

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

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This Temporary Construction Easement Agreement ("Agreement") is made by and between **HIGHLAND PARK RESIDENTIAL COMMUNITY, INC.**, a Texas non-profit corporation ("Owner") and the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule municipality ("City"), and is as follows:

RECITALS

A. Owner 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. Owner have agreed to grant City a temporary, non-exclusive easement and right-of-way upon, over, through and across the Easement Tract to construct a 24-inch water main (the "Project") in the location shown on Exhibit "B" attached hereto and incorporated herein, 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 a temporary construction 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 temporary. The easement shall expire upon the earlier of (i) completion of the construction and installation of the Project by the City, or (ii) eighteen months following the date of this Agreement.
3. **Exclusiveness of Easement.** The Easement is non-exclusive and City's use shall be in common with Owner and its successors and assigns. Owner hereby reserves for itself and its 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 any and all lawful purposes. Notwithstanding anything contained herein to the contrary, Owner 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 ingress and egress over and across the Easement Tract by the City, and the City's, employees, agents and contractors necessary to construct a 24-inch water main (the "Project"), over the Easement Tract at the City's sole cost and expense, which construction shall be (i) in compliance with all applicable laws, ordinances, codes, regulations and statutes, (ii) in compliance with the terms and conditions of this Agreement and (iii) acceptable to Owner.

5. **Repairs and Restoration.** In the event that the construction of the Project 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 the Owner, its tenant or agents (or their respective successors and assigns), the 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 Owner agrees to repair or replace, as necessary, at Owners' expense, any such improvements so damaged or destroyed. To the extent allowed by applicable law, the City and its successors and assigns herein defend, indemnify and hold Owner, its tenant, agents and their respective successors and assigns, harmless from any and all liability, claims, demands, and causes of action, including reasonable attorneys fees related to or in connection with the City's use of the Easement Tract or exercise of the City's rights herein expressly set forth.

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 2 day of FEBRUARY, 2015 (the "Effective Date").

OWNER:

**Highland Park Residential Community Inc.
(a Texas non-profit corporation)**

By: Thomas J. Anker
Name: THOMAS J. ANKER
Title: 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 WILLIAMSON §

This instrument was acknowledged before me on February 2, 2015, by
Thomas J. Anker, the President of Highland Park Residential Community,
Inc., a Texas non-profit corporation, on behalf of said corporation.

(seal)



Stacy M. Laine
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"



Exhibit "A"

Page 1 of 2

July 11, 2014

Revised: September 5, 2014

Revised: January 16, 2015

Temporary Construction Easement
Private Open Space #2
HIGHLAND PARK, PHASE A, SECTION 1
Travis County, Texas

DESCRIPTION

DESCRIPTION OF A 1988 SQUARE FOOT TRACT OF LAND SITUATED IN THE TG STUART SURVEY, A-689, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT PRIVATE OPEN SPACE #2, OF HIGHLAND PARK, PHASE A, SECTION 1, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, A MAP OF WHICH IS RECORDED IN DOCUMENT NO. 200300243, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 1988 SQUARE FOOT TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a ½ inch iron rod found with cap stamped "CCC 4835" on the east boundary line of said Private Open Space #2, same line being the west boundary line of that certain 25 foot wide alley way described as Alley #1 on said map of HIGHLAND PARK, PHASE A, SECTION 1, for the eastern most northeast corner of said Private Open Space #2 and for the southern end of the west return to Great Basin Avenue, a 50 foot wide roadway dedicated on said map of HIGHLAND PARK, PHASE A, SECTION 1, for a corner of said Private Open Space #2;

THENCE, in a northwestern direction, with said west return to Great Basin Avenue, along a curve to the left, having an arc length of 23.56 feet, a radius of 15.00 feet, a delta angle of 89°58'58", and a chord which bears North 08°38'26" West, a distance of 21.21 feet, to a point on said Great Basin Avenue for the northern end of said return, same point being a corner of said Private Open Space #2, from which point a ½ inch iron rod found with cap stamped "CCC 4835" for the northern most northwest corner of Lot 1, Block A, said HIGHLAND PARK, PHASE A, SECTION 1, bears South 53°38'58" East, a distance of 54.02 feet;

THENCE, North 53°38'58" West, with said south right-of-way line of Great Basin Ave, a distance of 15.00 feet to a point, from which a ½ inch iron rod found with cap stamped "CCC 4835" bears North 53°38'58" West, with said south right-of-way line of Great Basin Ave, at 27.81 feet leaving said south right-of-way line, in all a total distance of 43.48 feet;

THENCE, South 36°24'13" West, a distance of 67.76 feet, to a point for the northeast corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, over and across said Private Open Space #2, the following four (4) courses and distances:

1. South 36°24'13" West, a distance of 37.65 feet to a point for the southeast corner of the herein described tract;
2. North 84°08'22" West, a distance of 44.63 feet to a point for the southwest corner of the herein described tract;
3. North 28°20'52" East, a distance of 54.35 feet to a point for the northwest corner of the herein described tract;

905 East Huntland Drive, Suite 485 | Austin, Texas 78751 | 512.836.9798 | fax 512.836.6551 | www.cobbfindley.com

TIME For Regulation No. 274 | TAPES Regulation No. 10046201

Handwritten: 11/16/14 Jan 2015

Exhibit "A"

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Exhibit "A"
Page 2 of 2
January 16, 2015

Temporary Construction Easement
Private Open Space #2
HIGHLAND PARK, PHASE A, SECTION 1
Travis County, Texas

4. South 61°39'08" East, a distance of 46.52 feet to the **POINT OF BEGINNING** and containing 1988 square feet of land within these metes and bounds.

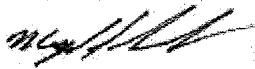
Reference is herein made to the sketch of this tract accompanying this metes and bounds description.

Subject tract described herein is an easement. No monumentation set for corners.

Bearings are based on the Texas Coordinate System of 1983, Central Zone (NAD 83 (2011)). All distances were adjusted to the surface using a Surface Adjustment Factor of 1.0001. (Surface = Grid X Surface Adjustment Factor)

I certify that this description was prepared from a survey made on the ground on July 10, 2014 under my supervision.

COBB, FENDLEY & ASSOCIATES


16 JAN 2015
Miguel A. Escobar, LSLS, RPLS
Texas Registration No. 5630



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rev2.docx

EXHIBIT "B"

