

THE STATE OF TEXAS

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**Amended and Restated  
Chapter 380 Grant Agreement  
Project Chia Pet**

COUNTY OF HAYS

THIS **Amended and Restated** Chapter 380 Grant Agreement – Project Chia Pet (this “Agreement”) is executed by and between Kyle TX Retail Owner, a Texas LLC duly authorized to do business in the State of Texas, (hereafter referred to as “**COMPANY**”) and the **CITY OF KYLE, TEXAS**, a home- rule city and municipal corporation of Hays County, Texas (hereafter referred to as “**CITY**”).

**WITNESSETH:**

**WHEREAS**, the CITY has established an economic development program pursuant to Chapter 380, Texas Local Government Code, (the “Program”) to provide for a grant of economic development incentives to qualifying businesses under the terms and conditions of this Agreement;

**WHEREAS**, the City has determined that the COMPANY qualifies for economic development incentives under the Program, subject to the terms and conditions of this Agreement;

**WHEREAS**, the Property is located within City of Kyle Tax Increment Reinvestment Zone No. 2;

**WHEREAS**, the COMPANY owns/leases the following described property: approximately four acres of property located Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the “Property”);

**WHEREAS**, the COMPANY made an application to the CITY for an economic incentive related to the construction of an approximately 23,000 square foot grocery store and three shell buildings consisting of a total of at least 18,000 square feet on the Property and the location and operation of a grocery store and retail shops;

**WHEREAS**, the construction of the Facilities (defined herein), the relocation of the COMPANY to the Property, and operation of the Business Operations (defined herein) on the Property will promote economic development of the CITY, encourage businesses to locate and expand in the CITY, and increase opportunities for increased property tax and employment;

**WHEREAS**, the Parties agree that the COMPANY must fulfill its obligations under this Agreement in order for the CITY to pay the Chapter 380 Grant (herein defined);

**WHEREAS**, Chapter 380 of the Texas Local Government Code provides statutory authority for granting the economic incentives and administering the Program provided herein;

**WHEREAS**, the use of the Premises (as hereafter defined) and the Property (as hereafter defined) and the other terms hereof are consistent with encouraging economic development within the City;

**WHEREAS**, the City Council finds that it is in the public interest to provide the economic incentives set forth herein subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, the CITY and the COMPANY, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant and contract as set forth below:

**I.**

**Definitions**

- A. **“Architectural Enhancements”** is defined as the higher quality design, materials, and aesthetic features that will be constructed and installed on the Facilities, described in this Section I.A and generally shown on **Exhibit B**, which include increased glazing above and on the left side of the storefront for the grocery store; additional canopy coverage on the left side of the grocery store storefront; entryway features for the grocery store consistent with the images in **Exhibit B**; murals located on the grocery store; material enhancements for the shops buildings as shown and described in **Exhibit B**; and the construction of a plaza space with surrounding elements of limestone seating, with the patios and other plaza spaces having direct connections to the cultural trail including elements of the trail. Architectural Enhancements have been approved by the Plum Creek Architectural Review Committee.
- B. **“Business Operations”** is defined as the COMPANY’S grocery store business operating under the name “Sprouts” located and conducted on the Property.
- C. **“Business Personal Property”** is defined as tangible personal property, materials, supplies, equipment, inventory, fixtures, or other personal property that are attributable to the Business Operations and located at the Premises and to the structures and uses present on the Property subject to ad valorem taxes, and that are not included in the definition of real property is Section 1.04(2) of the Texas Tax Code, as amended.
- D. **“Calendar Year”** is defined as the twelve-month period of time that begins on January 1st and ends on December 31st of the same numbered year.
- E. **“Chapter 380 Grant”** is defined as the economic incentive payment further described in Article V, consisting of the Real Property Tax Rebate, the Sales Tax Rebate, and the one-time Economic Incentive, not to exceed the Maximum Grant Amount.
- F. **“Certificate of Occupancy”** is defined as the final certificate of occupancy (which may be one or more, as appropriate under City regulations, issued by the City for the Grocery Store.
- G. **“Facilities”** is defined as: 1) the Grocery Store approximately twenty-three thousand (23,000) square foot building; and 2) the Shell Buildings; constructed on the Property in accordance with this Agreement, the CITY-approved plans, and applicable local, state, and federal regulations.
- H. **“Force Majeure”** is defined as either party being prevented or delayed from performing any obligations or satisfying any condition under this Agreement due to any strike, lockout, labor dispute, unavailability of services, labor or materials, acts of God, unusually inclement weather, unusual governmental restriction, regulation or control, enemy or

hostile governmental action or, civil commotion, insurrection, sabotage, fire or other casualty or any condition caused by the other party (each a “Force Majeure Event”), then the time to perform such obligation to satisfy such condition shall be extended on a day-for-day basis for the period of the delay caused by such Force Majeure Event; provided that the party claiming the benefit of a Force Majeure Event shall, as a condition thereto, give Notice to the other party within 10 days of the Force Majeure Event specifying with particularity the nature thereof, the reason therefor, the date and time such incident occurred and a reasonable estimate of the period that such incident shall delay the fulfillment of obligations required under this Agreement. Failure to give such Notice within the specified time shall nullify such party’s right to extend the time for performing the obligations under this Lease. Notwithstanding any contrary provision of this Agreement, the inability to pay any sum of money due under this Agreement or the failure to perform any other obligation due to the lack of money shall not be deemed a Force Majeure Event.

- I. **“Grant Criteria”** is defined as the criteria set forth in Article IV that the COMPANY must meet to receive the Chapter 380 Grant defined in Article V.
- J. **“Grocery Store”** is defined as the approximately twenty-three thousand (23,000) square foot building, out of which the Business Operations will be conducted.
- K. **“Maximum Grant Amount”** is defined as five hundred thousand dollars (\$500,000).
- L. **“Ongoing Documentation”** is defined as copies of the following documents for the year for which a Chapter 380 Grant is sought: (1) proof of compliance with Section IV.A(2); (2) proof of payment ad valorem and business personal property taxes; and (3) the 380 Grant Certification described in Article VI. The CITY may reasonably request additional records to support the information shown in the Ongoing Documentation and compliance with the applicable Grant Criteria.
- M. **“Ongoing Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants after Year 1, which are set forth in Section IV.A(2).
- N. **“Premises”** are defined as the real property (land and improvements) located on the Property.
- O. **“Project”** is defined as the Facilities, together with all other accessory and permitted uses on the Property, upon which the Business Operations will be conducted.
- P. **“Property”** is defined as that certain four acres, more or less, being more particularly described in **Exhibit A**.
- Q. **“Real Property Improvements”** are defined as improvements to the Property, which shall include the Project and any other buildings, structures or fixtures erected or affixed to land on the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code as amended.
- R. **“Real Property Taxes”** is defined as the ad valorem tax levied, collected, and received on the Real Property Improvements or a portion thereof, as appropriate, appraised by the Hays Central Appraisal District.

- S. **“Real Property Tax Rebate”** is defined as the percentage of Real Property Taxes received by the City and paid to the COMPANY pursuant to Article V.
- T. **“Retail Roads Agreement”** means that certain Infrastructure and Property Conveyance Agreement – Brick and Mortar District by and among the CITY, Plum Creek Development Partners, Ltd, and Mountain Plum, Ltd. dated effective April 25, 2023.
- U. **“Retail Roads Infrastructure”** means the improvements described in Exhibits B and B-1 of the Retail Roads Agreement.
- V. **“Sales Tax”** means, as of the Effective Date, the levied 1.5% sales tax for commercial activity on the Property less the 0.5% sales tax enacted by the City of property tax reduction, equaling a total of 1.0% sales tax.
- W. **“Sales Tax Rebate”** is defined as the percentage of Sales Tax received by the City and paid to the COMPANY pursuant to Article V.
- X. **“Shell Buildings”** is defined as three shell buildings consisting of a minimum of eighteen thousand (18,000) square feet suitable for commercial retail uses.
- Y. **“Shell Buildings Certificate of Occupancy”** is defined as the final certificate of occupancy final certificate of occupancy (which may be one or more, as appropriate under City regulations) issued by the City for the Shell Buildings.
- Z. **“Threshold Documentation”** is defined as copies of the following documents: (1) proof of compliance with Section IV.A(1); (2) proof that the Certificate of Occupancy for the Facilities and documentation acceptable to the CITY demonstrating that the Facilities was installed and completed on the Property by the deadlines set forth in Article IV; (3) invoices, contracts, and other documents reasonably requested by the CITY that establish the cost to construct the Architectural Enhancements; and (4) the 380 Grant Certification described in Section VI.A. The CITY may request additional records to support the information shown in the Threshold Documentation or compliance with this Agreement.
- AA. **“Threshold Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants to be paid, which are set forth in Section IV A (1).
- BB. **“Unauthorized Uses”** is defined as the land uses and activities described in **Exhibit C** that are prohibited from being located or maintained on the Property.
- CC. **“Year 1”** is defined as the Calendar Year (which is anticipated to be 2027) following the date on which the Facilities are constructed and completed on the Property, a Certificate of Occupancy is issued for the Facilities, and the COMPANY begins Business Operations.
- DD. **“Economic Incentive”** is defined as the one-time payment of three hundred thousand dollars (\$300,000) paid to the developer within 90 days of Sprouts opening and mural being in place on Sprouts pursuant to Article V.
- EE. **“Zone”** is defined as the City of Kyle Tax Increment Reinvestment Zone District No. 2.

## II.

### General Provisions

- A. The Project is not in an improvement project financed by tax increment bonds.
- B. The Property is not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.
- C. It is acknowledged and agreed by the parties that the completion of the Project is consistent with the purposes of encouraging state and local economic development and to stimulate business and commercial activity within the City.

### III.

#### Representations and Warranties

- A. The CITY hereby represents and warrants to the COMPANY that the CITY has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary CITY proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the CITY, is enforceable in accordance with its terms and provisions, and does not require the consent of any other governmental authority.
- B. The COMPANY hereby represents and warrants to the CITY that the COMPANY has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all actions necessary. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of COMPANY, is enforceable in accordance with its terms and provisions, and does not require the consent of any other authority or entity.

### IV.

#### Performance Criteria

- A. Grant Criteria.
  - 1. Threshold Grant Criteria. The following events must occur for the COMPANY to receive the Chapter 380 Grant described in Article V:
    - a. Subject to Force Majeure, the COMPANY completes and obtains a Certificate of Occupancy for the Grocery Store on or before November 1, 2025 and for the Shell Buildings on or before February 1, 2026. In the event that the completion of the Retail Roads Infrastructure prevents the issuance of a Certificate of Occupancy for the Facilities, the deadline for obtaining the Certificate of Occupancy may be extended one day for each day that the completion of the Retail Roads Infrastructure delays issuance of the Certificate of Occupancy.
    - b. The COMPANY constructs the Facilities with the Architectural Enhancements and substantially in compliance with the building materials and elevations shown and described in Exhibit B. Material deviations from Exhibit B must be approved by the City and the Plum Creek Architectural Review Committee.

- c. The COMPANY shall not allow the uses set forth in **Exhibit C** (the “Unauthorized Uses”) to be located on the Property.
  - d. The COMPANY commences the Business Operations on the Property within thirty (30) days of issuance of the Certificate of Occupancy.
  - e. The COMPANY is in compliance with Sections IV.B-D.
2. **Ongoing Grant Criteria.** After the first Chapter 380 Grant payment made to the COMPANY, the COMPANY must comply with the following requirements for each year in which the COMPANY seeks a Chapter 380 Grant payment:
- a. The Business Operations are in operation and conducted at the Property during regular business hours.
  - b. The Unauthorized Uses are not located, operating, or otherwise exist on the Property.
  - c. The existing Nail Salon lease in Building D shall not exceed 2,500 square feet and Developer agrees to lease the remaining available tenant space(s) in Building D exclusively to restaurant uses. At least one of these restaurant tenants shall be a full-service, sit-down restaurant that serves offerings for any one or combination of breakfast, lunch, or dinner, and operates during regular business hours throughout the full compliance period. All restaurant tenants in Building D shall be subject to review and written approval by the City’s Economic Development Department to ensure alignment with the City’s retail objectives and quality standards.
  - d. The COMPANY is in compliance with Section IV.B-D.
- B. The Project shall conform to this Agreement, the applicable building codes, zoning ordinances, plans approved by the jurisdiction issuing permits for the Project, and all other applicable ordinances and regulations. The Developer acknowledges and agrees that compliance with Article IV.A.1(b) (construction and installation of the Architectural Enhancements) will be a condition of issuance of building permits and the Certificate of Occupancy. The COMPANY further agrees that the City may use its building permitting, inspection, and enforcement processes and procedures to enforce the requirements of constructing and installing the Architectural Enhancements, including but not limited to rejection of applications and plans, stop work orders, and disapproval of inspections for applications and/or work that does not comply with this Agreement. Applications and plans for a building permit must demonstrate compliance with this Agreement in order for a building permit to be issued. Applications for building permits must be in compliance with this Agreement in order for such application to be approved and a building permit issued. Plans demonstrating compliance with this Agreement must accompany a building permit application and will become a part of the approved permit. Any structure constructed on the Property must comply with this Agreement for a Certificate of Occupancy to be issued for such structure.

- C. The COMPANY shall not allow the ad valorem taxes or business personal property owed to the CITY or the Hays Consolidated Independent School District (the “District”) on any real property or business personal property owned by COMPANY and located within the City of Kyle or the District to become delinquent beyond the last day they can be paid without assessment of penalty. Notwithstanding the foregoing the COMPANY may contest and appeal any and all taxes/ad valorem taxes associated with the Property and owed to the District or any other applicable governmental entity, and during such appeal/contest the COMPANY shall not be required to pay taxes/ad valorem taxes associated with the Property to the District or any other applicable governmental entity until such time as the contest/appeal is finally and fully resolved, and in such event the City shall not be required to pay the Chapter 380 Grant until the contest/appeal is finally and fully resolved.
- D. The COMPANY covenants and certifies that the COMPANY does not and will not knowingly and directly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if the COMPANY is convicted of a violation under 8 U.S.D. Section 132(a)(f), the COMPANY shall repay to the CITY the full amount of Chapter 380 Grants made under Article V of this Agreement. Repayment shall be paid within 120 days after the date following an unappealable conviction of the COMPANY, provided, however, the COMPANY shall not be liable for a violation by a subsidiary, affiliate, or franchisee of the COMPANY or by a person with whom the COMPANY contracts.

V.

**Economic Development Grants**

A. **Chapter 380 Grants.**

1. Subject to the terms and limitations of this Agreement, and COMPANY’s full and timely performance of, and compliance with, each of the applicable Grant Criteria set forth in Article IV, the CITY agrees to pay to COMPANY the following Chapter 380 Grant commencing in Year 1 and continuing for each subsequent year up to the earlier to occur of the following: (i) four additional years; or (ii) the Maximum Grant Amount has been reached, in which case the Chapter 380 Grants shall cease for any year following the year in which the Maximum Grant Amount has been reached. In the event that the cost to construct the Architectural Enhancements does not exceed the Minimum Grant Amount, the COMPANY shall receive a Chapter 380 Grant that equals the Minimum Grant Amount, and Chapter 380 Grant payments shall cease when the Chapter 380 Grants to the Company equal Minimum Grant Amount is reached
  - a. Year 1: An amount equal to twenty-five percent (25%) of the Real Property Taxes received by the City on an annual basis and twenty-five percent (25%) of the Sales Tax received by the City on a quarterly basis. In addition to the Real Property Tax Rebate and the Sales Tax Rebate, the COMPANY shall receive an additional one-time payment of Three Hundred Thousand

Dollars (\$300,000) (the “Economic Incentive”) 90 days from Sprouts opening and the mural being in place on Sprouts.

- b. Year 2: An amount equal to twenty-five percent (25%) of the Real Property Taxes received by the City on an annual basis and twenty-five percent (25%) of the Sales Tax received by the City on a quarterly basis.
  - c. Year 3: An amount equal to twenty-five percent (25%) of the Real Property Taxes received by the City on an annual basis and twenty-five percent (25%) of the Sales Tax received by the City on a quarterly basis.
  - d. Year 4: An amount equal to twenty-five percent (25%) of the Real Property Taxes received by the City on an annual basis and twenty-five percent (25%) of the Sales Tax received by the City on a quarterly basis.
  - e. Year 5: An amount equal to twenty-five percent (25%) of the Real Property Taxes received by the City on an annual basis and twenty-five percent (25%) of the Sales Tax received by the City on a quarterly basis.
2. The Parties acknowledge that the Property is located in The Zone, and that fifty percent (50%) of the ad valorem taxes levied and collected on the captured appraised value of real property taxable by the City in The Zone are deposited into the tax increment fund for the Zone (the “Zone Tax Increment Funds”). The Parties further acknowledge and agree that the Real Property Tax Rebate shall not be paid from the Zone Tax Increment Funds.

**B. Payment of Annual Chapter 380 Grants**

1. The City shall pay the Real Property Tax Rebate and the Sales Tax Rebate annually as provided in this Subsection B. To be eligible to receive the Chapter 380 Grant in the Year 1, the terms of IV.A.1 must be met. To be eligible to receive the Chapter 380 Grant in the years following Year 1, the terms of IV.A.2 must be met each year. The COMPANY will not be paid the 380 Grant payment for those years in which the Ongoing Grant Criteria are not met.
2. Each year on or before April 30, the COMPANY shall provide the City the Documentation described in Article VI. The City shall pay the Real Property Tax Rebate and the Sales Tax Rebate annually, and the Economic Incentive 90 days from Sprouts opening and mural being in place on Sprouts, upon the later to occur of: (i) forty-five (45) days following the date the Documentation is received by the City; or (ii) within forty-five (45) days following the date the Real Property Taxes are received by the City and the COMPANY has notified the City that the taxes have been paid; provided that the applicable Grant Criteria as set forth in Article V have been met.
3. Twenty-five percent (25%) of the Sales Tax received by the City will be deposited in the City’s accounts and paid out to the COMPANY, in arrears. The City will

begin depositing the Sales Tax Rebate amount for the first full Calendar Quarter following the date of issuance of the Certificate of Occupancy for the Facilities. The City shall pay the COMPANY the Sales Tax Rebate amount on deposit through March 31st of the year in which the COMPANY qualifies for a Chapter 380 Grant.

- C. **Maintenance of Books and Records.** The CITY shall maintain complete books and records showing ad valorem taxes received by the CITY from the Property, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of COMPANY during normal business hours upon request made not less than five (5) business days prior to the date of the examination. The CITY shall maintain such books and records throughout the term of this Agreement and store the same for four (4) years thereafter.

## VI.

### **Reports, Audits and Inspections**

- A. **Annual Certification and Reports.** The COMPANY shall certify in writing to the CITY that the COMPANY is in compliance with the terms of this Agreement, and shall provide the CITY with reports and records reasonably necessary to demonstrate fulfillment of the performance criteria set forth in Article IV as follows:
1. **Certification.** COMPANY shall complete and certify a 380 Grant Certification in a form substantially similar to that set forth in **Exhibit D**, which shall include the Threshold or Ongoing Documentation, as appropriate. Such Documentation and Certification shall be submitted at the time the COMPANY pays its respective Real Property Taxes.
  2. **Sales Tax Reports.** The COMPANY shall provide or cause to be provided to the City any required permission to access information filed with the State of Texas related to sales taxes collected and remitted to the State of Texas by the COMPANY and any tenants on the Property promptly upon request by the City to allow the City to verify the amount of Sales Tax Rebate to be paid to the COMPANY under this Agreement. The COMPANY may satisfy this requirement by providing the CITY with the sales tax identification numbers for all tenants located on the Property in the event the COMPANY is prohibited by law from obtaining tenant's sales tax payment and remittance information. The CITY shall not be required to pay the Sales Tax Rebate until the City has received all permissions required to access such information that will allow the CITY to calculate the Sales Tax Rebate, and the Sales Tax Rebate shall be calculated solely on sales tax receipts that can be verified based on records held by the State of Texas.
  3. **Additional Reports.** The COMPANY shall furnish CITY any additional records and information reasonably requested to support the Grant Criteria and the reports

required by this Agreement. The COMPANY shall further furnish the CITY with copies of or access to additional information reasonably required to verify the information set forth in the Threshold or Ongoing Documentation.

- B. **Right to Audit Books and Records.** CITY shall have the right to audit the books and records of the COMPANY related to the Project. CITY shall notify the COMPANY in advance in writing of their intent to audit in order to allow the COMPANY, as applicable, adequate time to make such books and records available (in no event shall the COMPANY, as applicable, have less than ten (10) business days in order to make such books and records available).
- C. **Inspection.** At all times throughout the term of this Agreement, CITY shall have reasonable access to the Property upon providing at least 48 hours' written notice to the COMPANY for the purpose of inspecting the Property to ensure that the Facilities are designed, constructed and installed in accordance with the terms of this Agreement. Notwithstanding the foregoing, the CITY's inspection of the Property shall not interfere with the operation of the Property.

## VII.

### **Breach**

- A. **Breach.** A breach of this Agreement may result in termination or modification of this Agreement as provided herein. The following conditions shall constitute a breach of this Agreement:
1. The COMPANY fails to meet the performance criteria as specified in Article IV above.
  2. The COMPANY falsely certifies that the performance criteria in the Documentation submitted to the CITY under Article VI has been met.
  3. CITY fails to timely make payments to the COMPANY under the terms of this Agreement.
- B. **Notice of Breach.** Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default under this Agreement until the passage of sixty (60) business days after receipt by such Party of notice of default from the other Party ("Cure Period"), which notice shall specify, in reasonable detail, the nature of the default. Upon the passage of the Cure Period without cure of the default, such Party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot reasonably be cured within the Cure Period, the Party receiving the notice of default may during such Cure Period give the other Party written notice that it has commenced cure within the Cure Period and will diligently and continuously prosecute the cure to completion as soon as reasonably possible, and such written notice together with diligent and continuous prosecution of the cure shall extend the Cure Period for up to an additional ninety (90) calendar days so long as the cure is being diligently and continuously pursued

during such time; and provided further that, if the cure cannot be reasonably accomplished within the additional ninety (90) calendar day period but the applicable facts, circumstances, and progress establish that a cure will be obtained within a reasonable period of time following the expiration of the ninety (90) calendar day period, the time for cure will be extended for an additional period of time as mutually agreed by the Parties in writing (such agreement not to be unreasonably withheld); provided, further, that if a default is not cured within the applicable Cure Period, or, as applicable, written notice having been given and cure being commenced and diligently and continuously prosecuted, within the additional ninety (90) calendar days after the giving of the written notice, or, as otherwise applicable within the time mutually agreed by the Parties due to the defaulting Party not being able to obtain a cure within the additional ninety (90) calendar days after the defaulting Party gives written notice that it is commencing cure, then the non-defaulting Party may terminate this Agreement, pursue the remedies set forth in this Agreement, as well as any other remedies available in equity or law.

C. **Repayment of Chapter 380 Grants.**

In the event that the COMPANY commits a breach of this Agreement according to Section VII.A(2), the COMPANY shall pay back to the CITY the Chapter 380 Grant for the tax year for which false certification was submitted within thirty (30) days of written demand by the CITY.

D. **Tax Lien Not Impaired.** It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Texas Tax Code. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the Property. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Subsection, "property" refers to the Premises and the Property described herein.

E. **Limitations on Liability.** The CITY shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the CITY shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty or governmental immunity on the part of the CITY.

F. **Personal Liability of Public Officials; No Debt Created.** No employee of the CITY, nor any councilmember or agent of the CITY, shall be personally responsible for any liability arising under or growing out of this Agreement. The Chapter 380 Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by the CITY. Under no circumstances shall the CITY's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

**VIII.**

**Indemnification**

COMPANY COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND DIRECTLY RELATING TO COMPANY'S ACTIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO COMPANY OR COMPANY'S AFFILIATE'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY'S AFFILIATE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S AFFILIATE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. COMPANY SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF COMPANY OR COMPANY'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT COMPANY'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY COMPANY TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CITY, OR ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY,

DEATH, OR DAMAGE. COMPANY FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE COMPANY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.

## IX.

### Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

**COMPANY:** Geren Moor  
Kyle TX Retail Owner, LLC  
9010 Overlook Blvd  
Brentwood, TN 37027

**With a copy to:**

**CITY:** City of Kyle  
Attn: City Manager  
1700 Kohlers Crossing  
Kyle, TX 78640  
blangley@cityofkyle.com

**With a copy to:**

City Attorney  
1700 Kohlers Crossing  
Kyle, TX 78640

## X.

### City Council Authorization

This Agreement was authorized by motion and vote of the City Council recorded in the minutes authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

## XI.

(13)

### **Severability**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

### **XII.**

#### **Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of COMPANY, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the eligible grants and such other matters reasonably requested by the party(ies) to receive the certificates.

### **XIII.**

#### **Standing**

COMPANY, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and COMPANY shall be entitled to intervene in said litigation.

### **XIV.**

#### **Applicable Law**

This Agreement shall be construed under the laws of the State of Texas without regarding to its conflict of laws provisions. Venue for any action under this Agreement shall be the State's District Court of Hays County, Texas. This Agreement is performable in Hays County, Texas.

### **XV.**

#### **Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, pandemic, material or labor shortage, strike, civil unrest, governmental action, or any other reason beyond the reasonable control of the respective party, or other casualty or event of a similar nature.

### **XVI.**

#### **No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

**XVII.**

**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XVIII.**

**Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

**XIX.**

**Counterparts**

This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all of the parties hereto have executed at least one counterpart.

**XX.**

**No Third-Party Beneficiaries**

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) the agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or the COMPANY; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or the COMPANY.

**XXI.**

**Remedies**

Except as provided in this Agreement, no right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this

agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this agreement.

## XXII.

### Term and Termination

- A. **Term.** Unless terminated earlier as provided herein, this Agreement shall terminate upon the earliest occurrence of any one or more of the following: (1) the written agreement of the Parties; or (2) the Agreement's Expiration Date. The Expiration Date shall be the date that the Maximum Grant Amount is paid to COMPANY; provided that the following shall survive termination of this Agreement for any reason: the obligation of the CITY to pay the Chapter 380 Agreement if the performance criteria and applicable terms and conditions of the Agreement are met; Article III; Article V; Article VI.B; Article VII; Article VIII; Article XIII, Article XIV, Article XV, Article XVI, Article XVIII, Article XX, and Article XXI.
- B. **Termination.** During the term of this Agreement, should the COMPANY commit a breach of this Agreement according to the Sections VII.A(1) or (2), the CITY may terminate this Agreement, subject to Section VII.B. In addition, the CITY may terminate the Agreement in the event that the COMPANY fails to obtain a Certificate of Occupancy for the Facilities by the deadlines set forth in Article IV, by giving thirty (30) days' written notice to the COMPANY.

## XXIII.

### Statutory Verifications

- A. In accordance with Chapter 2270, Texas Government Code, the CITY may not enter into a contract with a COMPANY for goods and services unless the contract contains a written verification from the COMPANY that it: (a) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of the COMPANY verifies that the COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement.
- B. To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the COMPANY represents that the COMPANY and all wholly owned subsidiary, majority-owned subsidiary, parent COMPANY and affiliates of COMPANY do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. Further, the COMPANY represents that the COMPANY and all wholly owned subsidiary, majority-owned subsidiary, parent COMPANY and affiliates of COMPANY do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. The phrase "Discriminates Against a Firearm Entity or Firearm Trade Association" as used in this paragraph have the meanings assigned to the phrase

“Discriminate Against a Firearm Entity or Firearm Trade Association” in Section 2274.001(3) of the Texas Government Code, as amended.

- C. To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the COMPANY represents that neither the COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY (i) boycotts energy companies or (ii) will boycott energy companies through the term of this Agreement. The phrase “Boycott Energy Companies” as used in this paragraph have the meanings assigned to the phrase “Boycott Energy COMPANY” in Section 809.001 of the Texas Government Code, as amended.
  
- D. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY is a COMPANY listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code. Further, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY is a COMPANY listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES AND NOTARY ACKNOWLEDGEMENTS APPEAR ON THE FOLLOWING PAGES]**

XXIV.

**Effective Date**

This Agreement shall be effective on September 2, 2025 (the "Effective Date").

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year written above.

COMPANY

BY:



SIGNATURE

George B. Tomlin, Jr. Manager  
TYPED OR PRINTED TITLE

August 25, 2025  
DATE

WITNESS:



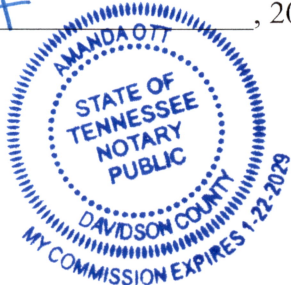
Tennessee  
THE STATE OF ~~TEXAS~~ §  
COUNTY OF ~~HAYS~~ Williamson §

**Acknowledgement**

Tennessee

BEFORE ME, the undersigned authority, a Notary Public in and for the State of ~~Texas~~, on this day personally appeared George B. Tomlin known to me (or proved to me on the oath of Known to me or through N/A (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of Kyle TX Retail Owner, a Texas LLC such entity duly authorized to do business in the State of Texas, and as the Manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 29 day of August, 2025.



A. Ott / Amanda  
NOTARY PUBLIC IN AND FOR  
THE STATE OF ~~TEXAS~~ Tennessee

CITY OF KYLE, TEXAS

By: Travis Mitchell

Travis Mitchell  
MAYOR

Date: 9/2/2025

ATTEST:

By: Jennifer Kirkland

Jennifer Kirkland  
CITY SECRETARY

APPROVED AS TO FORM:

By: Aimee Alcorn-Reed

Aimee Alcorn-Reed  
CITY ATTORNEY

Date: 9/3/25

THE STATE OF TEXAS

§  
§

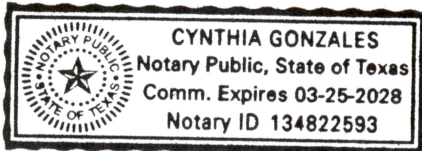
CITY OF KYLE, TEXAS

COUNTY OF HAYS §

Acknowledgement

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Travis Mitchell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **CITY OF KYLE, TEXAS**, a municipal corporation of Hays ~~and Travis~~ Counties, Texas, and as the Mayor thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 2<sup>nd</sup> day of September, 20 25.

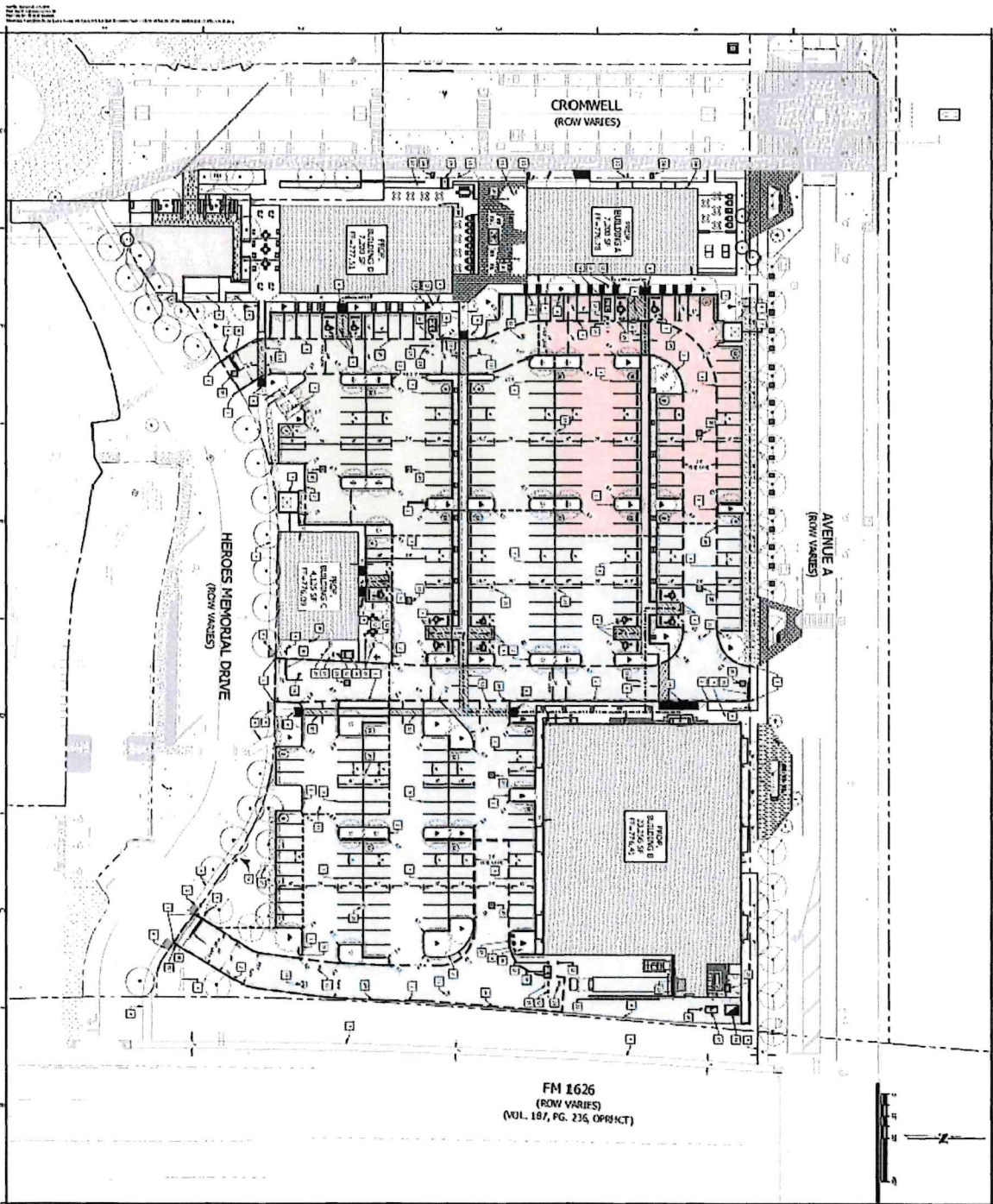


Cynthia Gonzales  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

03/25/2028  
MY COMMISSION EXPIRES:

Cynthia Gonzales  
NOTARY'S PRINTED NAME

**EXHIBIT A**  
**The Property**




FM 1626  
(ROW VARIES)  
(VOL. 187, PG. 236, OPR/CT)

NO.	DESCRIPTION
1	EXISTING BUILDING FOOTPRINT
2	EXISTING DRIVEWAY
3	EXISTING SIDEWALK
4	EXISTING LANDSCAPE
5	EXISTING UTILITY
6	EXISTING FENCE
7	EXISTING SIGNAGE
8	EXISTING LIGHTING
9	EXISTING PAVEMENT
10	EXISTING CURB
11	EXISTING DRIVE
12	EXISTING SIDEWALK
13	EXISTING LANDSCAPE
14	EXISTING UTILITY
15	EXISTING FENCE
16	EXISTING SIGNAGE
17	EXISTING LIGHTING
18	EXISTING PAVEMENT
19	EXISTING CURB
20	EXISTING DRIVE
21	EXISTING SIDEWALK
22	EXISTING LANDSCAPE
23	EXISTING UTILITY
24	EXISTING FENCE
25	EXISTING SIGNAGE
26	EXISTING LIGHTING
27	EXISTING PAVEMENT
28	EXISTING CURB
29	EXISTING DRIVE
30	EXISTING SIDEWALK
31	EXISTING LANDSCAPE
32	EXISTING UTILITY
33	EXISTING FENCE
34	EXISTING SIGNAGE
35	EXISTING LIGHTING
36	EXISTING PAVEMENT
37	EXISTING CURB
38	EXISTING DRIVE
39	EXISTING SIDEWALK
40	EXISTING LANDSCAPE
41	EXISTING UTILITY
42	EXISTING FENCE
43	EXISTING SIGNAGE
44	EXISTING LIGHTING
45	EXISTING PAVEMENT
46	EXISTING CURB
47	EXISTING DRIVE
48	EXISTING SIDEWALK
49	EXISTING LANDSCAPE
50	EXISTING UTILITY
51	EXISTING FENCE
52	EXISTING SIGNAGE
53	EXISTING LIGHTING
54	EXISTING PAVEMENT
55	EXISTING CURB
56	EXISTING DRIVE
57	EXISTING SIDEWALK
58	EXISTING LANDSCAPE
59	EXISTING UTILITY
60	EXISTING FENCE
61	EXISTING SIGNAGE
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63	EXISTING PAVEMENT
64	EXISTING CURB
65	EXISTING DRIVE
66	EXISTING SIDEWALK
67	EXISTING LANDSCAPE
68	EXISTING UTILITY
69	EXISTING FENCE
70	EXISTING SIGNAGE
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72	EXISTING PAVEMENT
73	EXISTING CURB
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83	EXISTING DRIVE
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85	EXISTING LANDSCAPE
86	EXISTING UTILITY
87	EXISTING FENCE
88	EXISTING SIGNAGE
89	EXISTING LIGHTING
90	EXISTING PAVEMENT
91	EXISTING CURB
92	EXISTING DRIVE
93	EXISTING SIDEWALK
94	EXISTING LANDSCAPE
95	EXISTING UTILITY
96	EXISTING FENCE
97	EXISTING SIGNAGE
98	EXISTING LIGHTING
99	EXISTING PAVEMENT
100	EXISTING CURB

**BRICK & MORTAR MIXED-USE DEVELOPMENT**  
 NW CORNER OF KOHLERS CROSSING AND FM 1626  
 CITY OF KYLE, HAYS COUNTY, TEXAS 78140

**DETAILED SITE & DIMENSION CONTROL PLAN**



**WGI**  
 WGIinc.com

**NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO FORMAL CITY APPROVAL**

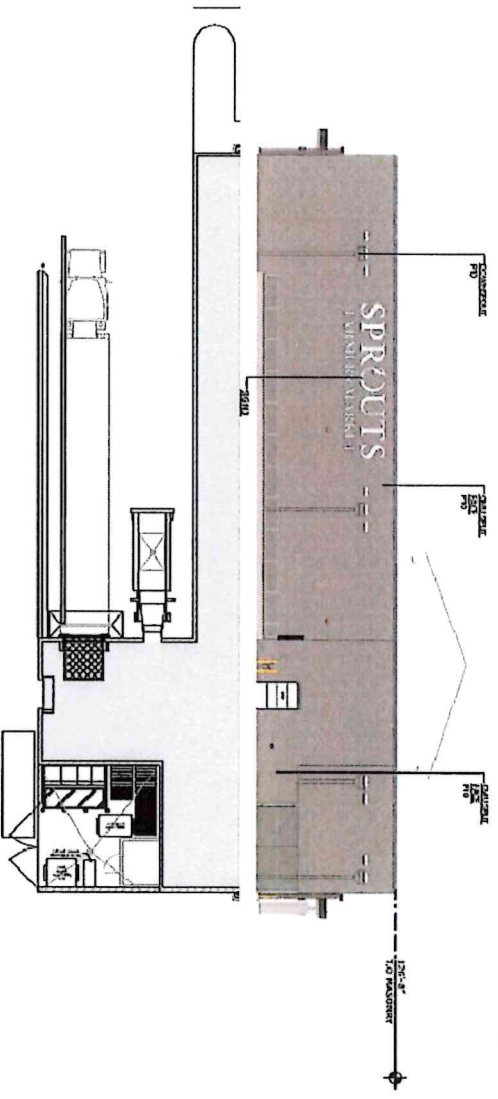
**EXHIBIT B**

**Facilities Elevations, Developments Standards, and Building Materials**

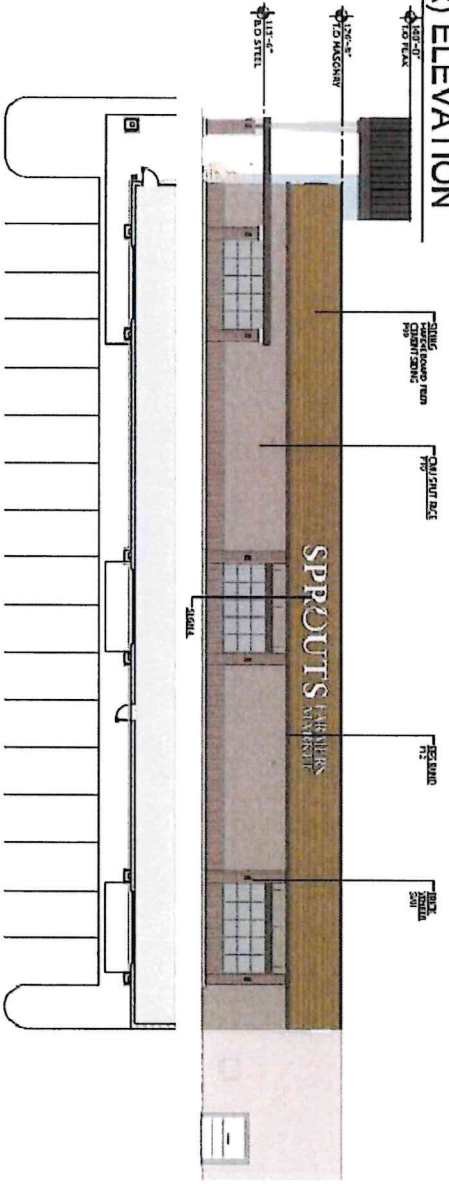






NOTE: ALL ASPECTS OF THE SIGNAGE, BOTH BUILDING AND SITE, SHALL BE GOVERNED BY SPROUTS' MOST CURRENT PROTOTYPE SIGN REQUIREMENTS.



**EAST (REAR) ELEVATION**



**SOUTH (RIGHT SIDE) ELEVATION**

		PROJECT: SPROUTS FARMERS MARKET ADDRESS: 0000 NWC FM 1626 AND KOHLER'S CROSSING CITY: KYLE, TX DRAWING: PREMISES ELEVATION AND TENANT'S BUILDING SITE SIGNAGE
		DATE: 11-15-23 DRAWN BY: [blank] CHECKED BY: [blank] SCALE: [blank] SHEET: C-1C









**EXHIBIT C**  
**Unauthorized Uses**

Not Allowed

Gas Stations

Car Wash

Convenience Store

Veterinary Hospital

Daycare Facility

Liquor store, except where the tenant is a high-quality "Class A" retail establishment. This refers to a professionally designed and maintained store that provides high-end customer experience, features premium or diverse product offerings, and is consistent with the design, signage, and operational standards typically associated with nationally or regionally recognized retail brands. The liquor store shall not exceed 3,000 square feet in floor area and only one such establishment shall be permitted on the Property.

Mattress Store

Vape Shops/Tobacco Sales

Drive throughs for any business located on the Property.

No financial institutions on the ground floor with the exception of one financial institution that does not exceed 2,500 square feet and is located in either Building A or Building D. The term "financial institution" shall not include a payday loan or cash advance business.

Office uses may not exceed forty percent (40%) of the overall leasable square footage on the Property. It is preferred that office uses be located in Building C. Buildings A and D may not have any one office use that exceeds 3,500 square feet.

Spa or massage parlor, excluding: (i) one "Massage Envy" or similar therapeutic massage retailer operating in a first-class manner; (ii) one nail salon; and (iii) one general salon offering a range of typical salon uses. Authorized massage parlor uses may not exceed 4,000 square feet of the overall leasable square footage on the Property. The nail salon may not exceed 2,500 square feet of the overall leasable square footage on the Property.

**\* The Company commits to placing at least one full-service, sit-down restaurant, offering for any one or combination of breakfast, lunch, or dinner, in one of the two remaining spaces in Building D and to incorporate outdoor seating in both endcaps of Building D.**

## PROHIBITED USES AND EXCLUSIVE RIGHTS

1. **Prohibited Uses.** The following uses (collectively, “Prohibited Uses”) are prohibited in any portion of the Shopping Center:

a. any so-called single price point discount or discount dollar stores (such as Dollar Tree, 99 Cents and More, Family Dollar, Dollar General, or any stores with a similar business plan or similar operation); except a Five Below shall be permitted to operate within the Shopping Center;

b. any use causing unreasonably loud noises (including any business using exterior loud speakers, except restaurants playing music at reasonable levels);

c. manufacturing facility;

d. dry cleaner (excluding, either (i) 1 dry cleaner which does not use perchloroethylene or any other Hazardous Substances, or (ii) 1 facility for drop off and pick up of clothing cleaned at another location). This shall not prohibit a dry cleaner which uses environmentally friendly solvents in the form of a synthetic hydrocarbon fluid developed by Exxon Mobil Chemical, Green Earth Solvents or similar manufacturers, which solvents are silicon based. These solvents are to be environmentally friendly, people friendly, and fabric friendly. All solvents are to be delivered by suppliers and directly injected into the cleaning machines by the supplier and are not stored on site. All residual wastes are to be safely removed from the premises by licensed and bonded industrial waste disposal companies);

e. any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles (excluding dealerships displaying vehicles inside their premises);

f. car wash, tire store, automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks

g. used clothing or thrift store, a “Salvation Army” or “Goodwill” type store or similar business, or a “second hand” store where principal business is selling used merchandise, excluding upscale resale operations such as Gamestop, Platos Closet and My Sister’s Attic;

h. a donation drop-off facility;

i. a “surplus” store selling under stock or overstock merchandise or liquidation outlet, excluding stores like Tuesday Morning;

j. amusement center, carnival, virtual reality, laser tag, jump/trampoline facility, game arcade, or a children’s recreational facility or play center of any kind, including, but not limited to, concepts such as “Boomerang’s,” “Funtastic,” “Chuck E. Cheese,” “Jump Zone” and “Peter Piper Pizza”, or other stores operating under similar business plans and operations;

k. spa or massage parlor (excluding (i) 1 "Massage Envy" or similar therapeutic massage retailer operating in a first-class manner that shall not occupy more than 5,000 square feet of Gross Floor Area, and (ii) 1 nail salon that shall not occupy more than 4,000 square feet of Gross Floor Area;

l. any type of hair salon and salon suites, salon studio or beauty mall that offers individual units or booths for lease inside of a beauty complex or gallery which offers an assortment of cosmetology, nail and other beauty salon/spa type treatments and services; however, individual hair or nail salons shall not be prohibited from operating within the Shopping Center provided such uses shall not occupy more than 2,500 square feet of Gross Floor Area each, except this restrictions shall not apply to a traditional hair salon which shall not occupy more than 3,500 square feet of Gross Floor Area;

m. adult book shop or adult movie house;

n. mortuary or funeral parlor;

o. coin operated laundry;

p. cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged (excluding the sale of alcoholic beverages in conjunction with the operation of a restaurant not prohibited under this Lease as set forth below in cc.);

q. night club;

r. cinema or theater;

s. Health clubs, gyms, or exercise facilities shall be permitted within the Shopping Center, provided such uses are limited to no more than two (2) tenants. Each tenant shall not exceed 3,500 square feet of Gross Floor Area, except as follows: The City hereby authorizes one (1) health club to occupy the entirety of Building C, not to exceed 4,125 square feet of Gross Floor Area. One (1) additional health or fitness-related tenant may lease up to 1,800 square feet of Gross Floor Area elsewhere within the Shopping Center.

t. bowling alley, pool hall, or skating rink;

u. animal raising or storage facility (except incidental to a full-line retail pet supply store, such as Hollywood Feed, Pet Supplies Plus or other similar retailer);

v. pawn shop, auction house, flea market, swap meet, or junk yard;

w. the drilling for and/or removal of subsurface substances from the surface of such properties, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

x. hotels or lodging facilities intended for human use;

y. church;

z. gun range or shooting club;

aa. day-care facility, educational facility or School (defined below) (excluding 1 "Sylvan," "Kumon" or similar tutoring tenant operating in a first-class manner and not to exceed 3,500 square feet of Gross Floor Area, and 1 first-class day-care facility such as Gardner School, The Learning Experience, or Primrose, which shall not occupy more than 6,000 square feet of Gross Floor Area; for purposes of this provision, "School" means a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers;

bb. drive-throughs ;

cc. any facility related to the occult sciences, such as palm readers, astrologers, fortune tellers, tea leaf readers or prophets;

dd. frozen food locker or sales facility, or milk distribution center;

ee. nursing home, old age center, or governmental facility (other than a post office), recruiting center or employment center;

ff. any office, medical, and/or professional uses occupying, collectively, occupying more than 40% of the Gross Floor Area of the Shopping Center (excluding the Premises); provided however in no event shall an abortion clinic be permitted to operate within the Shopping Center; and

gg. any tobacco store, hookah lounge or electronic cigarette type store or medical or otherwise legalized marijuana dispensaries.



**EXHIBIT D**

**CITY OF KYLE**

**CHAPTER 380 AGREEMENT (THE "AGREEMENT") GRANT REPORT FORM**

**Chapter 380 Grant Certification**

**PROJECT STATUS – THRESHOLD GRANT CRITERIA (provide in Year 1 only)**

Certificate of Occupancy for the Project issued \_\_\_\_\_.

Business Operations commenced on \_\_\_\_\_.

- Documents establishing the cost to construct the Architectural Enhancements.

**PROJECT STATUS – ONGOING GRANT CRITERIA (for Years ~~2-5~~ 1-7)**

**Please provide each of the following documents as an attachment to this Certification:**

- Proof of payment of the ad valorem and business personal property taxes.
- By my signature below, I certify that the Unauthorized Uses are not located, operating, or otherwise exist on the Property.

**CERTIFICATION**

I certify that to the best of my knowledge and belief, the information and attached documents provided in this Chapter 380 Grant Certification are true and accurate and in compliance with the terms of the Chapter 380 Agreement with the City of Kyle. I further certify that to the best of my knowledge and belief, I have met the requirements of the Grant Criteria, as that term is defined in the Agreement applicable to the COMPANY.

\_\_\_\_\_  
Printed Name and Title of Certifying Officer                      Signature of Certifying Officer

\_\_\_\_\_  
Date                                      Telephone Number                                      Email Address

NOTE:                      This Chapter 380 Grant Certification shall be filed with the City prior to the payment of the Chapter 380 Grant.