

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.

THE STATE OF TEXAS       §  
  §  
COUNTY OF BELL           §

#### UTILITY EASEMENT AGREEMENT

1. **Grant of Easement.** That Killeen Public Facility Corporation, a Texas public facility corporation ("Grantor") for the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is acknowledged, by the City of Killeen, Texas acting by and through its City Manager ("Grantee"), does hereby grant, sell, and convey unto Grantee an easement (the "Easement") upon and across the herein described property of the Grantor located in the City of Killeen, Bell County, Texas. Said property and easement are more fully described in Exhibit "A", attached hereto and incorporated herein for all intents and purposes (the "Easement Area") and is a portion of the dominant tenement.

2. **Character of Easement.** The Easement granted herein is appurtenant to the dominant tenement.

3. **Purpose of Easement.** The easement, rights, and privileges herein granted shall be used solely for the lawful construction, installation, maintenance, operation, repair, replacement and use of utility systems and necessary appurtenances within the Easement Area, and for providing pedestrian and vehicular ingress and egress within the Easement Area as necessary for said activities. In installing, repairing or maintaining the facilities within the Easement Area, Grantee expressly agrees that it will, at its sole cost and expense, (a) repair or cause to be repaired any and all damages to Grantor's property, including, but not limited to, the Easement Area, caused by any activities of Grantee or its employees, agents, contractors or subcontractors, on the Easement Area or any other portion of Grantor's property, and (b) restore any affected portion of Grantor's property, including, but not limited to, the Easement Area, to substantially the same condition as that which existed prior to any such activities, provided however Grantee shall not be required to restore or repair any buildings or structures on the Easement Area damaged or destroyed by Grantee or its employees, agents, contractors or subcontractors. In performing any use or construction activities for which Grantee is entitled to take hereunder, Grantee shall use reasonable efforts and shall cause its agents, contractors, employees, and assigns to use reasonable efforts to not interfere with Grantor's use and enjoyment of Grantor's adjoining property.

4. **Duration.** The easement, rights, and privileges herein granted shall be perpetual, provided however, that in the event Grantee or its successors and assigns abandon or terminate their use of the Easement Area for a period of twenty-four (24) consecutive months, this Utility Easement Agreement, the Easement and all rights granted hereunder shall terminate and revert back to Grantor. Grantor hereby binds himself, his heirs, and legal representatives, to warrant and forever defend the above-described easement and rights unto Grantee, its successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

5. **Non-Exclusiveness of Easement.** The easement shall be non-exclusive. So long as any further conveyance is subject to the easement granted herein and does not interfere with or interrupt the use of the Easement Area by Grantee, Grantor reserves the right to convey the same or other rights and easements to others, including without limitation, the right to grant non-exclusive easements upon, over, under and across any such portion of the Easement Area to any individual, private company, public or private utility or

governmental agency providing utility and other similar services. In addition to the foregoing, Grantor reserves for itself and its heirs, successors and assigns the right to continue to use and enjoy the surface of the Easement Area for all purposes, including the installation of lighting and signage, that do not interfere with or interrupt the use or enjoyment of the easement by Grantee for the purpose expressly stated herein. This easement is made subject to (i) all easements, rights-of-way and prescriptive rights of record pertaining to any portion(s) of the Easement Area, in existence as of the date this Easement becomes effective; (ii) all valid mineral reservations and other instruments constituting mineral interest severances of any kind that are of record as of the date this Easement becomes effective; (iii) all restrictive covenants, terms, conditions, contracts, provisions, encumbrances and other items that are of record as of the date the Easement becomes effective, (iv) all laws, rules, regulations, and ordinances as may now or at any time hereafter be in effect; (v) all instruments that are of record as of the date the Easement becomes effective. The conveyance of the rights described herein is made **"AS IS", "WHERE IS", WITH ALL FAULTS AND CONDITIONS THEREON. GRANTOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUITABILITY OF THE EASEMENT AREA FOR ANY ACTIVITIES OR USES.**

6. **Encroachments.** Grantee shall have the right to cut and trim trees or shrubbery which may encroach upon the Easement Area, and Grantee shall dispose of all cuttings and trimmings either by piling and burning within the Easement Area or by loading and hauling away from the premises.

7. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligation herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

8. **No Public Dedication.** Nothing set forth in this instrument shall be construed or deemed to confer on the general public any rights whatsoever with respect to the Easement, or the Easement Area, and Grantor reserves the right to do all things reasonably necessary to prevent the assertion of any claim stating otherwise.

8. **Attorney's Fees.** In the event of any controversy, claim, or dispute relating to this instrument or breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

9. **Counterparts; Amendments.** This instrument may be executed in counterparts and, when executed and delivered by all parties, shall become one (1) integrated agreement enforceable on its covenants, terms, and conditions. This instrument supersedes all prior agreements between the parties with respect to the subject hereof and all discussions, understandings, offers, and negotiations with respect thereto, whether oral or written. This instrument shall not be amended or modified, except in a writing signed by each party hereto or their respective heirs, successors, or assigns.

10. **Governing Law and Venue.** This instrument shall be governed and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles. In the event that any provision hereof is determined to be invalid, such invalid provision shall not invalidate the remaining provisions, which shall continue to be in full force and effect. Grantor and Grantee consent to personal jurisdiction and venue in the county and district courts located in Bell County, Texas, which courts shall have exclusive jurisdiction over any action arising out of this instrument.

11. **Partial Invalidity.** Any provision of this instrument that is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of the invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this instrument or affecting the validity or enforceability

of any of the provisions of this instrument in any other jurisdiction. If any provision of this instrument is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

12. **Covenants Running with the Land.** The parties to this instrument hereby acknowledge and agree that the Easement and other rights conferred by this instrument are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors, and assigns.

13. **Headings.** Headings and captions used in this instrument are for convenience only, do not define or limit the scope of this instrument, and are not intended to interpret or change the meaning of any of the provisions of this instrument.

*(signature pages follow)*

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PROPERTY OWNER:

**KILLEEN PUBLIC FACILITY CORPORATION,**  
a Texas public facility corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGEMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF BELL         §**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument,

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public of Texas  
My Commission Expires \_\_\_\_\_

JOINDER BY TENANT

**TANK DESTROYER APARTMENTS LP,**  
a Delaware limited partnership

By: NRP Tank Destroyer Apartments GP LLC,  
a Delaware limited liability company,  
its general partner

By:

  
\_\_\_\_\_  
Noam Magence, Authorized Signatory

ACKNOWLEDGMENT

THE STATE OF OHIO  
  
COUNTY OF CUYAHOGA


§  
§  
§

On this the 20 day of November, 2023, before me, the undersigned Notary Public, personally appeared Noam Magence, who acknowledged to be the Authorized Signatory of NRP Tank Destroyer Apartments GP LLC, general partner of Tank Destroyer Apartments LP, and that he, as such officer, being duly authorized to do so, executed the foregoing Utility Easement Agreement for the purposes therein contained by signing his name in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Emma Samuels  
Notary Public, State of Ohio  
My Commission Expires:  
June 30, 2026

  
\_\_\_\_\_  
Notary Public of the State of Ohio

JOINDER OF MORTGAGEE

**Texas Capital Bank, a Texas state bank** (“Lienholder”), is the owner and holder of indebtedness that is secured in whole or in part by that certain Deed of Trust, Security Agreement and Financing Statement dated as of November 19, 2021, recorded under Document Number 2021076515 of the Official Public Records of Bell County, Texas (the “Deed of Trust”), which Deed of Trust encumbers the Easement Area described in the Utility Easement Agreement (the “Easement Agreement”) to which this Joinder is attached. Lienholder, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to and does hereby consent to the Easement Agreement, and agrees that a foreclosure of the lien of the Deed of Trust will not extinguish or diminish any of the terms, conditions, and provisions set forth in the Easement Agreement. Lienholder further agrees to and does hereby subordinate and make secondary and inferior, the liens created under the Deed of Trust to the Easement Agreement. In the event of any foreclosure of the liens under the Deed of Trust, the buyer at the sale at foreclosure (including Lienholder, if applicable) and such buyer’s heirs, executors, administrators, successors, and assigns will be bound by the Easement Agreement.

**LIENHOLDER:**

**TEXAS CAPITAL BANK,**  
a Texas state bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, \_\_\_\_\_ of Texas Capital Bank, a Texas state bank, on behalf of said bank.

Notary Public State of Texas

The City of Killeen does hereby accept the above-described dedication and conveyance.

**DATE**

**CITY OF KILLEEN**

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Edwin Revell  
Executive Dir. of Development Services

**ATTEST**

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Helen G. Crathers  
Executive Assistant

**Exhibit A**

Insert Field Survey Notes and/or Maps



# JPH Land Surveying, Inc.

D.F.W. ★ Central Texas ★ West Texas ★ Houston ★ San Antonio

EXHIBIT "A"  
Page 1 of 2

## EASEMENT DESCRIPTION

**FIELDNOTES** for a 4,291 square feet tract, being a portion of Lot 1, Block A, *YOUNG FAMILY ADDITION*, an addition to the City of Killeen, Bell County, Texas, according to the plat recorded under Instrument Number 2021069818, of the Official Public Records of Bell County, Texas; the subject tract being more particularly described as follows:



**COMMENCING** at a mag nail with metal washer stamped "JPH Land Surveying" recovered at the common south corner of said Lot 1 and that tract described as 0.324 of an acre in a Special Warranty Deed to the City of Killeen, Texas (hereinafter referred to as Killeen tract), recorded under Instrument Number 2021059767, of said Official Public Records; **THENCE** NORTH 18° 59' 23" EAST with the common line of said Lot 1 and said Killeen tract, a distance of 303.97 feet to the **POINT OF BEGINNING**;

**THENCE** NORTH 18° 59' 23" EAST, continuing with the common line of said Lot 1 and said Killeen tract, a distance of 19.88 feet, from which a 1/2-inch capped rebar stamped "JPH Land Surveying" recovered at an angle point in the common line of said Lot 1 and said Killeen tract bears NORTH 18° 59' 23" EAST, a distance of 59.33 feet;

**THENCE** through the interior of said Lot 1 the following bearings and distances:

1. SOUTH 29° 58' 51" EAST, a distance of 295.15 feet to a point in the east line of an existing 14 foot Utility Easement recorded in Volume 818, Page 237, of the Deed Records of Bell County, Texas ;
2. SOUTH 78° 54' 12" WEST, into said existing easement, at a distance of 14.00 feet passing the west line of said easement, continuing a total distance of 15.85 feet;
3. NORTH 29° 58' 51" WEST, a distance of 276.97 feet returning to the **POINT OF BEGINNING**, enclosing 4,291 square feet of land.

The bearings described hereon are Texas State Plane Grid bearings (Texas Central Zone, NAD83)

Chris Henderson  
Registered Professional  
Land Surveyor No. 6831  
chris@jphls.com  
October 5, 2023



Dallas-Fort Worth  
(817) 431-4971

Central Texas  
(512) 778-5688

West Texas  
(325) 672-7420

Houston  
(281) 812-2242

San Antonio  
(512) 778-5688

# EXHIBIT "A"

PAGE 2 OF 2

## SKETCH TO ACCOMPANY LEGAL DESCRIPTION

Line Data Table

Line #	Bearing	Distance
L1	N18°59'23"E	19.88'
L2	S78°54'12"W	15.85'

### LEGEND OF ABBREVIATIONS

P.R.B.C.T. Plat Records of Bell County, Texas  
O.P.R.B.C.T. Official Public Records of Bell County, Texas  
D.R.B.C.T. Deed Records of Bell County, Texas  
POB/POC Point of Beginning/Point of Commencing

### MONUMENTS / BEARING BASIS

- Calculated point (Not found or set)

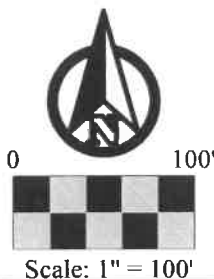
Found monuments are as noted

The bearings shown hereon are Texas State Plane Grid bearings  
(Texas Central Zone, NAD83).

CRS ○ 1/2" rebar stamped "JPH Land Surveying" set/recovered

MNS ○ Mag nail & washer stamped "JPH Land Surveying" set/recovered

Chris Henderson  
Registered Professional  
Land Surveyor No. 6831  
Chris@jphls.com  
October 5, 2023



Scale: 1" = 100'

JPH Job No.

2020.024.027 Killeen MF Site Veterans Memorial Rd, Killeen,  
Bell Co, TX-4,291 S.F. WW ESMT

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1516 E. Palm Valley Blvd., Ste. A4, Round Rock, Texas 78664  
Telephone (817) 431-4971 www.jphlandsurveying.com  
TBPELS Firm #10019500

DFW | Central Texas | West Texas | Houston | San Antonio

CITY OF KILLEEN  
CALLED 0.324  
OF AN ACRE  
INST.# 2021059767  
O.P.R.B.C.T.

CITY OF KILLEEN  
VOL. 765, PG. 657  
D.R.B.C.T.

PORTION OF APPROX.  
LOCATION OF 14'  
EASEMENT  
VOL. 818, PG. 237  
D.R.B.C.T.

60D NAIL RECOVERED  
"JPH LAND SURVEYING"

CRS

CRS

CRS

N18°59'23"E 59.33'

L1

P.O.B.

15.0'

S29°38'51"E 295.15'  
N29°58'51"W 276.97'

4,291 SQUARE FEET  
EASEMENT

LOT 1

BLOCK A

YOUNG FAMILY ADDITION

INST.# 2021069818

O.P.R.B.C.T.

KILLEEN PUBLIC FACILITY  
CORPORATION, A TEXAS PUBLIC  
FACILITY CORPORATION  
INST.# 2021076511  
O.P.R.B.C.T.

P.O.C.

PORTION OF APPROX.  
LOCATION OF 14'  
EASEMENT  
VOL. 818, PG. 237  
D.R.B.C.T.

MNS

KILLEEN TH, LLC, A TEXAS LIMITED  
LIABILITY COMPANY  
INST.# 200700048880  
O.P.R.B.C.T.

## EXHIBIT SHOWING 4,291 SQUARE FEET

BEING A PORTION OF  
LOT 1, BLOCK A  
YOUNG FAMILY ADDITION  
INSTRUMENT NUMBER 2021069818, O.P.R.W.C.T.

CITY OF KILLEEN  
BELL COUNTY, TEXAS