

**EASEMENT PURCHASE AGREEMENT  
CACTUS COMMERCIAL SOUTH, LP (SELLER)**

This Purchase Agreement (this "Agreement") is made and entered into by and between the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule municipality ("Buyer"), and **CACTUS COMMERCIAL SOUTH, LP**, a Texas limited partnership ("Seller"), hereafter collectively referred to as the "Parties," upon the premises and for the purposes set out herein, and is effective as stated in this Agreement.

**INTRODUCTION**

A. Seller is the current owner thereof of 281.80 acre tract recorded in Document No. 2014095553, Official Public Records of Travis County, Texas.

B. Buyer requires acquisition of portions of this tract for a public utility easement (**Exhibit "A"**) for the Weiss Lane Widening CIP hereafter collectively referred to as the "Easement."

C. Seller is willing to convey and Buyer to purchase the public utility easement for the appraised value of **\$75.00**.

NOW, THEREFORE, in exchange for the mutual promises provided herein, the Parties agree as follows:

**I.**

*Purchase and Sale Agreement.* For the Purchase Price, Seller agrees to sell and convey an easement to Buyer, and Buyer agrees to buy and pay Seller for the public utility easement as described in **Exhibit "A"** for 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 for that certain City of Pflugerville Weiss Lane Widening CIP. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The obligation of the Buyer contained in this agreement are conditional on City Council of Pflugerville's approval and acceptance of the Easement. In the event the City Council does not approve the acceptance of the Easement, Buyer shall pay Seller \$100.00, as consideration for Seller's agreement to the condition on closing and shall return to Seller all original documents, unfiled with the County, at Buyer's expense.

**II.**

*The Purchase Price.* **SEVENTY-FIVE AND NO/100 DOLLARS (\$75.00)** to be paid at closing.

**III.**

*The Property.* A 10 foot wide public utility easement over, across, under and through a 281.80 acre tract recorded in Document No. 2014095553, Official Public Records of

Travis County, Texas as more particularly described in **Exhibit "A"** and **Exhibit "B"**, attached hereto and incorporated by reference for all purposes.

#### IV.

*Easement Instrument.* The Instrument of Conveyance shall be in substantial conformance with the form and substance as stated in the Public Utility Easement Agreement (**Exhibit "B"**) attached hereto and incorporated by reference for all purposes.

#### V.

##### *Miscellaneous.*

- A. *Closing Date.* The parties shall close on this transaction within 30 days of City Council's approval and acceptance of the Easement.
- B. *Notice.* Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement; or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

Buyer: City of Pflugerville  
Attn: Brandon Wade, City Manager  
100 East Main Street  
Pflugerville, Texas 78660

Seller: Cactus Commercial South, LP  
5000 Bee Cave Road, Suite 106  
Austin, Texas 78746

- C. *Severability; Waiver.* If any provision of this agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is similar in terms to the illegal, invalid, or enforceable provision as is possible. Each of the rights and obligations of the parties hereto are separate covenants. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not be deemed a waiver of such provision or any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

- D. Applicable Law and Venue.* The interpretation, performance, enforcement, and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.
- E. Entire Agreement.* With the exception of the permits and approvals to be issued in connection with this Agreement, this Agreement contains the entire agreement of the Parties and there are no other agreements or promises, oral or written between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter hereof.
- F. Exhibits and Counterparts.* All exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The section headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the sections. The Parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts bear the signatures of all the parties.
- G. Representations and Warranties by Seller.* Seller warrants, represents, covenants, and agrees that Seller has fee simple absolute title to the Property described in **Exhibit "A"**, that said Property is free of any liens or other encumbrances that would prevent this sale, and that Seller meets all requirements to contract with the City of Pflugerville as provided by Chapter 38 of the City's Code of Ordinances.
- H. Eligibility Certification.* Seller certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
- I. Payment of Debt or Delinquency to the State or Political Subdivision of the State.* Pursuant to Chapter 38, City of Pflugerville Code of Ordinances, Seller agrees that any payments owing to Seller under the Agreement may be applied directly toward any debt or delinquency that Seller owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- J. Texas Family Code Child Support Certification.* Seller certifies that it is not ineligible to receive the award of or payments under the Agreement and

acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**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 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

**PURCHASER:**

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

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

**ATTEST:**

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

md/jg/db

## Exhibit "A"

EXHIBIT "A"

William Caldwell Survey No. 66, Abstract No. 162

### DESCRIPTION OF 0.0058 OF ONE ACRE

DESCRIPTION OF 0.0058 OF ONE ACRE OR 254 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 0.0058 OF ONE ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod set with a plastic cap at the south corner of this tract, same being in the southwest line of said Cactus Commercial South, L.P. tract and 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 55.91 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 55.91 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=10,129,846.01 E=3,165,918.87;

THENCE, with the southwest line of this tract and said Cactus Commercial South, L.P. tract and the northeast line of said Noneman tract, **N62°33'20"W 10.00 feet** to a calculated point at the west corner of this tract;

THENCE, with the northwest line of this tract, crossing said Cactus Commercial South, L.P. tract, **N27°33'37"E 25.38 feet** to a calculated point at the north corner of this tract, same being in the northeast line of said Cactus Commercial South, L.P. 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, L.P. tract and the southwest line of said Joe Weiss tract, **S62°36'40"E 10.00 feet** to a 1/2" iron rod set with a plastic cap at the east corner of this tract;

## Exhibit "A"

0.0058 AC

THENCE, with the southeast line of this tract, crossing said Cactus Commercial South, L.P. tract, **S27°33'37"W 25.39 feet** to the POINT OF BEGINNING and containing 0.0058 of one acre, or 254 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

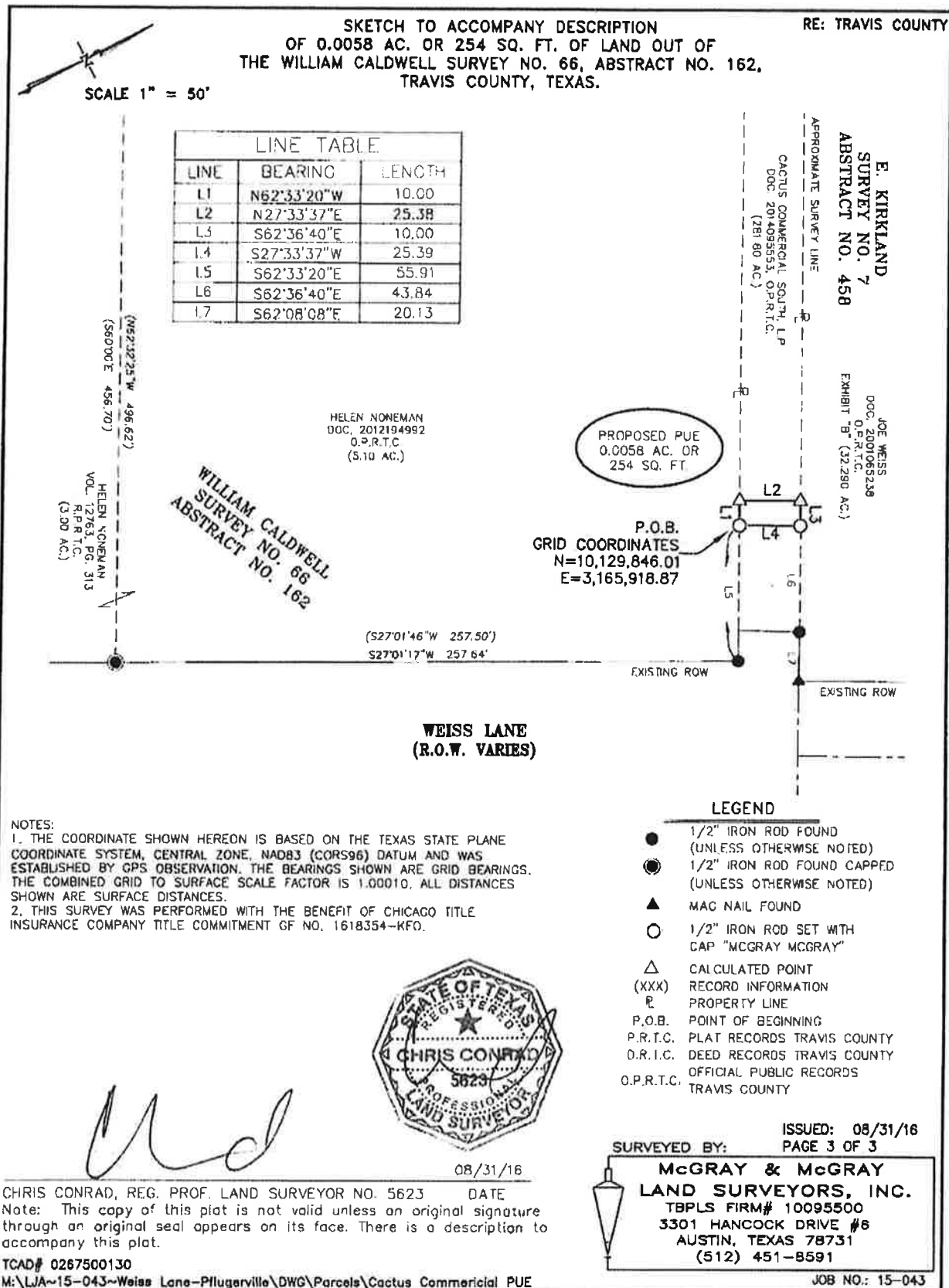
Date

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/0.0058 ac

TCAD # 0267500130

# Exhibit "A"



## 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.**

### PUBLIC UTILITY EASEMENT AGREEMENT

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

#### GRANT OF EASEMENT:

**CACTUS COMMERCIAL SOUTH, LP** ("Grantor"), a Texas limited partnership, 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 78660 ("Grantee"), an easement and right-of-way ("Easement") on, over, under, along, upon and across the property of Grantor which is more particularly described in **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.



## Exhibit "B"

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 retains 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 retain 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

## Exhibit "B"

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.

## Exhibit "B"

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.

{SIGNATURE PAGES FOLLOWING}

## Exhibit "B"

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ 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

### AGREED AND ACCEPTED:

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

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

ATTEST:

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

## Exhibit "B"

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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

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### Acknowledgement

THE STATE OF TEXAS       §  
                                      §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Brandon Wade, City Manager of City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

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

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

md/jg/db