

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.

PUBLIC UTILITY EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

TACK DEVELOPMENT, LTD, a Texas limited partnership, located at 2490 FM 385, Hutto, Williamson County, Texas, 78634 (“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 78691 (“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) “Permitted Improvements” shall mean landscaping or planting of vegetation, driveways and sidewalks; but shall not mean the construction of a building or structure unless such installation or construction is approved in writing by the City Manager or the City Manager’s designee.

(c) "Public Utility" shall mean electricity, fiber optic, gas, television cable, and telecommunication infrastructure.

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 is irrevocable. The Easement is for the benefit of Holder.
3. *Purpose of Easement.* The Easement shall be used for public utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public utility facilities and related appurtenances, or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the public utility facilities and related appurtenances.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.

Reservation of Rights (Surface use only). Save and except Grantor's retain right to surface use, Holder's right to use the Easement Property is exclusive and Grantor shall not convey to others any right to use all or part of the Easement Property. Grantor and Grantor's heirs, successors, and assigns shall retained the right to use the surface of all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns neither interferes with the use of the Easement Property by Holder for the Easement Purpose. Specifically, Grantor shall not construct any building, structure or obstruction on the Easement Property. Any improvement made by Grantor (Permitted Improvement) must comply with applicable ordinances, development codes and engineering guidelines of the City of Pflugerville.

5. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 7, immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences or other encroachments within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder shall not be required to replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and are damaged in connection with the work.

6. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash.
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 non-defaulting 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.* 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.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2016.

GRANTOR:

TACK DEVELOPMENT, LTD
A Texas limited partnership

By Commerce Texas Properties, Inc.
A Texas corporation, General Partner

By: _____
Timothy Timmerman, President

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 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on _____, 2016, by Timothy Timmerman, President of Commerce Texas Properties, Inc., a Texas corporation, on behalf of said corporation, general partner of Tack Development, Ltd., a Texas limited partnership, on behalf of said partnership.

Notary Public Signature

(seal)

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2016, 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)

EXHIBIT "A"

County: Travis
Project: Helios Way
Halff AVO: 31018

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7/13/2016

0.1583 ACRE GENERAL PUBLIC UTILITY EASEMENT

BEING A 0.1583 ACRE (6,897 SQUARE FEET) TRACT SITUATED IN THE TAYLOR S. BARNES SURVEY, ABSTRACT NO. 67, AND THE WILLIAM CALDWELL SURVEY, ABSTRACT NO. 162, TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 75.30 ACRES TRACT AS DESCRIBED IN A WARRANTY DEED TO TACK DEVELOPMENT, LTD. AND RECORDED IN DOCUMENT NO. 2003232092 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a ½-inch iron rod with plastic cap stamped "CHAPPARAL" found in the east line of said 2.56 acres tract for the southwest corner of Sun Light Near Way, a variable width right-of-way according to Document No. 201100199 of the O.P.R.T.C.T., same being the northwest corner of a called 17.800 acres tract as described in a Notice of Lis Pendens recorded in Document No. 1999122493 of the O.P.R.T.C.T.;

THENCE with the west right-of way line of said Sun Light Near Way, same being the east line of said 2.56 acres tract, N28°23'35"E a distance of 6.81 feet to a calculated point, and from which a ½-in iron rod with plastic cap stamped "G&R SURVEYING" found in said west right-of-way line of Sun Light Near Way, and said east line of the 2.56 acres tract, bears N28°23'35"E a distance of 1,153.66 feet;

THENCE leaving said west right-of-way line of Sun Light Near Way and said east line of the 2.56 acres tract, crossing said 2.56 acres tract N62°59'55"W a distance of 20.00 feet to a ½-inch iron rod with plastic cap stamped "HALFF ESMT" set in the west line of said 2.56 acres tract, same being the east line of said 75.30 acres tract, for the **POINT OF BEGINNING** of the tract described herein;

THENCE crossing said 75.30 acres tract the following three courses and distances:

1. N62°59'55"W a distance of 689.54 feet to a ½-inch iron rod with plastic cap stamped "HALFF ESMT" set,
2. N27°00'05"E a distance of 10.00 feet to a ½-inch iron rod with plastic cap stamped "HALFF" set, for the southwest corner of Helios Way, a proposed 80 feet right-of-way, and
3. with the proposed south right-of-way line of said Helios Way, S62°59'55"E a distance of 689.78 feet to a ½-inch iron rod with plastic cap stamped "HALFF ESMT" set in said east line of the 75.30 acres tract, and said west line of the 2.56 acres tract;

EXHIBIT "A"

County: Travis
Project: Helios Way
Halff AVO: 31018

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0.1583 ACRE GENERAL PUBLIC UTILITY EASEMENT

THENCE with said east line of the 75.30 acres tract and said west line of the 2.56 acres tract, S28°23'35"W a distance of 10.00 feet to said **POINT OF BEGINNING** and containing 0.1583 acres (6,897 square feet).

NOTES:

Basis of bearings is the Texas Coordinate System of 1983, Central Zone 4203 (NAD83/2011). All distances shown hereon are surface and may be converted to grid by using the surface adjustment factor of 1.00010. Units: U.S. Survey Feet.

This survey was prepared without the benefit of a title commitment or report. The surveyor has not abstracted the subject property, nor made any independent investigation or search for easements of record, restrictive covenants or any other encumbrances.

I, Dan H. Clark, a Registered Professional Land Surveyor, do hereby certify that the above description and the accompanying plat of even date herewith, are true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey on the ground under my direction and supervision.



Dan H. Clark, R.P.L.S.

8-16-16

Date

Registered Professional Land Surveyor

Texas Registration No. 6011

Halff Associates, Inc.,

4030 W. Braker Ln, Suite 450, Austin, Texas 78759, 512-777-4600





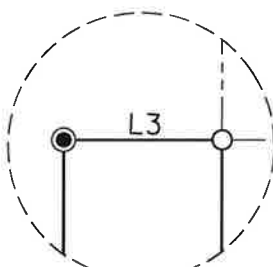
GRAPHIC SCALE
1"=100'



LINE TABLE

LINE NO.	BEARING	DISTANCE
L1	N28°23'35"E	6.81'
L2	N62°59'55"W	20.00'
L3	N27°00'05"E	10.00'
L4	S28°23'35"W	10.00'

**TAYLOR S BARNES
SURVEY, A-67**



DETAIL "B"
N.T.S.

SEE DETAIL "B"

**PROPOSED
BILTMORE AVENUE
(VARIABLE WIDTH R.O.W.)**

10' WIDE
GENERAL PUBLIC UTILITY EASEMENT
0.1583AC
(6,897 Sq Ft)

APPROXIMATE ABSTRACT SURVEY LINE

REMAINDER OF
TACK DEVELOPMENT, LTD
(75.30 AC)
DOC. NO. 2003232092
O.P.R.T.C.T.

**WILLIAM CALDWELL
SURVEY, A-162**

REMAINDER OF
CITY OF
PFLUGERVILLE
(2.56 AC.)
VOL. 9236, PG. 954
R.P.R.T.C.T.

SEE DETAIL "A"

TRAVIS COUNTY
CAUSE NO. 2319
(17.800 AC)
DOC. NO. 1999122493
O.P.R.T.C.T.

P.O.C.
CHAPPARAL

**PROPOSED
HELIOS WAY
(80' WIDE R.O.W.)**

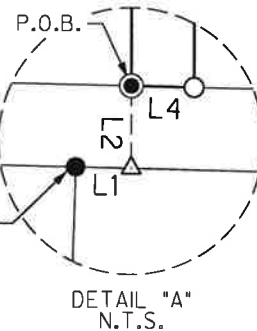
S62°59'55"E 689.78'

N62°59'55"W 689.54'

N28°23'35"E 1153.66'

G&R SURVEYING

**SUN LIGHT NEAR WAY
(VARIABLE WIDTH R.O.W.)
DOC. NO. 201100199
O.P.R.T.C.T.**



DETAIL "A"
N.T.S.

P.O.C.
"CHAPPARAL"



HALFF

4030 WEST BRAKER LANE, SUITE 450
AUSTIN, TEXAS 78759-5356
TEL (512) 777-4600
FAX (512) 252-8141
TBPLS FIRM NO. 10029607

HELIOS WAY
0.1583 ACRE
GENERAL PUBLIC UTILITY EASEMENT

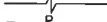
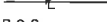
Project No.: 31018

Issued: 8/15/2016

Accompanying file Name:
SV-LD-GP ESMT 0.1583.docx

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LEGEND

○	1/2" IRON ROD SET WITH "HALFF" CAP
●	1/2" IRON ROD SET WITH "HALFF ESMT" CAP
●	1/2" IRON ROD FOUND (CAP NOTED)
△	CALCULATED POINT
N.T.S.	NOT TO SCALE
R.O.W.	RIGHT-OF-WAY
ESMT.	EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
P.R.T.C.T.	PLAT RECORDS OF TRAVIS COUNTY TEXAS
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY TEXAS
DOC.#	DOCUMENT NUMBER
	DISTANCE NOT SHOWN TO SCALE
	PROPERTY LINE
P.O.C.	POINT OF COMMENCING
P.O.B.	POINT OF BEGINNING

1) THE BEARINGS SHOWN HEREON ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE. ALL DISTANCES SHOWN HEREON ARE SURFACE DISTANCES. THE SURFACE ADJUSTMENT FACTOR IS 1.00010

2) THE ACREAGE CALCULATED AND SHOWN HEREON IS CONVERTED FROM THE SQUARE FOOTAGE SHOWN HEREON, AND IS FOR INFORMATIONAL PURPOSES ONLY.

3) THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT OR REPORT. THE SURVEYOR HAS NOT ABSTRACTED THE SUBJECT PROPERTY, NOR MADE ANY INDEPENDENT INVESTIGATION OR SEARCH FOR EASEMENTS OF RECORD, RESTRICTIVE COVENANTS OR ANY OTHER ENCUMBRANCES.

I HEREBY CERTIFY THAT THIS PLAT AND THE ACCOMPANYING DESCRIPTION OF EVEN DATE HERewith ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE PROPERTY SHOWN HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

Dan H. Clark

8-16-16

DAN H. CLARK
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6011

DATE



HALFF

4030 WEST BRAKER LANE, SUITE 450
AUSTIN, TEXAS 78759-5356
TEL (512) 777-4600
FAX (512) 252-8141
TBPLS FIRM NO. 10029607

HELIOS WAY

0.1583 ACRE
GENERAL PUBLIC UTILITY EASEMENT

Project No.: 31018

Issued: 8/15/2016

Accompanying file Name:
SV-LD-GP ESMT 0.1583.docx

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