

**DECLARATION OF ACCESS EASEMENT AND PERVIOUS COVER MAINTENANCE
AND PRESERVATION RESTRICTIVE COVENANT**

TO HAVE AND TO HOLD the same perpetually to Grantee and any successor governmental entity, together with the rights, and privileges and on the terms and conditions set forth herein; and Grantor, subject to exceptions to warranty, including any easements, liens, encumbrances, and other matters not subordinated to the Easement and of record in the Real Property Records of the Travis County, Texas that are valid, existing, and affect the Easement as of the date of this declaration, does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted, unto Grantee, any successor governmental entity,

against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor, but not otherwise.

II. Pervious Cover Maintenance and Preservation Restrictive Covenant:

RECITALS

WHEREAS, the Owner of the Property and the City of Pflugerville have agreed that in order to ensure perpetual compliance with applicable City of Pflugerville regulations establishing maximum impervious coverage requirements that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of Property, for the consideration recited above, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this Pervious Cover Maintenance and Preservation Restrictive Covenant (the "Restrictive Covenant"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors and assigns. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC COVENANTS AND RESTRICTIONS:

1. Recitals and Definitions Incorporated. The above Recitals, definitions, and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
2. Covenant and Restriction to Maintain and Preserve. Owner acknowledges and agrees that development of the Property is required adherence to and compliance with specific regulations established by the City of Pflugerville Code of Ordinances, which includes a limitation on the amount of impervious cover that could exist on the Property. Owner further acknowledges and agrees that as a condition of development approval and subsequent release of a certificate of occupancy permitting legal occupation of the Property that Owner is required to, and hereby covenants to maintain and preserve Pervious Cover Facilities (the "Facilities") proposed as part of the Owner's development of the Property, as more specifically identified in the site plan attached hereto as **Exhibit A**, which is incorporated herein for all purposes, in accordance with the terms of this Restrictive Covenant. Notwithstanding the foregoing, Owner and its successors and assigns may alter or replace the Facilities as permitted by the City of Pflugerville Code of Ordinances and this restriction shall not prevent Owner and its successors and assigns with any future redevelopment of the Property.
3. Maintenance Obligations. The Owner hereby covenants to provide periodic maintenance to ensure that the Facilities remain in good, functioning, and safe condition in compliance with all applicable laws and in accordance with the requirements of the City as more specifically detailed in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

4. Preservation Obligations. The Owner hereby covenants that the Facilities shall be maintained and restricts the use of the Property such that the Facilities shall not be removed, relocated, destroyed, or otherwise disposed of without the express written consent of the City, which express written consent will not be unreasonably withheld or delayed; further, the City may not withhold its consent if Owner covenants to rebuild the Facilities so that they are in compliance with applicable City of Pflugerville Code of Ordinances and such rebuild is in conjunction with the redevelopment or reconstruction/restoration of the Property. In the event of the Facilities' destruction due to occurrences of Force Majeure outside the reasonable control of the Owner, Owner hereby covenants to repair, replace and/or restore the Facilities to their original condition within sixty (60) days of said destruction, provided however, if the Facilities cannot be reasonably repaired within sixty (60) days, Owner will diligently pursue the repair, replacements and/or restoration to completion.

5. Annual Reporting. Owner further covenants that Owner shall provide an annual report to the City's Development Services Center on or before December 31st of each subsequent year specifically detailing maintenance actions taken to maintain the Facilities or the occurrence of any event requiring the Owner to perform Preservation Obligations, and the extent of those performed, during the current calendar year.

6. Failure to Maintain or Preserve. The Owner acknowledges and agrees that the Owner is obligated to perform the Maintenance Obligations and uphold the Preservation Obligations and, in the event any Owner does not perform the Maintenance Obligations or uphold the Preservation Obligations, Owner further agrees: (a) that the City at its option may, following thirty (30) days written notice to Owner, but is not obligated to perform the Maintenance and Preservation Obligations; (b) to indemnify the City for all reasonable City costs necessary to perform the Maintenance and Preservation Obligations and/or secure the reimbursement of such costs from Owner, including without limitation, attorney's fees and court costs; and (c) that the City is entitled to a judicially enforceable lien on the Property to secure the payment of all City costs necessary to perform the Maintenance and Preservation Obligations or secure reimbursement of such costs from Owner, provided that Lender's liens shall not be subordinate to such lien. The City will, upon written request from a Lender, provide (i) written notice by certified mail and 30 days opportunity to cure any default hereunder, and (ii) a letter stating if there is any default hereunder and acknowledging the Lender's rights hereunder. Any Lender must be a party to any judicial action to enforce any lien created hereunder. The City shall also have the right to enforce the Owner's Maintenance and Preservation Obligations or secure reimbursement of any costs incurred in any manner provided at law or in equity, including without limitation, through Code Enforcement action to enforce the Zoning Code requirement upon which this Restrictive Covenant is predicated.

7. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.

III. General Provisions:

1. Severability. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this Declaration shall remain in full effect.
2. Non-Waiver. If at any time the City of Pflugerville fails to enforce this Declaration, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
3. Modification and Amendment. The Restrictive Covenant provided by this Declaration may be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Real Property Records of Travis County, Texas, executed, acknowledged, and approved by (a) the Director of Planning of the City of Pflugerville, or successor department; (b) by the owner(s) of the property subject to the modification, amendment or termination at the time of such modification, amendment or termination, and (c) any mortgagees holding first lien security interests on any portion of the Property (herein referred to as, "Lender", the initial Lender being set forth hereinabove). The Easement granted by this Declaration in Section I above may only be modified, amended or terminated upon filing and obtaining approval of an application for modification, partial vacation, or vacation of the Easement in compliance with the requirements of the City of Pflugerville Code or Ordinances, as amended.
4. Governing Law. This Declaration and all rights and obligations created hereby will be governed by the laws of the State of Texas and venue shall be located in Travis County, Texas.
5. Entire Agreement. This Declaration, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the exhibits attached hereto. The provisions of this Declaration will be construed as a whole according to their common meaning and not strictly for or against any party.

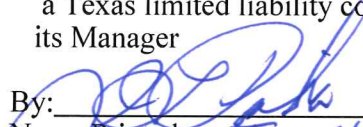
Signature Page Follows.

Executed to be effective on 6-20, 2017.

DECLARANT/OWNER/GRANTOR:

1713 PARKWAY, LLC,
a Texas limited liability company

By: Priske Development, LLC,
a Texas limited liability company,
its Manager

By: 
Name Printed: Joseph H. Priske
Title: 6-20-17

AGREED AND ACCEPTED:

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

By: _____
Brandon E. Wade, City Manager

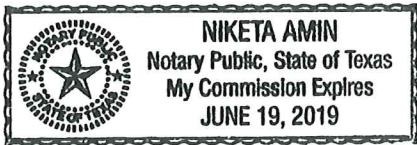
ATTEST:

Karen Thompson, City Secretary

Acknowledgement Page Follows.

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on June 20, 2017, by Joseph L. Priske, the Managing Member of Priske Development, LLC, a Texas limited liability company, the manager of 1713 PARKWAY, LLC, a Texas limited liability company, on behalf of said limited liability company.





Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 201_, by Brandon E. Wade, City Manager of the City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public Signature

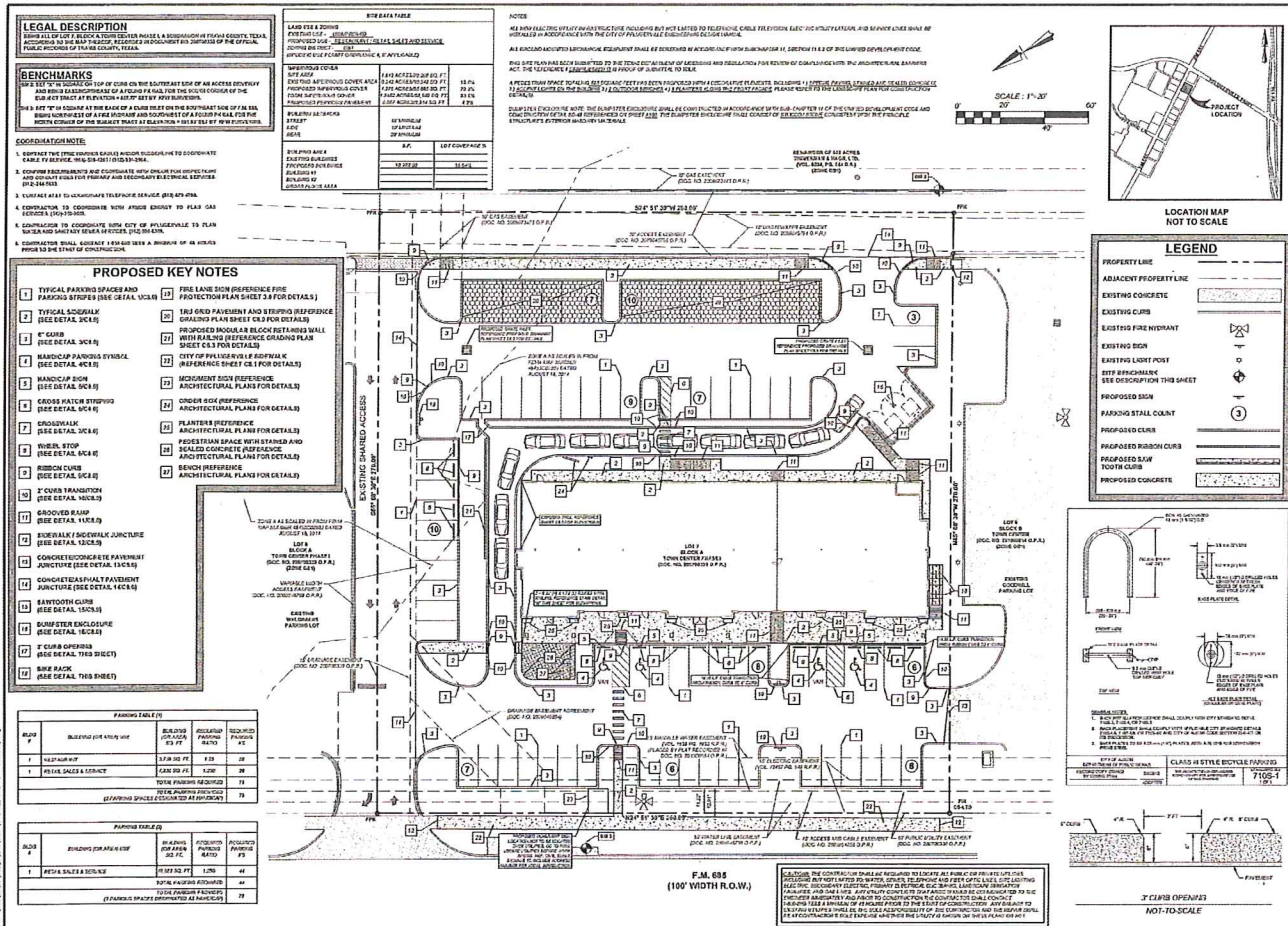
AFTER RECORDING, RETURN TO:

City of Pflugerville
Development Services Center
201-B East Pecan
Pflugerville, Texas 78660

Project Name: _____
Attn.: _____

EXHIBIT A

The Site Plan/Facilities Detail



Open studio architecture
 The Finest Building
 810 Cameron, Suite 230
 San Antonio, Texas 78212
 Tel: 210.417.4307
 www.openstudio-usa.com



FM 685 RETAIL TOWN CENTER
 1713 FM 685, PFLUGERVILLE, TX 78660

Project #: 330-1341
 Date: 2/15/2018
 Drawn by: [Signature]
 Checked by: [Signature]
 Overall Site Plan

C2.0
APPROVED

SUBMITTAL DATE: 10/31/18

EXHIBIT B

The Maintenance Obligations

PERVIOUS PARKING MAINTENANCE PLAN

FM 685 RETAIL / Permit #ST2016-35

The following are requirements for the overall maintenance of the pervious pavement for the aforementioned project.

- *Inspections.* The permeable pavement should be inspected at least once a quarter to evaluate that it is functioning properly. One of these inspections should occur during or immediately following a rainfall event. Inspections should evaluate key functionality markers such as debris buildup, standing water, sediment accumulation, and gravel displacement. Please see attached TRUEGRID Maintenance Guide.
- *Sediment Removal.* All sediment accumulation shall be removed from outlet structures and drainage pathways immediately downstream of drainage structures at least once bi-annually or anytime sediment accumulation is greater than 2 inches of depth. Sediment depth should be measured near the outlet structure of the TRUEGRID system. See maintenance exhibit for location of depth measurement, outlet structure and drainage pathways. When sediment accumulates within the basin to within 25% of the permeable pavement system volume, the sediment is to be removed and disposed of properly.
- *Debris and Litter Removal.* During inspections, mowing, or other regular maintenance activities, all visible debris and litter will be removed from the permeable pavement system or outlet structures. Special attention will be paid to all debris and litter on top of the permeable pavers, upstream of the permeable paver system and at the outlets.

Leaves & Garbage: Leaves and/or garbage should be raked, air blown or vacuumed being careful not to remove the gravel. Small particles will decay naturally and pass through the system.

Mud or Sediment: TRUEGRID may be hosed down with water or carefully power washed to move excess mud or sediment through the system. Care should be taken to not wash gravel out during this process.

- *Nuisance Control.* Standing water or constantly wet conditions within the system is evidence that the system is failing and can promote nuisance problems for nearby residents and businesses. These problems include odors, mosquitoes, weeds, and litter. If encountered, standing water or constantly wet conditions will require maintenance whenever such conditions become an issue.

I agree to perform the above maintenance items on the underground detention system.

1713 PARKWAY, LLC


Priske Development, LLC

OWNER (Joe Priske)

DATE

6-20-17

MANAGING MEMBER



SIGNATURE

TRUEGRID – Maintenance Guide

TRUEGRID typically requires very little maintenance. Most silt and sediment will decay and pass naturally through the system as tested and documented in the Brattebo and Booth 2003 study¹. Here are some maintenance suggestions to ensure high permeability for the life of your TRUEGRID site.

Leaves & Garbage:

Leaves and/or garbage should be raked, air blown or vacuumed being careful not to remove the gravel. Small particles will decay naturally and pass through the system.

Mud or Sediment:

TRUEGRID may be hosed down with water or carefully power washed to move excess mud or sediment through the system. Care should be taken to not wash gravel out during this process.

Snowplowing:

TRUEGRID can be plowed using standard truck-mounted snowplow blades with small riser skids on the corners of the blades to keep the bottom of the blade off the surface of the grid by roughly 1".

Tree or plants watering:

Adjacent trees or plants next to or part of the TRUEGRID site can be watered directly through the permeable TRUEGRID system either manually or with irrigation. TRUEGRID paving helps protect the tree roots from damage from heavy vehicles and traffic.

¹Long-term stormwater quantity and quality performance of permeable pavement systems

Benjamin O. Brattebo, Derek B. Booth*

Department of Civil and Environmental Engineering, Center for Water and Watershed Studies, University of Washington, Box 352700,

Seattle, WA 98195, USA

Received 10 October 2002; received in revised form 20 June 2003; accepted 1 July 2003

Abstract

This study examined the long-term effectiveness of permeable pavement as an alternative to traditional impervious asphalt pavement in a parking area. Four commercially available permeable pavement systems were evaluated after 6 years of daily parking usage for structural durability, ability to infiltrate precipitation, and impacts on infiltrate water quality. All four permeable pavement systems showed no major signs of wear. Virtually all rainwater infiltrated through the permeable pavements, with almost no surface runoff. The infiltrated water had significantly lower levels of copper and zinc than the direct surface runoff from the asphalt area. Motor oil was detected in 89% of samples from the asphalt runoff but not in any water sample infiltrated through the permeable pavement. Neither lead nor diesel fuel were detected in any sample. Infiltrate measured 5 years earlier displayed significantly higher concentrations of zinc and significantly lower concentrations of copper and lead.

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ECS TEXAS, LLP

Geotechnical • Construction Materials • Environmental • Facilities

"Setting the Standard for Service"

TX Registered Engineering Firm F-8461

January 31, 2017

Mr. Joseph L. Priske
Priske Development, LLC
4520 Spicewood Springs Road, #100
Austin, TX 78759

Subject: **Geotechnical Consultation Letter**
Proposed Permeable Pavement Design
FM 685 Retail Town Center
1713 FM 685
Pflugerville, Texas
ECS Project Number 17-4690

Dear Mr. Priske:

As requested, ECS-Texas, LLP (ECS) is providing geotechnical consultation regarding the proposed permeable pavement design for the subject development.

Project Information

The subject project includes the construction of an approximate 11,000 square foot retail building, pavements and associated utilities and appurtenances. It is understood that TruGrid permeable pavements are to be constructed within 17 parking stalls in the eastern pavement area of the subject site. The permeable pavement section is understood to consist of a surface course of 1.8 inch thick aggregate filled TruGrid permeable paver units, underlain by 6 inches compacted ASTM C-33 No. 57 stone, underlain by Mirifi 140N filter fabric (or approved equivalent), underlain by a prepared subgrade. A sub-drainage system was also noted to be incorporated into the design.

Geotechnical Opinion

Based on a review of the plans prepared by Open Studio Architecture titled "FM 685 Retail Town Center" and dated November 28, 2016, the Geotechnical Engineering Services Report prepared by PSI dated January 8, 2008, and the TruGrid manufacturer's recommendations for permeable pavement design and construction listed on their website, it is ECS' opinion that the permeable pavement system is anticipated to perform as intended at the subject site.

Limitations

This report has been prepared as a plan review service and to assist design professionals in the geotechnical related aspects of design. It is intended for use with regard to the specific project as described in this report. Any substantial changes or differences in the understood project information should be brought to our attention so that we may determine any effect on the opinions provided in this report. It is recommended that all construction operations dealing with earthwork and pavements be reviewed by an experienced Geotechnical Engineer to provide

FM 685 Retail Town Center, Pflugerville, Texas
ECS Project No. 4690

information on which to base a decision as to whether the design requirements are fulfilled in the actual construction.

This report has been prepared in accordance with generally accepted principles of geotechnical engineering practice and no warranties are included, expressed, or implied, as to the professional services provided under the terms of our agreement. The opinions submitted in this report are based upon the data obtained from the testing performed at the site by others, and from other information described in this report. It is a well known fact that variations in soil conditions and depth to rock exist on most sites between test boring locations, and conditions such as groundwater levels vary from time to time. The nature and extent of variations may not become evident until the course of construction. If variations then appear evident, after allowing ECS to perform on-site observations during the construction period and note characteristics and variations, a re-evaluation of the opinions in this report may be necessary.

Closing

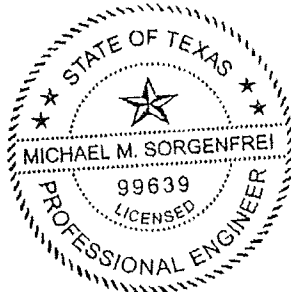
The opportunity to be of service to Priske Development and to provide quality control testing services on the project is appreciated. Should you have any questions, comments, or concerns regarding this report, please contact the undersigned.

Respectfully,

ECS-TEXAS, LLP

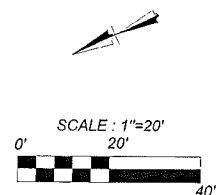


Connor Roman, E.I.T.
Staff Engineer



Michael Sorgenfrei, P.E., P.G.
Principal / Geotechnical Manager

Electronic seal approved by Michael Sorgenfrei, P.E. on January 31, 2017



JOB NO. 300-13-09
 DATE FEBRUARY 2017
 DRAWN BY CHESTER JR
 SHEET NUMBER
 EX-1