

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

PUBLIC ACCESS EASEMENT AGREEMENT

**THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF KENDALL §**

The City of Boerne, a Texas home-rule municipality ("**Grantor**"), for and in consideration of the sum of \$10.00 and other good and valuable consideration to Grantor paid by _____ ("**Grantee**"), the receipt and sufficiency of which are hereby acknowledged, and subject to the reservations and easements described below, has GRANTED, BARGAINED, SOLD, and CONVEYED and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto Grantee a non-exclusive variable-width ingress and egress public access easement (the "Easement") for the Grantee's use, and for the use of the general public, and for laying out, constructing, and maintaining driveway facilities for vehicular ingress to and egress from all that certain tract or parcel of land generally depicted as described in **Exhibits A-1 and A-2**, which is attached hereto and made a part hereof for all purposes (collectively the "Property").

TO HAVE AND TO HOLD, the above described Property for the limited Easement purposes described herein "**AS-IS, WHERE-IS, AND WITH ALL FAULTS**" and without warranty or guarantee of any kind, to the Grantee, its successors and assigns, together with the non-exclusive right and privilege, at any and all times to enter the Property, or any part thereof, for the purposes of vehicular ingress and egress on the Property, but the Grantee shall not have the right to limit public access to or obstruct the same, and for the purposes of laying out, constructing, and maintaining driveway facilities on the Property, all subject to the limited Easement purposes described above and the terms and conditions described below.

NOW, THEREFORE, in consideration of the Easement granted above and for other good and valuable consideration in accordance with the mutual rights and obligations in this this Public Access Easement Agreement (the "Easement Agreement") the parties mutually agree as follows:

1. Grantor reserves the right to use and enjoy the Easement for any and all municipal purposes; provided, however, that Grantor its successors, and assigns, and invitees shall not create a nuisance or do any act that will be detrimental to the Grantee's use and enjoyment of the Easement.
2. This Easement Agreement is expressly made subject to the terms and conditions of the "Easement Agreement for Access" dated November 9th, 2017, and recorded in the Official Public Deed Records for Kendall County by Instrument No. 00318360.

3. Grantor shall have the right, but not the obligation, to maintain the Easement in a condition required for proper operation as a public access easement. As additional consideration to Grantor, and to ensure that Grantor's public municipal purposes are satisfied, Grantee shall have the continuous obligation to maintain the Easement and all driveway facilities thereon in compliance with Grantor's ordinances and specifications for public driveway access, as amended.

4. INDEMNIFICATION. GRANTEE DOES HEREBY INDEMNIFY, DEFEND, RELEASE, AND HOLD HARMLESS, THE GRANTOR, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER, NAME, AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY ON ACCOUNT OF GRANTEE'S USE OF THE PROPERTY, INCLUDING GRANTEE'S AGENTS, EMPLOYEES, OR SUBCONTRACTORS; OR ON ACCOUNT OF ANY NEGLIGENT ACT OR FAULT OF THE GRANTEE, OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS; AND GRANTEE SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE GRANTOR GROWING OUT OF SUCH INJURY OR DAMAGE AND SHALL DEFEND THE CITY CONCERNING THE SAME.

5. APPLICABLE LAW. This Easement Agreement shall be construed under and governed in accordance with the laws of the State of Texas, without regard for conflict of laws principles. This Easement Agreement is performable and venue for any action hereunder shall exclusively be in the state district court physically located in Kendall County, Texas.

6. ATTORNEYS' FEES. In any legal proceeding brought under or with relation to this Easement Agreement, the prevailing party in such proceeding shall be entitled to recover court costs, reasonable attorneys' fees, and all other litigation expenses from the other.

7. INTEGRATION. This Easement Agreement contains the complete agreement between the Parties with respect to the Property and cannot be varied except by written agreement. The Parties agree that there are no oral agreements, understandings, representations or warranties signed by the Parties which are not expressly set forth herein.

8. SEVERABILITY. In the event any one or more of the provisions contained in this Easement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Easement Agreement shall be construed as if such invalid, illegal, or unenforceable provision is severed and deleted from this Easement Agreement.

9. GOVERNMENTAL IMMUNITY. THIS EASEMENT AGREEMENT IS EXPRESSLY MADE SUBJECT TO GRANTOR'S GOVERNMENTAL IMMUNITY AND THE PARTIES AGREE THAT GRANTOR IS ACTING PURSUANT TO ITS GOVERNMENTAL FUNCTIONS AND NOTHING CONTAINED IN THIS EASEMENT AGREEMENT SHALL BE CONSTRUED AS CONSTITUTING A WAIVER OF GRANTOR'S GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY, WHICH IS EXPRESSLY RESERVED TO THE FULLEST EXTENT ALLOWED BY LAW.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED to be effective this ____ day of _____, 2023.

GRANTOR:

City of Boerne, a Texas home-rule municipality

By: _____
Ben Thatcher, City Manager

THE STATE OF TEXAS §
§
COUNTY OF KENDALL §

BEFORE ME, the undersigned authority, a Notary Public in and for said State, on this day personally appeared Ben Thatcher, City Manager of the City of Boerne, Texas, a municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said City of Boerne, Texas, a home-rule municipal corporation, that he was duly authorized to perform the same by appropriate action of the City Council of the City of Boerne and that he executed the same as the act of the said City for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D. 2023.

Notary Public, in and for the State of Texas

My Commission Expires:

GRANTEE:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF KENDALL §

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, _____ of the _____, who is personally known to me to be the person who signed the foregoing instrument and (s)he acknowledged that the execution thereof was his/her free act and deed as such _____ for the uses and purposes therein expressed, and that the said instrument is the act and deed of said _____ for the uses and purposes therein expressed.

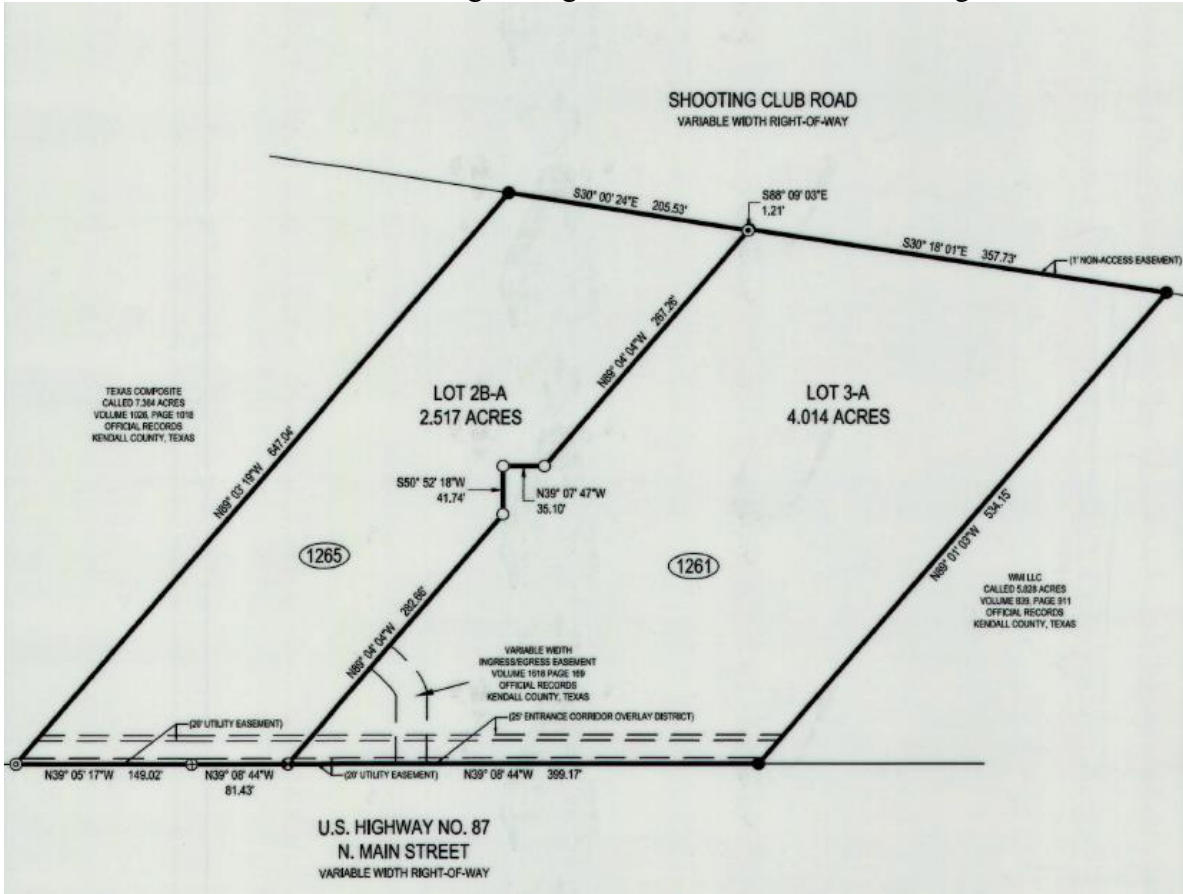
WITNESS my hand and official seal this ____ day of _____, 2023.

Notary Public, in and for the State of Texas

My Commission Expires: _____

Exhibit A-1

Depiction of Public Access Easement Identified as
“Variable Width Ingress/Egress Easement” - Vol. 1618 Pg. 169



WHEN RECORDED, RETURN TO:

City of Boerne, Texas
447 N. Main Street
Boerne, TX 78006
Attn: City Manager's Office

Exhibit A-2

Description of Public Access Easement Identified as “Variable Width Ingress/Egress Easement” - Vol. 1618 Pg. 169

A VARIABLE WIDTH INGRESS/EGRESS EASEMENT (0.062 OF ONE ACRE) LOCATED IN THE C.W. NEWTON & T TAYLOR SURVEY NO. 181, ABSTRACT NO. 361, KENDALL COUNTY, TEXAS, SAID VARIABLE WIDTH INGRESS/EGRESS EASEMENT (0.062 OF ONE ACRE) BEING LOCATED ON LOT 3, PFEIFFER HERITAGE SUBDIVISION, RECORDED IN VOLUME 6, PAGES 59-61, PLAT RECORDS OF KENDALL COUNTY, TEXAS. SAID VARIABLE WIDTH INGRESS/EGRESS EASEMENT (0.062 OF ONE ACRE) BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set in the northeast right-of-way line of State Highway No. 87, the southwest boundary line of Lot 3, said point bears S 39° 08’ 44” E, a distance of 91.71’ from a PK nail in concrete found at the northwest corner of Lot 3, the southwest corner of Lot 2B, Pfeiffer Heritage Subdivision;

- (1) Thence, departing the northeast right-of-way line of State Highway No. 87, the southwest boundary line of Lot 3, with the northwest and west lines of the herein described easement, the following courses and distances:**
 - a. N 51° 06’ 59” E, 58.60’ to a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set for angle;**
 - b. with the arc of a curve to the left, with a radius of 24.00’, a central angle of 21° 46’ 22”, an arc length of 9.12’, and a chord which bears N 17° 20’ 30” E, a distance of 9.07’ to a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set for angle;**
 - c. N 07° 27’ 48” E, 13.30’ to a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set for angle;**
 - d. with the arc of a curve to the left, with a radius of 53.19’, a central angle of 11° 35’ 33”, an arc length of 10.76’, and a chord which bears N 00° 42’ 14” E, a distance of 10.74’ to a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set for corner in the north boundary line of Lot 3, and the south boundary line of Lot 2B;**
- (2) Thence, S 89° 04’ 04” E, with the south boundary line of Lot 2B, the north boundary line of Lot 3, and the north line of the herein described easement, a distance of 26.00’ to a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set for corner;**
- (3) Thence, departing the south boundary line of Lot 2B, the north boundary line of Lot 3, with the east and southeast lines of the herein described easement, the following courses and distances:**
 - a. with the arc of a curve to the right, with a radius of 61.54’, a central angle of 12° 22’ 29”, an arc length of 13.29’, and a chord which bears S 01° 16’ 39” W, a distance of 13.27’ to an “x” scribed in brick for angle;**
 - b. S 07° 27’ 54” W, 13.27’ to an “x” scribed in brick for angle;**
 - c. with the arc of a curve to the right, with a radius of 50.00’, a central angle of 28° 51’ 30”, an arc length of 25.18’, and a chord which bears S 20° 53’ 04” W, a distance of 24.92’ to an “x” scribed in brick for angle;**
 - d. S 51° 06’ 59” W, 62.77’ to a ½” iron rod with a yellow “JM Matkin Easement” plastic cap set for corner in the southwest boundary line of Lot 3, and the northeast right-of-way line of State Highway No. 87;**
- (4) Thence, N 39° 08’ 44” W, with the northeast right-of-way line of State Highway No. 87, the southwest boundary line of Lot 3, and the southwest line of the herein described easement, a distance of 26.00’ to the POINT OF BEGINNING for this VARIABLE WIDTH INGRESS/EGRESS EASEMENT, containing 0.062 OF ONE ACRE, more or less.**