

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

WATER AND WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

KM AVALON, LTD., a Texas limited partnership ("*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 home-rule city located in 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.

Grantor 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, by, through, or under Grantor, but not otherwise, subject to all matters of record and visible and apparent on the ground, to the extent the same are valid and subsisting and affect the Easement Tract, and the matters set forth herein.

CHARACTER OF EASEMENT:

The Easement is an easement in gross.

PURPOSE OF EASEMENT:

The Easement shall be used only for the installation, construction, operation, use, enjoyment, maintenance, reconstruction, replacement, repair, re-alignment, upgrade, expansion, inspection, patrol, and removal of public water and wastewater facilities, together with appurtenances and facilities related to such public water and wastewater facilities and for making connections therewith; all public water and wastewater lines will be located underground, but facilities and appurtenances related to the water and wastewater lines may be located above ground.

The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement, and expansion of such public water and wastewater utility facilities and related appurtenances.

DURATION OF EASEMENT:

The Easement shall be perpetual.

EXCLUSIVENESS OF EASEMENT:

Subject to the following sentence and the section entitled "Surface Use" below, the Easement shall be exclusive, and Grantor covenants that Grantor will not convey any other easement or conflicting rights within the Easement Tract without obtaining the prior written consent of Grantee, which will not be unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary, Grantor may alter or otherwise use the Easement Tract for purposes that do not interfere with Grantee's exercise of the rights herein granted, and may place, construct, operate, repair, and maintain roadways and driveways, hike and bike trails, landscaping, drainage lines and systems, and other public utility lines (including without limitation, water, wastewater, electric, telephone, cable television, and gas lines and systems) in, on, over, under, and across the Easement Tract (but may not install parallel lines within the Easement Tract), and may grant public and/or private easements for such uses; provided, however, that the plans for all improvements to be placed within the Easement Tract (except for landscaping improvements installed no deeper than 24 inches below the surface of the land) must be approved by Grantee before such improvements are installed or built, with such approval not to be unreasonably withheld or delayed.

SURFACE USE:

Grantor hereby retains, reserves, and shall continue to enjoy the use of the surface of the Easement Tract for any and all purposes which do not materially interfere with or unreasonably prevent the use by Grantee of the Easement herein granted. Grantee has the right to trim and cut down trees and shrubbery and to remove other improvements and structures installed in violation of this agreement to the extent reasonably necessary to prevent interference with the operation or repairs to Grantee's facilities in the Easement Tract. If necessary, Grantee will install temporary fencing adequate to contain and protect any livestock located on the Easement Tract during any construction activities. Upon completion of any construction, maintenance or repair which disturbs the surface of the Easement, Grantee must fill all trenches, remove all construction debris, and restore the surface of the Easement to substantially the same condition which existed prior to commencement of such construction, maintenance, or repair. All rocks, timber, brush, and other debris generated by any construction, maintenance, or repair must be removed from the premises and may not be placed on Grantor's adjacent lands, unless specifically approved in writing by Grantor. Further, if Grantee, in the exercise of its rights hereunder, disturbs or damages any improvements, except those installed in violation of this Agreement, located upon the Easement, Grantee must promptly upon completion of the work which caused the disturbance or damage, repair the improvement to substantially the same condition that existed prior to Grantee's work, utilizing comparable materials, at Grantee's sole expense.

NO REPRESENTATIONS OR WARRANTIES:

GRANTEE HEREBY EXPRESSLY ASSUMES ALL RISK AND PERILS ASSOCIATED WITH THE EASEMENT AND THE USE OF THE EASEMENT TRACT GRANTED HEREIN. GRANTOR WILL HAVE NO RESPONSIBILITY, LIABILITY, OR OBLIGATION WITH RESPECT TO ANY PROPERTY OF GRANTEE, IT BEING ACKNOWLEDGED AND UNDERSTOOD BY GRANTEE THAT THE SAFETY AND SECURITY OF ANY SUCH PROPERTY IS THE SOLE RESPONSIBILITY AND RISK OF GRANTEE. GRANTEE ACCEPTS THE CURRENT AND FUTURE CONDITION OF THE EASEMENT AND THE EASEMENT TRACT **"AS IS"**, **"WHERE IS"**, AND **WITH ALL FAULTS**. GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE EASEMENT OR THE EASEMENT TRACT, INCLUDING, BUT NOT LIMITED TO, THE FITNESS FOR ANY USE BY GRANTEE, THE SAFETY OR SECURITY OF THE EASEMENT OR THE EASEMENT TRACT, THE COMPLIANCE OF THE

EASEMENT OR THE EASEMENT TRACT WITH ANY APPLICABLE LAW, OR THE COMPLIANCE OF THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE EASEMENT TRACT WITH ANY APPLICABLE LAWS, RULES, REGULATIONS, AND RESTRICTIONS. THIS PROVISION WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

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.

BINDING EFFECT:

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

ASSIGNABILITY:

This Easement and the rights of Grantee hereunder may be assigned in whole or in part by Grantee so long as the assignee utilizes the Easement as contemplated herein.

In witness whereof, this instrument is executed and accepted effective as of this 23 day of August, 2016.

KM AVALON, LTD., a Texas limited partnership

By: KM Avalon GP, Inc., a Texas corporation, its
General Partner

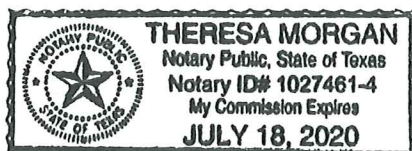
By: 
Blake J. Magee, President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on August 23, 2016, by Blake Magee, President of KM Avalon GP, Inc., a Texas corporation, general partner of KM Avalon, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.


Notary Public Signature

(seal)



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 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.

(seal)

Notary Public Signature

EXHIBIT "A"

0.1186 Acre

THAT PART OF THE EDWARD FLINT SURVEY, ABSTRACT No. 277, IN TRAVIS COUNTY, TEXAS, BEING A PART OF THAT 190.47 ACRE TRACT OF LAND CONVEYED TO KM AVALON, LTD., BY DEED RECORDED IN DOCUMENT No. 2005118418 OF THE OFFICIAL PUBIC RECORDS OF TRAVIS COUNTY, TEXAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at a cotton gin spindle set at the intersection of the north line of Kelly lane and the west line of Weiss Lane, same being the southeast corner of a 16.6069-Acre Tract of land conveyed to 735 Henna LLC by deed recorded in Document No. 2013195014 of the Official Public Records of Travis County, Texas:

THENCE N.63°04'44"W. with the north line of said Kelly Lane and the south line of said 16.6069-Acre Tract, a distance of 1050.27 feet to a 1/2" iron rod found at the southwest corner of said 16.6069-Acre Tract;

THENCE N.26°55'23"E. with the west line of said 16.6069-Acre Tract and across said 190.47-Acre Tract, a distance of 527.97 feet to a 1/2" iron rod found for the Point of Beginning;

THENCE continuing across said 190.47-Acre Tract the following four courses:

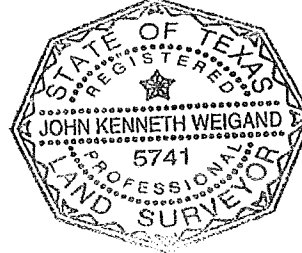
1. THENCE N.72°52'34"W. a distance of 169.61 feet to a 1/2" iron rod set at a point on a non-tangent curve to the left;
2. Northerly along the arc of said curve, a distance of 28.05 feet, said curve having a radius of 50.00 feet, a central angle of 32°08'47" and a chord bearing N.05°58'24"W., 27.69 feet;
3. S.72°52'34"E. a distance of 210.16 feet;
4. S.16°59'24"W. a distance of 25.00 feet to a point on the north line of said 16.6069-Acre Tract;

THENCE N.73°00'36"W. with the north line of said 16.6069-Acre Tract and continuing across said 190.47-Acre Tract (at 29.12 feet pass a 1/2" iron rod found) in all a distance of 29.68 feet;

THENCE S.26°55'23"W. with the west line of said 16.6069-Acre Tract and continuing across said 190.47-Acre Tract a distance of 0.40 feet to the said Point of Beginning.

Containing 0.1186 acre, more or less, as shown on the sketch attached.


J. Kenneth Weigand
Registered Professional Land Surveyor No. 5741
State of Texas



RJ Surveying & Associates, Inc.
2900 Jazz Street
Round Rock, Texas 78664
F-10015400

All iron rods set have RJ Surveying caps
Bearings are Texas State Plane Central Zone NAD 83

2389-WWE-1

