

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER=S LICENSE NUMBER.

WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

KM AVALON, LTD., a Texas limited partnership (“Grantor”), for 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 and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a home-rule city located in Travis County, Texas (“Grantee”), an easement and right-of-way (“Easement”) upon and across the property of Grantor which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (“Easement Tract”).

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights and privileges and on the terms and conditions set forth below.

Grantor does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to all matters of record and visible and apparent on the ground, to the extent the same are valid and subsisting and affect the Easement Tract, and the matters set forth herein.

CHARACTER OF EASEMENT:

The Easement is an easement in gross.

PURPOSE OF EASEMENT:

The easement shall be used only for the installation, construction, operation, use, enjoyment, maintenance, reconstruction, replacement, repair, re-alignment, upgrade, expansion, inspection, patrol, and removal of public wastewater facilities, together with appurtenances and facilities related to such public wastewater facilities and for making connections therewith; all public wastewater lines will be located underground, but facilities and appurtenances related to the wastewater lines may be located above ground.

The easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of such public wastewater utility facilities and related appurtenances.

DURATION OF EASEMENT:

The Easement shall be perpetual.

EXCLUSIVENESS OF EASEMENT:

Subject to the following sentence and the section entitled "Surface Use" below, the Easement shall be exclusive, and Grantor covenants that Grantor will not convey any other easement or conflicting rights within the Easement Tract without obtaining the prior written consent of Grantee, which will not be unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary, Grantor may alter or otherwise use the Easement Tract for purposes that do not interfere with Grantee's exercise of the rights herein granted, and may place, construct, operate, repair and maintain roadways and driveways, hike and bike trails, landscaping, drainage lines and systems, and other public utility lines (including without limitation, water, wastewater, electric, telephone, cable television, and gas lines and systems) in, on, over, under, and across the Easement Tract (but may not install parallel lines within the Easement Tract), and may grant public and/or private easements for such uses; provided, however, that the plans for all improvements to be placed within the Easement Tract (except for landscaping improvements installed no deeper than 24 inches below the surface of the land) must be approved by Grantee before such improvements are installed or built, with such approval not to be unreasonably withheld or delayed.

SURFACE USE:

Grantor hereby retains, reserves, and shall continue to enjoy the use of the surface of the Easement Tract for any and all purposes which do not materially interfere with or unreasonably prevent the use by Grantee of the Easement herein granted. Grantee has the right to trim and cut down trees and shrubbery and to remove other improvements and structures installed in violation of this agreement to the extent reasonably necessary to prevent interference with the operation or repairs to Grantee's facilities in the Easement Tract. If necessary, Grantee will install temporary fencing adequate to contain and protect any livestock located on the Easement Tract during any construction activities. Upon completion of any construction, maintenance or repair which disturbs the surface of the Easement, Grantee must fill all trenches, remove all construction debris and restore the surface of the Easement to substantially the same condition which existed prior to commencement of such construction, maintenance or repair. All rocks, timber, brush and other debris generated by any construction, maintenance or repair must be removed from the premises and may not be placed on Grantor's adjacent lands, unless specifically approved in writing by Grantor. Further, if Grantee, in the exercise of its rights hereunder, disturbs or damages any improvements, except those installed in violation of this agreement, located upon the Easement, Grantee must promptly upon completion of the work which caused the disturbance or damage, repair the improvement to substantially the same condition that existed prior to Grantee's work, utilizing comparable materials, at Grantee's sole expense.

NO REPRESENTATIONS OR WARRANTIES:

GRANTEE HEREBY EXPRESSLY ASSUMES ALL RISK AND PERILS ASSOCIATED WITH THE EASEMENT AND THE USE OF THE EASEMENT TRACT GRANTED HEREIN. GRANTOR WILL HAVE NO RESPONSIBILITY, LIABILITY, OR OBLIGATION WITH RESPECT TO ANY PROPERTY OF GRANTEE, IT BEING ACKNOWLEDGED AND UNDERSTOOD BY GRANTEE THAT THE SAFETY AND SECURITY OF ANY SUCH PROPERTY IS THE SOLE RESPONSIBILITY AND RISK OF GRANTEE. GRANTEE ACCEPTS THE CURRENT AND FUTURE CONDITION OF THE EASEMENT AND THE EASEMENT TRACT "AS IS", "WHERE IS", AND WITH ALL FAULTS. GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE EASEMENT OR THE EASEMENT TRACT, INCLUDING, BUT NOT LIMITED TO, THE FITNESS FOR ANY USE BY GRANTEE, THE SAFETY OR SECURITY OF THE EASEMENT OR THE EASEMENT TRACT, THE COMPLIANCE OF THE EASEMENT OR THE EASEMENT TRACT WITH ANY APPLICABLE LAW, OR THE COMPLIANCE OF THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE EASEMENT TRACT WITH ANY APPLICABLE LAWS, RULES, REGULATIONS, AND RESTRICTIONS. THIS PROVISION WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

ENTIRE AGREEMENT:

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

BINDING EFFECT:

This agreement shall bind and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors and assigns.

ASSIGNABILITY:

This Easement and the rights of Grantee hereunder may be assigned in whole or in part by Grantee so long as the assignee utilizes the Easement as contemplated herein.

In witness whereof, this instrument is executed and accepted effective as of this _____ day of October, 2012.

(Signatures on following page.)

GRANTOR:

KM AVALON, LTD., a Texas limited partnership

By: KM Avalon GP, Inc., a Texas corporation,
its General Partner

By: 
Blake J. Magee, President

AGREED AND ACCEPTED:

CITY OF PFLUGERVILLE, TEXAS,
a Texas home-rule municipality

By: _____
Brandon Wade, City Manager

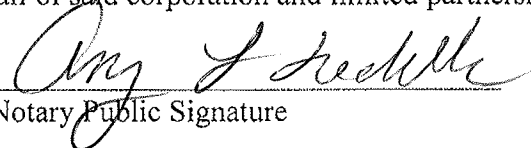
ATTEST:

Karen Thompson, City Secretary

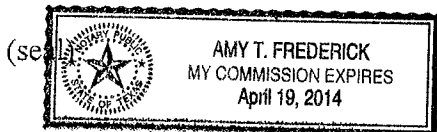
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on October 22, 2012, by
Blake Magee, President of KM Avalon GP, Inc., a Texas corporation, general partner of KM
Avalon, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.



Notary Public Signature



(Acknowledgment on following page.)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2012, by
Brandon Wade, City Manager of the City of Pflugerville, Texas, a Texas home-rule
municipality, on behalf of said municipality.

Notary Public Signature

(seal)

EXHIBIT "A"

DESCRIPTION OF A STRIP OF LAND TWENTY (20) FEET IN WIDTH CONTAINING 0.09 ACRES (4,327 SQUARE FEET) OF LAND SITUATED IN THE EDWARD FLINT SURVEY NO. 11, ABSTRACT NO. 277, LOCATED IN TRAVIS COUNTY, TEXAS, BEING OUT OF 190.47 ACRE TRACT OF LAND CONVEYED TO KM AVALON, LTD. RECORD ED IN DOCUMENT NUMBER 2005118418 OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMENCING at an iron rod found for the southwest corner of a 135.31 acre tract of land conveyed to Pflugerville Independent School District and recorded in Document number 2008092209 of the Official Public Records of Travis County, Texas, same being on the east Right of Way of Hodde Ln,

THENCE, N 25° 07' 02" E 24.63 feet following the west property line of said 135.31 acre tract, same being the east Right of Way of Hodde Ln, to a point,

THENCE, N 62° 50' 58" W 60.14 feet leaving the west property line of said 135.31 acre tract and crossing Hodde Ln, to a point on the west property line of said 190.47 acre tract, same being the west Right of Way line of Hodde Ln, to the **POINT OF BEGINNING**,

THENCE, N 62° 50' 58" W 44.65 feet leaving the east line and crossing said 190.47 acre tract to a point.

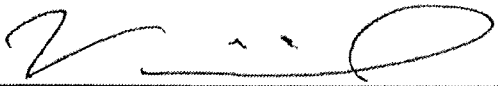
THENCE, S 40° 19' 41" W 136.87 feet crossing a twenty (20) foot wide water easement recorded in Document number 2006105953 of the Official Public Records, Travis County, Texas, in all 156.96 feet to the northeast corner of a twenty (20) foot wide waste water easement recorded in Document number 2005016798 of the Official Public Records, Travis County, Texas,

THENCE, N 44° 27' 23" W 20.08 feet following the north line of said twenty (20) foot wide waste water easement to a point,

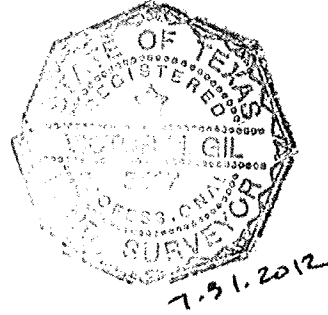
THENCE, N 40° 19' 41" E 170.99 feet leaving the north line of said twenty (20) foot wide waste water easement and crossing said twenty (20) foot wide water easement to a point,

THENCE, S 62° 50' 58" E 60.13 feet to the **POINT OF BEGINNING** and containing .089 acre.

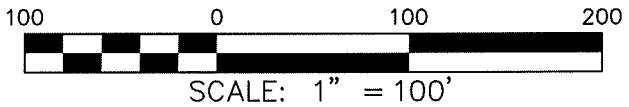
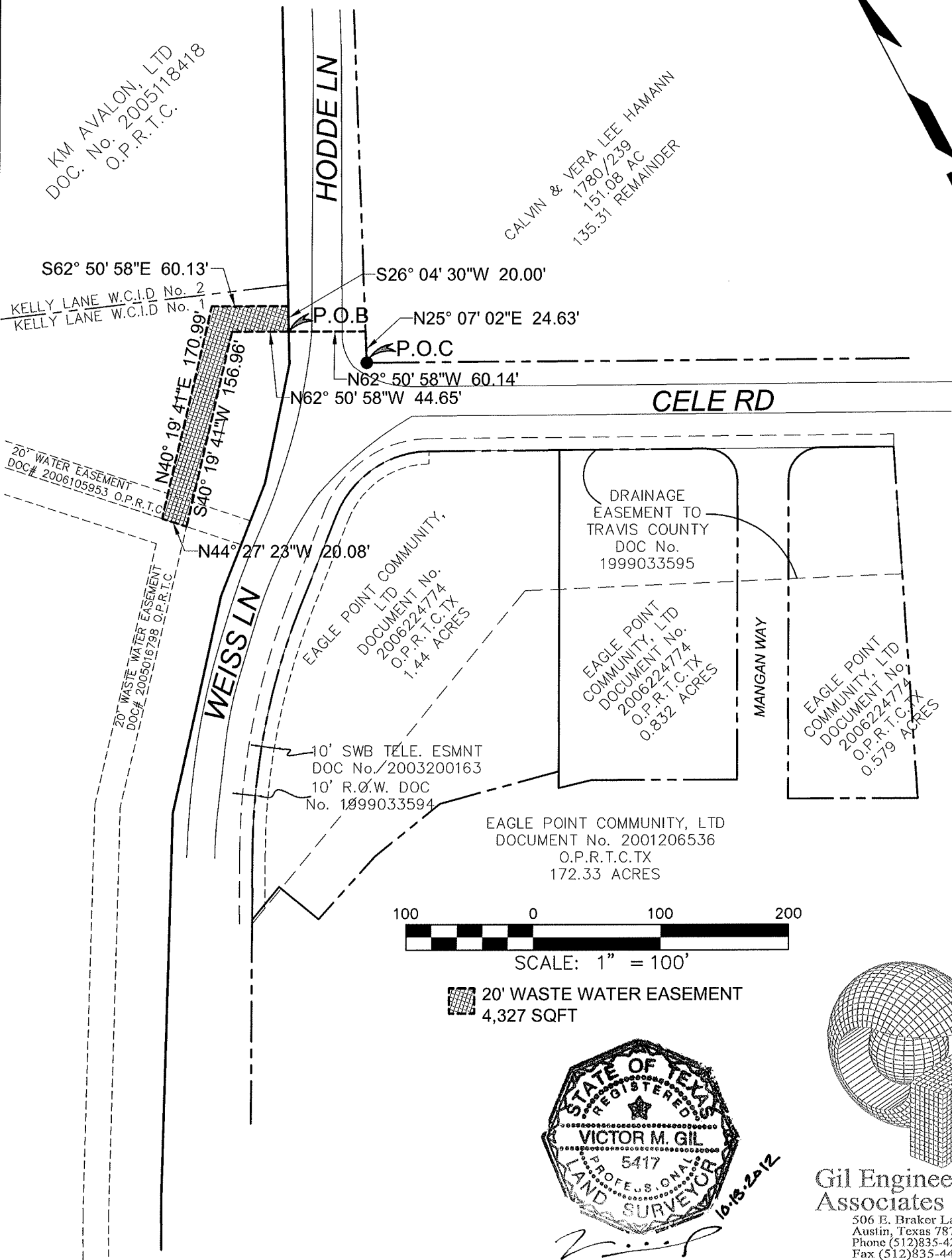
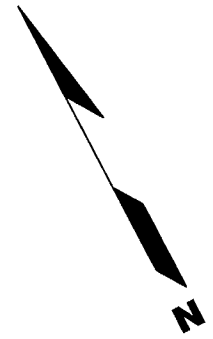
That I, Victor M. Gil, a Registered Professional Land Surveyor, do hereby state that the description provided hereon is true and correct to the best of my knowledge.



Victor M. Gil R.P.L.S No. 5417



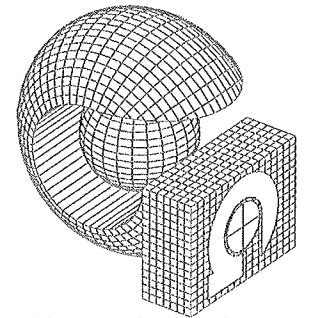
20' WIDE WASTE WATER EASEMENT



 **20' WASTE WATER EASEMENT**
4,327 SQFT



10-18-2012



Gil Engineering Associates Inc.
506 E. Braker Lane
Austin, Texas 78753
Phone (512)835-4203
Fax (512)835-4407

AFTER RECORDING RETURN TO:

KM Avalon Ltd
Blake Magee, President
1011 North Lamar
Austin, Texas 78703