DEVELOPMENT AGREEMENT
(WOODLANDS PARK PHASES 3 AND 4)

This DEVELOPMENT AGREEMENT (Woodlands Park Phases 3 & 4) (the "**Agreement**") is made and entered into to be effective as of the 1st day of September, 2015 (the "**Effective Date**"), by and between the CITY OF KYLE, TEXAS (the "**City**"), located within Hays County, Texas, and KYLE RIVERBEND – COTTONWOOD INVESTMENTS, LLC., a Texas limited liability company (the "**Owner**"; the City and Owner are hereinafter sometimes referred to individually as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, the Owner owns a tract of land located in the City in Hays County, Texas (the "**Property**"), containing approximately 74.9± acres, and being more particularly described by metes and bounds in **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, the Property was being developed with 65' minimum lot widths with 25' front setbacks in compliance with the Property's approved preliminary plan prior to the City adopting Ordinance #438 in 2003, which, among other things, abolished old zoning districts and established new zoning districts, setbacks, and minimum lot widths for single family residential development; and

WHEREAS, after improvements to the Property had begun, the Property was rezoned to R-1-1 by the City, which requires among other things 80' minimum lot widths, and 30' front setbacks; and

WHEREAS, the City and Owner entered into a certain Compromise Agreement dated September 29, 2006 (the "**Compromise Agreement**") attached hereto as **Exhibit B**, which, among other things, (a) established that the minimum lot widths for future phases of the Development (defined below) would be grandfathered at 65', (b) provided that the setbacks established in the Compromise Agreement would rule and control, and (c) established certain performance requirements of the Owner; and

WHEREAS, the Owner desires to sell the Property to Astra Investments I, LLC, a Texas limited liability company (the "**Future Developer**"); and

WHEREAS, the Future Developer desires to proceed with development (the "**Development**") of the Property as generally described and/or depicted in the proposed preliminary plat (the "**Concept Plan**") attached hereto as **Exhibit C** and incorporated herein by reference, which Development is anticipated to occur over a period of time in phases of various sizes and which Concept Plan is anticipated to be modified from time to time; and

WHEREAS, as a condition of purchase of the Property from the Owner, the Future Developer desires to increase the allowable percentage of variance from the requirements of the 65' minimum lot width from 25% to 75% of the lots in the Property to accommodate 55' lot widths and to address other issues as outlined below, insomuch as the Compromise Agreement

established that 65' minimum lot widths would be deemed to be the base required minimum lot width for the purposes of arriving at this calculation; and,

WHEREAS, the City has determined that development of the Property will promote local economic development within the City, will stimulate business and commercial activity within the City, and will overall benefit the City; and,

WHEREAS, it is the intent of this Agreement to establish certain legally binding restrictions and commitments to be imposed upon the Property, and the City and the Owner are proceeding in reliance on the enforceability of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the Owner agree as follows:

ARTICLE I
REPRESENTATIONS AND DEFINITIONS

1.01 Recitals. The recitals contained in this Agreement are true and correct as of the Effective Date and form the basis upon which the Parties negotiated and entered into this Agreement.

1.02 Authority.

(a) The City represents and warrants that this Agreement has been approved and duly adopted by the City Council of the City (the "**City Council**") in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act), and that the individuals executing this Agreement on behalf of the City have been authorized to do so. The City acknowledges and agrees (i) that this Agreement shall be binding upon the City and enforceable against the City in accordance with its terms and conditions, and (ii) that the performance by the City under this Agreement is authorized by Section 212.171 of the Texas Local Government Code and by Chapter 791 of the Texas Local Government Code.

(b) Owner represents and warrants that this Agreement has been approved by appropriate action of the Owner, and that the individual executing this Agreement on behalf of the Owner has been authorized to do so. The Owner acknowledges and agrees that this Agreement shall be binding upon the Owner and enforceable against the Owner in accordance with its terms and conditions.

ARTICLE II
PURPOSES, TERM, CONSIDERATION, AND JURISDICTIONAL STATUS

2.01 Purposes.

(a) Subject to the terms and provisions of this Agreement, the Parties desire to enter into this Agreement to (i) establish the Governing Regulations (as defined in **Section 3.01**) which

will govern and apply to the Development and the Property, and (ii) establish the fees and charges that will apply to the Development and the Property.

(b) Without limiting the foregoing, it is expressly understood and agreed that the letter dated June 8, 2015 from Astra Development to the City references certain exceptions and clarifications to straight zoning (as per Ordinance #378) and the Compromise Agreement that would be allowed for the Property and Development, and some of such exceptions are reiterated in this **Article II**. Such exceptions include, without limitation, the following:

(i) The terms of this Agreement, inclusive of these exceptions, would replace any conflicting terms set forth in, and clarify, the current zoning and that certain Compromise Agreement with the City dated September 29, 2006.

(ii) All front and rear setbacks shall be set at 25 feet.

(iii) Lot widths would be a minimum of 55 feet. Depth of the lots shall be a minimum of 125 feet to allow Owner to meet a lot area minimum of 6,825 square feet.

(iv) Compliance with Ordinance #824 shall be required relative to garage setbacks. However, the City agrees that in order to determine compliance, a builder shall be deemed to satisfy the ordinance when a five (5) foot setback does not exist if a complying front porch covering the front porch exists and the garage does not take up more than 60% of the front elevation. Furthermore, homes that have a third car garage option shall not be required to have a five (5) foot setback and shall not be required to meet this 60% requirement if a complying front porch exists.

(v) The minimum garage square footage shall be 400 square feet. All other parking requirements per applicable City code and ordinances shall remain in effect.

(vi) The side setback on non-corner lots shall be 5 feet.

(vii) The minimum square footage on the Property shall be 1,400 square feet.

(viii) The remaining phases of development shall not exceed 276 lots, unless an agreement is provided to the city providing for either: 1) a regional solution for drainage; or, 2) regional solution for sewer that allows the reclamation of the planned detention area or planned lift station sites currently in the southern boundary shown in Exhibit C to be reincorporated by final plat in which case the lot count shall not exceed 300.

2.02 *Consideration*. The covenants of, benefits to, and performances by the Parties set forth in this Agreement, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the Parties.

2.03 *Term*. The term (as extended, the "**Term**") of this Agreement shall initially be ninety (90) days from the Effective Date. If this Agreement is assigned to Future Developer during the initial Term, the Term (i) shall then be extended five (5) years from and after the

Effective Date, and (ii) shall be automatically extended for an additional ten (10) year period unless the Parties mutually agree in writing not to extend the Agreement; provided, however, the total duration of this Agreement, including the initial ninety (90) day Term and any successive extensions, may not exceed fifteen (15) years from the Effective Date.

ARTICLE III
REGULATION OF DEVELOPMENT

3.01 Governing Regulations. (a) Development of the Property shall be governed by the following (collectively, the "**Governing Regulations**"), subject to the provisions below:

(i) the Concept Plan attached as **Exhibit C** to this Agreement;

(ii) except as set forth herein and subject to the terms hereof, the City's subdivision regulations in effect as of the date of approval (the "**Approval**") of the preliminary plat, or in the event there is no preliminary plat then the final plat, as uniformly applied and enforced throughout the City (collectively, the "**Subdivision Regulations**"), which Subdivision Regulations are defined and established in the Kyle Municipal Code, as amended from time to time;

(iii) except as set forth herein and subject to the terms hereof, the City's development regulations and standards in effect as of the date of Approval, as uniformly applied and enforced throughout the City (collectively, the "**Development Regulations**"), which Development Regulations are defined and established in the Kyle Municipal Code, as amended from time to time;

(iv) except as set forth herein and subject to the terms hereof, the City's zoning regulations and standards in effect prior to re-zoning as modified by and subject to the Compromise Agreement, as modified by this Agreement (collectively, the "**Zoning Regulations**");

(v) except as set forth herein and subject to the terms hereof, the City's ordinances and regulations (collectively, the "**Fee Ordinances**") relating to the City's roadway and park impact fees and capital recovery fees (all of the foregoing fees and charges are herein collectively referred to as the "**City's Fees**") as of the date of Approval, uniformly applied and enforced throughout the City;

(vi) except as set forth herein and subject to the terms hereof, the City's building codes (collectively, the "**Building Codes**") in effect as of the date of Approval, as uniformly applied and enforced throughout the City;

(vii) except as set forth herein and subject to the terms hereof, such other City ordinances, statutes, rules or regulations (collectively, the "**Other Rules and Regulations**") which affect and apply to the Property and/or the Development as uniformly applied and enforced throughout the City; and

(viii) Approved Final Plats (as defined in **Section 4.01** hereof) for portions or phases of the Property that are approved, from time to time, by the City in accordance with **Section 4.01** of this Agreement.

(b) The City agrees not to place a moratorium adopted by the City after the Effective Date upon the Property unless the City, in its reasonable discretion, determines that a moratorium applicable to the Property is an absolute necessity from a health, safety and welfare standpoint and is applicable uniformly to all properties located within the City, or is required by a state or federal agency, or court with jurisdiction.

3.03 Conflicts. In the event of any conflict between this Agreement and any other ordinance, rule, regulation, standard, policy, procedure, order, guideline or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereinafter adopted, this Agreement shall control.

ARTICLE IV
PLATTING

4.01 Platting. When and as Owner desires to commence development of any portion or phase of the Property, Owner shall submit proposed preliminary and/or final plat(s) to the City for such portion of the Property. The City shall promptly review such proposed preliminary and/or final plat(s) in good faith and shall timely approve such proposed preliminary and/or final plat(s) (thereafter, "**Approved Final Plat(s)**") if such proposed preliminary and/or final plat(s) are substantially consistent and in general compliance with the Concept Plan, the Governing Regulations and this Agreement. Each Approved Final Plat shall be valid for a minimum timeframe in accordance with City municipal code PART II. CHAPTER 41 SUBDIVISIONS, ARTICLE II PROCESSING OF PROPOSED SUBDIVISIONS, SECTION 41.51.1 Expiration.

ARTICLE V
EVENTS OF DEFAULT; REMEDIES

5.01 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than ten (10) days for a monetary default, and thirty (30) days for a non-monetary default, after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance necessary to cure such noticed default and thereafter diligently and continuously pursues performance necessary to cure such noticed default until the alleged failure has been cured.

5.02 Remedies. (a) If a Party is in default hereunder, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall:

(i) entitle the aggrieved Party to terminate this Agreement; or

(ii) entitle the aggrieved Party to suspend performance under this Agreement unless the portion of the Property for which performance is suspended is the subject of the default (for example, the City shall not be entitled to suspend its performance with regard to the development of "Tract X" by "Developer A" based on the grounds that Developer A is in default with respect to any other tract or based on the grounds that any other developer is in default with respect to any other tract); or

(iii) adversely affect or impair the current or future obligations of the City under applicable law to provide water or wastewater/sanitary sewer service (whether wholesale or retail) or any other service to any developed portion of the Property or to any undeveloped portion of the Property unless the undeveloped portion of the Property is the subject of the default; or

(iv) limit the Term hereof.

(b) No default under this Agreement by any Party shall affect, in any way, (i) the obligation of the City to process preliminary and final Plats and plans and specifications, or issue permits or perform inspections, with respect to portions of the Property that are not directly impacted by the default, or (ii) the obligations of the City under any separate agreement.

ARTICLE VI
ASSIGNMENT AND ENCUMBRANCE

6.01 Assignment by Owner to Successor Owner(s). Owner (and each Owner Assignee as defined below) has the right (from time to time without the consent of the City, but upon prior written notice to the City) to assign this Agreement, in whole or in part, and including any whole or partial obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "**Owner Assignee**") including any Owner Assignee that is or will become an owner of any portion of the Property, provided that the Owner is not in breach of this Agreement at the time of such assignment. Notice of each proposed assignment to an Owner Assignee (the "**Owner Assignee's Notice**") shall be provided to the City at least fifteen (15) days prior to the effective date of the assignment, which notice shall include a copy of the proposed assignment document together with the name, address, telephone number, and e-mail address (if available) of a contact person representing the Owner Assignee who the City may contact for additional information regarding the experience and background of the Owner Assignee. Each assignment shall be in writing executed by Owner and the Owner Assignee and shall obligate the Owner Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each fully executed assignment to an Owner Assignee shall be provided to all Parties within fifteen (15) days after execution. From and after such assignment, the City agrees to look solely to the Owner Assignee for the performance of all obligations under this Agreement and agrees that Owner shall be released from performing such obligations and from any liability that results from the Owner Assignee's failure to perform such obligations; provided, however, if a copy of the assignment is not received by the City within fifteen (15) days after execution, the only effect thereof shall be that Owner shall not be released until the City receives such copy of the assignment.

6.02 Encumbrance by Owner and Assignees. Owner and Owner Assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including Notice (as defined in **Section 8.02** hereof) information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement, and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. A lender is not a Party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured.

6.03 Encumbrance by City. The City shall not collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of its rights, title, or interest under, this Agreement without Owner's prior written consent.

ARTICLE VII
RECORDATION, RELEASES, AND ESTOPPEL CERTIFICATES

7.01 Binding Obligations. Pursuant to the requirements of Section 212.172(f) of the Texas Local Government Code, this Agreement, and all amendments hereto, shall be recorded in the deed records of Hays County upon execution hereof. In addition, all assignments of this Agreement shall be recorded in the deed records of Hays County. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; provided, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any End-Buyer except for land use and development regulations that apply to the Property or specific lots; provided, further, that this provision shall not negate the End-Buyer's obligation for the payment of ad valorem taxes and assessments (including assessments that result from the application of this Agreement) applicable to such End-Buyer's property. For purposes of this Agreement, the Parties agree (a) that the term "**End-Buyer**" means any owner, developer, tenant, user, or occupant of a structure on the particular property, (b) that the term "**fully developed and improved lot**" means any lot, regardless of proposed use, for which a final Approved Final Plat has been approved by the City and recorded in the deed records, and (c) that the term "**land use and development regulations that apply to specific lots**" mean the Governing Regulations (including any authorized revisions thereto).

7.02 Releases. From time to time upon the written request of the Owner, the City shall execute, in recordable form, a full or partial release of this Agreement if the Owner's obligations under this Agreement have been satisfied, subject to the continued application of the Governing Regulations.

7.03 Estoppel Certificates. From time to time upon written request of Owner, the City will execute a written estoppel certificate identifying any obligations of the Owner under this Agreement that are in default or, with the giving of notice or passage of time, would be in default, and stating, to the extent that such default exists, that to the best knowledge and belief of the City, Owner is otherwise in compliance with its duties and obligations under this Agreement. The City's failure to timely execute a written estoppel certificate may not be held or considered to be an implied acknowledgment that Owner is not in default, or that the other requirements set forth above have been satisfied.

ARTICLE VIII
ADDITIONAL PROVISIONS

8.01 Notices. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "**Notice**") shall be in writing, shall be signed by or on behalf of the Party giving the Notice, and shall be effective on the earlier of (a) on the tenth (10^{th}) business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by facsimile and electronic mail, (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed), or (c) on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person, delivery by regular mail, delivery by facsimile (with a confirmation copy sent by regular mail), or delivery by email (with a confirming copy sent by facsimile). Notices given pursuant to this **Section 8.01** shall be addressed as follows:

To the City:	City of Kyle P. O. Box 40 Kyle, Texas 78640 Attention: City Manager Telephone: (512) 268-5341 Facsimile: (512) 268-0675 Email: _____
To the Owner:	Kyle Riverbend – Cottonwood Investments, LLC 121 N.E. Loop 820, Suite 300 Hurst, Texas 76053 Attention: Greg Goodman Telephone: (817) 919-9565 ~~Facsimile: (817) 457-4060~~ Email: ~~greg.goodman@charter.net~~ goodgregman @ charter.net
With a copy to	Astra Investments I, LLC

9219 Arbor Trail Drive
Dallas, Texas 75243
Attention: Justin Bono
Telephone: (214) 662-5530
Facsimile: (214) 282-9592
Email: jbono@astracompanies.com

With a copy to:

Glen A. Bellinger
Bellinger & Suberg, L.L.P.
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231
Telephone: (214) 954-9540
Facsimile: (214) 954-9541
Email: gbellinger@bd-law.com

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least ten (10) days written notice to the other Parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

8.02 Reservation of Rights. This Agreement constitutes a "permit" within the meaning of Chapter 245, Texas Local Government Code, as amended. Except as otherwise provided in this **Section 8.02**, Owner does not, by entering into this Agreement, waive (and Owner expressly reserves) any right that Owner may now or hereafter have with respect to any claim (a) of "vested" or "protected" development or other property rights arising from Chapters 43 or 245, Texas Local Government Code, as amended, or otherwise arising from common law or other state or federal laws, or (b) that an action by the City constitutes a "taking" or inverse condemnation of all or any portion of the Property. Without limiting the generality of the foregoing, Owner does not waive (and expressly reserves) any such claims (as to vested or protected development and a taking without compensation) that result from amendments and revisions to the Governing Regulations, state and federal requirements, and other City regulations described in this Agreement. In addition, to the extent that the City fails to provide adequate and continuous retail water and wastewater service in accordance with the requirements of this Agreement, the Owner does not waive (and expressly reserves) the right to seek retail water and sewer services from an alternative provider. Owner does, however, waive such claims to the extent they arise from or are based on development of the Property in accordance with the Governing Regulations. To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws. To the extent that it is not inconsistent with this Agreement, no provision of this Agreement shall constitute a waiver or release of any rights, privileges, and immunities of each Party under applicable laws. This Agreement shall be enforceable under state and federal law.

8.03 Interpretation. The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this

Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and not more strongly or favorably for or against any Party, regardless of which Party originally drafted the provision.

8.04 Enforceability. This Agreement may be enforced by the Owner including as provided under §271.153 of the Texas Local Government Code or by the City by any proceeding at law or equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

8.05 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties, executed with the same formalities as this instrument. No agent of either the City or the Owner, unless authorized in writing by the agent's principal, has any authority to waive, alter, or enlarge this Agreement, or to make any new or substituted or different contracts, representations, or warranties.

8.06 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

8.07 Applicable Law; Venue. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas without regard to conflicts of law principles, and all obligations of the Parties are performable in Hays County, Texas. Venue for any action to enforce or construe this Agreement shall be Hays County, Texas.

8.08 Non-Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision, and must be executed with the same formalities as this instrument. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

8.09 No Third-Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties hereto and their respective successors and assigns. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

8.10 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; provided, however, in the event a Party is unable, due to force

majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance shall give Notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence and reasonable care.

8.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

8.12 Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

8.13 Cooperate. As used in this Agreement, the term "cooperate" means that the City will take, to the extent necessary, reasonable action(s) in a timely manner consistent with (a) all applicable rules and regulations to accomplish the objectives and intent of this Agreement, (b) accepted sound engineering practices in the area of public works, and (c) good government practices as demonstrated by responsible municipalities in north central Texas.

8.14 Exhibits. The following Exhibits are attached to and incorporated into this Agreement and are part of this Agreement:

Exhibit A Metes and Bounds Description of Property
Exhibit B Compromise Agreement
Exhibit C Concept Plan

[THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

CITY:

CITY OF KYLE, TEXAS

By: _____
Name: R. Todd Webster
Title: Mayor

ATTEST:

By: _____
Name: Amelia Sanchez
Title: City Secretary

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

On this the 3rd day of September, 2015, before me, the undersigned personally appeared R. Todd Webster, Mayor, and Amelia Sanchez, City Secretary, for the City of Kyle and proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same in their authorized capacity.

JENNIFER A. VETRANO
Notary Public, State of Texas
My Commission Expires
February 17, 2017

_____
Notary Public in and for the State of Texas

OWNER:

KYLE RIVERBEND - COTTONWOOD INVESTMENTS, LLC,
a Texas limited liability company

By: _____
Greg Goodman, Manager

THE STATE OF TEXAS §
§
COUNTY OF ~~DALLAS~~ Tarrant §

This instrument was acknowledged before me on the 15th day of Sept, 2015, by Greg Goodman, Manager of Kyle Riverbend – Cottonwood Investments, LLC, a Texas limited liability company, on behalf of said entity.

_____
Notary Public in and for the State of Texas

CYNTHIA D. GRAHAM
MY COMMISSION EXPIRES
March 22, 2019

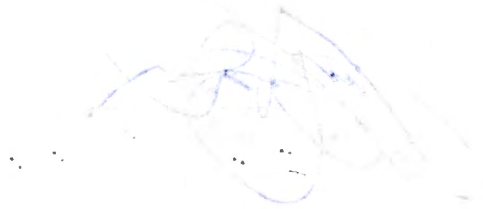


EXHIBIT A

METES AND BOUNDS DESCRIPTION OF PROPERTY

[See attached]

PAPE-DAWSON ENGINEERS

FIELD NOTES

FOR

A 74.9 ACRES OF LAND OUT OF THE WILLIAM HEMPHILL SURVEY, ABSTRACT NO. 221, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF: A CALLED 101.1435 ACRE TRACT OF LAND IN DEED RECORDED IN VOLUME 2021, PAGE 830 AND A CALLED 41.00 ACRE TRACT OF LAND IN DEED RECORDED IN VOLUME 2021, PAGE 835 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS

BEGINNING at a point in the northeasterly right-of-way line of County Road 158, said point being the southwesterly corner of a 125.41 acre tract of land in deed to Kalogridis & Kalogridis development, Inc. recorded in Volume 4917, Page 152 of said Official Public Records, same being the westernmost corner of said 101.1435 acre tract for the westernmost corner and **POINT OF BEGINNING** hereof;

THENCE departing the northeasterly right-of-way line of said County Road 158 with the southeasterly boundary line of said 125.41 acre tract, same being the northwesterly boundary line of said 101.1435 acre tract **N 43°19'05" E** for a distance of **1345.52 feet** to a point being the northwesterly corner of "Woodlands Park, Phase 2" a subdivision according to the plat of record in Volume 14, Page 307 of said Official Public Records, for the northernmost northeasterly corner hereof;

THENCE departing the southeasterly boundary line of said 125.41 acre tract, with the southwesterly boundary line of said "Woodlands Park, Phase 2", through the interior of said 101.1435 acre tract, the following (7) courses and distances:

1. **S 46°39'42" E** for a distance of **30.17 feet** to a point,
2. **S 43°20'07" W** for a distance of **80.00 feet** to a point,
3. **S 46°39'42" E** for a distance of **164.91 feet** to a point,
4. **S 43°20'18" W** for a distance of **36.45 feet** to a point,
5. **S 46°39'42" E** for a distance of **870.00 feet** to a point,
6. **N 43°20'18" E** for a distance of **45.32 feet** to a point,
7. **S 46°39'42" E** for a distance of **115.00 feet** to a point in the northwesterly boundary line of said 41.00 acre tract, said point being the southwesterly corner of said "Woodlands Park, Phase 2", for an angle point hereof;

THENCE with the southeasterly boundary line of said "Woodlands Park, Phase 2", same being the northwesterly boundary line of said 41.00 acre tract, the following three (3) courses and distances:

1. **N 43°20'18" E** for a distance of **335.00 feet** to a point,

2. **N 44°17'35" E** for a distance of **60.01 feet** to a point, and

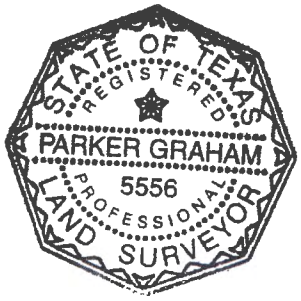
3. **N 43°20'22" E** for a distance of **404.28 feet** to a point being the westernmost corner of "Seth A. Bray Subdivision" a subdivision according to the plat of record in Volume 17, Page 14 of said Official Public Records, same the northernmost corner of said 41.00 acre tract, for the easternmost northeasterly corner hereof;

THENCE with the southwesterly boundary line of said "Seth A. Bray Subdivision", same being the northeasterly boundary line of said 41.00 acre tract, **S 47°23'29" E** for a distance of **855.57 feet** to a point in the northwesterly boundary line of a called 14.917 acre tract of land in deed to Kenneth Archerani recorded in Document Number '9912643 of said Official Public Records, said point being the southernmost corner of said "Seth A. Bray Subdivision", for the easternmost corner hereof;

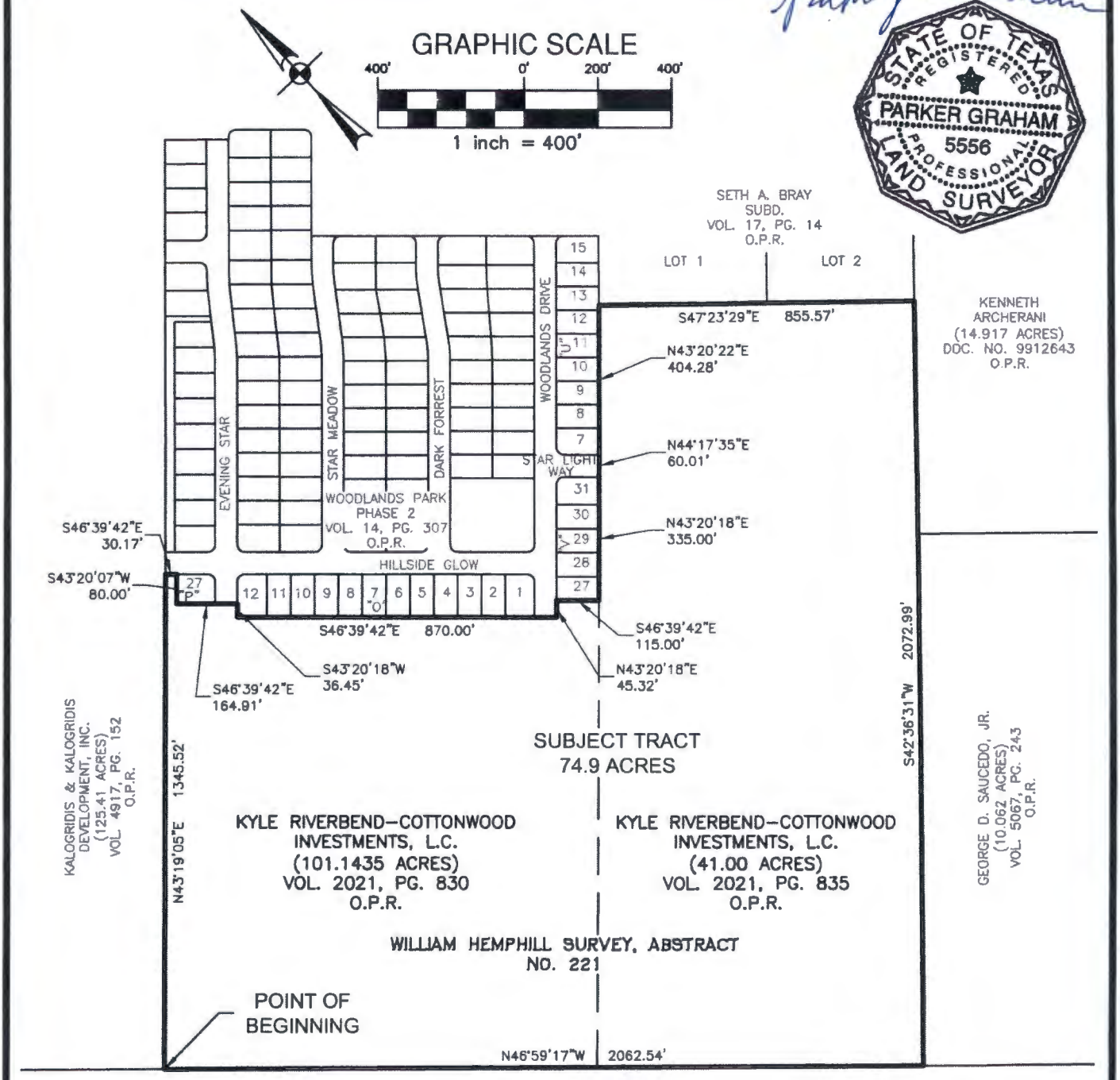
THENCE with, in part the northwesterly boundary line of said 14.917 acre tract and, in part, the northwesterly boundary line of a 10.062 acre tract of land in deed to George D. Saucedo, Jr., recorded in Volume 5067, Page 243 of said Official Public Records, same being the southeasterly boundary line of said 41.00 acre tract, **S 42°36'31" W** for a distance of **2072.99 feet** to a point in the northeasterly right-of-way line of said County Road 158, said point being the westernmost corner of said 10.062 acre tract, same being the southernmost corner of said 41.00 acre tract, for the southernmost corner hereof;

THENCE with the northeasterly right-of-way line of said County Road 158, same being, in part, the southwesterly boundary line of said 41.00 acre tract and , in part , the southwesterly boundary line of said 101.1435 acre, **N 46°59'17" W** for a distance of **2062.54 feet** to the **POINT OF BEGINNING** hereof and containing 74.9 acres of land.

This survey does not represent an on the ground survey. It has been compiled with the use of public records and partial work product of Pape-Dawson Engineers, Inc.



PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: June 5, 2015
JOB No.: 50868-00
DOC.ID.: H:\survey\CIVIL\50868-00\Zoning Exhibit\Z50868-00 FN.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-01



LEGEND:

O.P.R. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
"A" BLOCK LETTER

NOTES:

1. THE PROFESSIONAL SERVICES PROVIDED HEREWITH INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. THE BEARINGS ARE BASED RECORD DATA
3. ADJOINERS SHOWN FOR INFORMATIONAL PURPOSES ONLY.
4. THIS SURVEY DOES NOT REPRESENT AN ON THE GROUND SURVEY. IT HAS BEEN COMPILED WITH THE USE OF PUBLIC RECORDS AND PARTIAL WORK PRODUCT OF PAPE-DAWSON ENGINEERS, INC.

A 74.9 ACRES OF LAND OUT OF THE WILLIAM HEMPHILL SURVEY, ABSTRACT NO. 221, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF: A CALLED 101.1435 ACRE TRACT OF LAND IN DEED RECORDED IN VOLUME 2021, PAGE 830 AND A CALLED 41.00 ACRE TRACT OF LAND IN DEED RECORDED IN VOLUME 2021, PAGE 835 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

PAPE-DAWSON ENGINEERS
7800 SHOAL CREEK BLVD SUITE 220 WEST | AUSTIN TEXAS 78757 | PHONE: 512.454.8711 FAX: 512.459.8867
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 100288-00

JOB No.: 50868-00

Date: Jun 05, 2015, 2:14pm User ID: pgraham
File: H:\survey\CIVIL\50868-00\Zoning Exhibit\250868-00.dwg

EXHIBIT B

COMPROMISE AGREEMENT

[See attached]

Post-it® Fax Note 7671	Date 9-9-07	# of pages 2
To Dustin Goss	From Joel Wilkinson	
Co./Dept. Papa Dawson	Co. NWA	
Phone #	Phone # 462-3373	
Fax # 459-8867	Fax #	

Memorandum

Date: September 29, 2006

To: Mayor and City Council

Subject: Request for Exceptions and Compromise Agreement by Riverbend-Cottonwood Investments

The staff has continued its discussions and deliberations with representatives of Kyle Riverbend-Cottonwood Investments, developers of the Woodlands Park residential subdivision (FM150 east, across from Waterleaf). As I am sure you recall from our prior discussion, the developers have requested special consideration from the City Council as they prepare to move forward with development of Phases 2, 3, and 4 of Woodlands Park.

Due to a variety of timing and development issues (*due entirely to the actions or inactions of the developers, owners and/or prior owners*), the appropriate filing of the Final Plats for Phases 2, 3, and 4 were not submitted in a timely manner and the Preliminary Plan as approved for Woodlands Park has now expired. In accordance with city regulations, the developers must now re-submit the Preliminary Plan and any subsequent Final Plats for the development to lawfully proceed.

At issue, however, is the fact that the previously-approved Preliminary Plan for Woodlands Park had been submitted and approved under subdivision and zoning requirements that were in place prior to the new Subdivision and Zoning Ordinances adopted by Council in November, 2003. Therefore, any re-submission of the Woodlands Park Preliminary Plan would be reviewed for compliance with the new requirements - which would apparently necessitate substantial changes in the originally approved development plans for Woodlands Park. As such, the developers have requested that Council grant the appropriate exceptions that would allow them to proceed under the originally-approved (but now expired) plans.

The granting of such a request is certainly within Council's legal authority; and Council has requested that the staff attempt to negotiate a mutually-acceptable compromise to effectively address this situation.

Accordingly, we have continued discussions with Royce Lee, President of Riverbend-Cottonwood Investments and have developed a reasonable compromise that may provide the basis for Council to consider granting their request and allowing the Woodlands Park development to proceed consistent with the originally approved Preliminary Plan. In exchange for granting this request (which would essentially allow the development to be constructed under subdivision and zoning requirements that were in place prior to November, 2003), the developers have agreed to comply with additional requirements and/or stipulations as follows:

- Residential density and/or total LUE count will be reduced by six (6) from the original Preliminary Plan for Woodlands Park; and will not exceed 392 for Phases 2, 3, and 4.
- All homes constructed will provide a minimum of 1,600 square feet of living area.

- All homes will be permitted a twenty-five (25') foot setback, but will comply fully with all other applicable setback requirements for Single-Family Residential 1 – District "R-1-1" within City Zoning Ordinance No. 438.
- All homes, buildings, structures, garages, and/or accessory buildings constructed within the development will have four (4) sides composed of 100% brick, stone, hardiplank, or other approved (by the City) masonry product.
- Developers will widened the main traffic thoroughfare (Woodlands Drive) through Phases 2, 3, and 4 to provide sufficient spacing and construct a designated bicycle traffic lane, in addition to the appropriate vehicular traffic lanes.
- Developers will construct a public neighborhood park, at least one (1) acre in size, which will include the appropriate and desired amenities (to be approved by the City Parks Board).
- Park Land Dedication Fees shall be doubled from the original Preliminary Plan for Woodlands Park and the developer will pay five hundred dollars ($500.00) per dwelling unit, due at the time of filing of the Final Plats for Phases 2, 3, and 4

While the City is certainly under no obligation to grant this request, as the developers have clearly failed to comply with city regulations, the City Council and staff have clearly demonstrated in the past a desire to work with residential builders and developers; and to effectively support appropriate residential development within our city.

In addition, the current developers of Woodlands Park have demonstrated a desire to work with the City as best they believe they can while maintaining an economically viable development project.

Therefore, it is my recommendation that the compromise proposal as described herein be approved by City Council, as it provides the City with additional overall benefits it might not otherwise achieve and will slightly reduce overall density from the initial development; while allowing the builders/developers to complete essentially the original development as planned.

Please let me know at your earliest convenience if you have any questions or comments. If approved by the City Council and Kyle Riverbend-Cottonwood Investments, I recommend the parties sign below and this document act as the binding contractual agreement for proceeding forward with platting for Phases 2, 3 and 4.

Thomas L. Mattis
City Manager

AGREED and APPROVED:

Miguel Gonzalez, Mayor

Royce L. Lee, President
Kyle Riverbend-Cottonwood Investments

ATTEST:

Minerva Falcon, City Secretary

EXHIBIT C

CONCEPT PLAN

[See attached]

JOB NO	50513.03
DATE	JUNE 2015
DESIGNER	RFH
CHECKED	DRAWN RFH
SHEET	1 OF 1

WOODLANDS PARK
AMENDED CONCEPTUAL PLAN
PHASES III & IV
REVISED 55' X 125' LOT DIMENSIONS

PAPE-DAWSON ENGINEERS

7800 SHOAL CREEK BLVD SUITE 220 WEST | AUSTIN TEXAS 78757 | PHONE: 512.454.8711 FAX: 512.459.8867

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

REVISIONS