

## ORDINANCE NO. 2018-77

AN ORDINANCE OF THE CITY OF MIDLOTHIAN, TEXAS, AMENDING THE CITY OF MIDLOTHIAN ZONING ORDINANCE AND ZONING MAP BY AMENDING AND RESTATING THE DEVELOPMENT AND USE REGULATIONS OF PLANNED DEVELOPMENT DISTRICT NO. 109 (PD-109) AS SET FORTH IN SECTION 2 OF ORDINANCE NO. 2018-18 AND INCLUSIVE OF ALL EXHIBITS THERETO; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Midlothian, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Midlothian, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that the City of Midlothian Zoning Ordinance and Zoning Map of the City of Midlothian, Texas, as previously amended, should be amended.

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

### **SECTION 1. AMENDED AND RESTATED DEVELOPMENT REGULATIONS.**

The City of Midlothian Zoning Ordinance and the Zoning Map of the City of Midlothian, Texas, as previously amended (collectively, the "Zoning Ordinance"), be further amended by amending and restating in its entirety as follows the use and development regulations of Planned Development District No. 109 (PD-109) set forth in Section 2 of Ordinance No. 2018-18 relating to the use and development of 7.660± acres out of the John B. Garvin Survey, Abstract No. 402, City of Midlothian, Ellis County, Texas, depicted and described in Exhibit "A" and Exhibit "B", respectively, attached hereto and incorporated herein by reference ("the Property")

### **SECTION 2. LAND USE AND DEVELOPMENT STANDARDS.**

The Property shall be developed and used in accordance with the provisions of the Zoning Ordinance applicable to Community Retail (CR) subject to the following:

- A. **Additional Uses and Use Regulations:** In addition to the uses for which property located within a Community Retail (CR) district may be developed either by right or following approval of a Specific Use Permit, the Property may be used and developed for the following additional uses:
  - (1) **Grocery Store:** The Property may be used and developed for one (1) Grocery Store subject to the following:

- (a) The Grocery Store shall be located as shown on the Site Plan attached hereto as Exhibit "C" and incorporated herein by reference ("the Site Plan");
- (b) The Grocery Store shall not exceed 23,000 square feet in area under roof;
- (c) Development of the Grocery Store shall comply with all development and design regulations and procedures set forth in Section 2, Subsections B through M of this Ordinance; and
- (d) The right to use the Property for a Grocery Store shall terminate if:
  - (i) A certificate of occupancy for use of the Property for a Grocery Store has not been granted on or before the second (2<sup>nd</sup>) anniversary of the effective date of this Ordinance; or
  - (ii) The Property ceases to be used for the purpose of a Grocery Store for a period of 180 consecutive days except in the case of a fire or windstorm that causes substantial damage or destruction to the buildings developed and used for Grocery Store purposes sufficient to prevent such use from occurring, in which case termination of the right to use the Property as a Grocery Store will occur if the Grocery Store use is not recommenced on or before the last day of the 18th full calendar month after the date of the fire or windstorm that caused the damage or destruction.

(2) Restaurants (over 1,000 square feet): The Property may be used and developed with (i) Restaurants (over 1,000 square feet) without drive-thru windows and service and (ii) one Restaurant (over 1,000 square feet) with drive-thru windows and service at the location labeled as "Drive-Thru B" on the Site Plan, subject to the following:

- (a) No such restaurants may have an outdoor seating area unless a site plan for the outdoor seating area is approved by the City Council following review and recommendation by the Planning and Zoning Commission;
- (b) Development of such Restaurants shall comply with all development and design regulations and procedures set forth

in Section 2, Subsections B through M of this Ordinance; and

- (e) The right to use the Property for a Restaurant (over 1000 square feet), whether with or without drive-thru window or service, shall terminate if:
  - (i) A certificate of occupancy for use of the Property for a Restaurant (over 1000 square feet) with or without drive-thru window or service, has not been granted on or before the fifth (5<sup>th</sup>) anniversary of the effective date of this Ordinance; or
  - (ii) The Property ceases to be used for the purpose of a Restaurant (over 1000 square feet), whether with or without drive-thru window or service, for a period of 180 consecutive days except in the case of a fire or windstorm that causes substantial damage or destruction to the buildings developed and used for such restaurant purposes sufficient to prevent such use from occurring, in which case termination of the right to use the Property as a Restaurant (over 1000 square feet), whether with or without drive-thru window or service, will occur such use is not recommenced on or before the last day of the 18th full calendar month after the date of the fire or windstorm that caused the damage or destruction;
- (f) The provisions of paragraph (e), above, shall apply only on a per restaurant basis such the termination of the right to use the Property as a Restaurant (over 1000 square feet), whether with or without drive-thru window or service, at one location on the Property shall have no effect on the remaining Restaurants over 1000 square feet on the Property.

- (3) Dry Cleaners with a Drive-Thru Windows and Service: The Property may be used and developed with a Dry Cleaners with a Drive-Thru Window and Service at the location labeled as "Drive-Thru A" on the Site Plan; provided, however, the right to use the Property for a Dry Cleaners with a Drive-Thru Window and Service shall terminate if:
  - (a) A certificate of occupancy for the use of the Property for a Dry Cleaners with a Drive-Thru Window and Service has not been granted on or before the fifth (5th) anniversary of the effective date of this Ordinance; or

(b) The Property ceases to be used for the purpose of a Dry Cleaners with a Drive-Thru Window and Service for a period of 180 consecutive days except in the case of a fire or windstorm that causes substantial damage or destruction to the buildings developed and used for such a Dry Cleaners with a Drive-Thru Window and Service purposes sufficient to prevent such use from occurring, in which case termination of the right to use the Property as a Dry Cleaners with a Drive-Thru Window and Service will occur such use is not recommenced on or before the last day of the 18th full calendar month after the date of the fire or windstorm that caused the damage or destruction;

(4) Office Buildings: Notwithstanding anything to the contrary in this Ordinance, the southern portion of the Property where the three buildings labeled "General Professional (GP) District" on the Site Plan are located shall be developed and used solely for purposes permitted in the General Professional ("GP") zoning district.

(5) Dry Cleaners without a Drive-Thru Window and Service: The Property may be used and developed for a Dry Cleaners without a drive-thru window and service.

B. **Site Plan:** The size, number, and location of buildings, driveways, trails, and parking areas constructed on the Property shall comply with, and be limited by, the Site Plan. Any additions, modifications or amendments to the Site Plan that are considered significant (i.e. future site development of remainder of undeveloped land, increase in size of floor plan or site, and changing or adding ingress/egress to public rights-of-way) shall require an amendment to the Site Plan in accordance with the procedures required for approval of an amendment to this Ordinance as a zoning regulation.

C. **Architectural Design:**

(1) All buildings constructed on the Property shall be substantially in compliance with the Site Plan and elevations.

(2) The exterior of the structures constructed on the Property shall be constructed with masonry as the primary building material and otherwise designed and constructed to appear substantially as shown on the Elevations attached hereto as Exhibit "D" and incorporated herein by reference ("the Elevations").

(3) One hundred percent (100%) of all building elevations (excluding door and window areas), regardless of setback, shall require a

masonry exterior composed of brick or stone which shall contain no painted or other color accents except as shown on the Elevations.

- (4) The exterior of the buildings shall contain decorative features including metal canopies, and cornices as shown on the Elevations.
- (5) The three structures located on the southwest property line of the subject property and designated as "Office w/Limited Service Retail" on the Site Plan and the Elevations shall incorporate asphalt roofing shingles consistent with Section 3.5501(c) of the Zoning Ordinance.

**D. Screening and Fences:**

- (1) Trash and/or dumpster areas shall be located and screened in compliance with Section 4.5205 of the Zoning Ordinance prior to issuance of a Certificate of Occupancy.
- (2) Screening shall be provided by the existing six-foot (6.0') masonry wall located along the property lines of property zoned for residential purposes adjacent to the Property ("the Existing Wall") as shown on the Site Plan. In the event the Existing Wall or any portion thereof is removed, significantly damaged, or destroyed such that it no longer effectively screens the Property from the adjacent residentially zoned property, a new six-foot (6.0') masonry wall of similar design and color shall be constructed on the property line of the Property adjacent to the residentially zoned property not later than ninety (90) days after the event that results in the removal, damage, or destruction of the Existing Wall. Notwithstanding the foregoing, no new wall shall be required to be constructed if (a) the removal, damage, or destruction is the result of the intentional acts of an owner, tenant, or invitee of the owner of the residential lot on which the portion of the Existing Wall is located, (b) the removal, damage, or destruction of the Existing Wall results from an act or order of the City, Ellis County, or other governmental entity, or (c) the portion of the Existing Wall removed, damaged or destroyed is repaired or replaced within said ninety (90) day period. The City Manager shall have the authority to grant one or more extensions of said ninety (90) day period, not to exceed a total of ninety (90) days, upon a finding that reasonable progress is being made toward completion of construction of the new wall or repair or replacement of the Existing Wall. In addition to issuing citations for a violation of this Subsection D.(2), no permits or approvals relating to the use and development of the Property shall be issued during any period of time that the Existing Wall has not been repaired or replaced or the new wall constructed as required by this Subsection D.(2).

**E. Landscaping and Sidewalks:**

- (1) Prior to issuance of a certificate of occupancy for any building or structure on a platted lot, all landscaping shall be installed with all required irrigation systems substantially as shown for that lot on the Landscape Plan, attached hereto as Exhibit "E" and incorporated herein by reference ("the Landscape Plan").
- (2) No Certificate of Occupancy for any building constructed on any portion of the Property shall be issued until all sidewalks and landscaping with required irrigation systems are installed along the outer perimeter of the Property as shown on the Landscape Plan.
- (3) All required trees shall not be less than four (4) caliper inches in diameter (measured at 12" from the ground) at time of planting.

**F. Parking:** All parking spaces shall comply with the location, dimensions, and maximum numbers shown on the Site Plan. If the Property is subdivided, a perpetual joint parking easement agreement in a form approved by the City Attorney shall be created and must be filed of record in the plat records of the Ellis County prior to the issuance of the first building permit for the Property.

**G. Signage:**

- (1) Only two monument signs located generally as shown on Exhibit "F" (the "Sign Plan"), attached hereto respectively and incorporated herein by reference shall be installed on the Property.
  - (a) The monument signs shall be considered and may be used as a multi-tenant sign as depicted as shown in Exhibit "G" ("the Monument Sign Elevations"), attached hereto and incorporated herein by reference;
  - (b) The multi-tenant monument signs must be constructed and landscaped with irrigation installed and continuously maintained in accordance with Section 4.6017(b) of the Zoning Ordinance. The content of such landscaping and final location of the monument signs and design of the signs shall be determined prior to issuance of the related sign permit(s) and approved by the City's Planning Director;
  - (c) Height shall not exceed ten (10) feet;
  - (d) Width shall not exceed ten (10) feet;

- (e) Total sign area shall not exceed fifty (50) square feet on each side of the multi-tenant monument signs; and
- (f) No electronic message center is permitted as a component of the monument signs.
- (g) The monument signs may be internally lit.

- (2) The location and sign area of building wall signs shall be in accordance with Section 4.6017(a) of the Zoning Ordinance except as otherwise shown on the Elevations.
- (3) Window signs shall not exceed 10% of any window or glass area including side doors in accordance with Section 4.6017(a)(4) of the Zoning Ordinance.
- (4) No freestanding sign, pole sign, or electronic message center board may be installed or constructed on the Property.
- (5) All canopies and awnings shall be limited to galvalume, black, or the colors depicted in Exhibit "H", and shall be approved through the sign permit process.
  - (a) Any type of logo, lettering, striping, and/or symbols placed on the canopies or awnings shall be calculated as the overall permitted wall signage.
  - (b) All awnings and canopies shall be maintained and up kept as to not fade, stretch, tear, or be in disrepair.

**H. Lighting:** All lighting installed on the Property shall be pedestrian-scale, shielded and downcast, shall not exceed twenty (20) feet in height, and shall be directed away from adjacent properties and public rights-of-way. Light emanating from any fixture installed on the Property shall measure zero (0) foot candles at the common property line between the Property and the adjacent residential development.

**I. Outside Storage Prohibited:** Outside storage, including, but not limited to, merchandise or equipment, is prohibited.

**J. Uses Prohibited:** The following uses are prohibited on the Property:

- (1) Auto and boat sales;
- (2) Car wash;

- (3) Commercial equipment and tools rental and/or sales;
- (4) Commercial trailer and/or truck rentals.

**K. Cross Access Easement:** If the Property is subdivided, cross access easements shall be established through the driveway stubs on the north side of the property (Harvest Hill Drive) to the driveway stub on the southeast side of the property (Reindeer Drive) by either separate instrument approved as to form by the City Attorney or plat and shall be signed and recorded in the real property records of Ellis County prior to the first building permit being issued.

**L. Ingress/Egress:** All entrances to the Property shall be enhanced with stamped and stained concrete as shown on the Site Plan.

**M. Additional Requirements:** Prior to approval of the first final plat for the Property, Covenants, Conditions, and Restrictions (CC&R's) shall be established and created which, among other matters, provides for the continuous and perpetual operation, maintenance and supervision of landscape systems, trails, common areas or properties within the Property, including but not limited to: landscape features and irrigation systems, entryway features, private internal shared roads and driveways, and the monument sign subject to the following:

- (1) A copy of the agreements, covenants and restrictions must be approved by the City Attorney prior to the approval of the first final plat of any portion of the development to be platted and must be filed of record with said final plat in the map and plat records of the Ellis County.
- (2) At a minimum, the agreements, covenants and restrictions required herein shall contain and/or provide for the following:
  - (a) Definitions of terms contained therein;
  - (b) The covenants and restrictions shall be for a 25-year period and shall automatically renew for successive ten-year periods, and may not be dissolved without the prior written consent of the City;
  - (c) Provisions ensuring the continuous and perpetual use, operation, maintenance and/or supervision of all facilities, structures, improvements, systems, open space or common areas that are the responsibility of the property owners' and to establish a reserve fund for such purposes;

- (d) Provisions prohibiting the amendment of any portion of the covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, area or grounds that are the responsibility of the property owners without the prior written consent of the City;
- (e) The right and ability of the City or its lawful agents, after due notice to the property owners, to remove any landscape systems, features or elements that cease to be maintained by the property owners; to perform the responsibilities of the property owners if the property owners fail to do so in compliance with any provisions of the covenants or restrictions of the development or of any applicable City ordinances or regulations; to assess the property owners for all costs incurred by the City in performing said responsibilities if the property owners fail to do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law or City ordinances or regulations; and
- (f) Provisions indemnifying and holding the City harmless from any and all costs, expenses, suits, demands, liabilities or damages including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the property owners or from the City's performance of the aforementioned operation, maintenance or supervision responsibilities of the property owners due to the property owners failure to perform said responsibilities.

## **SECTION 2. AMENDED AND RESTATED EXHIBITS**

Exhibits "A", "B", "C", "D", "E", "F", "G", and "H" to Ordinance No. 2018-18 are amended and restated in their entirety as set forth in Exhibits "A", "B", "C", "D", "E", "F", "G", and "H", respectively, attached to this Ordinance and incorporated herein by reference.

## **SECTION 3. CONFLICTS.**

To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Midlothian governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

#### **SECTION 4. SEVERABILITY CLAUSE.**

Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the City of Midlothian Zoning Ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the City of Midlothian Zoning Ordinance, as amended hereby, which shall remain in full force and effect.

#### **SECTION 5. SAVINGS CLAUSE.**

An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the City of Midlothian Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

#### **SECTION 6. PENALTY.**

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed two thousand Dollars (\$2,000) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

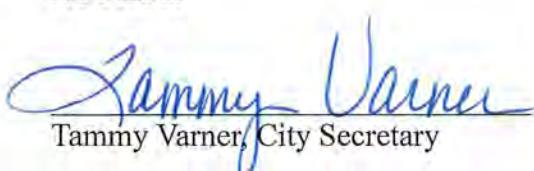
#### **SECTION 7. EFFECTIVE DATE.**

This Ordinance shall become effective from and after the date of its passage and final publication in accordance with the Charter of the City of Midlothian and/or applicable state law and it is accordingly so ordained.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN,  
TEXAS ON THIS THE 11<sup>th</sup> DAY OF DECEMBER 2018.**

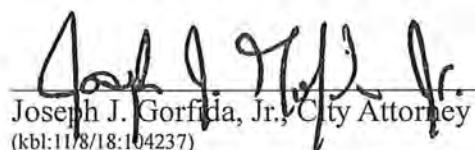
  
\_\_\_\_\_  
Bill Houston, Mayor

ATTEST:

  
\_\_\_\_\_  
Tammy Varner, City Secretary



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Joseph J. Gorfida, Jr., City Attorney  
(kbl:11/8/18:104237)

## Exhibit A "Boundary Description of the Property"

Being all that certain 7.660-acre tract of land situated in the John B. Garvin Survey, Abstract No. 402, Ellis County, Texas, and being all that tract of land conveyed as 'Tract 1' to Reindeer 663 Retail, LLC, by Special Warranty Deed recorded in Instrument No. 1604640, Deed Records, Ellis County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with yellow cap stamped "RPLS 4818" found (hereinafter referred to as 1/2 inch iron rod with cap found) for the Northwest corner of said Tract 1, same being the Northeast corner of Block 4, Hunters Glen-Phase One, an addition to the City of Midlothian, Ellis County, Texas, according to the plat thereof recorded in Cabinet F, Slide 387, Plat Records, Ellis County, Texas, same being in the southerly right-of-way line of Harvest Hill Drive (90 foot right-of-way)(Volume 2188, Page 2379);

THENCE along the common line of said Tract 1 and said Harvest Hill Drive as follows:

South 82 deg. 47 min. 04 sec. East, a distance of 274.62 feet to a 1/2-inch iron rod with cap found for the beginning of a curve to the right, having a radius of 295.00 feet and a delta angle of 79 deg. 12 min. 54 sec.;

Along said curve to the right, an arc distance of 407.86 feet and a chord bearing and distance of South 43 deg. 10 min. 36 sec. East, 376.14 feet to a 1/2-inch iron rod with cap found for the beginning of a curve to the left, having a radius of 385.00 feet and a delta angle of 19 deg. 29 min. 44 sec.;

Along said curve to the left, an arc distance of 131.00 feet and a chord bearing and distance of South 13 deg. 19 min. 20 sec. East, 130.37 feet to a 1/2 inch iron rod with cap found for the most easterly northeast corner of said Tract 1, same being the north end of a corner clip in the intersection of said Harvest Hill Drive and Reindeer Drive (60 foot right-of-way) (Cabinet F, Slide 389-391);

THENCE South 15 deg. 06 min. 01 sec. West, along the common line of said Tract 1 and said corner clip, a distance of 38.29 feet to a 1/2-inch iron rod with cap found for the south end of said corner clip, same being the beginning of a non-tangent curve to the left, having a radius of 180.00 feet and a delta angle of 05 deg. 27 min. 51 sec.;

THENCE along the common line of said Tract 1 and said Reindeer Drive as follows:

Along said non-tangent curve to the left, an arc distance of 17.17 feet and a chord bearing and distance of South 48 deg. 25 min. 16 sec. West, 17.16 feet to a 1/2-inch iron rod with cap found for angle point;

South 45 deg. 41 min. 21 sec. West, a distance of 435.37 feet to a 1/2-inch iron rod with cap found for the beginning of a curve to the right, having a radius o Conduct a public hearing and consider and act upon an ordinance to amend and restate the development and use regulations of Planned Development District No. 109 (PD-109) of Ordinance No. 2018-18. The property is situated in the John B. Garvin Survey, Abstract No. 402 and is generally located to the west of the Harvest Hill Drive and Reindeer Drive intersection (Z03-2019-07).

**Exhibit A "Boundary Description of the Property"**

f 122.50 feet and a delta angle of 05 deg. 51 min. 30 sec.;

Along said curve to the right, an arc distance of 12.53 feet and a chord bearing and distance of South 48 deg. 37 min. 03 sec. West, 12.52 feet to a 1/2-inch iron rod with cap found for the most southerly corner of said Tract 1, same being the most easterly corner of Block 4, Hunters Glen-Phase Two, an addition to the City of Midlothian, Ellis County, Texas, according to the plat thereof recorded in Cabinet F, Slide 390, Plat Records, Ellis County, Texas;

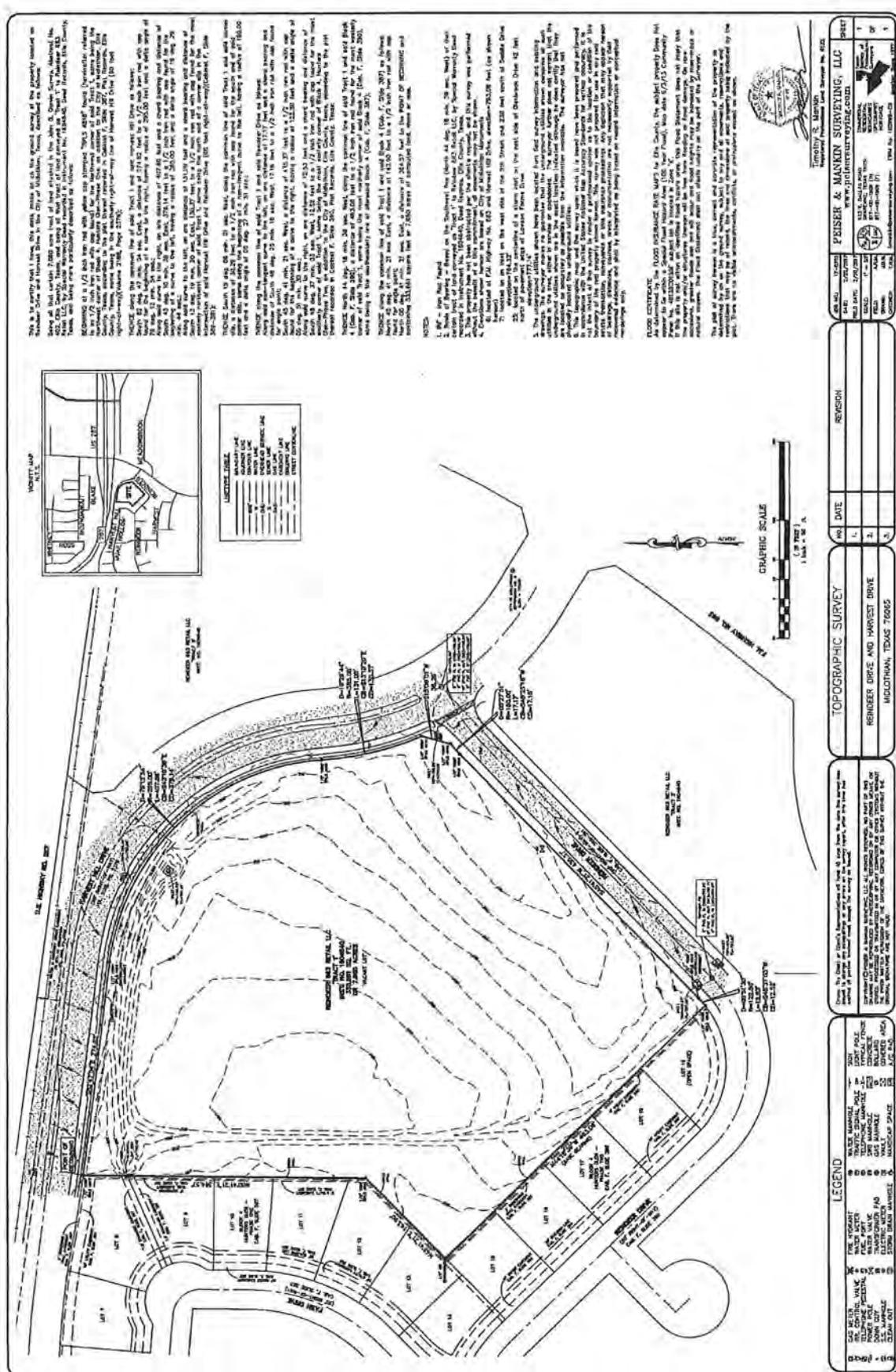
THENCE North 44 deg. 18 min. 39 sec. West, along the common line of said Tract 1 and said Block 4 (Cab. F, Slide 390), a distance of 463.06 feet to a 1/2-inch iron rod found for the most westerly corner of said Tract 1, same being the most northerly corner of said Block 4 (Cab. F, Slide 390), same being in the southeasterly line of aforesaid Block 4 (Cab. F, Slide 387);

THENCE along the common line of said Tract 1 and said Block 4 (Cab. F, Slide 387) as follows:

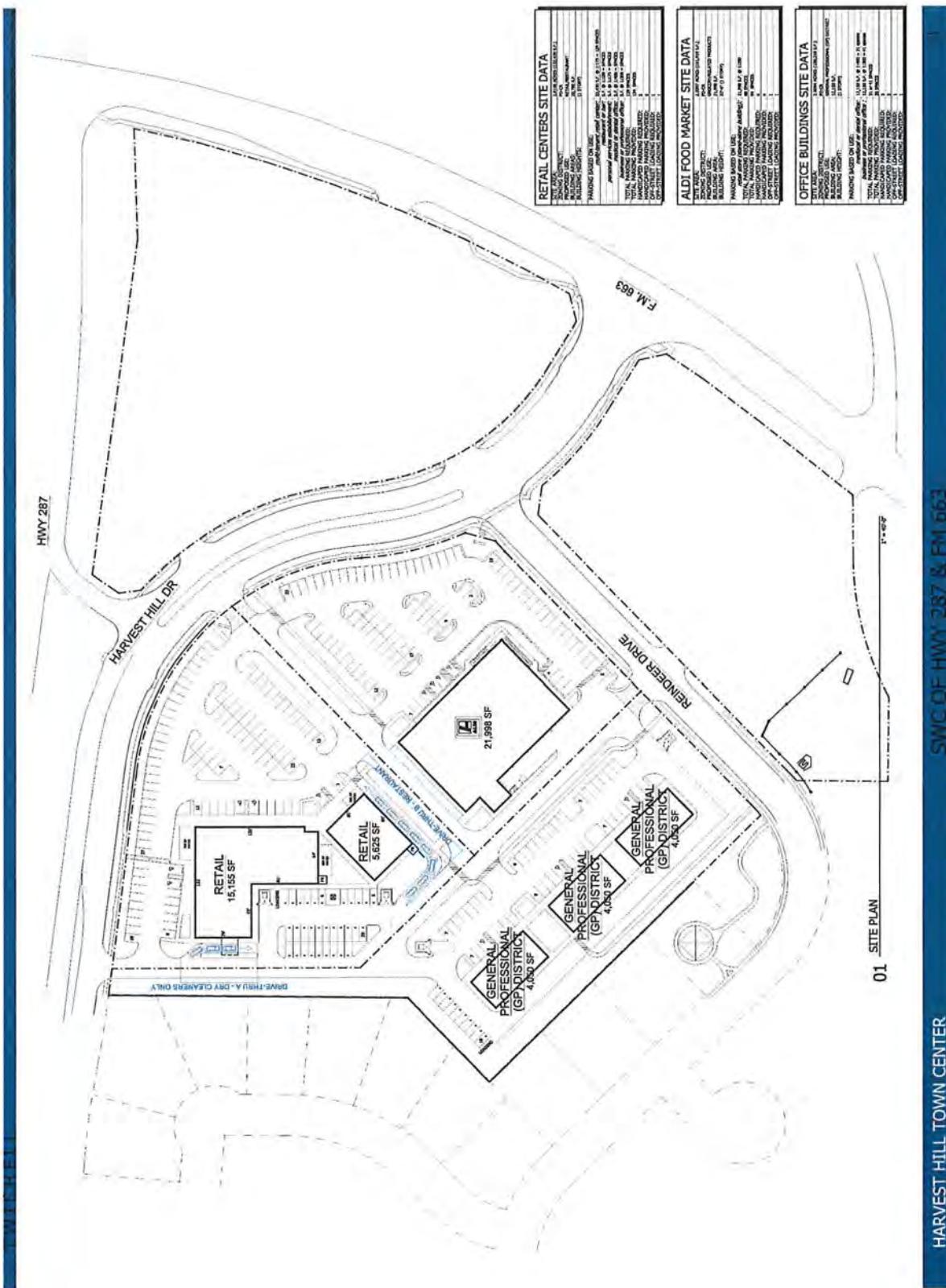
North 45 deg. 41 min. 21 sec. East, a distance of 143.90 feet to a 1/2-inch iron rod with cap found for angle point;

North 00 deg. 41 min. 21 sec. East, a distance of 364.57 feet to the POINT OF BEGINNING and containing 333,661 square feet or 7.660 acres of computed land, more or less.

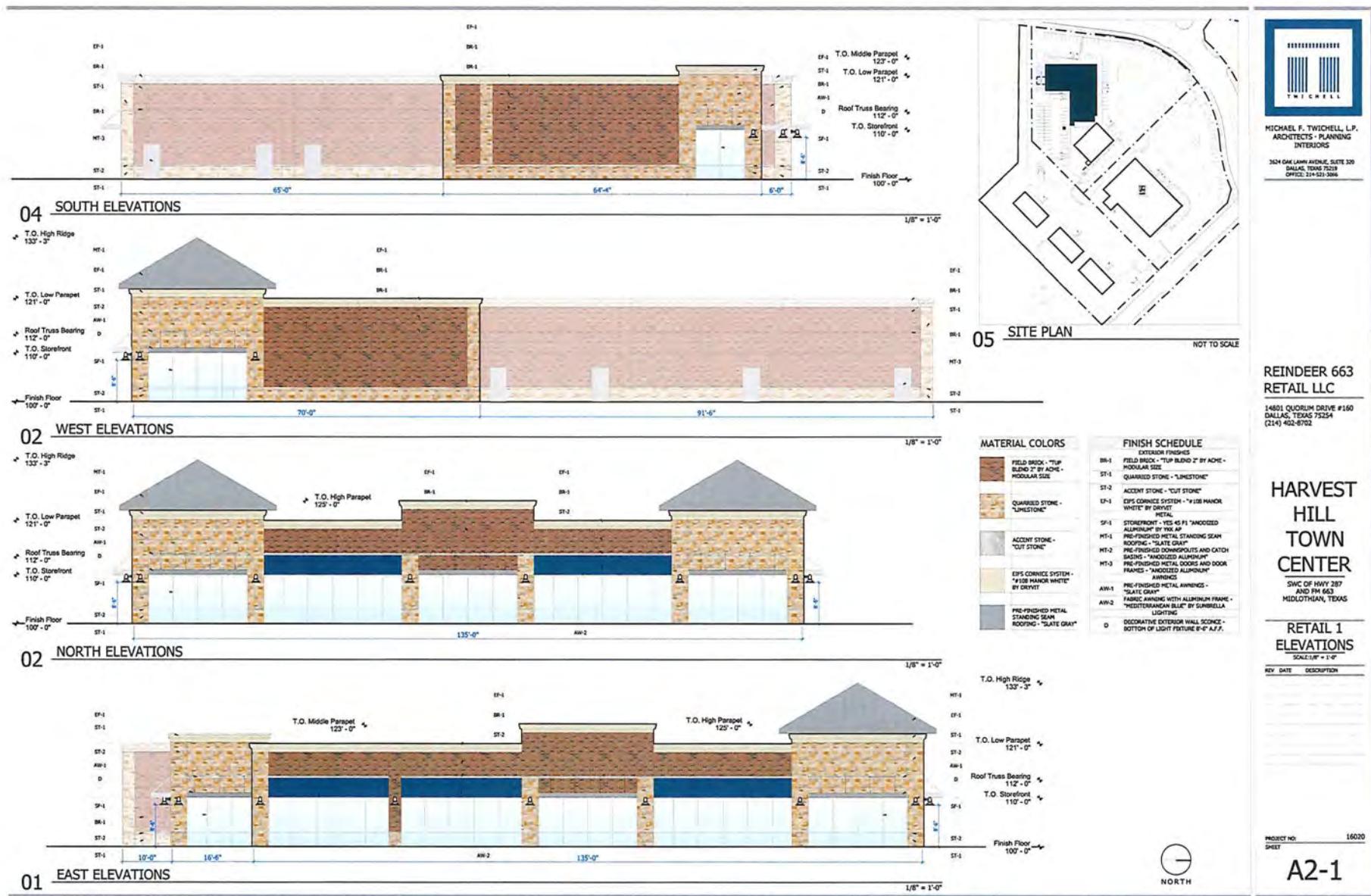
**Exhibit B "Survey Map of Property"**



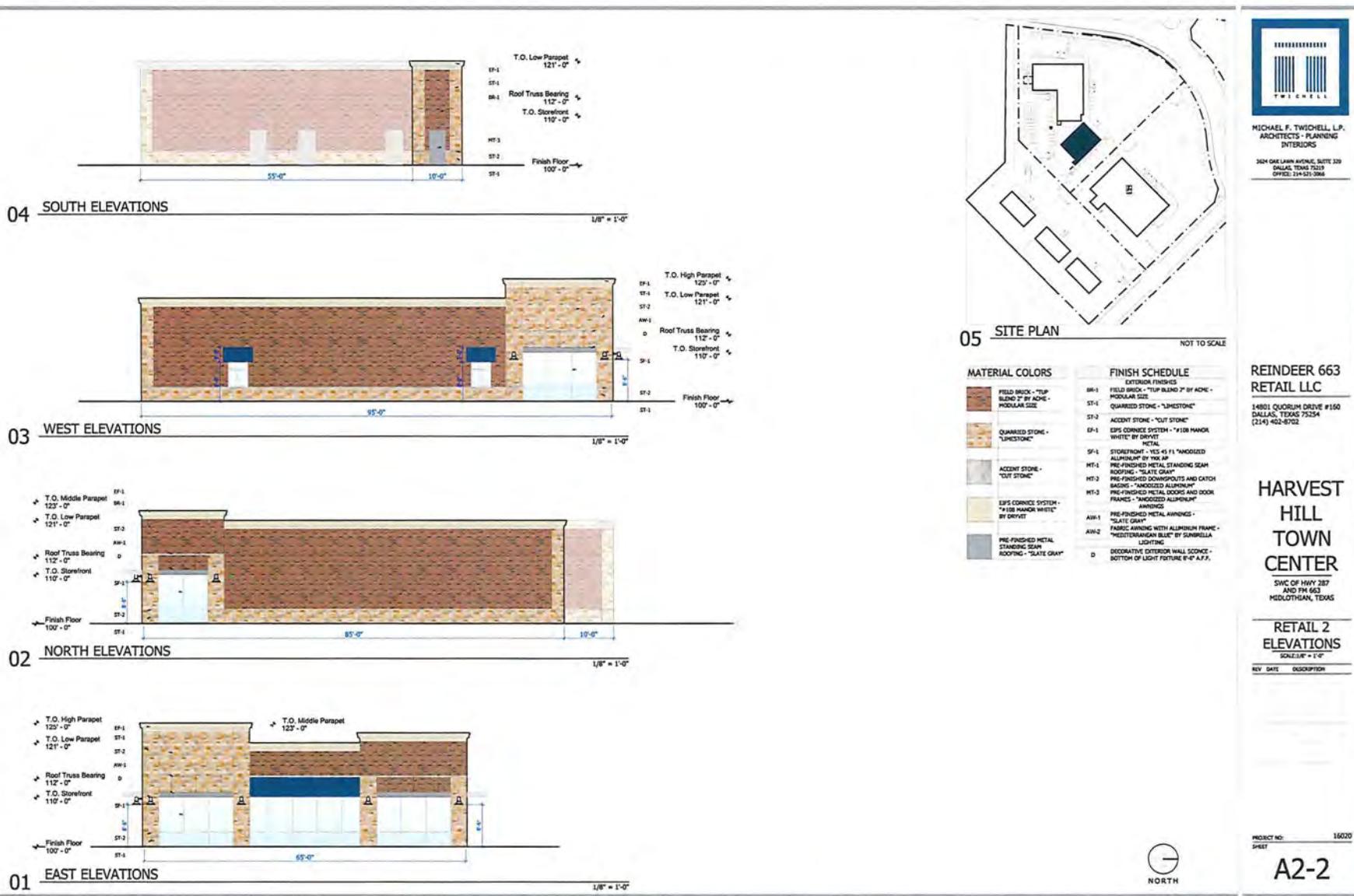
### **Exhibit C “Site Plan”**



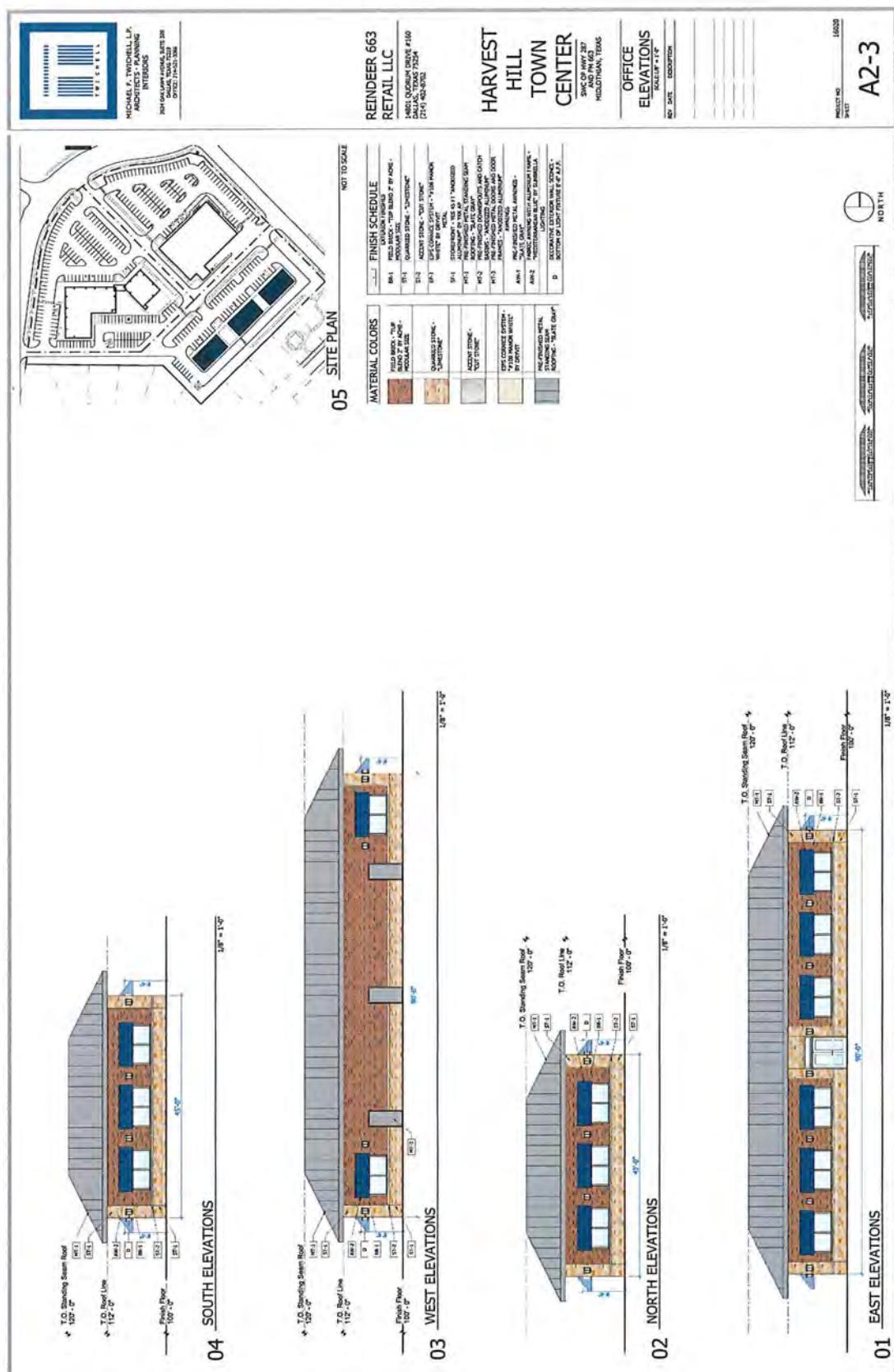
## Exhibit D "Elevations"



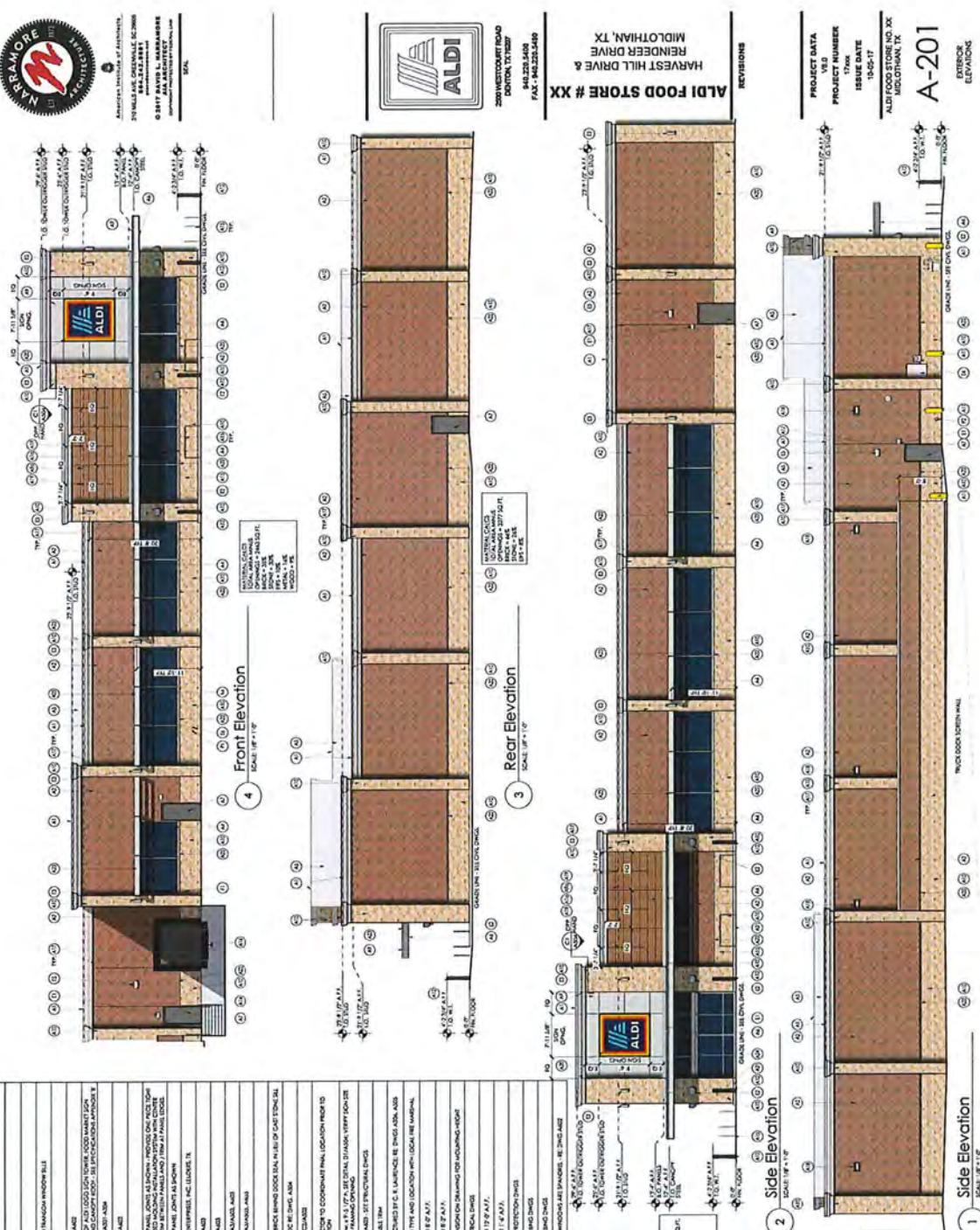
## Exhibit D "Elevations"



#### **Exhibit D “Elevations”**



#### **Exhibit D “Elevations”**



## Exhibit E "Landscape Plan"

<p>Date: 12-09-17 Job: 1712030-HAMILTON,T.C.</p> <p><b>Revisions</b> Date Description 10-15-18 Site/Unnecces. Plan Rev. 01-07-19 Site/Landscape Plan Rev.</p> <p>All plans and drawings produced by LandPatterns, Inc. are protected by Federal copyright laws. They may not be copied, reproduced or shared without written permission from LandPatterns, Inc.</p>	
<p>Hamilton, TX</p> <p><b>Harvest Hill Town Center</b></p> <p>A Landscape Development Guideline Plan for Harvest Hill Drive</p>	
<p>LANDSCAPE CODE ANALYSIS</p> <p>REQUIRED FRONT YARD   RETAIL AND OFFICE REQUIRED: 25'-375 S.F. PROVIDED: 33'-375 S.F. EXCESS: 7'-375 S.F. (31%)</p> <p>PERIMETER TREES REQUIRED: 12'-3' CALIPER PROVIDED: 20'-4' CALIPER</p> <p>PARKING LOT TREES   FOR 10 PARKING SPACES REQUIRED REQUIRED: 25 OVERSTORY TREES PROVIDED: 24 OVERSTORY TREES</p> <p>RESIDENTIAL BUFFER REQUIRED: 20' BUFFER WITH LARGE EVERGREEN SPHAGNUS 2' O.C. 2' BUFFER ELSE 10' SPACES BY 20' 6 ADDITIONAL OVERSTORY TREES AND 6 UNDERSTORY TREES</p>	<p>Date Completed: 12/09/17 Designed by: DMF Checked by: DMF Phase: Preliminary</p> <p>LANDPATTERNS, INC. Landscape Architecture Landscape Construction 2000 Old Lasalle Street Suite 800, Dallas, TX 75201 800.821.5555   214.748.1000   FAX 214.748.1001 www.landpatterns.com   info@landpatterns.com</p> <p>Sheet <b>LP-1A</b> LANDSCAPE PLAN</p>

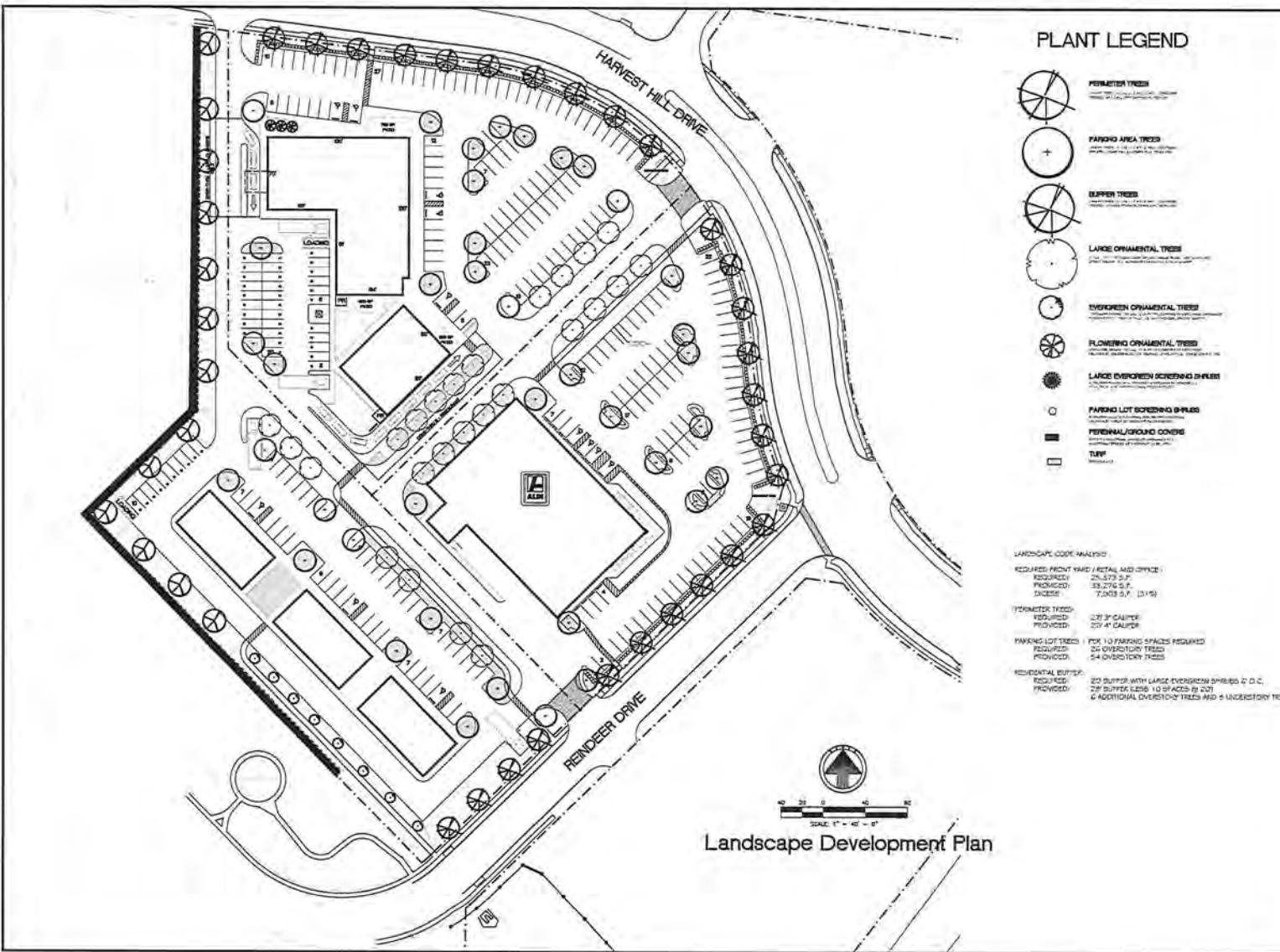
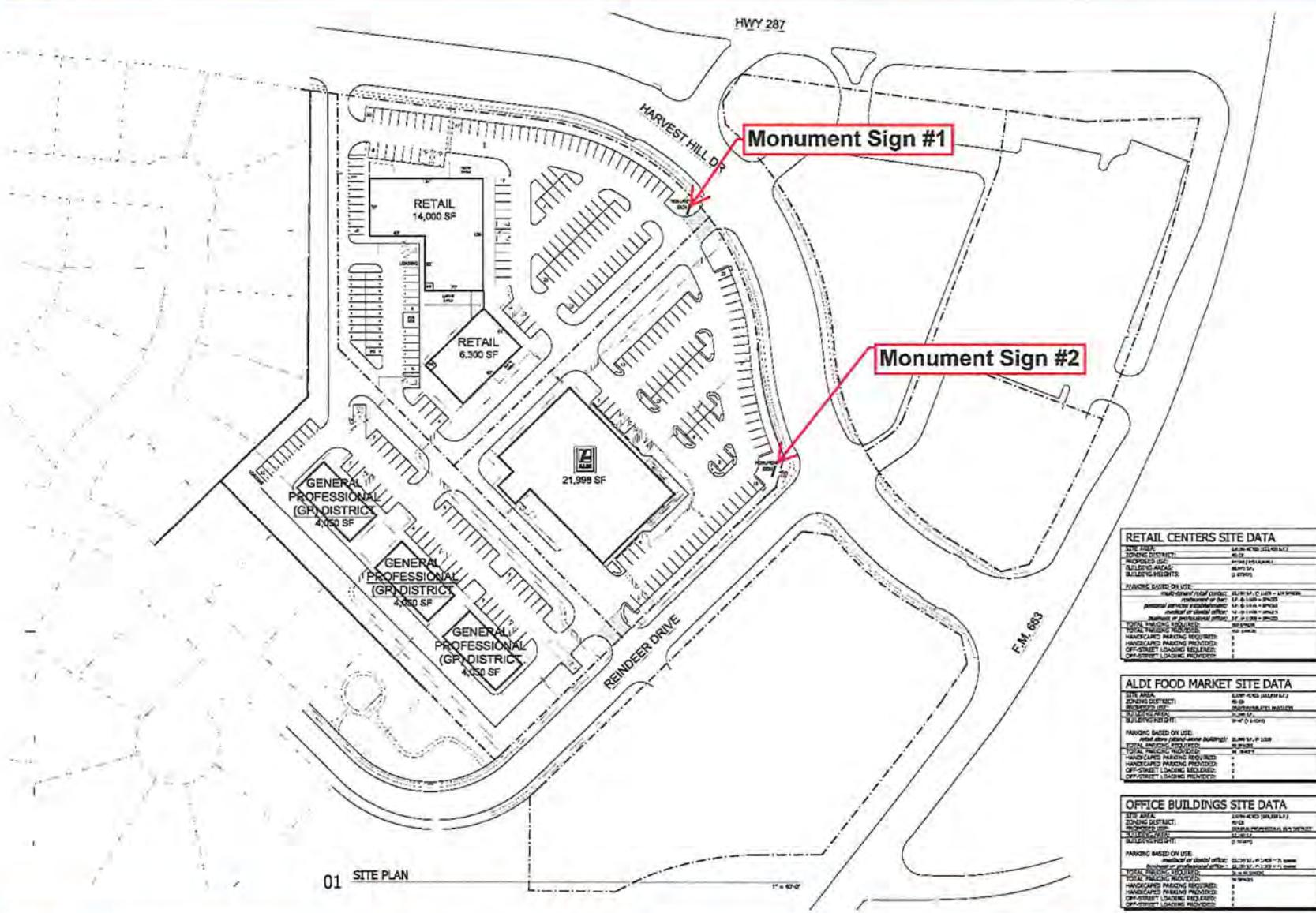


Exhibit F "Sign Plan"



## Exhibit G “Monument Sign Elevations”

Signage Exhibit for Aldi/MQ Development  
Harvest Hill Drive, Midlothian, Texas



**Tenant Names for Illustration Only**

Masonry Materials for signage will be consistent with Building materials and colors

**There will be two freestanding structures  
of an overall size of 10'x10', each monument sign  
will have a total 50 SF of signage area for tenants.**

\*This image is to depict the allotted size requirements. The final design of the monument sign shall be designed and constructed in accordance with Section 4.6017 of the Zoning Ordinance as outlined in Section 2 (H) of this ordinance.

## Exhibit H “Canopy and Awning Colors”



### Standard Colors



PAC-CLAD.COM TX: 800 441 8681 MD: 800 344 1400  
HQ: 800 PAC CLAD GA: 800 272 4482 MN: 877 571 2025

NOTE: Colors above are not exact representations of actual PAC-CLAD colors. Ask a PAC representative for a color-chip chart or painted metal samples before making final color selection.

## ORDINANCE NO. 2018-18

AN ORDINANCE OF THE CITY OF MIDLOTHIAN, TEXAS, AMENDING THE CITY OF MIDLOTHIAN ZONING ORDINANCE AND ZONING MAP BY AMENDING AND RESTATING THE DEVELOPMENT AND USE REGULATIONS OF PLANNED DEVELOPMENT DISTRICT NO. 109 (PD-109) AS SET FORTH IN SECTION 2 OF ORDINANCE NO. 2018-02 AND INCLUSIVE OF ALL EXHIBITS THERETO; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Midlothian, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Midlothian, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that the City of Midlothian Zoning Ordinance and Zoning Map of the City of Midlothian, Texas, as previously amended, should be amended.

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

### **SECTION 1. AMENDED AND RESTATED DEVELOPMENT REGULATIONS.**

The City of Midlothian Zoning Ordinance and the Zoning Map of the City of Midlothian, Texas, as previously amended (collectively, the "Zoning Ordinance"), be further amended by amending and restating in its entirety as follows the use and development regulations of Planned Development District No. 109 (PD-109) set forth in Section 2 of Ordinance No. 2018-02 relating to the use and development of 7.660± acres out of the John B. Garvin Survey, Abstract No. 402, City of Midlothian, Ellis County, Texas, depicted and described in Exhibit "A" and Exhibit "B", respectively, attached hereto and incorporated herein by reference ("the Property")

### **SECTION 2. LAND USE AND DEVELOPMENT STANDARDS.**

The Property shall be developed and used in accordance with the provisions of the Zoning Ordinance applicable to Community Retail (CR) subject to the following:

A. **Grant of Specific Use Permit:** A Specific Use Permit ("SUP") is hereby granted authorizing the Property to be used and developed for a grocery store and restaurants (over 1,000 square feet), subject to the following:

(1) **Grocery Store:** The Property may be used and developed for one (1) Grocery Store not to exceed 23,000 square feet in area under roof only in compliance to the Site Plan attached hereto as Exhibit "C" and incorporated herein by reference ("the Site Plan").

- (2) Restaurants (over 1,000 square feet): The Property may be used and developed with Restaurants (over 1,000 square feet) without drive-thru windows and service; provided, however, no such restaurant may have an outdoor seating area unless a site plan for the outdoor seating area is approved by the City Council following review and recommendation by the Planning and Zoning Commission.
- (3) Additional Regulations: Development of the uses authorized by Paragraph A(1) and (2), above, shall comply with all development and design regulations and procedures set forth in Section 2, Subsections C through N of this ordinance.
- (4) Termination: The SUP's granted by this Subsection A shall expire and terminate if:
  - (a) A certificate of occupancy for the use for which the SUP is granted has not been granted on or before the second anniversary of the effective date of this Ordinance for the grocery store, and a certificate of occupancy for the use for which the SUP is granted has not been granted on or before the fifth anniversary of the effective date of this Ordinance for any restaurant (over 1,000 square feet); or
  - (b) The Property ceases to be used for the purpose for which this SUP is granted for a period of 180 consecutive days except in the case of a fire or windstorm that causes substantial damage or destruction to the buildings developed and used for grocery store and/or restaurant (over 1,000 square feet) purposes sufficient to prevent such use from occurring, in which case termination of this SUP will occur if the use for which this SUP is granted is not recommenced on or before the last day of the 18th full calendar month after the date of the fire or windstorm that caused the damage or destruction.

**B. Other Uses.**

- (1) Restaurant SUP: The Property may be used for a Restaurant with drive-thru window and service upon approval of a Specific Use Permit in accordance with Section 5.200 of the Zoning Ordinance.
- (2) Office Buildings: Notwithstanding anything to the contrary in this Ordinance, the southern portion of the Property where the three buildings labeled "General Professional (GP) District" on the Site Plan are located shall be developed and used solely for purposes permitted in the General Professional ("GP") zoning district.

**C. Site Plan:** The size, number, and location of buildings, driveways, trails, and parking areas constructed on the Property shall comply with, and be limited by, the Site Plan. Any additions, modifications or amendments to the Site Plan that are considered significant (i.e. future site development of remainder of undeveloped land, increase in size of floor plan or site, and changing or adding ingress/egress to public rights-of-way) shall require an amendment to the Site Plan in accordance with the procedures required for approval of an amendment to this Ordinance as a zoning regulation.

**D. Architectural Design:**

- (1) All buildings constructed on the Property shall be substantially in compliance with the Site Plan and elevations.
- (2) The exterior of the structures constructed on the Property shall be constructed with masonry as the primary building material and otherwise designed and constructed to appear substantially as shown on the Elevations attached hereto as Exhibit "D" and incorporated herein by reference ("the Elevations").
- (3) One hundred percent (100%) of all building elevations (excluding door and window areas), regardless of setback, shall require a masonry exterior composed of brick or stone which shall contain no painted or other color accents except as shown on the Elevations.
- (4) The exterior of the buildings shall contain decorative features including metal canopies, and cornices as shown on the Elevations.
- (5) The three structures located on the southwest property line of the subject property and designated as "Office w/Limited Service Retail" on the Site Plan and the Elevations shall incorporate asphalt roofing shingles consistent with Section 3.5501(c) of the Zoning Ordinance.

**E. Screening and Fences:**

- (1) Trash and/or dumpster areas shall be located and screened in compliance with Section 4.5205 of the Zoning Ordinance prior to issuance of a Certificate of Occupancy.
- (2) Screening shall be provided by the existing six-foot (6.0') masonry wall located along the property lines of property zoned for residential purposes adjacent to the Property ("the Existing Wall") as shown on the Site Plan. In the event the Existing Wall or any portion thereof is removed, significantly damaged, or destroyed such that it no longer effectively screens the Property from the

adjacent residentially zoned property, a new six-foot (6.0') masonry wall of similar design and color shall be constructed on the property line of the Property adjacent to the residentially zoned property not later than ninety (90) days after the event that results in the removal, damage, or destruction of the Existing Wall. Notwithstanding the foregoing, no new wall shall be required to be constructed if (a) the removal, damage, or destruction is the result of the intentional acts of an owner, tenant, or invitee of the owner of the residential lot on which the portion of the Existing Wall is located, (b) the removal, damage, or destruction of the Existing Wall results from an act or order of the City, Ellis County, or other governmental entity, or (c) the portion of the Existing Wall removed, damaged or destroyed is repaired or replaced within said ninety (90) day period. The City Manager shall have the authority to grant one or more extensions of said ninety (90) day period, not to exceed a total of ninety (90) days, upon a finding that reasonable progress is being made toward completion of construction of the new wall or repair or replacement of the Existing Wall. In addition to issuing citations for a violation of this Subsection E.(2), no permits or approvals relating to the use and development of the Property shall be issued during any period of time that the Existing Wall has not been repaired or replaced or the new wall constructed as required by this Subsection E.(2).

**F. Landscaping and Sidewalks:**

- (1) Prior to issuance of a certificate of occupancy for any building or structure on a platted lot, all landscaping shall be installed with all required irrigation systems substantially as shown for that lot on the Landscape Plan, attached hereto as Exhibit "E" and incorporated herein by reference ("the Landscape Plan").
- (2) No Certificate of Occupancy for any building constructed on any portion of the Property shall be issued until all sidewalks and landscaping with required irrigation systems are installed along the outer perimeter of the Property as shown on the Landscape Plan.
- (3) All required trees shall not be less than four (4) caliper inches in diameter (measured at 12" from the ground) at time of planting.

**G. Parking:** All parking spaces shall comply with the location, dimensions, and maximum numbers shown on the Site Plan. If the Property is subdivided, a perpetual joint parking easement agreement in a form approved by the City Attorney shall be created and must be filed of record in the plat records of the Ellis County prior to the issuance of the first building permit for the Property.

**H. Signage:**

- (1) Only two monument signs shall be allowed on the Property and located generally as shown on Exhibit "F" (the "Sign Plan") and be depicted as shown in Exhibit "G" ("the Monument Sign Elevations"), attached hereto respectively and incorporated herein by reference.
  - a. The monument signs shall be considered and may be used as a multi-tenant sign as depicted on the Monument Sign Elevation;
  - b. The multi-tenant monument sign must be constructed with landscaping installed and continuously maintained at the base of the sign in accordance with Section 4.5841 (b) of the Zoning Ordinance. The content of such landscaping and final location of the monument signs shall be determined prior to issuance of the related sign permit(s) and approved by the City's Planning Director;
  - c. Height shall not exceed ten (10) feet;
  - d. Width shall not exceed ten (10) feet;
  - e. Total sign area shall not exceed fifty (50) square feet on each side of the multi-tenant monument signs; and
  - f. No electronic message center is permitted as a component of the monument signs.
- (2) The location and sign area of building wall signs shall be in accordance with Section 4.5841 (a) of the Zoning Ordinance except as otherwise shown on the Elevations.
- (3) Window signs shall not exceed 10% of any window or glass area including side doors in accordance with Section 4.5841(a)(4) of the Zoning Ordinance.
- (4) No freestanding sign, pole sign, or electronic message center board may be installed or constructed on the Property.
- (5) All canopies and awnings shall be limited to galvalume, black, or the colors depicted in Exhibit "H", and shall be approved through the sign permit process.

- a. Any type of logo, lettering, striping, and/or symbols placed on the canopies or awnings shall be calculated as the overall permitted wall signage.
- b. All awnings and canopies shall be maintained and up kept as to not fade, stretch, tear, or be in disrepair.

**I. Lighting:** All lighting installed on the Property shall be pedestrian-scale, shielded and downcast, shall not exceed twenty (20) feet in height, and shall be directed away from adjacent properties and public rights-of-way. Light emanating from any fixture installed on the Property shall measure zero (0) foot candles at the common property line between the Property and the adjacent residential development.

**J. Outside Storage Prohibited:** Outside storage, including, but not limited to, merchandise or equipment, is prohibited.

**K. Uses Prohibited:** The following uses are prohibited on the Property:

- (1) Auto and boat sales;
- (2) Car wash;
- (3) Commercial equipment and tools rental and/or sales;
- (4) Commercial trailer and/or truck rentals.

**L. Cross Access Easement:** If the Property is subdivided, cross access easements shall be established through the driveway stubs on the north side of the property (Harvest Hill Drive) to the driveway stub on the southeast side of the property (Reindeer Drive) by either separate instrument approved as to form by the City Attorney or plat and shall be signed and recorded in the real property records of Ellis County prior to the first building permit being issued.

**M. Ingress/Egress:** All entrances to the Property shall be enhanced with stamped and stained concrete as shown on the Site Plan.

**N. Additional Requirements:** Prior to approval of the first final plat for the Property, Covenants, Conditions, and Restrictions (CC&R's) shall be established and created which, among other matters, provides for the continuous and perpetual operation, maintenance and supervision of landscape systems, trails, common areas or properties within the Property, including but not limited to: landscape features and irrigation systems, entryway features, private internal shared roads and driveways, and the monument sign subject to the following:

- (1) A copy of the agreements, covenants and restrictions must be approved by the City Attorney prior to the approval of the first final plat of any portion of the development to be platted and must be filed of record with said final plat in the map and plat records of the Ellis County.
- (2) At a minimum, the agreements, covenants and restrictions required herein shall contain and/or provide for the following:
  - (a) Definitions of terms contained therein;
  - (b) The covenants and restrictions shall be for a 25-year period and shall automatically renew for successive ten-year periods, and may not be dissolved without the prior written consent of the City;
  - (c) Provisions ensuring the continuous and perpetual use, operation, maintenance and/or supervision of all facilities, structures, improvements, systems, open space or common areas that are the responsibility of the property owners' and to establish a reserve fund for such purposes;
  - (d) Provisions prohibiting the amendment of any portion of the covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, area or grounds that are the responsibility of the property owners without the prior written consent of the City;
  - (e) The right and ability of the City or its lawful agents, after due notice to the property owners, to remove any landscape systems, features or elements that cease to be maintained by the property owners; to perform the responsibilities of the property owners if the property owners fail to do so in compliance with any provisions of the covenants or restrictions of the development or of any applicable City ordinances or regulations; to assess the property owners for all costs incurred by the City in performing said responsibilities if the property owners fail to do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law or City ordinances or regulations; and
  - (f) Provisions indemnifying and holding the City harmless from any and all costs, expenses, suits, demands, liabilities or

damages including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the property owners or from the City's performance of the aforementioned operation, maintenance or supervision responsibilities of the property owners due to the property owners failure to perform said responsibilities.

## **SECTION 2. AMENDED AND RESTATED EXHIBITS**

Exhibits "A", "B", "C", "D", "E", "F", "G", and "H" to Ordinance No. 2018-02 are amended and restated in their entirety as set forth in Exhibits "A", "B", "C", "D", "E", "F", "G", and "H", respectively, attached to this Ordinance and incorporated herein by reference.

## **SECTION 3. CONFLICTS.**

To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Midlothian governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

## **SECTION 4. SEVERABILITY CLAUSE.**

Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the City of Midlothian Zoning Ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the City of Midlothian Zoning Ordinance, as amended hereby, which shall remain in full force and effect.

## **SECTION 5. SAVINGS CLAUSE.**

An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the City of Midlothian Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

## **SECTION 6. PENALTY.**

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed two thousand Dollars (\$2,000) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

## **SECTION 7. EFFECTIVE DATE.**

This Ordinance shall become effective from and after the date of its passage and final publication in accordance with the Charter of the City of Midlothian and/or applicable state law and it is accordingly so ordained.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN,  
TEXAS ON THIS THE 10<sup>th</sup> DAY OF APRIL, 2018.

Bill Houston  
Bill Houston, Mayor

ATTEST:

Tammy Varner  
Tammy Varner, City Secretary

APPROVED AS TO FORM:

Joseph J. Gorfida, Jr.  
Joseph J. Gorfida, Jr., City Attorney  
(kbl:3/15/18:96767)



## Exhibit A "Boundary Description of the Property"

Being all that certain 7.660 acre tract of land situated in the John B. Garvin Survey, Abstract No. 402, Ellis County, Texas, and being all that tract of land conveyed as 'Tract 1' to Reindeer 663 Retail, LLC, by Special Warranty Deed recorded in Instrument No. 1604640, Deed Records, Ellis County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with yellow cap stamped "RPLS 4818" found (hereinafter referred to as 1/2 inch iron rod with cap found) for the Northwest corner of said Tract 1, same being the Northeast corner of Block 4, Hunters Glen-Phase One, an addition to the City of Midlothian, Ellis County, Texas, according to the plat thereof recorded in Cabinet F, Slide 387, Plat Records, Ellis County, Texas, same being in the southerly right-of-way line of Harvest Hill Drive (90 foot right-of-way)(Volume 2188, Page 2379);

THENCE along the common line of said Tract 1 and said Harvest Hill Drive as follows:

South 82 deg. 47 min. 04 sec. East, a distance of 274.62 feet to a 1/2 inch iron rod with cap found for the beginning of a curve to the right, having a radius of 295.00 feet and a delta angle of 79 deg. 12 min. 54 sec.;

Along said curve to the right, an arc distance of 407.86 feet and a chord bearing and distance of South 43 deg. 10 min. 36 sec. East, 376.14 feet to a 1/2 inch iron rod with cap found for the beginning of a curve to the left, having a radius of 385.00 feet and a delta angle of 19 deg. 29 min. 44 sec.;

Along said curve to the left, an arc distance of 131.00 feet and a chord bearing and distance of South 13 deg. 19 min. 20 sec. East, 130.37 feet to a 1/2 inch iron rod with cap found for the most easterly northeast corner of said Tract 1, same being the north end of a corner clip in the intersection of said Harvest Hill Drive and Reindeer Drive (60 foot right-of-way)(Cabinet F, Slide 389-391);

THENCE South 15 deg. 06 min. 01 sec. West, along the common line of said Tract 1 and said corner clip, a distance of 38.29 feet to a 1/2 inch iron rod with cap found for the south end of said corner clip, same being the beginning of a non-tangent curve to the left, having a radius of 180.00 feet and a delta angle of 05 deg. 27 min. 51 sec.;

THENCE along the common line of said Tract 1 and said Reindeer Drive as follows:

Along said non-tangent curve to the left, an arc distance of 17.17 feet and a chord bearing and distance of South 48 deg. 25 min. 16 sec. West, 17.16 feet to a 1/2 inch iron rod with cap found for angle point;

South 45 deg. 41 min. 21 sec. West, a distance of 435.37 feet to a 1/2 inch iron rod with cap found for the beginning of a curve to the right, having a radius of 122.50 feet and a delta angle of 05 deg. 51 min. 30 sec.;

Along said curve to the right, an arc distance of 12.53 feet and a chord bearing and distance of South 48 deg. 37 min. 03 sec. West, 12.52 feet to a 1/2 inch iron rod with cap found for

### **Exhibit A “Boundary Description of the Property”**

the most southerly corner of said Tract 1, same being the most easterly corner of Block 4, Hunters Glen-Phase Two, an addition to the City of Midlothian, Ellis County, Texas, according to the plat thereof recorded in Cabinet F, Slide 390, Plat Records, Ellis County, Texas;

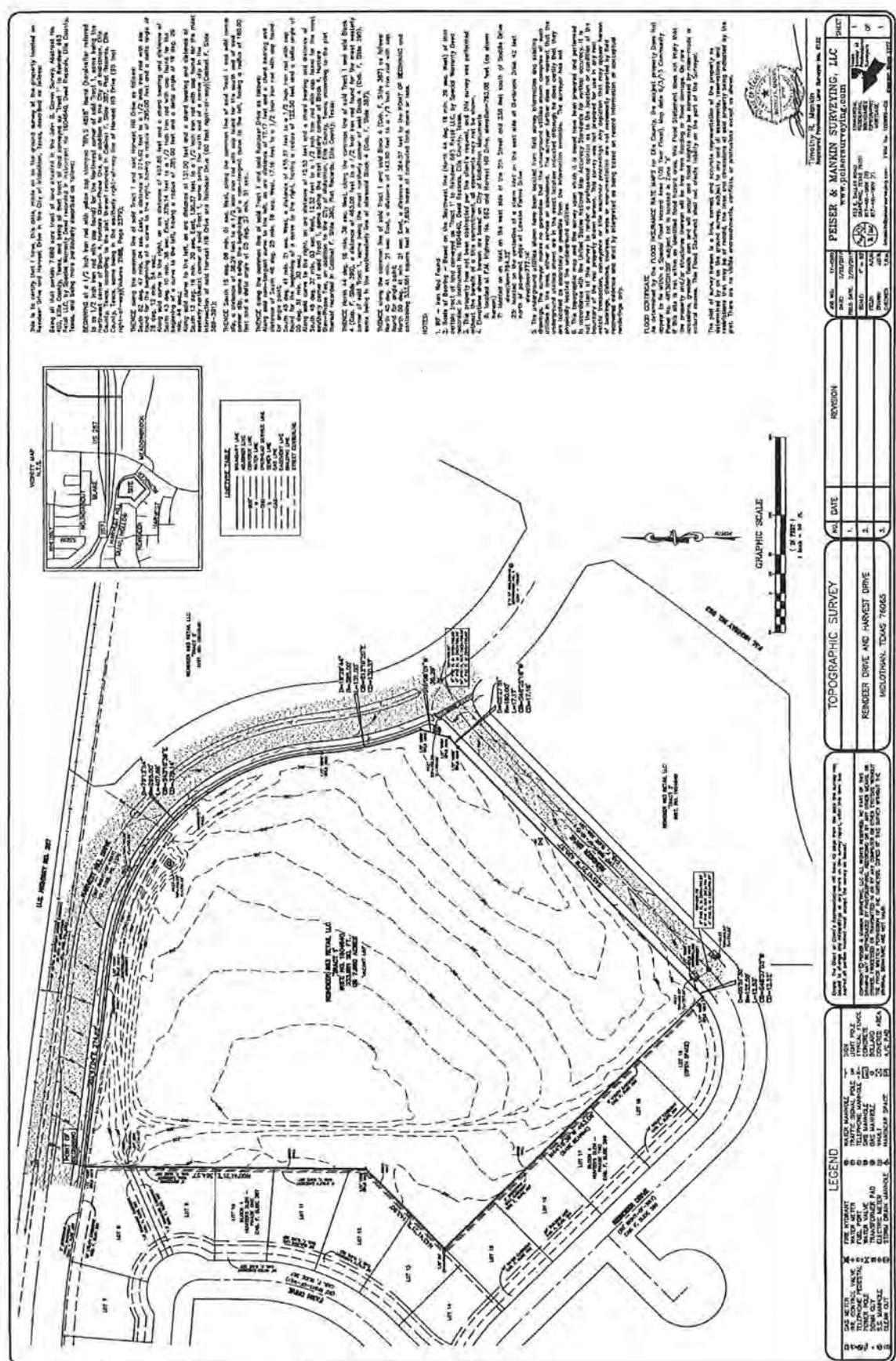
THENCE North 44 deg. 18 min. 39 sec. West, along the common line of said Tract 1 and said Block 4 (Cab. F, Slide 390), a distance of 463.06 feet to a 1/2 inch iron rod found for the most westerly corner of said Tract 1, same being the most northerly corner of said Block 4 (Cab. F, Slide 390), same being in the southeasterly line of aforesaid Block 4 (Cab. F, Slide 387);

THENCE along the common line of said Tract 1 and said Block 4 (Cab. F, Slide 387) as follows:

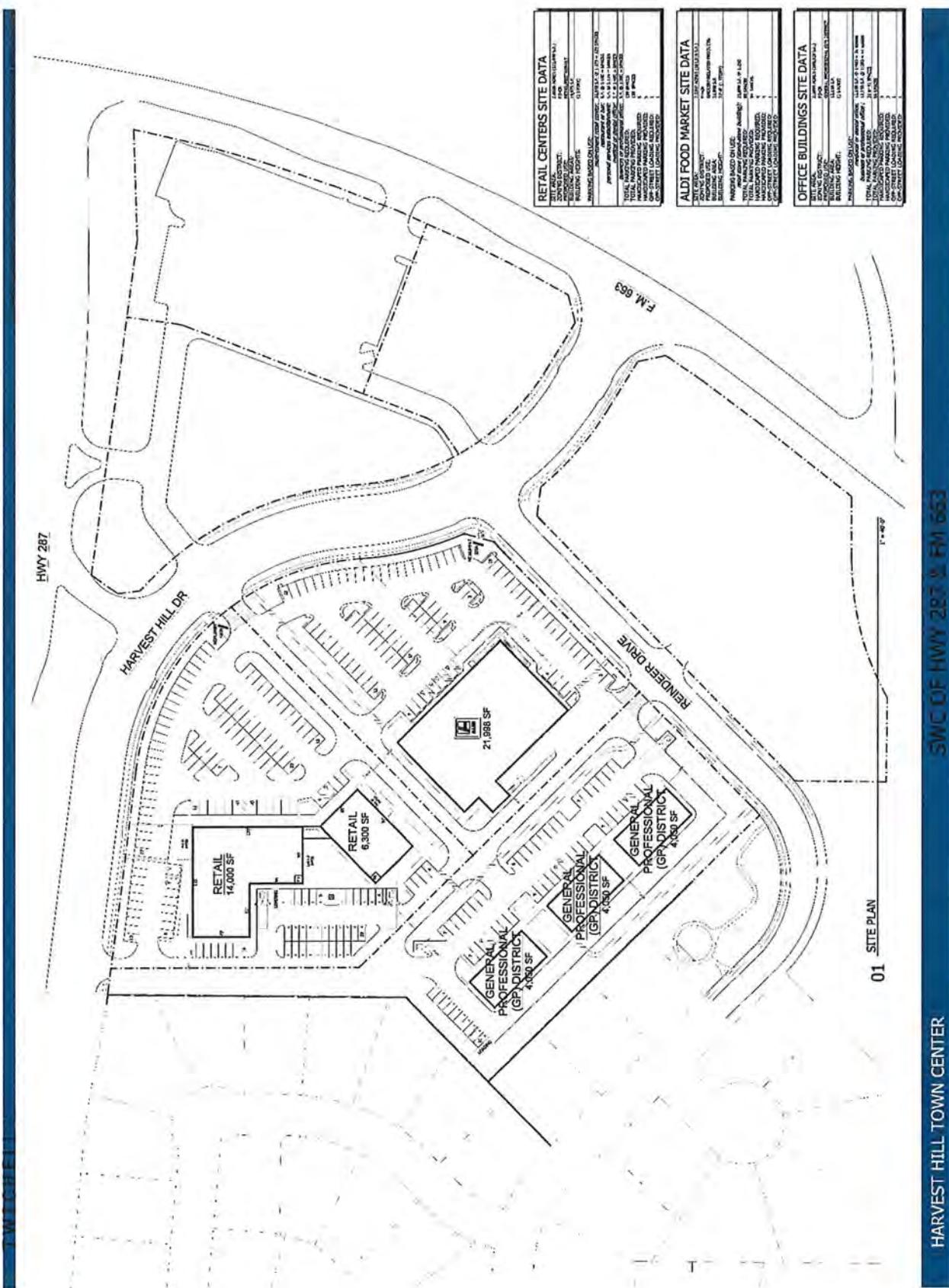
North 45 deg. 41 min. 21 sec. East, a distance of 143.90 feet to a 1/2 inch iron rod with cap found for angle point;

North 00 deg. 41 min. 21 sec. East, a distance of 364.57 feet to the POINT OF BEGINNING and containing 333,661 square feet or 7.660 acres of computed land, more or less.

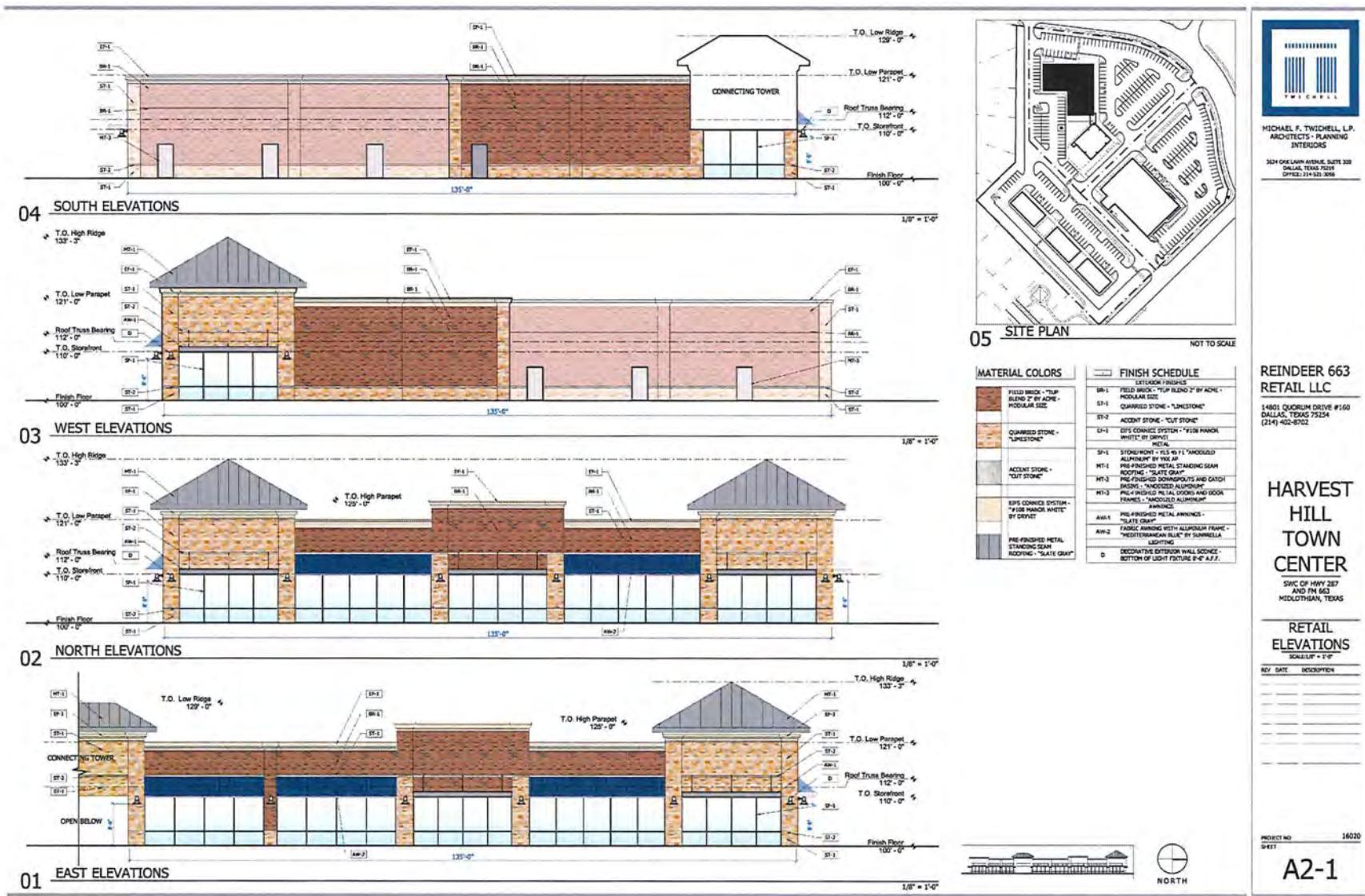
## **Exhibit B “Survey Map of Property”**



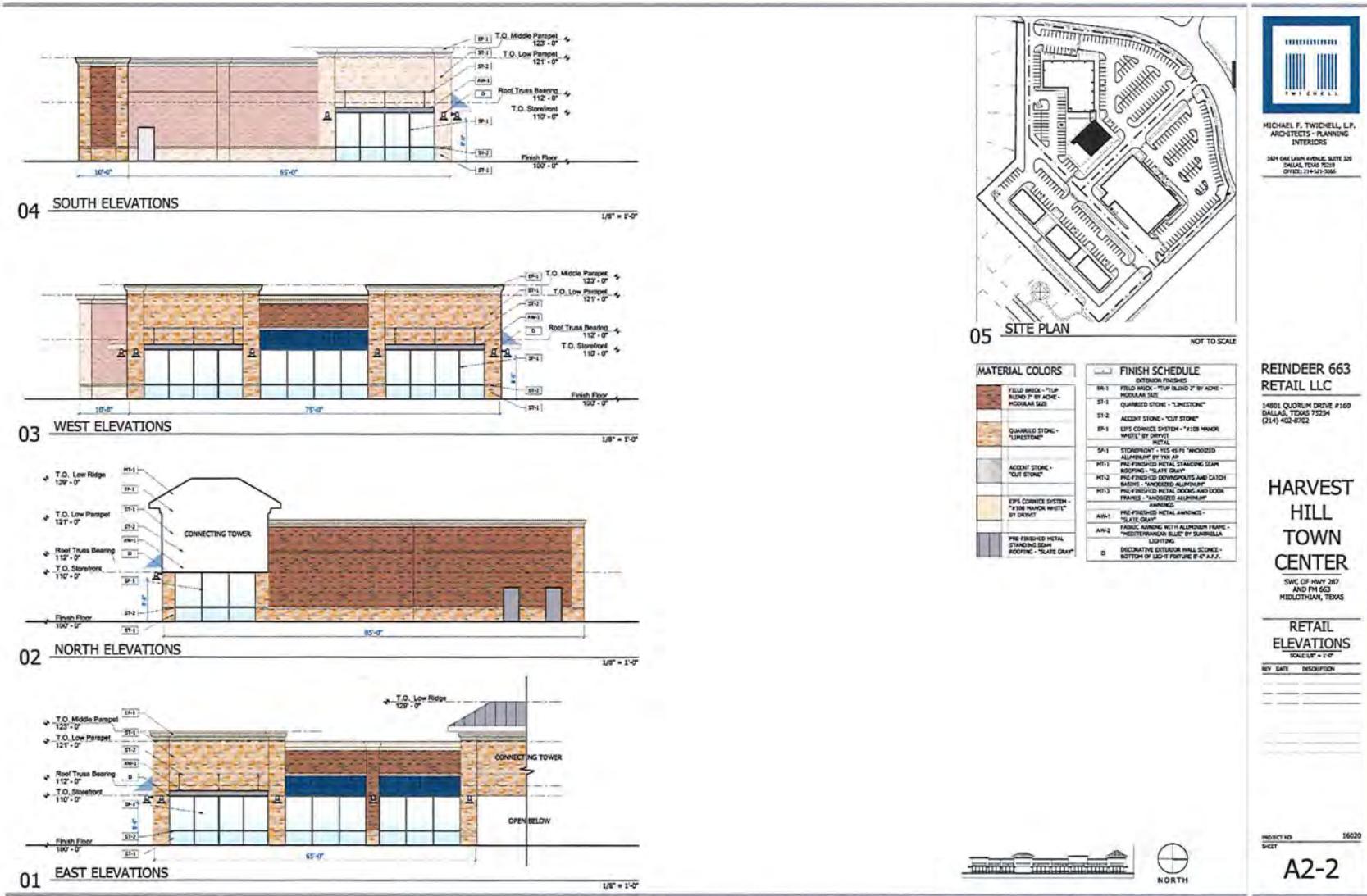
## Exhibit C "Site Plan"



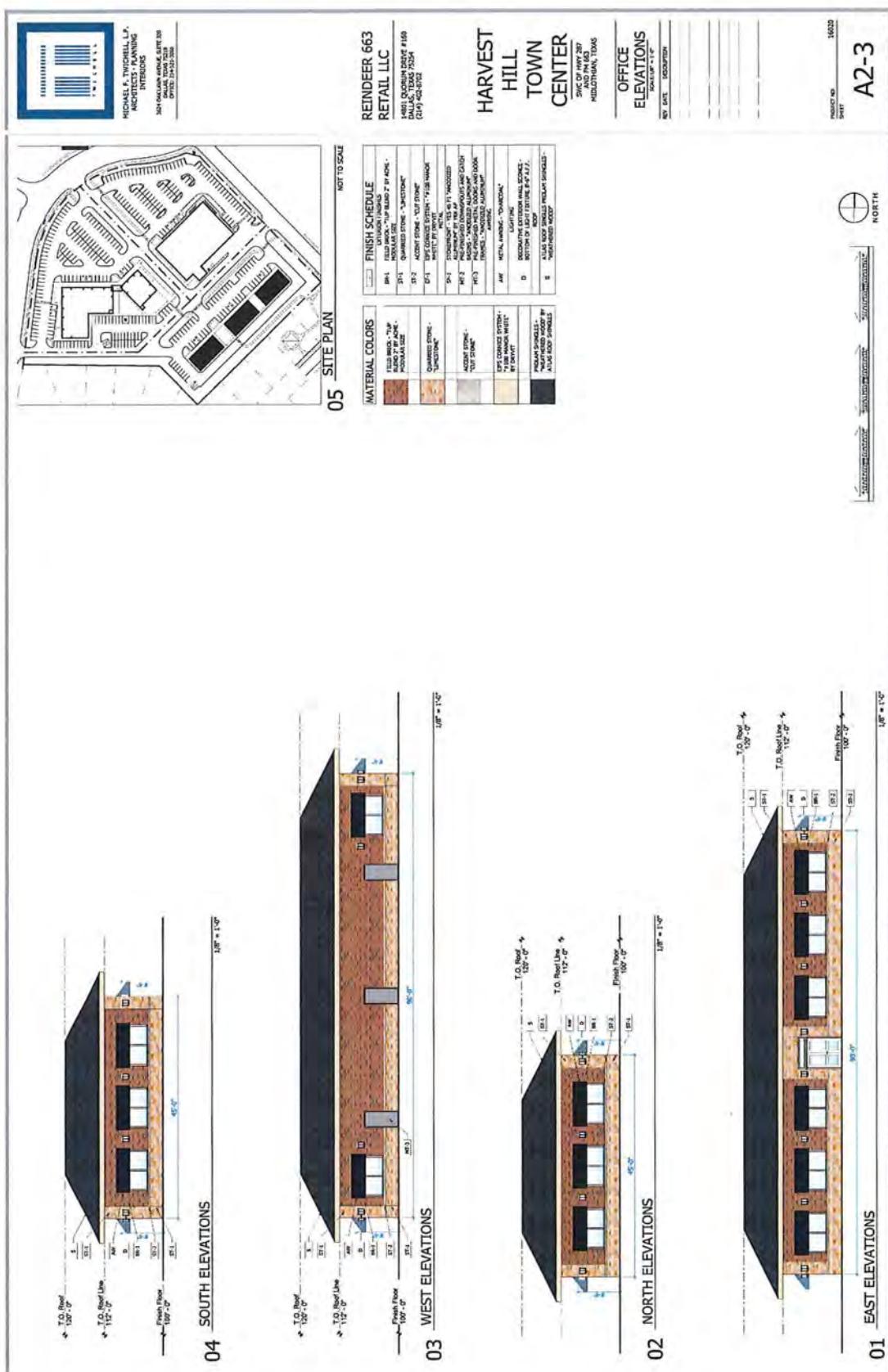
## Exhibit D "Elevations"

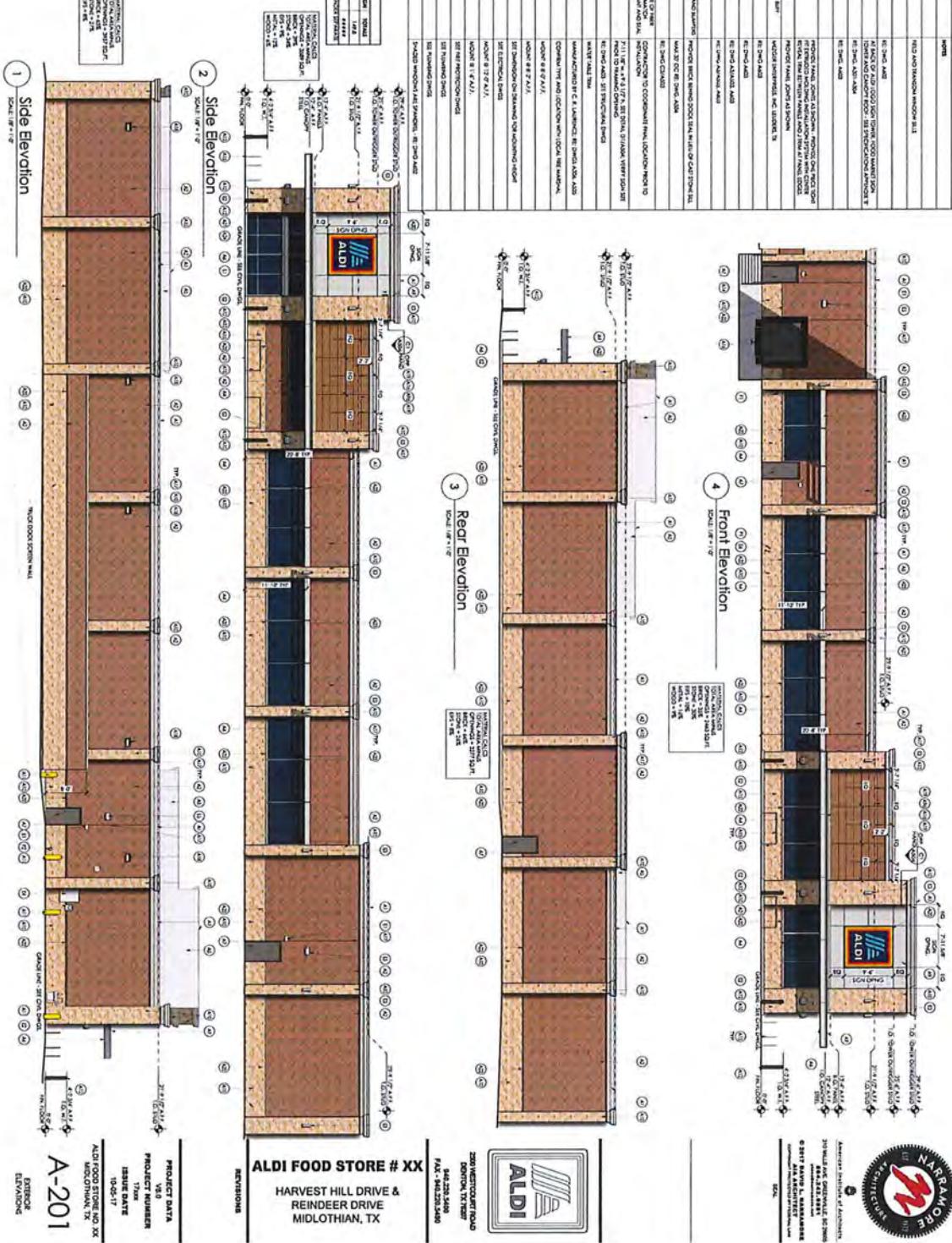


## Exhibit D "Elevations"



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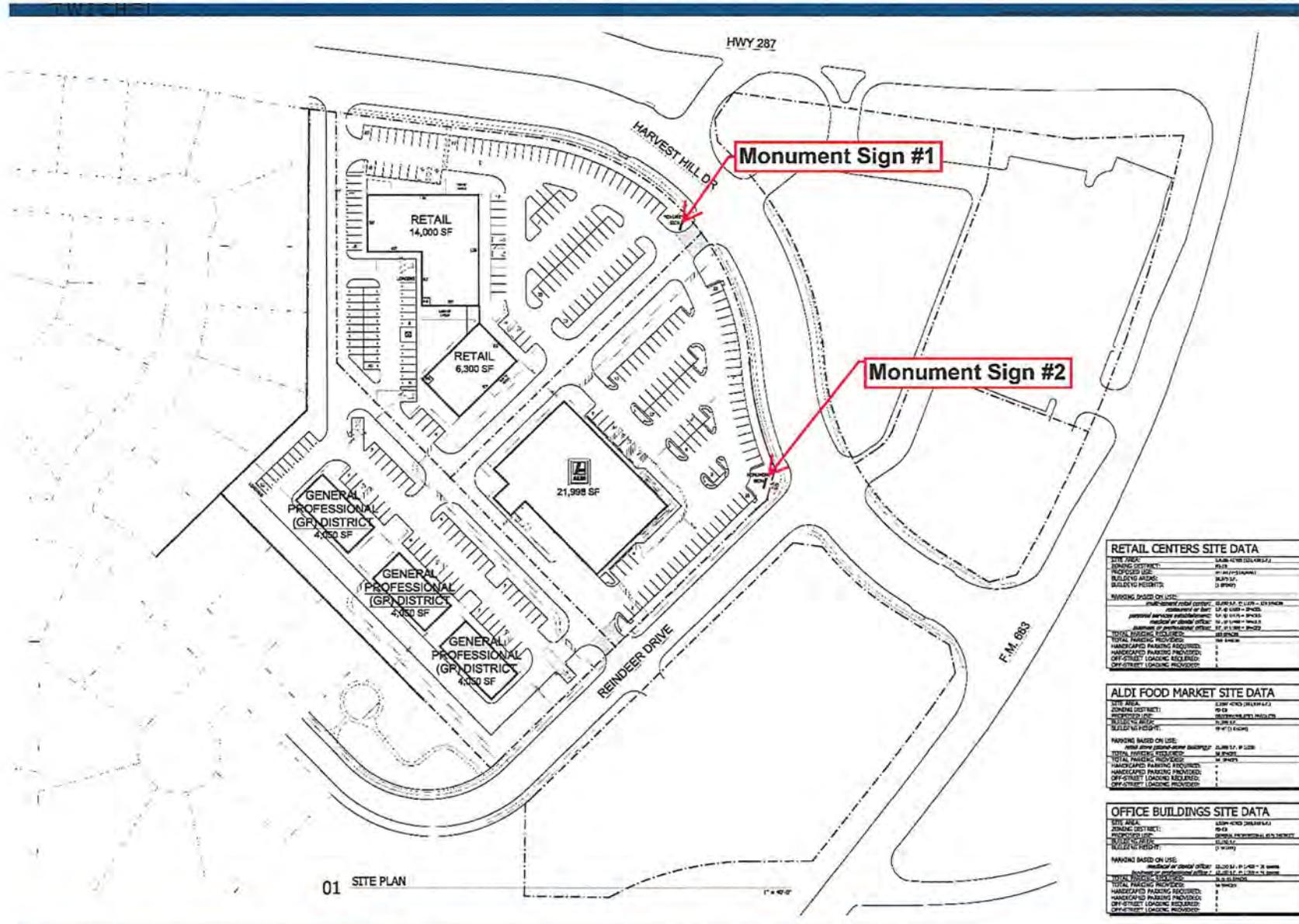




**Exhibit D "Elevations"**

### **Exhibit E “Landscape Plan”**

## Exhibit F “Sign Plan”



## Exhibit G “Monument Sign Elevations”

Signage Exhibit for Aldi/MQ Development  
Harvest Hill Drive, Midlothian, Texas



**Tenant Names for Illustration Only**

Masonry Materials for signage will be consistent with Building materials and colors

**There will be two freestanding structures  
of an overall size of 10'x10', each monument sign  
will have a total 50 SF of signage area for tenants.**

## Exhibit H “Canopy and Awning Colors”



NOTE: Colors above are not exact representations of actual PAC-CLAD colors. Ask a PAC representative for a color-chip chart or painted metal samples before making final color selection.