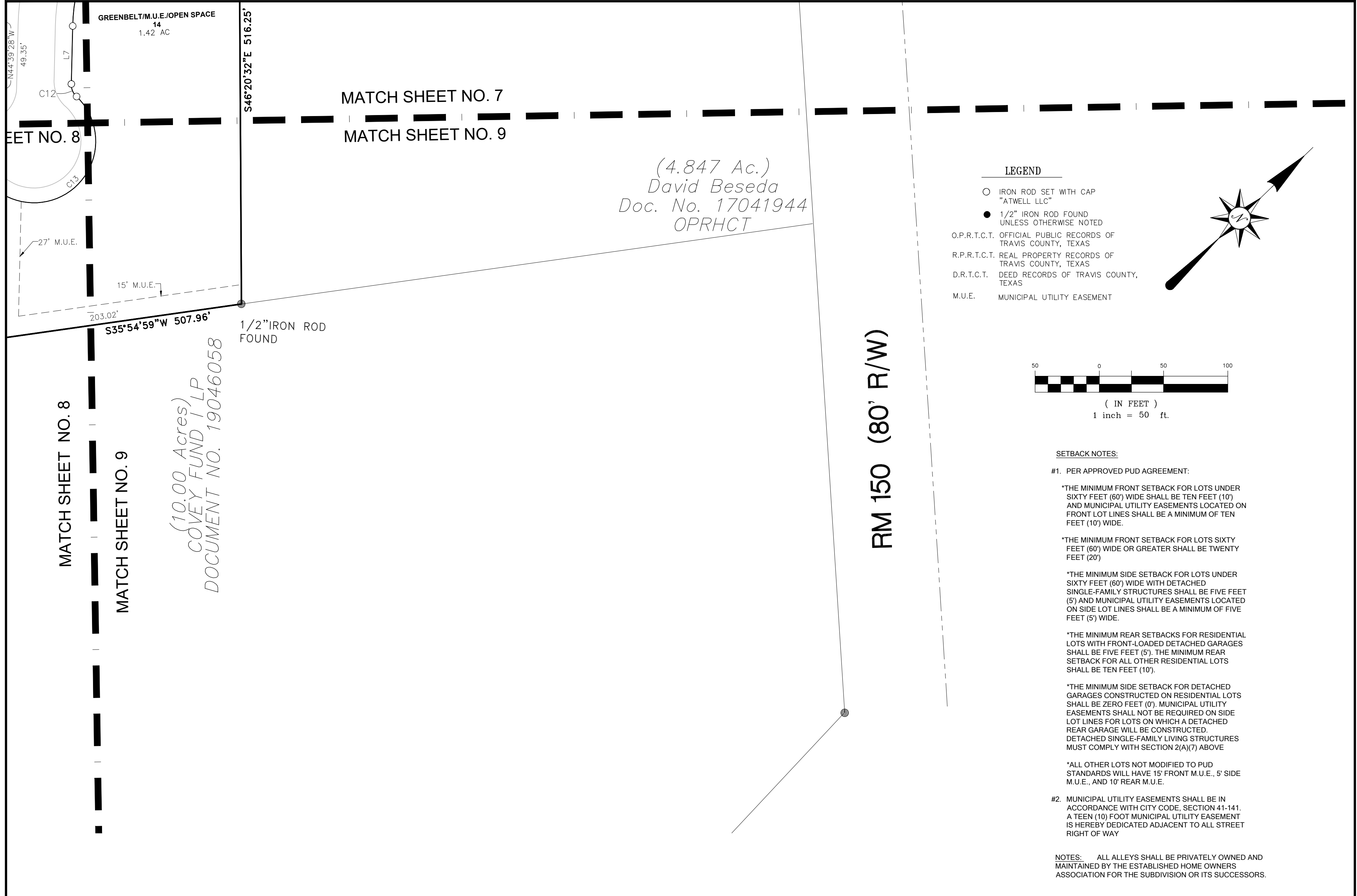
805 LAS CIMAS PARKWAY, SUITE 310  
AUSTIN, TX 78746  
512.904.0505  
TBPE LS 10193726

SAGE HOLLOW

SHEET <b>8</b> OF 10
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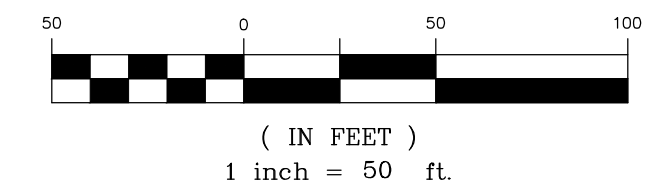
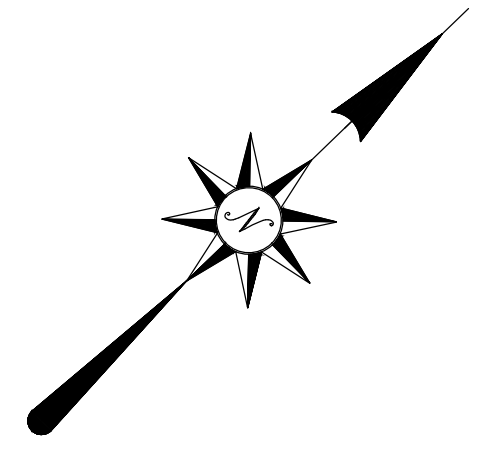


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**LEGEND**

- IRON ROD SET WITH CAP "ATWELL LLC"
- 1/2" IRON ROD FOUND UNLESS OTHERWISE NOTED
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- M.U.E. MUNICIPAL UTILITY EASEMENT



**SETBACK NOTES:**

- #1. PER APPROVED PUD AGREEMENT:
  - \*THE MINIMUM FRONT SETBACK FOR LOTS UNDER SIXTY FEET (60') WIDE SHALL BE TEN FEET (10') AND MUNICIPAL UTILITY EASEMENTS LOCATED ON FRONT LOT LINES SHALL BE A MINIMUM OF TEN FEET (10') WIDE.
  - \*THE MINIMUM FRONT SETBACK FOR LOTS SIXTY FEET (60') WIDE OR GREATER SHALL BE TWENTY FEET (20')
  - \*THE MINIMUM SIDE SETBACK FOR LOTS UNDER SIXTY FEET (60') WIDE WITH DETACHED SINGLE-FAMILY STRUCTURES SHALL BE FIVE FEET (5') AND MUNICIPAL UTILITY EASEMENTS LOCATED ON SIDE LOT LINES SHALL BE A MINIMUM OF FIVE FEET (5') WIDE.
  - \*THE MINIMUM REAR SETBACKS FOR RESIDENTIAL LOTS WITH FRONT-LOADED DETACHED GARAGES SHALL BE FIVE FEET (5'). THE MINIMUM REAR SETBACK FOR ALL OTHER RESIDENTIAL LOTS SHALL BE TEN FEET (10').
  - \*THE MINIMUM SIDE SETBACK FOR DETACHED GARAGES CONSTRUCTED ON RESIDENTIAL LOTS SHALL BE ZERO FEET (0'). MUNICIPAL UTILITY EASEMENTS SHALL NOT BE REQUIRED ON SIDE LOT LINES FOR LOTS ON WHICH A DETACHED REAR GARAGE WILL BE CONSTRUCTED. DETACHED SINGLE-FAMILY LIVING STRUCTURES MUST COMPLY WITH SECTION 2(A)(7) ABOVE
  - \*ALL OTHER LOTS NOT MODIFIED TO PUD STANDARDS WILL HAVE 15' FRONT M.U.E., 5' SIDE M.U.E., AND 10' REAR M.U.E.
- #2. MUNICIPAL UTILITY EASEMENTS SHALL BE IN ACCORDANCE WITH CITY CODE, SECTION 41-141. A TEEN (10) FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ADJACENT TO ALL STREET RIGHT OF WAY

NOTES: ALL ALLEYS SHALL BE PRIVATELY OWNED AND MAINTAINED BY THE ESTABLISHED HOME OWNERS ASSOCIATION FOR THE SUBDIVISION OR ITS SUCCESSORS.

<b>PROJECT:</b>	SAGE HOLLOW SITE LAYOUT
<b>JOB NUMBER:</b>	20002007
<b>SURVEY DATE:</b>	NOVEMBER, 2020
<b>SCALE:</b>	1" = 50'
<b>SURVEYOR:</b>	ROBERT J. GERTSON, RPLS 6367
<b>TECHNICIAN:</b>	AY, JBW
<b>DRAWING:</b>	
<b>DESCRIPTION:</b>	
<b>PARTY CHIEF:</b>	
<b>FIELD BOOKS:</b>	



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 TBPE LS 10193726

SAGE HOLLOW

SHEET  
**9**  
 OF 10

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CURVE DATA TABLE					
CURVE #	DELTA	RADIUS	LENGTH	CHORD DIRECTION	CHORD LENGTH
C1	89°28'26"	15.00'	23.42'	N1°37'15"W	21.12'
C2	89°28'34"	206.00'	321.70'	N1°37'11"W	289.99'
C3	90°31'34"	15.00'	23.70'	N88°22'45"E	21.31'
C4	90°00'00"	15.00'	23.56'	S1°21'28"E	21.21'
C5	10°18'46"	1891.00'	340.37'	S49°02'04"W	339.91'
C6	45°48'12"	13.00'	10.39'	S31°17'21"W	10.12'
C7	38°18'40"	61.00'	40.79'	S27°32'35"W	40.03'
C8	56°21'16"	13.00'	12.79'	S18°31'17"W	12.28'
C9	52°30'42"	292.00'	267.62'	S35°54'43"E	258.35'
C10	49°45'40"	208.00'	180.65'	S37°17'14"E	175.02'
C11	32°15'03"	152.00'	85.56'	S28°31'56"E	84.43'
C12	47°46'01"	13.00'	10.84'	S68°32'28"E	10.53'
C13	186°07'56"	48.00'	155.93'	S0°38'29"W	95.86'
C14	52°11'40"	15.15'	13.80'	S71°33'49"W	13.33'
C15	33°55'31"	15.00'	8.88'	S28°22'47"W	8.75'
C16	156°09'01"	48.37'	131.82'	S89°29'32"W	94.65'
C17	33°55'31"	15.00'	8.88'	N29°23'42"W	8.75'
C18	90°00'00"	15.00'	23.56'	S88°38'32"W	21.21'
C19	89°14'44"	15.00'	23.36'	S1°30'16"E	21.07'
C20	88°15'43"	15.00'	23.11'	N89°44'30"E	20.89'
C21	1°43'58"	1815.00'	54.89'	N44°44'40"E	54.89'
C22	46°18'55"	13.00'	10.51'	N77°21'23"E	10.22'
C23	5°58'27"	1815.00'	189.25'	N51°12'43"E	189.16'
C24	94°21'08"	15.00'	24.70'	N1°02'55"E	22.00'
C25	89°28'26"	15.00'	23.42'	N1°37'15"W	21.12'
C26	90°45'16"	15.00'	23.76'	S88°29'44"W	21.35'
C27	90°45'24"	15.00'	23.76'	N88°29'40"E	21.35'
C28	89°14'44"	15.00'	23.36'	S1°30'16"E	21.07'
C29	14°00'07"	632.00'	154.45'	S39°07'35"E	154.06'
C30	2°13'17"	669.59'	25.96'	S45°02'47"E	25.96'
C31	3°17'32"	697.77'	40.10'	S42°17'45"E	40.09'
C32	3°18'41"	697.70'	40.32'	S38°56'51"E	40.32'
C33	3°23'20"	688.00'	40.69'	S35°34'26"E	40.69'
C34	9°58'22"	272.00'	47.34'	N38°14'37"E	47.28'
C35	5°28'24"	528.00'	50.44'	N35°59'38"E	50.42'
C36	85°05'17"	15.00'	22.28'	N3°48'49"W	20.28'
C37	90°00'00"	15.00'	23.56'	S88°38'32"W	21.21'
C38	90°00'00"	15.00'	23.56'	S1°21'28"E	21.21'

CURVE DATA TABLE					
CURVE #	DELTA	RADIUS	LENGTH	CHORD DIRECTION	CHORD LENGTH
C40	90°24'45"	15.00'	23.67'	N88°26'10"E	21.29'
C41	89°28'26"	15.00'	23.42'	S1°37'15"E	21.12'
C42	90°00'00"	15.00'	23.56'	N88°38'32"E	21.21'
C43	90°00'00"	15.00'	23.56'	N1°21'28"W	21.21'
C44	90°31'34"	15.00'	23.70'	S88°22'45"W	21.31'
C45	30°02'58"	688.00'	360.83'	S47°09'01"E	356.71'
C46	53°47'53"	13.00'	12.21'	S35°16'34"E	11.76'
C47	57°38'00"	61.00'	61.36'	S37°11'37"E	58.81'
C48	56°21'16"	13.00'	12.79'	S37°49'59"E	12.28'
C49	52°30'42"	348.00'	318.94'	S35°54'43"E	307.90'
C50	90°00'00"	15.00'	23.56'	S17°10'04"E	21.21'
C51	24°53'23"	272.00'	118.16'	S40°16'38"W	117.23'
C52	24°53'23"	328.00'	142.49'	S40°16'38"W	141.37'
C53	19°27'54"	472.00'	160.35'	S42°59'23"W	159.58'
C54	9°58'22"	328.00'	57.09'	S38°14'37"W	57.02'
C55	89°35'15"	15.00'	23.45'	S1°33'50"E	21.14'
C56	90°00'00"	15.00'	23.56'	N0°20'32"E	21.21'
C57	32°15'03"	208.00'	117.08'	N28°31'56"W	115.54'
C58	49°45'40"	152.00'	132.01'	N37°17'14"W	127.90'
C59	90°00'00"	15.00'	23.56'	S72°49'56"W	21.21'
C60	88°18'00"	15.00'	23.12'	S89°29'32"W	20.90'
C61	5°19'50"	528.00'	49.12'	S50°03'24"W	49.11'
C62	86°15'03"	15.00'	22.58'	N89°28'59"W	20.51'
C63	15°17'16"	48.37'	12.91'	N19°03'39"E	12.87'
C64	10°43'05"	206.00'	38.54'	S37°45'34"W	38.48'
C65	17°47'35"	206.00'	63.97'	S23°30'32"W	63.72'
C66	14°45'25"	206.00'	53.06'	S7°14'02"W	52.91'
C67	34°14'49"	206.00'	123.13'	S17°16'05"E	121.31'
C68	55°15'40"	48.37'	46.65'	N54°20'07"E	44.86'
C69	89°14'36"	15.00'	23.36'	S1°30'20"E	21.07'
C70	90°31'34"	15.00'	23.70'	S88°22'45"W	21.31'
C71	89°28'34"	154.00'	240.49'	N1°37'11"W	216.79'
C72	90°45'16"	15.00'	23.76'	N88°29'44"E	21.35'
C73	44°42'09"	154.00'	120.15'	S20°46'01"W	117.13'
C74	44°46'25"	154.00'	120.34'	S23°58'16"E	117.30'
C75	62°28'03"	48.37'	52.74'	S66°48'01"E	50.16'
C76	23°08'03"	48.37'	19.53'	S23°59'58"E	19.40'
C77	11°57'58"	206.00'	43.02'	S40°22'29"E	42.94'

CURVE DATA TABLE					
CURVE #	DELTA	RADIUS	LENGTH	CHORD DIRECTION	CHORD LENGTH
C80	24°17'38"	96.98'	41.12'	N55°07'00"E	40.81'
C81	2°56'13"	203.00'	10.41'	N65°46'59"E	10.40'
C82	11°42'23"	203.00'	41.48'	N58°27'41"E	41.40'
C85	9°06'42"	203.00'	32.28'	N48°03'09"E	32.25'
C88	11°23'54"	208.00'	41.38'	S31°53'13"E	41.31'
C89	11°03'12"	208.00'	40.13'	S43°06'46"E	40.06'
C90	11°08'25"	208.00'	40.44'	S54°12'34"E	40.38'
C91	32°55'46"	70.61'	40.58'	S44°17'09"E	40.03'
C92	28°58'54"	80.00'	40.47'	S48°47'32"E	40.04'
C93	9°59'48"	80.00'	13.96'	S68°16'53"E	13.94'
C94	25°41'29"	62.76'	28.14'	S60°26'02"E	27.91'
C95	29°03'35"	62.76'	31.83'	S33°03'30"E	31.49'
C96	3°55'10"	152.00'	10.40'	S20°29'18"E	10.40'
C97	15°44'17"	152.00'	41.75'	S30°19'01"E	41.62'
C98	15°07'21"	152.00'	40.12'	S45°44'50"E	40.00'
C99	9°14'04"	152.00'	24.50'	S57°55'33"E	24.47'
C100	5°14'57"	180.00'	16.49'	S59°55'07"E	16.48'
C101	12°47'56"	180.00'	40.21'	S50°53'40"E	40.13'
C102	12°53'41"	180.00'	40.51'	S38°02'52"E	40.42'
C106	2°55'31"	180.00'	9.19'	S30°08'16"E	9.19'

CURVE DATA TABLE					
CURVE #	DELTA	RADIUS	LENGTH	CHORD DIRECTION	CHORD LENGTH
C107	16°43'57"	108.56'	31.70'	S37°03'46"E	31.59'
C108	6°15'36"	304.00'	33.21'	S49°29'16"E	33.20'
C109	8°36'52"	304.00'	45.71'	S56°55'29"E	45.66'
C110	4°37'16"	496.13'	40.01'	N45°47'38"W	40.00'
C111	4°38'27"	496.13'	40.19'	N41°09'46"W	40.17'
C112	4°41'32"	496.13'	40.63'	N36°29'47"W	40.62'
C113	2°37'42"	496.13'	22.76'	N32°50'10"W	22.76'
C114	5°02'52"	208.00'	18.32'	N34°02'40"W	18.32'
C115	4°00'30"	203.00'	14.20'	N41°29'33"E	14.20'
C116	10°37'37"	219.00'	40.62'	N33°57'55"E	40.56'
C117	29°06'53"	79.75'	40.53'	S50°00'15"E	40.09'
C118	3°40'31"	142.18'	9.12'	S67°05'33"E	9.12'
C119	18°29'44"	100.00'	32.28'	S57°43'15"E	32.14'
C120	23°23'20"	100.00'	40.82'	S36°46'43"E	40.54'
C121	12°52'20"	100.00'	22.47'	S18°38'53"E	22.42'
C122	13°15'33"	98.00'	22.68'	S18°50'30"E	22.63'
C123	29°49'27"	632.00'	328.98'	S47°02'15"E	325.27'
C124	1°45'14"	688.00'	21.06'	S33°00'09"E	21.06'

CURVE DATA TABLE					
CURVE #	DELTA	RADIUS	LENGTH	CHORD DIRECTION	CHORD LENGTH
C125	58°34'55"	13.00'	13.29'	N88°45'33"E	12.72'
C126	41°02'45"	60.00'	42.98'	N79°59'28"E	42.07'
C127	10°59'34"	104.00'	19.95'	N49°22'14"E	19.92'
C128	11°26'43"	104.00'	20.78'	N60°35'23"E	20.74'
C129	29°25'46"	40.00'	20.55'	N51°35'52"E	20.32'
C130	21°30'22"	40.00'	15.01'	N26°07'47"E	14.93'
C131	30°24'38"	50.49'	26.80'	N30°39'06"E	26.49'

LINE DATA TABLE		
LINE #	DIRECTION	LENGTH
L1	N46°21'28"W	73.01'
L2	N43°06'58"E	109.93'
L3	N43°06'58"E	109.48'
L4	S43°38'32"W	105.55'
L5	S43°38'32"W	105.37'
L6	N46°21'28"W	73.69'
L7	S44°39'28"E	45.19'
L8	S9°39'21"E	36.91'
L9	S43°52'40"W	65.02'
L10	S43°07'06"W	119.66'
L11	N43°52'40"E	65.01'
L12	N43°13'47"E	30.43'
L13	N33°15'26"E	85.09'
L14	N46°21'28"W	766.74'
L15	N62°10'04"W	16.52'
L16	S46°21'28"E	80.00'
L17	S43°38'32"W	110.00'
L19	S89°51'20"W	25.00'
L20	S43°52'22"W	120.00'
L21	N43°52'22"E	110.00'
L22	N46°21'28"W	72.26'
L23	S46°07'38"E	94.81'
L24	S46°07'38"E	95.16'
L25	S43°07'06"W	166.71'
L26	N43°07'06"E	166.45'
L27	S46°52'54"E	20.00'
L28	S89°23'08"W	104.43'
L29	N43°07'31"E	118.02'
L30	N62°10'04"W	37.23'
L32	N62°10'04"W	33.31'

LINE DATA TABLE		
LINE #	DIRECTION	LENGTH
L33	S46°07'38"E	36.09'
L34	S39°04'56"W	97.25'
L35	S43°40'27"W	7.01'
L36	S36°07'57"W	80.39'
L37	S46°09'18"E	33.05'
L39	S9°39'21"E	36.91'
L41	S62°10'04"E	11.60'
L43	S27°49'56"W	7.58'
L45	S52°43'19"W	14.09'
L48	S52°43'19"W	82.13'
L50	S33°15'26"W	85.09'
L52	S43°13'47"W	31.05'
L54	S46°21'28"E	138.94'
L55	N43°29'48"E	409.95'
L56	N46°30'12"W	110.00'
L57	N43°29'48"E	20.00'
L58	S46°30'12"E	253.91'
L59	N45°20'32"E	93.91'
L64	N62°10'04"W	9.54'
L66	S27°49'56"W	7.58'
L69	N46°21'28"W	95.49'
L70	N43°29'48"E	410.00'
L71	S46°30'12"E	123.27'
L72	S52°43'19"W	47.78'
L76	N43°38'32"E	110.00'
L77	S46°21'28"E	663.54'
L79	N43°29'48"E	110.58'
L80	N25°49'56"E	86.32'

<b>PROJECT:</b>	SAGE HOLLOW SITE LAYOUT
<b>JOB NUMBER:</b>	20002007
<b>SURVEY DATE:</b>	NOVEMBER, 2020
<b>SCALE:</b>	1" = 50'
<b>SURVEYOR:</b>	ROBERT J. GERTSON, RPLS 6367
<b>TECHNICIAN:</b>	AY, JBW
<b>DRAWING:</b>	
<b>DESCRIPTION:</b>	
<b>PARTYCHIEF:</b>	
<b>FIELDBOOKS:</b>	



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805 LAS CIMAS PARKWAY, SUITE 310  
AUSTIN, TX 78746  
512.904.0505  
TBPE LS 10193726

SAGE HOLLOW

SHEET  
**10**  
OF 10



# CITY OF KYLE, TEXAS

Replat of Lots 14, 15 and 16, Block 4, Original Town of Kyle  
Establishing Lots 15A and 15B,  
Block 4 (SUB-21-0221)

**Meeting Date: 12/14/2021**  
**Date time:6:30 PM**

**Subject/Recommendation:** Replat of Lots 14, 15 and 16, Block 4, Original Town of Kyle Establishing Lots 15A and 15B, Block 4 (SUB-21-0221) 0.1973 acres; 2 lots located at 111 S. Main Street.

Staff Proposal to P&Z: Approve the plat.

**Other Information:** See attached.

**Legal Notes:** N/A

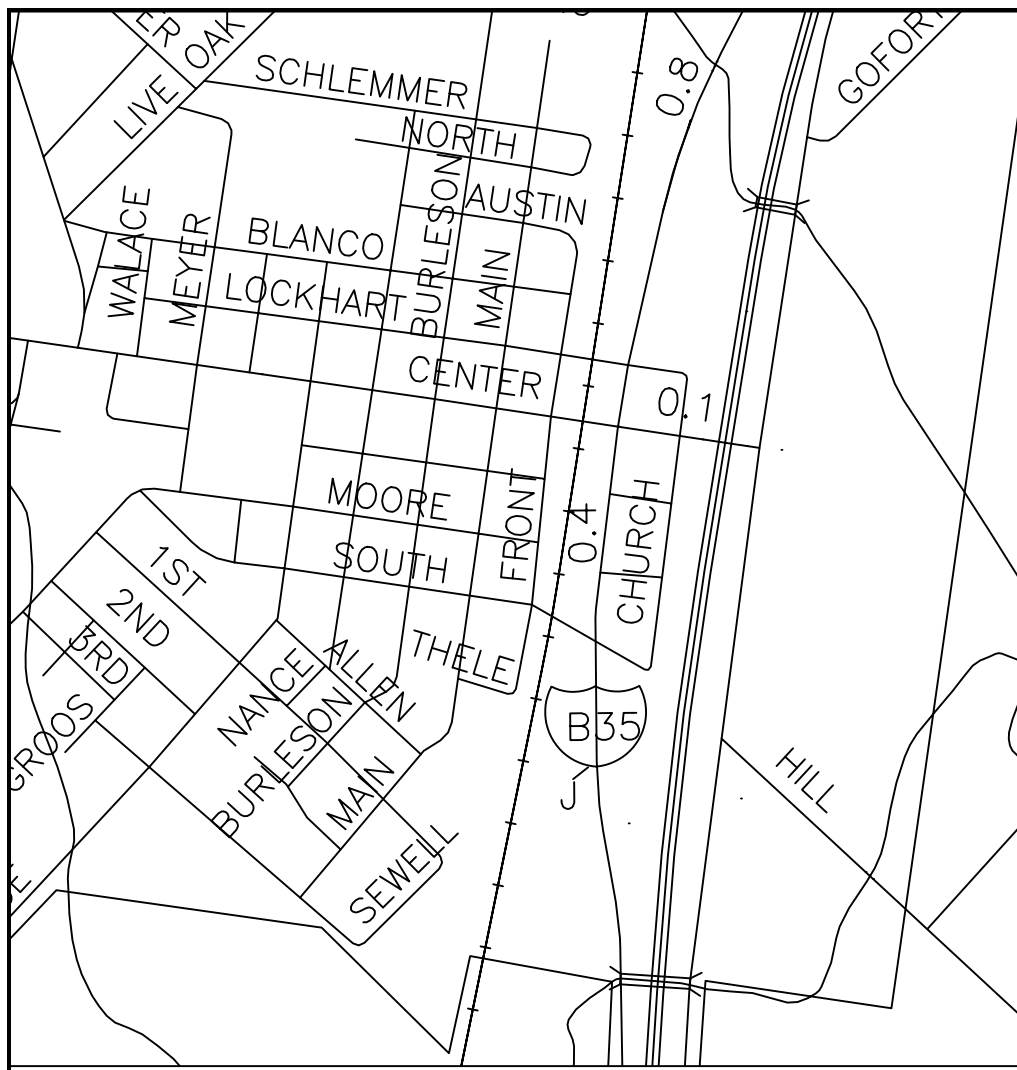
**Budget Information:** N/A

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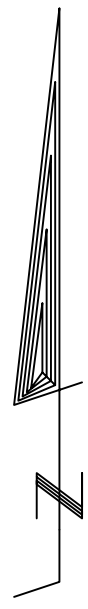
**ATTACHMENTS:**

**Description**

□ Plat



VICINITY MAP - 1" = 2000'



ORIGINAL SCALE  
1" = 20'

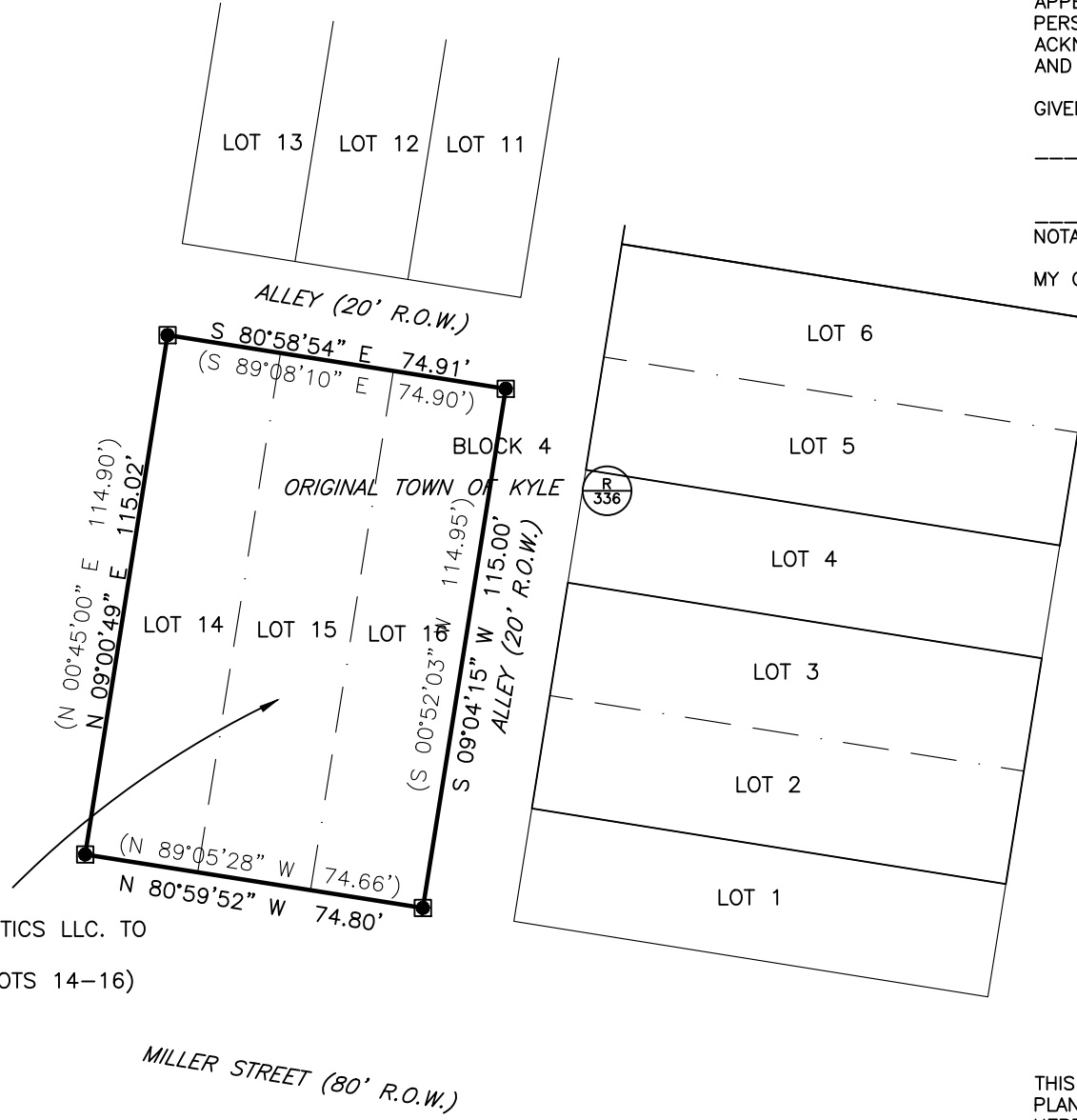


**GENERAL NOTES**

1. ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0385F, DATED SEPTEMBER 2, 2005, A PORTION OF THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
2. ACCORDING TO SCALING FROM TCEQ MAPS ALL OF THIS SUBDIVISION LIES WITHIN THE EDWARDS AQUIFER TRANSITION ZONE, NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE AND NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER CONTRIBUTING ZONE.
3. THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE HAYS CONSOLIDATED SCHOOL DISTRICT.
4. THIS SUBDIVISION LIES WITHIN THE KYLE CITY LIMITS.
5. THIS SUBDIVISION LIES WITHIN HAYS COUNTY EMERGENCY SERVICES DISTRICT 5 AND 9..

UTILITIES:  
ELECTRIC- PEC  
WATER- CITY OF KYLE  
SEWER- CITY OF KYLE

HCIN 21030006  
DOJO KYLE JIU-JITSU AND ATHLETICS LLC. TO  
OLIVE & MURPHY PROPERTIES  
JUNE 4, 2021 (0.1973 ACRES-LOTS 14-16)



**EXISTING CONFIGURATION**



**REPLAT**

**SURVEYORS NOTES**

1. FENCES MAINTAINED.
2. BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
3. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT, THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
4. THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

CLIENT: DOJO KYLE  
DATE: MAY 17, 2021  
OFFICE: HADEN  
CREW: C. SMITH  
FB/PG: 777/64  
PLAT NO. 27925-21-2-c

STATE OF TEXAS\*  
COUNTY OF HAYS\*

KNOW ALL MEN BY THESE PRESENTS, THAT WE OLIVE AND MURPHY PROPERTIES, OWNERS OF ALL LOTS 14, 15 & 16, BLOCK 4, ORIGINAL TOWN OF KYLE, HAYS COUNTY, TEXAS AS CONVEYED BY DEED DATED JUNE 14, 2021, AND RECORDED IN HAYS COUNTY INSTRUMENT NUMBER 21030006 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, DO HEREBY REPEAT THIS PROPERTY TO BE KNOWN AS LOT 15-A AND 15-B, BLOCK 4, ORIGINAL TOWN OF KYLE IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

OLIVE AND MURPHY PROPERTIES

STATE OF TEXAS\*  
COUNTY OF HAYS\*

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED \_\_\_\_\_ KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2021.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
MY COMMISSION EXPIRES: \_\_\_\_\_

**LEGEND**

- HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
- 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND WITH ILLEGIBLE PLASTIC CAP
- CONCRETE NAIL SET WITH ALUMINUM WASHER STAMPED "BYRN SURVEY"
- HAYS COUNTY INSTRUMENT NUMBER

THIS PLAT HAS BEEN SUBMITTED TO AND CONSIDERED BY THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT OF THE CITY OF KYLE, TEXAS, AND IS HEREBY APPROVED BY THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

PLANNING & ZONING COMMISSION CHAIRPERSON

REVIEWED BY:

DIRECTOR OF PUBLIC WORKS

REVIEWED BY:

CITY ENGINEER

STATE OF TEXAS \*  
COUNTY OF HAYS \*

I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2021, AT

\_\_\_\_ O'CLOCK \_\_\_\_M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN INSTRUMENT NUMBER \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 2021.

ELAINE H. CARDENAS, COUNTY CLERK  
HAYS COUNTY, TEXAS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY STATE THAT TO THE BEST OF MY SKILL AND KNOWLEDGE THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED UNDER MY SUPERVISION.

PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE.

REGISTERED PROFESSIONAL LAND SURVEYOR  
DAVID C. WILLIAMSON, R.P.L.S. NO. 4190

REPLAT OF LOTS 14, 15 & 16,  
BLOCK 4, ORIGINAL TOWN OF KYLE  
ESTABLISHING  
LOT 15-A & LOT 15-B, BLOCK 4,  
ORIGINAL TOWN OF KYLE,  
CITY OF KYLE, HAYS COUNTY, TEXAS



# CITY OF KYLE, TEXAS

Plum Creek Phase II, Section 10,  
Lot 2 - Final Plat (SUB-21-0225)

**Meeting Date: 12/14/2021**  
**Date time:6:30 PM**

**Subject/Recommendation:** Plum Creek Phase II, Section 10, Lot 2 - Final Plat (SUB-21-0225) 5.246 acres; 1 Lot for property located off FM 1626 and Rikardson.

Staff Proposal to P&Z: Approve the plat.

**Other Information:** See attachments.

**Legal Notes:** N/A

**Budget Information:** N/A

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**ATTACHMENTS:**

**Description**

□ Plat

# FINAL PLAT LOT 2, PLUM CREEK PHASE II SECTION 10

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT WE, MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH ITS HOME ADDRESS AT 4040 BROADWAY, SUITE 501, SAN ANTONIO, TEXAS 78209, BEING THE OWNER OF 5.246 ACRES IN THE M.M. MCCARVER LEAGUE NO. 4, ABSTRACT NO. 10, HAYS COUNTY, TEXAS, BEING A PORTION OF A CERTAIN CALLED 983.99 ACRE TRACT DESIGNATED AS TRACT 2 OF EXHIBIT "A" AND DESCRIBED IN THE DEED WITHOUT WARRANTY TO MOUNTAIN PLUM, LTD. OF RECORD IN VOLUME 2297, PAGE 139, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID 5.246 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE LOT 2, PLUM CREEK PHASE II, SECTION 10 SUBDIVISION TO THE CITY OF KYLE, TEXAS, AND SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER PUBLIC RIGHT OF WAY AND DRAINS, EASEMENTS (EXCLUDING LANDSCAPE AREA WITHIN EASEMENTS), PARKS AND PUBLIC PLACES THEREON SHOWN, EXCEPT AREAS IDENTIFIED AS PRIVATE OR CREATED BY SEPARATE INSTRUMENT, FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

WHEREOF THE SAID MOUNTAIN PLUM, LTD., OWNER, HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THEREUNTO DULY AUTHORIZED, GENERAL PARTNER HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS MANAGERS, \_\_\_\_\_, AND MOUNTAINCITYLAND, LLC HAS CAUSED THESE PRESENTS TO BE EXECUTED BY \_\_\_\_\_, ITS MANAGER, THEREUNTO DULY AUTHORIZED.

MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP

BY: MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

BY: \_\_\_\_\_, NAME: \_\_\_\_\_, MANAGER

BY: \_\_\_\_\_, NAME: \_\_\_\_\_, MANAGER

BY: MOUNTAINCITYLAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, MANAGER

BY: \_\_\_\_\_, NAME: \_\_\_\_\_, MANAGER

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. DID PERSONALLY APPEAR \_\_\_\_\_ MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANY AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. DID PERSONALLY APPEAR \_\_\_\_\_ MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND SHE ACKNOWLEDGED BEFORE ME THAT SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANY AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. DID PERSONALLY APPEAR \_\_\_\_\_ MANAGER OF MOUNTAINCITYLAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS

THAT, ELAINE H. CARDENAS, CLERK OF HAYS COUNTY COURT DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON

THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS UNDER

CLERK'S FILE NUMBER \_\_\_\_\_ WITNESS MY HAND AND SEAL OF OFFICE OF HAYS

COUNTY ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

FILED FOR RECORD AT \_\_\_\_ O'CLOCK \_\_\_\_M. THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS

APPROVAL CITY OF KYLE

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: \_\_\_\_\_  
CHAIRPERSON

THIS PLAT (LOT 2, PLUM CREEK PHASE II, SECTION 10) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: \_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
SECRETARY

REVIEWED BY:

LEON BARBA, CITY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

REVIEWED BY:

HARPER WILDER, DIRECTOR OF PUBLIC WORKS \_\_\_\_\_ DATE \_\_\_\_\_

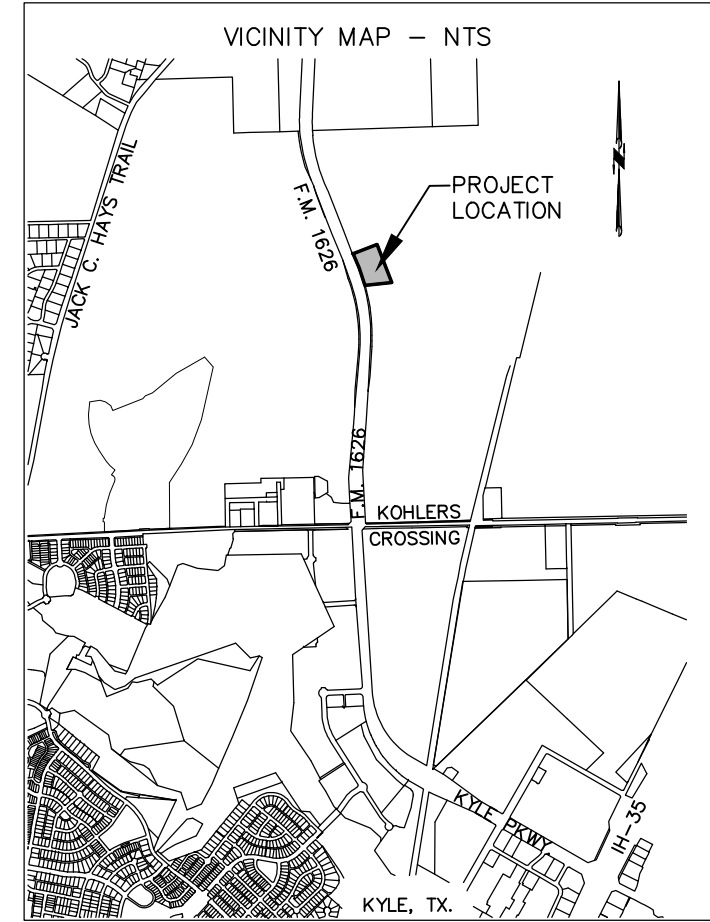
STATE OF TEXAS §  
COUNTY OF HAYS §

ENGINEER'S CERTIFICATION

I THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

BY: \_\_\_\_\_

ANTHONY J. ENNIS, P.E.  
REGISTERED PROFESSIONAL ENGINEER  
NO. 125658- STATE OF TEXAS  
KIMLEY-HORN  
FIRM# F-928  
5301 SOUTHWEST PARKWAY, BUILDING 3, SUITE 100  
AUSTIN, TEXAS 78735  
(512) 646-2237



NOTES:

1. TOTAL ACREAGE: 5.246 ACRES.
2. THE TOTAL AREA OF PUBLIC STREET RIGHT-OF-WAY TO BE DEDICATED IN THIS SUBDIVISION IS: 0.00 ACRES.
3. TOTAL NUMBER OF LOTS: 1.
4. PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. MASTER PLAN & CITY OF KYLE ORDINANCE 308 AND 311 AS AMENDED.
5. SETBACKS NOT SHOWN ON LOTS SHALL CONFIRM TO THE CITY OF KYLE ZONING ORDINANCES.
6. A 7.5 FOOT PUBLIC UTILITY EASEMENT ADJACENT TO F.M. 1626 IS HEREBY DEDICATED.
7. ALL UTILITIES WITHIN THIS SUBDIVISION SHALL BE UNDERGROUND.
8. ALL OPEN SPACES, DRAINAGE EASEMENT AND LANDSCAPE EASEMENT AREAS CREATED HEREBY SHALL BE MAINTAINED, KEPT NEATLY CUT, FREE FROM DEBRIS AND, WITH RESPECT TO DRAINAGE EASEMENTS, FREE FROM TREE/BRUSH RE-GROWTH. TYPICAL LANDSCAPE MAINTENANCE, CUTTING AND TRIMMING WITHIN THE SUBDIVISION, ALL EASEMENTS AND RIGHT-OF-WAYS TO THE PAVEMENT TO BE THE RESPONSIBILITY OF THE PROPERTY OWNERS.
9. THE OWNERS OF LOT 2 ARE REQUIRED TO SUBMIT THE SITE DEVELOPMENT PLAN FOR LOT 2 TO THE CITY OF KYLE, PLUM CREEK DEVELOPMENT PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, AND, IF NOT THE SAME PARTIES AS ARE IN PLUM CREEK DEVELOPMENT PARTNERS, THEN THE ARCHITECTURAL REVIEW COMMITTEE FOR THE PLUM CREEK HOME OWNER'S ASSOCIATION, FOR THEIR RESPECTIVE REVIEW AND APPROVALS PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITY ON OR AROUND LOT 2, INCLUDING, WITHOUT LIMITATION, THE INSTALLATION OF THE SIDEWALK AND ANY OTHER IMPROVEMENTS REQUIRED HEREIN.
10. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOT 2 IN THIS SUBDIVISION, A SITE DEVELOPMENT AND/OR BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF KYLE.
11. THIS SUBDIVISION LIES WITHIN THE BUNTON BRANCH-PLUM CREEK WATERSHED.
12. EASEMENTS SHOWN HEREON WHICH ARE CREATED BY SEPARATE INSTRUMENTS AND NOT DEDICATED PER THIS PLAT ARE GOVERNED BY THE TERMS OF SUCH SEPARATE INSTRUMENTS.
13. SIDEWALKS ALONG PUBLIC RIGHT-OF-WAY ADJACENT TO LOT 2 SHALL BE INSTALLED BY THE OWNER OF LOT 2 AT THE TIME OF SITE DEVELOPMENT AND PRIOR TO SUCH OWNER'S OCCUPANCY OF LOT 2. SIDEWALKS, PEDESTRIAN CROSSING AND OTHER PUBLIC AMENITIES THAT ARE TO BE DEDICATED TO THE CITY OF KYLE SHALL MEET OR EXCEED ALL 2010 ADA STANDARDS OF ACCESSIBILITY DESIGN AND ALL CURRENT FEDERAL AND STATE LAWS REGARDING ACCESS FOR PEOPLE WITH DISABILITIES FOR TITLE II ENTITIES.
14. THE OWNER OF THE LAND DEDICATED BY THIS PLAT RESERVES THE RIGHT TO USE AND ENJOY THE SURFACE OF ALL EASEMENT AREAS FOR ALL PURPOSES THAT DO NOT INTERFERE WITH THE USE OF SAID EASEMENT AREAS FOR THE PURPOSE OF SAID EASEMENT, INCLUDING BUT NOT LIMITED TO THE RIGHT TO PLACE SURFACING MATERIALS OVER AND ACROSS THE EASEMENT AREA AND TO USE THE SAME FOR PARKING AREAS, DRIVEWAYS, WALKWAYS, SIDEWALK, LANDSCAPING AND LIGHTING.
15. FLOODPLAIN ANALYSIS MAY BE REQUIRED PER CITY ADOPTED RAINFALL DEPTH AT THE TIME OF SITE DEVELOPMENT.

STATE OF TEXAS §  
COUNTY OF HAYS §

SURVEYOR'S CERTIFICATION:

I, ERNESTO NAVARRETE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

ERNESTO NAVARRETE, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6642 - STATE OF TEXAS  
LANDDEV CONSULTING, LLC.  
FIRM# 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TEXAS 78735  
(512) 872-6696

**"PRELIMINARY"**  
This Document shall not be Recorded  
for any purpose

PUBLIC UTILITY INFORMATION:  
THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES:

WATER: CITY OF KYLE 100 W. CENTER ST. KYLE, TEXAS 78640	WASTEWATER: CITY OF KYLE 100 W. CENTER ST. KYLE, TEXAS 78640
--	---

ELECTRIC:  
PEDERNALES ELECTRIC COOPERATIVE  
1819 RANCH TO MARKET RD 150  
KYLE, TX 78640

FILE No: 1373

PLAT PREPARATION DATE  
APPLICATION SUBMITTAL DATE

SEPTEMBER, 2021



TBPE NO: 16384 · TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAM.S.COM

**FINAL PLAT**  
LOT 2, PLUM CREEK PHASE II, SECTION 10  
M.M. MCCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS

SHEET 1 OF 2

No: REVISION:

Item # 0



# FINAL PLAT LOT 2, PLUM CREEK PHASE II SECTION 10

**"PRELIMINARY"**  
This Document shall not be Recorded  
for any purpose

CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C1	2,984.79'	217.67'	N 19°26'53" W	217.62'
C2	2,984.79'	348.66'	N 14°00'45" W	348.46'

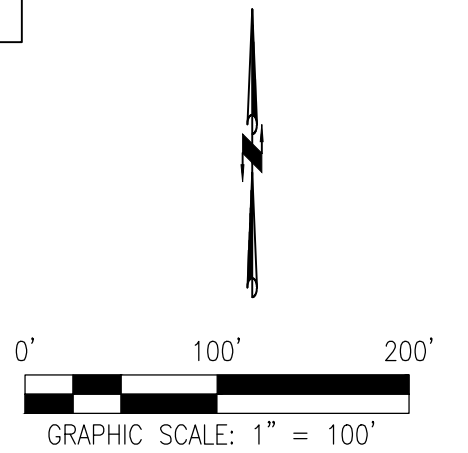
**NOTES:**

1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS, TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999902.

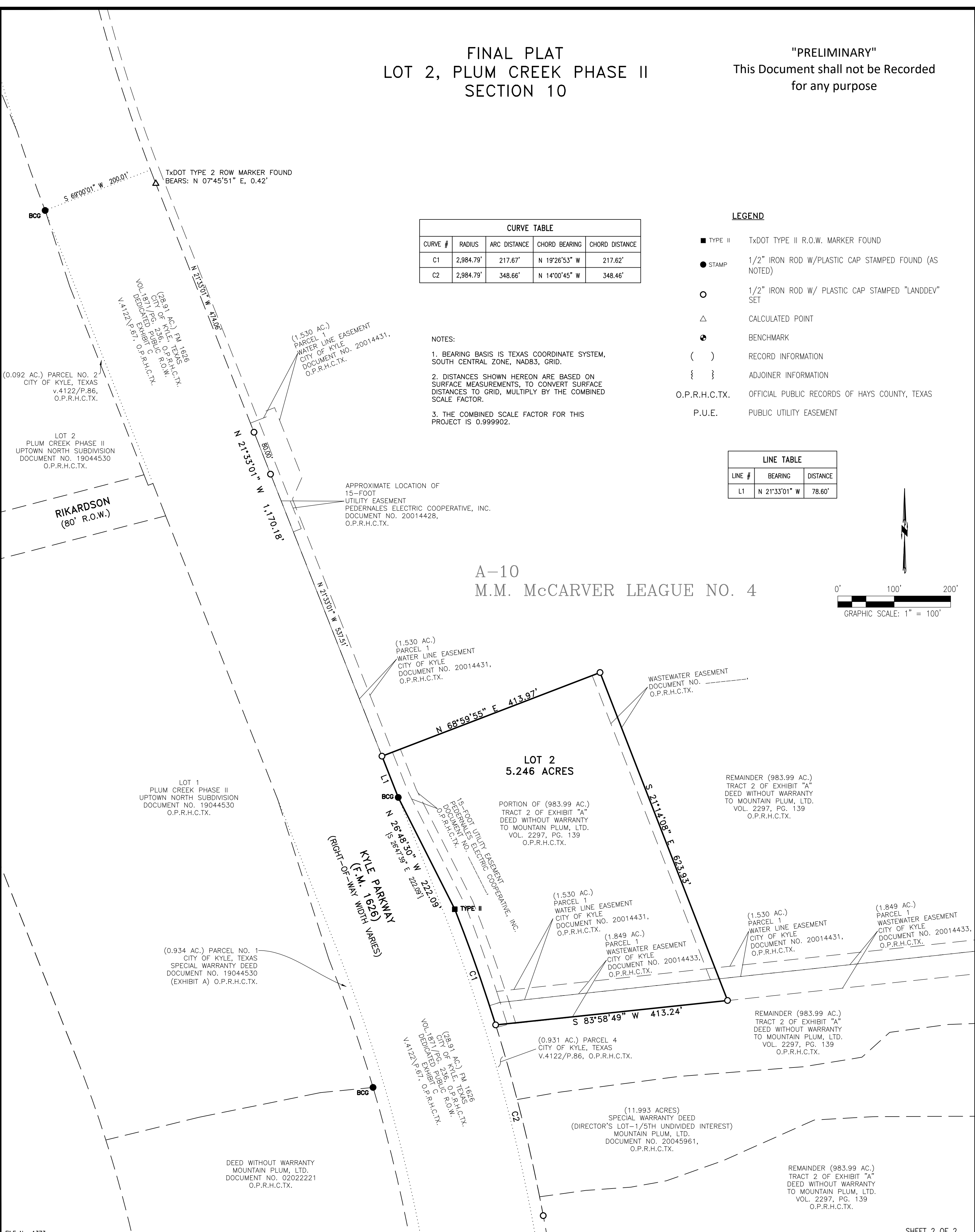
**LEGEND**

- TYPE II TxDOT TYPE II R.O.W. MARKER FOUND
- STAMP 1/2" IRON ROD W/PLASTIC CAP STAMPED FOUND (AS NOTED)
- 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LANDDEV" SET
- △ CALCULATED POINT
- BENCHMARK
- ( ) RECORD INFORMATION
- { } ADJOINER INFORMATION
- O.P.R.H.C.TX. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
- P.U.E. PUBLIC UTILITY EASEMENT

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N 21°33'01" W	78.60'



A-10  
M.M. McCARVER LEAGUE NO. 4



FILE No: 1373	PLAT PREPARATION DATE SEPTEMBER, 2021	
	APPLICATION SUBMITTAL DATE	
No: REVISION:		

**LDC**

TBPE NO: 16384 · TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAMS.COM

**FINAL PLAT**  
**LOT 2, PLUM CREEK PHASE II, SECTION 10**  
**M.M. McCARVER SURVEY, ABSTRACT NO. 10**  
**HAYS COUNTY, TEXAS**

L:\Projects\1373-Plum Creek Phase II\2600-Survey\2021-CADD\Area 10\Lot 2 Final Plat\Lot 2 Plum Creek Area 10 Final Plat.dwg  
PLOT DATE: 09/21/2021 08:50:00



# CITY OF KYLE, TEXAS

## Plum Creek Phase II, Section 10 - Final Plat (SUB-21-0226)

**Meeting Date: 12/14/2021**  
**Date time: 6:30 PM**

**Subject/Recommendation:** Plum Creek Phase II, Section 10 - Final Plat (SUB-21-0226) 171.05 acres; 6 commercial lots located off FM 1626 and Rikardson.

Staff Proposal to P&Z: Approve the plat.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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### ATTACHMENTS:

#### **Description**

Final Plat



# FINAL PLAT PLUM CREEK PHASE II SECTION 10

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT WE, MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH ITS HOME ADDRESS AT 4040 BROADWAY, SUITE 501, SAN ANTONIO, TEXAS 78209, BEING THE OWNER OF 171.05 ACRES IN THE M.M. MCCARVER LEAGUE NO. 4, ABSTRACT NO. 10, HAYS COUNTY, TEXAS, BEING A PORTION OF A CERTAIN CALLED 983.99 ACRE TRACT DESIGNATED AS TRACT 2 OF EXHIBIT "A" AND DESCRIBED IN THE DEED WITHOUT WARRANTY TO MOUNTAIN PLUM, LTD. OF RECORD IN VOLUME 2297, PAGE 139, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID 171.05 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE PLUM CREEK PHASE II, SECTION 10 SUBDIVISION TO THE CITY OF KYLE, TEXAS, AND SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER PUBLIC RIGHT OF WAY AND DRAINS, EASEMENTS (EXCLUDING LANDSCAPE AREA WITHIN EASEMENTS), PARKS AND PUBLIC PLACES THEREON SHOWN, EXCEPT AREAS IDENTIFIED AS PRIVATE OR CREATED BY SEPARATE INSTRUMENT, FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

WHEREOF THE SAID MOUNTAIN PLUM, LTD., OWNER, HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THEREUNTO DULY AUTHORIZED, GENERAL PARTNER HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS MANAGERS, \_\_\_\_\_, AND MOUNTAINCITYLAND, LLC HAS CAUSED THESE PRESENTS TO BE EXECUTED BY \_\_\_\_\_, ITS MANAGER, THEREUNTO DULY AUTHORIZED.

MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP

BY: MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

BY: \_\_\_\_\_, NAME: \_\_\_\_\_, MANAGER

BY: \_\_\_\_\_, NAME: \_\_\_\_\_, MANAGER

BY: MOUNTAINCITYLAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, MANAGER

BY: \_\_\_\_\_, NAME: \_\_\_\_\_, MANAGER

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. DID PERSONALLY APPEAR \_\_\_\_\_ MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANY AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. DID PERSONALLY APPEAR \_\_\_\_\_ MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND SHE ACKNOWLEDGED BEFORE ME THAT SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANY AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. DID PERSONALLY APPEAR \_\_\_\_\_ MANAGER OF MOUNTAINCITYLAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS

THAT, ELAINE H. CARDENAS, CLERK OF HAYS COUNTY COURT DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON

THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS UNDER

CLERK'S FILE NUMBER \_\_\_\_\_ WITNESS MY HAND AND SEAL OF OFFICE OF HAYS

COUNTY ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

FILED FOR RECORD AT \_\_\_\_\_ O'CLOCK \_\_\_\_M. THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS

APPROVAL CITY OF KYLE

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: \_\_\_\_\_  
CHAIRPERSON

THIS PLAT (PLUM CREEK PHASE II, SECTION 10) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: \_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
SECRETARY

REVIEWED BY:

LEON BARBA, CITY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

REVIEWED BY:

HARPER WILDER, DIRECTOR OF PUBLIC WORKS \_\_\_\_\_ DATE \_\_\_\_\_

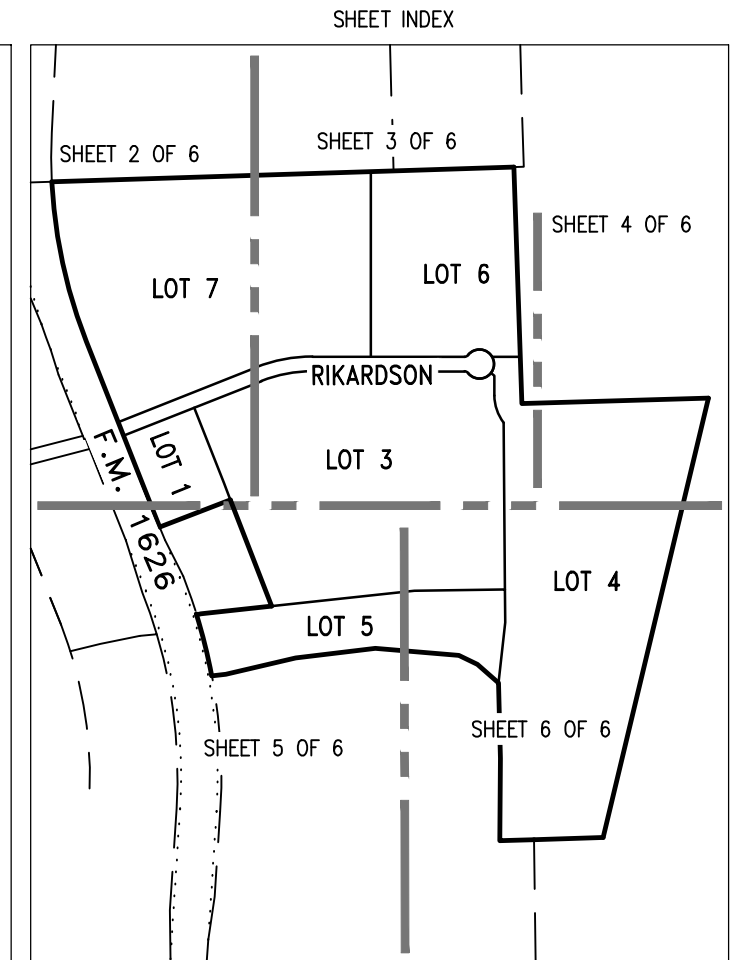
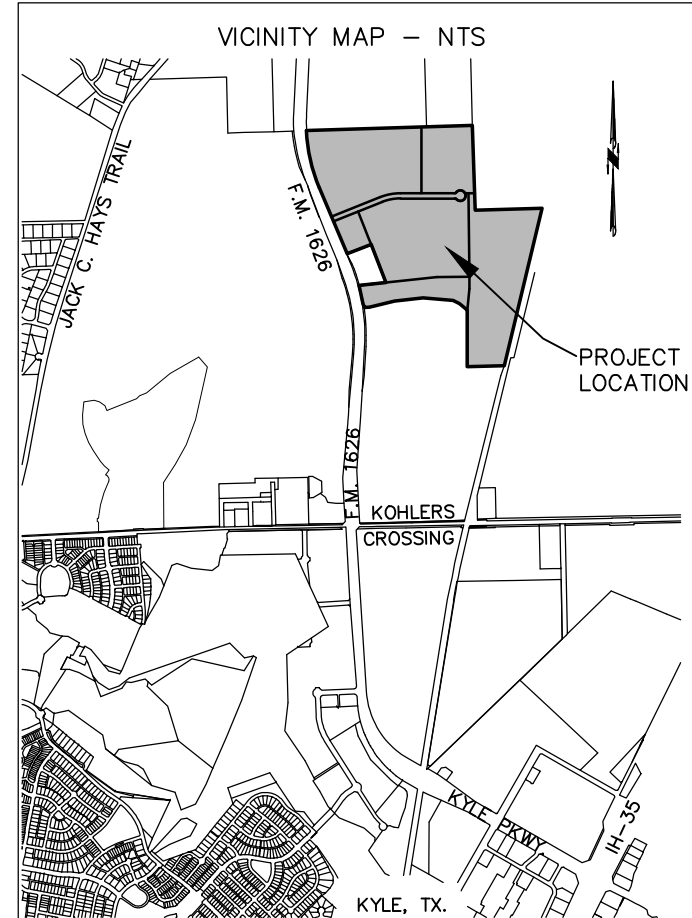
STATE OF TEXAS §  
COUNTY OF HAYS §

ENGINEER'S CERTIFICATION

I THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

BY: \_\_\_\_\_

ANTHONY J. ENNIS, P.E.  
REGISTERED PROFESSIONAL ENGINEER  
NO. 125658- STATE OF TEXAS  
KIMLEY-HORN  
FIRM# F-928  
5301 SOUTHWEST PARKWAY, BUILDING 3, SUITE 100  
AUSTIN, TEXAS 78735  
(512) 646-2237



NOTES:

1. TOTAL ACREAGE: 171.05 ACRES.
2. THE TOTAL AREA OF PUBLIC STREET RIGHT-OF-WAY TO BE DEDICATED IN THIS SUBDIVISION IS: 4.044 ACRES.
3. TOTAL NUMBER OF LOTS: 6.
4. PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. MASTER PLAN & CITY OF KYLE ORDINANCE 308 AND 311 AS AMENDED.
5. SETBACKS NOT SHOWN ON LOTS SHALL CONFIRM TO THE CITY OF KYLE ZONING ORDINANCES.
6. A 7.5 FOOT PUBLIC UTILITY EASEMENT ADJACENT TO F.M. 1626 AND RIKARDSON IS HEREBY DEDICATED, AS SHOWN HEREON.
7. ALL UTILITIES WITHIN THIS SUBDIVISION SHALL BE UNDERGROUND.
8. ALL OPEN SPACES, DRAINAGE EASEMENT AND LANDSCAPE EASEMENT AREAS DEPICTED HEREON SHALL BE MAINTAINED, KEPT NEATLY CUT, FREE FROM DEBRIS AND, WITH RESPECT TO DRAINAGE EASEMENTS, FREE FROM TREE/BRUSH RE-GROWTH. MAINTENANCE OF ALL EASEMENTS AND RIGHT-OF-WAYS TO THE PAVEMENT TO BE THE RESPONSIBILITY OF THE PROPERTY OWNERS, OR IF EASEMENTS ARE CREATED BY SEPARATE INSTRUMENTS, MAINTENANCE GOVERNED BY THE TERMS OF SUCH SEPARATE INSTRUMENTS.
9. THE OWNER OF LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7, ARE REQUIRED TO SUBMIT THE SITE DEVELOPMENT PLAN FOR LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7, TO THE CITY OF KYLE, PLUM CREEK DEVELOPMENT PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, AND, IF NOT THE SAME PARTIES AS ARE IN PLUM CREEK DEVELOPMENT PARTNERS, THEN THE ARCHITECTURAL REVIEW COMMITTEE FOR THE PLUM CREEK HOME OWNER'S ASSOCIATION, FOR THEIR RESPECTIVE REVIEW AND APPROVALS PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITY ON OR AROUND LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7, INCLUDING, WITHOUT LIMITATION, THE INSTALLATION OF THE SIDEWALK AND ANY OTHER IMPROVEMENTS REQUIRED HEREIN.
10. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7, IN THIS SUBDIVISION, A SITE DEVELOPMENT AND/OR BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF KYLE.
11. THIS SUBDIVISION LIES WITHIN THE BUNTON BRANCH-PLUM CREEK WATERSHED.
12. EASEMENTS SHOWN HEREON WHICH ARE CREATED BY SEPARATE INSTRUMENTS AND NOT DEDICATED PER THIS PLAT ARE GOVERNED BY THE TERMS OF SUCH SEPARATE INSTRUMENTS.
13. SIDEWALKS ALONG PUBLIC RIGHT-OF-WAY ADJACENT TO LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7, SHALL BE INSTALLED BY THE OWNER OF LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7, AT THE TIME OF SITE DEVELOPMENT AND PRIOR TO SUCH OWNER'S OCCUPANCY OF LOT 1, LOT 3, LOT 4, LOT 6, AND LOT 7. SIDEWALKS, PEDESTRIAN CROSSING AND OTHER PUBLIC AMENITIES THAT ARE TO BE DEDICATED TO THE CITY OF KYLE SHALL MEET OR EXCEED ALL 2010 ADA STANDARDS OF ACCESSIBILITY DESIGN AND ALL CURRENT FEDERAL AND STATE LAWS REGARDING ACCESS FOR PEOPLE WITH DISABILITIES FOR TITLE II ENTITIES.
14. THE OWNER OF THE LAND DEDICATED BY THIS PLAT RESERVES THE RIGHT TO USE AND ENJOY THE SURFACE OF ALL EASEMENT AREAS FOR ALL PURPOSES THAT DO NOT INTERFERE WITH THE USE OF SAID EASEMENT AREAS FOR THE PURPOSE OF SAID EASEMENT, INCLUDING BUT NOT LIMITED TO THE RIGHT TO PLACE SURFACING MATERIALS OVER AND ACROSS THE EASEMENT AREA AND TO USE THE SAME FOR PARKING AREAS, DRIVEWAYS, WALKWAYS, SIDEWALK, LANDSCAPING AND LIGHTING.
15. FLOODPLAIN ANALYSIS MAY BE REQUIRED PER CITY ADOPTED RAINFALL DEPTH AT THE TIME OF SITE DEVELOPMENT.
16. THE COSTS OF MAINTAINING THE DRAINAGE FACILITIES LOCATED OR TO BE CONSTRUCTED WITHIN LOT 4, AS CREATED BY THIS PLAT, SHALL BE MAINTAINED PURSUANT TO THAT CERTAIN STORMWATER FACILITIES SITE MAINTENANCE AGREEMENT RECORDED UNDER DOC. # \_\_\_\_\_, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

STATE OF TEXAS §  
COUNTY OF HAYS §

SURVEYOR'S CERTIFICATION:

I, ERNESTO NAVARRETE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

ERNESTO NAVARRETE, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6642 - STATE OF TEXAS  
LANDDEV CONSULTING, LLC.  
FIRM# 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TEXAS 78735  
(512) 872-6696

**"PRELIMINARY"**  
This Document shall not be Recorded  
for any purpose

PUBLIC UTILITY INFORMATION:  
THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES:

WATER: CITY OF KYLE 100 W. CENTER ST. KYLE, TEXAS 78640	WASTEWATER: CITY OF KYLE 100 W. CENTER ST. KYLE, TEXAS 78640
--	---

ELECTRIC:  
PEDERNALES ELECTRIC COOPERATIVE  
1819 RANCH TO MARKET RD 150  
KYLE, TX 78640

FILE No: 1373

PLAT PREPARATION DATE \_\_\_\_\_ SEPTEMBER, 2021  
APPLICATION SUBMITTAL DATE \_\_\_\_\_

No: REVISION:

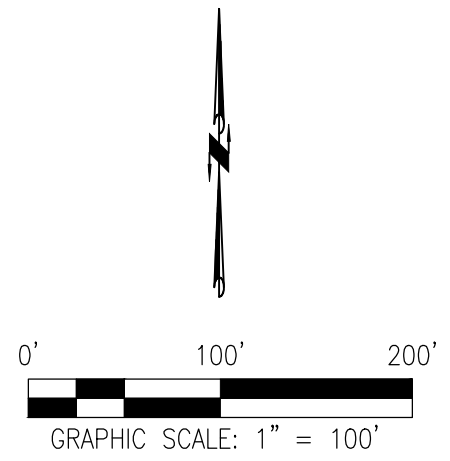


TBPE NO: 16384 - TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAM.S.COM

**FINAL PLAT**  
**PLUM CREEK PHASE II SECTION 10**  
**M.M. McCARVER SURVEY, ABSTRACT NO. 10**  
**HAYS COUNTY, TEXAS**

SHEET 1 OF 6

# FINAL PLAT PLUM CREEK PHASE II SECTION 10



TEXAS LEHIGH CEMENT COMPANY  
VOL. 609, PG. 843,  
R.P.R.H.C.TX.

(8.51 AC.)  
FM 1626  
VOL. 2019, PG. 482,  
O.P.R.H.C.TX.

TEXAS LEHIGH CEMENT COMPANY  
VOL. 609, PG. 843,  
R.P.R.H.C.TX.

TYPE 2 R.O.W. MARKER FOUND  
BEARS: N 01°39' E, 0.72'  
(N 03°01' E, 0.55')

[N 88°41'49" E 3,747.10']  
[N 88°09'38" E 3,746.84']

N 88°09'38" E 1,747.03'

CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C1	2,764.79'	898.29'	N 12°13'25" W	894.34'
C2	2,984.79'	343.94'	N 13°58'02" W	343.75'
C3	3,268.05'	222.38'	N 19°24'10" W	222.34'
C4	840.00'	316.09'	S 79°13'12" W	314.23'
C5	25.00'	22.58'	N 64°07'24" E	21.82'
C6	80.00'	156.01'	N 85°53'12" W	132.44'
C7	80.00'	95.03'	N 04°00'35" E	89.54'
C8	80.00'	144.81'	N 89°53'47" E	125.84'
C9	25.00'	22.58'	N 64°07'24" W	21.82'
C10	760.00'	285.98'	S 79°13'12" W	284.30'
C11	250.01'	160.40'	S 18°55'42" E	157.66'

**BENCHMARK LIST: NAVD88 - OPUS**

BM005549-633:  
SQUARE FOUND ON A CONCRETE INLET IN THE SOUTH RIGHT-OF-WAY OF KOHLERS CROSSING  
APPROXIMATELY 588' EAST OF THE UNION PACIFIC RAIL ROAD RIGHT-OF-WAY, AND APPROXIMATELY  
850' WEST OF THE MARKETPLACE RIGHT-OF-WAY.  
ELEVATION = 718.35 FEET.

BM005549-634:  
SQUARE SET ON A CONCRETE INLET AT THE SOUTHEAST INTERSECTION OF KOHLERS CROSSING AND  
MARKETPLACE AVENUE.  
ELEVATION = 708.46 FEET.

**FLOOD NOTE:**  
A PORTION OF THE SUBJECT TRACT IS SHOWN TO BE IN FLOOD ZONE A, A SPECIAL FLOOD  
HAZARD AREA INUNDED BY THE 1% ANNUAL CHANCE FLOOD, NO BASE FLOOD ELEVATIONS  
DETERMINED, AS IDENTIFIED BY THE FLOOD INSURANCE RATE MAP PANEL NO. 48209C0270F &  
48209C0290F, DATED SEPTEMBER 02, 2005.

THE ABOVE STATEMENT IS MEANT FOR FLOOD INSURANCE DETERMINATION ONLY AND THIS  
SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAP(S).

**LOT 7  
42.04 ACRES**

**KYLE PARKWAY  
(F.M. 1626)  
(RIGHT-OF-WAY WIDTH VARIES)**

**A-10  
M.M. McCARVER LEAGUE NO. 4**

LOT 3  
PLUM CREEK PHASE II  
UPTOWN NORTH SUBDIVISION  
DOCUMENT NO. 19044530  
O.P.R.H.C.TX.

[0.392 AC.] PARCEL NO. 3  
CITY OF KYLE, TEXAS  
SPECIAL WARRANTY DEED  
VOL. 4122, PG. 86  
(EXHIBIT A) O.P.R.H.C.TX.

**ETHEREDGE  
(60' R.O.W.)**

LOT 2  
PLUM CREEK PHASE II  
UPTOWN NORTH SUBDIVISION  
DOCUMENT NO. 19044530  
O.P.R.H.C.TX.

(0.092 AC.) PARCEL NO. 2  
CITY OF KYLE, TEXAS  
v.4122/P.86,  
O.P.R.H.C.TX.

(0.891 AC.) FM 1626  
CITY OF KYLE, TEXAS  
VOL. 1871/P.256, O.P.R.H.C.TX.  
DEDICATED EXHIBIT C  
VOL. 4122/P.87, O.P.R.H.C.TX.

(1.530 AC.)  
PARCEL 1  
WATER LINE EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014431,  
O.P.R.H.C.TX.

15-FOOT UTILITY EASEMENT  
PEDERNALES ELECTRIC COOPERATIVE, INC.  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

**RIKARDSON  
(80' R.O.W.)**

**LOT 3  
41.47 ACRES**

APPROXIMATE LOCATION OF  
15-FOOT  
UTILITY EASEMENT  
PEDERNALES ELECTRIC COOPERATIVE, INC.  
DOCUMENT NO. 20014428,  
O.P.R.H.C.TX.

15-FOOT UTILITY EASEMENT  
PEDERNALES ELECTRIC COOPERATIVE, INC.  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

**LOT 1  
5.138 ACRES**

PUBLIC UTILITY EASEMENT  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

(1.530 AC.)  
PARCEL 1  
WATER LINE EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014431,  
O.P.R.H.C.TX.

DECLARATION OF ACCESS EASEMENT  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

N 90°00'00" W 831.53'

[324.250 AC.] TRACT 1  
LENNER HOMES OF TEXAS LAND  
AND CONSTRUCTION, LTD.  
DOCUMENT NO. 16029226  
O.P.R.H.C.TX.

**RIKARDSON  
(80' R.O.W.)**

LOT 1  
PLUM CREEK PHASE II  
UPTOWN NORTH SUBDIVISION  
DOCUMENT NO. 19044530  
O.P.R.H.C.TX.

MATCH-LINE SHEET 2 OF 6  
MATCH-LINE SHEET 5 OF 6

MATCH-LINE SHEET 2 OF 6

MATCH-LINE SHEET 5 OF 6

MATCH-LINE SHEET 2 OF 6  
MATCH-LINE SHEET 3 OF 6

**"PRELIMINARY"**  
This Document shall not be Recorded  
for any purpose

FILE No: 1373  
PLAT PREPARATION DATE: SEPTEMBER, 2021  
APPLICATION SUBMITTAL DATE:



TBPE NO: 16384 · TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAMS.COM

**FINAL PLAT  
PLUM CREEK PHASE II SECTION 10  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS**

SHEET 2 OF 6



(21.60 AC.)  
 WARRANTY DEED  
 HAYS COUNTY YOUTH ATHLETIC  
 ASSOCIATION, INCORPORATED  
 VOL. 356, PG. 294,  
 O.P.R.H.C.TX.

# FINAL PLAT PLUM CREEK PHASE II SECTION 10



TEXAS LEHIGH CEMENT COMPANY  
 VOL. 609, PG. 843,  
 R.P.R.H.C.TX.

N 88°09'38" E 2,530.18'

N 88°09'38" E 783.15'

N 88°09'38" E 1,747.03'

BYPASS CHANNEL DRAINAGE EASEMENT  
 DOCUMENT NO. \_\_\_\_\_,  
 O.P.R.H.C.TX.

BYPASS CHANNEL DRAINAGE EASEMENT  
 DOCUMENT NO. \_\_\_\_\_,  
 O.P.R.H.C.TX.

PORTION OF  
 (983.99 AC.)  
 TRACT 2 OF EXHIBIT "A"  
 DEED WITHOUT WARRANTY  
 TO MOUNTAIN PLUM, LTD.  
 VOL. 2297, PG. 139  
 O.P.R.H.C.TX.

PORTION OF  
 (983.99 AC.)  
 TRACT 2 OF EXHIBIT "A"  
 DEED WITHOUT WARRANTY  
 TO MOUNTAIN PLUM, LTD.  
 VOL. 2297, PG. 139  
 O.P.R.H.C.TX.

(145.94 AC.)  
 SPECIAL WARRANTY DEED  
 FLINT HILLS RESOURCES  
 CENTRAL TEXAS, LLC,  
 VOL. 5167, PG. 585  
 O.P.R.H.C.TX.

MATCH-LINE SHEET 2 OF 6  
 MATCH-LINE SHEET 3 OF 6

MATCH-LINE SHEET 3 OF 6  
 MATCH-LINE SHEET 4 OF 6

**LOT 7**  
 42.04 ACRES

**LOT 6**  
 18.78 ACRES

S 01°56'18" E 1,039.74'

[S 01°23'20" E 1,296.55']  
 S 01°56'18" E 1,296.51'

S 00°00'00" E 1,014.01'

CHANNEL DRAINAGE EASEMENT  
 DOCUMENT NO. \_\_\_\_\_,  
 O.P.R.H.C.TX.

N 90°00'00" E 319.05'

N 90°00'00" E 831.53'

N 90°00'00" E 512.48'

S 89°59'28" E 153.71'

**RIKARDSON**

**RIKARDSON**

80' R.O.W. HEREBY DEDICATED

80' R.O.W. HEREBY DEDICATED

N 90°00'00" W 831.53'

7.5' P.U.E.

7.5' P.U.E.

PUBLIC UTILITY EASEMENT  
 DOCUMENT NO. \_\_\_\_\_,  
 O.P.R.H.C.TX.

15-FOOT UTILITY EASEMENT  
 PEDERNALES ELECTRIC COOPERATIVE, INC.  
 DOCUMENT NO. \_\_\_\_\_,  
 O.P.R.H.C.TX.

**LOT 3**  
 41.47 ACRES

PORTION OF  
 (983.99 AC.)  
 TRACT 2 OF EXHIBIT "A"  
 DEED WITHOUT WARRANTY  
 TO MOUNTAIN PLUM, LTD.  
 VOL. 2297, PG. 139  
 O.P.R.H.C.TX.

**LOT 3**  
 41.47 ACRES

**LOT 4**  
 47.02 ACRES

100 YR FLOODPLAIN PER HEC-RAS  
 MODEL COMPILED BY LANDBEY  
 CONSULTING DATED NOVEMBER, 2020  
 (HATCH)

A-10  
 M.M. McCARVER LEAGUE NO. 4

MATCH-LINE SHEET 3 OF 6  
 MATCH-LINE SHEET 5 OF 6

MATCH-LINE SHEET 4 OF 6  
 MATCH-LINE SHEET 6 OF 6

MATCH-LINE SHEET 3 OF 6  
 MATCH-LINE SHEET 4 OF 6

MATCH-LINE SHEET 5 OF 6  
 MATCH-LINE SHEET 6 OF 6

**LOT 3**  
 41.47 ACRES

"PRELIMINARY"  
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SHEET 3 OF 6

FILE No: 1373

PLAT PREPARATION DATE  
 APPLICATION SUBMITTAL DATE

SEPTEMBER, 2021



TBPE NO: 16384 · TBPLS NO: 10194101  
 5508 HIGHWAY 290 WEST, SUITE 150  
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 512.872.6696  
 LDCTEAMS.COM

**FINAL PLAT**  
**PLUM CREEK PHASE II SECTION 10**  
**M.M. McCARVER SURVEY, ABSTRACT NO. 10**  
**HAYS COUNTY, TEXAS**

FINAL PLAT  
PLUM CREEK PHASE II SECTION 10

(21.60 AC.)  
WARRANTY DEED  
HAYS COUNTY YOUTH ATHLETIC  
ASSOCIATION, INCORPORATED  
VOL. 356, PG. 294,  
O.P.R.H.C.TX.

N 88°09'38" E 783.15'

BYPASS CHANNEL DRAINAGE EASEMENT  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

PORTION OF  
(983.99 AC.)  
TRACT 2 OF EXHIBIT "A"  
DEED WITHOUT WARRANTY  
TO MOUNTAIN PLUM, LTD.  
VOL. 2297, PG. 139  
O.P.R.H.C.TX.

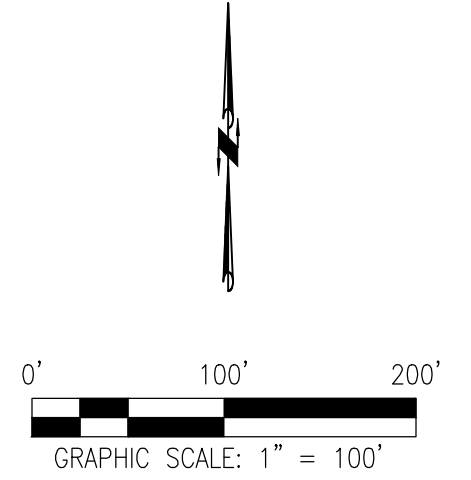
LOT 6  
18.78 ACRES

S 01°56'18" E 1,039.74'

[S 01°23'20" E 1,296.55']  
S 01°56'18" E 1,296.51'

(145.94 AC.)  
SPECIAL WARRANTY DEED  
FLINT HILLS RESOURCES  
CENTRAL TEXAS, LLC,  
VOL. 5167, PG. 585  
O.P.R.H.C.TX.

MATCH-LINE SHEET 3 OF 6  
MATCH-LINE SHEET 4 OF 6



(145.94 AC.)  
SPECIAL WARRANTY DEED  
FLINT HILLS RESOURCES CENTRAL TEXAS, LLC,  
VOL. 5167, PG. 585  
O.P.R.H.C.TX.

CHANNEL DRAINAGE EASEMENT  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

N 90°00'00" E 512.48'

RIKARDSON

80' R.O.W. HEREBY DEDICATED

7.5' P.U.E.

PUBLIC UTILITY EASEMENT  
DOCUMENT NO. \_\_\_\_\_  
O.P.R.H.C.TX.

LOT 3  
41.47 ACRES

A-10  
M.M. McCARVER LEAGUE NO. 4

N 88°17'17" E 1,022.93'  
[N 88°50'15" E 1,022.96']

100 YR FLOODPLAIN PER HEC-RAS  
MODEL COMPILED BY LANDDEV  
CONSULTING DATED NOVEMBER, 2020  
(HATCH)

PORTION OF  
(983.99 AC.)  
TRACT 2 OF EXHIBIT "A"  
DEED WITHOUT WARRANTY  
TO MOUNTAIN PLUM, LTD.  
VOL. 2297, PG. 139  
O.P.R.H.C.TX.

LOT 4  
47.02 ACRES

UNION PACIFIC RAILROAD  
(RIGHT-OF-WAY WIDTH VARIES)  
INTERNATIONAL & GREAT  
NORTHERN RAILROAD CO  
VOL. 1, PG. 22,  
D.R.H.C.TX.

MATCH-LINE SHEET 3 OF 6  
MATCH-LINE SHEET 6 OF 6

MATCH-LINE SHEET 4 OF 6  
MATCH-LINE SHEET 6 OF 6

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PLAT PREPARATION DATE  
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SEPTEMBER, 2021



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FINAL PLAT  
PLUM CREEK PHASE II SECTION 10  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS

SHEET 4 OF 6



FINAL PLAT  
PLUM CREEK PHASE II SECTION 10

MATCH-LINE SHEET 3 OF 6  
MATCH-LINE SHEET 6 OF 6

MATCH-LINE SHEET 4 OF 6  
MATCH-LINE SHEET 6 OF 6

UTILITY EASEMENT  
DOCUMENT NO. O.P.R.H.C.T.X.

LOT 4  
47.02 ACRES

LOT 3  
41.47 ACRES

A-10  
M.M. McCARVER LEAGUE NO. 4

(1.530 AC.)  
PARCEL 1  
WATER LINE EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014431,  
O.P.R.H.C.T.X.

(1.849 AC.)  
PARCEL 1  
WASTEWATER EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014433,  
O.P.R.H.C.T.X.

(1.849 AC.)  
PARCEL 1  
WASTEWATER EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014433,  
O.P.R.H.C.T.X.

(1.550 AC.)  
PARCEL 1  
WATER LINE EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014431,  
O.P.R.H.C.T.X.

PORTION OF  
(983.99 AC.)  
TRACT 2 OF EXHIBIT "A"  
DEED WITHOUT WARRANTY  
TO MOUNTAIN PLUM, LTD.  
VOL. 2297, PG. 139  
O.P.R.H.C.T.X.

100 YR FLOODPLAIN PER HEC-RAS  
MODEL COMPILED BY LANDDEV  
CONSULTING DATED NOVEMBER, 2020  
(HATCH)

(11.993 ACRES)  
SPECIAL WARRANTY DEED  
(DIRECTOR'S LOT-1/5TH UNDIVIDED INTEREST)  
MOUNTAIN PLUM, LTD.  
DOCUMENT NO. 20045961,  
O.P.R.H.C.T.X.

LOT 5  
12.56 ACRES

(0.351 AC.)  
WASTEWATER LINE EASEMENT  
DOCUMENT NO. 20030435,  
O.P.R.H.C.T.X.

(11.993 ACRES)  
SPECIAL WARRANTY DEED  
(DIRECTOR'S LOT-1/5TH UNDIVIDED INTEREST)  
MOUNTAIN PLUM, LTD.  
DOCUMENT NO. 20045961,  
O.P.R.H.C.T.X.

(0.1867 AC.)  
WATER LINE EASEMENT  
DOCUMENT NO. 20030434,  
O.P.R.H.C.T.X.

LOT 4  
47.02 ACRES

APPROX. LOCATION OF FEMA  
ZONE A FLOODPLAIN PER  
FIRMETTE #48209C0290F  
(SOLID HATCH)

(RECORD DEED LINE)

100 YR FLOODPLAIN PER HEC-RAS  
MODEL COMPILED BY LANDDEV  
CONSULTING DATED NOVEMBER, 2020  
(HATCH)

(2.881 AC.)  
PARCEL 2  
WASTEWATER EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014433,  
O.P.R.H.C.T.X.

(1.451 AC.)  
PARCEL 2  
WATER LINE EASEMENT  
CITY OF KYLE  
DOCUMENT NO. 20014431,  
O.P.R.H.C.T.X.

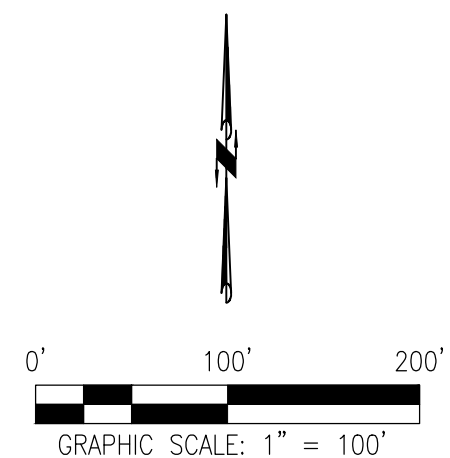
LOT 4  
47.02 ACRES

REMAINDER (983.99 AC.)  
TRACT 2 OF EXHIBIT "A"  
DEED WITHOUT WARRANTY  
TO MOUNTAIN PLUM, LTD.  
VOL. 2297, PG. 139  
O.P.R.H.C.T.X.

UNION PACIFIC RAILROAD  
(RIGHT-OF-WAY WIDTH VARIES)  
INTERNATIONAL & GREAT  
NORTHERN RAILROAD CO  
VOL. H, PG. 22,  
D.R.H.C.T.X.

S 13°29'02" W 2,474.39'  
[S 14°01'32" W 2,474.39']

MATCH-LINE SHEET 5 OF 6  
MATCH-LINE SHEET 6 OF 6



"PRELIMINARY"  
This Document shall not be Recorded  
for any purpose

INTERNATIONAL & GREAT  
NORTHERN RAILROAD  
VOL. N PG. 428  
D.R.H.C.T.X.

FILE No: 1373

PLAT PREPARATION DATE  
APPLICATION SUBMITTAL DATE

SEPTEMBER, 2021

No: REVISION:



TBPE NO: 16384 - TBPLS NO: 10194101  
5508 HIGHWAY 290 WEST, SUITE 150  
AUSTIN, TX 78735  
512.872.6696  
LDCTEAMS.COM

FINAL PLAT  
PLUM CREEK PHASE II SECTION 10  
M.M. McCARVER SURVEY, ABSTRACT NO. 10  
HAYS COUNTY, TEXAS

SHEET 6 OF 6





# CITY OF KYLE, TEXAS

## Kalterra Addition Lots 6-8 - Final Plat (SUB-21-0217)

**Meeting Date: 12/14/2021**  
**Date time:6:30 PM**

**Subject/Recommendation:** Kalterra Addition Lots 6-8 - Final Plat (SUB-21-0217) 8.994 acres; 3 lots located on the southwest corner of Kohler's Crossing and IH-35.

Staff Proposal to P&Z: Approve the plat.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

---

### ATTACHMENTS:

#### **Description**

Final Plat





# KALTERRA ADDITION LOTS 6-8

3 LOTS  
8.994 ACRES OUT OF THE  
T.G. ALLEN SURVEY, ABSTRACT #26  
CITY OF KYLE  
HAYS COUNTY, TEXAS

STATE OF TEXAS §  
COUNTY OF HAYS §

**WHEREAS KCP KOHLERS, LLC** is the owner of a tract of land out of the T.G. Allen Survey, Abstract Number 26, in the City of Kyle, Hays County, Texas, and being a portion of that same tract of land described by deed to KCP KOHLERS, LLC, a Texas limited liability company, as recorded under Document Number 20055533, Official Public Records of Hays County, Texas, (O.P.R.H.C.T.), the subject tract being more particularly described by metes and bounds as follows (bearings are based on State Plane Coordinate System, Texas South Central Zone (4204) North American Datum of 1983 (NAD '83)):

**BEGINNING** at a 1/2 inch rebar with cap stamped, "RPLS 4160" found for the southwest corner of said KCP tract and the herein described tract;

**THENCE** North 09 degrees 23 minutes 11 seconds East, with the west line of said KCP tract, a distance of 432.31 feet to a MAG nail set in concrete overpour of a metal fence corner post;

**THENCE** North 00 degrees 30 minutes 38 seconds West, partially with the west line of said KCP tract, a distance of 204.88 feet to a 1/2 inch rebar with pink cap stamped, "BARTON CHAPA" set (hereinafter called "capped rebar set");

**THENCE** through the interior of said KCP tract, the following calls:

1. South 74 degrees 36 minutes 26 seconds East, a distance of 603.85 feet to a capped rebar set;
2. South 21 degrees 49 minutes 33 seconds East, a distance of 48.14 feet to a capped rebar set;
3. South 30 degrees 42 minutes 47 seconds West, a distance of 137.17 feet to a capped rebar set;
4. South 59 degrees 17 minutes 13 seconds East, a distance of 249.99 feet to a 5/8 inch rebar with cap stamped, "TXDOT" found in the southeast line of said KCP tract;

**THENCE** South 30 degrees 42 minutes 50 seconds West, with the southeast line of said KCP tract, a distance of 314.40 feet to a MAG nail found for the southeast corner thereof;

**THENCE** North 82 degrees 11 minutes 49 seconds West, with the south line of said KCP tract, passing at a distance of 484.05 feet a 5/8 inch rebar with an illegible cap found, and continuing for a total distance of 659.16 feet to the **POINT OF BEGINNING** and enclosing 8.994 acres (391,766 square feet) of land, more or less.

**KNOWN ALL MEN BY THESE PRESENTS**

That KCP Kohlers, LLC, a Texas limited liability company, as the owner of that certain tract of land recorded in Document Number 20055533, of the Official Records of Williamson County, Texas does hereby dedicate to the public forever use of all additional ROW, streets, alleys, easements, parks, and all other lands intended for public dedication, or when the subdivider has made provision for perpetual maintenance thereof, to the inhabitants of the subdivision as shown hereon to be known as **Kalterra Addition Lots 6-8**.

KCP Kohlers, LLC, a Texas limited liability company

Member \_\_\_\_\_

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared, \_\_\_\_\_, as \_\_\_\_\_ of KCP Kohlers, LLC, a Texas limited liability company, on behalf of said KCP Kohlers, LLC, a duly authorized agent with authority to sign said document, personally known to me (and proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public-State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**SURVEYOR'S CERTIFICATE**

This is to certify that I, John H. Barton III, a Registered Professional Land Surveyor of the State of Texas, have prepared this plat from an actual survey on the ground, and that this map correctly represents that survey made by me or under my direction and supervision. Corner monuments were found or properly placed under my supervision in accordance with the subdivision regulations of the City of Kyle and with Ordinance# 439 of the City of Kyle. Existing easements of record shown hereon per Title Commitment G.F.# CTMJ63-8055632000513. Fieldwork was completed on October 23, 2020.

Date of Plat/Map: **October 8, 2021**

\_\_\_\_\_  
John H. Barton III, RPLS# 6737

This plat has been submitted to and considered by the Planning and Zoning Commission of the City of Kyle, Texas and is hereby approved by the commission.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Planning and Zoning Chairperson

**SURVEYOR'S NOTES:**

1. Bearings are based on the State Plane Coordinate System, Texas South Central Zone (4204) North American Datum of 1983 (NAD '83), distances are surface with a combined scale factor of 1.00011.
2. This property lies within Zone "X" of the Flood Insurance Rate Map for Hays County, Texas and Incorporated Areas, map no. 48209C0290F, with an effective date of September 2, 2005, via scaled map location and graphic plotting.
3. Monuments are found unless specifically designated as set.
4. Elevations (if shown) are North American Vertical Datum of 1988 (NAVD '88).
5. Owner information shown hereon is per Hays County Appraisal District

**PLAT NOTES:**

1. Obstructions in drainage easements are prohibited.
2. Setbacks are not shown on lots and shall conform to the City of Kyle Zoning Ordinance.
3. Limited access from Interstate Highway 35 as shown hereon.
4. Sidewalks shall be installed on the subdivision side of Kohlers Crossing. Those sidewalks not abutting a residential, commercial or industrial lot shall be installed when the adjoining street is constructed. Where there are double frontage lots, sidewalks on the street to which access is prohibited are also required to be installed when the streets in the subdivision are constructed. Ord. # 439, Article V, Sec. 10, Kyle Code.

Reviewed by:  
\_\_\_\_\_  
Leon Barba, City Engineer      Date \_\_\_\_\_

Reviewed by:  
\_\_\_\_\_  
Harper Wilder      Date \_\_\_\_\_  
Director of Public Works



**BCS**  
**BARTON CHAPA**  
**SURVEYING**  
5200 State Highway 121  
Colleyville, TX 76034  
Phone: 817-864-1957  
info@bcscdfw.com  
TBPLS Firm #10194474



**FORESITE**  
group  
TBPE Firm No. F-12878  
Foresite Group, LLC      o | 770.368.1399  
100 NE Loop 410      f | 770.368.1944  
Suite 1105      w |  
San Antonio, TX 78216      www.foresitegroup.net  
D/B/A Foresite Consulting Group of Texas,  
LLC

**LEGEND OF ABBREVIATIONS**

- D.R.H.C.T. DEED RECORDS, HAYS COUNTY, TEXAS
- P.R.H.C.T. PLAT RECORDS, HAYS COUNTY, TEXAS
- O.P.R.H.C.T. OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS
- DOC.# DOCUMENT NUMBER
- C.M. CONTROLLING MONUMENT
- SQ. FT. SQUARE FEET
- ROW RIGHT OF WAY
- CRS CAPPED REBAR SET

JOB NO.	2020.095.001
DRAWN:	BCS
CHECKED:	JHB
TABLE OF REVISIONS	
DATE	SUMMARY
<b>SHEET 2 OF 2</b>	



# CITY OF KYLE, TEXAS

## Ky-Tex Downtown - Concept Plan (SUB-21-0207)

**Meeting Date: 12/14/2021**  
**Date time: 6:30 PM**

**Subject/Recommendation:** Ky-Tex Downtown - Concept Plan (SUB-21-0207) 47.07 acres; 230 lots for property located near the northwest intersection of Veterans Drive and Gregg Road.

Staff Proposal to P&Z: Approve the concept plan.

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

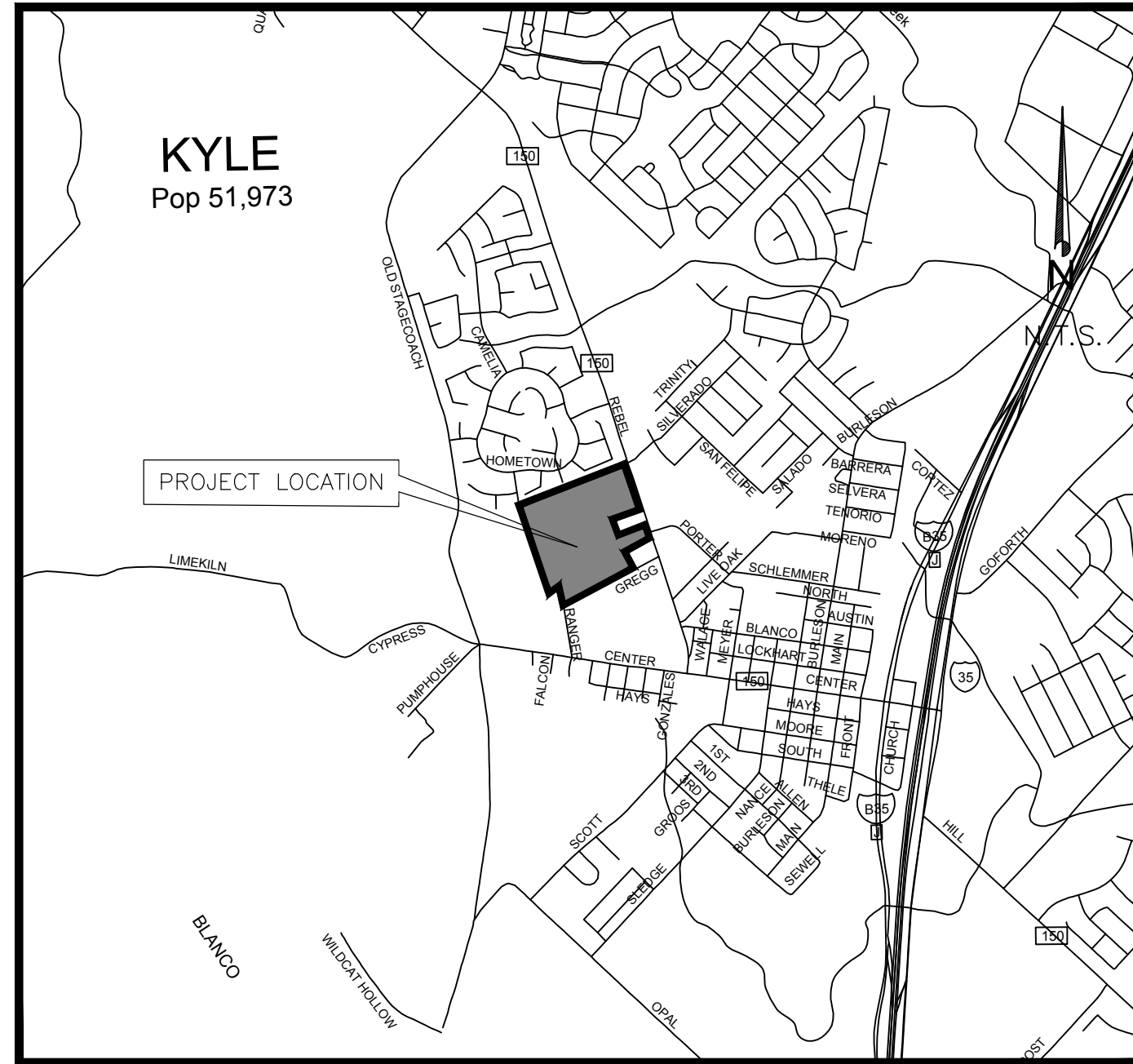
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### ATTACHMENTS:

#### **Description**

- ☐ Concept Plan

# CONCEPTUAL PLAN KY-TEX DOWNTOWN



### Sheet List Table

Sheet Number	Sheet Title
1	COVER SHEET
2	BOUNDARY SURVEY
3	ZONING ORDINANCES
4	ZONING PLAN
5	WATER & WASTEWATER PLAN
6	STORM & DRAINAGE PLAN

### Lot Summary Table

Lot Type	Number of Lots	Area (Ac.)
Single Family: R-1-A Zoning	84	11.37
Single Family: R-1-3 Zoning	75	10.84
Multifamily: R-1-T Zoning	42	2.33
Commercial: RS Zoning	3	7.59
Drainage/Open Space	20	3.14
Easements	2	0.32
ROW	1	9.89
ROW Dedication	3	1.59
<b>Total</b>	<b>230</b>	<b>47.07</b>

SUBMITTAL DATE: 10/11/2021

LEON BARBA, CITY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

HARPER WILDER, DIRECTOR OF PUBLIC WORKS \_\_\_\_\_ DATE \_\_\_\_\_

### SITE DESCRIPTION, ZONING & PROPOSED USE:

LEGAL DESCRIPTION: A SUBDIVISION OF 47.070 ACRES IN THE JOHN PHARASS SURVEY NO. 13, ABSTRACT NO. 361 HAYS COUNTY, TEXAS

TOTAL ACREAGE: 47.070 AC.

ZONING : CITY OF KYLE PUD ORD. NO. 1028

### GENERAL NOTES

- SUBJECT PROPERTY IS WITHIN THE CITY OF KYLE, TEXAS; AND IS SUBJECT TO THE CITY OF KYLE DEVELOPMENT STANDARDS.
- WATERSHED STATUS - THIS SUBDIVISION IS LOCATED IN THE BUNTON BRANCH-PLUM CREEK WATERSHED.
- NO PORTION OF THIS TRACT IS LOCATED WITHIN THE EDWARDS AQUIFER RECHARGE OR CONTRIBUTING ZONE.
- NO PORTION OF THIS SITE IS LOCATED WITHIN THE THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOODPLAIN AS IDENTIFIED ON MAP NO. [48209C0385F], DATED SEPTEMBER 2, 2005, FOR HAYS COUNTY, TEXAS AND INCORPORATED AREAS.
- THIS SITE IS LOCATED WITHIN THE HAYS COUNTY ESD #5 (KYLE FIRE).

<b>Owners:</b>	KY-TEX PROPERTIES		
<b>Address:</b>	1259 OLD STAGECOACH ROAD KYLE, TX 78640		
<b>Phone:</b>	(512)-268-3129	<b>Fax:</b>	N/A
<b>Acreage:</b>	47.070		
<b>Survey:</b>	A0361 JOHN PHARASS SURVEY, ACRES 0.50		
<b>Number of lots and proposed use (if more than one use is planned for the lots, provide land use summary showing # of lots are planned for each use):</b> SEE ABOVE LAND USE SUMMARY TABLE			
<b>Date:</b>	08/16/2021		
<b>Surveyor:</b>	JONATHAN O. NOBLES		
<b>Phone:</b>	(210)-879-0400	<b>Fax:</b>	N/A
<b>Engineer:</b>	CHRIS RAWLS		
<b>Phone:</b>	(512)-879-0426	<b>Fax:</b>	N/A

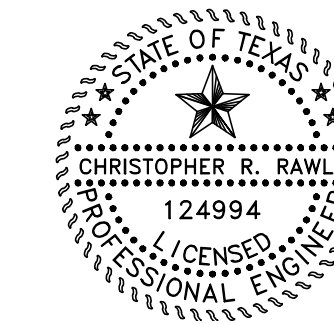
### SUBMITTED BY

*CHRIS RAWLS*

12/3/2021

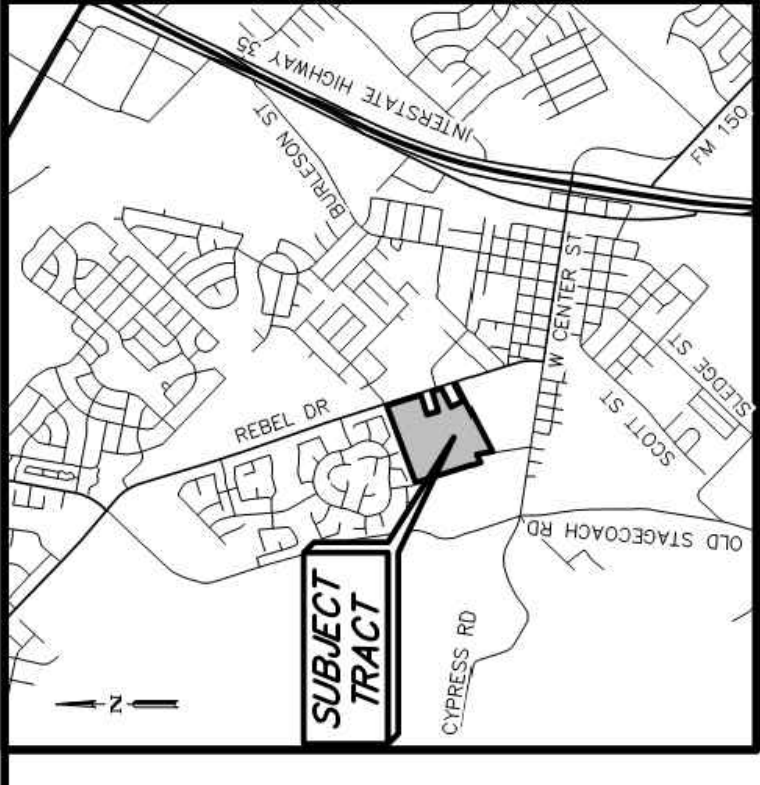
SEAL & SIGNATURE OF PROFESSIONAL ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

CHRISTOPHER R. RAWLS, P.E.  
BGE, INC. TBPE NO. F-1046  
1701 DIRECTORS BLVD, SUITE 1000  
AUSTIN, TEXAS 78728  
(512) 879-0400 (MAIN)



**BGE, Inc.**  
1701 Directors Blvd, Suite 1000  
Austin, TX 78744  
Tel: 512-879-0400 • www.bgeinc.com  
TBPE Registration No. F-1046

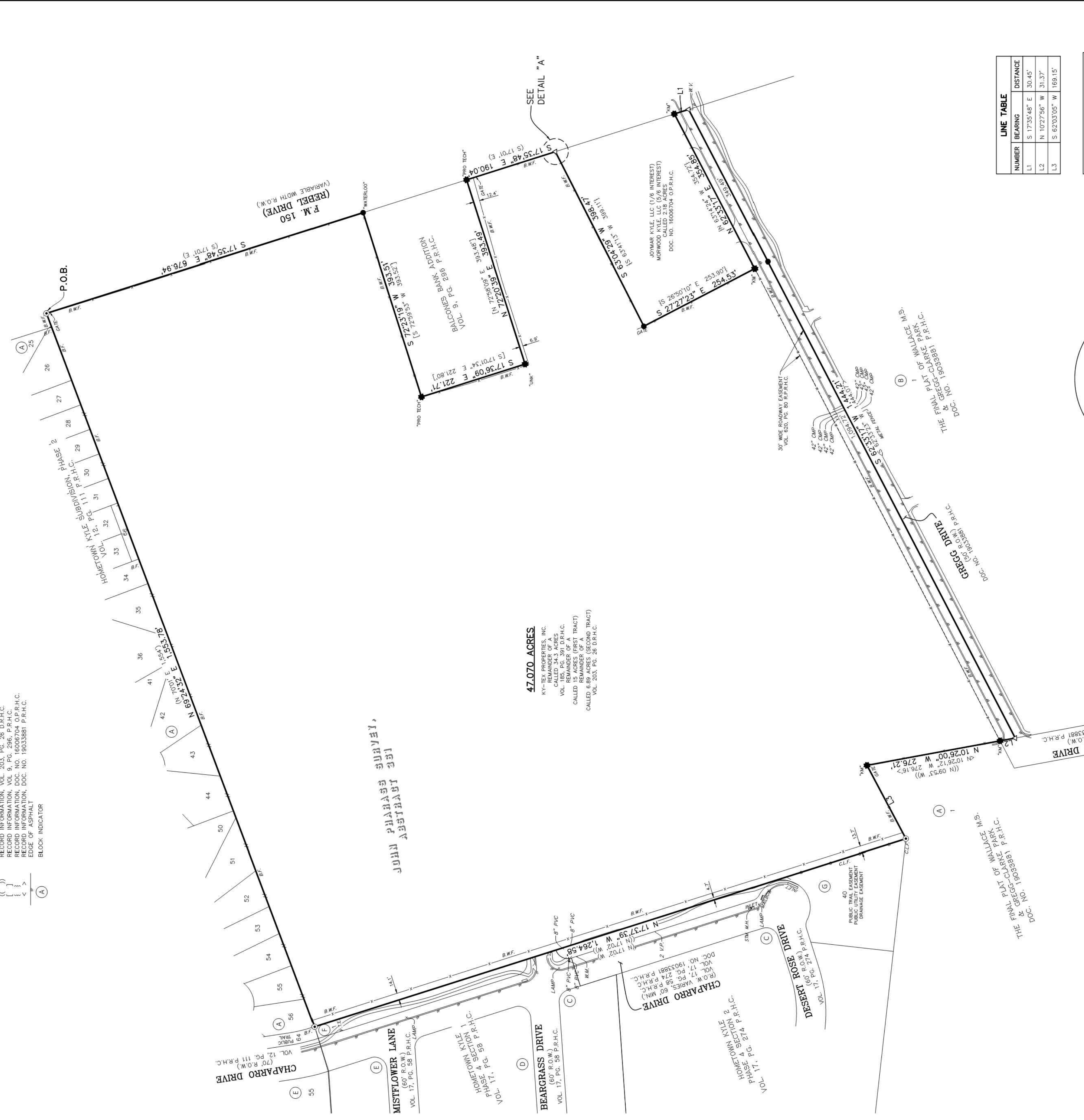
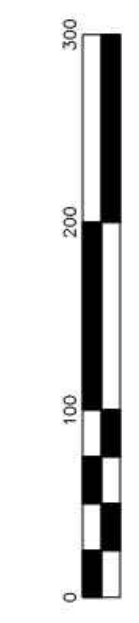




**LEGEND**

B.F. BOARD FENCE  
 C.L.F. CHAIN LINK FENCE  
 CMP CORRUGATED METAL PIPE  
 DOC DOCUMENT RECORDS OF HAYS COUNTY  
 G.P. GATE POST  
 H.C. HANDICAP NUMBER  
 N.O. NOT TO SCALE  
 N.T.S. NOT TO SCALE  
 O.P.R.H.C. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY  
 P.R.H.C. PLAT RECORDS OF HAYS COUNTY  
 P.T.E. PUBLIC TRAIL EASEMENT  
 P.U.E. PUBLIC UTILITY EASEMENT  
 R.O.W. RIGHT-OF-WAY  
 R.P.R.H.C. REAL PROPERTY RECORDS OF HAYS COUNTY  
 T.M. TOWN MONUMENT  
 V.P. VOLUME  
 V.P. VERTICAL PIPE  
 W.M. WATER METER  
 W.V. WATER VALVE  
 ● FOUND 1/2" IRON ROD  
 ● FOUND 1/2" IRON ROD W/CAP "4824 WATERLOO"  
 ● FOUND 1/2" IRON PIPE  
 ● FOUND ALUMINUM MONUMENT "KENT MOLLIAN RPLS 4341"  
 ● FOUND ALUMINUM MONUMENT "TECH 2219"  
 ● FOUND ALUMINUM MONUMENT "UNK"  
 ● CALCULATED POINT

RECORD INFORMATION, VOL. 185, PG. 391 D.R.H.C.  
 RECORD INFORMATION, VOL. 203, PG. 29 D.R.H.C.  
 RECORD INFORMATION, VOL. 203, PG. 29 D.R.H.C.  
 RECORD INFORMATION, DOC. NO. 16006704 O.P.R.H.C.  
 RECORD INFORMATION, DOC. NO. 19033881 P.R.H.C.  
 EDGE OF ASPHALT  
 BLOCK INDICATOR



**47.070 ACRES**  
 KENT MOLLIAN & ASSOCIATES, INC.  
 REMAINDER OF A TRACT  
 CALLED 34.3 ACRES (FIRST TRACT)  
 VOL. 185, PG. 391 D.R.H.C.  
 REMAINDER OF A TRACT  
 CALLED 15 ACRES (FIRST TRACT)  
 VOL. 203, PG. 29 D.R.H.C.  
 REMAINDER OF A TRACT  
 CALLED 6.89 ACRES (SECOND TRACT)  
 VOL. 203, PG. 26 D.R.H.C.

**LINE TABLE**

NUMBER	BEARING	DISTANCE
L1	S 17°35'48" E	300.45'
L2	N 10°27'56" W	31.37'
L3	S 62°03'05" W	169.15'

**RECORD LINE TABLE**

NUMBER	BEARING	DISTANCE
L1	<S 17°01' E)	<300.45>
L2	<N 09°53' W)	<31.37>
L3	<N 10°27'52" W)	<31.37>
L3	S 62°03'05" W	169.15'



**GENERAL NOTES**

- BEARING ORIENTATION IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE 4204. NA83. DISTANCES SHOWN HEREON ARE IN SURFACE AND HORIZONTAL DISTANCES TO GRID BY DIVIDING BY THE COMBINED SCALE FACTOR = 0.99989997.
- THE PROPERTY LIES IN UNSHARED ZONE "C" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS Delineated ON THE FLOOD INSURANCE RATE MAP FOR HAYS COUNTY, TEXAS, AND INCORPORATED AREAS, MAP NUMBER 4829CQ359F, REVISED SEPTEMBER 2, 2005.
- THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT OR REPORT. THE SURVEYOR HAS NOT ABSTRACTED THE SUBJECT PROPERTY, NOR MADE ANY CLAIMS OF INTEREST THEREIN. THIS SURVEY IS MADE IN ACCORDANCE WITH THE COVENANTS OR ANY OTHER ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.

**BGE, Inc.**  
 101 West Louis Henna Blvd, Suite 400, Austin, TX 78728  
 Tel: 512-879-0400 • www.bgeinc.com  
 TBPELS Licensed Surveying Firm No. 10106802

**BOUNDARY SURVEY OF 47.070 ACRES IN THE JOHN PHARASS SURVEY NO. 13, ABSTRACT NO. 361 HAYS COUNTY, TEXAS**



Jonathan O. Nobles  
 BGE, INC.  
 101 WEST LOUIS HENNA BLVD., SUITE 400  
 AUSTIN, TEXAS 78728  
 TELEPHONE: (210) 879-0400

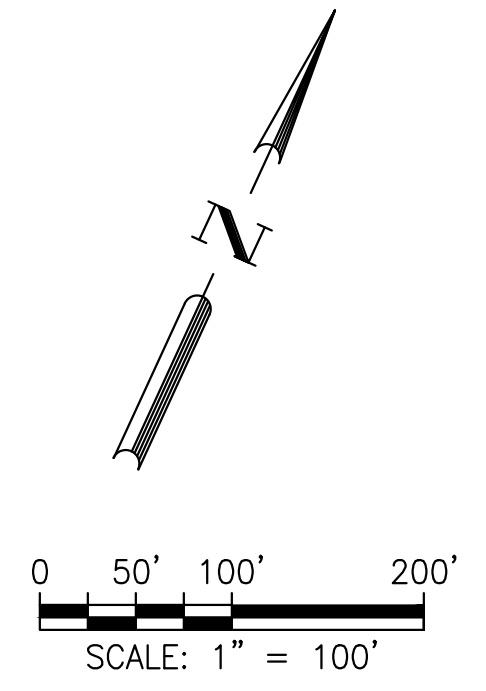
PARTY CHIEF: C.T.  
 TECHNICIAN: S.B.  
 FIELD BOOK NAME: J.O.N.  
 BASE FILE: G:\Users\jacob\Documents\Projects\3033-05\3033-05.dwg

ISSUE DATE: 08/17/2024  
 SCALE: 1"=100'  
 JOB NUMBER: 9233-00  
 SHEET 1 OF 1









**LEGEND**

	PROPERTY BOUNDARY
	EXISTING MINOR CONTOUR
	EXISTING MAJOR CONTOUR
	JURISDICTIONAL WATERS - JD-1
	R-1-A ZONING (84 UNITS)
	R-1-3 ZONING (75 UNITS)
	R-1-T ZONING (42 UNITS)
	RS ZONING 7.59 AC

REV	DESCRIPTION	DATE	APR

DESIGNED BY: \_\_\_\_\_  
 REVIEWED BY: \_\_\_\_\_  
 DRAWN BY: \_\_\_\_\_

**BGE Inc.**  
 101 W. LOUISIANA BLVD., SUITE 400  
 AUSTIN, TX 78728  
 TEL: 817-878-0400 • www.bgeinc.com  
 TBPPE Registration No. F-1046

**KY-TEX DOWNTOWN  
 KYLE, TEXAS  
 ZONING PLAN**



THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

12/3/21

CHRISTOPHER R. RAWLS  
 124994  
 LICENSED PROFESSIONAL ENGINEER  
 STATE OF TEXAS













# CITY OF KYLE, TEXAS

## Denny's Restaurant - Conditional Use Permit (CUP-21-0031)

**Meeting Date: 12/14/2021**  
**Date time: 6:30 PM**

**Subject/Recommendation:** Consider a request to construct an approximately 4,416 square foot Denny's free standing restaurant and site plan for property located at 19020 IH-35, within the I-35 overlay district. (Denny's Restaurant - CUP-21-0031)

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

---

### ATTACHMENTS:

#### **Description**

- Staff Memo
- Request Letter
- Landowner Authorization Letter
- Deed
- Colored Elevations 1
- Colored Elevations 2
- Dimensioned Elevations 1
- Dimensioned Elevations 2
- Colored Dumpster Enclosure



# CITY OF KYLE

## Community Development Department

---



### MEMORANDUM

**TO:** Planning & Zoning Commission

**FROM:** Will Atkinson – Senior Planner

**DATE:** Tuesday, December 14, 2021

**SUBJECT:** Denny's Restaurant – Conditional Use Permit (CUP-21-0031)

### REQUEST

The applicant seeks to construct an approximately 4,416 square foot Denny's free standing restaurant and site plan. The building will consist of both indoor and drive thru service, with materials consisting of a mix brick veneer, stone water table, stucco and tile.

### LOCATION

The property is located at 19020 IH-35, Kyle, TX 78640 in the Dry River District shopping center (Endeavor Group)).



## **OVERLAY DISTRICT**

The I-35 overlay district. The Interstate Highway 35 corridor conditional use overlay district (the I-35 overlay district) extends from the northernmost city limit boundary at I-35 to the southernmost city limit boundary at I-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of I-35. Sec. 53-899 is the code section staff uses to review for aesthetic compliance.

## **TEXT OF THE ZONING ORDINANCE**

**Sec. 53-896.** - Standards for review.

- (a) The planning and zoning commission shall determine whether the application and project is consistent and compliant with the terms and intent of this division, this chapter, chapter 32, article II, pertaining to the site development plan, and all other codes and ordinances of the city. The planning and zoning commission will determine if the proposed use, occupancy and structure will promote, preserve, and enhance, and will not damage or detract from the distinctive character of the community; will preserve and protect property values and taxable values; will not be detrimental or inconsistent with neighboring uses and occupancies; will not be detrimental to the general interests of the citizens; and will not be detrimental to the public health, safety and welfare. In conducting its review, the planning and zoning commission shall make examination of and give consideration to the traffic flow, development density, neighboring historical designs, neighboring uses, and elements of the application, including, but not limited to:
- (1) Height, which shall conform to the requirements of this chapter;
  - (2) Building mass, which shall include the relationship of the building width to its height and depth, and its relationship to the visual perception;
  - (3) Exterior detail and relationships, which shall include all projecting and receding elements of the exterior, including, but not limited to, porches and overhangs and the horizontal or vertical expression which is conveyed by these elements;
  - (4) Roof shape, which shall include type, form, and materials;
  - (5) Materials, texture, and color, which shall include a consideration of material compatibility among various elements of the structure;
  - (6) Compatibility of design and materials, which shall include the appropriateness of the use of exterior design details;
  - (7) Landscape design and plantings, which shall include lighting and the use of landscape details to highlight architectural features or screen or soften undesirable views;
  - (8) Vehicular and pedestrian access, which shall include location, width, and type of surface for all points of ingress and egress;

- (9) Signage, which shall include, in addition to the requirements chapter 29, pertaining to signs, the appropriateness of signage to the building in relation location, historical significance of the structure and neighboring structures, traffic visibility; obstruction of views from neighboring property;
- (b) The planning and zoning commission may request from the applicant such additional information, sketches, and data as it shall reasonably require. It may call upon experts and specialists for testimony and opinion regarding matters under examination. It may recommend to the applicant changes in the plans it considers desirable and may accept a voluntary amendment to the application to include or reflect such changes. The planning and zoning commission shall keep a record of its proceedings and shall attach to the application copies of information, sketches, and data needed to clearly describe any amendment to the application.
- (c) If the conditional use permit is granted by the planning and zoning commission, the applicant shall be required to obtain a building permit and/or a development permit, if required, provided all other requirements for a building permit and/or a development permit are met. The building permit and/or a development proposal as approved shall be valid from one year from the date of approval. The planning and zoning commission may grant an extension of the one-year limitation if sufficient documentation can be provided to warrant such an extension.

## **STAFF ANALYSIS**

Staff has reviewed the request and has made the following findings:

1. The proposed building meets the intent of the Retail Services zoning standards for the building and site work;
2. The architecture style of the building meets the intent for variation of architectural design requirements in the I-35 Overlay;
3. Materials types and specific colors are available on the elevation sheet.
4. The overall design aesthetic and color palette does match the current ideals within the I-35 Overlay standard for the preferable appearance of the Kyle I-35 corridor. Aesthetic variety is a good idea, as to promote architectural diversity within the City of Kyle.
5. The percentages of masonry does not meet the minimum 90% per face of building rule (Sec. 53-899(j)(1)). However, sometimes architectural design improves upon requirements in place by municipalities (i.e. design requirements do not always encapsulate all potential designs). The proposed design is better than what the code requires, while not meeting percentage standards.
  - Stucco use over 10% of building and used for more than detail uses (roof canopy).
  - Overall masonry (including stucco) at over 90%.
  - Mix of wood, rock, stucco and steel provides a cohesive design.

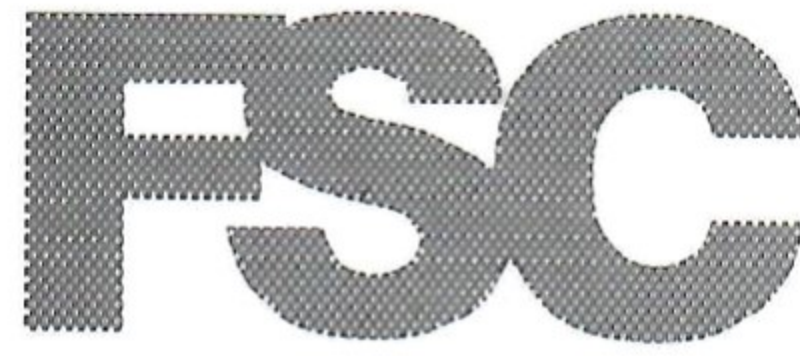


The site plan shown as an exhibit is code compliant, and matches the proposed building for both the Retail Services zoning district and I-35 Overlay. The building does not meet the requirements for a minimum of 90% four sided masonry, however the overall architectural design meets the intent of the I-35 Overlay. The Planning & Zoning Commission has the authority to approve designs that do not meet the requirements of the I-35 Overlay, but should be careful to ensure that such designs meet or exceed the intent of the overlay district.

### **RECOMMENDATION**

Staff has reviewed the color elevations for compliance with the Sec. 53-899 (I-35 Overlay design standards). Staff recommends approval of the conditional use permit (CUP-21-0031).





Food Service Concepts, Inc.  
1101-A W. Melinda Lane Phoenix, AZ 85027  
Ph: 623-492-0077 Fax: 623-492-0840

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May 12, 2021

To: City of Kyle  
100 W. Center Street  
Kyle, TX 78640

RE: Denny's -- 19020 IH 35, Kyle, TX 78640

The purpose of this letter is to provide the City of Kyle with a description of the project mentioned above. Food Service Concepts, Inc. plans to build a Denny's restaurant on the vacant Lot 11 at Kyle Crossing, an Endeavor project. The property is currently undergoing a replat which will leave 0.8 acres for the Denny's restaurant. The lot for the Denny's will provide 36 of the 44 parking spaces required. Parking spaces on the lots at either side of the Denny's are available for the Denny's to use to bring them up to the 44 parking spaces required.

The Denny's restaurant will have a drive thru lane with pick up window. Customers have the option of ordering from the menu board or placing an order online and picking up the order at the window. Pick up window is also available for 3<sup>rd</sup> party delivery.

The Denny's will operate 24 hours per day, 365 days per year. The site will be lit and landscaped appropriately to provide attraction towards the public passing by. This restaurant will provide an assortment of foods to the public at all hours of the day and night as well as employment opportunities for the surrounding community.

Feel free to contact me if there are any questions or concerns.

Thank you,

A handwritten signature in blue ink that reads "Lori King". The signature is written in a cursive, flowing style.

Lori King  
Food Service Concepts, Inc.



LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided:

A portion of Lot 11, Kyle Town Center Replat of Lot 1-A, Block A

The lot is currently 1.228 acres, but will soon be replatted to a smaller size (+/- .8 acres)

# of lots (if subdivided): 23 # of acres: 65.573

Site APN/Property ID #(s): 20015578

Location: 19020 IH 35 County: Hays

Development Name: Dry River District

OWNER

Company/Applicant Name: 135 Kyle Crossing Lot 11, Ltd.

Authorized Company Representative (if company is owner): \_\_\_\_\_

Type of Company and State of Formation: Ltd partnership TX

Title of Authorized Company Representative (if company is owner): \_\_\_\_\_

Applicant Address: 500 W 5<sup>th</sup> Street, Suite 700, Austin TX 78701

Applicant Fax: \_\_\_\_\_

Applicant Phone: 512-682-5516

Applicant/Authorized Company Representative Email: shesson@endeavor-re.com

APPLICANT REPRESENTATIVE

Check one of the following:

\_\_\_\_. I will represent the application myself; or

X I hereby designate Food Service Concepts, Inc. – Lori King (name of project representative) to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

Owner's Signature: Lori King Date: 05/12/21

State of Arizona §

County of Maricopa §

This instrument was acknowledged before me on (date) by (name of authorized company representative) who is a(n) (member, manager, authorized officer, etc.) of (name of company), a (Texas) (limited liability company, corporation, partnership, etc.).

SUBSCRIBED AND SWORN TO before me, this the 12<sup>th</sup> day of May, 2021





(Notary Seal)

Denzel B. Belfi  
Notary Public's Signature  
June 6, 2021  
My Commission Expires

PROJECT REPRESENTATIVE

Representative Name: Food Service Concepts, Inc. -- Lori King  
Representative Address: 1101-A W. Melinda Lane, Phoenix, AZ 85027  
Representative Phone: 623-492-0077  
Representative Email: lking@fscaz.net  
Representative's Signature: Lori King Date: 05/06/21

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

This instrument was prepared by  
and after recording, should be returned to:

L. Jeffrey Hubenak, Esq.  
Locke Lord LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701

**DEED OF TRUST AND SECURITY AGREEMENT**

This Deed of Trust and Security Agreement ("**Mortgage**") is a deed of trust from:

I35 KYLE CROSSING LOT 2, LTD.,  
I35 KYLE CROSSING LOT 5, LTD.,  
I35 KYLE CROSSING LOT 8, LTD.,  
I35 KYLE CROSSING LOT 9, LTD.,  
I35 KYLE CROSSING LOT 10, LTD.,  
I35 KYLE CROSSING LOT 11, LTD.,  
I35 KYLE CROSSING LOT 12, LTD.,  
I35 KYLE CROSSING LOT 18, LTD.,  
I35 KYLE CROSSING LOT 19, LTD.,  
I35 KYLE CROSSING LOT 20, LTD.,  
I35 KYLE CROSSING LOT 21, LTD., and  
I35 KYLE CROSSING LOT 22, LTD.,

each a Texas limited partnership, whose address is c/o Endeavor Real Estate Group, 500 West 5th Street, Suite 700, Austin, Texas 78701, Attention: Mr. David Roberts (collectively, called the "**Borrower**"), and

I35 KYLE CROSSING LOT 6, LTD.,  
I35 KYLE CROSSING LOT 14, LTD.,  
I35 KYLE CROSSING LOT 15, LTD.,  
I35 KYLE CROSSING LOT 16, LTD., and  
I35 KYLE CROSSING LOT 17, LTD.,

each a Texas limited partnership, whose address is c/o Endeavor Real Estate Group, 500 West 5th Street, Suite 700, Austin, Texas 78701, Attention: Mr. David Roberts (collectively, called the "**Grantor**" and together with the Borrower, collectively, the "**Mortgagor**"), to JAMES D. VANDEVENTER, Trustee, whose address for purposes hereof is 909 E. Southeast Loop 323, Ste. 400, Tyler, Smith County, Texas 75701 (called the "**Trustee**"), for the use and benefit of SOUTHSIDE BANK, a Texas state bank, whose address is P.O. Box 1079, Tyler, Texas 75710-1079

(1201 South Beckham, Tyler, Texas 75701), with a copy to 11815 Alterra Parkway, Suite 100, Austin, Texas 78758, Attention: Commercial Real Estate Department (called the "**Mortgagee**"). Mortgagor is also referred to herein as "**Debtor**" and "**Assignor**," and Mortgagee is also referred to herein as "**Secured Party**" and "**Assignee**." This instrument is also an assignment of rents and leases from Assignor to Assignee, and a security agreement between Debtor and Secured Party.

**WITNESSETH:**

**ARTICLE 1  
IDENTIFICATION OF THE MORTGAGED PROPERTY  
AND ITS CONVEYANCE TO TRUSTEE**

**Section 1.1 MORTGAGOR'S CONVEYANCE OF THE MORTGAGED PROPERTY TO TRUSTEE TO SECURE THE INDEBTEDNESS.** To secure payment of principal, lawful interest and other elements of the Indebtedness described and defined in Article 2, in consideration of the uses and trusts (the "**Trust**") established and continued by this Mortgage and in consideration of Ten Dollars (\$10.00) and other valuable consideration paid before delivery of this Mortgage by each of Trustee and Mortgagee to Mortgagor, who hereby acknowledges its receipt and that it is reasonably equivalent value for this Mortgage and all other security and rights given by Mortgagor, Mortgagor hereby Grants, Sells, Conveys, Transfers, Assigns, Sets Over, Confirms and Delivers unto the Trustee and to his successors or substitutes in the Trust, the following property (collectively, the "**Mortgaged Property**"):

- (a) **Real Property.** All of the real estate and premises described or referred to on Exhibit A, together with (i) all of Mortgagor's estate, right, title and interest in and to all easements and rights-of-way for utilities, ingress or egress to or from said property and (ii) all interests of Mortgagor in and to all streets, rights-of-way, alleys or strips of land adjoining said property (collectively, the "**Real Property**").
- (b) **Buildings and Improvements.** All of Mortgagor's right, title and interest in and to all existing and all future buildings on the Real Property and other improvements to it, all of which Mortgagor and Mortgagee hereby irrevocably declare to be real estate and part of the Real Property, including all water, sewage, drainage, flood control and water quality control facilities, wells, supply, collection and distribution systems, paving, landscaping and other improvements (collectively, the "**Improvements**").
- (c) **Fixtures, Equipment and Supplies.** All of Mortgagor's right, title and interest in and to all fixtures, equipment and supplies (the "**Fixtures and Equipment**") now or hereafter attached to, used, intended or acquired for use for, or in connection with, the construction, maintenance, operation or repair of the Real Property or Improvements, or for the present or future replacement or replenishment of used portions of it, and all related parts, filters and supplies, including but not limited to, all heating, lighting, cooling, ventilating, air conditioning, environment control, refrigeration, plumbing, incinerating, water-heating, cooking, gas, electric, monitoring, measuring, controlling, distributing and other equipment and fixtures, and all renewals and replacements of them, all substitutions for them and all additions and accessions to them, all of which Mortgagor and Mortgagee hereby also irrevocably declare to be real estate and part of the Real Property.



- (d) **Leases.** All Leases (as such term is defined in Loan Agreement).
- (e) **Utilities.** All wastewater, fresh water and other utilities capacity and facilities (the "Utilities Capacity") available or allocable to the Real Property and Improvements or dedicated to or reserved for them pursuant to any system, program, contract or other arrangement with any public or private utility, and all related or incidental licenses, rights and interests, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all such rights and the right to any credit, refund, reimbursement or rebate for utilities facilities construction or installation or for any reservation fee, standby fee or capital recovery charge promised, provided or paid for by Mortgagor or any of Mortgagor's predecessors or Affiliates (defined below) to the full extent now allocated or allocable to the Real Property or Improvements, plus all additional Utilities Capacity, if any, not dedicated or reserved to the Real Property or Improvements but which is now or hereafter owned or controlled by Mortgagor or by anyone (an "Affiliate", whether a natural person or an entity) who directly or through one or more intermediaries controls, is controlled by or is under common control with Mortgagor, to the full extent that such additional Utilities Capacity is necessary to allow development, marketing and use of the Real Property or Improvements for their highest and best use.
- (f) **After-acquired Property.** All estate, right, title and interest acquired by Mortgagor in or to the Real Property, Improvements, Fixtures and Equipment, Leases and Utilities Capacity after execution of this Mortgage.
- (g) **Appurtenances.** All rights and appurtenances (the "Appurtenances") belonging, incident or appertaining to the Real Property, Improvements, Fixtures and Equipment, Leases or Utilities Capacity or any part of them.
- (h) **Oil and Gas.** All of Mortgagor's right, title and interest in and to all existing and future minerals, oil, gas and other hydrocarbon substances in, upon, under or through the Real Property.
- (i) **Reversions and Remainders.** All of Mortgagor's right, title and interest in and to all rights and estates in reversion or remainder to the Real Property, Improvements, Fixtures and Equipment, Leases, Utilities Capacity or Appurtenances or any part of them.
- (j) **Contractual Rights.** All of Mortgagor's right, title and interest in and to all contracts (including leases or any other contracts for the use, occupancy, sale or exchange of all or any portion of the Real Property or the Improvements), franchises, licenses and permits whether executed, granted or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to or connected with the construction, development, occupancy, use or sale of the Real Property or the Improvements, whether now or at any time hereafter existing, and all amendments and supplements thereto and renewals and extensions thereof at any time made, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Mortgagor's other benefits thereunder, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Mortgagor's other benefits thereunder, including, without limitation, (i) that certain Standard Form of Agreement between Owner and Construction Manager as Constructor (AIA Document A133-2009) executed on June 24, 2020, between EMJ Corporation,

a Tennessee corporation dba EMJ Construction, as "Construction Manager", and I35 Kyle Crossing, Ltd., a Texas limited partnership, as original "Owner", and now serving as managing agent on behalf of I35 Kyle Crossing Lot 2, Ltd., I35 Kyle Crossing Lot 4, Ltd., I35 Kyle Crossing Lot 5, Ltd., I35 Kyle Crossing Lot 6, Ltd., I35 Kyle Crossing Lot 7, Ltd., I35 Kyle Crossing Lot 8, Ltd., I35 Kyle Crossing Lot 9, Ltd., I35 Kyle Crossing Lot 10, Ltd., I35 Kyle Crossing Lot 11, Ltd., I35 Kyle Crossing Lot 12, Ltd., I35 Kyle Crossing Lot 13, Ltd., I35 Kyle Crossing Lot 14, Ltd., I35 Kyle Crossing Lot 15, Ltd., I35 Kyle Crossing Lot 16, Ltd., I35 Kyle Crossing Lot 17, Ltd., and/or I35 Kyle Crossing Lot 18, Ltd., as applicable, each a Texas limited partnership, as "Owner", as said Standard Form of Agreement between Owner and Construction Manager as Constructor may now or hereafter be amended, and (ii) all rights as "Consenting Owner" now or hereafter held by I35 Kyle Crossing Lot 5, Ltd. and/or any other Mortgagor as an "Owner" of all or any portion of the "Developer Parcel" under that certain Restriction Agreement and Grant of Easements dated August 5, 2019 by and between Kyle Texas Company, LLC, an Ohio limited liability company (predecessor in interest to I35 Kyle Crossing Lot 5, Ltd), as developer, and Home Depot U.S.A., Inc. (predecessor in interest to HD Development of Maryland, Inc.), and recorded June 8, 2004, under Document No. 4016158, Vol. 2478, Page 732 in the Official Records of Hays County, Texas, as said Restriction Agreement and Grant of Easements may now or hereafter be amended.

- (k) **Other Estates and Interests.** All of Mortgagor's right, title and interest in and to all other estates, easements, interests, licenses, rights, titles, powers or privileges of every kind and character which Mortgagor now has, or at any time hereafter acquires, in and to any of the foregoing, including the proceeds from condemnation, or threatened condemnation, and the proceeds of any and all insurance covering any part of the foregoing; and all related parts, accessions and accessories to any of the foregoing and all replacements or substitutions therefor, as well as all other Improvements, Fixtures and Equipment, Utilities Capacity and Appurtenances now or hereafter placed thereon or accruing thereto. The foregoing shall not include the names "Endeavor" or any derivatives thereof.

**Section 1.2 TITLE WARRANTY.** TO HAVE AND TO HOLD the Mortgaged Property, together with every right, privilege, hereditament and appurtenance belonging or appertaining to it, unto the Trustee, his successors or substitutes in the Trust and his or their assigns, forever. Mortgagor represents that Mortgagor is the lawful owner of the Mortgaged Property with good and indefeasible title and has the right and authority to mortgage, grant a lien upon and convey the Mortgaged Property, and that the Mortgaged Property is free and clear of any liens, claims and encumbrances other than the lien, security interests and assignments evidenced hereby and those encumbrances and exceptions to title described in Exhibit B attached hereto and hereby made a part hereof (collectively the "**Permitted Encumbrances**"). Mortgagor hereby binds Mortgagor and Mortgagor's successors and assigns to forever WARRANT and DEFEND the Mortgaged Property and every part thereof unto the Trustee, his successors or substitutes in the Trust, and his or their assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim it or any part of it; subject, however, to the Permitted Encumbrances.

**ARTICLE 2**  
**THE INDEBTEDNESS SECURED**

**Section 2.1 CONVEYANCE IN TRUST TO SECURE DESIGNATED OBLIGATIONS.** This conveyance to the Trustee is in trust to secure all of the following present and future indebtedness and obligations:

- (a) **Note.** All indebtedness now or hereafter evidenced and to be evidenced by the promissory note of even date herewith, executed by Borrower, payable to the order of Mortgagee in the face principal amount of TEN MILLION FIVE HUNDRED SIXTY-FOUR THOUSAND THREE HUNDRED SEVENTY-FOUR AND NO/100 DOLLARS (\$10,564,374.00), maturing sixty (60) months from the date hereof, and any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases of such note (collectively, the "Note").
- (b) **Loan Agreement.** All obligations and indebtedness of Borrower now or hereafter created or incurred under the Construction Loan Agreement dated concurrently herewith between Borrower and Mortgagee, as the same may be amended, supplemented, restated or replaced from time to time (collectively, the "Loan Agreement").
- (c) **Other Specified Obligations.** All other obligations, if any, described or referred to in any other place in this Mortgage.
- (d) **Advances and Other Obligations Pursuant to this Mortgage's Provisions.** Any and all sums and the interest which accrues on them as provided in this Mortgage which Mortgagee may advance or which Borrower may owe Mortgagee pursuant to this Mortgage on account of Borrower's failure to keep, observe or perform any of Borrower's covenants under this Mortgage.
- (e) **Obligations under Credit Documents.** All present and future debts and obligations under or pursuant to (1) any Credit Documents (as defined in the Loan Agreement), including without limitation, any ISDA Master Agreements, or (2) all supplements, amendments, restatements, renewals, extensions, rearrangements, increases, expansions or replacements of them.
- (f) **Related Indebtedness.** All other loans or advances not otherwise specifically described in this Section now or hereafter made for the purpose of paying costs of developing, constructing, improving or operating all or any part of the Mortgaged Property.

**Section 2.2 INDEBTEDNESS DEFINED.** The term "**Indebtedness**" means and includes the Note and all other indebtedness and obligations described or referred to in Section 2.1. The Indebtedness includes interest and other obligations accruing or arising after (a) commencement of any case under any bankruptcy or similar laws by or against Borrower or any other person or entity now or hereafter primarily or secondarily obligated to pay all or any part of the Indebtedness or (b) the obligations of Borrower shall cease to exist by operation of law or for any other reason. The Indebtedness also includes all reasonable attorneys' fees and any other expenses incurred by Mortgagee in enforcing any of the Credit Documents. All liens, assignments and security interests created, represented or continued by this Mortgage, both present and future, shall be first, prior and superior to any lien, assignment, security interest, charge, reservation of title or other interest heretofore, concurrently or subsequently suffered or granted by Mortgagor or Mortgagor's successors or assigns, except only

statutory super priority liens for nondelinquent taxes and those other liens (if any) expressly identified and stated in this Mortgage to be senior.

### ARTICLE 3 SECURITY AGREEMENT

**Section 3.1 GRANT OF SECURITY INTEREST.** Without limiting any of the provisions of this Mortgage, this Mortgage shall be construed as a "Security Agreement" within the meaning of and create a security interest under the UCC (as defined below), and as such, Mortgagor, as Debtor, and referred to in this Article as "**Debtor**" (whether one or more) hereby grants to Mortgagee, as Secured Party, and referred to in this Article as "**Secured Party**" (whether one or more), a security interest in all of Debtor's remedies, powers, privileges, rights, titles and interests (including all of Debtor's power, if any, to pass greater title than it has itself) of every kind and character now owned or hereafter acquired, created or arising in and to (i) the Mortgaged Property (including both that now and that hereafter existing) to the full extent that the Mortgaged Property may be subject to Article 9 of the Uniform Commercial Code of the state or states where the Mortgaged Property is situated (the "UCC"), (ii) all furniture, furnishings, equipment, accounts, machinery, general intangibles, fixtures, inventory, chattel paper, notes, documents and other personal property owned by Debtor and used, intended or acquired for use, on, or in connection with the use, operation or development of, the Mortgaged Property, or otherwise related to the Mortgaged Property, and all products and proceeds of it, all security deposits under Leases now or at any time hereafter held by or for Debtor's benefit, all monetary deposits which Debtor has been required to give to any public or private utility with respect to utility services furnished to the Mortgaged Property, all funds, accounts, instruments, accounts receivable, documents, trademarks, trade names and symbols used in connection therewith, and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property, and all guaranties and warranties obtained with respect to all improvements, equipment, furniture, furnishings, personal property and components of any thereof located on or installed at the Mortgaged Property and (iii) the following described property:

- (a) **Contracts.** All contracts now or hereafter entered into by and between Debtor and any Original Contractor (as such term is defined in Section 53.001(7) of the Texas Property Code) or between Debtor and any other party, as well as all right, title and interest of Debtor under any subcontracts, providing for the construction (original, restorative or otherwise) of any improvements to or on any of the Mortgaged Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction;
- (b) **Plans.** All of the plans, specifications and drawings (including all engineering and other plans and specifications for any drainage, flood control and water quality control facilities, and all plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses for any structural Improvements) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Mortgaged Property;
- (c) **Design, etc. Agreements.** All agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development or consulting

services rendered or to be rendered in respect of planning, design, inspection or supervision of the construction, management or development of any of the Mortgaged Property;

- (d) **Lender or Investor Commitments.** Any commitment issued by any lender or investor other than Mortgagee to finance or invest in any of the Mortgaged Property; and
- (e) **Bonds.** Any completion bond, performance bond and labor and material payment bond and any other bond relating to the Mortgaged Property or to any contract providing for construction of improvements to any of the Mortgaged Property.

Together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles related to any of the foregoing Property now owned by Debtor or existing or hereafter acquired, created or arising. All the property described or referred to in this Section 3.1 is collectively referred to as the "**Collateral**", and the Collateral shall include any and all proceeds of any of the above-described Collateral. The Mortgaged Property and the Collateral are collectively referred to as the "**Property**".

**Section 3.2 DEBTOR'S COVENANTS CONCERNING PERSONALTY SUBJECT TO THE UCC.** Debtor covenants and agrees with Secured Party that in addition to and cumulative of any other remedies granted in this Mortgage to Secured Party or the Trustee, upon or at any time after the occurrence of an Event of Default (defined in Article 6 below) which is then continuing:

(a) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Debtor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell the same for the account of Debtor and to deduct from such sale proceeds all reasonable costs, expenses and liabilities of every character incurred by Secured Party in collecting such sale proceeds and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds on the Indebtedness in such manner as Secured Party may elect. Before any sale, Secured Party may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Secured Party may reasonably deem advisable and any sums expended therefor by Secured Party shall be reimbursed by Debtor. Secured Party may take possession of Debtor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Debtor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Debtor. All costs, expenses, and liabilities incurred by Secured Party in collecting such sales proceeds, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate (as defined in Article 7 below), all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this Section, Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Secured Party with



respect to the Collateral unless such loss is caused by the gross negligence, willful misconduct or bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Secured Party shall have all the rights of a secured party after default under the UCC and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and

(ii) it shall not be necessary that Secured Party take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale.

**Section 3.3 UCC RIGHTS ARE NOT EXCLUSIVE.** Should Secured Party elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Mortgage, such election shall not preclude Secured Party or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Mortgage as to the remaining personal property or fixtures.

**Section 3.4 MORTGAGE IS ALSO FINANCING STATEMENT.** Secured Party may, at its election, at any time after delivery of this Mortgage, file an original of this Mortgage as a financing statement or sign one or more copies of this Mortgage to use as a UCC financing statement. Secured Party's signature may be placed between the last sentence of this Mortgage and Debtor's acknowledgment or may follow Debtor's acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the effectiveness of this Mortgage as a deed of trust, mortgage, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement. Debtor's address and Secured Party's address shall be as set forth on page 1 of this Mortgage.

**Section 3.5 NO OTHER FINANCING STATEMENTS ON THE COLLATERAL.** So long as any amount remains unpaid on the Indebtedness, Debtor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Secured Party under this Mortgage, unless prior written specific consent and approval of Secured Party shall have been first obtained.

**Section 3.6 SECURED PARTY MAY FILE FINANCING AND CONTINUATION STATEMENTS.** Secured Party is authorized to file this Mortgage, a financing statement or statements and one or more continuation statements in any jurisdiction where Secured Party deems it necessary, and at Secured Party's request, Debtor will join Secured Party in executing one or more financing statements, continuation statements or both pursuant to the UCC, in form satisfactory to Secured Party, and will pay the costs of filing or recording them, in all public offices at any time and from time to time whenever filing or recording of this Mortgage, any financing statement or any continuation statement is deemed reasonable by Secured Party or its counsel to be necessary or desirable.

**Section 3.7 FIXTURES.** Certain of the Collateral is or will become "fixtures" (as that term is defined in the UCC) on the Real Property, and when this Mortgage is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a fixture filing with respect to such of the Collateral which is or may become fixtures.

For purposes of the security interest granted herein, Debtor hereby certifies to Secured Party the accuracy of the following information:

Name of Debtor & Debtor's Organizational Identification No.:

I35 KYLE CROSSING LOT 2, LTD. - 803559279  
I35 KYLE CROSSING LOT 5, LTD. - 803559311  
I35 KYLE CROSSING LOT 8, LTD. - 803559332  
I35 KYLE CROSSING LOT 9, LTD. - 803559335  
I35 KYLE CROSSING LOT 10, LTD. - 803559342  
I35 KYLE CROSSING LOT 11, LTD. - 803559351  
I35 KYLE CROSSING LOT 12, LTD. - 803559358  
I35 KYLE CROSSING LOT 18, LTD. - 803559647  
I35 KYLE CROSSING LOT 19, LTD. - 803559651  
I35 KYLE CROSSING LOT 20, LTD. - 803559657  
I35 KYLE CROSSING LOT 21, LTD. - 803559666  
I35 KYLE CROSSING LOT 22, LTD. - 803559677  
I35 KYLE CROSSING LOT 6, LTD. - 803559318  
I35 KYLE CROSSING LOT 14, LTD. - 803559369  
I35 KYLE CROSSING LOT 15, LTD. - 803559373  
I35 KYLE CROSSING LOT 16, LTD. - 803559621  
I35 KYLE CROSSING LOT 17, LTD. - 803559625

Address of Debtor: 500 West 5th Street, Suite 700, Austin, Texas 78701  
State of Organization: Texas  
Type of Organization: limited partnership

Name of Secured Party: Southside Bank  
Address of Secured Party: 909 E. Southeast Loop 323, Suite 400, Tyler, Texas 75701

**Section 3.8 ASSIGNMENT OF NON-UCC PERSONAL PROPERTY.** To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Debtor hereby assigns to Secured Party all of Debtor's right, title and interest in the Collateral to secure the Indebtedness. Release of the lien of this Mortgage shall automatically terminate this assignment.

**Section 3.9 DEBTOR'S WARRANTIES CONCERNING COLLATERAL.** Debtor warrants and represents to Secured Party that Debtor is the legal and equitable owner and holder of the Collateral free of any adverse claim and security interest or other encumbrance, except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Mortgage. Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its

proceeds or any interest in either. Debtor also warrants and represents that Debtor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Debtor is now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party.

**Section 3.10**            **STANDARD OF CARE.** Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself conclusively be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by Debtor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

**Section 3.11**            **CHANGE TERMS, RELEASE COLLATERAL.** Secured Party may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Debtor or discharging or otherwise affecting any liability of Debtor. Secured Party shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

#### **ARTICLE 4 MORTGAGOR'S COVENANTS**

**Section 4.1 COVENANTS FOR THE BENEFIT OF MORTGAGEE.** To better secure the Indebtedness, Mortgagor covenants and agrees with the Trustee and his substitutes and successors in the Trust, for the use and benefit of Mortgagee and with the intent that Mortgagee, the Trustee or both may enforce these covenants, that:

- (a)    **Liens, etc. and Remedies Cumulative.** No lien, assignment, security interest, guaranty, right or remedy in favor of Mortgagee granted in, secured by or ancillary to this Mortgage shall be considered as exclusive, but each shall be cumulative of all others which Mortgagee or the Trustee may now or hereafter have.
- (b)    **Mortgagor Waives Marshalling of Assets and Sale in Inverse Order of Alienation Rights.** Mortgagor hereby irrevocably WAIVES all rights of marshalling of assets or sale in inverse order of alienation in the event of foreclosure of this or any other security.
- (c)    **Mortgagor Will Correct Title Defects.** If at any future time any defect should be found to exist in the title to any of the Property other than the Permitted Encumbrances, Mortgagor agrees to promptly commence and thereafter diligently proceed to cure the defect and defend the title. If any lien or encumbrance against the Property, junior, equal or superior in rank or priority to the lien of this Mortgage other than the Permitted Encumbrances should be discovered or arise at any time in the future then, unless Mortgagee is the only holder of it, or Mortgagee has given specific prior written consent to it, Mortgagor agrees to promptly discharge and remove it from the Mortgaged Property; provided, however, that in the case of any such involuntary lien or encumbrance, Mortgagor may provide a bond in form, substance and amount reasonably satisfactory to Mortgagee (but not greater than 150% of the amount of the claim) covering and affecting any such lien or encumbrance in lieu of discharging and

removing such involuntary lien or encumbrance, but only so long as no attempt shall be made to foreclose any such involuntary lien or encumbrance. Mortgagor will notify Mortgagee in writing within ten (10) days of the time that Mortgagor becomes aware of the filing of any mortgage, lien, security interest, financing statement or other security device whatsoever against the Property.

- (d) **Insurance Requirements.** At all times before the final termination of this Mortgage, Mortgagor agrees to provide, maintain and keep in force the insurance policies and coverages required under the Loan Agreement.

If Mortgagor fails to obtain any insurance as required by this Section, Mortgagee may obtain such insurance at Mortgagor's expense. In connection with the Mortgagee's right to obtain coverage to protect Mortgagee's interest in the Mortgaged Property, the following notice is hereby given to Mortgagor in accordance with the requirements of Section 307.052 of the Texas Finance Code:

**NOTICE:**

- (i) **MORTGAGOR IS REQUIRED TO: (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE FOR THE FULL REPLACEMENT COST THEREOF; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME MORTGAGEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS;**
- (ii) **MORTGAGOR MUST, IF REQUIRED BY MORTGAGEE, DELIVER TO MORTGAGEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND**
- (iii) **IF MORTGAGOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (i) OR (ii) ABOVE, MORTGAGEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF MORTGAGOR AT MORTGAGOR'S EXPENSE.**
- (e) **Insurance Companies, Policies, Endorsements and Premium Payments.** Mortgagor agrees that all required insurance will be written on forms and by companies as required under the Loan Agreement.
- (f) **Mortgagee's Rights to Collect Insurance Proceeds.** Mortgagor hereby assigns to Mortgagee the exclusive right to collect any and all monies that may become payable under any insurance policies covering any part of the Property, or any risk to or about the Property. Mortgagee shall fully cooperate with and assist Mortgagor with respect to the filing of insurance claims and the collection of insurance proceeds so long as Mortgagee reasonably concurs with Mortgagor's actions with respect thereto and all reasonable costs incurred by Mortgagee in connection with such cooperation and participation are promptly paid or reimbursed by Mortgagor upon the request of Mortgagee.

- (g) **Effects of Foreclosure on Insurance Policies and Post-foreclosure Event Claims.** Foreclosure of this Mortgage shall automatically constitute foreclosure upon all policies of insurance insuring any part of or risk to the Property and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Property at foreclosure, as their respective interests may appear, shall automatically accede to all of Mortgagor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as insured(s) on request, whether or not the trustee's deed or bill of sale to any such successful bidder mentions insurance.
- (h) **Application of Insurance Proceeds Collected Before Foreclosure.** In the event of loss or destruction of all or any portion of the Property, Mortgagor may, at its option, but subject to the requirements of the Loan Agreement, cause Mortgagee to either (i) apply all such monies or any part thereof toward the payment of the Indebtedness, whether the same be then due or not, such application to be made in such manner and order as Mortgagee shall elect, and any balance of insurance proceeds remaining after such application shall be delivered to Mortgagor or (ii) disburse to Mortgagor any insurance proceeds received to be used by Mortgagor solely for the repair, rebuilding and restoration (hereinafter collectively referred to as the "**Restoration Work**") of the Property; provided, however, that the disbursement to Mortgagor of such insurance proceeds shall be and is hereby made subject to compliance by Mortgagor with the following terms, conditions and procedures (hereinafter collectively referred to as the "**Disbursement Procedures**"), to wit:
- (1) The actual disbursement of such insurance proceeds shall be made in the same manner and upon the same terms and conditions as Mortgagee normally and customarily imposes for disbursement of loan proceeds under construction loans of similar scope and size;
  - (2) If the estimated cost (as certified to Mortgagee by the restoration architect) of the Restoration Work exceeds the proceeds of the insurance available for application thereto, then an amount of money equal to such excess shall be escrowed with Mortgagee prior to the commencement of the Restoration Work to be used solely for payment of the costs of such Restoration Work, and any amount so escrowed with Mortgagee shall be disbursed by Mortgagee in accordance with the Disbursement Procedures prior to the disbursement of any of such insurance proceeds;
  - (3) Mortgagor will continue to be able, in the reasonable judgment of Mortgagee, to complete construction of the Improvements on or before the maturity date of the Note;
  - (5) No Event of Default (as defined in the Loan Agreement) shall have occurred which is then continuing; and
  - (6) If the entire principal portion of the Note shall become due at any time for any reason, and if at that time any amounts are held by Mortgagee pursuant to any subparagraph of this paragraph, then Mortgagee is hereby authorized to apply such amounts on any amounts due pursuant to the Note or any other Credit Documents.

- (i) **Flood Insurance Requirements.** Except as may be expressly disclosed on the survey of the Real Property received and approved by Mortgagee prior to the date hereof, no portion of the Property is currently located within an area that has been designated or identified as an area having special flood hazards or flood prone characteristics (hereinafter referred to as the "Flood Plain") by the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended and in effect, and should the Property, or any part thereof, be hereafter so designated as being within the Flood Plain, Mortgagor will maintain, at all times thereafter that any Indebtedness is outstanding, flood insurance with respect to the Property in amounts not less than the maximum limit of insurance coverage then available with respect to the Property pursuant to any and all national and state flood insurance program then in effect, and cause all insurance so carried to be made payable to Mortgagee pursuant to a standard mortgagee clause, without contribution, and cause copies of all such policies to be delivered to Mortgagee.
- (j) **Application of Insurance Proceeds Collected After Foreclosure.** Unless Mortgagee or Mortgagee's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Mortgagee, shall have no interest in such proceeds and Mortgagee shall apply them, if and when collected, to the Indebtedness in such order and manner as Mortgagee shall then elect and remit any remaining balance to Mortgagor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Mortgagee at the foreclosure sale and are not actually received by Mortgagee until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Mortgagor shall have no interest in them and shall receive no credit for them.
- (k) **Mortgagee Not Obligated to Require, Provide or Evaluate Insurance.** Mortgagee shall have no duty to Mortgagor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance.
- (l) **Mortgagee May Elect to Insure Only its Own Interests.** If Mortgagee elects at any time or for any reason to purchase insurance relating to the Property, it shall have no obligation to cause Mortgagor or anyone else to be named as an insured, to cause Mortgagor's or anyone else's interests to be insured or protected or to inform Mortgagor or anyone else that his or its interests are uninsured or underinsured.
- (m) **Mortgagor Will Correct Defects, Provide Further Assurances and Papers.** Upon Mortgagee's written request, Mortgagor will promptly correct any defect which hereafter may be discovered in the text, execution or acknowledgment of the Note, this Mortgage or any Credit Document executed by Mortgagor or in the description of any of the Property, and will deliver such further customary assurances and execute such additional customary papers as in the reasonable opinion of Mortgagee or its legal counsel shall be necessary, proper or appropriate (1) to better convey and assign to the Trustee and Mortgagee all the Property intended or promised to be conveyed or assigned or (2) to properly evidence the intended or promised security for the Indebtedness.
- (n) **Mortgagor Will Pay Taxes and Impositions and Furnish Receipts.** Mortgagor agrees at its own cost and expense to pay and discharge (or cause to be paid and discharged) all other



taxes, assessments, maintenance charges, permit fees, impact fees, development fees, capital recovery charges, utility reservation and standby fees and all other similar and dissimilar impositions of every kind and character ("**Impositions**") charged, levied, assessed or imposed against any interest in any of the Property, before they become delinquent; provided, however, that Mortgagor shall have the right to actively contest such Impositions in good faith if Mortgagor shall establish sufficient reserves to pay any such contested Impositions that are later determined to be properly owed by Mortgagor; and provided, further, that no attempts shall be made to foreclose any lien for such Impositions. Mortgagor agrees to furnish due proof of such payment to Mortgagee promptly after payment and before delinquency. Mortgagor also agrees to hereafter file all income, franchise and other tax returns within the time frames that they are required to be filed and pay all taxes shown thereon to be due, including interest and penalties, except for those taxes which are being diligently contested in good faith and for payment of which adequate reserves have been set aside by Mortgagor.

- (o) **Mortgagor to Pay Monthly Tax and Insurance Deposits on Request.** After Mortgagee has requested that such payments be made, Mortgagor agrees to pay the monthly tax and insurance premium deposits required by Article 8 and to provide Mortgagee any additional sums needed to pay the taxes and insurance premiums for the Property when due.
- (p) **Mortgagor Won't Grant Easements, Etc.** Except for customary and ordinary easements reasonably required for the development and use of the retail project to be developed upon the Property under the terms of the Loan Agreement (such easements to not be granted under or beneath the location or the contemplated location of any building(s) located or to be located upon the Property), Mortgagor shall not grant, join in or consent to any lien, security interest, easement, license, use or other charge or interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed).
- (q) **Mortgagor Will Protect Property from Mechanic's Liens.** Mortgagor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Mortgage, for any such bill which may be legally due and payable; provided, however, that Mortgagor shall have the right to actively contest any such bills in good faith if Mortgagor shall either (1) provide a bond in form, substance and amount satisfactory to Mortgagee covering and affecting any lien for any such bills or (2) establish a cash reserve therefor (which Mortgagee may require to be deposited with it) in an amount reasonably satisfactory to Mortgagee, and provided, further, that no attempt shall be made to foreclose any such lien. Mortgagor agrees to furnish due proof of such payment to Mortgagee after payment and before delinquency.
- (r) **Mortgagor Will Maintain Property and Won't Remove Improvements.** Mortgagor agrees to keep, preserve, and maintain all elements of the Property in a good state of repair and condition, ordinary wear and tear and casualty and condemnation excepted. Mortgagor will not tear down, damage or attempt to remove, demolish or materially alter or enlarge any elements of the Property, or construct any new Improvements (except for those improvements to the Mortgaged Property contemplated under the Loan Agreement), without

Mortgagee's prior written consent, except as required under applicable laws or for compliance with the terms of the Credit Documents. Mortgagor shall not grant, join in or consent to any lien, security interest, easement, license, use or other charge or interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Mortgagee.

- (s) **Mortgagee's Inspection and Discussion Rights.** Mortgagor agrees to permit Mortgagee and its agents, representatives and employees at all reasonable times (and subject to rights of tenants and contractors) to go upon, examine, inspect and remain on the Mortgaged Property, to assist and cooperate, and require Mortgagor's employees, agents and contractors to cooperate, with Mortgagee and to furnish to Mortgagee on request all pertinent information concerning the physical and economic condition, development and operation of the Mortgaged Property. Mortgagee may discuss the Mortgaged Property directly with any of Mortgagor's officers and managers.
- (t) **Mortgagee May Grant Releases without Impairing Other Collateral or Rights.** At all times, Mortgagee shall have the right to release any part of the Property or any other security from this Mortgage or any other security instrument or device without releasing any other part of the Property or any other security, without affecting Mortgagee's lien, assignment or security interest as to any property or rights not released and without affecting or impairing the liability of any maker, guarantor or surety on the Note or other obligation.
- (u) **Mortgagor Will Notify Mortgagee of Legal Proceedings and Defend Lien; Mortgagee May Act if Mortgagor Doesn't.** Mortgagor will notify Mortgagee in writing promptly of the commencement of any legal proceedings affecting any part of the Property and will engage and pay the reasonable fees of legal counsel to answer and to defend and preserve Mortgagee's liens, rights and interests and their rank and priority. If Mortgagor fails or refuses to promptly begin or to diligently continue any such acts, then Mortgagee may elect to do so and may take such action in behalf of Mortgagor, in Mortgagor's name and at Mortgagor's expense.
- (v) **Partnership Existence.** Mortgagor agrees to maintain its existence as a Texas limited partnership, and to obtain and maintain all franchises and permits necessary for it continuously to be in good standing in the State of Texas with full power and authority to conduct its regular business and to own and operate the Mortgaged Property until final termination of this Mortgage.
- (w) **Legal Compliance, Governmental Notices.** Mortgagor will operate the Property and conduct any construction, repairs and renovation of all or any portion of the Real Property in compliance in all material respects with all requirements of governmental and quasi-governmental authorities having jurisdiction over Mortgagor or the Property and will comply with and punctually perform, in all material respects, all of the covenants, agreements and obligations imposed upon it or the Property.
- (x) **Perform Other Obligations.** Mortgagor will pay punctually and discharge when due, or renew or extend, any indebtedness incurred by it and will discharge, perform and observe the covenants, provisions and conditions to be performed, discharged and observed on the part of

Mortgagor in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any mortgage, pledge or lien existing at any time upon any of the property or assets of Mortgagor; provided, however, that nothing contained in this subsection shall require Mortgagor to pay, discharge, renew or extend any such indebtedness or to discharge, perform or observe any such covenants, provisions and conditions so long as Mortgagor shall be diligently and in good faith contesting any claims which may be asserted against it with respect to any such indebtedness or any such covenants, provisions and conditions and shall set aside on its books reserves with respect thereto deemed adequate by Mortgagee.

- (y) **Notice of Condemnation and Other Proceedings.** Immediately upon obtaining actual knowledge or receipt of written notice of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Mortgagor will notify Mortgagee in writing of the pendency of such proceedings. Mortgagor shall diligently prosecute any such proceedings and shall be responsible for payment of all expenses incurred by it, including its attorneys' fees, in connection with such proceedings. Mortgagee may participate in any such proceedings, and Mortgagor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall consult with Mortgagee, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings, but the fees and expenses of Mortgagee's attorneys and experts in connection therewith shall not be paid by Mortgagor and shall be paid by Mortgagee unless an Event of Default has occurred which is then continuing.
- (z) **Maintenance.** Mortgagor will, or will cause its managers to, do and perform any and all acts and things relating to the management, upkeep and operation of the Property as are customarily performed by managing agents and owners of properties comparable to the Property, similarly situated, and shall otherwise operate the Property, or cause the Property to be operated, in an efficient manner and in accordance with all legal requirements and the terms and conditions of this Mortgage and the other Credit Documents.

## ARTICLE 5 MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

To induce Mortgagee to extend financial accommodations, including credit under the Note, Mortgagor makes the warranties and representations set forth in this Article.

**Section 5.1 MORTGAGOR SOLVENT.** Mortgagor is now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or, to Mortgagor's knowledge, threatened in writing against Mortgagor. Mortgagor's liabilities and obligations under this Mortgage and all other Credit Documents do not and will not render Mortgagor insolvent, cause Mortgagor's liabilities to exceed Mortgagor's assets or leave Mortgagor with too little capital to properly conduct all of its business as contemplated to be conducted.

**Section 5.2 NO FALSE REPRESENTATION.** To Mortgagor's knowledge, no representation or warranty contained in this Mortgage or any other Credit Document executed by Mortgagor and no statement contained in any certificate, schedule, list, financial statement or other papers furnished to Mortgagee

by or on behalf of Mortgagor contains, or will contain, any untrue statement of material fact, or omits, or will omit, to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect.

**Section 5.3 TITLE.** Mortgagor has good and indefeasible title to the Property, free and clear of any lien or security interest except only for liens and security interests against the Mortgaged Property which are expressly permitted by this Mortgage. The lien and security interest of this Mortgage will constitute a valid and perfected first and prior liens and security interests on the Property, subject to no other liens, security interests or charges whatsoever.

**Section 5.4 MORTGAGOR HAS ALL NECESSARY RIGHTS.** All easements, rights-of-way, utilities and other rights necessary to maintain and operate the Property as a retail project have been or will be obtained in a timely manner and shall remain in full force and effect.

**Section 5.5 LEGAL REQUIREMENTS.** To Mortgagor's knowledge, Mortgagor and the Property are in compliance with all applicable legal requirements in all material respects.

## **ARTICLE 6 DEFAULTS AND REMEDIES**

**Section 6.1 RELEASE FOR FULL PAYMENT AND PERFORMANCE.** Subject to the automatic reinstatement provisions of Section 9.16 below, this Mortgage shall terminate and be of no further force or effect (and shall be released on Mortgagor's written request and at a reasonable cost and expense to Mortgagor) upon full payment of the Indebtedness and complete performance of all of the obligations of Mortgagor under the Credit Documents.

**Section 6.2 EVENTS OF DEFAULT.** The occurrence of any Event of Default (herein so called) under the terms of the Loan Agreement shall constitute an Event of Default under this Mortgage.

**Section 6.3 REMEDIES.** Upon the occurrence of any Event of Default, and at any time thereafter during the continuance of such Event of Default:

- (a) **Indebtedness Due.** All Indebtedness in its entirety shall, at the option of Mortgagee, become immediately due and payable without further presentment, demand, notice of intention to accelerate or notice of acceleration, or other notice of any kind, all of which are hereby expressly WAIVED (except to the extent required under applicable laws or as expressly required under the terms of any applicable Credit Documents to establish the existence of such Event of Default), and the liens and security interests created or intended to be created hereby shall be subject to foreclosure, repossession and sale in any manner provided for herein or provided for by law, as Mortgagee may elect, and Mortgagee may exercise any and all of its rights under this Mortgage, the Note and any of the other Credit Documents.
- (b) **Legal Proceedings.** Trustee and Mortgagee shall have the right and power to proceed by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement of Mortgagor contained herein or in aid of the execution of the powers herein granted, or for foreclosure or the sale of the Property or any part thereof under the judgment or decree

of any court of competent jurisdiction, or for the enforcement of any other appropriate legal or equitable remedy.

- (c) **Trustee's Sale.** It shall be the duty of the Trustee and of his successors and substitutes in the Trust, on Mortgagee's request (which request is hereby presumed) to enforce the Trust by selling the Mortgaged Property as is provided in this Mortgage.

**Section 6.4 Time and Place of Sale and Notices.** The sale shall be a public sale at auction held between 10 A.M. and 4 P.M. of the first Tuesday of a month (provided however, if the first Tuesday of such month is January 1 or July 4, then said public sale at auction for such month shall be held to the first Wednesday of the applicable month). The sale shall take place at the county courthouse in the county in which the Real Property is located, or if it is located in more than one county, the sale will be made at the courthouse in one of those counties. The sale shall occur at the area at that courthouse which the commissioners' court of that county has designated as the place where such sales are to take place by designation recorded in the real property records of that county, or if no area is so designated, then the notice of sale shall designate the area at the courthouse where the sale covered by that notice is to take place, and the sale shall occur in that area. Notice of the sale shall include a statement of the earliest time at which the sale will occur and shall be given at least twenty-one (21) days before the date of the sale (1) by posting at the courthouse door of each county in which the Real Property is located a written notice designating the county in which the Real Property will be sold, (2) by filing in the Office of the County Clerk of each county in which the Real Property is located a copy of the notice posted under subsection (1) above and (3) by the holder of the Indebtedness to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of a holder of the Indebtedness, is obligated to pay that Indebtedness. The sale shall begin at the time stated in the notice of sale or not later than three (3) hours after that time. Service of any notice under this Section by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor entitled to it at that debtor's last known address as shown by the records of a holder of the Indebtedness. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service. After such written notice shall have been posted and filed, as aforesaid, and such notice shall have been served upon such debtor or debtors, as aforesaid, the Trustee (or his successor or substitute then acting) shall perform his duty to enforce the Trust by selling the Mortgaged Property, either as an entirety or in parcels as the Trustee acting may elect, all rights to a marshalling of assets or sale in inverse order of alienation being waived, as aforesaid to the highest bidder or bidders for cash, and make due conveyance to the purchaser or purchasers, with general warranty, and the title to such purchaser or purchasers, when so made by the Trustee acting, Mortgagor binds itself, its successors and assigns, to warrant and forever defend against the claims and demands of every person whomsoever lawfully claiming or to claim the same or any part thereof. The provisions of this Mortgage with respect to posting and giving notices of sale are intended to comply with the provisions of Section 51.002 of the Texas Property Code as in force and effect on January 1, 1991, and in the event the requirement for any notice under such Section 51.002 shall be eliminated or the prescribed manner of giving it shall be modified by future amendment to, or adoption of any statute superseding, such Section 51.002, the requirement for such particular notice shall be deemed stricken from or modified in of this Mortgage in conformity with such amendment or superseding statute, effective as of its effective date. The manner prescribed in this Mortgage for serving or giving any notice, other than that to be posted or caused to be posted by the Trustee acting, shall not be deemed exclusive but such notice or notices may be given in any other manner permitted



by applicable law. Said sale shall forever be a bar against Mortgagor, its heirs, legal representatives, successors and assigns, and all other persons claiming under it. It is expressly agreed that the recitals in each conveyance to the purchaser shall be prima facie evidence of the truth of the matters therein stated, absent manifest error. Trustee may require minimum bids at any foreclosure sale and may cancel and abandon the sale if no bid is received equal to or greater than any such minimum bid.

**Section 6.5 APPLICATION OF FORECLOSURE SALE PROCEEDS.** The proceeds of any sale of the Property, and any rents and other amounts collected by Mortgagee from Mortgagee's holding, leasing, operating or making any other use of the Property, shall be applied by Mortgagee (or by the receiver, if one is appointed) to the extent that funds are available therefrom in the following order of priority:

- (a) **To Expenses and Senior Obligation Payments.** First, to the payment of the out of pocket costs and expenses of taking possession of the Mortgaged Property and of holding, maintaining, using, leasing, repairing, equipping, manning, improving, marketing and selling it, including (i) trustee's and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement and brokers' commissions and (v) payment of any and all Impositions, liens, security interests or other rights, titles or interests superior to the lien and security interest of this Mortgage, whether or not then due and including any prepayment penalties or fees and any accrued or required interest (except, in the case of foreclosure proceeds, those senior liens and security interests, if any, subject to which the Mortgaged Property was sold at such sale, and without in any way implying Mortgagee's consent to the creation or existence of any such prior liens).
- (b) **To Other Obligations Owed to Mortgagee.** Second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to Mortgagee under the Note or any other Credit Document, together with interest thereon as provided therein.
- (c) **To Accrued Interest on the Indebtedness.** Third, to the payment of all accrued but unpaid interest due on the Indebtedness.
- (d) **To Indebtedness Principal.** Fourth, to the payment of the principal balance on the Indebtedness and the principal owing under this Mortgage and any other Credit Document, irrespective of whether then matured, and if it is payable in installments and not matured, then to the installments in such order as Mortgagee shall elect.
- (e) **To Junior Lienholders.** Fifth, to the extent funds are available therefor out of the sale proceeds or any rents and, to the extent known by Mortgagee, to the payment of any indebtedness or obligation secured by a subordinate mortgage on or security interest in the Mortgaged Property.
- (f) **To Mortgagor.** Sixth, to Mortgagor, its successors and assigns, or to whomsoever may be lawfully entitled to receive such proceeds under applicable law.

**Section 6.6 MORTGAGEE MAY REQUIRE ABANDONMENT AND RECOMMENCEMENT OF SALE.** If the Trustee or his substitute or successor should commence the sale, Mortgagee may at any time before the sale is completed direct the Trustee to abandon the sale, and may at any time or times thereafter

direct the Trustee to again commence foreclosure; or, irrespective of whether foreclosure is commenced by the Trustee, Mortgagee may at any time after an Event of Default institute suit for collection of the Indebtedness or foreclosure of this Mortgage. If Mortgagee should institute suit for collection of the Indebtedness or foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment dismiss it and require the Trustee to sell the Mortgaged Property in accordance with the provisions of this Mortgage.

**Section 6.7 MULTIPLE SALES; MORTGAGE CONTINUES IN EFFECT.** No single sale or series of sales by the Trustee or by any substitute or successor and no judicial foreclosure shall extinguish the lien or exhaust the power of sale under this Mortgage except with respect to the items of property sold, nor shall it extinguish, terminate or impair Mortgagor's contractual obligations under this Mortgage, but such lien and power shall exist for so long as, and may be exercised in any manner by law or in this Mortgage provided as often as the circumstances require to give Mortgagee full relief under this Mortgage, and such contractual obligations shall continue in full force and effect until final termination of this Mortgage.

**Section 6.8 MORTGAGEE MAY BID AND PURCHASE.** Mortgagee shall have the right to become the purchaser at any sale made under this Mortgage, being the highest bidder, and credit given upon all or any part of the Indebtedness shall be the exact equivalent of cash paid for the purposes of this Mortgage.

**Section 6.9 SUCCESSOR OR SUBSTITUTE TRUSTEE.** In case of absence, death, inability, refusal or failure of the Trustee in this Mortgage named to act, or in case he should resign (and he is hereby authorized to resign without notice to or consent of Mortgagor), or if Mortgagee shall desire, with or without cause, to replace the Trustee in this Mortgage named, or to replace any successor or substitute previously named, Mortgagee or any agent or attorney-in-fact for Mortgagee may name, constitute and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances, if any, where acknowledgment, filing and/or recording is required by applicable law and such law also precludes Mortgagor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute trustee, as Trustee, the estate in and title to all of the Mortgaged Property, and such substitute Trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights, powers and duties in this Mortgage conferred on the Trustee named and any previous successor or substitute Trustee, and his conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named in this Mortgage. Such right to appoint a substitute Trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, Mortgagee or Mortgagee's agent or attorney-in-fact elects to exercise it.

**Section 6.10 RIGHT TO RECEIVER.** Upon the occurrence of an Event of Default and during the continuance thereof or at any time after commencement of a Trustee's foreclosure sale or any legal proceedings under this Mortgage, Mortgagee shall be entitled to the appointment of a receiver and Mortgagee may, at Mortgagee's election and by or through the Trustee or otherwise, make application to a court of competent jurisdiction for appointment of a receiver of the Property, as a matter of strict right, without notice to Mortgagor and without regard to the adequacy of the value of the Property for the repayment of the Indebtedness, and Mortgagor hereby irrevocably consents to

such an appointment. Any receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to possess, rent, maintain, repair and operate the Property upon such terms and conditions as may be approved by the court, and shall apply the rents realized in the same manner and order as foreclosure proceeds in accordance with Section 6.5.

**Section 6.11 TENANTS AT WILL.** Mortgagor agrees for itself and its heirs, legal representatives, successors and assigns, that if any of them shall hold possession of the Property or any part thereof subsequent to foreclosure hereunder, Mortgagor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

## **ARTICLE 7 MORTGAGEE'S RIGHT TO PERFORM MORTGAGOR'S OBLIGATIONS**

**Section 7.1 MORTGAGEE MAY ELECT TO PERFORM DEFAULTED OBLIGATIONS.** If Mortgagor should fail to comply with any of its other agreements, covenants or obligations under this Mortgage, the Note, or any other Credit Document executed by Mortgagor, and if such failure has ripened into an Event of Default which is then continuing, then Mortgagee (in Mortgagor's name or in Mortgagee's own name) may perform them or cause them to be performed for Mortgagor's account and at Mortgagor's expense, but shall have no obligation to perform any of them or cause them to be performed. With respect to Mortgagor's failure to maintain or cause to be maintained the insurance coverage required hereby, however, Mortgagee itself may purchase or secure such insurance coverage for the Mortgaged Property prior to providing Mortgagor with any notice of and opportunity to cure or remedy such failure. Any and all out of pocket expenses thus incurred or paid by Mortgagee under the provisions of this paragraph shall be Mortgagor's obligations to Mortgagee due and payable within fifteen (15) days after written demand, and each shall bear interest from the date Mortgagee delivers demand for it until the date Mortgagor repays it to Mortgagee, at the maximum nonusurious rate of interest from time to time permitted by whichever of applicable state or federal law from time to time permits the higher nonusurious interest rate (the "**Ceiling Rate**"), or, only if applicable law imposes no maximum nonusurious rate, then at the Default Rate (as defined in the Loan Agreement). Upon making any such payment or incurring any such expense, Mortgagee shall be fully and automatically subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts owing by Mortgagor to Mortgagee pursuant to this or any other provision of this Mortgage shall automatically and without notice be and become a part of the Indebtedness and shall be secured by this and all other instruments securing the Indebtedness. The amount and nature of any such expense and the time when it was paid shall be fully established by the affidavit of Mortgagee or any of Mortgagee's officers or agents or by the affidavit of any original, substitute or successor Trustee acting under this Mortgage. Without notice to Mortgagor or any other person or entity, the Ceiling Rate and the Default Rate shall automatically fluctuate upward and downward as and in any amount by which the maximum nonusurious rate of interest permitted by such applicable law and the Default Rate as provided for in the Loan Agreement, respectively, fluctuates.

**Section 7.2 EXERCISE OF RIGHTS IS NOT WAIVER OR CURE OF DEFAULT.** The exercise of the privileges granted to Mortgagee in this Article shall in no event be considered or constitute a cure of the default or a waiver of Mortgagee's right at any time after an Event of Default and during the continuance thereof to declare the Indebtedness to be at once due and payable, but is cumulative of such right and of all other rights given by this Mortgage, the Note and the Credit Documents and of all rights given Mortgagee by law.

## **ARTICLE 8 TAX AND INSURANCE DEPOSITS**

**Section 8.1 TAX AND INSURANCE DEPOSITS.** In addition to the Indebtedness payments, if Mortgagor is ever delinquent in paying either ad valorem taxes assessed against the Property or insurance premiums for the requisite insurance coverage for the Property, or if an Event of Default has occurred which is then continuing, Mortgagor agrees that upon the request of Mortgagee, Mortgagor will thereafter deposit with Mortgagee each month an amount equal to one-twelfth (1/12) of the aggregate of (i) the next succeeding premiums (or payments in respect of them, if premiums are financed) on all insurance policies which Mortgagor is required by or pursuant to this Mortgage to maintain on the Property, and (ii) the amount of the next succeeding annual tax payments, assessment installments, maintenance charges and other Impositions to become due and payable with respect to the Property, as reasonably estimated by Mortgagee, plus, with the first of such monthly deposits, an additional month's share (a twelfth) of such premiums and taxes for each month less than twelve remaining before the next payment thereof falls due. At least fifteen (15) days before the date on which any such insurance premium (or payment in respect of it, if premiums are financed) or any of the Impositions must be paid to avoid delinquency, promptly after Mortgagee's request, Mortgagor agrees to deliver or cause to be delivered to Mortgagee a statement or statements showing the amount of the premium (or payment in respect of it, if premiums are financed) or Impositions required to be paid and the name and mailing address of the concern or authority to which it is payable and, at the same time, Mortgagor agrees to deposit or cause to be deposited with Mortgagee such amounts as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance obligations or Impositions. Mortgagee hereby agrees to apply such deposits in payment of such insurance obligations and Impositions prior to delinquency, but only if sufficient funds have been deposited with Mortgagee by Mortgagor for the payment of such amounts and Mortgagee has been timely furnished with the requisite statements of the amounts required to be paid and the names and addresses of the concerns or authorities to which such amounts are payable. Mortgagee shall in no way be obligated to pay any interest to Mortgagor on such deposits, and upon the occurrence of an Event of Default which is then continuing, Mortgagee is hereby irrevocably authorized to apply any and all amounts so deposited with Mortgagee against the amounts due under the Indebtedness (with such order of application to be at Mortgagee's discretion) without any further notice to or consent from Mortgagor or any other person or entity. Additionally, Mortgagor hereby irrevocably grants to Mortgagee a security interest and assigns to Mortgagee all such funds so deposited with Mortgagee as additional security for payment of the Indebtedness and all other amounts now or hereafter outstanding under any of the Credit Documents.

## **ARTICLE 9 GENERAL AND MISCELLANEOUS PROVISIONS**

**Section 9.1 INDEBTEDNESS MAY BE CHANGED WITHOUT AFFECTING THIS MORTGAGE.** Any of the Indebtedness may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Mortgage or any other security for any part of the Indebtedness may be waived or released without in anyway altering or diminishing the force, effect or lien of this Mortgage, and the lien, assignment and security interest granted by this Mortgage shall continue as a prior lien, assignment and security interest on all of the Property not expressly so released, until the final termination of this Mortgage.

**Section 9.2 USURY NOT INTENDED; SAVINGS PROVISIONS.** Notwithstanding any provision to the contrary contained in any Credit Document, it is expressly provided that in no case or event shall the aggregate of any amounts accrued or paid pursuant to this Mortgage which under applicable laws are or may be deemed to constitute interest ever exceed the maximum nonusurious interest rate permitted by applicable Texas or federal laws, whichever permit the higher rate. In this connection, Mortgagor and Mortgagee stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Mortgage shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Mortgagor shall never be liable for interest in excess of the maximum rate permitted by applicable laws. If, for any reason whatever, such interest paid or received during the full term of the applicable indebtedness produces a rate which exceeds the maximum rate permitted by applicable laws, Mortgagee shall credit against the principal of such indebtedness (or, if such indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the maximum rate permitted by applicable laws. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of money shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the applicable indebtedness, so that the interest rate is uniform throughout the full term of such indebtedness. The provisions of this Section shall control all agreements, whether now or hereafter existing and whether written or oral, between Mortgagor and Mortgagee.

**Section 9.3 SUBROGATION TO LIENS DISCHARGED.** Mortgagor hereby agrees that Mortgagee shall be subrogated to all rights, titles, interests, liens, benefits, remedies, equities, superior title and security interests (the "**Subrogated Liens**") owned, claimed or held as security for any indebtedness or other obligation (the "**Discharged Obligations**") directly or indirectly satisfied, discharged or paid with money or other property advanced by Mortgagee. Irrespective of any formal or informal acknowledgment of partial or complete satisfaction or release of the Discharged Obligations, the Subrogated Liens shall be continued, renewed, extended, brought forward and rearranged as security for the Indebtedness in addition to and cumulative of the lien and security interest of this Mortgage. Foreclosure under this Mortgage shall constitute foreclosure of the Subrogated Liens.

**Section 9.4 DUE ON SALE.** Mortgagor agrees that if, without Mortgagee's prior written consent (except as otherwise provided herein or in any of the other Credit Documents), (a) any part of or interest in the Property should be directly or indirectly transferred, conveyed or mortgaged, voluntarily or involuntarily, absolutely or as security, or (b) Mortgagor should enter into any contractual arrangement to transfer, convey or mortgage any part of the Property or any interest in the Property

which does not contemplate full payment of the Indebtedness upon closing thereunder, Mortgagee shall have the right and option (except only in those circumstances, if any, where the exercise of such right is expressly prohibited by applicable law and such law also precludes Mortgagor from effectively waiving such prohibition), to declare the Note or the entire amount of the Indebtedness to be due and payable. Mortgagee shall have such right and option, absolutely and irrespective of whether or not the transfer, conveyance or mortgage would or might (i) diminish the value of any security for the Indebtedness, (ii) increase the risk of default under this Mortgage, (iii) increase the likelihood of Mortgagee's having to resort to any security for the Indebtedness after default or (iv) add or remove the liability of any person or entity for payment of the Indebtedness or performance of any covenant or obligation under this Mortgage. To exercise such right and option, Mortgagee shall give written notice to Mortgagor and to the person or entity to whom such property was transferred, conveyed or mortgaged that the Note or Indebtedness has been declared due and payable and that Mortgagee demands that its maker pay it. If Mortgagee's consent to a proposed transfer, conveyance or mortgaging is requested, Mortgagee shall have the right (in addition to its absolute right to refuse to consent to any such transaction), and to condition its consent upon satisfaction of any one or more of the following requirements: (1) that the interest rate(s) on all or any part of the Indebtedness be increased to a rate which is then acceptable to Mortgagee; (2) that a reasonable transfer fee, in an amount determined by Mortgagee, be paid; (3) that a principal amount deemed appropriate by Mortgagee be paid against the Indebtedness to reduce to a level which is then acceptable to Mortgagee the ratio that the outstanding balance of the Indebtedness bears to the value of the Property as determined by Mortgagee; (4) that Mortgagor and each proposed transferee execute an assumption agreement and such other instruments as Mortgagee or its counsel shall reasonably require and in form and substance satisfactory to Mortgagee and its counsel; (5) that the proposed transferee's creditworthiness and experience in owning and operating similar properties be demonstrable and proven to Mortgagee's reasonable satisfaction to be at least as good as Mortgagor's and Mortgagor's managers' at the time the Note was first funded; (6) that the liability to Mortgagee of Mortgagor and all makers and guarantors of all or any part of the Indebtedness will be confirmed by them in writing to be unaffected and unimpaired by such transfer, conveyance or mortgaging; and (7) that any existing or proposed junior mortgagee expressly subordinate to all liens and security interests securing the Indebtedness as to both lien and payment right priority and consent to the proposed transaction in a writing addressed to Mortgagee.

**Section 9.5 CONDEMNATION.** If before final termination of this Mortgage, all or a portion of the Property is taken for public or quasi-public purposes, either through eminent domain or condemnation proceedings, by voluntary conveyance under threat of condemnation with Mortgagee's express written consent and joinder or otherwise (collectively a "**Taking**"), Mortgagor hereby agrees that any and all sums of money awarded or allowed as damages, payments in lieu of condemnation awards or otherwise to or for the account of the owner of the Property or any portion of it on account of such taking shall be paid and delivered to Mortgagee, and they are hereby assigned to Mortgagee and shall be paid directly to Mortgagee. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be applied, first to reimburse Mortgagee or the Trustee for all reasonable out of pocket costs and expenses, including reasonable out of pocket attorneys' fees, reasonably incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be paid to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in Section 4.1(h) above; provided, however, that if either



(a) Mortgagee determines in its sole but good faith discretion that any such Taking would make it impossible or uneconomic to continue with the operation of the Property after such restoration or repair with the available condemnation proceeds and any other restoration funds deposited by Mortgagor with Mortgagee or (b) the loan-to-value ratio for the Loan (as defined in the Loan Agreement) after such repair and restoration shall not be reasonably acceptable to Mortgagee (in an amount equal to not more than 60%), then, at the discretion of Mortgagee, all of said proceeds shall be applied to the payment of the Indebtedness in the order determined by Mortgagee in its sole discretion. Mortgagor agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Mortgagee may reasonably request. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Mortgagee shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

**Section 9.6 APPRAISALS AND REPORTS TO BE PROVIDED.** At any time and from time to time, at Mortgagee's sole cost and expense prior to (a) the occurrence of an Event of Default which is then continuing, (b) an appraisal of all or any portion of the Property being required by applicable regulation or regulatory authorities (but at Mortgagor's sole cost and expense after the occurrence of an Event of Default which is then continuing or, subject to the limitation set forth below, if Mortgagee believes an appraisal of all or any portion of the Property is then required by applicable regulation or regulatory authorities) or (c) as otherwise expressly provided in Section 7.26 of the Loan Agreement (but at Mortgagor's sole cost and expense), Mortgagee (by its officers, employees, directors or agents) may contract for the services of an appraiser approved by Mortgagee in its sole discretion to perform a written appraisal of the Property (or such parts of it as are designated in Mortgagee's request). Any such appraisal may be performed at any time or times upon reasonable notice to Mortgagor, as long as it does not unreasonably interfere with Mortgagor's use of the Property. Specifically, any appraiser is authorized to enter upon, and Mortgagor shall allow such appraiser access to, the Property as may be necessary in the opinion of such appraiser to perform its professional services. Mortgagor will also promptly furnish (or cause to be furnished to) such appraiser such historical and operational information regarding the Property as may be reasonably requested by such appraiser to facilitate preparation of an appraisal and will make available for meetings with such appraiser appropriate personnel having knowledge of such matters. Mortgagor will permit Mortgagee and its agents, independent contractors, representatives, employees and officers at all reasonable times to go upon, examine, inspect and remain on the Property for any lawful purpose and will furnish to Mortgagee on request all pertinent information in regard to the development, operation, use and status of the Property. Mortgagee may elect to deliver any such request orally, by telegram, telex or telefax, by mail or by hand delivery addressed to Mortgagor as provided in the Introduction to this Mortgage or by any other legally effective method, and it may be given at any time and from time to time before the complete and final release and discharge of this Mortgage. Any appraisal fee to be paid under this Section 9.6 by Mortgagor to Mortgagee after the occurrence of an Event of Default, as a result of regulatory requirements, or as otherwise expressly provided in Sections 7.24 and 7.26 of the Loan Agreement, shall be a demand obligation owing by Mortgagor to Mortgagee and shall bear interest from the date of expenditure at the Default Rate; provided, however, that in no event shall Mortgagor be required to reimburse Mortgagee for any appraisal fee resulting from an appraisal Mortgagee believes is required by applicable regulation or regulatory authorities more frequently than once during any consecutive twelve (12) month period.

**Section 9.7 NOTICES.** Except for notices where certified or registered mail notice is required by applicable law, any notice to Mortgagor required or permitted under this Mortgage shall be given in accordance with the notice provisions of the Loan Agreement.

**Section 9.8 MORTGAGEE AND MORTGAGOR.** The terms "**Mortgagee**" and "**Secured Party**" as used in this Mortgage shall mean and include the successors and assigns of Mortgagee. The term "Mortgagor" and "Debtor" shall also include the successors and assigns of Mortgagor. In general, Mortgagor may not assign or delegate any of its rights, interests or obligations under this Mortgage, the Note or any Credit Document without Mortgagee's express prior written consent, and any attempted assignment or delegation without it shall be void or voidable at Mortgagee's election; provided, however, that Mortgagor may delegate its obligations under this Mortgage and any other Credit Documents regarding the management, maintenance and leasing of the Mortgaged Property, as well as the construction of repairs to the Mortgaged Property, to reputable agents or independent contractors without the prior written consent of Mortgagee, but in any and all such events, Mortgagor shall remain fully obligated to Mortgagee in accordance with the provisions of this Mortgage and all other Credit Documents for the complete and full compliance with and performance of all such obligations.

**Section 9.9 ARTICLE, SECTION AND EXHIBIT REFERENCES, NUMBERS AND HEADINGS.** References in this Mortgage to Articles, Sections and Exhibits refer to Articles, Sections and Exhibits in and to this Mortgage unless otherwise specified. The Article and Section numbers, Exhibit designations and headings used in this Mortgage are included for convenience of reference only and shall not be considered in interpreting, applying or enforcing this Mortgage.

**Section 9.10 EXHIBITS INCORPORATED.** All exhibits, annexes, appendices and schedules referred to any place in the text of this Mortgage are hereby incorporated into it at that place in the text, to the same effect as if set out there *verbatim*.

**Section 9.11 "INCLUDING" IS NOT LIMITING.** Wherever the term "including" or a similar term is used in this Mortgage, it shall be read as if it were written, "including by way of example only and without in any way limiting the generality of the clause or concept referred to."

**Section 9.12 GENDER.** The masculine and neuter pronouns used in this Mortgage each includes the masculine, feminine and neuter genders.

**Section 9.13 SEVERABILITY.** If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and this Mortgage shall be liberally construed so as to carry out the intent of the parties to it. Each waiver in this Mortgage is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Mortgagee for having bargained for and obtained it.

**Section 9.14 ANY UNSECURED INDEBTEDNESS IS DEEMED PAID FIRST.** If any part of the Indebtedness cannot lawfully be secured by this Mortgage, or if the lien, assignments and security interest of this Mortgage cannot be lawfully enforced to pay any part of the Indebtedness, then and in

either such event, at the option of Mortgagee, all payments on the Indebtedness shall be deemed to have been first applied against that part of the Indebtedness.

**Section 9.15 NOUN, PRONOUN AND VERB NUMBERS.** When this Mortgage is executed by more than one person, it shall be construed as though "Mortgagor" were written "Mortgagors" and as though the pronouns and verbs in their number were changed to correspond, and in such case, (a) each of Mortgagors shall be bound jointly and severally with one another to keep, observe and perform the covenants, agreements, obligations and liabilities imposed by this Mortgage upon the "Mortgagor", (b) a release of one or more persons, corporations or other legal entities comprising "Mortgagor" shall not in any way be deemed a release of any other person comprising "Mortgagor" and (c) a separate action hereunder may be brought and prosecuted against one or more of the persons, corporations or other legal entities comprising "Mortgagor" without limiting any liability of or impairing Mortgagee's right to proceed against any other person, corporation or other legal entity comprising "Mortgagor".

**Section 9.16 PAYMENTS RETURNED.** Mortgagor agrees that, if at any time all or any part of any payment previously applied by Mortgagee to the Indebtedness is or must be returned by Mortgagee, or recovered from Mortgagee, for any reason (including the order of any bankruptcy court), this Mortgage shall automatically be reinstated to the same effect as if the prior application had not been made, and, in addition, Mortgagor hereby agrees to indemnify Mortgagee against, and to save and hold Mortgagee harmless from any required return by Mortgagee, or recovery from Mortgagee, of any such payment because of its being deemed preferential under applicable bankruptcy, receivership or insolvency laws, or for any other reason.

**Section 9.17 AMENDMENTS IN WRITING.** This Mortgage shall not be changed orally but shall be changed only by agreement in writing signed by Mortgagor and Mortgagee. Any waiver or consent with respect to this Mortgage shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Mortgage.

**Section 9.18 SECURITY IS CUMULATIVE.** No other security now existing or hereafter taken to secure any part of the Debt or the performance of any obligation or liability whatever shall in any manner affect or impair the security given by this Mortgage. All security for any part of the Debt and the performance of any obligation or liability shall be taken, considered and held as cumulative.

**Section 9.19 APPLICABLE LAW. THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF TEXAS, EXCEPT TO THE EXTENT THAT THE LAWS OF THE UNITED STATES OF AMERICA AND ANY RULES, REGULATIONS, OR ORDERS ISSUED OR PROMULGATED THEREUNDER, APPLICABLE TO THE AFFAIRS AND TRANSACTIONS ENTERED INTO BY MORTGAGOR, OTHERWISE PREEMPT TEXAS LAW, IN WHICH EVENT SUCH FEDERAL LAW SHALL CONTROL.**

**Section 9.20 ENTIRE AGREEMENT.** This Mortgage, together with all of the other Credit Documents, embodies the entire agreement and understanding between Mortgagor and Mortgagee with respect to

its subject matter and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Mortgagor acknowledges and agrees that there is no oral agreement between Mortgagor and Mortgagee which has not been incorporated in this Mortgage.

**Section 9.21 CONSTRUCTION MORTGAGE.** If funds are to be advanced by Mortgagee against the Note as construction progresses on the Property, then this is a construction mortgage, as such term is defined in the Texas Business and Commerce Code, and such funds are to be used to pay the costs of such construction.

## **ARTICLE 10 SPECIAL PROVISIONS**

**Section 10.1 JURY WAIVER. MORTGAGOR AND MORTGAGEE (AS EVIDENCED BY MORTGAGEE'S ACCEPTANCE OF THIS MORTGAGE), EACH AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND EACH WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.2 WAIVER OF STATUTORY PROVISIONS; ALTERNATIVE FAIR MARKET VALUE DETERMINATION.** In the event of a foreclosure sale of the Property, Mortgagor hereby expressly waives Sections 51.003, 51.004 and 51.005 of the Texas Property Code, and Mortgagor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price received from any foreclosure of the Mortgaged Property is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Mortgagor and others against whom recovery of a deficiency is sought. Alternatively, in the event the foregoing waiver is determined by a court of competent jurisdiction to be unenforceable, and to the extent permitted by law, Mortgagor agrees that the following shall be the basis for the finder of facts determination of the fair market value of the Real Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time):

(a) The Real Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Real Property will be repaired or improved in any manner before a resale of the Real Property after foreclosure;

(b) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Real Property for cash promptly (but no later than twelve months) following the foreclosure sale;

(c) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction in the Austin, Texas area should be deducted from the gross fair market value of the Real Property, including, without limitation, brokerage commissions, title insurance, a survey of the Real Property, tax prorations, attorney's fees and marketing costs;

(d) The gross fair market value of the Real Property shall be further discounted to account for any estimated holding costs associated with maintaining the Real Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (c) above) and other maintenance expenses; and

(e) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Real Property must be given by persons having at least five years experience in appraising property similar to the Real Property and who have conducted and prepared a complete written appraisal of the Real Property taking into consideration the factors set forth above.

**Section 10.3 Request for Notice.** The undersigned Mortgagor requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at its address set forth above.

**Section 10.4 Credit Facility; Future Advances.** This Mortgage secures the payment of any additional amounts advanced, from time to time, by Mortgagee to Mortgagor under the Note or other Credit Documents or under any other replacement Note or agreements from Mortgagor to Mortgagee issued under the terms of Loan Agreement. Accordingly, a portion of the Debt secured hereby may increase periodically from time to time. Notwithstanding any provision of this Mortgage, this Mortgage shall secure all subsequent advances hereafter made under the Loan Agreement. This Mortgage shall terminate only upon the payment in full of the Debt secured hereby and the termination in full of the credit facility which is made available to Mortgagor by Mortgagee under the terms of the Loan Agreement.

**Section 10.5 Nonrecourse as to Grantor.** Notwithstanding anything to the contrary in this Mortgage or in any other Credit Document, by acceptance of this instrument, Mortgagee hereby waives any right to obtain a money judgment or equitable relief against any entity comprising Grantor (but not any entity comprising Borrower), whether by an action brought upon this Mortgage or any other Credit Document, or an action brought for a deficiency judgment against any entity comprising Grantor, and agrees that the extent of liability on the part of such Grantor parties with respect to this Mortgage or any other Credit Document is and shall for all purposes be limited to the interest of Grantor in the Mortgaged Property, including policies of hazard insurance on the Mortgaged Property owned by any Grantor party and any proceeds thereof and any award of damages on account of condemnation for public use of the Mortgaged Property owned by any Grantor party, Mortgagee agreeing to look solely to Grantor's interest in the Mortgaged Property and such insurance policies and condemnation awards in satisfaction of all obligations of any entity comprising Grantor (but not any entity comprising Borrower) under the Credit Documents. The



terms of this paragraph shall supersede any and all other terms and conditions herein or in any Credit Document.

*[Remainder of page left intentionally blank]*





**EXHIBIT A**

**REAL PROPERTY**

Tract 1: Lot 2, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 3: Lot 5, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 4: Lot 6, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 6: Lot 8, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 7: Lot 9, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 8: Lot 10, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 9: Lot 11, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 10: Lot 12, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 12: Lot 14, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 13: Lot 15, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 14: Lot 16, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat



Records of Hays County, Texas.

Tract 15: Lot 17, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 16: Lot 18, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 17: Lot 19, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 18: Lot 20, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 19: Lot 21, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 20: Lot 22, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 21: Easement Estate appurtenant to all Tracts, for ingress, egress, common area, parking, utility lines, drainage and detention and temporary construction, as created and described in that certain Restriction Agreement and Grant of Easements recorded in Volume 2478, Page 732, as amended in Volume 4751, Page 519. Document No. 19045925, and Document No. 20008136, all of the Official Public Records of Hays County, Texas, and being over and across Lot 2, Block A, KYLE TOWNE CENTER, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 11, Page 356, Plat Records of Hays County, Texas; over and across Lot 4, Block A, KYLE TOWNE CENTER, REPLAT OF LOT 1, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 16, Page 191, Plat Records of Hays County, Texas; over and across Lot 1-B, Block A, KYLE TOWNE CENTER, SECOND REPLAT OF LOT 1, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 17, Page 317, Plat Records of Hays County, Texas; and over and across Lots 2 through 23, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 22: Easement Estate appurtenant to Tract 1, for ingress and egress across Protected Drives, as created and described in that certain Declaration of Restrictions recorded in Document No. 20017808, of the Official Public Records of Hays County, Texas and said non-exclusive access

easements being over and across a that portion of the 0.1626 acre Protected Drive within Lot 3, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, and over and across a 0.2157 acre portion of Lot 1, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas and as more particularly described by metes and bounds therein.

Tract 23: Easement Estate appurtenant to Tract 1, for Private Wastewater Line, as created and described in that certain Private Wastewater Line Easement Agreement recorded in Document No. 20016528, Official Public Records of Hays County, Texas, and being over and across Lots 1, 3, 4 and 6, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 24: Easement Estate appurtenant to all Tracts, for Drainage and Ponds, as created and described in that certain Private Wastewater Line Easement Agreement recorded in Document No. 21007904, Official Public Records of Hays County, Texas, and being over and across Lots 4 through 21, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

## EXHIBIT B

### PERMITTED ENCUMBRANCES

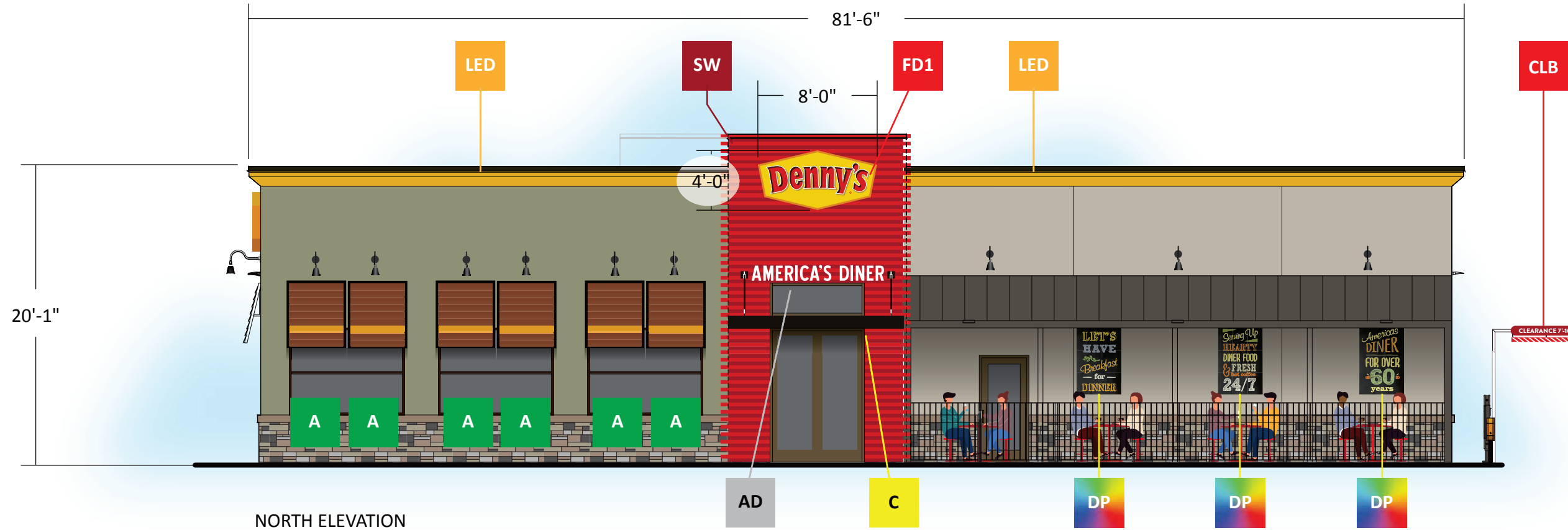
1. The following restrictive covenants of record: Those recorded in Volume 11, Page 356, Volume 16, Page 191, Volume 17, Page 317, Plat Records and Volume 407, Page 444, Deed Records, and Volume 2478, Page 732, Volume 4243, Page 788, Volume 4751, Page 519, Document No. 19045925, Document No. 20008136, Document No. 20015578, Document No. 20016529, Document No. 20017808, Document No. 20040374, Document No. 20045687, Document No. 21006008, and Document No. 21008014, Official Public Records of Hays County, Texas
2. 30' public utility easement along the north line of Lot 5, the east line of Lots 8, 9, 10, 11, 12, 14, as recorded in Volume 11, Page 356, Volume 16, Page 191, Volume 17, Page 317, and Document No. 20015578, Plat Records of Hays County, Texas. (Tracts 3, 6, 7, 8, 9, 10, and 12)
3. Remnant of 30' public utility easement along the west line of Lot 22, as recorded in Volume 11, Page 356, Volume 16, Page 191, Volume 17, Page 317, and Document No. 20015578, Plat Records of Hays County, Texas. (Tract 20)
4. 15' public utility easement dedicated along each front lot line(s), as recorded in Volume 16, Page 191, Volume 17, Page 317, and Document No. 20015578, Plat Records of Hays County, Texas. (All Tracts)
5. 5' public utility easement along the west line of Lot 5, the north line of Lot 6, the most northern west lot line of Lot 23 and the north line of Lot 23, as recorded in Volume 11, Page 356, Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 3 and 4)
6. 15' electric easement along the south line of Lots 19-22, as recorded in Volume 16, Page 191, Plat Records of Hays County, Texas. (Tracts 17, 18, 19, and 20)
7. 12' public utility easement dedicated along each side lot line(s), as recorded in Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 3, 4, 15, 16, 17, 18, 19, and 20)
8. 10' public utility easement dedicated along each rear lot line(s), as recorded in Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 12 and 16)
9. Access, drainage and public utility easement traversing subject lot, as recorded in Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 15 and 16)
10. 15' grading and temporary construction easement traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tract 12)

11. 10' water easement traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 10, 12 and 16)
12. 15' drainage easement traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 12 and 16)
13. 15' access easement for driveway extension traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 15 and 16)
14. A portion of a 30' access easement along the north line of Lots 19-22, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 17, 18, 19, and 20)
15. Covenants, conditions, obligations, restrictions, easements, charges and liens as set forth in that certain Restriction Agreement and Grant of Easements, by and between Kyle Texas Company, LLC, an Ohio limited liability company and Home Depot U.S.A., Inc., a Delaware corporation, as recorded in Volume 2478, Page 732, Official Public Records of Hays County, Texas and as affected by First Amendment to Restriction Agreement and Grant of Easements recorded in Volume 4751, Page 519, Official Public Records of Hays County, Texas. As affected by Second Amendment to Restriction Agreement and Grant of Easements recorded in Document No. 19045925, Official Public Records of Hays County, Texas and by Third Amendment to Restriction Agreement and Grant of Easements recorded in Document No. 20008136, of the Official Public Records of Hays County, Texas. Said instrument being further affected by Assignment of Consenting Owner Rights and Obligations recorded in Document No. 20040374, of the Official Public Records of Hays County, Texas and that certain Consenting Owner Amendment Restrictions recorded in Document No. 21008014, of the Official Public Records of Hays County, Texas. (All Tracts)
16. Easement executed by Richard V. W. Negley, to Southwestern Bell Telephone Company, dated August 10, 1973, recorded in Volume 261, Page 492, Deed Records of Hays County, Texas. (Tracts 6, 7, 8, 9, 10, 12, and 13)
17. Easement executed by Cary Troop, Jr., Trustee, to Texas Water Services, Inc., dated July 26, 2000, recorded in Volume 1726, Page 113, Official Public Records of Hays County, Texas. (Tracts 3, 6, 7, 8, 9, 10, 12, and 13)
18. Undivided royalty interest in and to all oil, gas and other minerals in, on, under or that may be produced from the herein described property, together with all rights relating thereto, express or implied, reserved unto The San Antonio Joint Stock Land Bank of San Antonio, a corporation in deed to J.J. Butler, dated December 10, 1941, and recorded in Volume 123, Page 352, Deed Records of Hays County, Texas. (All Tracts)
19. Rights of ingress and egress and all terms, conditions, liens and other stipulations contained in that certain Private Wastewater Easement Agreement recorded in Document No. 20016528, Official Public records of Hays County, Texas. (Tract 1)

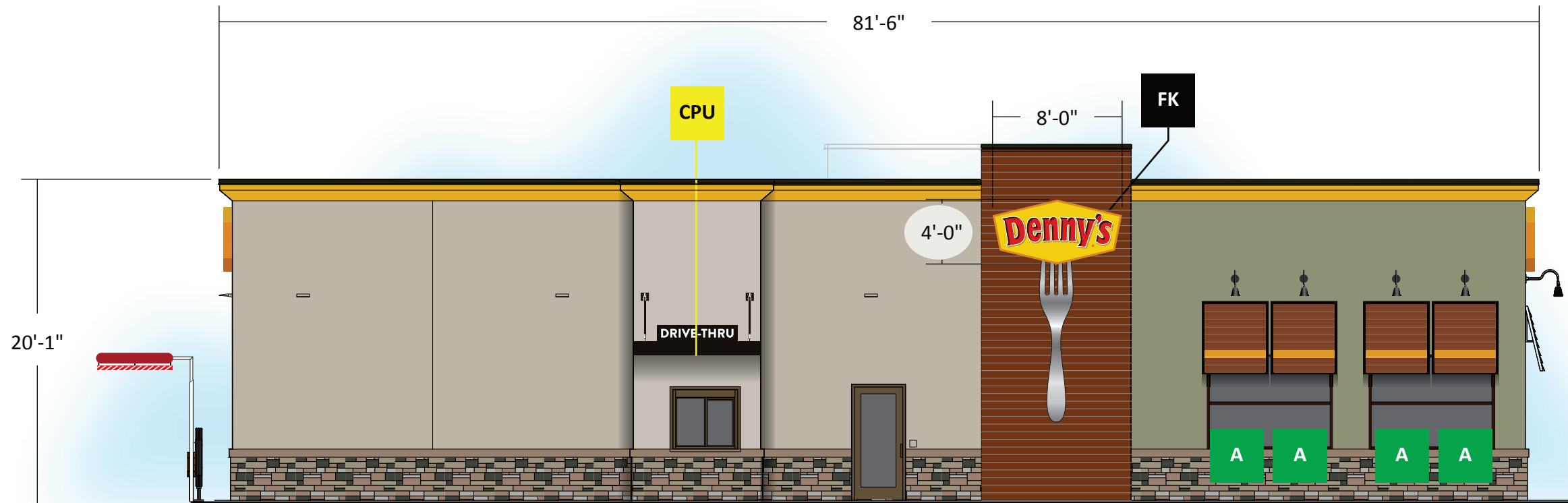


20. Easement executed by O.H. Cullen and wife, Mattie Mae Cullen, to the State of Texas, dated May 5, 1959, recorded in Volume 177, Page 589, Deed Records of Hays County, Texas. (Tracts 3, 4, 6, 7, 8, 9, and 10)
21. Easement executed by Laura B. Negley and husband, Richard V.W. Negley, to the State of Texas, dated June 1, 1959, recorded in Volume 178, Page 98, Deed Records of Hays County, Texas. (Tracts 3, 4, 6, 7, 8, 9, and 10)
22. Easement executed by O.H. Cullen and Mattie M. Cullen, to Southwestern Bell Telephone Company, dated August 8, 1973, recorded in Volume 261, Page 526, Deed Records of Hays County, Texas. (Tracts 6, 7, 8, 9, 10, 12 and 13)
23. Easement executed by Austin South Venture #1, Ltd., to Texas Water Services, Inc., dated July 26, 2000, recorded in Volume 1726, Page 109, Official Public Records of Hays County, Texas. (Tract 3)
24. Easement executed by Kyle Texas Company, L.L.C., to the City of Kyle for wastewater lines, dated August 4, 2004, recorded in Volume 2519, Page 818, Official Public Records of Hays County, Texas. (Tracts 3, 4, 12, 13, 14, and 15)
25. Easement executed by Sterling/Babcock & Brown, LP., a Texas limited partnership, to Warren Realty, Ltd., a Texas limited partnership (successor-in-interest to Sac-N-Pac Stores, Inc., a Texas corporation), dated November 21, 2011, Volume 4238, Page 286, Official Public Records of Hays County, Texas. (Tracts 10, 12, 13, 14, and 15)
26. Easements for protected drive, and terms, conditions, and stipulations, as set out in that certain Declaration of Restrictions, executed by I35 Kyle Crossing, Ltd, dated May 6, 2020, as recorded in Document No. 20017808, of the Official Public Records of Hays County, Texas. (Tract 1)
27. Easements, terms, conditions, and stipulations in that certain Declaration of Restrictions, dated April 29, 2020, as recorded in Document No. 20016529, of the Official Public Records of Hays County, Texas. (Tracts 3 and 4)
28. Terms, conditions and stipulations of that certain Lease Agreement between I35 Kyle Crossing Lot 9, Ltd., as Landlord, and Terry Enterprises, LLC, as Tenant, as evidenced by Memorandum of Lease recorded in Document No. 21006008, Official Public Records of Hays County, Texas. (Tract 7)
29. Easements, terms, conditions and stipulations of that certain Private Wastewater Line Easement Agreement recorded in Document No. 21007903, Official Public Records of Hays County, Texas. (Tract 4)
30. Easements, terms, conditions and stipulations of that certain Drainage Easement and Operating Agreement recorded in Document No. 21007904, Official Public Records of Hays County, Texas. (All Tracts)

31. Covenants providing for assessments as set out in instrument recorded in Document No. 21007904, of the Official Public Records of Hays County, Texas. (All Tracts)



NORTH ELEVATION  
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION  
SCALE: 1/8" = 1'-0"

Item # 12



PROJECT INFORMATION

Client  
DENNY'S  
City & State  
City, State  
Drawing #  
DENNYS.CITY.DATE  
Scale  
AS NOTED  
Designer  
IH  
Project Manager  
PM

REVISIONS

- 4-15-21 Add patio dtls - IH
- 4-16-21 Rev tower to slat wall-GP
- 5-10-21 Elev. updates - IH
- 6-15-21 New Elevs. style/color-IH
- 6-30-21 Update colors - IH
- 8-20-21 replace elevs w/ new elevs & recolor -GP
- 9-21-21 Add slat wall - IH
- 10-5-21 Add DT1 details - IH
- 10-14-21 Elevs. Color chng-IH
- 10-18-21 Revise elevs - IH
- 10-20-21 Revise elevs - IH
- 11-2-21 Rmv hardiboard - IH
- 11-3-21 Add DP, add back wood-IH
- 11-4-21 Elev. color update - IH

CLIENT APPROVAL

- APPROVED
- APPROVED AS NOTED
- REVISE & RESUBMIT
- NAME:
- DATE:

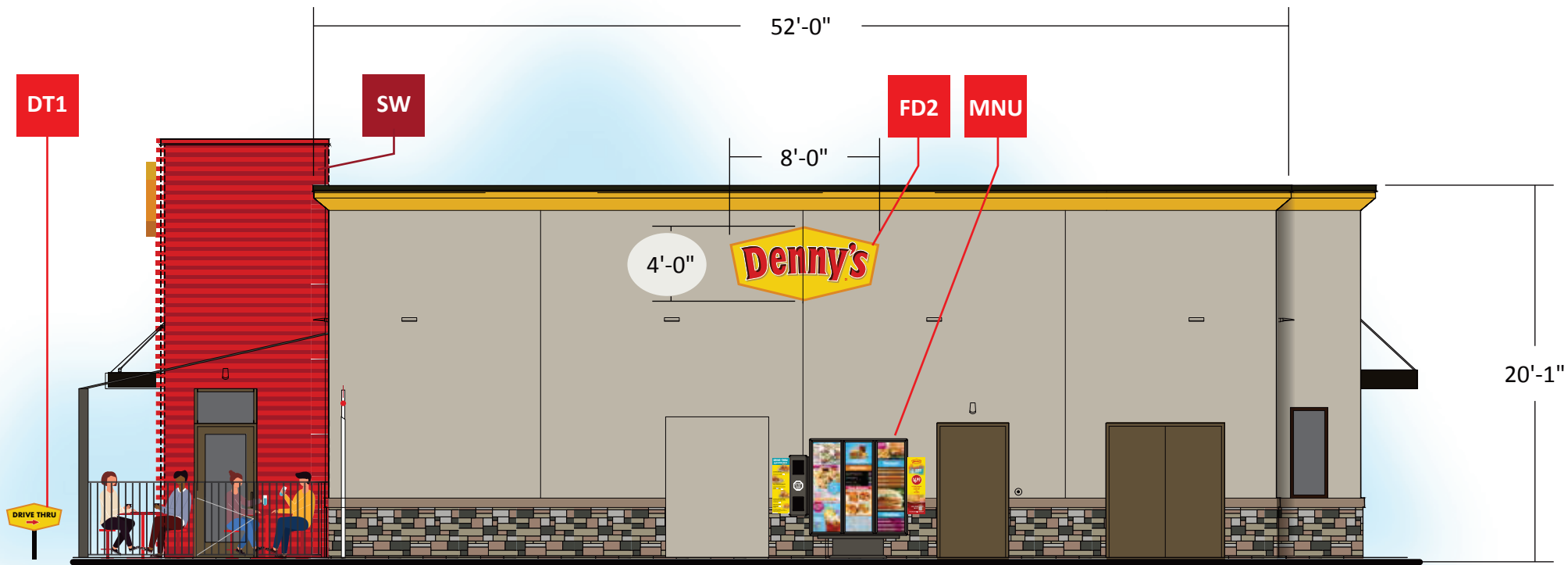


FRANCHISE SIGNS INTERNATIONAL

Main Office  
1101-A W. Melinda Lane  
Phoenix, Arizona 85027  
PHONE: 623 792 3061  
FAX: 623 792 3063

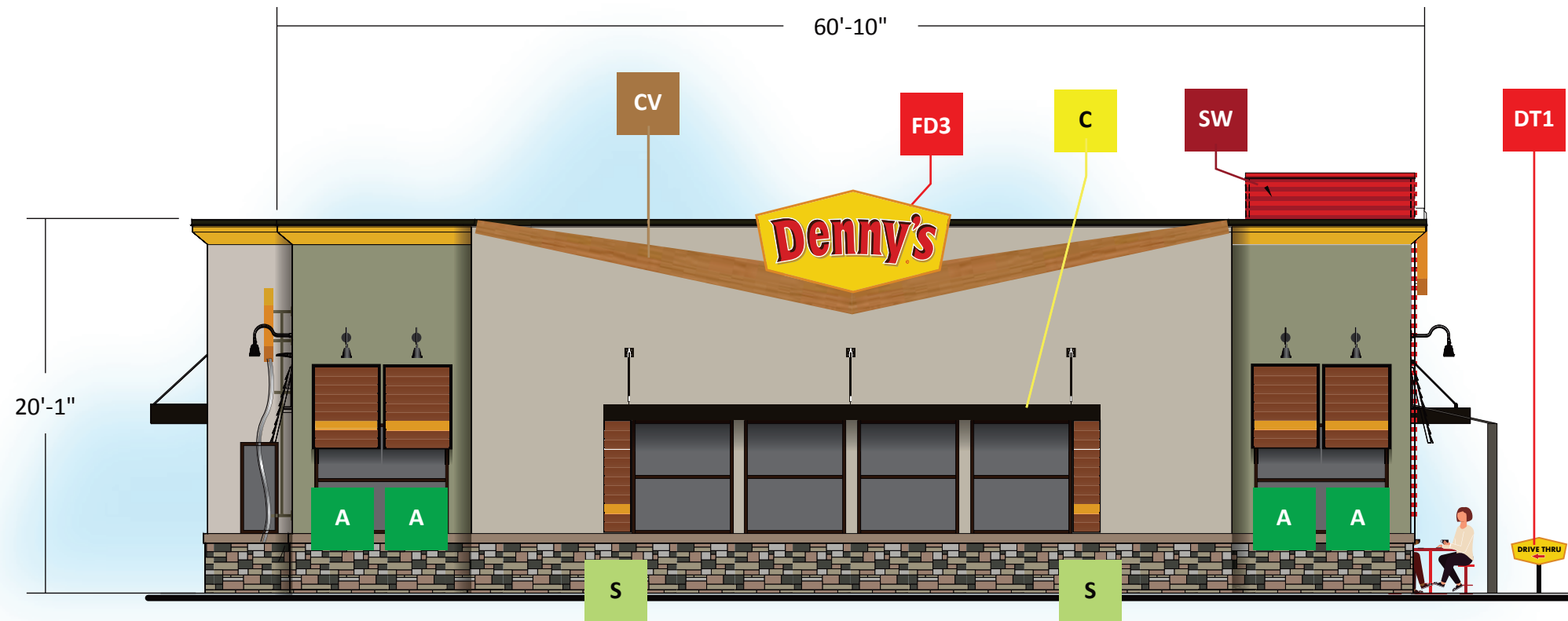
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ELEVATIONS



WEST ELEVATION

SCALE: 1/8" = 1'-0"



EAST ELEVATION

SCALE: 1/8" = 1'-0"

Item # 12



PROJECT INFORMATION

Client  
DENNY'S  
City & State  
City, State  
Drawing #  
DENNYS.CITY.DATE  
Scale  
AS NOTED  
Designer  
IH  
Project Manager  
PM

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- 9-21-21 Add slat wall - IH
- 10-5-21 Add DT1 details - IH
- 10-14-21 Elevs. Color chng-IH
- 10-18-21 Revise elevs - IH
- 10-20-21 Revise elevs - IH
- 11-2-21 Rmv hardiboard - IH
- 11-3-21 Add DP, add back wood- IH
- 11-4-21 Elev. color update - IH

CLIENT APPROVAL

- APPROVED
- APPROVED AS NOTED
- REVISE & RESUBMIT
- NAME:
- DATE:



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Phoenix, Arizona 85027  
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FAX: 623 792 3063

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ELEVATIONS

PAGE

5



DATE: 05/12/21  
 JOB NO:  
 DRAWN: STAFF  
 CHECKED: CM



711 N. FIELDER RD.  
 ARLINGTON, TX 76012  
 PH: (817) 635-5696  
 FAX: (817) 635-5699

**Denny's**  
 19020 IH 35  
 KYLE, TX

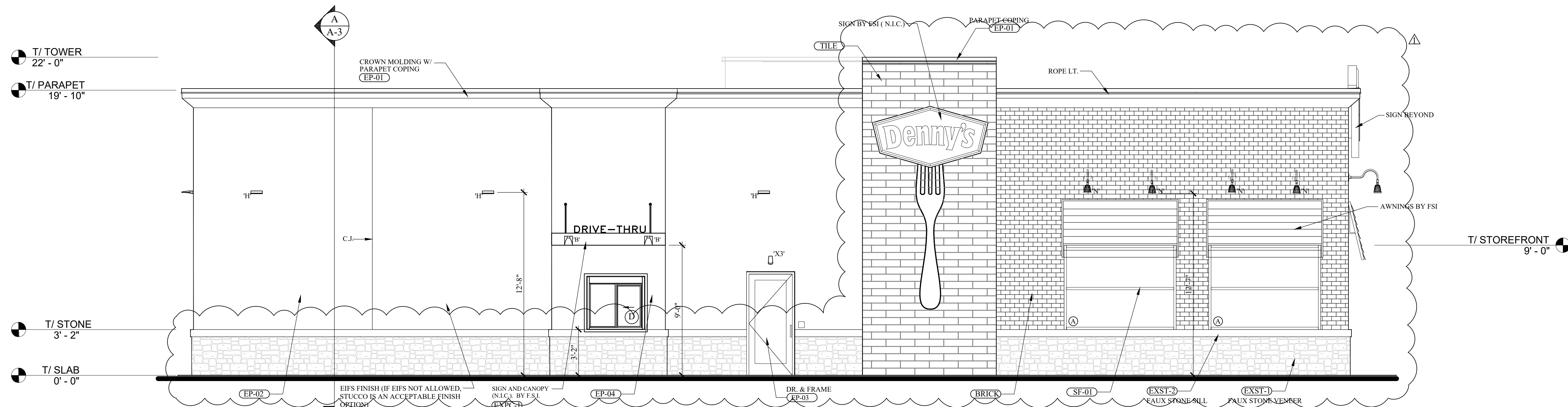


REVISIONS  
 Δ 11/15/21 CUP COMMENTS

EXTERIOR  
 ELEVATIONS

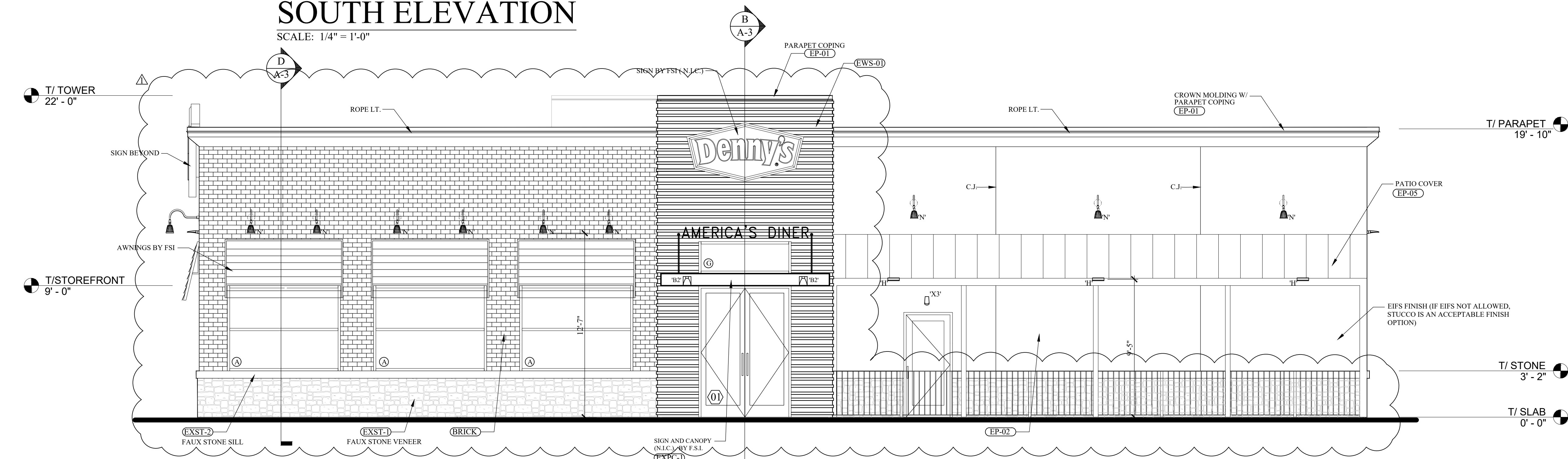
SHEET NUMBER

**A-2A**



**SOUTH ELEVATION**

SCALE: 1/4" = 1'-0"



**NORTH ELEVATION**

SCALE: 1/4" = 1'-0"

GENERAL ELEVATION NOTES

1. ALL UTILITY BOXES (ELECTRICAL PANELS, GAS METER, ETC.) ARE TO BE PAINTED TO MATCH E.I.F.S IF PERMISSIBLE BY THE LOCAL UTILITY COMPANIES.
2. DOWN SPOUTS AND GUTTERS TO BE PREFORMED & PREFINISHED, COLOR EP-02.
3. ALL EXTERIOR LIGHT FIXTURES SHALL BE PREFINISHED, REFER TO E-DWGS.
4. EXTERIOR WALL FINISH TO BE INSTALLED IN STRICT ACCORDANCE WITH MANUFACTURERS PUBLISHED INSTRUCTIONS.
5. ALL METAL COMPONENTS ON EXTERIOR ARE TO BE PREFORMED & PREFINISHED TO BE A NON-REFLECTIVE SURFACE.
6. ALL EXTERIOR WOOD TRIM TO BE PAINTED "AZEK" TRIM BOARDS OR EQUAL.
7. PROVIDE BLOCKING FOR AWNINGS TO ENSURE A 300LB PULL OUT OR BETTER.
8. CAULKLINE AROUND WINDOWS AND DOORS SHALL BE 1/2" WIDE.
9. CANOPIES, SHUTTERS, AWNINGS AND SIGNS PROVIDED BY F.S.I. UNDER SEPARATE PERMIT.
10. POLYSTYRENE UNDER EIFS THICKNESS TO BE 1-1/2" UNLESS NOTED OTHERWISE.
11. AWNINGS AND SIGNS PROVIDED BY F.S.I. UNDER SEPARATE PERMIT. VERIFY LOCATIONS AND HEIGHTS OF ALL SIGNS AND AWNINGS WITH F.S.I.
12. ALL SIGNS TO BE VERIFIED WITH SIGN PACKAGE FOR LOCATION, SIZE, AND ELECTRICAL REQUIREMENTS.
13. ALL STUCCO FINISH TO HAVE SAND TEXTURE.

**ABBREVIATIONS:**

CONTROL JOINT = C.J.  
 TEMPERED GLASS = T.G.

DRYVIT REPRESENTATIVE CONTACT INFO:  
 ED WEST  
 CIRCLE SUPPLY  
 1-800-227-0050  
 1-704-631-8526  
 EDW@CIRCLENC.COM

**EXTERIOR FINISH LEGEND**

CODE	PRODUCT	VENDORS & SPECIFICATIONS	COLOR
EP-01	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 6670 GOLD CREST; SATIN
EP-02	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7044 AMAZING GRAY; SATIN
EP-03	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7041 VAN DYKE BROWN
EP-04	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7032 WARM STONE; SATIN
EP-05	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7675 SEALSkin
SF-01	STOREFRONT	KAWNEER	DARK BRONZE ANODIZED
EXPC-1	POWDER COAT	PRISMATIC POWDERS	SOFT RUBBED BRONZE UMB 1326/METALLIC
EXST-1	STACKED STONE VENEER	NICHIHA	AT1118 MOUNTAIN
EXST-2	STONE VENEER WAINSCOT CAP	NICHIHA	ATS002 TAN
EXCC-1	FAUX WOOD SIDING	NEW TECH WOOD	BRAZILIAN IPE; PATTERN: H1/H6
BRICK	BRICK VENEER	NICHIHA	TO BE DETERMINED
EWS-01	SLATWALL SYSTEM, LOUVERED, LED	FRANCHISE SIGNS	
TILE	EXTERIOR WALL TILE	DAL-TILE	TO BE DETERMINED

**LEGEND**

- SEE WINDOW SCHEDULE
- ◻ SEE DOOR SCHEDULE
- SEE EXTERIOR COLOR SCHEDULE

ALL DOORS & WINDOWS SHALL BE BRONZED ANODIZED ALUMINUM WITH CLEAR GLASS

\*SEE ELECTRICALS TO VERIFY LIGHTING.

**LIGHT FIXTURE SCHEDULE**

- ⦿ 'N' LIGHT FIXTURE
- 'H' LIGHT FIXTURE
- ⦿ 'X3' LIGHT FIXTURE
- ⦿ 'B' RECESSED CAN LT. FIXTURES
- ⦿ ROOF MOUNTED LT. FIX.

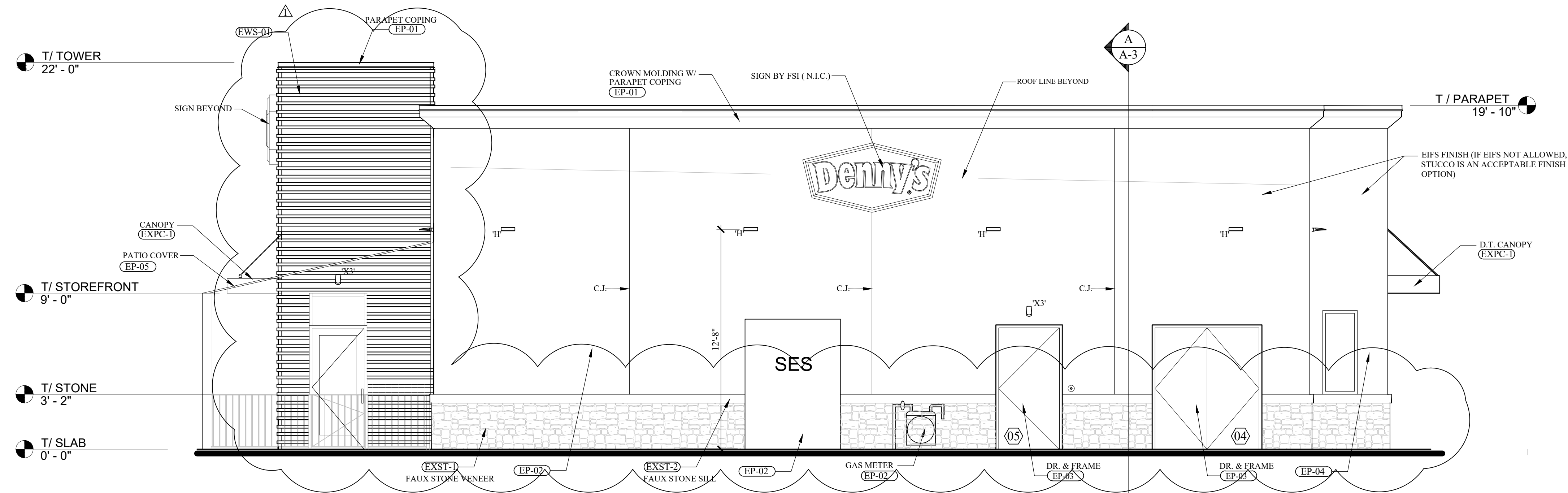


DATE: 05/12/21  
 JOB NO:  
 DRAWN: STAFF  
 CHECKED: CM



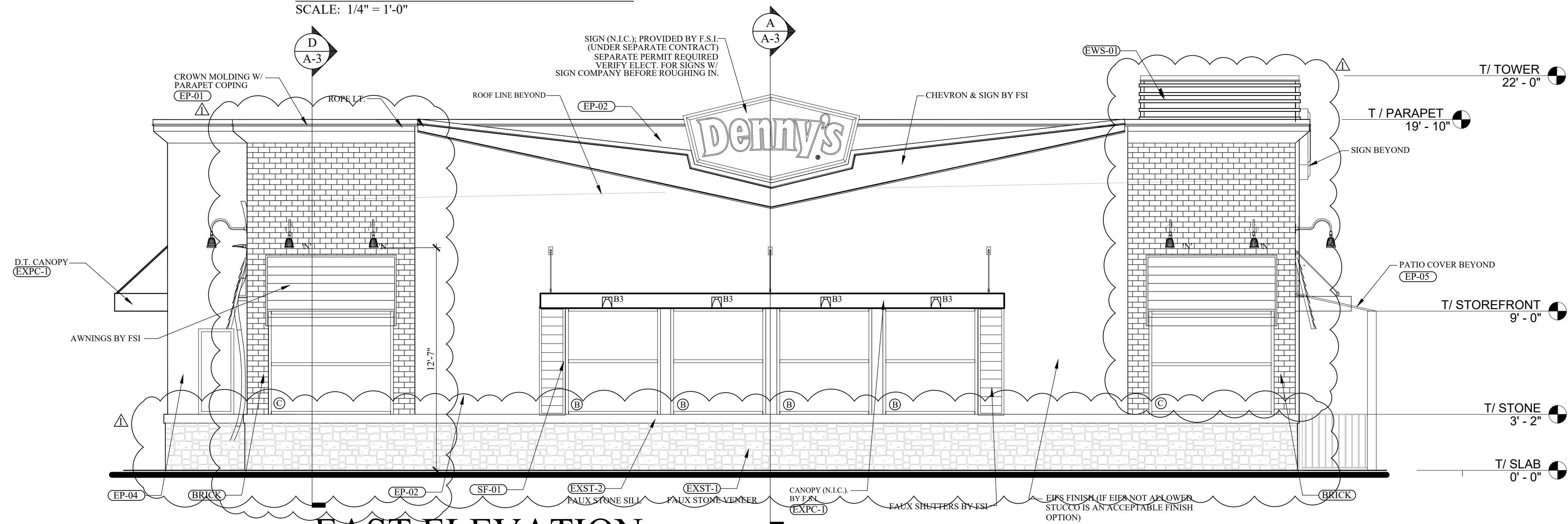
711 N. FIELDER RD.  
 ARLINGTON, TX 76012  
 PH: (817) 635-5696  
 FAX: (817) 635-5699

**Denny's**  
 19020 IH 35  
 KYLE, TX



**WEST ELEVATION**

SCALE: 1/4" = 1'-0"



**EAST ELEVATION**

SCALE: 1/4" = 1'-0"

**GENERAL ELEVATION NOTES**

1. ALL UTILITY BOXES (ELECTRICAL PANELS, GAS METER, ETC.) ARE TO BE PAINTED TO MATCH E.I.F.S IF PERMISSIBLE BY THE LOCAL UTILITY COMPANIES.
2. DOWN SPOUTS AND GUTTERS TO BE PREFORMED & PREFINISHED, COLOR EP-02.
3. ALL EXTERIOR LIGHT FIXTURES SHALL BE PREFINISHED, REFER TO E-DWGS.
4. EXTERIOR WALL FINISH TO BE INSTALLED IN STRICT ACCORDANCE WITH MANUFACTURERS PUBLISHED INSTRUCTIONS.
5. ALL METAL COMPONENTS ON EXTERIOR ARE TO BE PREFORMED & PREFINISHED TO BE A NON-REFLECTIVE SURFACE.
6. ALL EXTERIOR WOOD TRIM TO BE PAINTED "AZEK" TRIM BOARDS OR EQUAL.
7. PROVIDE BLOCKING FOR AWNINGS TO ENSURE A 300LB PULL OUT OR BETTER.
8. CAULKLINE AROUND WINDOWS AND DOORS SHALL BE 1/2" WIDE.
9. CANOPIES, SHUTTERS, AWNINGS AND SIGNS PROVIDED BY F.S.I. UNDER SEPARATE PERMIT.
10. POLYSTYRENE UNDER EIFS THICKNESS TO BE 1-1/2" UNLESS NOTED OTHERWISE.
11. AWNINGS AND SIGNS PROVIDED BY F.S.I. UNDER SEPARATE PERMIT. VERIFY LOCATIONS AND HEIGHTS OF ALL SIGNS AND AWNINGS WITH F.S.I.
12. ALL SIGNS TO BE VERIFIED WITH SIGN PACKAGE FOR LOCATION, SIZE, AND ELECTRICAL REQUIREMENTS.
13. ALL STUCCO FINISH TO HAVE SAND TEXTURE.

**ABBREVIATIONS:**

CONTROL JOINT = C.J.  
 TEMPERED GLASS = T.G.

DRYVIT REPRESENTATIVE CONTACT INFO:  
 ED WEST  
 CIRCLE SUPPLY  
 1-800-227-0050  
 1-704-631-8526  
 EDW@CIRCLENC.COM

**EXTERIOR FINISH LEGEND**

CODE	PRODUCT	VENDORS & SPECIFICATIONS	COLOR
EP-01	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 6670 GOLD CREST; SATIN
EP-02	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7044 AMAZING GRAY; SATIN
EP-03	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7041 VAN DYKE BROWN
EP-04	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7032 WARM STONE; SATIN
EP-05	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7675 SEALSKIN
SF-01	STOREFRONT	KAWNEER	DARK BRONZE ANODIZED
EXPC-1	POWDER COAT	PRISMATIC POWDERS	SOFT RUBBED BRONZE UMB 1326/METALLIC
EXST-1	STACKED STONE VENEER	NICHIHA	AT1118 MOUNTAIN
EXST-2	STONE VENEER WAINSCOT CAP	NICHIHA	ATS002 TAN
EXCC-1	FAUX WOOD SIDING	NEW TECH WOOD	BRAZILIAN IPE; PATTERN: H1/H6
BRICK	BRICK VENEER	NICHIHA	TO BE DETERMINED
EWS-01	SLATWALL SYSTEM, LOUVERED, LED	FRANCHISE SIGNS	
TILE	EXTERIOR WALL TILE	DAL-TILE	TO BE DETERMINED

**LEGEND**

- SEE WINDOW SCHEDULE
- ◻ SEE DOOR SCHEDULE
- SEE EXTERIOR COLOR SCHEDULE

ALL DOORS & WINDOWS SHALL BE BRONZED ANODIZED ALUMINUM WITH CLEAR GLASS

\*SEE ELECTRICALS TO VERIFY LIGHTING.

**LIGHT FIXTURE SCHEDULE**

- ⊕ 'N' LIGHT FIXTURE
- 'H' LIGHT FIXTURE
- 'X3' LIGHT FIXTURE
- ◻ 'B' RECESSED CAN LT. FIXTURES
- ⊞ ROOF MOUNTED LT. FIX.

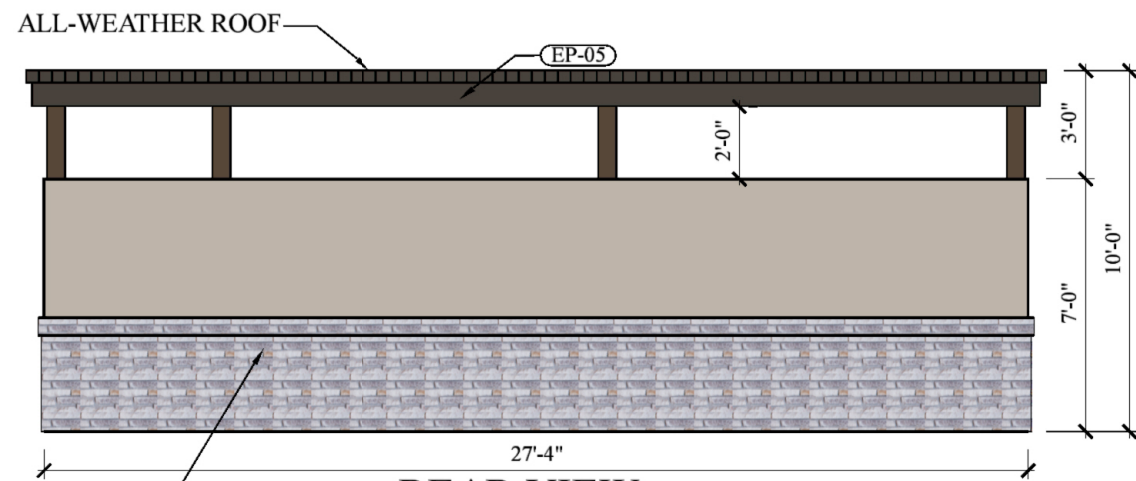
REVISIONS  
 Δ 11/15/21 CUP COMMENTS

**EXTERIOR ELEVATIONS**

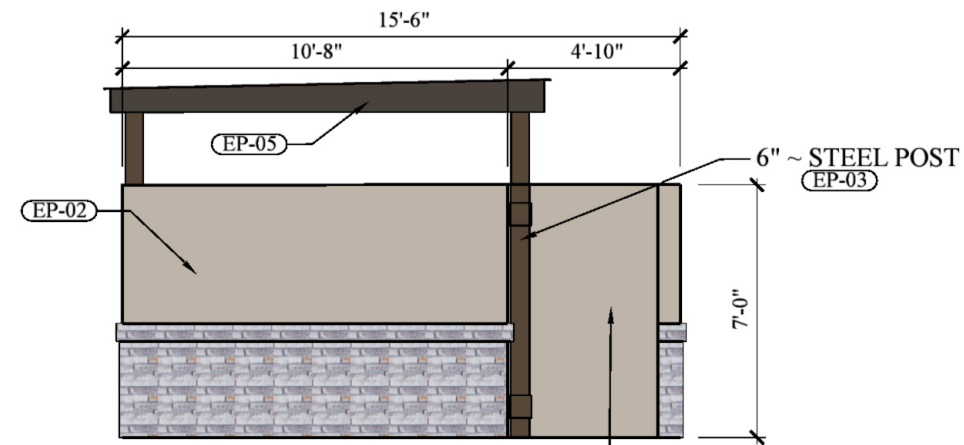
SHEET NUMBER

**A-2B**

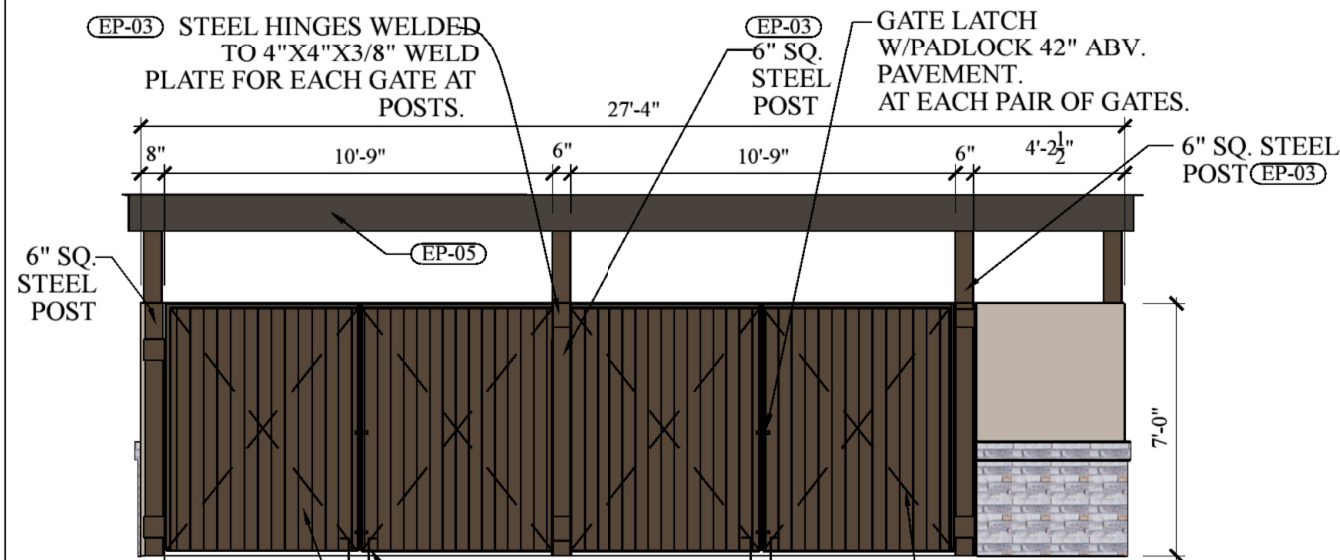
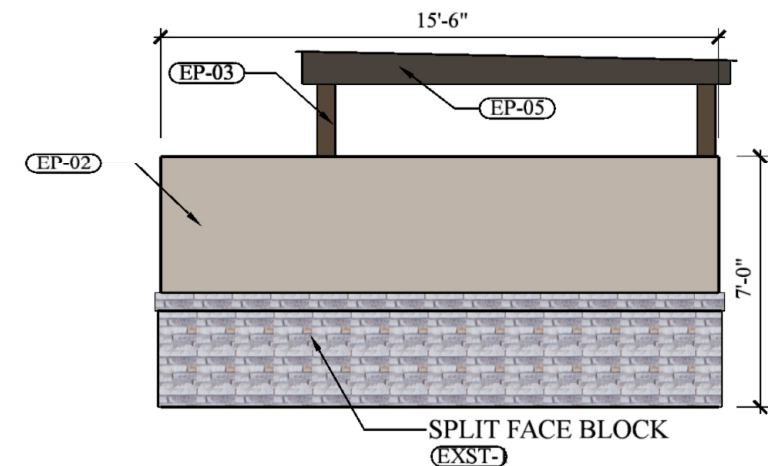




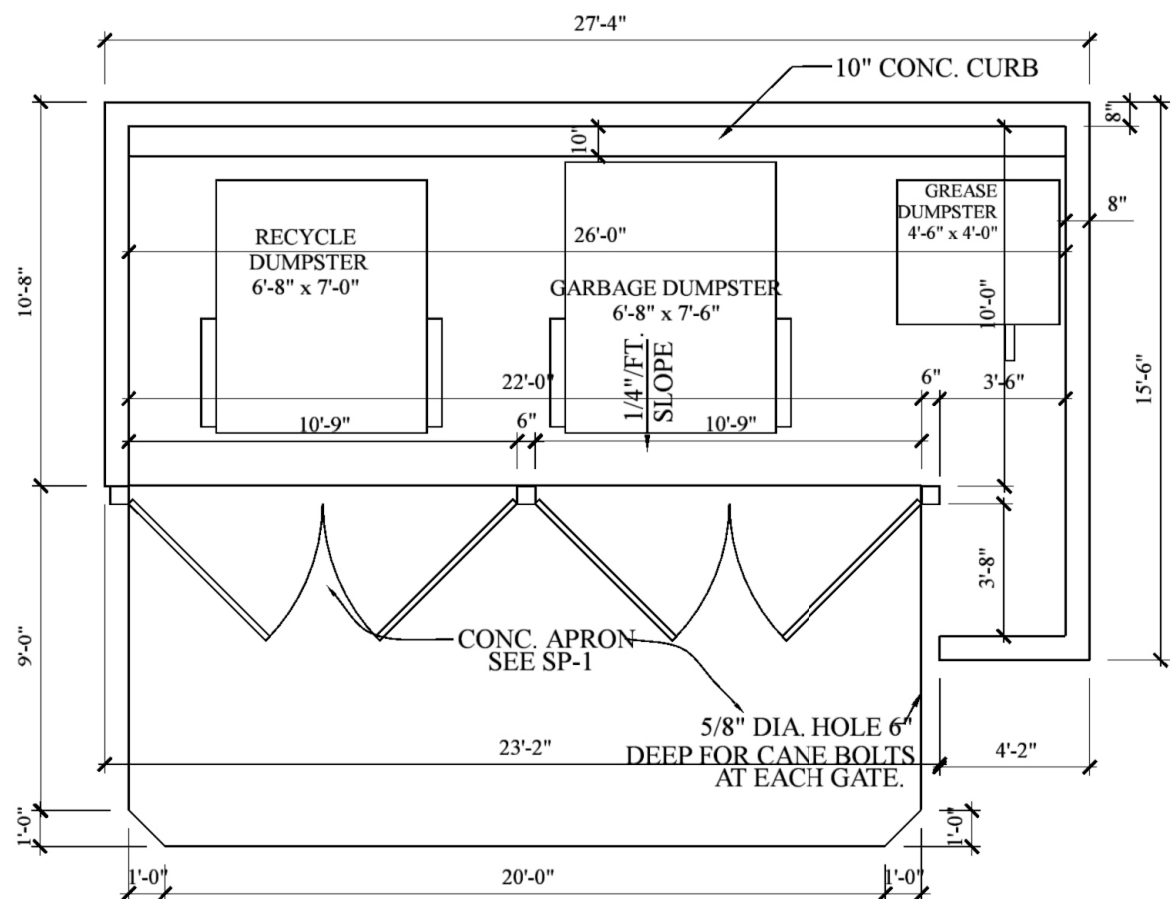
SEE WALL SECTION  
**REAR VIEW**  
 SPLIT FACE BLOCK



**RIGHT VIEW**  
 OPEN TO DUMPSTER



**FRONT VIEW**



EXTERIOR FINISH LEGEND			
CODE	PRODUCT	VENDORS & SPECIFICATIONS	COLOR
EP-02	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7044 AMAZING GRAY; SATIN
EP-05	EXTERIOR PAINT	SHERWIN WILLIAMS	SW 7675 SEALSKIN
EP-03	EXTERIOR PAINT	SHERWIN WILLIAMS	SW7041 VAN DYKE BROWN
EXST-1	STACKED STONE VENEER	NICHIHA	AT1118 MOUNTAIN

FINISHES AND COLORS TO MATCH DENNY'S BUILDING

# DUMPSTER DETAILS

DATE: 05/12/21  
 JOB NO:  
 DRAWN/STAFF:  
 CHECKED/CM:



711 N. FIELDER RD.  
 ARLINGTON, TX 76012  
 PH: (817) 635-5696  
 FAX: (817) 635-5699

**Denny's**  
 19020 IH 35  
 KYLE, TX 78640

Exp. 8-31-2022



DUMPSTER ENC. DETAILS

SHEET NUMBER

**SP2**



# CITY OF KYLE, TEXAS

Z Tejas - Conditional Use Permit  
(CUP-21-0038)

Meeting Date: 12/14/2021  
Date time: 6:30 PM

**Subject/Recommendation:** Consider a request to construct an approximately 4,500 square foot free standing restaurant and site plan for property located at 18920 IH-35, within the I-35 overlay district. (Z Tejas - CUP-21-0038)

**Other Information:**

**Legal Notes:**

**Budget Information:**

---

**ATTACHMENTS:**

**Description**

- Staff Memo
- Colored Elevations
- Concept Package
- Landscape Plan
- Deed
- Landowner Authorization Letter





# CITY OF KYLE

## Community Development Department

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### MEMORANDUM

**TO:** Planning & Zoning Commission

**FROM:** Will Atkinson – Senior Planner

**DATE:** Tuesday, December 14, 2021

**SUBJECT:** Z Tejas Restaurant – Conditional Use Permit (CUP-21-0038)

### REQUEST

The applicant seeks to construct an approximately 4,500 square foot Z Tejas free standing restaurant and site plan. The building will consist of both indoor and outdoor service, with materials consisting of a mix of Smooth Stucco, Natural Corten Metal, Corrugated Metal panels and board form concrete. These materials are complimented by the dark aluminum storefront and metal canopies, in addition to the outdoor dining patios.

### LOCATION

The property is located at 18920 IH-35, Kyle, TX 78640 in the Dry River District shopping center (Endeavor Group)).



## OVERLAY DISTRICT

The I-35 overlay district. The Interstate Highway 35 corridor conditional use overlay district (the I-35 overlay district) extends from the northernmost city limit boundary at I-35 to the southernmost city limit boundary at I-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of I-35. Sec. 53-899 is the code section staff uses to review for aesthetic compliance.

### TEXT OF THE ZONING ORDINANCE

**Sec. 53-896.** - Standards for review.

- (a) The planning and zoning commission shall determine whether the application and project is consistent and compliant with the terms and intent of this division, this chapter, chapter 32, article II, pertaining to the site development plan, and all other codes and ordinances of the city. The planning and zoning commission will determine if the proposed use, occupancy and structure will promote, preserve, and enhance, and will not damage or detract from the distinctive character of the community; will preserve and protect property values and taxable values; will not be detrimental or inconsistent with neighboring uses and occupancies; will not be detrimental to the general interests of the citizens; and will not be detrimental to the public health, safety and welfare. In conducting its review, the planning and zoning commission shall make examination of and give consideration to the traffic flow, development density, neighboring historical designs, neighboring uses, and elements of the application, including, but not limited to:
- (1) Height, which shall conform to the requirements of this chapter;
  - (2) Building mass, which shall include the relationship of the building width to its height and depth, and its relationship to the visual perception;
  - (3) Exterior detail and relationships, which shall include all projecting and receding elements of the exterior, including, but not limited to, porches and overhangs and the horizontal or vertical expression which is conveyed by these elements;
  - (4) Roof shape, which shall include type, form, and materials;
  - (5) Materials, texture, and color, which shall include a consideration of material compatibility among various elements of the structure;
  - (6) Compatibility of design and materials, which shall include the appropriateness of the use of exterior design details;
  - (7) Landscape design and plantings, which shall include lighting and the use of landscape details to highlight architectural features or screen or soften undesirable views;
  - (8) Vehicular and pedestrian access, which shall include location, width, and type of surface for all points of ingress and egress;
  - (9) Signage, which shall include, in addition to the requirements chapter 29, pertaining to signs, the appropriateness of signage to the building in relation location, historical significance of the structure and neighboring structures, traffic visibility; obstruction of views from neighboring property;

- (b) The planning and zoning commission may request from the applicant such additional information, sketches, and data as it shall reasonably require. It may call upon experts and specialists for testimony and opinion regarding matters under examination. It may recommend to the applicant changes in the plans it considers desirable and may accept a voluntary amendment to the application to include or reflect such changes. The planning and zoning commission shall keep a record of its proceedings and shall attach to the application copies of information, sketches, and data needed to clearly describe any amendment to the application.
- (c) If the conditional use permit is granted by the planning and zoning commission, the applicant shall be required to obtain a building permit and/or a development permit, if required, provided all other requirements for a building permit and/or a development permit are met. The building permit and/or a development proposal as approved shall be valid from one year from the date of approval. The planning and zoning commission may grant an extension of the one-year limitation if sufficient documentation can be provided to warrant such an extension.

### **STAFF ANALYSIS**

Staff has reviewed the request and has made the following findings:

1. The proposed building meets the intent of the Retail Services zoning standards for the building and site work;
2. The architecture style of the building meets the intent for variation of architectural design requirements in the I-35 Overlay;
3. Materials types and specific colors are available on the elevation sheet.
4. The overall design aesthetic and color palette does match the current ideals within the I-35 Overlay standard for the preferable appearance of the Kyle I-35 corridor. The design does not meet the masonry requirements in the I-35 Overlay. However, aesthetic variety is a good idea, as to promote architectural diversity within the City of Kyle.
5. The percentages of masonry does not meet the minimum 90% per face of building rule (Sec. 53-899(j)(1)). However, sometimes architectural design improves upon requirements in place by municipalities (i.e. design requirements do not always encapsulate all potential designs). The proposed design is better than what the code requires, while not meeting percentage standards.
  - Stucco use over 10% of building and used for more than detail uses (roof canopy).
  - Overall masonry percentages (per face) only meet 90% on south face (left side elevation) of building. This includes stucco, which is not typically included in the percentage.
  - The overall mix of materials create a cohesive and unique design.

The site plan shown as an exhibit is code compliant, and matches the proposed building for both the Retail Services zoning district and I-35 Overlay. The building does not meet the requirements for a minimum of 90% four sided masonry, however the overall architectural design meets the intent of the I-35 Overlay. The Z Tejas proposed elevations is a good example of not being code compliant, and at the same time exceeding the intent of the I-35 Overlay, relating to unique design (to be showcased). The Planning & Zoning Commission has the authority to approve designs that do not meet the requirements of the I-35 Overlay, but should be careful to ensure that such designs meet or exceed the intent of the overlay district.

### **RECOMMENDATION**

Staff has reviewed the color elevations for compliance with the Sec. 53-899 (I-35 Overlay design standards). Staff recommends approval of the conditional use permit (CUP-21-0038).



# CUASO DESIGN STUDIO

ARCHITECTURE • PLANNING • DESIGN • GRAPHICS

December 3, 2021

Mr. Will Atkinson  
City of Kyle  
100 W. Center Street  
Kyle, Texas 78640

Re: CP-21-0038  
Z –Tejas

Dear Mr. Atkinson,

The proposed restaurant building is primarily composed of Smooth Stucco, Natural Corten Metal, Corrugated Metal panels and board form concrete. All of which are complimented by the dark aluminum storefront and metal canopies. We believe that this material composition not only has a modern upscale contemporary feel but also a tan organic material color palette. The West and South side has a wrap around patio that can be indoors when we have extreme temperatures in the summer and can open up in the cooler months. In addition to the proposed building colors and materials, lush landscaping would supplement and soften the site context.

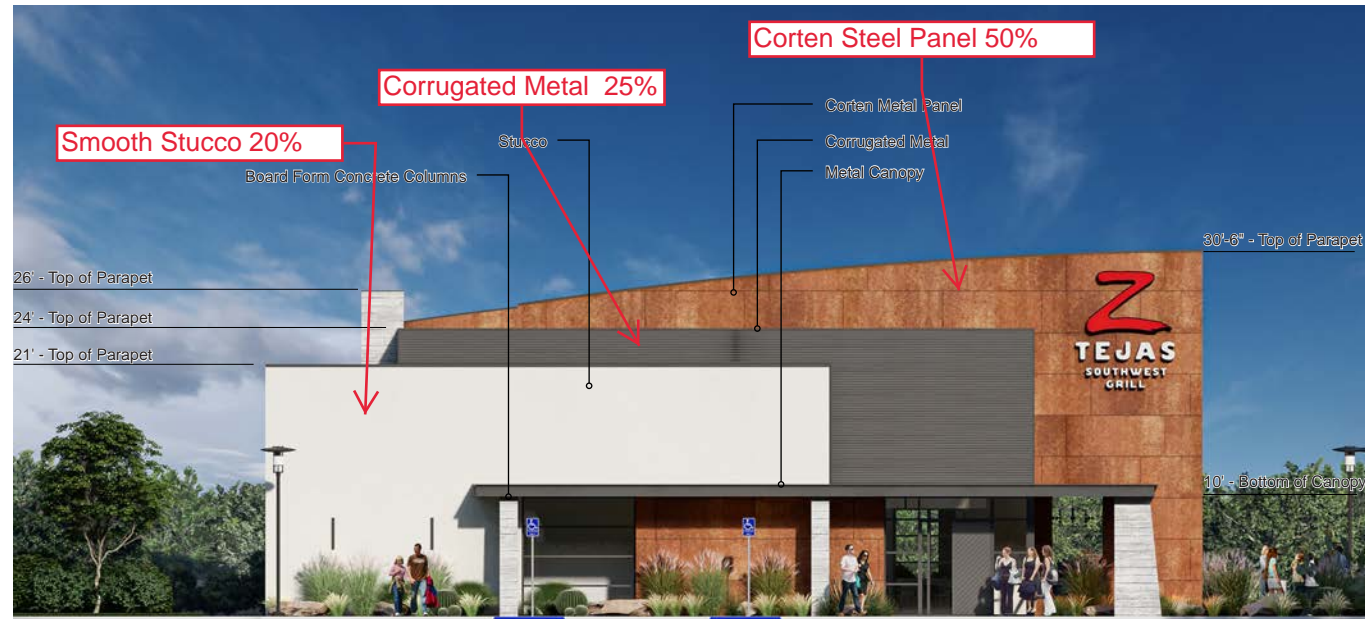
Please let us know if you need any additional information.

Thank you

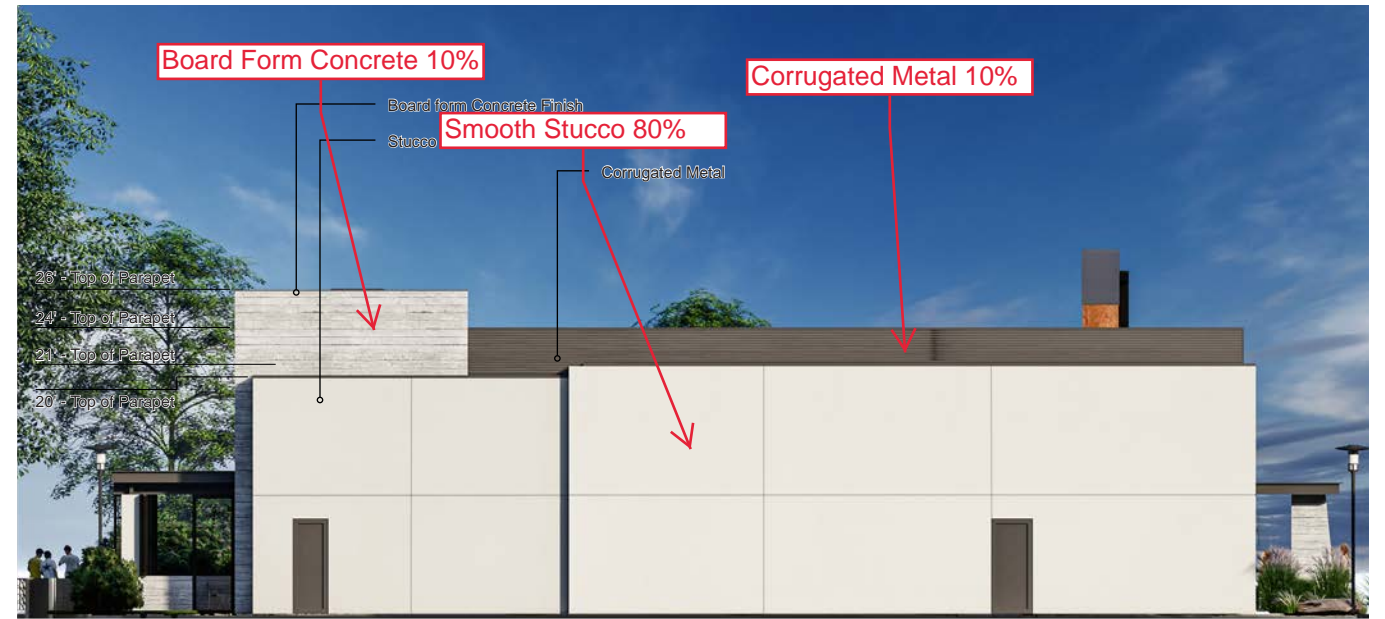
Respectfully submitted,



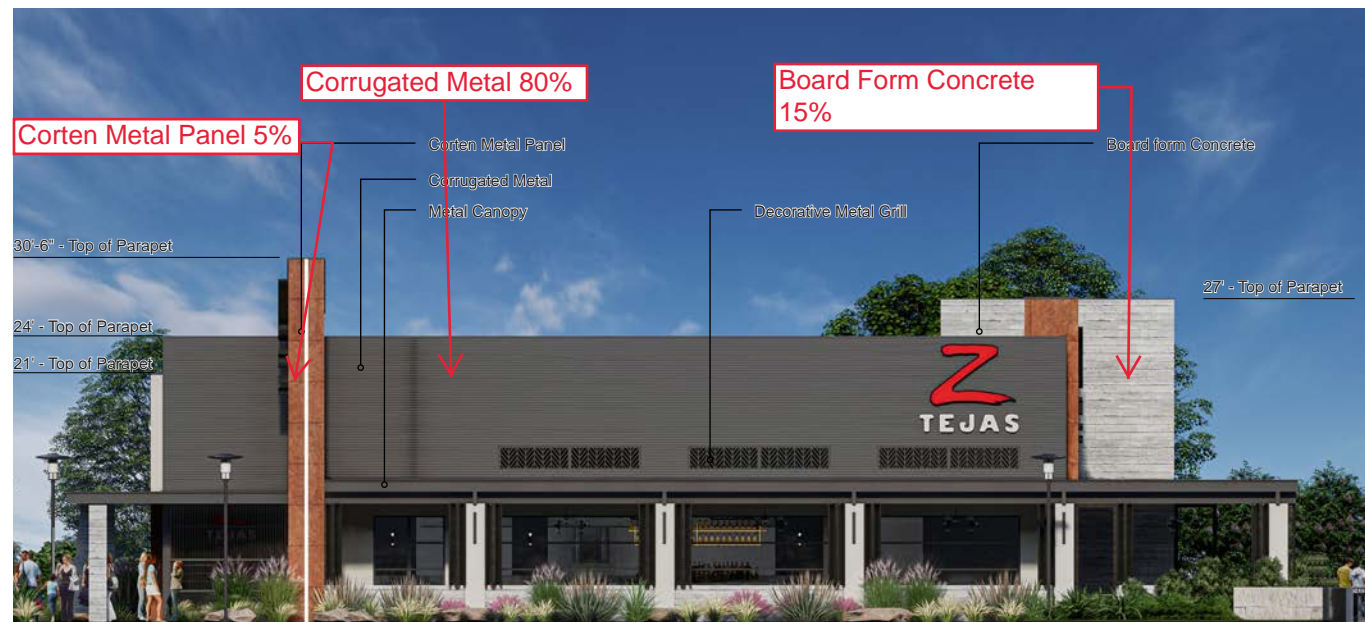
Christopher Cuaso  
Director of Design



FRONT ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



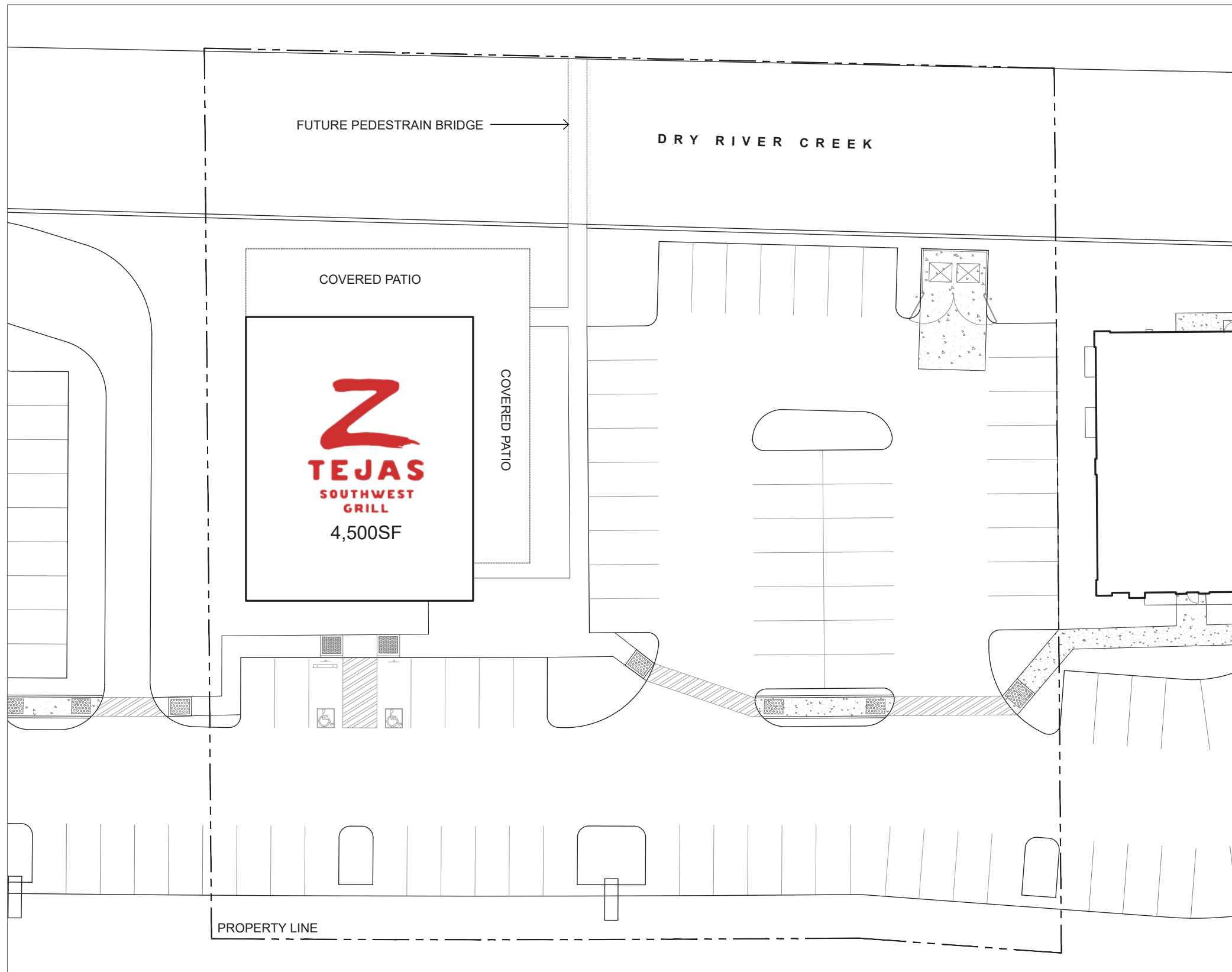
REAR ELEVATION

CUASO DESIGN STUDIO IS NOT RESPONSIBLE FOR ANY MODIFICATIONS MADE TO THIS DRAWING BY OTHER PARTIES. DIMENSIONS AND AREAS ON THIS DOCUMENT ARE APPROXIMATE AND SUBJECT TO CHANGE.



**CONCEPTUAL DESIGN PACKAGE**

**AUGUST 30, 2021**



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CUASO DESIGN STUDIO



Z TEJAS AT DRY RIVER DISTRICT - KYLE, TX  
Item # 13

Conceptual Design Rendering



3

08.30.2021





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CUASO DESIGN STUDIO



**Z TEJAS AT DRY RIVER DISTRICT – KYLE, TX**  
Item # 13

Conceptual Design Rendering

4

08.30.2021





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CUASO DESIGN STUDIO



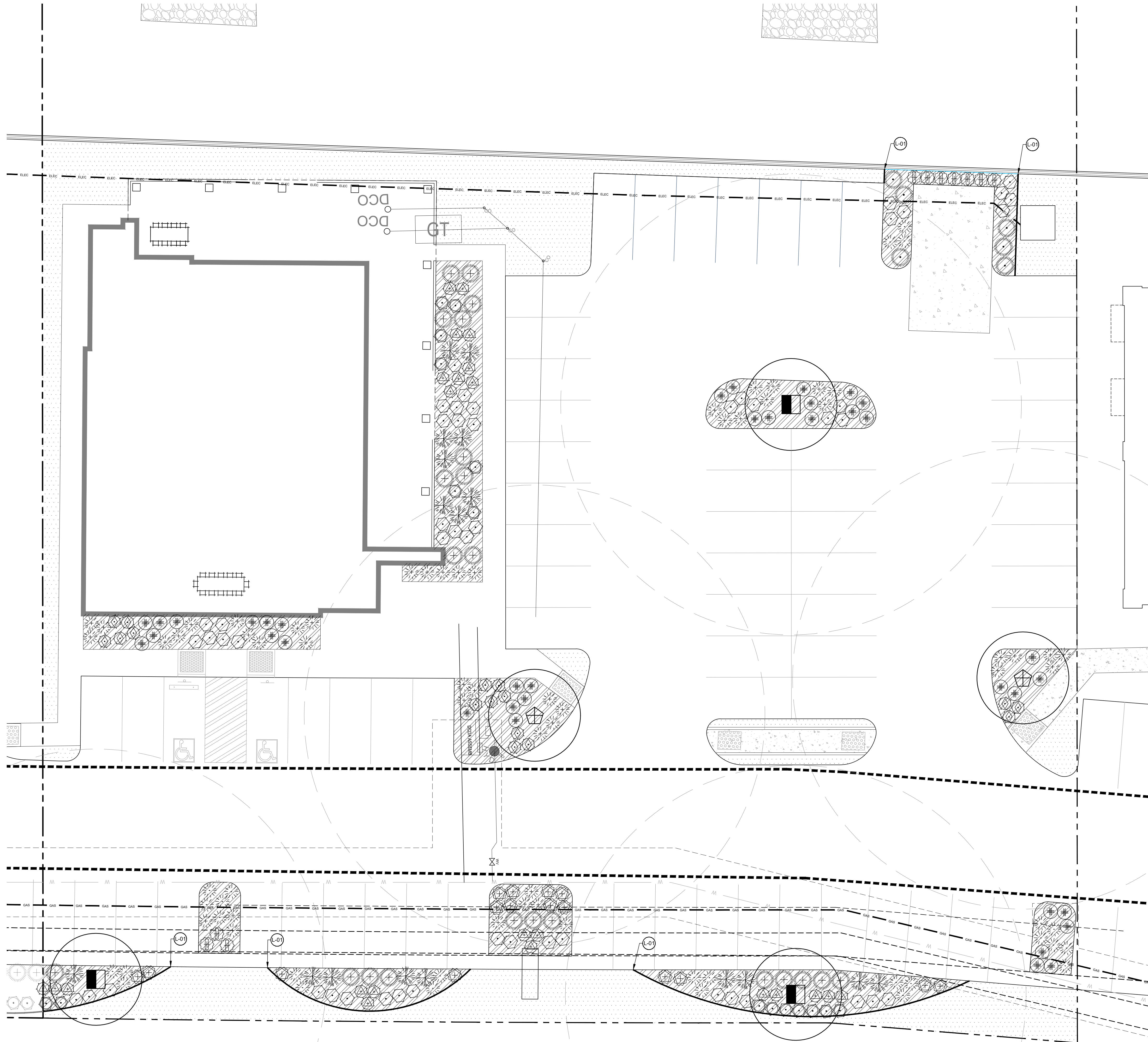
Z TEJAS AT DRY RIVER DISTRICT - KYLE, TX  
Item # 13

Conceptual Design Rendering

5

08.30.2021





PLANT SCHEDULE	
TREES	COMMON / BOTANICAL NAME
	CEDAR ELM ULMUS CRASSIFOLIA
	MEXICAN SYCAMORE PLATANUS MEXICANA
SHRUBS	COMMON / BOTANICAL NAME
	AUTUMN SAGE SALVIA GREGGII
	BLACK DALEA DALEA FRUTESCENS
	FLAME ACANTHUS ANISACANTHUS QUADRIFIDUS WRIGHTII
	GULF MUHLY MUHLENBERGIA CAPILLARIS
	LINDHEIMER'S MUHLY MUHLENBERGIA LINDHEIMERI
	LITTLE BUNNY FOUNTAIN GRASS PENNISETUM ALOPECUROIDES 'LITTLE BUNNY'
	NEW GOLD LANTANA LANTANA X 'NEW GOLD'
	RED YUCCA HESPERALOE PARVIFLORA
	ROSEMARY ROSMARINUS OFFICINALIS
	TEXAS SOTOL DASYLIRION TEXANUM
	TEXAS YUCCA YUCCA RUPICOLA
	TRAILING LANTANA LANTANA MONTEVIDENSIS 'PURPLE'
GROUND COVERS	COMMON / BOTANICAL NAME
	HARDWOOD MULCH 3" TEXAS DARK MULCH IN ALL PLANTING BEDS W/ WEED BARRIER FABRIC
SOD/SEED	COMMON / BOTANICAL NAME
	BERMUDA GRASS (SOD) CYNODON DACTYLON

**KEY LEGEND**

NOTE: ITEMS LISTED BELOW REFERENCE ALL SHEETS. QUANTITIES ARE INCLUDED FOR CONTRACTOR CONVENIENCE AND CONTRACTOR SHALL VERIFY ASSOCIATED QUANTITIES.

SYM	DESCRIPTION	QTY
L-01	LIMESTONE EDGE	180 LF

24x36  
  
**10'**  
 SCALE: 1"=10'-0"  
  
 12x18  
**20'**  
 SCALE: 1"=10'-0"

SUBMISSIONS | REVISIONS:

10.29.2021 CONCEPT LANDSCAPE PLAN

**NOT FOR CONSTRUCTION**

The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78701-2337 or 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3942, (512)305-9000, has jurisdiction over individuals licensed under the Landscape Architects Registration Law, Texas Civil Statutes, Article 249c.



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**civil engineer ::**  
 cunningham-allen, inc.  
 3103 Decatur road, suite 202  
 austin, tx 78746  
 p: 512.327.2946  
 cunningham-allen.com

**architect ::**  
 cuaso design studio  
 1601 e. cesar chavez, suite 101  
 austin, tx 78702  
 p: 512.348.8078

**owner ::**  
 kyle town center, ltd.  
 500 west 5th street, suite 700  
 austin, tx 78701  
 p: 512.682.5566  
 endeavor-re.com

**DRY RIVER DISTRICT**  
**Z TEJAS**  
 18900 IH-35, KYLE, TEXAS 78610

sheet information ::  
 project #: 19.519  
 date :: 10.29.2021  
 designed :: jw, mf, ym  
 drawn :: mf, ym  
 checked :: jw  
 approved :: bab

**LA1.00**  
 LANDSCAPE PLAN



**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

This instrument was prepared by  
and after recording, should be returned to:

L. Jeffrey Hubenak, Esq.  
Locke Lord LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701

**DEED OF TRUST AND SECURITY AGREEMENT**

This Deed of Trust and Security Agreement ("**Mortgage**") is a deed of trust from:

I35 KYLE CROSSING LOT 2, LTD.,  
I35 KYLE CROSSING LOT 5, LTD.,  
I35 KYLE CROSSING LOT 8, LTD.,  
I35 KYLE CROSSING LOT 9, LTD.,  
I35 KYLE CROSSING LOT 10, LTD.,  
I35 KYLE CROSSING LOT 11, LTD.,  
I35 KYLE CROSSING LOT 12, LTD.,  
I35 KYLE CROSSING LOT 18, LTD.,  
I35 KYLE CROSSING LOT 19, LTD.,  
I35 KYLE CROSSING LOT 20, LTD.,  
I35 KYLE CROSSING LOT 21, LTD., and  
I35 KYLE CROSSING LOT 22, LTD.,

each a Texas limited partnership, whose address is c/o Endeavor Real Estate Group, 500 West 5th Street, Suite 700, Austin, Texas 78701, Attention: Mr. David Roberts (collectively, called the "**Borrower**"), and

I35 KYLE CROSSING LOT 6, LTD.,  
I35 KYLE CROSSING LOT 14, LTD.,  
I35 KYLE CROSSING LOT 15, LTD.,  
I35 KYLE CROSSING LOT 16, LTD., and  
I35 KYLE CROSSING LOT 17, LTD.,

each a Texas limited partnership, whose address is c/o Endeavor Real Estate Group, 500 West 5th Street, Suite 700, Austin, Texas 78701, Attention: Mr. David Roberts (collectively, called the "**Grantor**" and together with the Borrower, collectively, the "**Mortgagor**"), to JAMES D. VANDEVENTER, Trustee, whose address for purposes hereof is 909 E. Southeast Loop 323, Ste. 400, Tyler, Smith County, Texas 75701 (called the "**Trustee**"), for the use and benefit of SOUTHSIDE BANK, a Texas state bank, whose address is P.O. Box 1079, Tyler, Texas 75710-1079

(1201 South Beckham, Tyler, Texas 75701), with a copy to 11815 Alterra Parkway, Suite 100, Austin, Texas 78758, Attention: Commercial Real Estate Department (called the "**Mortgagee**"). Mortgagor is also referred to herein as "**Debtor**" and "**Assignor**," and Mortgagee is also referred to herein as "**Secured Party**" and "**Assignee**." This instrument is also an assignment of rents and leases from Assignor to Assignee, and a security agreement between Debtor and Secured Party.

**WITNESSETH:**

**ARTICLE 1  
IDENTIFICATION OF THE MORTGAGED PROPERTY  
AND ITS CONVEYANCE TO TRUSTEE**

**Section 1.1 MORTGAGOR'S CONVEYANCE OF THE MORTGAGED PROPERTY TO TRUSTEE TO SECURE THE INDEBTEDNESS.** To secure payment of principal, lawful interest and other elements of the Indebtedness described and defined in Article 2, in consideration of the uses and trusts (the "**Trust**") established and continued by this Mortgage and in consideration of Ten Dollars (\$10.00) and other valuable consideration paid before delivery of this Mortgage by each of Trustee and Mortgagee to Mortgagor, who hereby acknowledges its receipt and that it is reasonably equivalent value for this Mortgage and all other security and rights given by Mortgagor, Mortgagor hereby Grants, Sells, Conveys, Transfers, Assigns, Sets Over, Confirms and Delivers unto the Trustee and to his successors or substitutes in the Trust, the following property (collectively, the "**Mortgaged Property**"):

- (a) **Real Property.** All of the real estate and premises described or referred to on Exhibit A, together with (i) all of Mortgagor's estate, right, title and interest in and to all easements and rights-of-way for utilities, ingress or egress to or from said property and (ii) all interests of Mortgagor in and to all streets, rights-of-way, alleys or strips of land adjoining said property (collectively, the "**Real Property**").
- (b) **Buildings and Improvements.** All of Mortgagor's right, title and interest in and to all existing and all future buildings on the Real Property and other improvements to it, all of which Mortgagor and Mortgagee hereby irrevocably declare to be real estate and part of the Real Property, including all water, sewage, drainage, flood control and water quality control facilities, wells, supply, collection and distribution systems, paving, landscaping and other improvements (collectively, the "**Improvements**").
- (c) **Fixtures, Equipment and Supplies.** All of Mortgagor's right, title and interest in and to all fixtures, equipment and supplies (the "**Fixtures and Equipment**") now or hereafter attached to, used, intended or acquired for use for, or in connection with, the construction, maintenance, operation or repair of the Real Property or Improvements, or for the present or future replacement or replenishment of used portions of it, and all related parts, filters and supplies, including but not limited to, all heating, lighting, cooling, ventilating, air conditioning, environment control, refrigeration, plumbing, incinerating, water-heating, cooking, gas, electric, monitoring, measuring, controlling, distributing and other equipment and fixtures, and all renewals and replacements of them, all substitutions for them and all additions and accessions to them, all of which Mortgagor and Mortgagee hereby also irrevocably declare to be real estate and part of the Real Property.

- (d) **Leases.** All Leases (as such term is defined in Loan Agreement).
- (e) **Utilities.** All wastewater, fresh water and other utilities capacity and facilities (the "Utilities Capacity") available or allocable to the Real Property and Improvements or dedicated to or reserved for them pursuant to any system, program, contract or other arrangement with any public or private utility, and all related or incidental licenses, rights and interests, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all such rights and the right to any credit, refund, reimbursement or rebate for utilities facilities construction or installation or for any reservation fee, standby fee or capital recovery charge promised, provided or paid for by Mortgagor or any of Mortgagor's predecessors or Affiliates (defined below) to the full extent now allocated or allocable to the Real Property or Improvements, plus all additional Utilities Capacity, if any, not dedicated or reserved to the Real Property or Improvements but which is now or hereafter owned or controlled by Mortgagor or by anyone (an "Affiliate", whether a natural person or an entity) who directly or through one or more intermediaries controls, is controlled by or is under common control with Mortgagor, to the full extent that such additional Utilities Capacity is necessary to allow development, marketing and use of the Real Property or Improvements for their highest and best use.
- (f) **After-acquired Property.** All estate, right, title and interest acquired by Mortgagor in or to the Real Property, Improvements, Fixtures and Equipment, Leases and Utilities Capacity after execution of this Mortgage.
- (g) **Appurtenances.** All rights and appurtenances (the "Appurtenances") belonging, incident or appertaining to the Real Property, Improvements, Fixtures and Equipment, Leases or Utilities Capacity or any part of them.
- (h) **Oil and Gas.** All of Mortgagor's right, title and interest in and to all existing and future minerals, oil, gas and other hydrocarbon substances in, upon, under or through the Real Property.
- (i) **Reversions and Remainders.** All of Mortgagor's right, title and interest in and to all rights and estates in reversion or remainder to the Real Property, Improvements, Fixtures and Equipment, Leases, Utilities Capacity or Appurtenances or any part of them.
- (j) **Contractual Rights.** All of Mortgagor's right, title and interest in and to all contracts (including leases or any other contracts for the use, occupancy, sale or exchange of all or any portion of the Real Property or the Improvements), franchises, licenses and permits whether executed, granted or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to or connected with the construction, development, occupancy, use or sale of the Real Property or the Improvements, whether now or at any time hereafter existing, and all amendments and supplements thereto and renewals and extensions thereof at any time made, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Mortgagor's other benefits thereunder, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Mortgagor's other benefits thereunder, including, without limitation, (i) that certain Standard Form of Agreement between Owner and Construction Manager as Constructor (AIA Document A133-2009) executed on June 24, 2020, between EMJ Corporation,

a Tennessee corporation dba EMJ Construction, as "Construction Manager", and I35 Kyle Crossing, Ltd., a Texas limited partnership, as original "Owner", and now serving as managing agent on behalf of I35 Kyle Crossing Lot 2, Ltd., I35 Kyle Crossing Lot 4, Ltd., I35 Kyle Crossing Lot 5, Ltd., I35 Kyle Crossing Lot 6, Ltd., I35 Kyle Crossing Lot 7, Ltd., I35 Kyle Crossing Lot 8, Ltd., I35 Kyle Crossing Lot 9, Ltd., I35 Kyle Crossing Lot 10, Ltd., I35 Kyle Crossing Lot 11, Ltd., I35 Kyle Crossing Lot 12, Ltd., I35 Kyle Crossing Lot 13, Ltd., I35 Kyle Crossing Lot 14, Ltd., I35 Kyle Crossing Lot 15, Ltd., I35 Kyle Crossing Lot 16, Ltd., I35 Kyle Crossing Lot 17, Ltd., and/or I35 Kyle Crossing Lot 18, Ltd., as applicable, each a Texas limited partnership, as "Owner", as said Standard Form of Agreement between Owner and Construction Manager as Constructor may now or hereafter be amended, and (ii) all rights as "Consenting Owner" now or hereafter held by I35 Kyle Crossing Lot 5, Ltd. and/or any other Mortgagor as an "Owner" of all or any portion of the "Developer Parcel" under that certain Restriction Agreement and Grant of Easements dated August 5, 2019 by and between Kyle Texas Company, LLC, an Ohio limited liability company (predecessor in interest to I35 Kyle Crossing Lot 5, Ltd), as developer, and Home Depot U.S.A., Inc. (predecessor in interest to HD Development of Maryland, Inc.), and recorded June 8, 2004, under Document No. 4016158, Vol. 2478, Page 732 in the Official Records of Hays County, Texas, as said Restriction Agreement and Grant of Easements may now or hereafter be amended.

- (k) **Other Estates and Interests.** All of Mortgagor's right, title and interest in and to all other estates, easements, interests, licenses, rights, titles, powers or privileges of every kind and character which Mortgagor now has, or at any time hereafter acquires, in and to any of the foregoing, including the proceeds from condemnation, or threatened condemnation, and the proceeds of any and all insurance covering any part of the foregoing; and all related parts, accessions and accessories to any of the foregoing and all replacements or substitutions therefor, as well as all other Improvements, Fixtures and Equipment, Utilities Capacity and Appurtenances now or hereafter placed thereon or accruing thereto. The foregoing shall not include the names "Endeavor" or any derivatives thereof.

**Section 1.2 TITLE WARRANTY.** TO HAVE AND TO HOLD the Mortgaged Property, together with every right, privilege, hereditament and appurtenance belonging or appertaining to it, unto the Trustee, his successors or substitutes in the Trust and his or their assigns, forever. Mortgagor represents that Mortgagor is the lawful owner of the Mortgaged Property with good and indefeasible title and has the right and authority to mortgage, grant a lien upon and convey the Mortgaged Property, and that the Mortgaged Property is free and clear of any liens, claims and encumbrances other than the lien, security interests and assignments evidenced hereby and those encumbrances and exceptions to title described in Exhibit B attached hereto and hereby made a part hereof (collectively the "**Permitted Encumbrances**"). Mortgagor hereby binds Mortgagor and Mortgagor's successors and assigns to forever WARRANT and DEFEND the Mortgaged Property and every part thereof unto the Trustee, his successors or substitutes in the Trust, and his or their assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim it or any part of it; subject, however, to the Permitted Encumbrances.



**ARTICLE 2**  
**THE INDEBTEDNESS SECURED**

**Section 2.1 CONVEYANCE IN TRUST TO SECURE DESIGNATED OBLIGATIONS.** This conveyance to the Trustee is in trust to secure all of the following present and future indebtedness and obligations:

- (a) **Note.** All indebtedness now or hereafter evidenced and to be evidenced by the promissory note of even date herewith, executed by Borrower, payable to the order of Mortgagee in the face principal amount of TEN MILLION FIVE HUNDRED SIXTY-FOUR THOUSAND THREE HUNDRED SEVENTY-FOUR AND NO/100 DOLLARS (\$10,564,374.00), maturing sixty (60) months from the date hereof, and any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases of such note (collectively, the "Note").
- (b) **Loan Agreement.** All obligations and indebtedness of Borrower now or hereafter created or incurred under the Construction Loan Agreement dated concurrently herewith between Borrower and Mortgagee, as the same may be amended, supplemented, restated or replaced from time to time (collectively, the "Loan Agreement").
- (c) **Other Specified Obligations.** All other obligations, if any, described or referred to in any other place in this Mortgage.
- (d) **Advances and Other Obligations Pursuant to this Mortgage's Provisions.** Any and all sums and the interest which accrues on them as provided in this Mortgage which Mortgagee may advance or which Borrower may owe Mortgagee pursuant to this Mortgage on account of Borrower's failure to keep, observe or perform any of Borrower's covenants under this Mortgage.
- (e) **Obligations under Credit Documents.** All present and future debts and obligations under or pursuant to (1) any Credit Documents (as defined in the Loan Agreement), including without limitation, any ISDA Master Agreements, or (2) all supplements, amendments, restatements, renewals, extensions, rearrangements, increases, expansions or replacements of them.
- (f) **Related Indebtedness.** All other loans or advances not otherwise specifically described in this Section now or hereafter made for the purpose of paying costs of developing, constructing, improving or operating all or any part of the Mortgaged Property.

**Section 2.2 INDEBTEDNESS DEFINED.** The term "**Indebtedness**" means and includes the Note and all other indebtedness and obligations described or referred to in Section 2.1. The Indebtedness includes interest and other obligations accruing or arising after (a) commencement of any case under any bankruptcy or similar laws by or against Borrower or any other person or entity now or hereafter primarily or secondarily obligated to pay all or any part of the Indebtedness or (b) the obligations of Borrower shall cease to exist by operation of law or for any other reason. The Indebtedness also includes all reasonable attorneys' fees and any other expenses incurred by Mortgagee in enforcing any of the Credit Documents. All liens, assignments and security interests created, represented or continued by this Mortgage, both present and future, shall be first, prior and superior to any lien, assignment, security interest, charge, reservation of title or other interest heretofore, concurrently or subsequently suffered or granted by Mortgagor or Mortgagor's successors or assigns, except only

statutory super priority liens for nondelinquent taxes and those other liens (if any) expressly identified and stated in this Mortgage to be senior.

### ARTICLE 3 SECURITY AGREEMENT

**Section 3.1 GRANT OF SECURITY INTEREST.** Without limiting any of the provisions of this Mortgage, this Mortgage shall be construed as a "Security Agreement" within the meaning of and create a security interest under the UCC (as defined below), and as such, Mortgagor, as Debtor, and referred to in this Article as "**Debtor**" (whether one or more) hereby grants to Mortgagee, as Secured Party, and referred to in this Article as "**Secured Party**" (whether one or more), a security interest in all of Debtor's remedies, powers, privileges, rights, titles and interests (including all of Debtor's power, if any, to pass greater title than it has itself) of every kind and character now owned or hereafter acquired, created or arising in and to (i) the Mortgaged Property (including both that now and that hereafter existing) to the full extent that the Mortgaged Property may be subject to Article 9 of the Uniform Commercial Code of the state or states where the Mortgaged Property is situated (the "UCC"), (ii) all furniture, furnishings, equipment, accounts, machinery, general intangibles, fixtures, inventory, chattel paper, notes, documents and other personal property owned by Debtor and used, intended or acquired for use, on, or in connection with the use, operation or development of, the Mortgaged Property, or otherwise related to the Mortgaged Property, and all products and proceeds of it, all security deposits under Leases now or at any time hereafter held by or for Debtor's benefit, all monetary deposits which Debtor has been required to give to any public or private utility with respect to utility services furnished to the Mortgaged Property, all funds, accounts, instruments, accounts receivable, documents, trademarks, trade names and symbols used in connection therewith, and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property, and all guaranties and warranties obtained with respect to all improvements, equipment, furniture, furnishings, personal property and components of any thereof located on or installed at the Mortgaged Property and (iii) the following described property:

- (a) **Contracts.** All contracts now or hereafter entered into by and between Debtor and any Original Contractor (as such term is defined in Section 53.001(7) of the Texas Property Code) or between Debtor and any other party, as well as all right, title and interest of Debtor under any subcontracts, providing for the construction (original, restorative or otherwise) of any improvements to or on any of the Mortgaged Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction;
- (b) **Plans.** All of the plans, specifications and drawings (including all engineering and other plans and specifications for any drainage, flood control and water quality control facilities, and all plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses for any structural Improvements) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Mortgaged Property;
- (c) **Design, etc. Agreements.** All agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development or consulting

services rendered or to be rendered in respect of planning, design, inspection or supervision of the construction, management or development of any of the Mortgaged Property;

- (d) **Lender or Investor Commitments.** Any commitment issued by any lender or investor other than Mortgagee to finance or invest in any of the Mortgaged Property; and
- (e) **Bonds.** Any completion bond, performance bond and labor and material payment bond and any other bond relating to the Mortgaged Property or to any contract providing for construction of improvements to any of the Mortgaged Property.

Together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles related to any of the foregoing Property now owned by Debtor or existing or hereafter acquired, created or arising. All the property described or referred to in this Section 3.1 is collectively referred to as the "**Collateral**", and the Collateral shall include any and all proceeds of any of the above-described Collateral. The Mortgaged Property and the Collateral are collectively referred to as the "**Property**".

**Section 3.2 DEBTOR'S COVENANTS CONCERNING PERSONALTY SUBJECT TO THE UCC.** Debtor covenants and agrees with Secured Party that in addition to and cumulative of any other remedies granted in this Mortgage to Secured Party or the Trustee, upon or at any time after the occurrence of an Event of Default (defined in Article 6 below) which is then continuing:

(a) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Debtor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell the same for the account of Debtor and to deduct from such sale proceeds all reasonable costs, expenses and liabilities of every character incurred by Secured Party in collecting such sale proceeds and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds on the Indebtedness in such manner as Secured Party may elect. Before any sale, Secured Party may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Secured Party may reasonably deem advisable and any sums expended therefor by Secured Party shall be reimbursed by Debtor. Secured Party may take possession of Debtor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Debtor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Debtor. All costs, expenses, and liabilities incurred by Secured Party in collecting such sales proceeds, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate (as defined in Article 7 below), all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this Section, Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Secured Party with

respect to the Collateral unless such loss is caused by the gross negligence, willful misconduct or bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Secured Party shall have all the rights of a secured party after default under the UCC and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and

(ii) it shall not be necessary that Secured Party take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale.

**Section 3.3 UCC RIGHTS ARE NOT EXCLUSIVE.** Should Secured Party elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Mortgage, such election shall not preclude Secured Party or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Mortgage as to the remaining personal property or fixtures.

**Section 3.4 MORTGAGE IS ALSO FINANCING STATEMENT.** Secured Party may, at its election, at any time after delivery of this Mortgage, file an original of this Mortgage as a financing statement or sign one or more copies of this Mortgage to use as a UCC financing statement. Secured Party's signature may be placed between the last sentence of this Mortgage and Debtor's acknowledgment or may follow Debtor's acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the effectiveness of this Mortgage as a deed of trust, mortgage, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement. Debtor's address and Secured Party's address shall be as set forth on page 1 of this Mortgage.

**Section 3.5 NO OTHER FINANCING STATEMENTS ON THE COLLATERAL.** So long as any amount remains unpaid on the Indebtedness, Debtor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Secured Party under this Mortgage, unless prior written specific consent and approval of Secured Party shall have been first obtained.

**Section 3.6 SECURED PARTY MAY FILE FINANCING AND CONTINUATION STATEMENTS.** Secured Party is authorized to file this Mortgage, a financing statement or statements and one or more continuation statements in any jurisdiction where Secured Party deems it necessary, and at Secured Party's request, Debtor will join Secured Party in executing one or more financing statements, continuation statements or both pursuant to the UCC, in form satisfactory to Secured Party, and will pay the costs of filing or recording them, in all public offices at any time and from time to time whenever filing or recording of this Mortgage, any financing statement or any continuation statement is deemed reasonable by Secured Party or its counsel to be necessary or desirable.



**Section 3.7 FIXTURES.** Certain of the Collateral is or will become "fixtures" (as that term is defined in the UCC) on the Real Property, and when this Mortgage is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a fixture filing with respect to such of the Collateral which is or may become fixtures.

For purposes of the security interest granted herein, Debtor hereby certifies to Secured Party the accuracy of the following information:

Name of Debtor & Debtor's Organizational Identification No.:

I35 KYLE CROSSING LOT 2, LTD. - 803559279  
I35 KYLE CROSSING LOT 5, LTD. - 803559311  
I35 KYLE CROSSING LOT 8, LTD. - 803559332  
I35 KYLE CROSSING LOT 9, LTD. - 803559335  
I35 KYLE CROSSING LOT 10, LTD. - 803559342  
I35 KYLE CROSSING LOT 11, LTD. - 803559351  
I35 KYLE CROSSING LOT 12, LTD. - 803559358  
I35 KYLE CROSSING LOT 18, LTD. - 803559647  
I35 KYLE CROSSING LOT 19, LTD. - 803559651  
I35 KYLE CROSSING LOT 20, LTD. - 803559657  
I35 KYLE CROSSING LOT 21, LTD. - 803559666  
I35 KYLE CROSSING LOT 22, LTD. - 803559677  
I35 KYLE CROSSING LOT 6, LTD. - 803559318  
I35 KYLE CROSSING LOT 14, LTD. - 803559369  
I35 KYLE CROSSING LOT 15, LTD. - 803559373  
I35 KYLE CROSSING LOT 16, LTD. - 803559621  
I35 KYLE CROSSING LOT 17, LTD. - 803559625

Address of Debtor: 500 West 5th Street, Suite 700, Austin, Texas 78701  
State of Organization: Texas  
Type of Organization: limited partnership

Name of Secured Party: Southside Bank  
Address of Secured Party: 909 E. Southeast Loop 323, Suite 400, Tyler, Texas 75701

**Section 3.8 ASSIGNMENT OF NON-UCC PERSONAL PROPERTY.** To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Debtor hereby assigns to Secured Party all of Debtor's right, title and interest in the Collateral to secure the Indebtedness. Release of the lien of this Mortgage shall automatically terminate this assignment.

**Section 3.9 DEBTOR'S WARRANTIES CONCERNING COLLATERAL.** Debtor warrants and represents to Secured Party that Debtor is the legal and equitable owner and holder of the Collateral free of any adverse claim and security interest or other encumbrance, except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Mortgage. Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its

proceeds or any interest in either. Debtor also warrants and represents that Debtor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Debtor is now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party.

**Section 3.10 STANDARD OF CARE.** Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself conclusively be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by Debtor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

**Section 3.11 CHANGE TERMS, RELEASE COLLATERAL.** Secured Party may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Debtor or discharging or otherwise affecting any liability of Debtor. Secured Party shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

#### **ARTICLE 4 MORTGAGOR'S COVENANTS**

**Section 4.1 COVENANTS FOR THE BENEFIT OF MORTGAGEE.** To better secure the Indebtedness, Mortgagor covenants and agrees with the Trustee and his substitutes and successors in the Trust, for the use and benefit of Mortgagee and with the intent that Mortgagee, the Trustee or both may enforce these covenants, that:

- (a) **Liens, etc. and Remedies Cumulative.** No lien, assignment, security interest, guaranty, right or remedy in favor of Mortgagee granted in, secured by or ancillary to this Mortgage shall be considered as exclusive, but each shall be cumulative of all others which Mortgagee or the Trustee may now or hereafter have.
- (b) **Mortgagor Waives Marshalling of Assets and Sale in Inverse Order of Alienation Rights.** Mortgagor hereby irrevocably WAIVES all rights of marshalling of assets or sale in inverse order of alienation in the event of foreclosure of this or any other security.
- (c) **Mortgagor Will Correct Title Defects.** If at any future time any defect should be found to exist in the title to any of the Property other than the Permitted Encumbrances, Mortgagor agrees to promptly commence and thereafter diligently proceed to cure the defect and defend the title. If any lien or encumbrance against the Property, junior, equal or superior in rank or priority to the lien of this Mortgage other than the Permitted Encumbrances should be discovered or arise at any time in the future then, unless Mortgagee is the only holder of it, or Mortgagee has given specific prior written consent to it, Mortgagor agrees to promptly discharge and remove it from the Mortgaged Property; provided, however, that in the case of any such involuntary lien or encumbrance, Mortgagor may provide a bond in form, substance and amount reasonably satisfactory to Mortgagee (but not greater than 150% of the amount of the claim) covering and affecting any such lien or encumbrance in lieu of discharging and

removing such involuntary lien or encumbrance, but only so long as no attempt shall be made to foreclose any such involuntary lien or encumbrance. Mortgagor will notify Mortgagee in writing within ten (10) days of the time that Mortgagor becomes aware of the filing of any mortgage, lien, security interest, financing statement or other security device whatsoever against the Property.

- (d) **Insurance Requirements.** At all times before the final termination of this Mortgage, Mortgagor agrees to provide, maintain and keep in force the insurance policies and coverages required under the Loan Agreement.

If Mortgagor fails to obtain any insurance as required by this Section, Mortgagee may obtain such insurance at Mortgagor's expense. In connection with the Mortgagee's right to obtain coverage to protect Mortgagee's interest in the Mortgaged Property, the following notice is hereby given to Mortgagor in accordance with the requirements of Section 307.052 of the Texas Finance Code:

**NOTICE:**

- (i) **MORTGAGOR IS REQUIRED TO: (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE FOR THE FULL REPLACEMENT COST THEREOF; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME MORTGAGEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS;**
- (ii) **MORTGAGOR MUST, IF REQUIRED BY MORTGAGEE, DELIVER TO MORTGAGEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND**
- (iii) **IF MORTGAGOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (i) OR (ii) ABOVE, MORTGAGEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF MORTGAGOR AT MORTGAGOR'S EXPENSE.**
- (e) **Insurance Companies, Policies, Endorsements and Premium Payments.** Mortgagor agrees that all required insurance will be written on forms and by companies as required under the Loan Agreement.
- (f) **Mortgagee's Rights to Collect Insurance Proceeds.** Mortgagor hereby assigns to Mortgagee the exclusive right to collect any and all monies that may become payable under any insurance policies covering any part of the Property, or any risk to or about the Property. Mortgagee shall fully cooperate with and assist Mortgagor with respect to the filing of insurance claims and the collection of insurance proceeds so long as Mortgagee reasonably concurs with Mortgagor's actions with respect thereto and all reasonable costs incurred by Mortgagee in connection with such cooperation and participation are promptly paid or reimbursed by Mortgagor upon the request of Mortgagee.

- (g) **Effects of Foreclosure on Insurance Policies and Post-foreclosure Event Claims.** Foreclosure of this Mortgage shall automatically constitute foreclosure upon all policies of insurance insuring any part of or risk to the Property and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Property at foreclosure, as their respective interests may appear, shall automatically accede to all of Mortgagor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as insured(s) on request, whether or not the trustee's deed or bill of sale to any such successful bidder mentions insurance.
- (h) **Application of Insurance Proceeds Collected Before Foreclosure.** In the event of loss or destruction of all or any portion of the Property, Mortgagor may, at its option, but subject to the requirements of the Loan Agreement, cause Mortgagee to either (i) apply all such monies or any part thereof toward the payment of the Indebtedness, whether the same be then due or not, such application to be made in such manner and order as Mortgagee shall elect, and any balance of insurance proceeds remaining after such application shall be delivered to Mortgagor or (ii) disburse to Mortgagor any insurance proceeds received to be used by Mortgagor solely for the repair, rebuilding and restoration (hereinafter collectively referred to as the "**Restoration Work**") of the Property; provided, however, that the disbursement to Mortgagor of such insurance proceeds shall be and is hereby made subject to compliance by Mortgagor with the following terms, conditions and procedures (hereinafter collectively referred to as the "**Disbursement Procedures**"), to wit:
- (1) The actual disbursement of such insurance proceeds shall be made in the same manner and upon the same terms and conditions as Mortgagee normally and customarily imposes for disbursement of loan proceeds under construction loans of similar scope and size;
  - (2) If the estimated cost (as certified to Mortgagee by the restoration architect) of the Restoration Work exceeds the proceeds of the insurance available for application thereto, then an amount of money equal to such excess shall be escrowed with Mortgagee prior to the commencement of the Restoration Work to be used solely for payment of the costs of such Restoration Work, and any amount so escrowed with Mortgagee shall be disbursed by Mortgagee in accordance with the Disbursement Procedures prior to the disbursement of any of such insurance proceeds;
  - (3) Mortgagor will continue to be able, in the reasonable judgment of Mortgagee, to complete construction of the Improvements on or before the maturity date of the Note;
  - (5) No Event of Default (as defined in the Loan Agreement) shall have occurred which is then continuing; and
  - (6) If the entire principal portion of the Note shall become due at any time for any reason, and if at that time any amounts are held by Mortgagee pursuant to any subparagraph of this paragraph, then Mortgagee is hereby authorized to apply such amounts on any amounts due pursuant to the Note or any other Credit Documents.



- (i) **Flood Insurance Requirements.** Except as may be expressly disclosed on the survey of the Real Property received and approved by Mortgagee prior to the date hereof, no portion of the Property is currently located within an area that has been designated or identified as an area having special flood hazards or flood prone characteristics (hereinafter referred to as the "Flood Plain") by the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended and in effect, and should the Property, or any part thereof, be hereafter so designated as being within the Flood Plain, Mortgagor will maintain, at all times thereafter that any Indebtedness is outstanding, flood insurance with respect to the Property in amounts not less than the maximum limit of insurance coverage then available with respect to the Property pursuant to any and all national and state flood insurance program then in effect, and cause all insurance so carried to be made payable to Mortgagee pursuant to a standard mortgagee clause, without contribution, and cause copies of all such policies to be delivered to Mortgagee.
- (j) **Application of Insurance Proceeds Collected After Foreclosure.** Unless Mortgagee or Mortgagee's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Mortgagee, shall have no interest in such proceeds and Mortgagee shall apply them, if and when collected, to the Indebtedness in such order and manner as Mortgagee shall then elect and remit any remaining balance to Mortgagor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Mortgagee at the foreclosure sale and are not actually received by Mortgagee until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Mortgagor shall have no interest in them and shall receive no credit for them.
- (k) **Mortgagee Not Obligated to Require, Provide or Evaluate Insurance.** Mortgagee shall have no duty to Mortgagor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance.
- (l) **Mortgagee May Elect to Insure Only its Own Interests.** If Mortgagee elects at any time or for any reason to purchase insurance relating to the Property, it shall have no obligation to cause Mortgagor or anyone else to be named as an insured, to cause Mortgagor's or anyone else's interests to be insured or protected or to inform Mortgagor or anyone else that his or its interests are uninsured or underinsured.
- (m) **Mortgagor Will Correct Defects, Provide Further Assurances and Papers.** Upon Mortgagee's written request, Mortgagor will promptly correct any defect which hereafter may be discovered in the text, execution or acknowledgment of the Note, this Mortgage or any Credit Document executed by Mortgagor or in the description of any of the Property, and will deliver such further customary assurances and execute such additional customary papers as in the reasonable opinion of Mortgagee or its legal counsel shall be necessary, proper or appropriate (1) to better convey and assign to the Trustee and Mortgagee all the Property intended or promised to be conveyed or assigned or (2) to properly evidence the intended or promised security for the Indebtedness.
- (n) **Mortgagor Will Pay Taxes and Impositions and Furnish Receipts.** Mortgagor agrees at its own cost and expense to pay and discharge (or cause to be paid and discharged) all other

taxes, assessments, maintenance charges, permit fees, impact fees, development fees, capital recovery charges, utility reservation and standby fees and all other similar and dissimilar impositions of every kind and character ("**Impositions**") charged, levied, assessed or imposed against any interest in any of the Property, before they become delinquent; provided, however, that Mortgagor shall have the right to actively contest such Impositions in good faith if Mortgagor shall establish sufficient reserves to pay any such contested Impositions that are later determined to be properly owed by Mortgagor; and provided, further, that no attempts shall be made to foreclose any lien for such Impositions. Mortgagor agrees to furnish due proof of such payment to Mortgagee promptly after payment and before delinquency. Mortgagor also agrees to hereafter file all income, franchise and other tax returns within the time frames that they are required to be filed and pay all taxes shown thereon to be due, including interest and penalties, except for those taxes which are being diligently contested in good faith and for payment of which adequate reserves have been set aside by Mortgagor.

- (o) **Mortgagor to Pay Monthly Tax and Insurance Deposits on Request.** After Mortgagee has requested that such payments be made, Mortgagor agrees to pay the monthly tax and insurance premium deposits required by Article 8 and to provide Mortgagee any additional sums needed to pay the taxes and insurance premiums for the Property when due.
- (p) **Mortgagor Won't Grant Easements, Etc.** Except for customary and ordinary easements reasonably required for the development and use of the retail project to be developed upon the Property under the terms of the Loan Agreement (such easements to not be granted under or beneath the location or the contemplated location of any building(s) located or to be located upon the Property), Mortgagor shall not grant, join in or consent to any lien, security interest, easement, license, use or other charge or interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed).
- (q) **Mortgagor Will Protect Property from Mechanic's Liens.** Mortgagor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Mortgage, for any such bill which may be legally due and payable; provided, however, that Mortgagor shall have the right to actively contest any such bills in good faith if Mortgagor shall either (1) provide a bond in form, substance and amount satisfactory to Mortgagee covering and affecting any lien for any such bills or (2) establish a cash reserve therefor (which Mortgagee may require to be deposited with it) in an amount reasonably satisfactory to Mortgagee, and provided, further, that no attempt shall be made to foreclose any such lien. Mortgagor agrees to furnish due proof of such payment to Mortgagee after payment and before delinquency.
- (r) **Mortgagor Will Maintain Property and Won't Remove Improvements.** Mortgagor agrees to keep, preserve, and maintain all elements of the Property in a good state of repair and condition, ordinary wear and tear and casualty and condemnation excepted. Mortgagor will not tear down, damage or attempt to remove, demolish or materially alter or enlarge any elements of the Property, or construct any new Improvements (except for those improvements to the Mortgaged Property contemplated under the Loan Agreement), without

Mortgagee's prior written consent, except as required under applicable laws or for compliance with the terms of the Credit Documents. Mortgagor shall not grant, join in or consent to any lien, security interest, easement, license, use or other charge or interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Mortgagee.

- (s) **Mortgagee's Inspection and Discussion Rights.** Mortgagor agrees to permit Mortgagee and its agents, representatives and employees at all reasonable times (and subject to rights of tenants and contractors) to go upon, examine, inspect and remain on the Mortgaged Property, to assist and cooperate, and require Mortgagor's employees, agents and contractors to cooperate, with Mortgagee and to furnish to Mortgagee on request all pertinent information concerning the physical and economic condition, development and operation of the Mortgaged Property. Mortgagee may discuss the Mortgaged Property directly with any of Mortgagor's officers and managers.
- (t) **Mortgagee May Grant Releases without Impairing Other Collateral or Rights.** At all times, Mortgagee shall have the right to release any part of the Property or any other security from this Mortgage or any other security instrument or device without releasing any other part of the Property or any other security, without affecting Mortgagee's lien, assignment or security interest as to any property or rights not released and without affecting or impairing the liability of any maker, guarantor or surety on the Note or other obligation.
- (u) **Mortgagor Will Notify Mortgagee of Legal Proceedings and Defend Lien; Mortgagee May Act if Mortgagor Doesn't.** Mortgagor will notify Mortgagee in writing promptly of the commencement of any legal proceedings affecting any part of the Property and will engage and pay the reasonable fees of legal counsel to answer and to defend and preserve Mortgagee's liens, rights and interests and their rank and priority. If Mortgagor fails or refuses to promptly begin or to diligently continue any such acts, then Mortgagee may elect to do so and may take such action in behalf of Mortgagor, in Mortgagor's name and at Mortgagor's expense.
- (v) **Partnership Existence.** Mortgagor agrees to maintain its existence as a Texas limited partnership, and to obtain and maintain all franchises and permits necessary for it continuously to be in good standing in the State of Texas with full power and authority to conduct its regular business and to own and operate the Mortgaged Property until final termination of this Mortgage.
- (w) **Legal Compliance, Governmental Notices.** Mortgagor will operate the Property and conduct any construction, repairs and renovation of all or any portion of the Real Property in compliance in all material respects with all requirements of governmental and quasi-governmental authorities having jurisdiction over Mortgagor or the Property and will comply with and punctually perform, in all material respects, all of the covenants, agreements and obligations imposed upon it or the Property.
- (x) **Perform Other Obligations.** Mortgagor will pay punctually and discharge when due, or renew or extend, any indebtedness incurred by it and will discharge, perform and observe the covenants, provisions and conditions to be performed, discharged and observed on the part of

Mortgagor in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any mortgage, pledge or lien existing at any time upon any of the property or assets of Mortgagor; provided, however, that nothing contained in this subsection shall require Mortgagor to pay, discharge, renew or extend any such indebtedness or to discharge, perform or observe any such covenants, provisions and conditions so long as Mortgagor shall be diligently and in good faith contesting any claims which may be asserted against it with respect to any such indebtedness or any such covenants, provisions and conditions and shall set aside on its books reserves with respect thereto deemed adequate by Mortgagee.

- (y) **Notice of Condemnation and Other Proceedings.** Immediately upon obtaining actual knowledge or receipt of written notice of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Mortgagor will notify Mortgagee in writing of the pendency of such proceedings. Mortgagor shall diligently prosecute any such proceedings and shall be responsible for payment of all expenses incurred by it, including its attorneys' fees, in connection with such proceedings. Mortgagee may participate in any such proceedings, and Mortgagor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall consult with Mortgagee, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings, but the fees and expenses of Mortgagee's attorneys and experts in connection therewith shall not be paid by Mortgagor and shall be paid by Mortgagee unless an Event of Default has occurred which is then continuing.
- (z) **Maintenance.** Mortgagor will, or will cause its managers to, do and perform any and all acts and things relating to the management, upkeep and operation of the Property as are customarily performed by managing agents and owners of properties comparable to the Property, similarly situated, and shall otherwise operate the Property, or cause the Property to be operated, in an efficient manner and in accordance with all legal requirements and the terms and conditions of this Mortgage and the other Credit Documents.

## ARTICLE 5 MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

To induce Mortgagee to extend financial accommodations, including credit under the Note, Mortgagor makes the warranties and representations set forth in this Article.

**Section 5.1 MORTGAGOR SOLVENT.** Mortgagor is now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or, to Mortgagor's knowledge, threatened in writing against Mortgagor. Mortgagor's liabilities and obligations under this Mortgage and all other Credit Documents do not and will not render Mortgagor insolvent, cause Mortgagor's liabilities to exceed Mortgagor's assets or leave Mortgagor with too little capital to properly conduct all of its business as contemplated to be conducted.

**Section 5.2 NO FALSE REPRESENTATION.** To Mortgagor's knowledge, no representation or warranty contained in this Mortgage or any other Credit Document executed by Mortgagor and no statement contained in any certificate, schedule, list, financial statement or other papers furnished to Mortgagee



by or on behalf of Mortgagor contains, or will contain, any untrue statement of material fact, or omits, or will omit, to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect.

**Section 5.3 TITLE.** Mortgagor has good and indefeasible title to the Property, free and clear of any lien or security interest except only for liens and security interests against the Mortgaged Property which are expressly permitted by this Mortgage. The lien and security interest of this Mortgage will constitute a valid and perfected first and prior liens and security interests on the Property, subject to no other liens, security interests or charges whatsoever.

**Section 5.4 MORTGAGOR HAS ALL NECESSARY RIGHTS.** All easements, rights-of-way, utilities and other rights necessary to maintain and operate the Property as a retail project have been or will be obtained in a timely manner and shall remain in full force and effect.

**Section 5.5 LEGAL REQUIREMENTS.** To Mortgagor's knowledge, Mortgagor and the Property are in compliance with all applicable legal requirements in all material respects.

## **ARTICLE 6 DEFAULTS AND REMEDIES**

**Section 6.1 RELEASE FOR FULL PAYMENT AND PERFORMANCE.** Subject to the automatic reinstatement provisions of Section 9.16 below, this Mortgage shall terminate and be of no further force or effect (and shall be released on Mortgagor's written request and at a reasonable cost and expense to Mortgagor) upon full payment of the Indebtedness and complete performance of all of the obligations of Mortgagor under the Credit Documents.

**Section 6.2 EVENTS OF DEFAULT.** The occurrence of any Event of Default (herein so called) under the terms of the Loan Agreement shall constitute an Event of Default under this Mortgage.

**Section 6.3 REMEDIES.** Upon the occurrence of any Event of Default, and at any time thereafter during the continuance of such Event of Default:

- (a) **Indebtedness Due.** All Indebtedness in its entirety shall, at the option of Mortgagee, become immediately due and payable without further presentment, demand, notice of intention to accelerate or notice of acceleration, or other notice of any kind, all of which are hereby expressly WAIVED (except to the extent required under applicable laws or as expressly required under the terms of any applicable Credit Documents to establish the existence of such Event of Default), and the liens and security interests created or intended to be created hereby shall be subject to foreclosure, repossession and sale in any manner provided for herein or provided for by law, as Mortgagee may elect, and Mortgagee may exercise any and all of its rights under this Mortgage, the Note and any of the other Credit Documents.
- (b) **Legal Proceedings.** Trustee and Mortgagee shall have the right and power to proceed by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement of Mortgagor contained herein or in aid of the execution of the powers herein granted, or for foreclosure or the sale of the Property or any part thereof under the judgment or decree

of any court of competent jurisdiction, or for the enforcement of any other appropriate legal or equitable remedy.

- (c) **Trustee's Sale.** It shall be the duty of the Trustee and of his successors and substitutes in the Trust, on Mortgagee's request (which request is hereby presumed) to enforce the Trust by selling the Mortgaged Property as is provided in this Mortgage.

**Section 6.4 Time and Place of Sale and Notices.** The sale shall be a public sale at auction held between 10 A.M. and 4 P.M. of the first Tuesday of a month (provided however, if the first Tuesday of such month is January 1 or July 4, then said public sale at auction for such month shall be held to the first Wednesday of the applicable month). The sale shall take place at the county courthouse in the county in which the Real Property is located, or if it is located in more than one county, the sale will be made at the courthouse in one of those counties. The sale shall occur at the area at that courthouse which the commissioners' court of that county has designated as the place where such sales are to take place by designation recorded in the real property records of that county, or if no area is so designated, then the notice of sale shall designate the area at the courthouse where the sale covered by that notice is to take place, and the sale shall occur in that area. Notice of the sale shall include a statement of the earliest time at which the sale will occur and shall be given at least twenty-one (21) days before the date of the sale (1) by posting at the courthouse door of each county in which the Real Property is located a written notice designating the county in which the Real Property will be sold, (2) by filing in the Office of the County Clerk of each county in which the Real Property is located a copy of the notice posted under subsection (1) above and (3) by the holder of the Indebtedness to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of a holder of the Indebtedness, is obligated to pay that Indebtedness. The sale shall begin at the time stated in the notice of sale or not later than three (3) hours after that time. Service of any notice under this Section by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor entitled to it at that debtor's last known address as shown by the records of a holder of the Indebtedness. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service. After such written notice shall have been posted and filed, as aforesaid, and such notice shall have been served upon such debtor or debtors, as aforesaid, the Trustee (or his successor or substitute then acting) shall perform his duty to enforce the Trust by selling the Mortgaged Property, either as an entirety or in parcels as the Trustee acting may elect, all rights to a marshalling of assets or sale in inverse order of alienation being waived, as aforesaid to the highest bidder or bidders for cash, and make due conveyance to the purchaser or purchasers, with general warranty, and the title to such purchaser or purchasers, when so made by the Trustee acting, Mortgagor binds itself, its successors and assigns, to warrant and forever defend against the claims and demands of every person whomsoever lawfully claiming or to claim the same or any part thereof. The provisions of this Mortgage with respect to posting and giving notices of sale are intended to comply with the provisions of Section 51.002 of the Texas Property Code as in force and effect on January 1, 1991, and in the event the requirement for any notice under such Section 51.002 shall be eliminated or the prescribed manner of giving it shall be modified by future amendment to, or adoption of any statute superseding, such Section 51.002, the requirement for such particular notice shall be deemed stricken from or modified in of this Mortgage in conformity with such amendment or superseding statute, effective as of its effective date. The manner prescribed in this Mortgage for serving or giving any notice, other than that to be posted or caused to be posted by the Trustee acting, shall not be deemed exclusive but such notice or notices may be given in any other manner permitted

by applicable law. Said sale shall forever be a bar against Mortgagor, its heirs, legal representatives, successors and assigns, and all other persons claiming under it. It is expressly agreed that the recitals in each conveyance to the purchaser shall be prima facie evidence of the truth of the matters therein stated, absent manifest error. Trustee may require minimum bids at any foreclosure sale and may cancel and abandon the sale if no bid is received equal to or greater than any such minimum bid.

**Section 6.5 APPLICATION OF FORECLOSURE SALE PROCEEDS.** The proceeds of any sale of the Property, and any rents and other amounts collected by Mortgagee from Mortgagee's holding, leasing, operating or making any other use of the Property, shall be applied by Mortgagee (or by the receiver, if one is appointed) to the extent that funds are available therefrom in the following order of priority:

- (a) **To Expenses and Senior Obligation Payments.** First, to the payment of the out of pocket costs and expenses of taking possession of the Mortgaged Property and of holding, maintaining, using, leasing, repairing, equipping, manning, improving, marketing and selling it, including (i) trustee's and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement and brokers' commissions and (v) payment of any and all Impositions, liens, security interests or other rights, titles or interests superior to the lien and security interest of this Mortgage, whether or not then due and including any prepayment penalties or fees and any accrued or required interest (except, in the case of foreclosure proceeds, those senior liens and security interests, if any, subject to which the Mortgaged Property was sold at such sale, and without in any way implying Mortgagee's consent to the creation or existence of any such prior liens).
- (b) **To Other Obligations Owed to Mortgagee.** Second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to Mortgagee under the Note or any other Credit Document, together with interest thereon as provided therein.
- (c) **To Accrued Interest on the Indebtedness.** Third, to the payment of all accrued but unpaid interest due on the Indebtedness.
- (d) **To Indebtedness Principal.** Fourth, to the payment of the principal balance on the Indebtedness and the principal owing under this Mortgage and any other Credit Document, irrespective of whether then matured, and if it is payable in installments and not matured, then to the installments in such order as Mortgagee shall elect.
- (e) **To Junior Lienholders.** Fifth, to the extent funds are available therefor out of the sale proceeds or any rents and, to the extent known by Mortgagee, to the payment of any indebtedness or obligation secured by a subordinate mortgage on or security interest in the Mortgaged Property.
- (f) **To Mortgagor.** Sixth, to Mortgagor, its successors and assigns, or to whomsoever may be lawfully entitled to receive such proceeds under applicable law.

**Section 6.6 MORTGAGEE MAY REQUIRE ABANDONMENT AND RECOMMENCEMENT OF SALE.** If the Trustee or his substitute or successor should commence the sale, Mortgagee may at any time before the sale is completed direct the Trustee to abandon the sale, and may at any time or times thereafter

direct the Trustee to again commence foreclosure; or, irrespective of whether foreclosure is commenced by the Trustee, Mortgagee may at any time after an Event of Default institute suit for collection of the Indebtedness or foreclosure of this Mortgage. If Mortgagee should institute suit for collection of the Indebtedness or foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment dismiss it and require the Trustee to sell the Mortgaged Property in accordance with the provisions of this Mortgage.

**Section 6.7 MULTIPLE SALES; MORTGAGE CONTINUES IN EFFECT.** No single sale or series of sales by the Trustee or by any substitute or successor and no judicial foreclosure shall extinguish the lien or exhaust the power of sale under this Mortgage except with respect to the items of property sold, nor shall it extinguish, terminate or impair Mortgagor's contractual obligations under this Mortgage, but such lien and power shall exist for so long as, and may be exercised in any manner by law or in this Mortgage provided as often as the circumstances require to give Mortgagee full relief under this Mortgage, and such contractual obligations shall continue in full force and effect until final termination of this Mortgage.

**Section 6.8 MORTGAGEE MAY BID AND PURCHASE.** Mortgagee shall have the right to become the purchaser at any sale made under this Mortgage, being the highest bidder, and credit given upon all or any part of the Indebtedness shall be the exact equivalent of cash paid for the purposes of this Mortgage.

**Section 6.9 SUCCESSOR OR SUBSTITUTE TRUSTEE.** In case of absence, death, inability, refusal or failure of the Trustee in this Mortgage named to act, or in case he should resign (and he is hereby authorized to resign without notice to or consent of Mortgagor), or if Mortgagee shall desire, with or without cause, to replace the Trustee in this Mortgage named, or to replace any successor or substitute previously named, Mortgagee or any agent or attorney-in-fact for Mortgagee may name, constitute and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances, if any, where acknowledgment, filing and/or recording is required by applicable law and such law also precludes Mortgagor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute trustee, as Trustee, the estate in and title to all of the Mortgaged Property, and such substitute Trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights, powers and duties in this Mortgage conferred on the Trustee named and any previous successor or substitute Trustee, and his conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named in this Mortgage. Such right to appoint a substitute Trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, Mortgagee or Mortgagee's agent or attorney-in-fact elects to exercise it.

**Section 6.10 RIGHT TO RECEIVER.** Upon the occurrence of an Event of Default and during the continuance thereof or at any time after commencement of a Trustee's foreclosure sale or any legal proceedings under this Mortgage, Mortgagee shall be entitled to the appointment of a receiver and Mortgagee may, at Mortgagee's election and by or through the Trustee or otherwise, make application to a court of competent jurisdiction for appointment of a receiver of the Property, as a matter of strict right, without notice to Mortgagor and without regard to the adequacy of the value of the Property for the repayment of the Indebtedness, and Mortgagor hereby irrevocably consents to



such an appointment. Any receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to possess, rent, maintain, repair and operate the Property upon such terms and conditions as may be approved by the court, and shall apply the rents realized in the same manner and order as foreclosure proceeds in accordance with Section 6.5.

**Section 6.11 TENANTS AT WILL.** Mortgagor agrees for itself and its heirs, legal representatives, successors and assigns, that if any of them shall hold possession of the Property or any part thereof subsequent to foreclosure hereunder, Mortgagor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

## ARTICLE 7 MORTGAGEE'S RIGHT TO PERFORM MORTGAGOR'S OBLIGATIONS

**Section 7.1 MORTGAGEE MAY ELECT TO PERFORM DEFAULTED OBLIGATIONS.** If Mortgagor should fail to comply with any of its other agreements, covenants or obligations under this Mortgage, the Note, or any other Credit Document executed by Mortgagor, and if such failure has ripened into an Event of Default which is then continuing, then Mortgagee (in Mortgagor's name or in Mortgagee's own name) may perform them or cause them to be performed for Mortgagor's account and at Mortgagor's expense, but shall have no obligation to perform any of them or cause them to be performed. With respect to Mortgagor's failure to maintain or cause to be maintained the insurance coverage required hereby, however, Mortgagee itself may purchase or secure such insurance coverage for the Mortgaged Property prior to providing Mortgagor with any notice of and opportunity to cure or remedy such failure. Any and all out of pocket expenses thus incurred or paid by Mortgagee under the provisions of this paragraph shall be Mortgagor's obligations to Mortgagee due and payable within fifteen (15) days after written demand, and each shall bear interest from the date Mortgagee delivers demand for it until the date Mortgagor repays it to Mortgagee, at the maximum nonusurious rate of interest from time to time permitted by whichever of applicable state or federal law from time to time permits the higher nonusurious interest rate (the "**Ceiling Rate**"), or, only if applicable law imposes no maximum nonusurious rate, then at the Default Rate (as defined in the Loan Agreement). Upon making any such payment or incurring any such expense, Mortgagee shall be fully and automatically subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts owing by Mortgagor to Mortgagee pursuant to this or any other provision of this Mortgage shall automatically and without notice be and become a part of the Indebtedness and shall be secured by this and all other instruments securing the Indebtedness. The amount and nature of any such expense and the time when it was paid shall be fully established by the affidavit of Mortgagee or any of Mortgagee's officers or agents or by the affidavit of any original, substitute or successor Trustee acting under this Mortgage. Without notice to Mortgagor or any other person or entity, the Ceiling Rate and the Default Rate shall automatically fluctuate upward and downward as and in any amount by which the maximum nonusurious rate of interest permitted by such applicable law and the Default Rate as provided for in the Loan Agreement, respectively, fluctuates.

**Section 7.2 EXERCISE OF RIGHTS IS NOT WAIVER OR CURE OF DEFAULT.** The exercise of the privileges granted to Mortgagee in this Article shall in no event be considered or constitute a cure of the default or a waiver of Mortgagee's right at any time after an Event of Default and during the continuance thereof to declare the Indebtedness to be at once due and payable, but is cumulative of such right and of all other rights given by this Mortgage, the Note and the Credit Documents and of all rights given Mortgagee by law.

## **ARTICLE 8 TAX AND INSURANCE DEPOSITS**

**Section 8.1 TAX AND INSURANCE DEPOSITS.** In addition to the Indebtedness payments, if Mortgagor is ever delinquent in paying either ad valorem taxes assessed against the Property or insurance premiums for the requisite insurance coverage for the Property, or if an Event of Default has occurred which is then continuing, Mortgagor agrees that upon the request of Mortgagee, Mortgagor will thereafter deposit with Mortgagee each month an amount equal to one-twelfth (1/12) of the aggregate of (i) the next succeeding premiums (or payments in respect of them, if premiums are financed) on all insurance policies which Mortgagor is required by or pursuant to this Mortgage to maintain on the Property, and (ii) the amount of the next succeeding annual tax payments, assessment installments, maintenance charges and other Impositions to become due and payable with respect to the Property, as reasonably estimated by Mortgagee, plus, with the first of such monthly deposits, an additional month's share (a twelfth) of such premiums and taxes for each month less than twelve remaining before the next payment thereof falls due. At least fifteen (15) days before the date on which any such insurance premium (or payment in respect of it, if premiums are financed) or any of the Impositions must be paid to avoid delinquency, promptly after Mortgagee's request, Mortgagor agrees to deliver or cause to be delivered to Mortgagee a statement or statements showing the amount of the premium (or payment in respect of it, if premiums are financed) or Impositions required to be paid and the name and mailing address of the concern or authority to which it is payable and, at the same time, Mortgagor agrees to deposit or cause to be deposited with Mortgagee such amounts as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance obligations or Impositions. Mortgagee hereby agrees to apply such deposits in payment of such insurance obligations and Impositions prior to delinquency, but only if sufficient funds have been deposited with Mortgagee by Mortgagor for the payment of such amounts and Mortgagee has been timely furnished with the requisite statements of the amounts required to be paid and the names and addresses of the concerns or authorities to which such amounts are payable. Mortgagee shall in no way be obligated to pay any interest to Mortgagor on such deposits, and upon the occurrence of an Event of Default which is then continuing, Mortgagee is hereby irrevocably authorized to apply any and all amounts so deposited with Mortgagee against the amounts due under the Indebtedness (with such order of application to be at Mortgagee's discretion) without any further notice to or consent from Mortgagor or any other person or entity. Additionally, Mortgagor hereby irrevocably grants to Mortgagee a security interest and assigns to Mortgagee all such funds so deposited with Mortgagee as additional security for payment of the Indebtedness and all other amounts now or hereafter outstanding under any of the Credit Documents.

## **ARTICLE 9 GENERAL AND MISCELLANEOUS PROVISIONS**

**Section 9.1 INDEBTEDNESS MAY BE CHANGED WITHOUT AFFECTING THIS MORTGAGE.** Any of the Indebtedness may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Mortgage or any other security for any part of the Indebtedness may be waived or released without in anyway altering or diminishing the force, effect or lien of this Mortgage, and the lien, assignment and security interest granted by this Mortgage shall continue as a prior lien, assignment and security interest on all of the Property not expressly so released, until the final termination of this Mortgage.

**Section 9.2 USURY NOT INTENDED; SAVINGS PROVISIONS.** Notwithstanding any provision to the contrary contained in any Credit Document, it is expressly provided that in no case or event shall the aggregate of any amounts accrued or paid pursuant to this Mortgage which under applicable laws are or may be deemed to constitute interest ever exceed the maximum nonusurious interest rate permitted by applicable Texas or federal laws, whichever permit the higher rate. In this connection, Mortgagor and Mortgagee stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Mortgage shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Mortgagor shall never be liable for interest in excess of the maximum rate permitted by applicable laws. If, for any reason whatever, such interest paid or received during the full term of the applicable indebtedness produces a rate which exceeds the maximum rate permitted by applicable laws, Mortgagee shall credit against the principal of such indebtedness (or, if such indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the maximum rate permitted by applicable laws. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of money shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the applicable indebtedness, so that the interest rate is uniform throughout the full term of such indebtedness. The provisions of this Section shall control all agreements, whether now or hereafter existing and whether written or oral, between Mortgagor and Mortgagee.

**Section 9.3 SUBROGATION TO LIENS DISCHARGED.** Mortgagor hereby agrees that Mortgagee shall be subrogated to all rights, titles, interests, liens, benefits, remedies, equities, superior title and security interests (the "**Subrogated Liens**") owned, claimed or held as security for any indebtedness or other obligation (the "**Discharged Obligations**") directly or indirectly satisfied, discharged or paid with money or other property advanced by Mortgagee. Irrespective of any formal or informal acknowledgment of partial or complete satisfaction or release of the Discharged Obligations, the Subrogated Liens shall be continued, renewed, extended, brought forward and rearranged as security for the Indebtedness in addition to and cumulative of the lien and security interest of this Mortgage. Foreclosure under this Mortgage shall constitute foreclosure of the Subrogated Liens.

**Section 9.4 DUE ON SALE.** Mortgagor agrees that if, without Mortgagee's prior written consent (except as otherwise provided herein or in any of the other Credit Documents), (a) any part of or interest in the Property should be directly or indirectly transferred, conveyed or mortgaged, voluntarily or involuntarily, absolutely or as security, or (b) Mortgagor should enter into any contractual arrangement to transfer, convey or mortgage any part of the Property or any interest in the Property

which does not contemplate full payment of the Indebtedness upon closing thereunder, Mortgagee shall have the right and option (except only in those circumstances, if any, where the exercise of such right is expressly prohibited by applicable law and such law also precludes Mortgagor from effectively waiving such prohibition), to declare the Note or the entire amount of the Indebtedness to be due and payable. Mortgagee shall have such right and option, absolutely and irrespective of whether or not the transfer, conveyance or mortgage would or might (i) diminish the value of any security for the Indebtedness, (ii) increase the risk of default under this Mortgage, (iii) increase the likelihood of Mortgagee's having to resort to any security for the Indebtedness after default or (iv) add or remove the liability of any person or entity for payment of the Indebtedness or performance of any covenant or obligation under this Mortgage. To exercise such right and option, Mortgagee shall give written notice to Mortgagor and to the person or entity to whom such property was transferred, conveyed or mortgaged that the Note or Indebtedness has been declared due and payable and that Mortgagee demands that its maker pay it. If Mortgagee's consent to a proposed transfer, conveyance or mortgaging is requested, Mortgagee shall have the right (in addition to its absolute right to refuse to consent to any such transaction), and to condition its consent upon satisfaction of any one or more of the following requirements: (1) that the interest rate(s) on all or any part of the Indebtedness be increased to a rate which is then acceptable to Mortgagee; (2) that a reasonable transfer fee, in an amount determined by Mortgagee, be paid; (3) that a principal amount deemed appropriate by Mortgagee be paid against the Indebtedness to reduce to a level which is then acceptable to Mortgagee the ratio that the outstanding balance of the Indebtedness bears to the value of the Property as determined by Mortgagee; (4) that Mortgagor and each proposed transferee execute an assumption agreement and such other instruments as Mortgagee or its counsel shall reasonably require and in form and substance satisfactory to Mortgagee and its counsel; (5) that the proposed transferee's creditworthiness and experience in owning and operating similar properties be demonstrable and proven to Mortgagee's reasonable satisfaction to be at least as good as Mortgagor's and Mortgagor's managers' at the time the Note was first funded; (6) that the liability to Mortgagee of Mortgagor and all makers and guarantors of all or any part of the Indebtedness will be confirmed by them in writing to be unaffected and unimpaired by such transfer, conveyance or mortgaging; and (7) that any existing or proposed junior mortgagee expressly subordinate to all liens and security interests securing the Indebtedness as to both lien and payment right priority and consent to the proposed transaction in a writing addressed to Mortgagee.

**Section 9.5 CONDEMNATION.** If before final termination of this Mortgage, all or a portion of the Property is taken for public or quasi-public purposes, either through eminent domain or condemnation proceedings, by voluntary conveyance under threat of condemnation with Mortgagee's express written consent and joinder or otherwise (collectively a "**Taking**"), Mortgagor hereby agrees that any and all sums of money awarded or allowed as damages, payments in lieu of condemnation awards or otherwise to or for the account of the owner of the Property or any portion of it on account of such taking shall be paid and delivered to Mortgagee, and they are hereby assigned to Mortgagee and shall be paid directly to Mortgagee. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be applied, first to reimburse Mortgagee or the Trustee for all reasonable out of pocket costs and expenses, including reasonable out of pocket attorneys' fees, reasonably incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be paid to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in Section 4.1(h) above; provided, however, that if either



(a) Mortgagee determines in its sole but good faith discretion that any such Taking would make it impossible or uneconomic to continue with the operation of the Property after such restoration or repair with the available condemnation proceeds and any other restoration funds deposited by Mortgagor with Mortgagee or (b) the loan-to-value ratio for the Loan (as defined in the Loan Agreement) after such repair and restoration shall not be reasonably acceptable to Mortgagee (in an amount equal to not more than 60%), then, at the discretion of Mortgagee, all of said proceeds shall be applied to the payment of the Indebtedness in the order determined by Mortgagee in its sole discretion. Mortgagor agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Mortgagee may reasonably request. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Mortgagee shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

**Section 9.6 APPRAISALS AND REPORTS TO BE PROVIDED.** At any time and from time to time, at Mortgagee's sole cost and expense prior to (a) the occurrence of an Event of Default which is then continuing, (b) an appraisal of all or any portion of the Property being required by applicable regulation or regulatory authorities (but at Mortgagor's sole cost and expense after the occurrence of an Event of Default which is then continuing or, subject to the limitation set forth below, if Mortgagee believes an appraisal of all or any portion of the Property is then required by applicable regulation or regulatory authorities) or (c) as otherwise expressly provided in Section 7.26 of the Loan Agreement (but at Mortgagor's sole cost and expense), Mortgagee (by its officers, employees, directors or agents) may contract for the services of an appraiser approved by Mortgagee in its sole discretion to perform a written appraisal of the Property (or such parts of it as are designated in Mortgagee's request). Any such appraisal may be performed at any time or times upon reasonable notice to Mortgagor, as long as it does not unreasonably interfere with Mortgagor's use of the Property. Specifically, any appraiser is authorized to enter upon, and Mortgagor shall allow such appraiser access to, the Property as may be necessary in the opinion of such appraiser to perform its professional services. Mortgagor will also promptly furnish (or cause to be furnished to) such appraiser such historical and operational information regarding the Property as may be reasonably requested by such appraiser to facilitate preparation of an appraisal and will make available for meetings with such appraiser appropriate personnel having knowledge of such matters. Mortgagor will permit Mortgagee and its agents, independent contractors, representatives, employees and officers at all reasonable times to go upon, examine, inspect and remain on the Property for any lawful purpose and will furnish to Mortgagee on request all pertinent information in regard to the development, operation, use and status of the Property. Mortgagee may elect to deliver any such request orally, by telegram, telex or telefax, by mail or by hand delivery addressed to Mortgagor as provided in the Introduction to this Mortgage or by any other legally effective method, and it may be given at any time and from time to time before the complete and final release and discharge of this Mortgage. Any appraisal fee to be paid under this Section 9.6 by Mortgagor to Mortgagee after the occurrence of an Event of Default, as a result of regulatory requirements, or as otherwise expressly provided in Sections 7.24 and 7.26 of the Loan Agreement, shall be a demand obligation owing by Mortgagor to Mortgagee and shall bear interest from the date of expenditure at the Default Rate; provided, however, that in no event shall Mortgagor be required to reimburse Mortgagee for any appraisal fee resulting from an appraisal Mortgagee believes is required by applicable regulation or regulatory authorities more frequently than once during any consecutive twelve (12) month period.

**Section 9.7 NOTICES.** Except for notices where certified or registered mail notice is required by applicable law, any notice to Mortgagor required or permitted under this Mortgage shall be given in accordance with the notice provisions of the Loan Agreement.

**Section 9.8 MORTGAGEE AND MORTGAGOR.** The terms "**Mortgagee**" and "**Secured Party**" as used in this Mortgage shall mean and include the successors and assigns of Mortgagee. The term "Mortgagor" and "Debtor" shall also include the successors and assigns of Mortgagor. In general, Mortgagor may not assign or delegate any of its rights, interests or obligations under this Mortgage, the Note or any Credit Document without Mortgagee's express prior written consent, and any attempted assignment or delegation without it shall be void or voidable at Mortgagee's election; provided, however, that Mortgagor may delegate its obligations under this Mortgage and any other Credit Documents regarding the management, maintenance and leasing of the Mortgaged Property, as well as the construction of repairs to the Mortgaged Property, to reputable agents or independent contractors without the prior written consent of Mortgagee, but in any and all such events, Mortgagor shall remain fully obligated to Mortgagee in accordance with the provisions of this Mortgage and all other Credit Documents for the complete and full compliance with and performance of all such obligations.

**Section 9.9 ARTICLE, SECTION AND EXHIBIT REFERENCES, NUMBERS AND HEADINGS.** References in this Mortgage to Articles, Sections and Exhibits refer to Articles, Sections and Exhibits in and to this Mortgage unless otherwise specified. The Article and Section numbers, Exhibit designations and headings used in this Mortgage are included for convenience of reference only and shall not be considered in interpreting, applying or enforcing this Mortgage.

**Section 9.10 EXHIBITS INCORPORATED.** All exhibits, annexes, appendices and schedules referred to any place in the text of this Mortgage are hereby incorporated into it at that place in the text, to the same effect as if set out there *verbatim*.

**Section 9.11 "INCLUDING" IS NOT LIMITING.** Wherever the term "including" or a similar term is used in this Mortgage, it shall be read as if it were written, "including by way of example only and without in any way limiting the generality of the clause or concept referred to."

**Section 9.12 GENDER.** The masculine and neuter pronouns used in this Mortgage each includes the masculine, feminine and neuter genders.

**Section 9.13 SEVERABILITY.** If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and this Mortgage shall be liberally construed so as to carry out the intent of the parties to it. Each waiver in this Mortgage is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Mortgagee for having bargained for and obtained it.

**Section 9.14 ANY UNSECURED INDEBTEDNESS IS DEEMED PAID FIRST.** If any part of the Indebtedness cannot lawfully be secured by this Mortgage, or if the lien, assignments and security interest of this Mortgage cannot be lawfully enforced to pay any part of the Indebtedness, then and in

either such event, at the option of Mortgagee, all payments on the Indebtedness shall be deemed to have been first applied against that part of the Indebtedness.

**Section 9.15 NOUN, PRONOUN AND VERB NUMBERS.** When this Mortgage is executed by more than one person, it shall be construed as though "Mortgagor" were written "Mortgagors" and as though the pronouns and verbs in their number were changed to correspond, and in such case, (a) each of Mortgagors shall be bound jointly and severally with one another to keep, observe and perform the covenants, agreements, obligations and liabilities imposed by this Mortgage upon the "Mortgagor", (b) a release of one or more persons, corporations or other legal entities comprising "Mortgagor" shall not in any way be deemed a release of any other person comprising "Mortgagor" and (c) a separate action hereunder may be brought and prosecuted against one or more of the persons, corporations or other legal entities comprising "Mortgagor" without limiting any liability of or impairing Mortgagee's right to proceed against any other person, corporation or other legal entity comprising "Mortgagor".

**Section 9.16 PAYMENTS RETURNED.** Mortgagor agrees that, if at any time all or any part of any payment previously applied by Mortgagee to the Indebtedness is or must be returned by Mortgagee, or recovered from Mortgagee, for any reason (including the order of any bankruptcy court), this Mortgage shall automatically be reinstated to the same effect as if the prior application had not been made, and, in addition, Mortgagor hereby agrees to indemnify Mortgagee against, and to save and hold Mortgagee harmless from any required return by Mortgagee, or recovery from Mortgagee, of any such payment because of its being deemed preferential under applicable bankruptcy, receivership or insolvency laws, or for any other reason.

**Section 9.17 AMENDMENTS IN WRITING.** This Mortgage shall not be changed orally but shall be changed only by agreement in writing signed by Mortgagor and Mortgagee. Any waiver or consent with respect to this Mortgage shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Mortgage.

**Section 9.18 SECURITY IS CUMULATIVE.** No other security now existing or hereafter taken to secure any part of the Debt or the performance of any obligation or liability whatever shall in any manner affect or impair the security given by this Mortgage. All security for any part of the Debt and the performance of any obligation or liability shall be taken, considered and held as cumulative.

**Section 9.19 APPLICABLE LAW. THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF TEXAS, EXCEPT TO THE EXTENT THAT THE LAWS OF THE UNITED STATES OF AMERICA AND ANY RULES, REGULATIONS, OR ORDERS ISSUED OR PROMULGATED THEREUNDER, APPLICABLE TO THE AFFAIRS AND TRANSACTIONS ENTERED INTO BY MORTGAGOR, OTHERWISE PREEMPT TEXAS LAW, IN WHICH EVENT SUCH FEDERAL LAW SHALL CONTROL.**

**Section 9.20 ENTIRE AGREEMENT.** This Mortgage, together with all of the other Credit Documents, embodies the entire agreement and understanding between Mortgagor and Mortgagee with respect to

its subject matter and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Mortgagor acknowledges and agrees that there is no oral agreement between Mortgagor and Mortgagee which has not been incorporated in this Mortgage.

**Section 9.21 CONSTRUCTION MORTGAGE.** If funds are to be advanced by Mortgagee against the Note as construction progresses on the Property, then this is a construction mortgage, as such term is defined in the Texas Business and Commerce Code, and such funds are to be used to pay the costs of such construction.

## **ARTICLE 10 SPECIAL PROVISIONS**

**Section 10.1 JURY WAIVER. MORTGAGOR AND MORTGAGEE (AS EVIDENCED BY MORTGAGEE'S ACCEPTANCE OF THIS MORTGAGE), EACH AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND EACH WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.2 WAIVER OF STATUTORY PROVISIONS; ALTERNATIVE FAIR MARKET VALUE DETERMINATION.** In the event of a foreclosure sale of the Property, Mortgagor hereby expressly waives Sections 51.003, 51.004 and 51.005 of the Texas Property Code, and Mortgagor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price received from any foreclosure of the Mortgaged Property is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Mortgagor and others against whom recovery of a deficiency is sought. Alternatively, in the event the foregoing waiver is determined by a court of competent jurisdiction to be unenforceable, and to the extent permitted by law, Mortgagor agrees that the following shall be the basis for the finder of facts determination of the fair market value of the Real Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time):

(a) The Real Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Real Property will be repaired or improved in any manner before a resale of the Real Property after foreclosure;



(b) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Real Property for cash promptly (but no later than twelve months) following the foreclosure sale;

(c) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction in the Austin, Texas area should be deducted from the gross fair market value of the Real Property, including, without limitation, brokerage commissions, title insurance, a survey of the Real Property, tax prorations, attorney's fees and marketing costs;

(d) The gross fair market value of the Real Property shall be further discounted to account for any estimated holding costs associated with maintaining the Real Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (c) above) and other maintenance expenses; and

(e) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Real Property must be given by persons having at least five years experience in appraising property similar to the Real Property and who have conducted and prepared a complete written appraisal of the Real Property taking into consideration the factors set forth above.

**Section 10.3 Request for Notice.** The undersigned Mortgagor requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at its address set forth above.

**Section 10.4 Credit Facility; Future Advances.** This Mortgage secures the payment of any additional amounts advanced, from time to time, by Mortgagee to Mortgagor under the Note or other Credit Documents or under any other replacement Note or agreements from Mortgagor to Mortgagee issued under the terms of Loan Agreement. Accordingly, a portion of the Debt secured hereby may increase periodically from time to time. Notwithstanding any provision of this Mortgage, this Mortgage shall secure all subsequent advances hereafter made under the Loan Agreement. This Mortgage shall terminate only upon the payment in full of the Debt secured hereby and the termination in full of the credit facility which is made available to Mortgagor by Mortgagee under the terms of the Loan Agreement.

**Section 10.5 Nonrecourse as to Grantor.** Notwithstanding anything to the contrary in this Mortgage or in any other Credit Document, by acceptance of this instrument, Mortgagee hereby waives any right to obtain a money judgment or equitable relief against any entity comprising Grantor (but not any entity comprising Borrower), whether by an action brought upon this Mortgage or any other Credit Document, or an action brought for a deficiency judgment against any entity comprising Grantor, and agrees that the extent of liability on the part of such Grantor parties with respect to this Mortgage or any other Credit Document is and shall for all purposes be limited to the interest of Grantor in the Mortgaged Property, including policies of hazard insurance on the Mortgaged Property owned by any Grantor party and any proceeds thereof and any award of damages on account of condemnation for public use of the Mortgaged Property owned by any Grantor party, Mortgagee agreeing to look solely to Grantor's interest in the Mortgaged Property and such insurance policies and condemnation awards in satisfaction of all obligations of any entity comprising Grantor (but not any entity comprising Borrower) under the Credit Documents. The

terms of this paragraph shall supersede any and all other terms and conditions herein or in any Credit Document.

*[Remainder of page left intentionally blank]*







**EXHIBIT A**

**REAL PROPERTY**

Tract 1: Lot 2, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 3: Lot 5, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 4: Lot 6, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 6: Lot 8, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 7: Lot 9, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 8: Lot 10, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 9: Lot 11, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 10: Lot 12, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 12: Lot 14, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 13: Lot 15, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 14: Lot 16, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat

Records of Hays County, Texas.

Tract 15: Lot 17, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 16: Lot 18, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 17: Lot 19, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 18: Lot 20, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 19: Lot 21, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 20: Lot 22, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 21: Easement Estate appurtenant to all Tracts, for ingress, egress, common area, parking, utility lines, drainage and detention and temporary construction, as created and described in that certain Restriction Agreement and Grant of Easements recorded in Volume 2478, Page 732, as amended in Volume 4751, Page 519. Document No. 19045925, and Document No. 20008136, all of the Official Public Records of Hays County, Texas, and being over and across Lot 2, Block A, KYLE TOWNE CENTER, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 11, Page 356, Plat Records of Hays County, Texas; over and across Lot 4, Block A, KYLE TOWNE CENTER, REPLAT OF LOT 1, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 16, Page 191, Plat Records of Hays County, Texas; over and across Lot 1-B, Block A, KYLE TOWNE CENTER, SECOND REPLAT OF LOT 1, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 17, Page 317, Plat Records of Hays County, Texas; and over and across Lots 2 through 23, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 22: Easement Estate appurtenant to Tract 1, for ingress and egress across Protected Drives, as created and described in that certain Declaration of Restrictions recorded in Document No. 20017808, of the Official Public Records of Hays County, Texas and said non-exclusive access

easements being over and across a that portion of the 0.1626 acre Protected Drive within Lot 3, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, and over and across a 0.2157 acre portion of Lot 1, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas and as more particularly described by metes and bounds therein.

Tract 23: Easement Estate appurtenant to Tract 1, for Private Wastewater Line, as created and described in that certain Private Wastewater Line Easement Agreement recorded in Document No. 20016528, Official Public Records of Hays County, Texas, and being over and across Lots 1, 3, 4 and 6, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Tract 24: Easement Estate appurtenant to all Tracts, for Drainage and Ponds, as created and described in that certain Private Wastewater Line Easement Agreement recorded in Document No. 21007904, Official Public Records of Hays County, Texas, and being over and across Lots 4 through 21, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. The following restrictive covenants of record: Those recorded in Volume 11, Page 356, Volume 16, Page 191, Volume 17, Page 317, Plat Records and Volume 407, Page 444, Deed Records, and Volume 2478, Page 732, Volume 4243, Page 788, Volume 4751, Page 519, Document No. 19045925, Document No. 20008136, Document No. 20015578, Document No. 20016529, Document No. 20017808, Document No. 20040374, Document No. 20045687, Document No. 21006008, and Document No. 21008014, Official Public Records of Hays County, Texas
2. 30' public utility easement along the north line of Lot 5, the east line of Lots 8, 9, 10, 11, 12, 14, as recorded in Volume 11, Page 356, Volume 16, Page 191, Volume 17, Page 317, and Document No. 20015578, Plat Records of Hays County, Texas. (Tracts 3, 6, 7, 8, 9, 10, and 12)
3. Remnant of 30' public utility easement along the west line of Lot 22, as recorded in Volume 11, Page 356, Volume 16, Page 191, Volume 17, Page 317, and Document No. 20015578, Plat Records of Hays County, Texas. (Tract 20)
4. 15' public utility easement dedicated along each front lot line(s), as recorded in Volume 16, Page 191, Volume 17, Page 317, and Document No. 20015578, Plat Records of Hays County, Texas. (All Tracts)
5. 5' public utility easement along the west line of Lot 5, the north line of Lot 6, the most northern west lot line of Lot 23 and the north line of Lot 23, as recorded in Volume 11, Page 356, Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 3 and 4)
6. 15' electric easement along the south line of Lots 19-22, as recorded in Volume 16, Page 191, Plat Records of Hays County, Texas. (Tracts 17, 18, 19, and 20)
7. 12' public utility easement dedicated along each side lot line(s), as recorded in Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 3, 4, 15, 16, 17, 18, 19, and 20)
8. 10' public utility easement dedicated along each rear lot line(s), as recorded in Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 12 and 16)
9. Access, drainage and public utility easement traversing subject lot, as recorded in Volume 16, Page 191, and Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 15 and 16)
10. 15' grading and temporary construction easement traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tract 12)



11. 10' water easement traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 10, 12 and 16)
12. 15' drainage easement traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 12 and 16)
13. 15' access easement for driveway extension traversing subject lot, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 15 and 16)
14. A portion of a 30' access easement along the north line of Lots 19-22, as recorded in Volume 17, Page 317, Plat Records of Hays County, Texas. (Tracts 17, 18, 19, and 20)
15. Covenants, conditions, obligations, restrictions, easements, charges and liens as set forth in that certain Restriction Agreement and Grant of Easements, by and between Kyle Texas Company, LLC, an Ohio limited liability company and Home Depot U.S.A., Inc., a Delaware corporation, as recorded in Volume 2478, Page 732, Official Public Records of Hays County, Texas and as affected by First Amendment to Restriction Agreement and Grant of Easements recorded in Volume 4751, Page 519, Official Public Records of Hays County, Texas. As affected by Second Amendment to Restriction Agreement and Grant of Easements recorded in Document No. 19045925, Official Public Records of Hays County, Texas and by Third Amendment to Restriction Agreement and Grant of Easements recorded in Document No. 20008136, of the Official Public Records of Hays County, Texas. Said instrument being further affected by Assignment of Consenting Owner Rights and Obligations recorded in Document No. 20040374, of the Official Public Records of Hays County, Texas and that certain Consenting Owner Amendment Restrictions recorded in Document No. 21008014, of the Official Public Records of Hays County, Texas. (All Tracts)
16. Easement executed by Richard V. W. Negley, to Southwestern Bell Telephone Company, dated August 10, 1973, recorded in Volume 261, Page 492, Deed Records of Hays County, Texas. (Tracts 6, 7, 8, 9, 10, 12, and 13)
17. Easement executed by Cary Troop, Jr., Trustee, to Texas Water Services, Inc., dated July 26, 2000, recorded in Volume 1726, Page 113, Official Public Records of Hays County, Texas. (Tracts 3, 6, 7, 8, 9, 10, 12, and 13)
18. Undivided royalty interest in and to all oil, gas and other minerals in, on, under or that may be produced from the herein described property, together with all rights relating thereto, express or implied, reserved unto The San Antonio Joint Stock Land Bank of San Antonio, a corporation in deed to J.J. Butler, dated December 10, 1941, and recorded in Volume 123, Page 352, Deed Records of Hays County, Texas. (All Tracts)
19. Rights of ingress and egress and all terms, conditions, liens and other stipulations contained in that certain Private Wastewater Easement Agreement recorded in Document No. 20016528, Official Public records of Hays County, Texas. (Tract 1)

20. Easement executed by O.H. Cullen and wife, Mattie Mae Cullen, to the State of Texas, dated May 5, 1959, recorded in Volume 177, Page 589, Deed Records of Hays County, Texas. (Tracts 3, 4, 6, 7, 8, 9, and 10)
21. Easement executed by Laura B. Negley and husband, Richard V.W. Negley, to the State of Texas, dated June 1, 1959, recorded in Volume 178, Page 98, Deed Records of Hays County, Texas. (Tracts 3, 4, 6, 7, 8, 9, and 10)
22. Easement executed by O.H. Cullen and Mattie M. Cullen, to Southwestern Bell Telephone Company, dated August 8, 1973, recorded in Volume 261, Page 526, Deed Records of Hays County, Texas. (Tracts 6, 7, 8, 9, 10, 12 and 13)
23. Easement executed by Austin South Venture #1, Ltd., to Texas Water Services, Inc., dated July 26, 2000, recorded in Volume 1726, Page 109, Official Public Records of Hays County, Texas. (Tract 3)
24. Easement executed by Kyle Texas Company, L.L.C., to the City of Kyle for wastewater lines, dated August 4, 2004, recorded in Volume 2519, Page 818, Official Public Records of Hays County, Texas. (Tracts 3, 4, 12, 13, 14, and 15)
25. Easement executed by Sterling/Babcock & Brown, LP., a Texas limited partnership, to Warren Realty, Ltd., a Texas limited partnership (successor-in-interest to Sac-N-Pac Stores, Inc., a Texas corporation), dated November 21, 2011, Volume 4238, Page 286, Official Public Records of Hays County, Texas. (Tracts 10, 12, 13, 14, and 15)
26. Easements for protected drive, and terms, conditions, and stipulations, as set out in that certain Declaration of Restrictions, executed by I35 Kyle Crossing, Ltd, dated May 6, 2020, as recorded in Document No. 20017808, of the Official Public Records of Hays County, Texas. (Tract 1)
27. Easements, terms, conditions, and stipulations in that certain Declaration of Restrictions, dated April 29, 2020, as recorded in Document No. 20016529, of the Official Public Records of Hays County, Texas. (Tracts 3 and 4)
28. Terms, conditions and stipulations of that certain Lease Agreement between I35 Kyle Crossing Lot 9, Ltd., as Landlord, and Terry Enterprises, LLC, as Tenant, as evidenced by Memorandum of Lease recorded in Document No. 21006008, Official Public Records of Hays County, Texas. (Tract 7)
29. Easements, terms, conditions and stipulations of that certain Private Wastewater Line Easement Agreement recorded in Document No. 21007903, Official Public Records of Hays County, Texas. (Tract 4)
30. Easements, terms, conditions and stipulations of that certain Drainage Easement and Operating Agreement recorded in Document No. 21007904, Official Public Records of Hays County, Texas. (All Tracts)

31. Covenants providing for assessments as set out in instrument recorded in Document No. 21007904, of the Official Public Records of Hays County, Texas. (All Tracts)

LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided: Lot B, Kyle Town Center Rphlt of Lot 1-A Block A  
# of lots (if subdivided): 1 (23 total) # of acres: 1.2018 (63.973 total)  
Site APN/Property ID #(s): 20015578  
Location: 18920 14 35 County: Hays  
Development Name: Dry River District (formerly known as Kyle Town Center)

OWNER

Company/Applicant Name: 135 Kyle Crossing Lot 9 Ltd  
Authorized Company Representative (if company is owner): Shona Hesson  
Type of Company and State of Formation: Ltd Partnership TX  
Title of Authorized Company Representative (if company is owner): Vice President  
Applicant Address: 500 w 5th Street Suite 700 Austin TX 78701  
Applicant Fax: \_\_\_\_\_  
Applicant Phone: 512.682.5516  
Applicant/Authorized Company Representative Email: shesson@endeavor-re.com

APPLICANT REPRESENTATIVE

Check one of the following:

I will represent the application myself; or

I hereby designate Robby Nethercut (name of project representative) to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

Owner's Signature: [Signature] Date: 7.20.21

State of Texas §  
County of Texas §

This instrument was acknowledged before me on (date) by (name of authorized company representative) who is a(n) (member, manager, authorized officer, etc.) of (name of company), a (Texas) (limited liability company, corporation, partnership, etc.).



SUBSCRIBED AND SWORN TO before me, this the 20 day of September, 2021.

[Signature]  
Notary Public's Signature  
June 7, 2025  
My Commission Expires

PROJECT REPRESENTATIVE



Representative Name: Robby Nethercut  
Representative Address: 5912 Balcones Dr Suite 102 Austin, Texas 78731  
Representative Phone: 512-897-6099  
Representative Email: rnethercut@ztejas.com  
Representative's Signature: \_\_\_\_\_ Date: 09/20/2021

A handwritten signature in black ink that reads "Robby Nethercut". The signature is written in a cursive style and is positioned over the signature line of the form.



# CITY OF KYLE, TEXAS

Marketplace Section 2, Block A,  
Lot 2 - Conditional Use Permit  
(CUP-21-0039)

Meeting Date: 12/14/2021  
Date time: 6:30 PM

**Subject/Recommendation:** Consider a request to construct two (2) single-story, multi-tenant retail buildings. Each building will be approximately 7,200 square feet located south of FM 1626 and west of Marketplace Avenue within the FM 1626 overlay district. (Kyle Marketplace Section 2, Block A, Lot 2 - CUP-21-0039)

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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## ATTACHMENTS:

### **Description**

- Staff Memo
- Request Letter
- Concept Package and Land Plan
- Colored Dimensions
- Deed
- Landowner Authorization Letter



# CITY OF KYLE

## Community Development Department



### MEMORANDUM

**TO:** Planning & Zoning Commission

**FROM:** Will Atkinson – Senior Planner

**DATE:** Tuesday, December 14, 2021

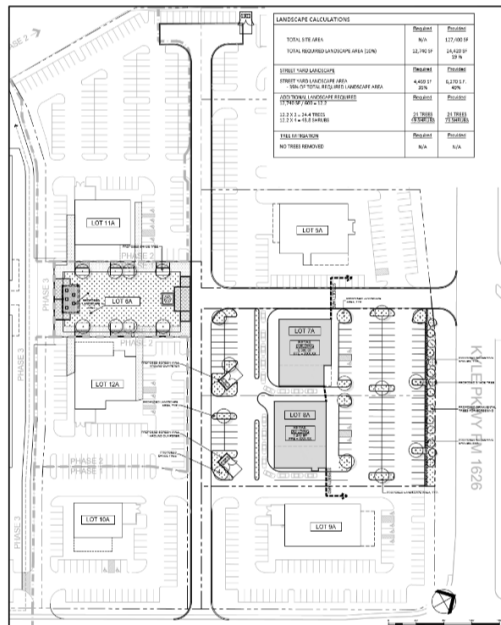
**SUBJECT:** Kyle Crossing Phase 2, Lots 7A & 8A – Conditional Use Permit (CUP-21-0039)

### REQUEST

The applicant seeks to construct two (2) single-story, multi-tenant retail buildings. Each building will be approximately 7,200 square feet. The buildings will consist of both indoor and drive thru service, with materials consisting of a mix of stucco, dark colored brick and composite wood siding.

### LOCATION

The property is within Kyle Marketplace Section 2, Block A, Lot 2. This are is south of FM 1626 and west of Marketplace Avenue. An address has not yet been assigned to the project.



## **OVERLAY DISTRICT**

The FM 1626 conditional use overlay district (FM 1626 overlay district). The FM 1626 overlay district extends from the intersection of FM 1626 and IH 35 on the south and east to the city limit boundary to the north and west, and includes all real property within 500 feet of the outer most edge of the street right-of-way of FM 150 East. Sec. 53-896 is the code section staff uses to review for aesthetic compliance.

### **TEXT OF THE ZONING ORDINANCE**

**Sec. 53-896.** - Standards for review.

- (a) The planning and zoning commission shall determine whether the application and project is consistent and compliant with the terms and intent of this division, this chapter, chapter 32, article II, pertaining to the site development plan, and all other codes and ordinances of the city. The planning and zoning commission will determine if the proposed use, occupancy and structure will promote, preserve, and enhance, and will not damage or detract from the distinctive character of the community; will preserve and protect property values and taxable values; will not be detrimental or inconsistent with neighboring uses and occupancies; will not be detrimental to the general interests of the citizens; and will not be detrimental to the public health, safety and welfare. In conducting its review, the planning and zoning commission shall make examination of and give consideration to the traffic flow, development density, neighboring historical designs, neighboring uses, and elements of the application, including, but not limited to:
- (1) Height, which shall conform to the requirements of this chapter;
  - (2) Building mass, which shall include the relationship of the building width to its height and depth, and its relationship to the visual perception;
  - (3) Exterior detail and relationships, which shall include all projecting and receding elements of the exterior, including, but not limited to, porches and overhangs and the horizontal or vertical expression which is conveyed by these elements;
  - (4) Roof shape, which shall include type, form, and materials;
  - (5) Materials, texture, and color, which shall include a consideration of material compatibility among various elements of the structure;
  - (6) Compatibility of design and materials, which shall include the appropriateness of the use of exterior design details;
  - (7) Landscape design and plantings, which shall include lighting and the use of landscape details to highlight architectural features or screen or soften undesirable views;
  - (8) Vehicular and pedestrian access, which shall include location, width, and type of surface for all points of ingress and egress;
  - (9) Signage, which shall include, in addition to the requirements chapter 29, pertaining to signs, the appropriateness of signage to the building in relation location, historical significance of the structure and neighboring structures, traffic visibility; obstruction of views from neighboring property;



- (b) The planning and zoning commission may request from the applicant such additional information, sketches, and data as it shall reasonably require. It may call upon experts and specialists for testimony and opinion regarding matters under examination. It may recommend to the applicant changes in the plans it considers desirable and may accept a voluntary amendment to the application to include or reflect such changes. The planning and zoning commission shall keep a record of its proceedings and shall attach to the application copies of information, sketches, and data needed to clearly describe any amendment to the application.
- (c) If the conditional use permit is granted by the planning and zoning commission, the applicant shall be required to obtain a building permit and/or a development permit, if required, provided all other requirements for a building permit and/or a development permit are met. The building permit and/or a development proposal as approved shall be valid from one year from the date of approval. The planning and zoning commission may grant an extension of the one-year limitation if sufficient documentation can be provided to warrant such an extension.

### **STAFF ANALYSIS**

Staff has reviewed the request and has made the following findings:

1. The proposed building meets the intent of the Retail Services zoning standards for the building and site work;
2. The architecture style of the building meets the intent for variation of architectural design requirements in the FM 1626 Overlay (no standards created for the Overlay); The overall design submitted is a modern design that simultaneously meets and exceeds the requirements for the FM 1626.
3. Materials types and specific colors are available on the elevation sheet.

The site plan shown as an exhibit is code compliant, and matches the proposed building for both the Retail Services zoning district and the FM 1626 Overlay. The design is modern, and given that there are no standards in the FM 1626 Overlay, the design is compliant.

### **RECOMMENDATION**

Staff has reviewed the color elevations for compliance with the FM 1626 Overlay. Staff recommends approval of the conditional use permit (CUP-21-0039).

September 30, 2021

Mr. Will Atkinson  
City of Kyle  
100 W. Center Street  
Kyle, Texas 78640

**Re: Summary Request – Kyle Crossing Phase 2 Lot 7A & 8A  
Kyle, TX**

Dear Will Atkinson,

We respectfully submit our design package for the Conditional Use Permit for lot 7a & 8a. The two retail buildings are designed in with complimenting materials such as smooth plaster and soldier coarse brick and wood sidings along with a rich dark bronze metal canopy and storefront system. Building Lot 8A has a wood trim that wraps the Southeast side as this corner faces the entry of Marketplace Ave. Due to the relatively short building width, we kept the parapet heights consistent while keeping clean and timeless proportions.

Respectfully submitted,



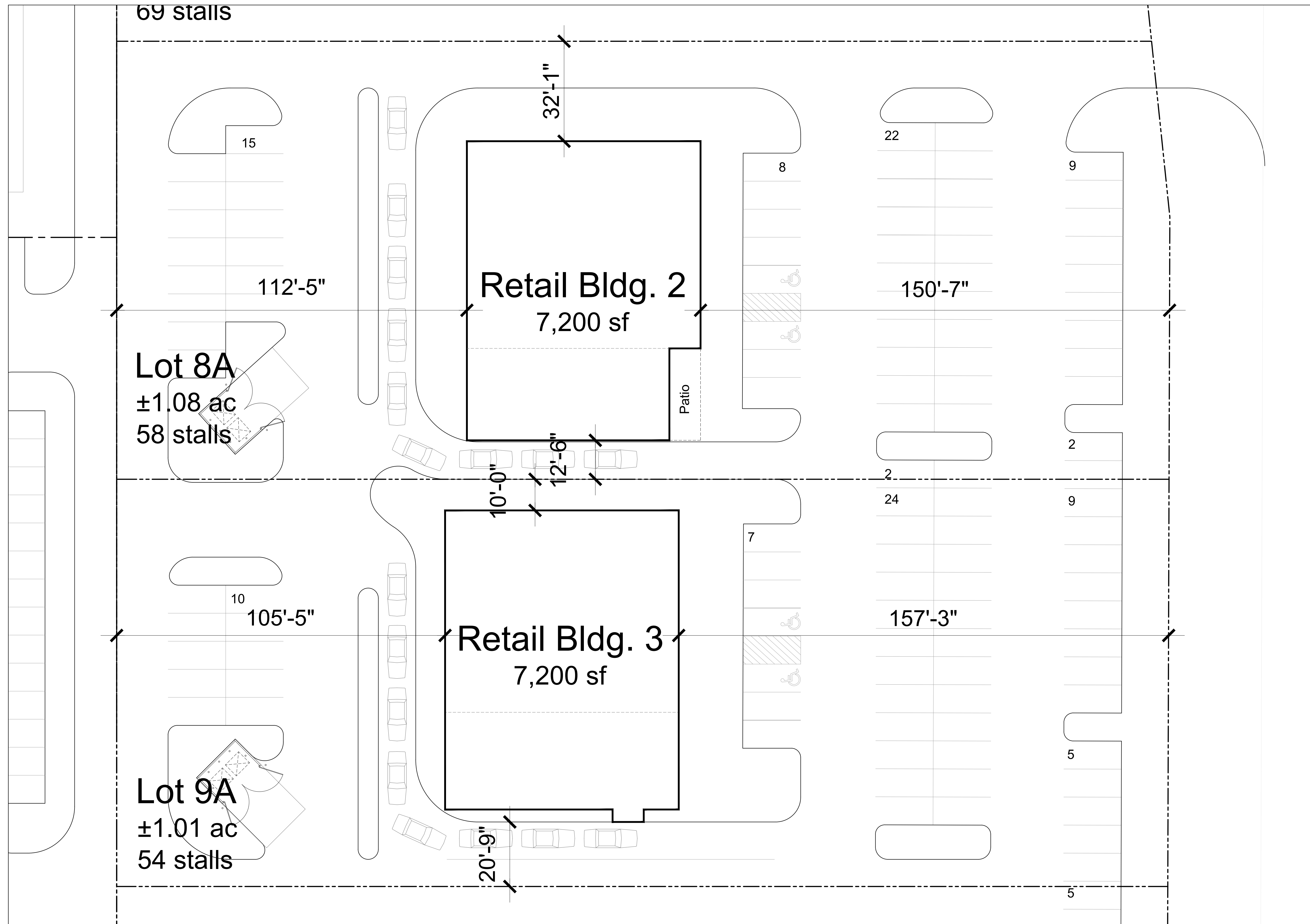
Christopher Cuaso  
Design Director

# KYLE CROSSING PHASE 2

RETAIL 2 & 3

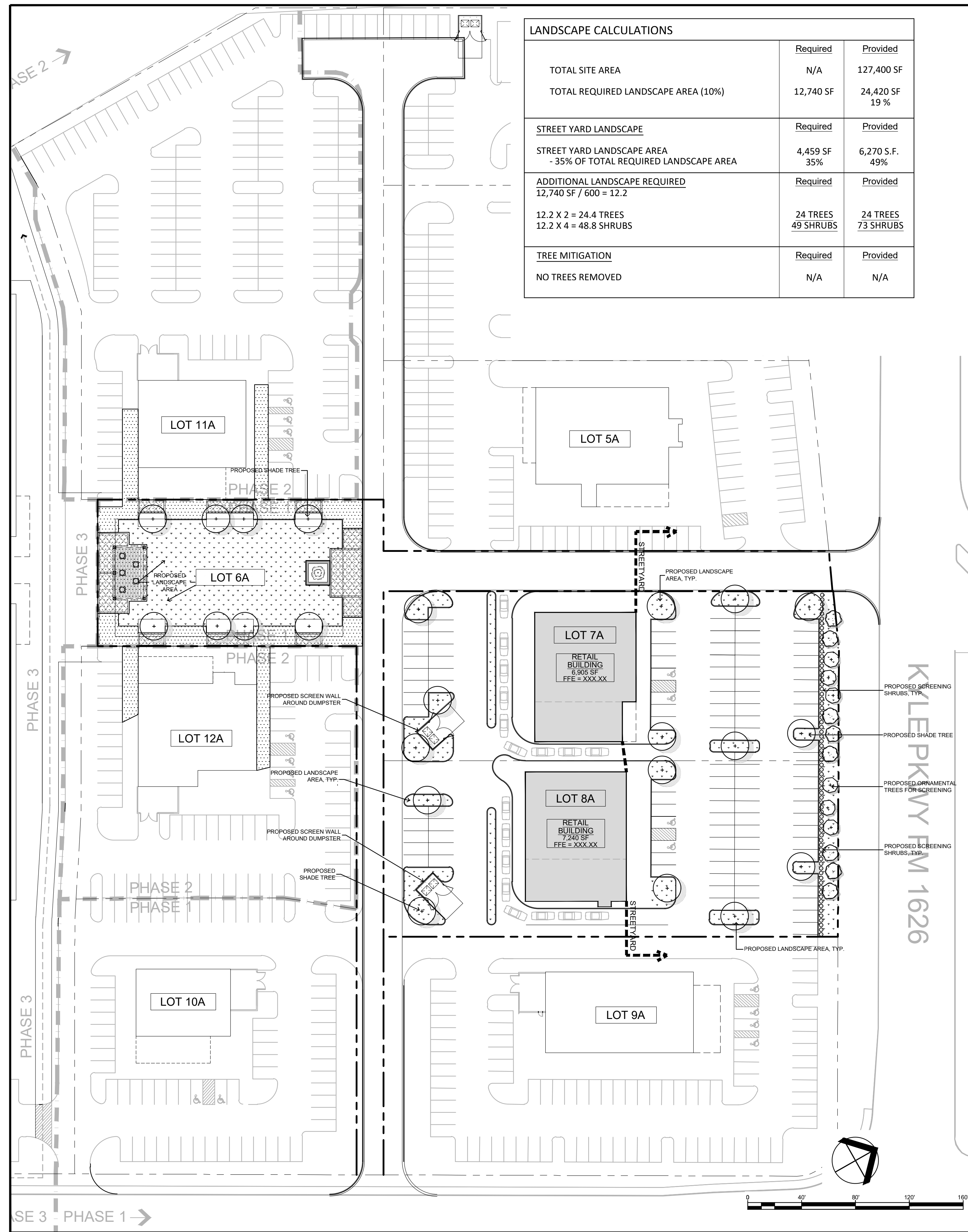
CONDITIONAL USE PERMIT DESIGN PACKAGE

SEPTEMBER 30, 2021



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LANDSCAPE CALCULATIONS		
	Required	Provided
TOTAL SITE AREA	N/A	127,400 SF
TOTAL REQUIRED LANDSCAPE AREA (10%)	12,740 SF	24,420 SF 19 %
<b>STREET YARD LANDSCAPE</b>		
STREET YARD LANDSCAPE AREA - 35% OF TOTAL REQUIRED LANDSCAPE AREA	4,459 SF 35%	6,270 S.F. 49%
<b>ADDITIONAL LANDSCAPE REQUIRED</b> 12,740 SF / 600 = 12.2		
12.2 X 2 = 24.4 TREES	24 TREES	24 TREES
12.2 X 4 = 48.8 SHRUBS	49 SHRUBS	73 SHRUBS
<b>TREE MITIGATION</b>		
NO TREES REMOVED	N/A	N/A

LARGE SHADE TREES				
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
+	24	Cedar Elm	Ulmus crassifolia	4" caliper / 10' height minimum
		Live Oak	Quercus virginiana	4" caliper / 10' height minimum
		Mexican Sycamore	Platanus mexicana	4" caliper / 10' height minimum
		Texas Red Oak	Texas shumardi 'Buckley'	4" caliper / 10' height minimum

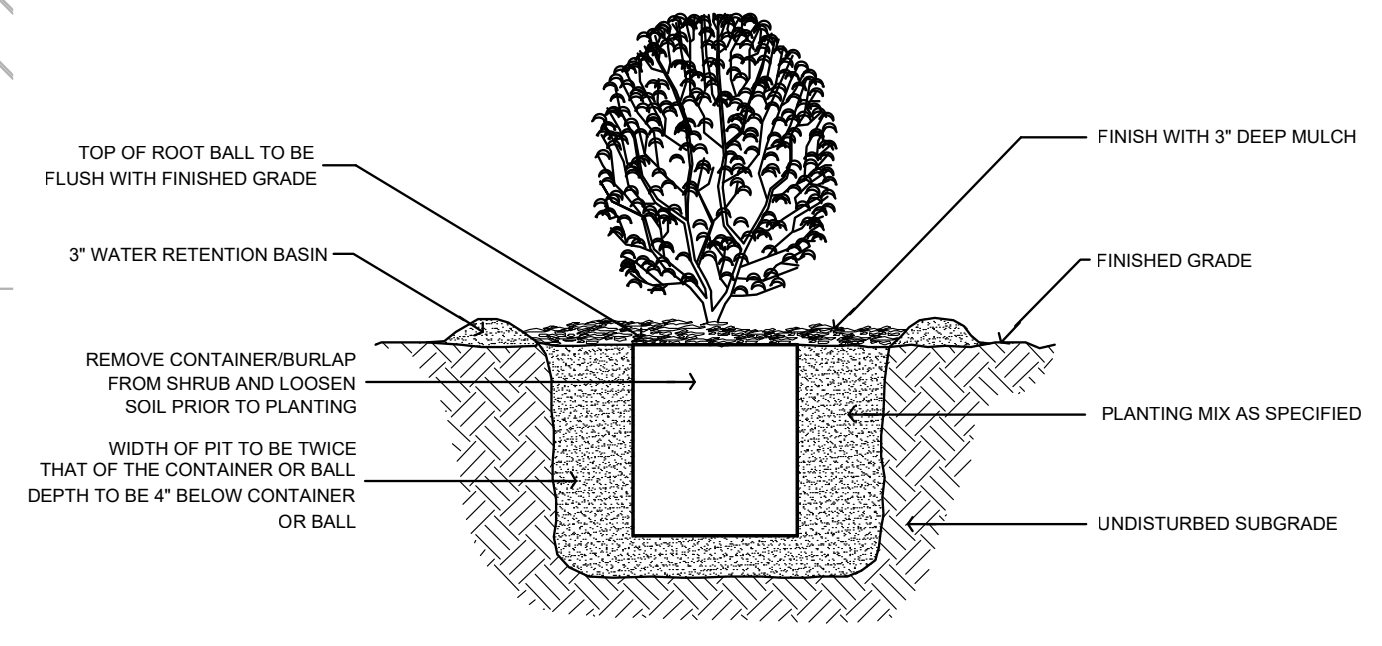
ORNAMENTAL TREES				
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
+	8	Texas Redbud	Cercis canadensis 'Texensis'	2" caliper / 6' height minimum
+	6	Tree Yaupon	Ilex vomitoria	2" caliper / 6' height minimum

LARGE SHRUBS				
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
○	73	Bicolor Iris	Dietses bicolor	5 gallon, minimum
		Big Muntly	Muhlenbergia lindheimeri	5 gallon, minimum
		Dwarf Wax Myrtle	Myrica pusilla	5 gallon, minimum
		Knockout Rose 'Red'	Rosa spp. 'Radrazz'	5 gallon, minimum
		Mexican Bush Sage	Salvia leucantha	5 gallon, minimum
		Texas Sage	Leucophyllum frutescens	5 gallon, minimum

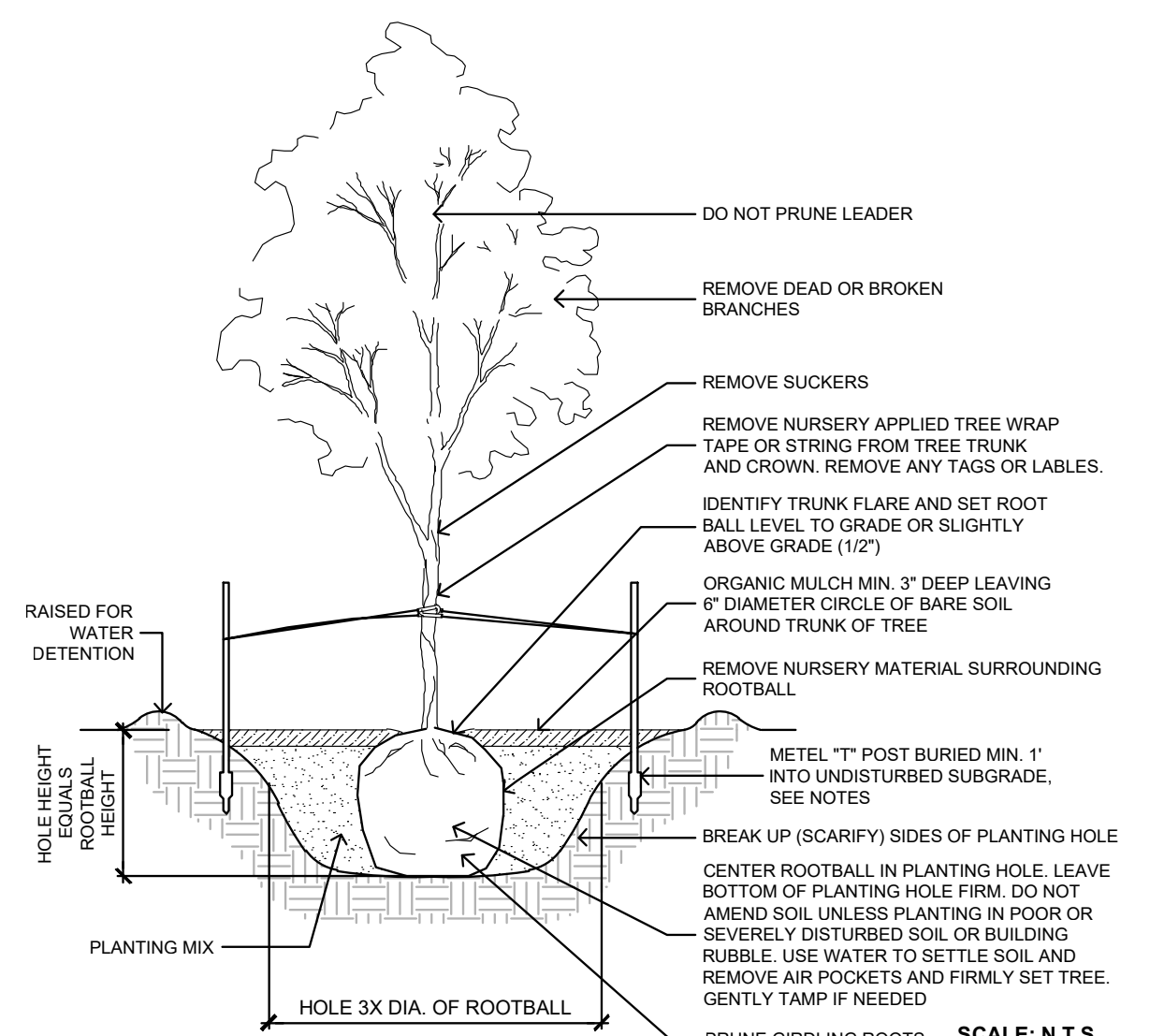
MISCELLANEOUS		
QUANTITY	SYMBOL	DESCRIPTION
24,000 +/-	[Symbol]	Bermuda Tiff, Solid Sod, for all disturbed areas SF 4" depth native hardwood mulch, in all planting areas

- ### LANDSCAPE CONSTRUCTION NOTES
- Contractor shall provide all labor and materials necessary to complete the work shown on the plans.
  - All proposed landscaping is to be installed as per local city ordinances and codes. Notify owner's representative and landscape architect of any discrepancies prior to construction.
  - All plant material shall comply with plant size per container as stated by the American Association of Nurseryman.
  - Plants are subject to inspection and approval by the landscape architect. Plants required for the site may be inspected and tagged at growing site before delivery.
  - Groundcover bed preparation shall be 2 inches of planting mix tilled 8 inches into bed areas.
  - Shrubs and trees shall be pocket planted. Excavate planting hole 1-1/2 times the width and height of the root ball. Backfill with 1/2 planting mix, 1/3 native soil and 1/3 sandy loam.
  - Grading shall provide positive drainage away from buildings and other structures. Fine grade for positive drainage to prevent ponding.
  - Quantities provided in the plant list are for general use only, contractor is responsible for verification of all plant quantities.
  - Contractor is responsible for quality of workmanship, superintendence and scheduling of work.
  - Contractor is responsible for removal of trash and job safety conditions
  - Contractor to provide (1) year warranty on all plant material.
  - Pre and Post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities including disturbance of the critical zone. Fertilizers must be phosphate free.

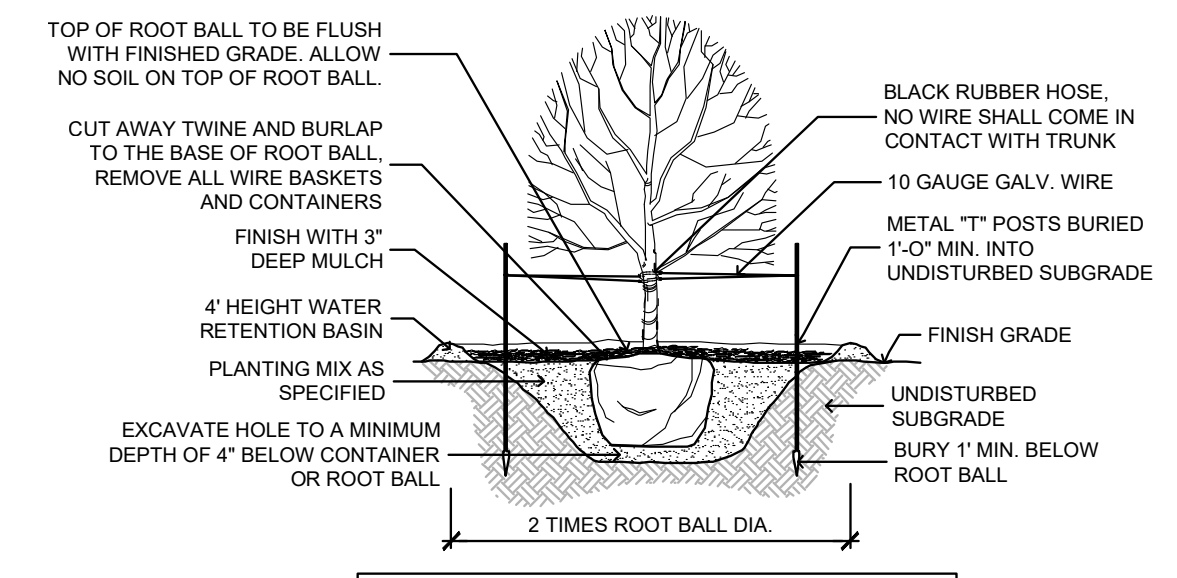
- ### GENERAL LANDSCAPE MAINTENANCE NOTES
- The owner shall be responsible for (unless otherwise specified herein):
- Regular maintenance of all required landscaped areas and plant materials in a vigorous and healthy condition, free from diseases, pests, weeds, and litter. This maintenance shall include weeding, watering, fertilization, pruning, mowing, edging, mulching, or other necessary maintenance in accordance with generally accepted horticultural practice;
  - The repair or replacement of required landscape structures (walls, fences, etc.) to a structurally sound condition;
  - The regular maintenance, repair, or replacement, where necessary, of any screening or buffering;
  - Replacing planted trees if they die or become diseased beyond repair within five (5) years after planting; and
  - Repairing damage to landscaped areas, structures, screening, buffering, or trees as a result of ingress or egress from site easements by authorized or unauthorized parties.



**A SHRUB PLANTING DETAIL**  
SECTION SCALE: N.T.S.

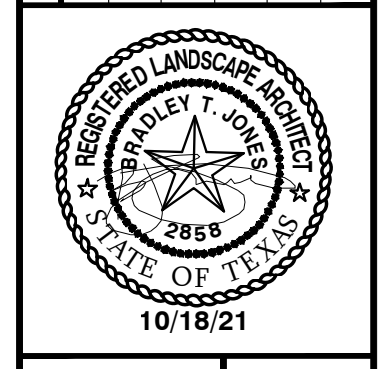


**B TREE PLANTING DETAIL**  
SECTION SCALE: N.T.S.



**C ORNAMENTAL TREE PLANTING DETAIL**  
SECTION SCALE: N.T.S.

REVISIONS	Description	Date



**KYLE CROSSING 1626 @ MARKET PLACE AVE**  
**KYLE, TEXAS 78640**  
**LANDSCAPE SUBMITTAL PLAN**

DATE: 10-18-21  
SCALE: 1" = 40'

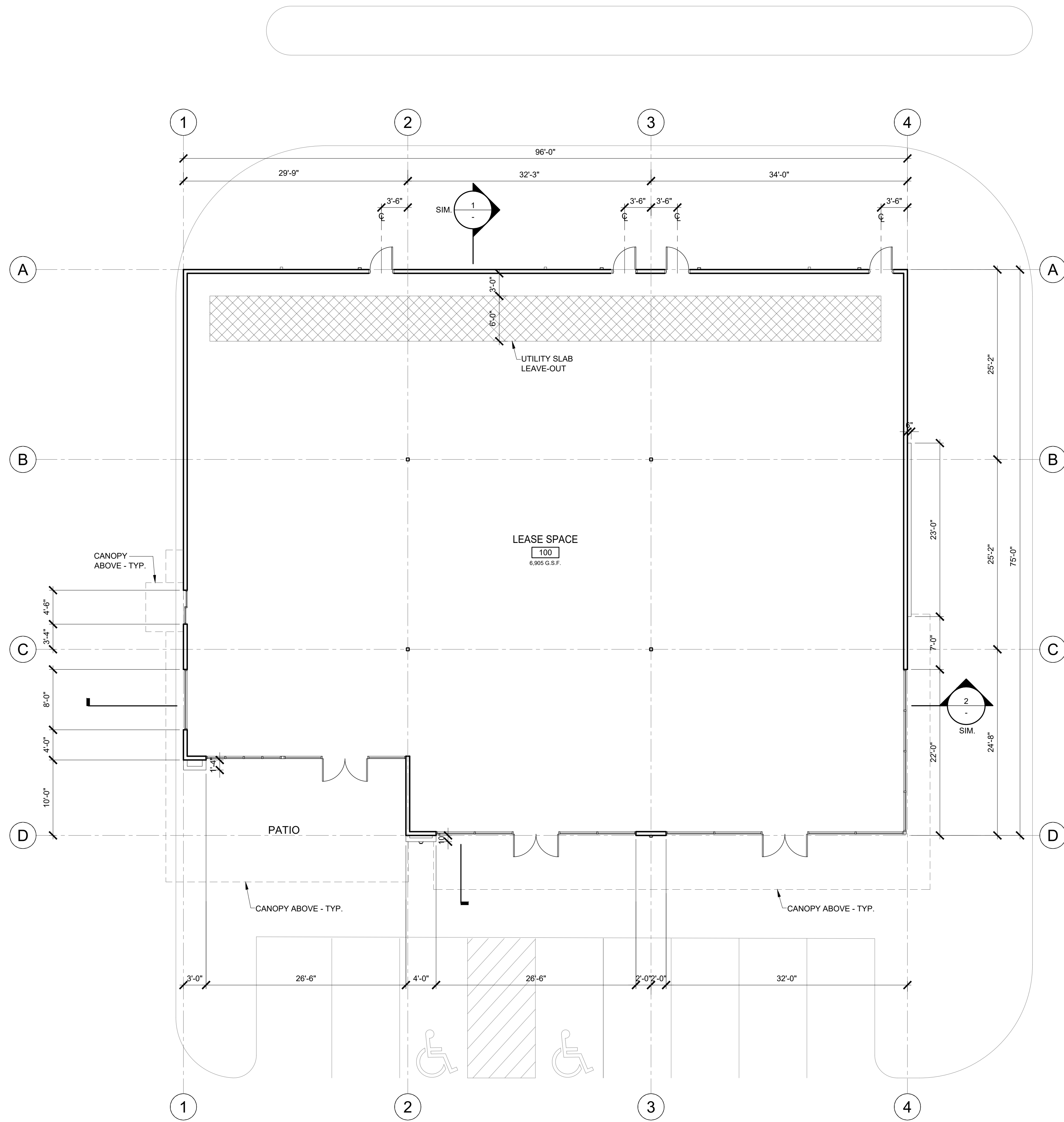
**ECOLAND DESIGN GROUP**

Sheet: **L1 of L1**

JOB#: E125-33

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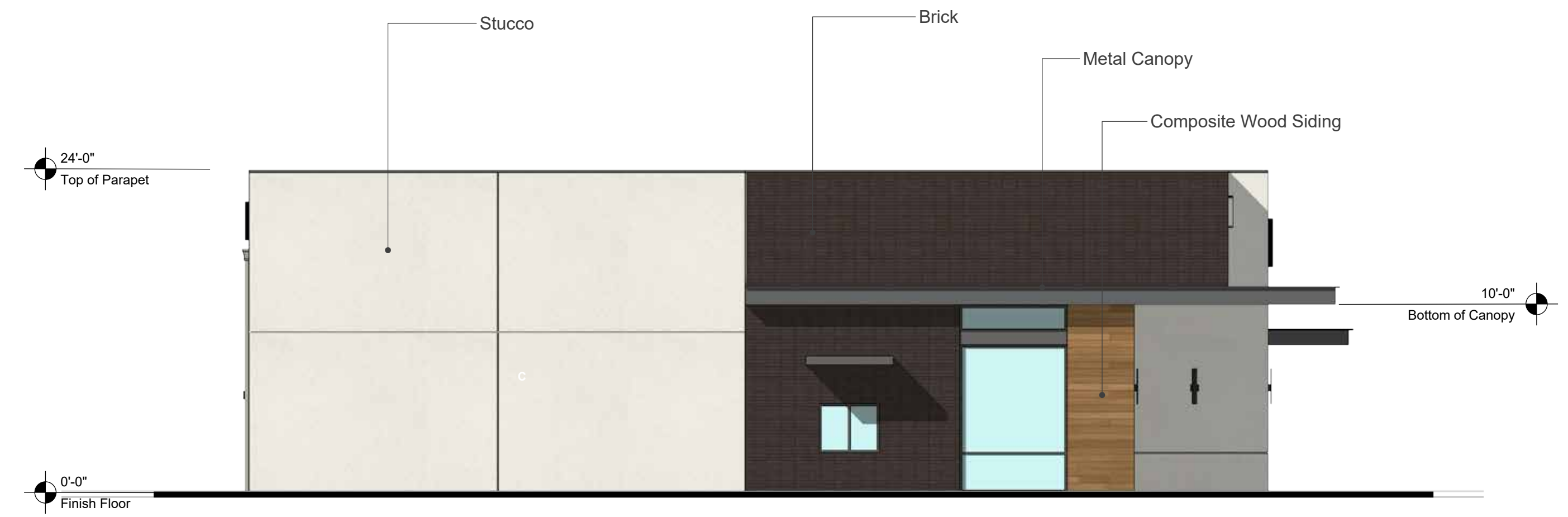




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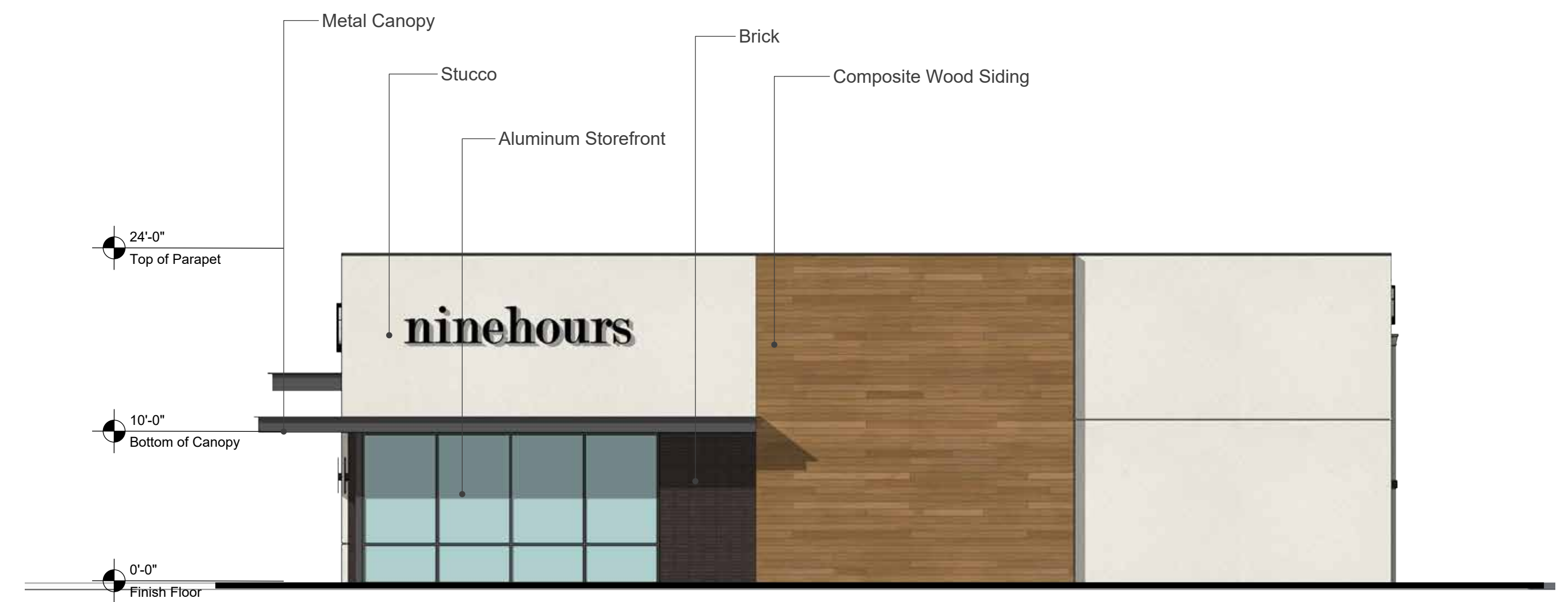
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**B LEFT ELEVATION**  
scale: 1/8"=1'

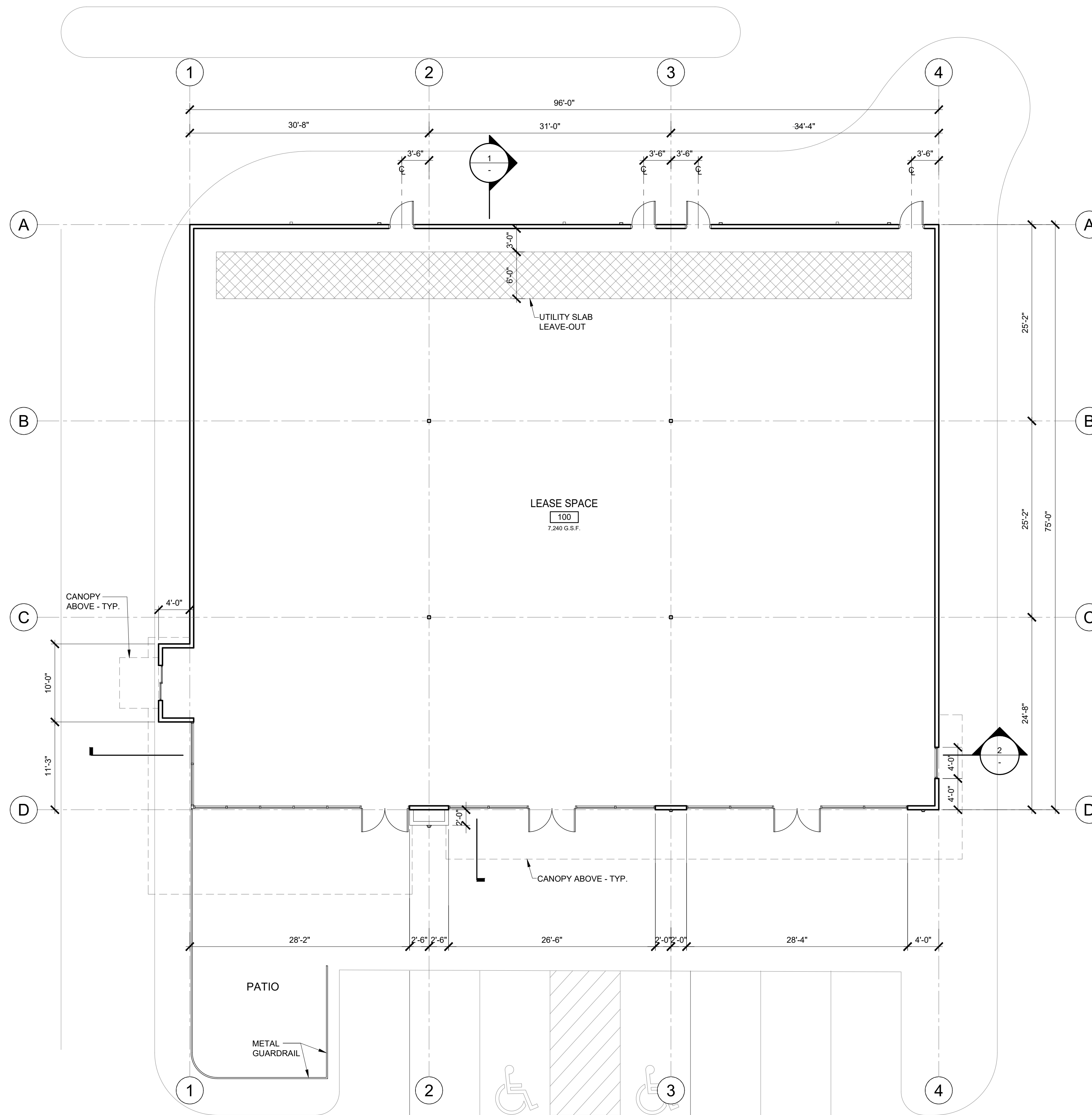


**C REAR ELEVATION**  
scale: 1/8"=1'



**D RIGHT ELEVATION**  
scale: 1/8"=1'

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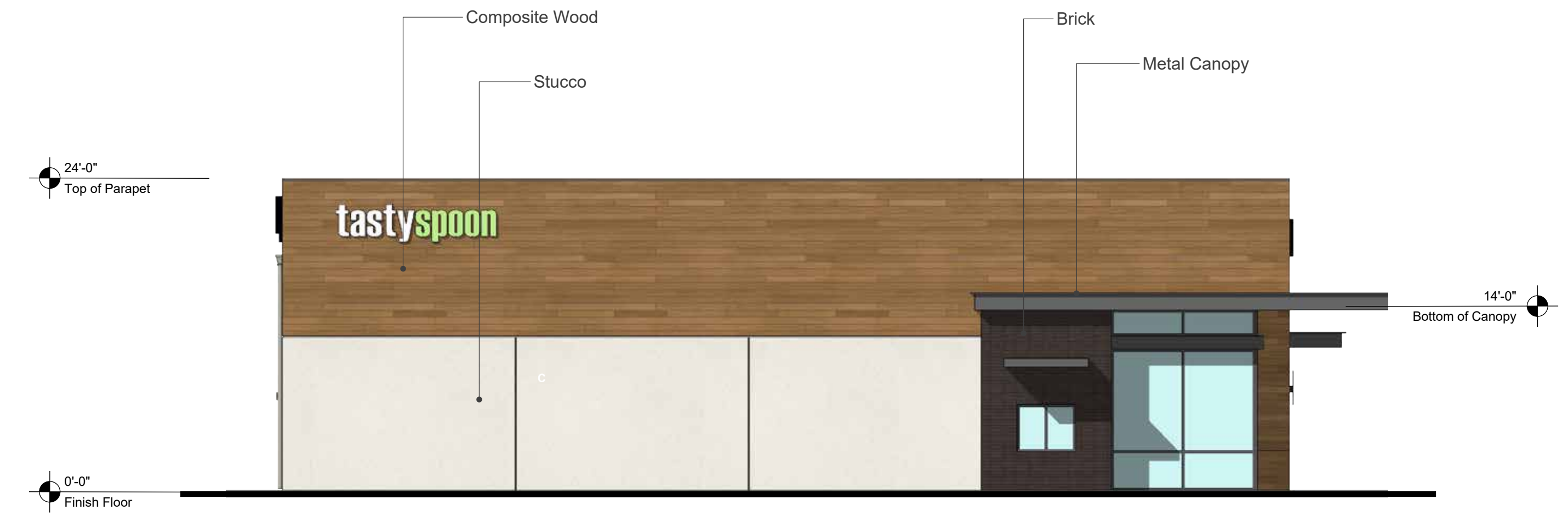


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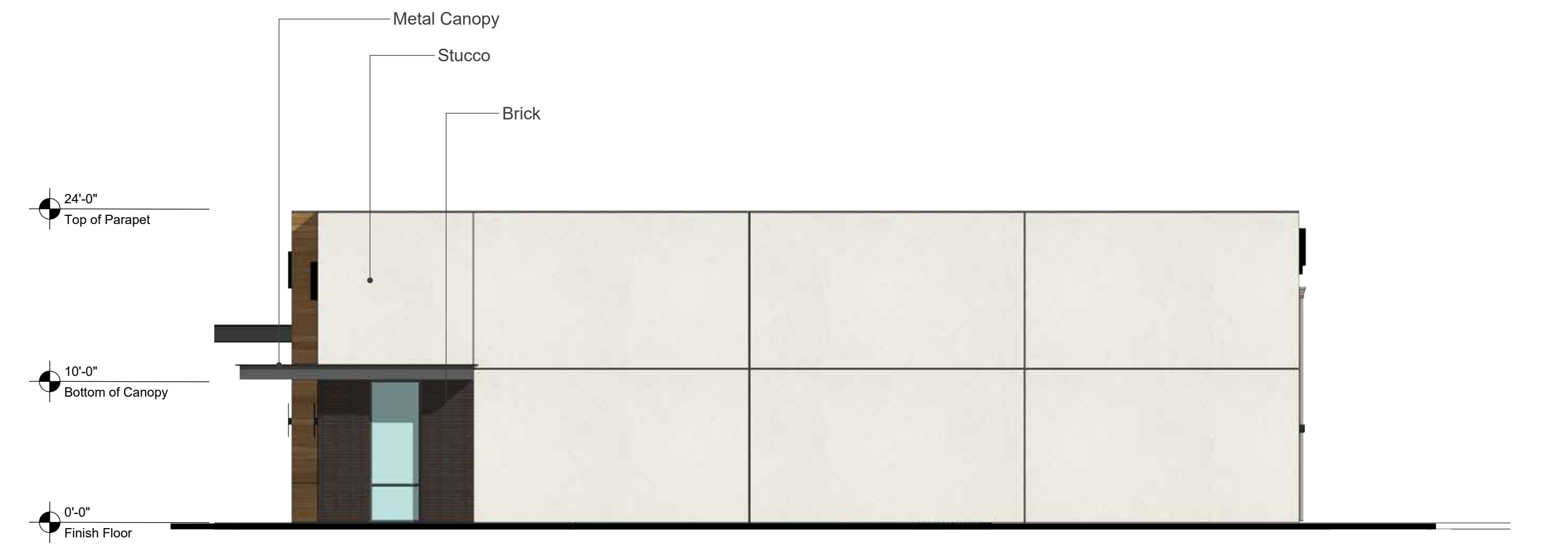
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**B LEFT ELEVATION**  
scale: 1/8"=1'



**C REAR ELEVATION**  
scale: 1/8"=1'



**D RIGHT ELEVATION**  
scale: 1/8"=1'

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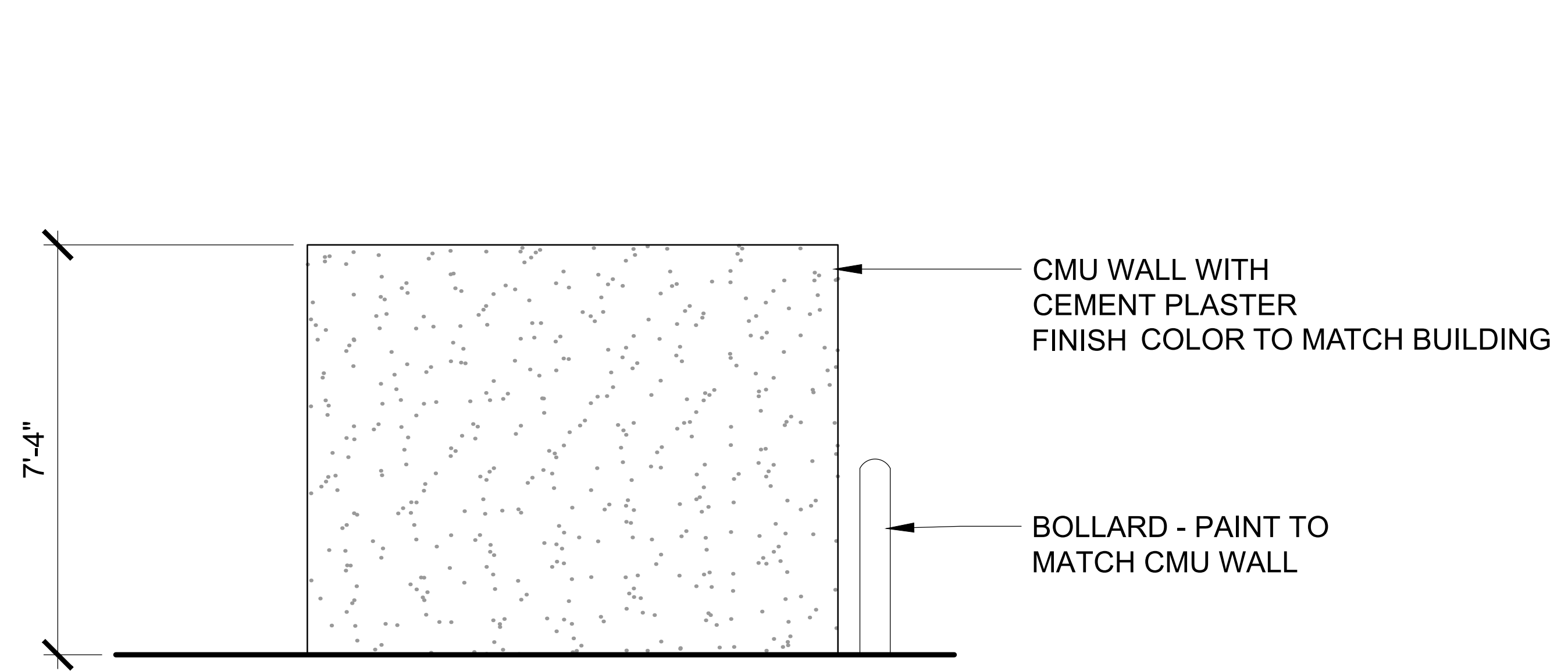
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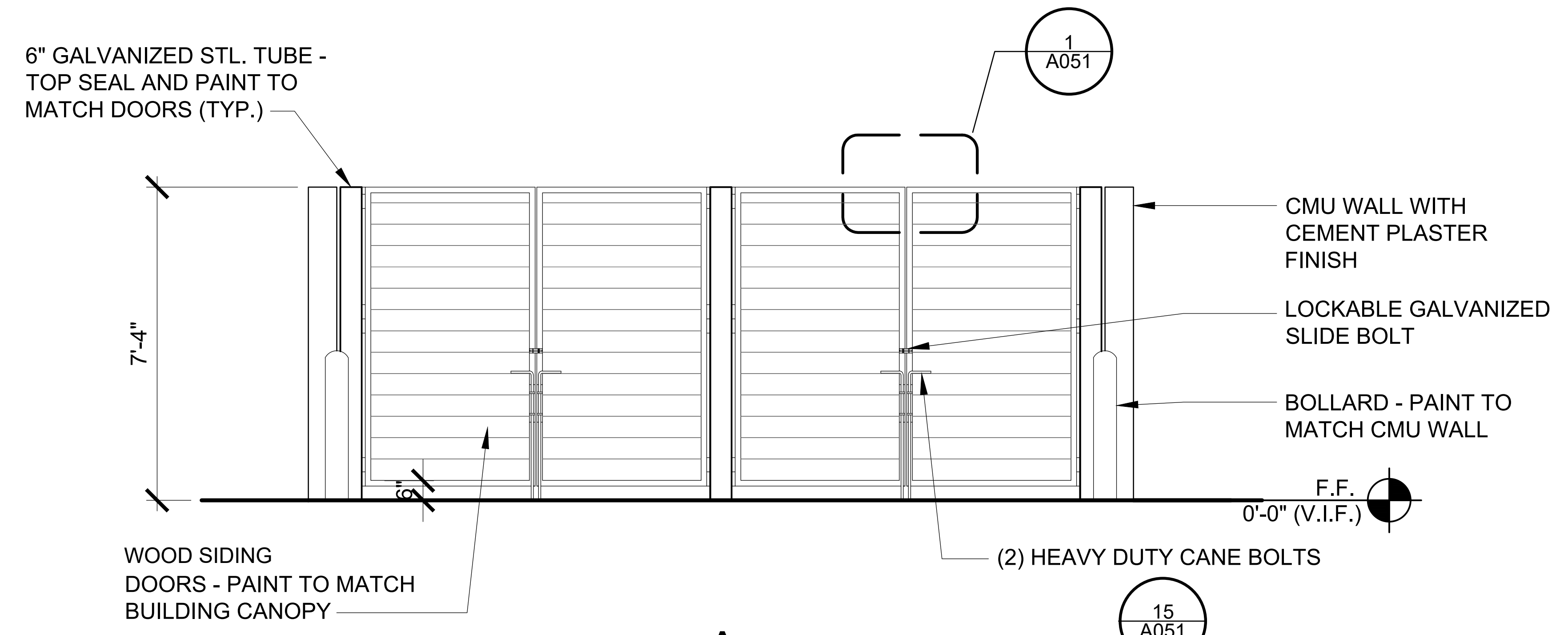


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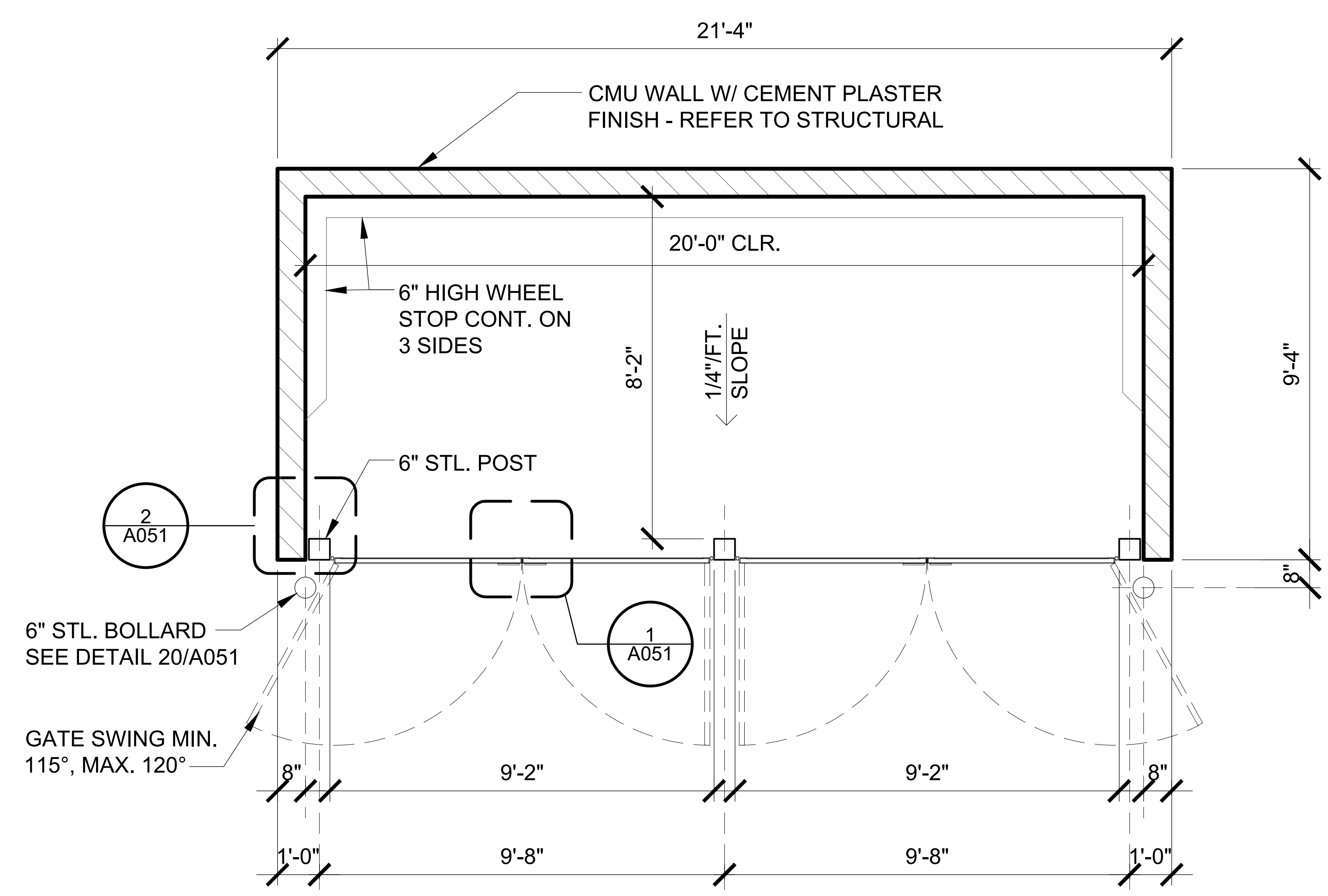




B.



A.

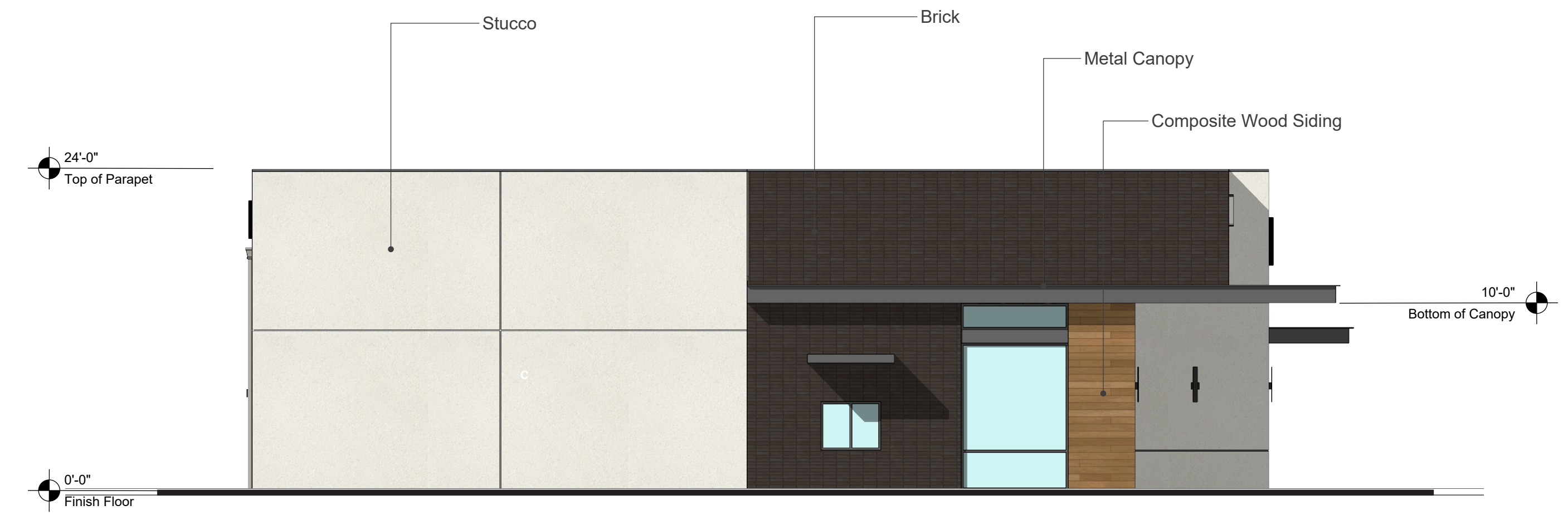


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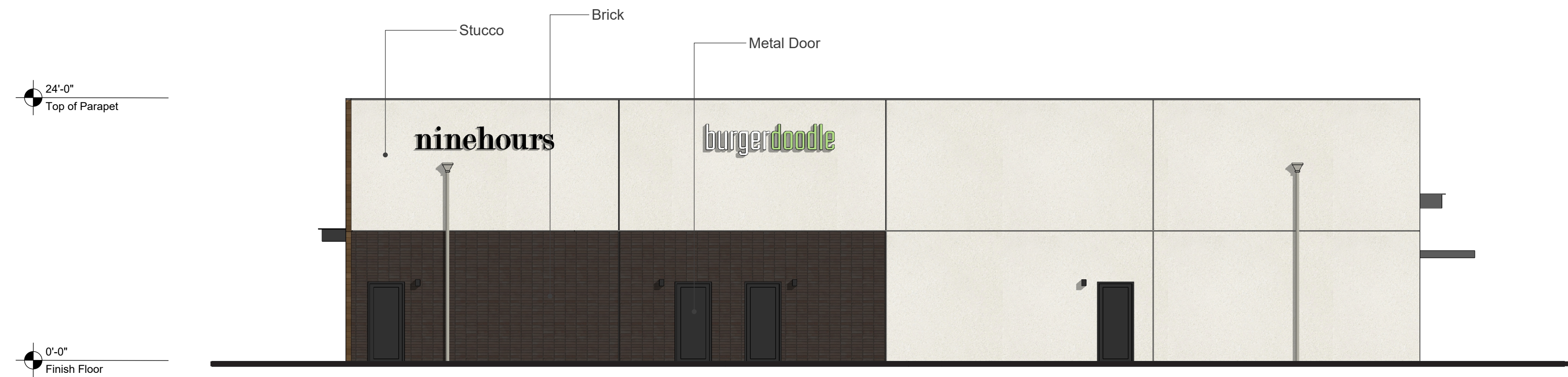




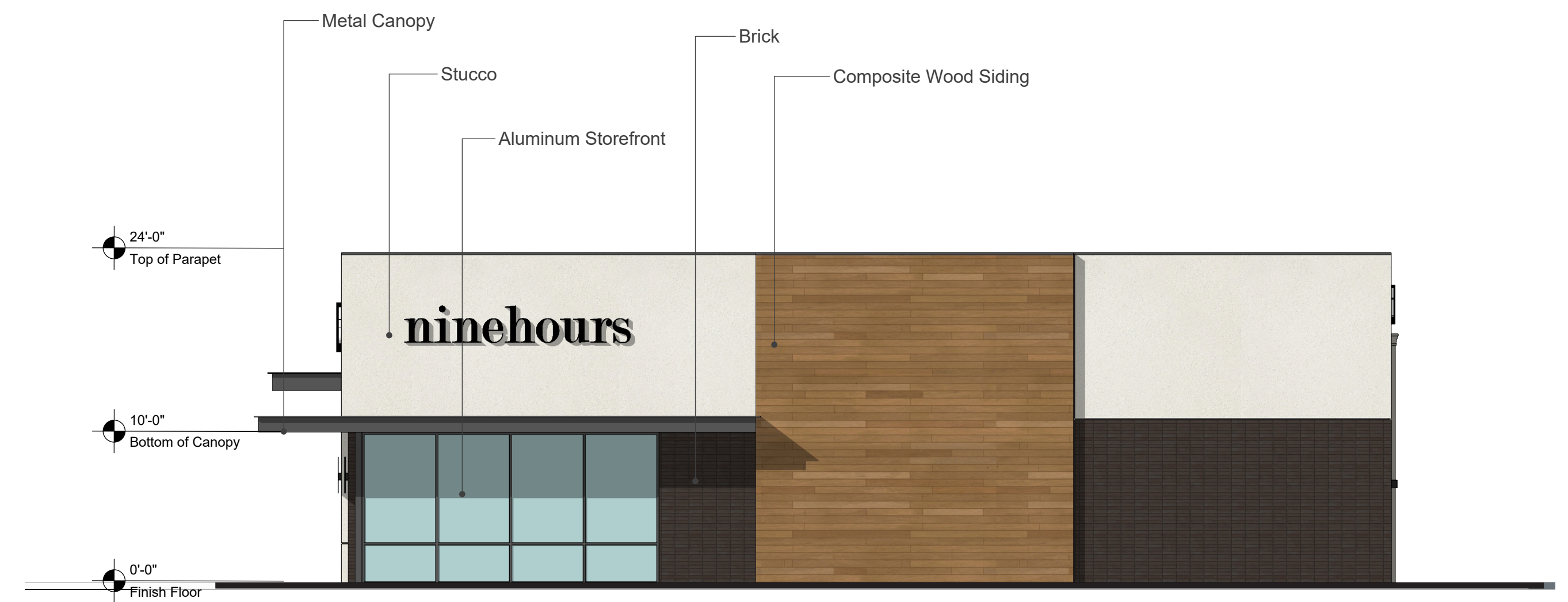
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scale: 1/8"=1'



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**D RIGHT ELEVATION**  
scale: 1/8"=1'

CUASO DESIGN STUDIO IS NOT RESPONSIBLE FOR ANY MODIFICATIONS MADE TO THIS DRAWING BY OTHER PARTIES. DIMENSIONS AND AREAS ON THIS DOCUMENT ARE APPROXIMATE AND SUBJECT TO CHANGE.





CUASO DESIGN STUDIO IS NOT RESPONSIBLE FOR ANY MODIFICATIONS MADE TO THIS DRAWING BY OTHER PARTIES. DIMENSIONS AND AREAS ON THIS DOCUMENT ARE APPROXIMATE AND SUBJECT TO CHANGE.



**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**  
(County of Hays, State of Texas)

As of this 31<sup>st</sup> day of August, 2021, **DDR DB KYLE LP**, a Texas limited partnership ("**Grantor**"), whose address is 3300 Enterprise Parkway, Beachwood, Ohio 44122, hereby GRANTS, BARGAINS, SELLS and CONVEYS to **CSW KC II, LLC**, a Texas limited liability company ("**Grantee**"), whose address is 1703 W. 5th Street, Suite 850, Austin, Texas 78703 Attn: Robert O'Farrell, for the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, all that certain tract of land situated in Hays County, Texas, more particularly described on **Exhibit A** attached hereto and made a part hereof, together with all appurtenances thereon or in anywise appertaining thereto and all buildings, structures, fixtures, and other improvements located thereon, if any (said land, appurtenances, and improvements being hereinafter referred to, collectively, as the "**Property**").

The above-described property is conveyed subject to those matters more particularly described in **Exhibit B** attached hereto and made a part hereof for all purposes (collectively, the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Property, with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, unto Grantee and Grantee's successors and assigns, forever; Grantor hereby covenanting that (i) the Property is free and clear from any encumbrance done or suffered by Grantor, except for the Permitted Exceptions, and (ii) Grantor will warrant and defend the title to the Property unto Grantee and Grantee's successors and assigns forever against the lawful claims and demands of all persons claiming or to claim the same, by, through or under Grantor, except for the Permitted Exceptions.

BY ACCEPTANCE OF THIS DEED, Grantee, on behalf of itself and all future owners and occupants of the Property, hereby waives and releases Grantor from any claims arising out of the environmental condition of the Property and all claims under any applicable federal, state or local laws ("**Environmental Laws**"). The term "Environmental Laws" include, without



limitation, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. § 6901 et seq., as amended from time to time; and any similar federal, state and local laws and ordinances and the regulations and rules implementing such statutes, laws and ordinances. The foregoing waiver and release shall be binding upon all future owners and occupants of the Property.

*[Remainder of this page intentionally left blank;  
signature and acknowledgment on the following page.]*



This Document was Prepared By:

DDR DB KYLE LP  
c/o SITE Centers Corp.  
3300 Enterprise Parkway  
Beachwood, Ohio 44122  
Attn: Legal Department  
(216) 755-5500

After Recording, Mail To:

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

Send Subsequent Tax Bills To:

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

**EXHIBIT A TO DEED**

Legal Description

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)

For Information Purposes Only:  
APN: R130276

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)

For Information Purposes Only:  
APN: R130277

TRACT 3:

LOT 7, BLOCK G, 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. (1.3905 ACRES)

For Information Purposes Only:  
APN: R130305

TRACT 4:

LOT 6A, BLOCK G, KYLE MARKETPLACE SECTION 2, REPLAT OF LOTS 5 AND 6, BLOCK G, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 19, PAGES 36-37, PLAT RECORDS OF HAYS COUNTY, TEXAS. (2.17 ACRES)

For Information Purposes Only:  
APN: R146392

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)

For Information Purposes Only:  
APN: R131692

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)

For Information Purposes Only:  
APN: R131693

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)

For Information Purposes Only:  
APN: R130295

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)

For Information Purposes Only:  
APN: R130296

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)

For Information Purposes Only:  
APN: R130297

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)

For Information Purposes Only:  
APN: R130298

**EXHIBIT B TO DEED**Permitted Exceptions

1. Real estate taxes and assessments, both general and special, for the year 2021 and subsequent years, which are not yet due and payable.
2. Applicable zoning and building ordinances.
3. Those matters disclosed by that certain ALTA/NSPS Land Title Survey, dated April 24, 2019, last revised \_\_\_\_\_, prepared by Brad Wells (Land Surveyor No. 5499) of Blew & Associates, P.A., Network Reference No. 20190495-001.
4. Declarations, conditions, covenants, restrictions, easements, rights of way and other matters of record, including without limitation, those items shown on the subdivision plat of the Property, and the following exceptions:
  - a. Any and all easements, building lines, and conditions, covenants, and restrictions as set forth in plat recorded under Volume 14, Page(s) 330-333, Plat Records of Hays County, Texas; Volume 17, Page 200, Plat Records of Hays County, Texas; and Volume 19, Page(s) 36-37, Plat Records of Hays County, Texas.
  - b. Ingress, Egress and Parking Easements granted in favor of McDonald's USA, LLC, as evidenced and disclosed by that Memorandum of Lease Agreement recorded August 12, 2009, under Instrument No. 2009-90021310 (Volume 3714, Page 91), Official Public Records of Hays County, Texas; as affected by that Assignment and Assumption recorded under Instrument No. 2010-10014355 (Volume 3894, Page 291), Official Public Records of Hays County, Texas.
  - c. Utility Easement granted in favor of Pedernales Electric Cooperative, Inc. recorded July 14, 2008, under Instrument No. 2008-80019031 (Volume 3429, Page 595), Official Public Records of Hays County, Texas.
  - d. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Declaration of Slope Easement and Restriction Agreement recorded October 3, 2005, under Instrument No. 2005- 05028861 (Volume 2779, Page 688), Official Public Records of Hays County, Texas.
  - e. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Development Agreement recorded June 29, 2007, under Instrument No. 2007-70018935 (Volume 3197, Page 426), Official Public Records of Hays County, Texas; as affected by that Indemnification Agreement recorded under Instrument No. 18019344, Official Public Records of Hays County, Texas; and as further affected by that Assignment and Assumption of Indemnification Agreement recorded under Instrument No. 18044402, Official Public Records of Hays County, Texas.

- f. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Declaration of Drainage and Access Easements, Covenants and Conditions recorded April 17, 2008, under Instrument No. 2008-80010148 (Volume 3369, Page 798), Official Public Records of Hays County, Texas; as affected by that First Amendment recorded under Instrument No. 2016-16016117, Official Public Records of Hays County, Texas; and as affected by that Second Amendment recorded under Instrument No. 18043798, Official Public Records of Hays County, Texas.
- g. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Operation and Easement Agreement recorded April 17, 2008, under Instrument No. 2008-80010151 (Volume 3370, Page 1), Official Public Records of Hays County, Texas; as affected by that Amended and Restated Operation and Easement Agreement recorded under Instrument No. 2008-80031597 (Volume 3507, Page 282), Official Public Records of Hays County, Texas; as affected by that Memorandum of Developer Acquisition Rights Agreement recorded under Instrument No. 2008-80031599 (Volume 3507, Page 391), Official Public Records of Hays County, Texas; As affected by that First, Second and Third Amendment to Amended and Restated Operation and Easement Agreement recorded under Instrument No. 2009-90002321 (Volume 3580, Page 484), Instrument No. 2009-90022603 (Volume 3722, Page 436), and Instrument No. 2012-12015941 (Volume 4363, Page 405), Official Public Records of Hays County, Texas; as affected by that Agreement recorded under Instrument No. 18044403, Official Public Records of Hays County, Texas.
- h. Terms, conditions and stipulations set forth in that Economic Development Agreement and City of Kyle License Agreement recorded October 22, 2008, under Instrument No. 2008-80031656 (Volume 3507, Page 797) and Instrument No. 2008-80031657 (Volume 3507, Page 827), Official Public Records of Hays County, Texas; as affected by that Indemnification Agreement recorded under Instrument No. 18019344, Official Public Records of Hays County, Texas; as affected by that Assignment and Assumption of Indemnification Agreement recorded under Instrument No. 18044402, Official Public Records of Hays County, Texas; and as further affected by that Agreement recorded under Instrument No. 18044403, Official Public Records of Hays County, Texas.
- i. Terms, conditions and stipulations set forth in that Sign Easement Agreement recorded January 26, 2010, under Instrument No. 2010-10000279 (Volume 3803, Page 228), Official Public Records of Hays County, Texas; as affected by that Agreement recorded under Instrument No. 18044403, Official Public Records of Hays County, Texas.
- j. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Declaration of Covenants and Restrictions recorded January 6, 2010, under Instrument No. 2010-10000277 (Volume 3803, Page 195), Official Public Records

of Hays County, Texas; as affected by that Agreement recorded under Instrument No. 18044403, Official Public Records of Hays County, Texas.

- k. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Restrictive Covenant, Development, Operating and Easement Agreement recorded July 31, 2013, under Instrument No. 2013-13025633 (Volume 4708, Page 218), Official Public Records of Hays County, Texas.
- l. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Reciprocal Easement and Restrictive Covenant Agreement recorded April 29, 2015, under Instrument No. 2015-15012563 (Volume 5199, Page 592), Official Public Records of Hays County, Texas.
- m. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Reciprocal Easement and Restrictive Covenant Agreement recorded May 24, 2016, under Instrument No. 2016-16016295, Official Public Records of Hays County, Texas; as affected by that Agreement recorded under Instrument No. 18044403, Official Public Records of Hays County, Texas.
- n. Terms, conditions and stipulations set forth in that Commercial System Installation Agreement granted in favor of Time Warner Cable Texas LLC, recorded October 13, 2017, under Instrument No. 17038473, Official Public Records of Hays County, Texas.
- o. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Reciprocal Easement and Restrictive Covenant Agreement recorded February 28, 2018, under Instrument No. 18007084, Official Public Records of Hays County, Texas; as affected by that First Amendment recorded under Instrument No. 18038577, Official Public Records of Hays County, Texas.
- p. Terms, conditions, stipulations, assessments, restrictions and easements set forth in that Reciprocal Easement and Restrictive Covenant Agreement recorded July 2, 2018, under Instrument No. 18023252, Official Public Records of Hays County, Texas; as affected by that First Amendment recorded under Instrument No. 18038578, Official Public Records of Hays County, Texas.
- q. Agreement dated December 14, 2018, by and between DDR DB Kyle LP and Kyle Crossing Holdings, LLC, and recorded on December 20, 2018 under Instrument No. 18044403, Official Public Records of Hays County, Texas.



**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.

21048116 DEED  
09/01/2021 10:55:40 AM Total Fees: \$58.00

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



LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

**SUBJECT PROPERTY INFORMATION**

Subdivision Name, Block, Lot, or legal description if not subdivided: **Kyle Marketplace Lot 1, Block A, Section 2**

# of lots (if subdivided): \_\_\_\_\_ # of acres: \_\_\_\_\_

Site APN/Property ID #(s): \_\_\_\_\_

Location: \_\_\_\_\_ County: \_\_\_\_\_

Development Name: **Kyle Crossing Phase 2**

**OWNER**

Company/Applicant Name: **CSW KC II, LLC**

Authorized Company Representative (if company is owner): **Kevin Hunter**

Type of Company and State of Formation: **Real Estate Developer in The State of Texas**

Title of Authorized Company Representative (if company is owner): **Manager of CSW KC II, LLC**

Applicant Address: **1703 W. 5<sup>th</sup> Street, Ste. 850; Austin, TX 78703**

Applicant Fax: -- NA --

Applicant Phone: **(512) 861-3550**

Applicant/Authorized Company Representative Email: **khunter@cswdevelopment.com**

**APPLICANT REPRESENTATIVE**

Check one of the following:

**X** - I will represent the application myself; or

\_\_\_\_\_ I hereby designate \_\_\_\_\_ (name of project representative) to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

Owner's Signature: *Kevin Hunter* Date: 10/19/21

State of TEXAS §

§

County of TRAVIS §

This instrument was acknowledged before me on October 19, 2021 by Kevin Hunter who is a(n) Manager of CSW KC II, LLC, a Texas limited liability company.

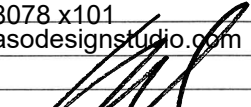


SUBSCRIBED AND SWORN TO before me, this the 19 day of October, 2021.

*Stephanie Montemayor*  
Notary Public's Signature

11/5/23  
My Commission Expires

PROJECT REPRESENTATIVE

Representative Name: Christopher Cuaso  
Representative Address: 12600 Hill Country Boulevard R-275 Bee Cave, TX 78738  
Representative Phone: 513488078 x101  
Representative Email: Chris@cuasodesignstudio.com  
Representative's Signature:  Date: 10/19/2021





# CITY OF KYLE, TEXAS

Discussion only regarding Planning and Zoning Commission request for future agenda items.

Meeting Date: 12/14/2021  
Date time: 6:30 PM

**Subject/Recommendation:** Discussion only regarding Planning and Zoning Commission request for future agenda items.

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Staff Report

Meeting Date: 12/14/2021  
Date time: 6:30 PM

**Subject/Recommendation:** Staff Report by William Atkinson, Senior Planner.

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available