

SIDEWALK EASEMENT AGREEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This Sidewalk Easement Agreement (“Agreement”) is made by and between **WAYPOINT AUSTIN FALCON OWNER, LLC**, a Delaware limited liability company (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 for installation, construction, operation, replacement, repair, maintenance, relocation, medication, and removal of walkways, sidewalks, and all associated steps, stairs, ramps, and other appurtenances which provide public access and connectivity (hereinafter collectively “Facilities”). The Easement shall also be used

for the purpose of providing access for the operation, installation repair, maintenance, replacement, modification, and expansion of the Facilities.

5. **Repairs and Restoration.** After the initial construction of the Facilities, the City shall be responsible for the repair, maintenance, restoration and replacement of the Facilities. 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 or for 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 23d day of September, 2016 (the "Effective Date").

OWNER:

**WAYPOINT AUSTIN FALCON
OWNER, LLC**, a Delaware limited liability
company

Address:
3475 Piedmont Road, NE, Suite 1640
Atlanta, Georgia 30305

By: 
Thomas S. Reif, General Counsel

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 GEORGIA §
 §
COUNTY OF FULTON §

This instrument was acknowledged before me on September 23, 2016, by Waypoint Austin Falcon Owner, LLC, a Delaware limited liability company.


Notary Public Signature

(seal)



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

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.0133 ACRE (581 SQUARE FEET), BEING A PORTION OF LOT 2, BLOCK 2, FALCON POINTE POD 7 PHASE 1 FINAL PLAT, RECORDED IN DOCUMENT NO. 201600108 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID 0.0133 ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

COMMENCING, at a TxDot Type III aluminum cap found in the east right-of-way line of State Highway 130 (right-of-way varies), and being the south corner of a called 38.14 acre tract conveyed to Clarence Bohls, Trustee of the Kenneth Bohls Cousins Trust in Document No. 2013196388 (O.P.R.T.C.T.), and being the northwest corner of Lot 1, Block 2 of said Falcon Pointe Pod 7 Phase 1 Final Plat, from which a 1/2-inch iron rod with “Bury” cap found in the south right-of-way line of Colorado Sand Drive (90’ right-of-way), and being in the east line of said Bohls tract, and being the northwest corner of said Lot 2 bears, N27°34’52”E, a distance of 1377.74 feet;

THENCE, with the east right-of-way line of said SH 130 and the west line of said Lot 1, S05°44’08”E, a distance of 33.55 feet to a calculated point at the intersection of the east right-of-way line of said SH 130 with the north right-of-way line of Falcon Village Lane (60’ right-of-way, dedicated per plat in Document No. 201600100 (O.P.R.T.C.T.)), and being the southwest corner of said Lot 1;

THENCE, with the north right-of-way line of said Falcon Village Lane and the south lines of said Lots 1 and 2, N84°15’52”E, a distance of 93.67 feet, and 198.51 feet along the arc of a curve to the right, having a radius of 495.00 feet, and whose chord bears S84°14’49”E, a distance of 197.18 feet to a calculated point for the southwest corner and **POINT OF BEGINNING** hereof;

THENCE, leaving the curving north right-of-way line of said Falcon Village Lane and the south line of said Lot 2, over and across said Lot 2, the following three (3) courses and distances:


- 1) **N59°29’09”E**, a distance of **6.73** feet to a calculated point for the northwest corner hereof,
- 2) **112.78** Feet along the arc of a curve to the right, having a radius of **500.00** feet, and whose chord bears **S65°46’42”E**, a distance of **112.54** feet to a calculated point for the northeast corner hereof,
- 3) **S04°54’10”E**, a distance of **6.16** feet to a calculated point for the southeast corner hereof, said point being in the curving north right-of-way line of said Falcon Village Lane and the south line of said Lot 2, from which a 1/2-inch iron rod with “Bury” cap found at an angle point in the common line of Lots 2 and 3, both of Block 2 of said Falcon Pointe Pod 7 Phase 1 Final Plat bears:

- 1) 84.46 Feet along the arc of a curve to the right, having a radius of 495.00 feet, and whose chord bears S54°00’47”E, a distance of 84.36 feet,
- 2) 111.22 Feet along the arc of a curve to the left, having a radius of 140.00 feet, and whose chord bears S71°53’01”E, a distance of 108.32 feet,
- 3) 63.59 Feet along the arc of a curve to the right, having a radius of 110.00 feet, and whose chord bears S78°04’56”E, a distance of 62.70 feet, and
- 4) N27°34’52”E, a distance of 677.82 feet;

THENCE, with the curving north right-of-way line of said Falcon Village Lane and the south line of said Lot 2, **119.72** feet along the arc of a curve to the left, having a radius of **495.00** feet, and whose chord bears **N65°49'47"W**, a distance of **119.43** feet to the **POINT OF BEGINNING** and containing 0.0133 Acre (581 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000107479591. See attached sketch (reference drawing: 00498_sidewalk easement.dwg.)


Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

6/3/2016



[A]
CALLED 38.14 ACRES
CLARENCE BOHLS,
AS TRUSTEE OF
THE KENNETH BOHLS
COUSINS TRUST
DOC. #2013196388
O.P.R.T.C.T.

[B]
STATE
HIGHWAY 130
(R.O.W. VARIES)

BLOCK 2
FALCON POINTE POD 7
PHASE 1 FINAL PLAT
DOC. #201600108
O.P.R.T.C.T.

SIDEWALK EASEMENT
0.0133 ACRE(S)
581 SQUARE FEET

R=500.00'
L=112.78' D=12°55'26"
S65°46'42"E 112.54'

R=495.00'
L=198.51' D=22°58'37"
S84°14'49"E 197.18'

R=495.00'
L=119.72' D=13°51'26"
N65°49'47"W 119.43'

P.O.B.

GRID N: 10,139,520.89
GRID E: 3,160,126.15

[S05°52'06"E
33.55']
[S05°44'08"E
33.55']
[N27°34'52"E
677.82']
[N27°26'54"E
677.82']

LOT 1

N84°15'52"E
93.67'
[N84°07'54"E
93.67']

P.O.C.

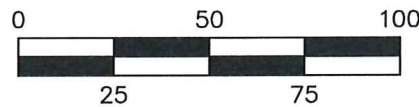
GRID N: 10,139,564.67
GRID E: 3,159,833.44

**0.0133 ACRE
SIDEWALK EASEMENT
City of Pflugerville,
Travis County, Texas**

4WARD
Land Surveying
A Limited Liability Company

PO Box 90876, Austin Texas 78709
WWW.4WARDLS.COM (512) 537-2384
TBPLS FIRM #10174300

Date:	6/3/2016
Project:	00498
Scale:	1" = 50'
Reviewer:	JSW
Tech:	CC
Field Crew:	MA/BP
Survey Date:	MAY 2016
Sheet:	1 OF 2



GRAPHIC SCALE: 1" = 50'

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	BEARING	DISTANCE
C1	84.46'	495.00'	9°46'35"	S54°00'47"E	84.36'
C2	111.22'	140.00'	45°31'04"	S71°53'01"E	108.32'
[C2]	111.22'	140.00'	45°31'04"	S72°00'58"E	108.32'
C3	63.59'	110.00'	33°07'13"	S78°04'56"E	62.70'
[C3]	63.59'	110.00'	33°07'13"	S78°12'54"E	62.70'
C4	402.69'	495.00'	46°36'39"	S72°25'49"E	391.68'
[C4]	402.69'	495.00'	46°36'39"	S72°33'46"E	391.68'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N59°29'09"E	6.73'
L2	S04°54'10"E	6.16'

LEGEND	
	PROPOSED EASEMENT LINE
	EXISTING PROPERTY LINES
	IRON ROD WITH "SURVEYOR" CAP FOUND
	CALCULATED POINT
	TXDOT TYPE III 5/8" ALUMINUM CAPPED FOUND
DOC. #	DOCUMENT NUMBER
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
VOL./PG.	VOLUME, PAGE
R.O.W.	RIGHT-OF-WAY
[.....]	RECORD INFORMATION PER DOC #201600108

TCAD #834502
COA GRID #R38

NOTES:

1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83 (CORS), ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000107479591.

2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

**0.0133 ACRE
SIDEWALK EASEMENT
City of Pflugerville,
Travis County, Texas**

6/3/2016



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