

PUBLIC IMPROVEMENT EASEMENT AGREEMENT (PEDESTRIAN TRAVEL)

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

NFMM LLC, a limited liability corporation, with address of 3800 Hidden Estates Drive, Austin, Travis County, Texas ("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 Texas home-rule city, with offices located at 100 East Main Street, Pflugerville, 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; and Grantor, subject to the Exceptions, to Warranty, 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.

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

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - a) "Holder" shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.
 - b) "Public Improvements" shall mean sidewalk, driveway, curb, gutter or appurtenance reasonably necessary to provide pedestrian ingress and egress over and across the Easement Tract to Grantee and Grantee's licensees, employees, agents, invitees, members, and the general public.
2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." Nevertheless, the Easement rights herein granted shall pass to Grantee's successors and assigns, subject to all of the Terms hereof. The Easement rights of use granted herein are nonexclusive and irrevocable. The Easement is for the benefit of Holder.
3. *Purpose of easement.* The Easement shall be used for public pedestrian travel and the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public improvements and related appurtenances, or making connections thereto.

4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
5. *Exclusive Easement.* The Holder's easement shall be exclusive and Grantee shall not use the Easement Property in any way other than as a member of the general public, save and except, connection from public utilities, (such as water, sewer, electric, gas, and telecommunications) to Grantor's property may run across the Easement Property, provided that such connections comply with all applicable rules, regulations, codes or ordinances of the City of Pflugerville; and electric and telecommunication utility may cross above the Easement Property provided same comply with all applicable rules, regulations, codes or ordinances of the City of Pflugerville.
6. *Maintenance of sidewalks.* Upon completion of the Public Improvements, and expiration of the warranty period, Grantor shall be responsible for the maintenance of the Public Improvement and repair of any defective, unsafe or hazardous condition as required by City of Pflugerville Code of Municipal Ordinances Section 96.08, or any amendment, recodification or other revision thereto.
7. *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 benefited 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.
8. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
9. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
10. *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 the county or counties in which the Easement Property is located.
11. *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.
12. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately 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.

13. *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.
14. *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.
15. *Exceptions to Warranty.* This grant is subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable
16. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, 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.
17. *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.
18. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
19. *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.
20. When the context requires, singular nouns and pronouns include the plural.

IN WITNESS WHEREOF, this Agreement is executed this 30th day of OCTOBER, 2014 (the "Effective Date").

Address:

NFMM LLC

3800 HIDDEN ESTATES DR

AUSTIN, TX 78727-1829

GRANTOR:

Nabil Elmurr

(Grantor's Name)

Title: Member

By: Nabil Elmurr

(Grantor's Signature)

Address:

City of Pflugerville

Attn: City Manager

P.O. Box 589

Pflugerville, Texas 78691

GRANTEE:

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

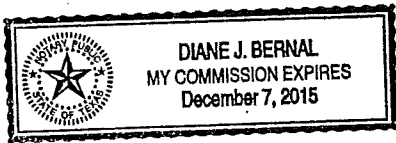
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COUNTY OF TRAVIS

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This instrument was acknowledged before me on October 30, 2014, by Nabil Elmurr, Managing Member of NFMM LLC, a Texas Limited Liability Company, known to me to be the person subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.



(seal)

DIANE J. BERNAL
Notary Public Signature

THE STATE OF TEXAS

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COUNTY OF _____

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This instrument was acknowledged before me on _____, 2013, 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)

After Recording Return To:

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

SKETCH TO ACCOMPANY FIELD NOTES

SCALE: 1"=50'

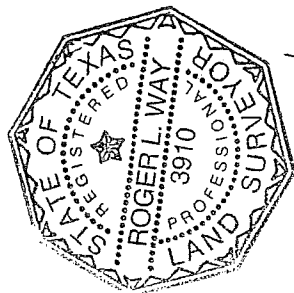


LEGEND

- IRON ROD END.
- 1/2" IRON ROD W/
- ▨ PROPOSED EASEMENT AREA CONTAINING 3,512 SQUARE FEET

CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS
 AMENDING PLAT OF BLOCK E,
 685 COMMERCIAL PARK
 VOL. 100, PG. 260 T.C.P.R.
 LOT 2-A
 BLOCK E

NFMM, LLC.
 DOC.# 2012023226



Roger L. Way

ROWE LANE
 (65' R.O.W.)

S 09°18'18"W 157.73'
 N 09°18'18"E 128.74'
 S 81°15'07"E 8.00'

20205 F.M. ROAD 685
 (110' R.O.W.)

POINT OF BEGINNING

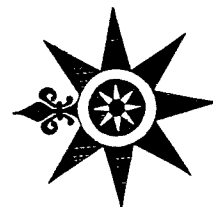
SULLIVAN STREET
 (60' R.O.W.)

LINE TABLE

①	L-S 68°21'07"E 4.95'	②	L-S 35°05'31"E 10.62'	③	L-N 64°42'16"W 7.58'
④	L-S 21°38'53"W 13.75'	⑤	L-S 25°17'44"W 11.75'	⑥	

CURVE TABLE

①	C-S12°53'31"W 64.68' A=64.68' R=1429.73'	②	C-S30°53'48"W 13.78' A=13.91' R=29.68'	③	C-S20°00'31"W 62.78' A=62.79' R=929.18'	④	C-N15°54'45"E 238.65' A=239.21' R=1014.93' (C=N15°54'45"E 238.65') (A=239.21')	⑤	C-S20°00'31"W 62.78' A=62.79' R=929.18'	⑥	C-N 20°01'10"W 20.56' A=22.65' R=15.00' (C=N 21°05'33"W 20.75') (A=22.91')
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ALL POINTS SURVEYING

1714 FORTVIEW ROAD - SUITE 200

AUSTIN TX. 78704

TELE.: (512) 440-0071 - FAX: (512) 440-0199

SURVEY DATE: 10-27-14
 Job No.: 10822714
 SCALE: 1"=50'
 DRAFTING: SCN

EXHIBIT "A2"

FIELD NOTES

BEING 3512 SQUARE FEET OF LAND, MORE OR LESS, FOR A SIDEWALK EASEMENT, OUT OF AND A PORTION OF LOT 2A, OF THE "AMENDING PLAT OF BLOCK E 685 COMMERCIAL PARK" AS RECORDED IN VOLUME 100, PAGE 260 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, SAID LOT 2A BEING CONVEYED BY DEED TO NFMM LLC AS RECORDED IN DOCUMENT NUMBER 2012023226 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS SAID PROPERTY ALSO BEING KNOWN AS 20205 F.M. ROAD 685 IN THE CITY OF PFLUGERVILLE, TEXAS, SAID 3512 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a found $\frac{1}{2}$ " iron rod for the northwest corner of said Lot 2A also being the northwest corner of this easement said point also being at the point of intersection of the east right-of-way line of F.M. Road 685, with the south right-of-way line of Rowe Lane in the city of Pflugerville, Texas;

THENCE S $81^{\circ} 15' 07''$ E, (Basis of Bearings) along the south right-of-way line of Rowe Lane, a distance of 8.00 feet to a calculated point for the northeast corner of this easement, from this point a $\frac{1}{2}$ " iron rod found for the northwest corner of Lot 2A, same being the northeast corner of Lot 3A of said subdivision bears S $81^{\circ} 15' 07''$ E, along said right-of-way line, a distance of 154.24 feet:

THENCE through said Lot 2A the following eleven (10) courses and distances to a calculated point at the terminus of each course:

- 1) S $09^{\circ} 18' 18''$ W 157.73 feet
- 2) Along a curve to the right (concave to the west) having the following elements, a central angle of $2^{\circ} 35' 32''$, a radius of 1429.73 feet and an arc length of 64.68 feet the chord of which bears S $12^{\circ} 53' 31''$ W a distance of 64.68 feet
- 3) Along a curve to the left (concave to the east) having the following elements. A central angle of $24^{\circ} 58' 16''$, a radius of 50.95 feet and an arc length of 22.21 feet the chord of which bears S $03^{\circ} 35' 30''$ W a distance of 22.03 feet
- 4) Along a curve to the right (concave to the west) having the following elements, a central angle of $60^{\circ} 32' 24''$, a radius of 34.02 feet and an arc length of 35.95 feet the chord of which bears S $18^{\circ} 42' 42''$ W a distance of 34.30 feet
- 5) Along a curve to the left (concave to the southeast) having the following elements, a central angle of $26^{\circ} 50' 36''$, a radius of 29.68 feet and an arc length of 13.91 feet the chord of which bears S $30^{\circ} 53' 48''$ W a distance of 13.78 feet
- 6) Along a curve to the right (concave to the west) having the following elements, a central angle of $3^{\circ} 52' 19''$, a radius of 929.18 feet and an arc length of 62.79 feet the chord of which bears S $20^{\circ} 00' 31''$ W a distance of 62.78 feet
- 7) S $68^{\circ} 21' 07''$ E 4.95 feet
- 8) S $21^{\circ} 38' 53''$ W 13.75 feet
- 9) S $35^{\circ} 05' 31''$ E 10.62 feet
- 10) S $25^{\circ} 17' 44''$ W 11.75 feet to the north right-of-way line of Sullivan Street;

THENCE along the north right-of-way line of Sullivan Street N $64^{\circ} 42' 16''$ W 7.58 feet to a $\frac{1}{2}$ " iron rod found for the beginning of the return curve from the north right-of-way line of Sullivan Street to the east right-of-way line of F.M. Road 685;



ALL POINTS SURVEYING

1714 Fortview Road, Suite 200, Austin, TX 78704
Telephone: (512) 440-0071 Fax: (512) 440-0199

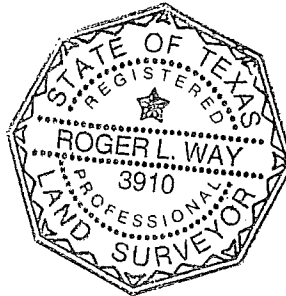
THENCE along said return curve to the right (concave to the east) having the following elements, a central angle of $39^{\circ} 44' 12''$, a radius of 15.00 feet and an arc length of 22.65 feet the chord of which bears $N 20^{\circ} 01' 10'' W$ a distance of 20.56 feet to a $\frac{1}{2}$ " iron rod found at the end of said return curve on the east right-of-way line of F.M. Road 685,

THENCE along the east right-of-way line of F.M. Road 685, same being the west line of said Lot 2A and this easement the following two (2) courses and distances:

- 1) along a curve to the left (concave to the west) having the following elements, a central angle of $13^{\circ} 30' 14''$, a radius of 1014.93 feet and an arc length of 239.21 feet the chord of which bears $N 15^{\circ} 54' 45'' E$ a distance of 238.65 feet, and
- 2) $N 09^{\circ} 18' 18'' E$ 128.74 feet to **THE POINT OF BEGINNING** and containing 3512 square feet of land, more or less.

This metes and bounds description is to accompany a survey map of same date.

Roger L. Way
ROGER L. WAY
R.P.L.S. No. 3910
JOB No. 10B22714



10/27/14
Date

