

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.

WASTEWATER PIPELINE EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

KELLY LANE WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2, a political subdivision of the State of Texas (“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 exclusive 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 Property”). Grantor and Grantee may jointly be referred to herein as “the parties.”

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 to the extent that such claim arises 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 Property, and the matters set forth herein.

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 that 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 wastewater pipeline" shall mean an underground pipeline designed and operated to transport wastewater.
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 and Conditions hereof. The Easement rights of use granted herein are irrevocable. The Easement is for the benefit of Holder.
 3. *Purpose of Easement.* The Easement shall be used only for the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of a public wastewater pipeline and related appurtenances (hereinafter collectively "Facilities") and for making connections and providing access thereto.
 4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
 5. *Reservation of Rights.* Grantor retains the right to surface use. 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 materially interferes nor unreasonably conflicts with the use of the Easement Property by Holder for the Easement Purpose. *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. Grantor shall obtain Holder's permission prior to the start of constructing Permitted Improvements, which permission will not be unreasonably withheld or delayed. Grantor shall not construct any fencing or gating on the Easement Property without Holder's permission.*
 6. *Improvement and Maintenance of Easement Property.* 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 made in violation of this agreement. Subject to the provisions of this agreement, 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 its boundary lines if reasonably necessary

to construct, install, maintain, replace, or remove the Facilities. Upon completion of any construction, maintenance, or repair which disturbs the surface of the Easement Property, Grantee must fill all trenches, remove all construction debris, and restore the surface of the Easement Property 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 Property, 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.

7. *Equitable Rights of Enforcement.* This agreement 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 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. *Legal Construction.* If 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.
16. *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) three business days after deposit with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the applicable address shown on the signature page(s) of 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.
17. *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.
18. *Assignability.* This agreement may be assigned by Grantee, its successors or assigns, without the prior written consent of Grantor.

* * *

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____ 2017.

[SIGNATURE PAGES FOLLOW]

GRANTOR:

**KELLY LANE WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 2**, a political
subdivision of the State of Texas

By: _____

President, Board of Directors

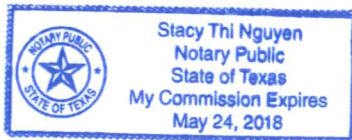
Address: c/o Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas, 78701

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on April 17, 2017, by
Mark Kalish, President of the Board of Directors of Kelly Lane Water Control & Improvement
District No. 2, a political subdivision of the State of Texas, on behalf of said district.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 17 day of
April, 2017.

(seal)



Notary Public Signature

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 TRAVIS §

This instrument was acknowledged before me on _____, 2017, 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)

AFTER RECORDING, RETURN TO:

City of Pflugerville
Attn.: Emily Barron, Planning Director
Development Services Center
P.O. Box 589
Pflugerville, Texas 78691

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION

FOR A 0.081 ACRE TRACT OF LAND SITUATED IN THE JAMES P. KEMPE SURVEY, ABSTRACT NO. 464, TRAVIS COUNTY, TEXS, BEING OUT OF THE REMAINDER PORTION OF A CALLED 190.47 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN TO KM AVALON, LTD., RECORDED IN DOCUMENT NO. 2005118418 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.081 ACRE TRACT OF LAND SURVEYED ON THE GROUND BY DIAMOND SURVEYING, INC. DURING THE MONTH OF OCTOBER, 2015 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at an iron rod found with cap (not legible) found monumenting the most easterly southeast corner of said remainder portion of the 190.47 acre Avalon tract and the northeast corner of a called 16.6069 acre tract of land described in a Special Warranty Deed to 735 Henna LLC, recorded in Document No. 2013195014 of the Official Public Records of Travis County, Texas, same being on the west right-of-way line of Weiss Lane (Hodde Lane) a variable width right-of-way;

THENCE, with the east boundary line of said remainder portion of the 190.47 acre Avalon tract and said west right-of-way line of Weiss Lane (Hodde Lane), the following two (2) courses and distances:

1. N 39°34'43" E for a distance of 170.92 feet to an iron rod found with cap marked "RPLS 4835";
2. N 48°33'01" E for a distance of 24.58 to a 1/2" iron rod set with cap marked "Diamond Surveying", for the southeast corner and **POINT OF BEGINNING** hereof;

THENCE, departing said west right-of-way line of Weiss Lane (Hodde Lane), through the interior of said remainder portion of the 190.47 acre Avalon tract, the following six (6) courses and distances:

1. N 41°26'59" W for a distance of **52.57 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", for the southwest corner hereof;
2. N 48°33'01" E for a distance of **15.00 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", for an angle point;
3. S41°26'59" E for a distance of **37.57 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", for an angle point;
4. N 48°33'01" E for a distance of **54.32 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", for an angle point;

5. **N 38°48'21" E** for a distance of **92.48 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", for an angle point;
6. **N 26°08'16" E** for a distance of **33.22 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", on the north boundary line of said remainder of 190.47 acre Avalon tract and the south boundary line of a portion of said 190.47 acre tract of land described in a Special Warranty Deed to KM Weiss Lane, L.P., recorded in Document No. 2011109414 of the Official Public Records of Travis County, Texas, for the northwest corner hereof;


THENCE, **S 69°29'33" E** with the north boundary line of said 190.47 acre Avalon tract and the south boundary line of said 190.47 portion KM Weiss Lane, L.P. tract, for a distance of **15.07 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", on the west right-of-way line of said Weiss Lane (Hodde Lane), for the northeast corner hereof;


THENCE, with said east boundary line of the 190.47 acre Avalon tract and the west right-of-way line of Weiss Lane (Hodde Lane), the following three (3) courses and distances:

1. **S 26°08'16" W** for a distance of **36.37 feet** to a 1/2" iron rod found (leaning) for an angle point;
2. **S 38°48'21" W** for a distance of **95.42 feet** to a 1/2" iron rod set with cap marked "Diamond Surveying", for an angle point;
3. **S 48°33'01" W** for a distance of **70.60 feet** to the **POINT OF BEGINING** hereof and containing 0.081 acre of land more or less.

Bearing Basis: NAD-83(1993), Texas Central Zone (4203) State Plane System.

A survey drawing has been prepared to accompany this metes and bounds description.

 **DIAMOND SURVEYING, INC.**
116 SKYLINE ROAD, GEORGETOWN, TX 78628
(512) 931-3100



June 17, 2016

SHANE SHAFER, R.P.L.S. NO. 5281

DATE



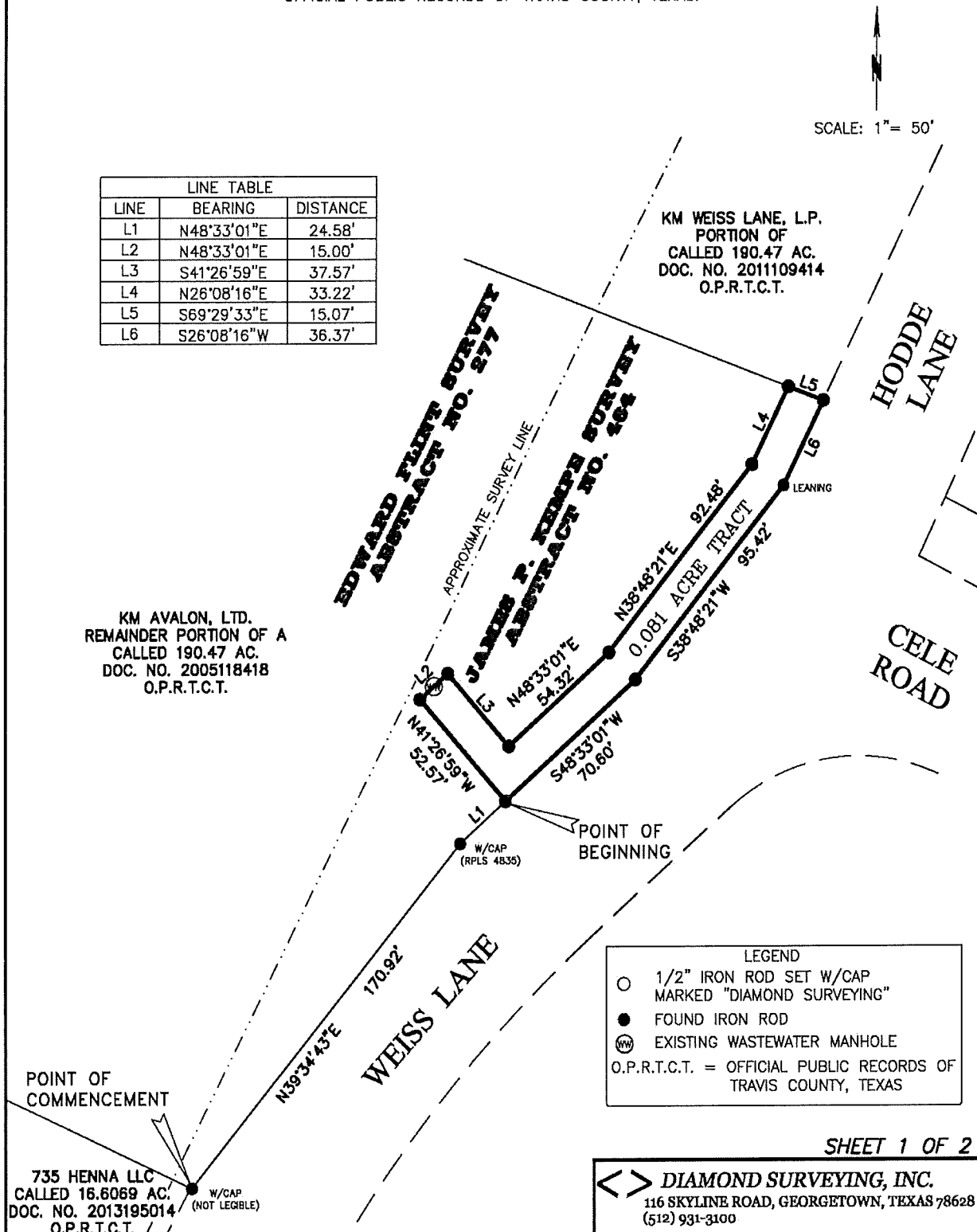
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DRAWING TO ACCOMPANY METES AND BOUNDS DESCRIPTION

FOR A 0.081 ACRE TRACT OF LAND SITUATED IN THE JAMES P. KEMPE SURVEY, ABSTRACT NO. 464, TRAVIS COUNTY, TEXAS, BEING OUT OF A REMAINDER PORTION OF A CALLED 190.47 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN TO KM AVALON, LTD., RECORDED IN DOCUMENT NO. 2005118418 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N48°33'01"E	24.58'
L2	N48°33'01"E	15.00'
L3	S41°26'59"E	37.57'
L4	N26°08'16"E	33.22'
L5	S69°29'33"E	15.07'
L6	S26°08'16"W	36.37'

SCALE: 1" = 50'



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DRAWING TO ACCOMPANY METES AND BOUNDS DESCRIPTION

FOR A 0.081 ACRE TRACT OF LAND SITUATED IN THE JAMES P. KEMPE SURVEY, ABSTRACT NO. 464, TRAVIS COUNTY, TEXAS, BEING OUT OF A REMAINDER PORTION OF A CALLED 190.47 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN TO KM AVALON, LTD., RECORDED IN DOCUMENT NO. 2005118418 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

GENERAL NOTES:

1) BEARING BASIS: NAD-83(1993), TEXAS CENTRAL (4203), STATE PLANE SYSTEM.

2) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND DOES NOT SHOW ALL EASEMENTS THAT MAY AFFECT THE SUBJECT TRACT SHOWN HEREON. THIS SURVEY IS NOT INTENDED TO BE USED AS A LAND TITLE SURVEY.

3) ALL DOCUMENTS LISTED HEREON ARE RECORDED IN THE OFFICE OF THE COUNTY CLERK OF TRAVIS COUNTY, TEXAS.

I, Shane Shafer, Registered Professional Land Surveyor in the State of Texas, hereby certify that this drawing represents a survey made on the ground under my direct supervision completed on October 22, 2015. At the time of this survey there was no evidence of encroachments, conflicts or protrusions apparent on the ground, EXCEPT AS SHOWN. This survey substantially complies with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1B, Condition III Standard Land Survey. USE OF THIS SURVEY BY OTHER PARTIES SHALL BE AT THEIR OWN RISK AND UNDERSIGNED SURVEYOR IS NOT RESPONSIBLE FOR ANY LOSS RESULTING THEREFROM.

Shane Shafer

Shane Shafer, R.P.L.S. NO. 5281

JUNE 17, 2016

DATE



SHEET 2 OF 2



DIAMOND SURVEYING, INC.

116 SKYLINE ROAD, GEORGETOWN, TEXAS 78628
(512) 931-3100

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