

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING AN ALTERNATIVE ENVIRONMENTALLY SENSITIVE AREA PLAN TO ALLOW FOR COMMERCIAL DEVELOPMENT TO ENCROACH INTO AN EXISTING ENVIRONMENTALLY SENSITIVE AREA. THE APPROXIMATELY 39 ACRE PROPERTY IS GENERALLY LOCATED ON SOUTHBOUND I-35E AND APPROXIMATELY 2200 FEET SOUTH OF LILLIAN B MILLER PARKWAY WITHIN A REGIONAL CENTER COMMERCIAL DOWNTOWN (RCC-D) ZONING DISTRICT; AND PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF \$2,000.00 FOR VIOLATIONS THEREOF, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE. (ADP16-0002).

WHEREAS, the property on which commercial development is proposed is located on approximately 39 acres of land generally located on southbound I-35E and approximately 2200 Feet South of Lillian B. Miller Parkway and 1,200 feet north of Wind River Lane and more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property contains an existing Environmentally Sensitive Area ("ESA") in the form of a Riparian Buffer and Water-related Habitat, in which development activities and land disturbing activities are prohibited absent the approval of an Alternative Environmentally Sensitive Area Plan ("AESAP"); and

WHEREAS, the owner of the Property has proposed the development of a Buc-ee's Travel Center, along with peripheral development sites, necessitating a private road and public infrastructure which would impact the existing ESA; and

WHEREAS, Ratcliff Engineering Services, LLC has applied for an Alternative Environmentally Sensitive Area Plan on the Property, a copy of which is attached hereto and made a part hereof as **Exhibit B** (the AESAP), which act to mitigate the effects of the ESA disturbance and provide appropriate management practices; and

WHEREAS, on March 23, 2016, the Planning and Zoning Commission conducted a public hearing as required by law, and recommended approval (4-3) of the requested AESAP; and

WHEREAS, on April 5, 2016, the City Council conducted a public hearing as required by law, and finds that the request meets and complies with all substantive and procedural standards set for in Subsection 17 of the Denton Development Code, that the applicant has demonstrated that the AESAP results in a high quality development meeting the intent of the standards of the Denton Development Code, that the AESAP is consistent with the Denton Plan, that the applicant has agreed to comply with all provisions of the Denton Development Code, as it exists and hereafter amended, including but not limited

to this Ordinance and has further agreed to comply with the additional restriction and conditions set forth herein; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and found to be true.

SECTION 2. The requested Alternative Environmentally Sensitive Area Plan is hereby approved so long as the owner, applicant, or other representative of the Property complies with the following conditions:

1. An area equal to or greater than 13,149 square feet where ten (10) trees currently exist shall be preserved in accordance with the ESA Mitigation Plan. No land disturbing activity as defined by the Denton Development Code is permitted in the preservation area. The existing ten trees are a component of the mitigation area for preservation, and shall not be removed unless directed and/or permitted by City Urban Forester pursuant to the Denton Development Code.
2. Eight new trees shall be planted to mitigate the removal of trees in the ESA. Each new tree shall be a Large Tree from the Landscape Plant List (mature canopy size of 1,256 square feet) and a minimum of 2 inches in diameter at planting. Planted trees must be irrigated for a minimum of three years. If any tree that is planted as part of the AESAP dies, that tree shall be immediately removed and replaced with a Large Tree within the appropriate planting season. The ESA mitigation trees are in addition to the Percentage of Tree Canopy required by the governing zoning district.
3. The eight new trees shall be planted near the preserved area shown on the ESA Mitigation Plan with appropriate spacing as to achieve the maximum height and canopy for the species.
4. Two stormwater quality controls, or Stormceptors®, shall be installed according to manufacturer's recommendations and sized for at least obtaining minimum pollutant removal efficiencies recommended by integrated Storm Water Management (iSWM) specifications. Sizing and location shall be determined during the final plat stage of development, and location and sizing shall be approved by City of Denton staff.
5. All water quality protection facilities shall be maintained by the property owner or maintenance entity established for that purpose. A description of maintenance tasks, frequency of maintenance, responsible parties for maintenance, funding, access, etc. shall be provided during the final plat stage of development.
6. The property owner or maintenance entity established to maintain the Stormceptors® shall provide to the City a report demonstrating that the

Stormceptors® have been monitored and maintained in accordance with the manufacturer's recommendation twice per year.

7. Where chronic or severe problems exist, and the owner does not provide maintenance and repairs, the City of Denton shall have the right, but not the obligation, to remedy the situation and recover the cost for the work from the property owner. This authority shall be established on the final plat document.

SECTION 3. Failure to comply with any term or condition of the Ordinance shall result in the AESAP being declared null and void and of no force and effect. This AESAP does not run with the land and is therefore not transferrable. It shall be unlawful for any person, firm, or entity to develop the Property in some manner other than as authorized by the Denton Code of Ordinances and this Ordinance.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of the provisions or applications, and to this end the provisions of this ordinance are severable.

SECTION 5. Any person, firm, partnership, or corporation violating any provision of this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by fine in a sum not exceeding \$2,000.00 for each offense. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 6. In compliance with Section 2.09(c) of the Denton Charter, this ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the ____ day of _____, 2016.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:

BY: _____

Jennifer DeCurtis
Deputy City Attorney

Exhibit A
Environmentally Sensitive Area Mitigation Plan