

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

**CONDITIONAL PURCHASE AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **CACTUS COMMERCIAL SOUTH, LP**, a Texas limited partnership, hereinafter referred to as "**SELLER**", for and in consideration of the agreed purchase price of **ONE THOUSAND THREE HUNDRED EIGHT AND NO/100 DOLLARS (\$1,308.00) DOLLARS** (the "Purchase Price") and upon the terms and conditions hereof, contracts to **GRANT, SELL and CONVEY** by Special Warranty Deed to the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule municipality, hereinafter referred to as "**PURCHASER**"; a good, marketable title, free and clear of all liens and encumbrances of every kind (except liens for current taxes and assessments), to the following described Property in the City of Pflugerville, Travis County, Texas, to-wit:

**DESCRIBE PROPERTY:** As more fully described in **Exhibit "A"**, the property is described as follows:

Being a 0.0254 of one acre or 1,106 square feet of land, more or less out of the E. WILLIAM CALDWELL SURVEY NO. 66, ABSTRACT NO. 162, Travis County, Texas and being out of that tract described as 281.80 acres in a deed to Cactus Commercial South, L.P., of Record in Document No. 2014095553, Official Public Records, Travis County, Texas; said 0.0254 acres being more particularly described by metes and bounds in **Exhibit "A"** attached hereto.

Together with all improvements incident or belonging thereto.

**Purchase and Sale Agreement:** **SELLER** agrees to sell and convey the Property to **PURCHASER**, and **PURCHASER** conditionally agrees to buy and pay **SELLER** for the Property. The promises by **PURCHASER** and **SELLER** stated in this contract are the consideration for the formation of this contract.

**Offer Conditional:** Pursuant to Pflugerville City Charter Section 3.14, **PURCHASER'S** obligation to buy or convey the real property described in this agreement is conditional and shall not be effective until such action is approved by City Council.

**SELLER** hereby agrees to furnish **PURCHASER** a Release, Partial Release or Subordination of Lien, if applicable.

**Special Conditions:** NONE

The agreed Purchase Price includes full accord, satisfaction and compensation for all demands and damages to the remaining property of the **SELLER**, if any.

The **PURCHASER**, without expense to the **SELLER**, shall prepare the Special Warranty Deed document and shall bear the expense of all closing costs.

**INDEPENDENCE TITLE COMPANY** shall act as **Agent**, and the **SELLER** agrees that closing shall occur at a mutually agreeable time and day at the **Agent's** office located at **203 W. Main Street, Pflugerville, Texas 78660** and **SELLER** shall appear at **Agent's** office at said time to execute a **SPECIAL WARRANTY DEED** in substantially similar form as **EXHIBIT "B"** and other conveyance documents reasonably required by **Agent**.

Until title has been conveyed to the **PURCHASER**, loss or damage to the property by fire or other casualty, except that caused by **PURCHASER**, shall be at the risk of the **SELLER** and the amount thereof shall be deducted from the Purchase Price. In the event this purchase fails to close through no fault of **SELLER**, and **PURCHASER** does not proceed to condemnation, **PURCHASER** shall repair any damage caused by **PURCHASER'S** entry on the Property. In addition, should the purchase fail to close, as a result of **PURCHASER'S** decision not to proceed with closing or condemnation, and **PURCHASER'S** decision is not attributable, in whole or part, to fault of **SELLER**; in such event, **PURCHASER** shall instruct **TITLE COMPANY** to release the Earnest Money and accrued interest to **SELLER**. This shall be **SELLER'S** sole remedy in the event of **PURCHASER'S** determination not to proceed to proceed with closing. This contract shall not be binding upon either party until it is accepted by the **PURCHASER**, acting by and through its City Manager, or other designated official. Such acceptance shall be acknowledged by the City Manager, or other designated official's execution of this contract. This contract contains the entire consideration for the purchase and conveyance of the property, it being agreed and understood that there is no valid other written or parole agreement regarding the property between **SELLER** and the City, or any officer or employee of the City.

This Agreement shall remain binding on the Parties for a period of 180 days after execution by the City Manager, or other designated city official. After such period should the sale that is the subject of this contract not close, and **PURCHASER** has failed to initiate condemnation, such failure shall be deemed as **PURCHASER'S** decision not to proceed with closing or condemnation.

The **PURCHASER** may take possession of the Property and begin construction immediately upon the **SELLER'S** execution of this contract.

The **SELLER** represents to the **PURCHASER** that there are no water wells, or other wells, or underground storage tanks on the property, capped or uncapped, registered or unregistered. This provision shall survive closing.

If examination of title or any other source discloses any defects in the title to the Property which, in the opinion of the **PURCHASER**, cannot be cured in a reasonable time or which negatively impact the value of the property, then the **PURCHASER**, in lieu of completing the purchase of the property, may, but shall not be required to, proceed to acquire the same by condemnation.

**EXECUTED** this the \_\_\_\_ day of December, 2016.

**SELLER:**

**Cactus Commercial South LP,**  
a Texas limited partnership,

By: Cactus GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Pemberton Capital, LLC,  
a Texas limited liability company,  
its Manager

By: Aequitas Capital Advisors Fund, LP,  
a Texas limited partnership,  
its Manager

By: Aequitas Capital Advisors, Inc.,  
a Delaware Corporation,  
its General Partner

By:   
Douglas B. Kadison, President

**PURCHASER:**

**CITY OF PFLUGERVILLE,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Brandon Wade, City Manager

**ATTEST:**

\_\_\_\_\_  
Karen Thompson, City Secretary

**PARCEL ADDRESS:**  
E. Pecan Street  
Pflugerville, Texas 78660

## Exhibit "A"

EXHIBIT " \_ "

William Caldwell Survey No. 66, Abstract No. 162

### DESCRIPTION OF 0.0254 OF ONE ACRE

DESCRIPTION OF 0.0254 OF ONE ACRE OR 1,106 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE WILLIAM CALDWELL SURVEY NO. 66, ABSTRACT NO. 162, TRAVIS COUNTY, TEXAS, AND BEING OUT OF THAT TRACT DESCRIBED AS 281.80 ACRES IN A DEED TO CACTUS COMMERCIAL SOUTH, L.P., OF RECORD IN DOCUMENT NO. 2014095553, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS; SAID 0.0254 OF ONE ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a calculated point at the south corner of this tract and at an exterior ell corner in said Cactus Commercial South tract, same being in the northeast line of that tract described as 5.10 acres in a deed to Helen Noneman, of record in Document No. 2012194992, Official Public Records, Travis County, Texas and in the existing northwest right-of-way line of Weiss Lane, from which a 1/2" iron rod found at the east corner of said Noneman tract, bears S62°33'20"E 12.68 feet, and from which point of beginning a 1/2" iron rod found with cap at the south corner of said Noneman tract bears S62°33'20"E 12.68 feet and S27°01'17"W 257.64 feet, and said point of beginning having State Plane Coordinates (Texas Central Zone, NAD83, U.S. Feet, Combined Grid to Surface Scale Factor of 1.00010) grid value of N=10,129,826.10 E=3,165,957.21;

THENCE, with the southwest line of this tract and said Cactus Commercial South tract and the northeast line of said Noneman tract, **N62°33'20"W 43.23 feet** to a 1/2" iron rod set with a plastic cap at the west corner of this tract, same being in the proposed northwest right-of-way line of Weiss Lane;

THENCE, with the northwest line of this tract and the proposed northwest right-of-way line of Weiss Lane, crossing said Cactus Commercial South tract, **N27°33'37"E 25.39 feet** to a 1/2" iron rod set with a plastic cap at the north corner of this tract, same being in the northeast line of said Cactus Commercial South tract and the southwest line of that tract described as 32.290 acres (Exhibit "B") in a deed to Joe Weiss, of record in Document No. 2001065238, Official Public Records, Travis County, Texas;

THENCE, with the northeast line of this tract and said Cactus Commercial South tract and the southwest line of said Joe Weiss tract, **S62°36'40"E 43.84 feet** to a 1/2" iron rod found at the east corner of this tract and said Cactus Commercial South tract, same being in the existing northwest right-of-way line of Weiss Lane;

## Exhibit "A"

0.0254 AC

THENCE, with the southeast line of this tract and said Cactus Commercial South tract and the existing northwest right-of-way line of Weiss Lane, **S28°56'20"W 25.44 feet** to the POINT OF BEGINNING and containing 0.0254 of one acre, or 1,106 square feet, more or less, contained within these metes and bounds.

### Bearing Basis Note

The bearings described herein are Texas State Plane Grid bearings (Texas Central Zone, NAD83 (CORS96). The Combined Grid to Surface Scale Factor is 1.00010) and was established by GPS observations.

SURVEYED BY:

**McGRAY & McGRAY LAND SURVEYORS, INC.**  
3301 Hancock Dr., Ste. 6, Austin, TX 78731 (512) 451-8591  
TBPLS Firm# 10095500



08/31/16

Chris Conrad, Reg. Professional Land Surveyor No. 5623

Date

Note: This copy of this description is not valid unless an original signature through an original seal appears on its face. There is a plat to accompany this description.

2016/Descriptions/Weiss Lane/0.0254 ac

TCAD # 0267500130

# Exhibit "A"

SKETCH TO ACCOMPANY DESCRIPTION  
OF 0.0254 AC. OR 1,106 SQ. FT. OF LAND OUT OF  
THE WILLIAM CALDWELL SURVEY NO. 66, ABSTRACT NO. 162,  
TRAVIS COUNTY, TEXAS.

RE: TRAVIS COUNTY

SCALE 1" = 50'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N62°33'20"W	43.23
L2	N27°33'37"E	25.39
L3	S62°36'40"E	43.84
L4	S28°56'20"W	25.44
L5	S62°33'20"E	12.68
L6	S62°08'08"E	20.13

WILLIAM CALDWELL  
SURVEY NO. 66  
ABSTRACT NO. 162

HELEN NONEMAN  
DOC. 2012194992  
O.P.R.T.C.  
(5.10 AC.)

(N62°32'25"W 496.62')  
(S60°00'E 456.70')  
HELEN NONEMAN  
VOL. 12763, PG. 3:3  
R.P.R.T.C.  
(3.00 AC.)

(S27°01'46"W 257.50')  
S27°01'17"W 257.64'

PROPOSED R.O.W.  
0.0254 AC. OR  
1,106 SQ. FT.  
P.O.B.  
GRID COORDINATES  
N=10,129,826.10  
E=3,165,957.21

EXISTING ROW

EXISTING ROW

WEISS LANE  
(R.O.W. VARIES)

## LEGEND

- 1/2" IRON ROD FOUND  
(UNLESS OTHERWISE NOTED)
- ⊙ 1/2" IRON ROD FOUND CAPPED  
(UNLESS OTHERWISE NOTED)
- ▲ MAG NAIL FOUND
- 1/2" IRON ROD SET WITH  
CAP "MCGRAY MCGRAY"
- △ CALCULATED POINT
- (XXX) RECORD INFORMATION
- P PROPERTY LINE
- P.O.B. POINT OF BEGINNING
- P.R.T.C. PLAT RECORDS TRAVIS COUNTY
- D.R.T.C. DEED RECORDS TRAVIS COUNTY
- O.P.R.T.C. OFFICIAL PUBLIC RECORDS  
TRAVIS COUNTY

## NOTES:

1. THE COORDINATE SHOWN HEREON IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD83 (CORS96) DATUM AND WAS ESTABLISHED BY GPS OBSERVATION. THE BEARINGS SHOWN ARE GRID BEARINGS. THE COMBINED GRID TO SURFACE SCALE FACTOR IS 1.00010. ALL DISTANCES SHOWN ARE SURFACE DISTANCES.
2. THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF CHICAGO TITLE INSURANCE COMPANY TITLE COMMITMENT GF NO. 1618354-KFO.



*Chris Conrad*

08/31/16

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE  
Note: This copy of this plat is not valid unless an original signature through an original seal appears on its face. There is a description to accompany this plat.

TCAD# 0267500130

M:\LJA\15-043~Weiss Lane~Pflugerville\DWG\Parcels\Cactus Commercial Parcel

ISSUED: 08/31/16  
PAGE 3 OF 3

SURVEYED BY:

**McGRAY & McGRAY**  
**LAND SURVEYORS, INC.**  
TBPLS FIRM# 10095500  
3301 HANCOCK DRIVE #6  
AUSTIN, TEXAS 78731  
(512) 451-8591

JOB NO.: 15-043

## Exhibit "B"

**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.**

### SPECIAL WARRANTY DEED

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

KNOW ALL MEN BY THESE PRESENTS: That **CACTUS COMMERCIAL SOUTH, LP** ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by the **CITY OF PFLUGERVILLE, TEXAS**, a home-rule municipality located in Travis County, Texas ("Grantee"), whose mailing address is P.O. Box 589, Pflugerville, Travis County, Texas 78691, the receipt and sufficiency of which consideration are hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the property depicted on Exhibit "A", attached hereto and incorporated herein by reference ("Property").

This conveyance is expressly made subject to all validly existing restrictions, covenants, conditions, rights-of-way, easements, mineral reservations and royalty reservations, and other matters of record, if any, affecting the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, and Grantee's successors or assigns, forever; and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's 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, except, however, that this conveyance is made subject to the liens securing payment of ad valorem taxes for the current and all subsequent years.

[Signatures appear on the following page]

## Exhibit "B"

EXECUTED effective as of this the \_\_\_\_ day of \_\_\_\_\_, 2016.

**GRANTOR:**

Cactus Commercial South LP,  
a Texas limited partnership,

By: Cactus GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Pemberton Capital, LLC,  
a Texas limited liability company,  
its Sole Member

By: Aequitas Capital Advisors Fund, LP,  
a Texas limited partnership,  
its Manager

By: Aequitas Capital Advisors, Inc.,  
a Delaware Corporation,  
its General Partner

By: \_\_\_\_\_  
Douglas B. Kadison, President

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**Acknowledgement**

THE STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on \_\_\_\_ day of, \_\_\_\_\_ 2016 by  
Douglas B. Kadison, President of Aequitas Capital Advisors, Inc., a Delaware corporation, on  
behalf of said Corporation.

\_\_\_\_\_  
Notary Public's Signature



## Exhibit "B"

**AGREED AND ACCEPTED:**

**CITY OF PFLUGERVILLE, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Brandon Wade, City Manager

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

After recordation please return to: City of Pflugerville  
Attn: Brandon Wade, City Manager  
P.O. Box 589,  
Pflugerville, Texas 78691