

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS GRANTING THE CONVEYANCE OF A 10' PRIVATE WASTEWATER EASEMENT ON CITY PROPERTY JOINTLY TO HW CARMEN INVESTMENTS AND DPS MEGACENTER 2000, LTD. ON A 10.51 ACRE TRACT OF LAND OUT OF THE L.C. CUNNINGHAM SURVEY, NO. 63, ABSTRACT NO. 163; AND MORE SPECIFICALLY DESCRIBED IN A DEED TO THE CITY OF PFLUGERVILLE, OF RECORD IN DOCUMENT NO. 2003293775 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**WHEREAS**, the City Charter, Section 3.14., requires a ordinance to convey or lease or authorize the conveyance or lease of any city land; and

**WHEREAS**, in order for the City to provide wastewater service to the proposed Carmen Subdivision development ("Project"), south of the Club Lift Station, and facilitate wastewater service for the Megacenter 2000 project, a private wastewater force main is required to traverse City property to connect to the existing Club Lift Station operated and maintained by the City.

**WHEREAS**, the wastewater force main is necessary for the Megacenter 2000 economic development project to construct a Public Safety Facility-Drivers License Office in the corporate limits of the City of Pflugerville; and

**WHEREAS**, the City has established policies to adopt reasonable measures, as are permitted by law, to promote the development of new and expanded business enterprises within the City and thereby enhance the economic stability and growth of the City; and

**WHEREAS**, the City has agreed to provide incentives and financial assistance to Megacenter 2000 to encourage and promote job growth and economic development and the public health and safety; and

**WHEREAS**, HW Carmen Investments and DPS Megacenter 2000, Ltd. has agreed, in exchange and as consideration to install infrastructure and to satisfy and comply with certain terms and conditions;

**WHEREAS**, the City finds providing this limited use easement substantially advances a legitimate interest of the City; and,

**WHEREAS**, the City Council has determined the granting of said easement agreement does not hinder the use of the city owned detention lot but furthers and serves a public purpose;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS, THAT:

The City Council of the City of Pflugerville hereby authorizes the City Attorney to prepare all documents necessary to convey a wastewater utility easement in the form attached hereto and as further modified if and as required in connection with the Project and the City Manager to execute any such document on behalf of the City.

I. Description.

The easement attached and described by metes and bounds in Exhibit "A" and illustrated Exhibit "B" is a limited use easement for the sole purpose of private wastewater utility purposes, limited to, the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of private underground wastewater infrastructure and making connections thereto (including ingress & egress rights for those purposes). The limited use easement is conditional on any such use being subordinate to and concurrent with the existing uses of the real property by the City and such use of the easement is further conditioned upon the easement holder's continued regular maintenance of such infrastructure within the easement and the return of any disturbed soils on the property in connection with such use to their prior undisturbed condition. All such use of the said easement shall be consistent with any and all applicable City ordinances, standards and policies.

II. Severability.

If any provision of the Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of the Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

III. Effective Date.

This Ordinance will take effect upon its adoption by the City Council and publication of the caption hereof in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF PFLUGERVILLE,  
TEXAS

By: \_\_\_\_\_  
JEFF COLEMAN, Mayor

ATTEST:

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KAREN THOMPSON, City Secretary

APPROVED AS TO FORM:

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City Attorney

**PRIVATE WASTEWATER INFRASTRUCTURE EASEMENT**

Date: December \_\_\_\_\_, 2011

Grantor: City of Pflugerville, Texas, a home-rule city  
P.O. Box 589103  
Pflugerville, Travis County, Texas

Grantee: (whether one or more)

DPS Megacenter 2000, Ltd., a Texas limited partnership  
510 W. 15<sup>th</sup> Street  
Austin, Travis County, Texas 78703  
Attn: Jerry R. Reed

HW Carmen Investments, L.P., a Texas limited partnership  
5300 Bee Cave Road, Building I, Suite 220  
Austin, Travis County, Texas 78746  
Attn: Shannon Martinez

Grantor is the owner of that certain 10.51 acres of land located in Travis County, Texas and as more specifically described in Document Number 2003293774 of the Official Public Records of Travis County, Texas (“Grantor’s Tract”).

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 Grantee, a non-exclusive Easement (“Easement”) upon and across Grantor’s Tract as described by metes and bounds on Exhibit ”A” and as shown in the sketch accompanying the metes and bounds described on Exhibit “B” (the “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 Tract unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

The Easement shall be used for the construction, operation and maintenance of private wastewater infrastructure and is a limited use easement. The use granted by this Easement is limited to the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of private underground wastewater infrastructure and making connections thereto (including ingress & egress for those purposes). The limited use Easement is conditioned upon the Easement holder’s continued regular maintenance of such infrastructure within the Easement and the return of any disturbed soils on the property in connection with such use to their prior undisturbed condition. All such use of the said Easement shall be consistent with any and all applicable law including City ordinances, standards and policies.

Grantor also retains, reserves and shall continue to enjoy the surface and sub-surface of such Easement Tract for any and all purposes which do not interfere with and prevent the use by Grantee of the Easement. Grantor shall have and retain the right to use and install other above and underground infrastructure in accordance with all applicable laws but shall not do so in a way that adversely affects Grantee's use of the Easement. The Easement shall not be exclusive to Grantee, but Grantor covenants that Grantor will not convey any other easement that unreasonably interferes with Grantee's rights within the Easement Tract.

This conveyance is made and accepted subject to any and all conditions and restrictions if any, relating to the hereinabove described property to the extent and only to the extent that the same may still be in force and effect and shown of record in the office of the County Clerk of Travis County, Texas.

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

The Easement granted herein and the rights and obligations of the Grantee hereunder shall be perpetual and shall run with the land.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_ day of \_\_\_\_\_, 2011.

**GRANTOR:**

**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 the \_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_ a person known to me, in his/her capacity as \_\_\_\_\_ of the City of Pflugerville, Texas a Texas home-rule city and on behalf of same.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(seal)

**GRANTEE:**

DPS Megacenter 2000, Ltd., a Texas limited partnership

By: \_\_\_\_\_  
Jerry R. Reed

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_, 2011 by \_\_\_\_\_ a person known to me, in his/her capacity as \_\_\_\_\_ of the DPS Megacenter 2000, Ltd., a Texas limited partnership on behalf of same.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(seal)

HW Carmen Investments, L.P., a Texas limited partnership

By: \_\_\_\_\_  
Shannon Martinez

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_, 2011 by \_\_\_\_\_ a person known to me, in his/her capacity as \_\_\_\_\_ of HW Carmen Investments, L.P., a Texas limited partnership, on behalf of same.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(seal)

## **EXHIBIT A**

**The City of Pflugerville  
(Wastewater Easement)  
out of the L.C. Cunningham Survey  
Travis County, Texas**

### **10' WASTEWATER EASEMENT METES AND BOUND DESCRIPTION**

ALL THAT CERTAIN PARCEL OR TRACT OF LAND BEING A TEN FOOT (10.00') STRIP OF LAND IN THE L.C. CUNNINGHAM SURVEY No. 63 IN TRAVIS COUNTY, TEXAS, AND BEING OUT OF AND A PART OF A TRACT CALLED 10.51 ACRES IN A DEED TO THE CITY OF PFLUGERVILLE, OF RECORD IN DOCUMENT No. 2003293775 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 10' STRIP BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a ½" iron rod found at the east corner of said 10.51 acre tract and south corner of Lot 2, Block A of Wellspoint One, Section Two, a subdivision in Travis County of record in Document No. 200100093 of the Travis County Official Public Records and in the northwest line of a remaining portion of a called 271.148 acre tract described in a deed to Village at Northcross LTD, of record in Document No. 2000156544, Travis County Official Public Records; Thence with the northeast line of said 10.51 acre tract and southwest line of said Lot 2, N60°38'49"W for a distance of 10.00 feet to a point in the northwest line of a 10' electric & telephone easement of record in Volume 9693, Page 623 of the Travis County Real Property Records, for the east corner and POINT OF BEGINNING hereof

THENCE with a line ten feet northwest of the southeast line of said 10.51 acre tract, and with the northwest line of said electric & telephone easement, S27°43'08"W for a distance of 921.60 feet to a point in the southwest line of said 10.51 acre tract and northeast line

of a tract of 25.534 acres described in a deed to HW Carmen Investments LP of record in Document No. 2007122140 of the Travis County Official Public Records, for the south corner hereof, and from which a ½" iron rod found at the south corner of said 10.51 acre tract bears S31°04'20"E at a distance of 11.69 feet

THENCE with the northeast line of said 25.534 acre tract and southwest line of said 10.51 acre tract, N31°04'20"W for a distance of 11.69 feet to a point for the west corner hereof

THENCE with a line twenty feet (20.00') northwest of the southeast line of said 10.51 acre tract N27°43'08"E for a distance of 915.83 feet to a point in the northeast line of said 10.51 acre tract and southwest line of said Lot 2 for the north corner hereof

THENCE with the northeast line of said 10.51 acre tract and southwest line of said Lot 2, S60°38'49"E for a distance of 10.00 feet to the POINT OF BEGINNING hereof

Bearing Basis: NAD 1983

See Sketch to Accompany Metes and Bounds", Plan No. 110123-WW01, Exhibit B, attached and hereby made a part hereof



Michael Samford, R.P.L.S. 3693



