

SIDEWALK EASEMENT AGREEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This Sidewalk Easement Agreement (“Agreement”) is made by and between **ALDI (TEXAS) L.L.C.** (collectively, “Owners”) and the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule municipality (“City”), and is as follows:

RECITALS

A. Owners are the owners of certain real property located in Travis County, Texas, which is more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (the “Easement Tract”);

B. Owners have agreed to grant City a non-exclusive easement and right-of-way upon, over, through and across the Easement Tract (“Easement”), subject to the terms, conditions and other matters set forth in this Agreement.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged and confessed, Owner hereby GRANTS, SELLS and CONVEYS, to City an access easement on, over, through and across the Easement Tract, subject to the reservations, terms and conditions of this Agreement and subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable. The Easement shall be subject to the following terms and provisions:

1. **Character of Easement.** The Easement is an easement in gross.
2. **Duration of Easement.** The Easement is perpetual.
3. **Exclusiveness of Easement.** The Easement is non-exclusive and City’s use shall be in common with Owners and their successors and assigns. Owners hereby reserve, for themselves and their successors and assigns, the right to enter upon and use the surface of the Easement Tract, subsurface of the Easement Tract and the air space over the Easement Tract for the purposes of installing, constructing, repairing, maintaining, operating, replacing, upgrading and using (i) landscaping, irrigation sleeves and other irrigation facilities; (ii) any other improvements that are permitted under the City of Pflugerville Code of Ordinances to encroach into any setbacks or private easements; and (iii) for any other purposes that do not unreasonably interfere with the rights granted to City hereunder. Notwithstanding anything contained herein to the contrary, Owners shall not use the Easement Tract in any other manner or grant any easement on or across the Easement Tract that interferes in any material way, or is inconsistent with, the easements, rights, and privileges granted hereunder or the terms and conditions hereof.
4. **Purpose of Easement.** The Easement shall be used only for the purpose of pedestrian ingress and egress over and across the Easement Tract by Grantee and Grantee’s licensees, employees, agents, invitees, members, and the general public.

5. **Repairs and Restoration.** In the event that City's operations and/or other activities on the Easement Tract result in any damage to or destruction of any improvements constructed or installed on the Easement Tract by Owners (or their successors and assigns), then City agrees to repair or replace, as necessary, at City's expense, any such improvements so damaged or destroyed. In the event that Owners' construction, repairs, operations and/or other activities on the Easement Tract result in any damage to or destruction of any improvements constructed or installed on the Easement Tract by City (or its successors and assigns), then Owners agree to repair or replace, as necessary, at Owners' expense, any such improvements so damaged or destroyed.

6. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the rights granted. Any oral representations or modifications concerning this Agreement shall be of no force and effect except in a subsequent modification in writing, signed by the party to be charged.

7. **Assignment.** The Easement may be assigned by City, its successors or assigns, without the prior written consent of Owner as long as the proposed successor or assign is a governmental entity that expressly assumes City's obligations under this Agreement.

8. **Attorney's Fees.** In the event of any controversy, claim, or dispute relating to this Agreement or the breach, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, attorney's fees, and costs.

9. **Binding Effect.** This Agreement, and the terms, covenants, and conditions shall be covenants running with the Easement Tract and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties.

10. **No Waiver.** Except for a written waiver signed by the party to be charged, any action or inaction by any party with respect to any provision of this Agreement, including, but not limited to, a party's failure to enforce any provision of this Agreement, shall not constitute a waiver of that provision or any other provision of this Agreement. Any waiver by any party of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement.

11. **Headings.** Any section headings in this Agreement are for reference only and shall not modify or affect the interpretation of this Agreement in any manner whatsoever.

IN WITNESS WHEREOF, this Agreement is executed this _____ day of _____, 20__ (the "Effective Date").

OWNERS:

**Aldi (Texas) L.L.C.,
a Texas limited liability company**

**By: Aldi Inc. (Pennsylvania),
a Pennsylvania corporation**

Its: Sole Member

By: 
Karla Waddleton, Vice President

CITY:

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

Address:
City of Pflugerville
Attn: City Manager
P.O. Box 589
Pflugerville, Texas 78691


By: _____
Brandon Wade, City Manager

THE STATE OF Texas §
§
COUNTY OF Harris §

This instrument was acknowledged before me on July 9th, 2014, by
_____(owner's name) Karla Waddleton

(seal)




Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on _____, 20__, by
Brandon Wade, City Manager of the City of Pflugerville, Texas, a Texas home-rule
municipality, on behalf of said municipality.

(seal)

Notary Public Signature

After Recording Return To:

City of Pflugerville
Attn: Karen Thompson, City Secretary
P.O. Box 589
Pflugerville, Texas 78691

EXHIBIT "A"

288 SQUARE FEET
ALDI, INC. - PFLUGERVILLE
SIDEWALK EASEMENT

FN. NO. 14-247(MJJ)
JUNE 27, 2014
JOB NO. R0100114-10002

DESCRIPTION

OF 288 SQUARE FEET OF LAND OUT OF THE SEFRIN EISELIN SURVEY NO. 4, ABSTRACT 265, SITUATED IN THE CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS BEING A PORTION OF LOT 1, BLOCK "A", FINAL PLAT OF TOWN CENTER 2, A SUBDIVISION OF RECORD IN DOCUMENT NO. 201400100 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 288 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING for reference, at a 1/2 inch iron rod with "RJ Surveying" cap found at the southerly end of a right-of-way return at the intersection of the easterly right-of-way line of F.M. 685 Road (100' wide) and the southerly right-of-way line of Pfennig Lane (R.O.W. varies);

THENCE, leaving the easterly right-of-way line of F.M. 685 Road, along said right-of-way return, along a curve to the right having a central angle of $90^{\circ}47'34''$, a radius of 40.00 feet, an arc length of 63.39 feet, and a chord which bears $N70^{\circ}13'13''E$, a distance of 56.96 feet to a 1/2 inch iron rod with "CS Ltd" cap found at the end of said curve;

THENCE, $S64^{\circ}22'31''E$, along the southerly right-of-way line of Pfennig Lane, being the northerly line of said Lot 1, a distance of 200.70 feet to a 1/2 inch iron rod found at the point of curvature of a non-tangent curve to the left, for the **POINT OF BEGINNING** and northwesterly corner hereof;

THENCE, continuing along the southerly right-of-way line of Pfennig Lane, being the curving northerly line of said Lot 1, for the northerly line hereof, along said non-tangent curve to the left, having a central angle of $05^{\circ}29'31''$, a radius of 300.00 feet, an arc length of 28.76 feet, and a chord which bears $S67^{\circ}04'12''E$, a distance of 28.74 feet to a 1/2 inch iron rod with "RJ Surveying" cap found at the end of said curve, being the northeasterly corner of said Lot 1 and hereof;

THENCE, $S24^{\circ}48'31''W$, leaving the southerly right-of-way line of Pfennig Lane, along the easterly line of said Lot 1, for the easterly line hereof, a distance of 10.03 feet to a point in the southerly line of that certain Public Utility Easement Agreement of record in Document No. 2009045793 of said Official Public Records, being the point of curvature of a non-tangent curve to the right, for the southeasterly corner hereof, from which a 1/2 inch iron rod with cap found at the southeasterly corner of said Lot 1 bears, $S24^{\circ}48'31''W$, a distance of 295.93 feet;

FN NO. 14-247 (MJJ)

JUNE 27, 2014

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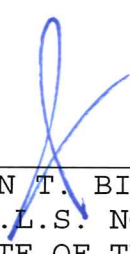
THENCE, leaving the easterly line of said Lot 1, along the southerly line of said Public Utility Easement Agreement of record, for the southerly line hereof, along said non-tangent curve to the right having a radius of 310.00 feet, a central angle of $05^{\circ}20'33''$, an arc length of 28.91 feet and a chord which bears, $N66^{\circ}59'43''W$, a distance of 28.89 feet to the end of said curve, for the southwesterly corner hereof;

THENCE, $N25^{\circ}40'34''E$, over and across said Lot 1, leaving the southerly line of said Public Utility Easement Agreement of record, for the westerly line hereof, a distance of 10.00 feet to the **POINT OF BEGINNING**, containing an area of 288 square feet of land, more or less, within these metes and bounds.

BEARING BASIS: THE BASIS OF BEARINGS SHOWN HEREON IS TEXAS STATE PLANE COORDINATES CENTRAL ZONE (HARN-NAD83)

I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

BURY-AUS, INC.
221 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701

 7/2/14

JOHN T. BILNOSKI
R.P.L.S. NO. 4998
STATE OF TEXAS
TBPLS # F-10107500

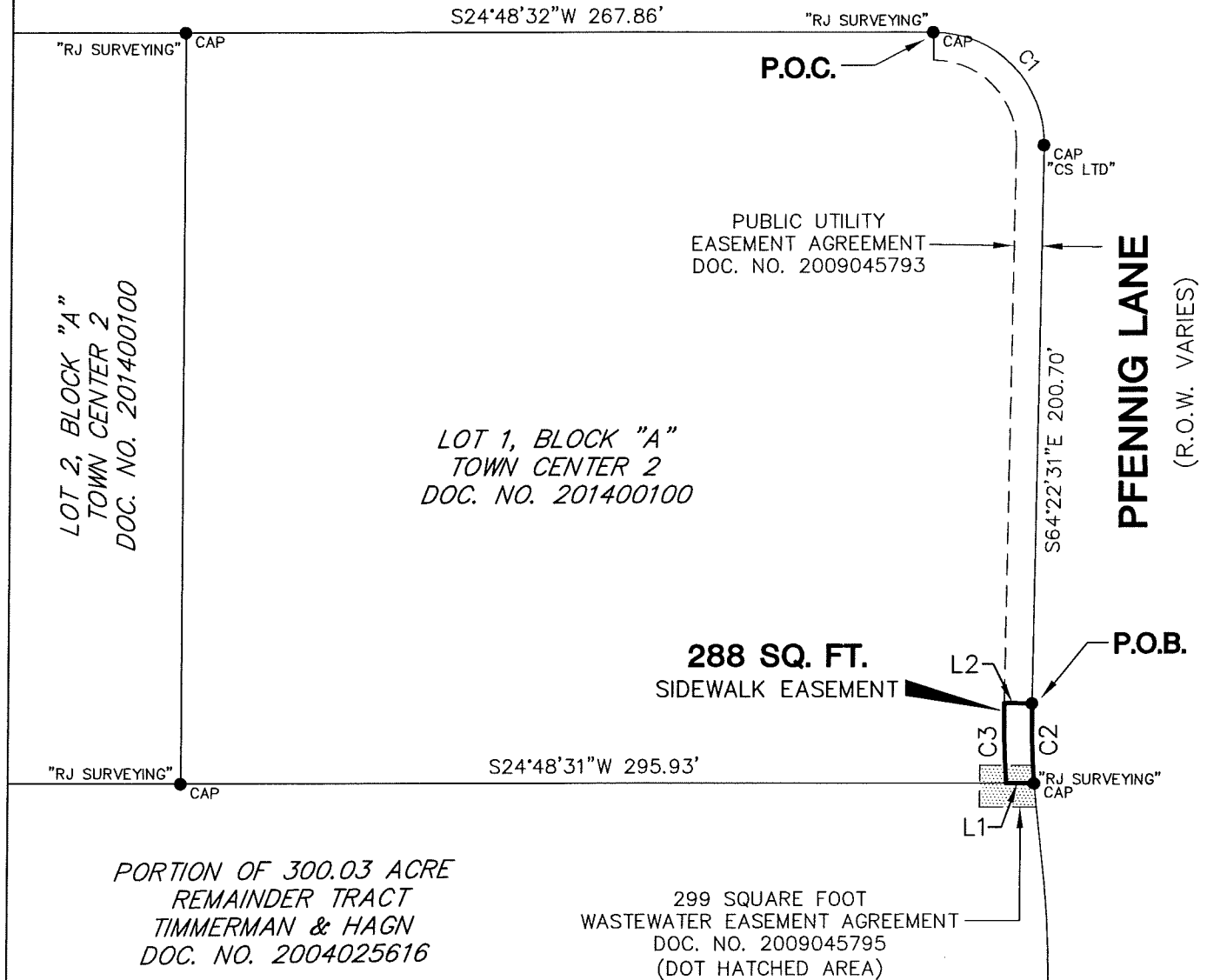
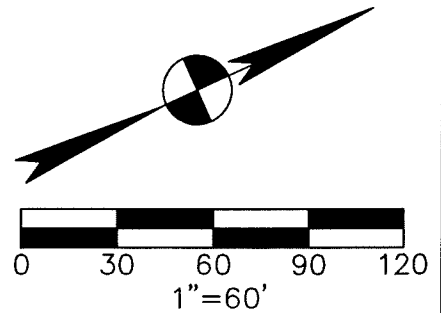


LEGEND

- 1/2" IRON ROD FOUND
- ^{CAP} 1/2" IRON ROD WITH CAP FOUND (AS NOTED)
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

F.M. 685 ROAD

(100' R.O.W.)



CURVE TABLE

NO.	DELTA	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	90°47'34"	40.00	63.39	56.96	N70°13'13"E
C2	5°29'31"	300.00	28.76	28.74	S67°04'12"E
C3	05°20'33"	310.00	28.91	28.89	N66°59'43"W

LINE TABLE

NO.	BEARING	DISTANCE
L1	S24°48'31"W	10.03'
L2	N25°40'34"E	10.00'

BURY

221 West Sixth Street, Suite 600
Austin, Texas 78701
Tel. (512) 328-0011 Fax (512) 328-0325
TBPE # F-1048 TBPLS # F-10107500
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SKETCH TO ACCOMPANY DESCRIPTION

OF 228 SQUARE FEET OF LAND OUT OF THE SEFRIN EISELIN SURVEY NO. 4, ABSTRACT NO. 265, SITUATED IN THE CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 1, BLOCK "A" TOWN CENTER 2, A SUBDIVISION OF RECORD IN DOCUMENT NO. 201000100 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

ALDI, INC.
PFLUGERVILLE
TEXAS

DATE: 6/27/2014

DRAWN BY: M.J.J.

FN: 14-247 (MJJ)

FILE: H:\100114\002\100114002EX1.DWG

PROJECT No. R0100114-10002.99