

Notice of confidentiality rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security number or your driver's license number.

EASEMENT AGREEMENT FOR WASTEWATER

Date: _____, 2017

Grantor: Kyle Apartments, LLC

Grantor's Mailing Address:

2088 Old Taylor Road
Oxford, Mississippi 38655

Grantee: City of Kyle, a Texas municipal corporation

Grantee's Mailing Address:

100 Center Street
Kyle, Texas 78640

Easement Property:

A tract of land consisting of 0.2043 acres out of the Elisha Pruett Survey No. 23, Abstract No. 376 and the Augustus Brichta Survey, Abstract No. 517, Hays County, Texas, being a portion of that 23.77 acre tract described as Exhibit A-1 conveyed to Dacy Lane, LLC by deed recorded in Document No. 2011-11022936 (Volume 4198, Page 372) of the Official Public Records of Hays County, Texas; the said 0.2043 acre tract is more particularly described by metes and bounds on Exhibit A attached.

Easement Purpose: For installation, construction, operation, maintenance, inspection, repair, upgrade and removal of a wastewater line (the "Wastewater Line") over, under, in, along, across and within the Easement Property together with the right and privilege at all times to the Grantee, its agents, employees and representatives of ingress and egress to and from the Easement Property for the purpose of installing, constructing, operating, constructing, maintaining, inspecting, replacing, repairing, upgrading and removing the Wastewater Line as Grantee deems reasonably necessary.

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: None.

Exceptions to Warranty: All easements, exceptions, covenants, conditions, restrictions, reservations and rights appearing of record.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns a non-exclusive easement over, in, on, under and across the Easement Property for the Easement Purpose and for the benefit of Grantee, its successors and assigns, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's successors, and assigns forever. Grantor binds Grantor and Grantor's successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is non-exclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors, and assigns. Notwithstanding the foregoing, the Grantee is not obligated to restore or relocate any improvements located in, upon or under the Easement Property.

2. *Duration of Easement.* The duration of the Easement is for the entire period of time that the Easement Property is used for the Easement Purpose.

3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easement by Grantee for the Easement Purposes. Grantor reserves for Grantor and Grantor's successors, and assigns the right to use all or part of the Easement in conjunction with Grantee and the right to convey to others the right to use all or part of the Easement in conjunction with Grantee, as long as such further conveyance is subject to the terms of this agreement.

4. *Secondary Easement.* Grantee has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain wastewater line(s) reasonably suited for the Easement Purpose within the Easement Property. However, Grantee must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefitted by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be

deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney Fees.* If any party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney fees and court and other costs.

7. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective, successors, and assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Hays County, Texas.

9. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

12. *Indemnity.* Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party.

13. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

14. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the lack of enforceability does not destroy the basis of the bargain among the parties, no other provision is affected, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

15. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or

not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

16. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

SIGNATURES ON FOLLOWING PAGE

GRANTOR:

Kyle Apartments, LLC

By: [Signature]
David Blackburn, Its Manager

STATE OF MISSISSIPPI ,

COUNTY OF LAFAYETTE ,

This instrument was acknowledged before me on the 27 day of April, 2017, by David Blackburn, Manager of Kyle Apartments, LLC on behalf of the company.



Margaret Barefoot
Notary Public in and for the State of Mississippi

Margaret Barefoot
Printed Name

My Commission Expires: 5/1/20

GRANTEE:

CITY OF KYLE, a Texas municipal corporation

By: _____
Todd Webster its Mayor

STATE OF TEXAS
COUNTY OF HAYS ,

This instrument was acknowledged before me on the ____ day of _____, 2017 by Todd Webster, the mayor of the City of Kyle, a Texas municipal corporation, on behalf of the City.

Notary Public in and for the State of Texas

Printed Name

My Commission Expires: _____

STATE OF TEXAS

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§
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COUNTY OF HAYS

FIELDNOTE DESCRIPTION, to accompany survey, of a 0.2043 acre tract out of the Elisha Pruett Survey No. 23, Abstract No. 376 and the Augustus Brichta Survey, Abstract No. 517, Hays County, Texas, being a portion of that 23.77 acre tract, described as Exhibit A-1, conveyed to Dacy Lane, LLC, by deed recorded in Document No. 2011-11022936 (Volume 4198, Page 372) of the Official Public Records of Hays County, Texas; the said 0.2043 acre tract is more particularly described by metes and bounds as follows:

COMMENCING at a ½" iron rod, with plastic cap marked "4601", found for the northeast corner of a 9.90 acre tract, described as Exhibit A, conveyed to Kyle Apartments, LLC, by deed recorded in Document No. 2014-14037496 (Volume 5097, Page 754) of the said Official Public Records and the northwest remainder corner of the aforesaid 23.77 acre tract, same being on the southerly right-of-way line of Beebee Road (County Road 122), right-of-way varies;

THENCE, S64°45'05"E, leaving the easterly line of said 9.90 acre tract, with the common northerly line of the said 23.77 acre tract and southerly right-of-way line of Beebee Road, for a distance of 52.27 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", set for the most northerly corner and POINT OF BEGINNING of the herein described tract;

THENCE, S64°45'05"E, continuing with the northerly line of the said 23.77 acre tract and southerly right-of-way line of Beebee Road, for a distance of 15.68 feet to a calculated point for the corner, from which a ½" iron rod, with plastic cap marked "4601", found bears S64°45'05"E, 545.55 feet;

THENCE, leaving the southerly right-of-way line of Beebee Road, across the aforesaid 23.77 acre tract, for the following four (4) courses:

- 1) S08°15'38"W, 138.84 feet to a calculated angle point;
- 2) S25°15'38"W, 196.73 feet to a calculate angle point;
- 3) S15°29'58"E, 114.20 feet to a calculated angle point;
- 4) S25°15'38"W, 85.30 feet to a calculated angle point on the southerly line of said 23.77 acre tract, same being on the northerly line of a 22.03 acre tract, described as "Exhibit B", Tract One, conveyed to Kyle Bluebonnet MHC, LLC, by deed recorded in Document No. 2015-15002027 (Volume 5121, Page 81) of the said Official Public Records, same being on the northerly line of Lot 89 of Bluebonnet Estates, an unrecorded subdivision, from which a ½" iron rod, with plastic cap marked "4601", found for the southeast corner of the aforesaid 23.77 acre tract, bears S61°03'04"E, 1018.16 feet;

THENCE, N61°03'04"W, with the common southerly line of the said 23.77 acre tract and northerly line of the said 22.03 acre tract, at 93.27 feet pass the calculated northwest corner of said Lot 89, for a total distance of 103.27 feet to a calculated point, from which the calculated southeast corner of the aforesaid 9.90 acre tract, being on the said common line between the 23.77 acre tract and the 22.03 acre tract, bears N61°03'04"W, 103.15 feet;

THENCE, leaving the northerly line of the said 22.03 acre tract, across the said 23.77 acre tract, for the following six (6) courses:


- 1) N28°57'02"E, 10.00 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", set for an angle point;
- 2) S61°03'04"E, 87.59 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", set for an angle point;
- 3) N25°15'38"E, 68.74 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", set for an angle point;
- 4) N15°29'58"W, 114.20 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", set for an angle point;
- 5) N25°15'38"E, 200.06 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", set for an angle point;
- 6) N08°15'38"E, 141.18 feet to the POINT OF BEGINNING, CONTAINING within these and bounds 0.2043 acres of land area.

Basis of Bearing is the Texas State Plane Coordinate System, South Central Zone, NAD83 (Grid).

I, Blaine J. Miller, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 28th day of October, 2015.




Blaine J. Miller
Registered Professional Land Surveyor
No. 5121 State of Texas

**SURVEY OF A 0.2043 ACRE EASEMENT
OUT OF THE
ELISHA PRUETT SURVEY No. 23,
ABSTRACT No. 376 AND
AUGUSTUS BRICHTA SURVEY,
ABSTRACT NO. 517
HAYS COUNTY, TEXAS**

ELISHA PRUETT
SURVEY NO. 23
ABST. NO. 376

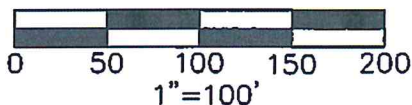
THE MEADOWS AT KYLE II, LTD.
(52.990 AC.)
DOC. NO. 2006-06023937
O.P.R.H.C.

LEGEND

- O.P.R.T.C. OFFICIAL PUBLIC RECORDS HAYS COUNTY
() RECORD INFORMATION
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
R.O.W. RIGHT-OF-WAY
● 1/2" IRON ROD FOUND
⊗ 1/2" IRON ROD FOUND WITH CAP MARKED "4601"
● 1/2" IRON ROD SET WITH CAP MARKED "CAPITAL SURVEYING CO., INC."
▲ CALCULATED POINT

BREAK IN SCALE

KYLE APARTMENTS, LLC
(9.90 AC.)
DOC. NO. 2014-14037496
O.P.R.H.C.



KYLE BLUEBONNET MHC, LLC
(TRACT ONE)
(22.03 AC.)
DOC. NO. 2015-15002027
O.P.R.H.C.

BEEBEE ROAD
(R.O.W. VARIES)
S84°45'05"E 613.52'
(S67°58'14"E) 545.55'

- | | |
|----|---------------------|
| L1 | S84°45'05"E 15.68' |
| L2 | S15°29'58"E 114.20' |
| L3 | S25°15'38"W 85.30' |
| L4 | N61°03'04"W 103.27' |
| L5 | N28°57'02"E 10.00' |
| L6 | S61°03'04"E 87.59' |
| L7 | N25°15'38"E 68.74' |
| L8 | N15°29'58"W 114.20' |

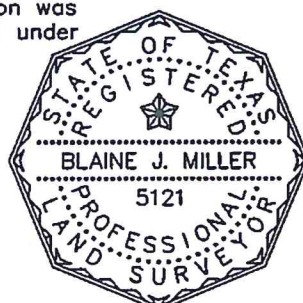
REMAINDER
DACY LANE, LLC
(23.77 AC.)
DOC. NO. 2011-11022936
O.P.R.H.C.

AUGUSTUS BRICHTA SURVEY
ABST. NO. 517

BLUEBONNET
ESTATES
(UNRECORDED)

I, Blaine J. Miller a Registered Professional Land Surveyor do hereby certify that the above map or plat is true and correct to the best of my knowledge and that the property shown hereon was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin,
Travis County, Texas this the 28th day of
October, 2015, A.D.



BLAINE J. MILLER
Registered Professional Land Surveyor
No. 5121 - State of Texas

BEARING BASIS: Texas State Plane Coordinate
System: South Central Zone, NAD83 (Grid).

Dwg. # 15525E1 CRD # 15522 SHEET 3 OF 3

CSCI
CAPITAL
SURVEYING
COMPANY
INCORPORATED

925 Capital of Texas Highway South
Building B, Suite 115
Austin, Texas 78748
(512) 327-4008

FIRM REGISTRATION
No. 101267-D

Consent, Joinder and Subordination by Lender

The undersigned First Tennessee Bank National Association joins in the execution of this waste water line easement to evidence its consent and agreement to the terms and provisions hereof, and to confirm and agree that any and all liens held by the undersigned, whether by Deed of Trust, reservation in a deed, constitutional, contractual or otherwise, are subject and subordinate to the terms and provisions of this waste water line easement, as the same may be amended or modified from time-to-time. Without limiting the preceding general statement, it is agreed that the following liens are hereby subordinated to the terms of this Easement: (i) "Deed of Trust", dated August 26, 2015, recorded in Document No. 2015-15026902 of the Official Public Records of Hays County, Texas.

First Tennessee Bank National Association

By: _____

Name: _____

Title: _____

Kevin Briske
Kevin Briske
Vice President

STATE OF TENNESSEE §

COUNTY OF Shelby §

This instrument was acknowledged before me on this 2nd day of May, 2017, by Kevin Briske, Vice Pres. of **First Tennessee Bank National Association** on behalf of said bank.

Jeannette Colbert

Notary Public

