

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Agreement") is made this ____ day of ____, 2023 (the "Effective Date"), by and between the City of San Antonio, hereinafter referred to as "CITY" and APPLEWHITE – NFP III LLC, a Texas limited liability company, hereinafter referred to as "NFP", acting by and through their duly authorized representatives, as follows:

WHEREAS, the CITY owns and maintains Medina River Park, located southwest of the intersection of Applewhite Road and Lonestar Pass, San Antonio, Texas, further identified (as of the Effective Date) as Bexar County Appraisal District Parcel ID 189353 (the "Property") and more particularly described in the attached **Exhibit "A"**; and

WHEREAS, NFP owns approximately 43.739 acres of land that is being developed for a commercial warehouse project ("Project") adjacent to the Property; and

WHEREAS, NFP desires to enter the Property to install and maintain an 8" sanitary sewer main connecting to an existing San Antonio Water System ("SAWS") sewer line, ("Improvements"); and

WHEREAS, NFP has requested that the City grant a 0.409-acre (12') SAWS sanitary sewer easement on the Property to allow for the Improvements (the "Easement"), as further described in the attached **Exhibit "B"**; and

WHEREAS, the sanitary sewer improvements will be dedicated to SAWS and SAWS has agreed to accept the same following completion of said improvements; and

WHEREAS, the City is agreeable to authorizing the Easement in exchange for NFP's payment of the appraised value of the easement in the amount of Nine Thousand One Hundred 00/100 Dollars (\$9,100); and

WHEREAS, the City authorizes NFP to enter the Property to allow for the installation of the Improvements; and

WHEREAS, NFP (and or its assigns) is authorized by the City to use the Easement property (non-exclusively) ("Joint Use Areas") for purposes related to the Improvements, and as further outlined in this Agreement.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES MUTUALLY AGREE TO THE TERMS AND CONDITIONS OUTLINED IN THIS AGREEMENT.

ARTICLE I. AGREEMENT

The CITY grants the Easement for the construction and maintenance of the Improvements as further described herein. Each Party's commitment and obligations are further outlined in this Agreement.

ARTICLE II. NFP COMMITMENTS

- 2.1 Payment. NFP will pay the appraised value of the Easement at execution of this agreement in the amount of Nine Thousand One Hundred 00/100 Dollars (\$9,100.00).
- 2.2 Dedication of Improvements, Transfer of Easement. Following completion of construction of the Improvements by NFP, the Improvements and the Easement shall be conveyed to SAWS, at which point NFP shall cease to be a beneficial owner of the Easement.

ARTICLE III. CITY COMMITMENTS

- 3.1 Execution of Plat. The CITY agrees to execute a plat and/or other document(s) granting the Easements in the general locations shown in Exhibit "B" to NFP or its successors or assigns, and/or its contractors are obligated to complete the construction of the Improvements.
- 3.2 Property Access/Use. The CITY agrees to allow NFP and/or its agents, employees, contractors, successors/assigns, and SAWS to enter the Property immediately following the Effective Date on a non-exclusive basis for the purpose of access to and use of the Joint Use Areas for any and all things necessary for the relocating, installing, constructing, reconstructing, realigning, inspecting, patrolling, operating, maintaining, repairing, adding, removing and replacing of Improvements and any other necessary related improvements and appurtenances.

Any pipes or other related infrastructure to be located beneath a trail or other park improvement existing as of the Effective Date shall have a minimum depth of five (5) feet.

The CITY hereby issues and temporarily grants an additional ten (10) feet of either side of the Joint Use Areas for the purpose of installing and constructing the Improvements ("Temporary Joint Use Areas") for a term of twenty-four (24) months following the commencement of construction.

ARTICLE IV. CONSTRUCTION

- 4.1 Coordination. Prior to the commencement of any construction activities by NFP on the Property or the CITY on the Joint Use Areas, including use for staging or storage of equipment, CITY and NFP and/or their respective contractors shall coordinate with one another in order to ensure such construction will not conflict with any ongoing or scheduled projects and/or activities of the other. The CITY Staff Contact is Roque Duque De Estrada, City of San Antonio Parks and Recreation Department, 210-207-2873, roque.duquedeestrada@sanantonio.gov. The NFP contact is Brad Elmore, be@newfoundpartners.com, (713) 408-4000. The Parties mutually agree to notify the other

in writing in the event this contact person changes.

- 4.2 Insurance. Prior to the commencement of any construction activity by NFP, NFP shall cause its contractors to provide the CITY executed certificates of insurance in a form and content acceptable to CITY naming the CITY as an additional insured on all such liability insurance policies for which an additional insured can be named.
- 4.3 Construction Activity. NFP, and its contractors, agents and employees, shall have the right to trim or cut trees and/or roots within the Joint Use Areas and the Temporary Joint Use Areas, which may endanger or interfere with said Improvements; provided, however, that in making any excavation on said Property, NFP shall work in a manner to cause the least injury to trees, vegetation, grasses and the surface of the ground around such excavation, and, within the Joint Use Areas and Temporary Joint Use Areas, shall replace earth, vegetation, grasses, and trail materials so removed by it and restore the area to equal or better condition as it was prior to such excavation. Any such site alterations shall be coordinated between the CITY and NFP prior to commencement, approval of which shall not be unreasonably withheld. If during construction by NFP within the Joint Use Areas or Temporary Joint Use Areas the Medina River Greenway trail is disrupted, NFP shall coordinate with the CITY to provide an alternative temporary trail access for users of the trail.
- 4.4 Future Activity. The CITY will not alter or modify any of NFP's Improvements without the prior written approval of the owner of the Improvements at the time of the alteration/modification. Further, the CITY will not construct any buildings or structures on the Joint Use Areas. NFP and its successor SAWS shall retain ownership of the Improvements and Easement on the Property and will operate and maintain said Improvements. The CITY and its successors and assigns shall have the right to continue to use and enjoy said Property for all purposes which do not unreasonably interfere with or interrupt its use for the rights granted in Section 3.2 herein, including, without limitation, and subject to SAWS and other applicable governmental approvals, the development of said Property for non-building structures and improvements on the Property, including but not limited to: surface parking lots, roads, driveways, sidewalks, landscaping, trail, and fencing. Subsequent to the construction of the Improvements, CITY reserves the right to access the Easement and construct a walking trail as part of the Leon Creek Greenway (Hwy 16 to Medina Creek) Project. Should future maintenance of the Improvements impact said walking trail, NFP (including successors or assigns) or SAWS shall coordinate with the CITY to provide an alternative temporary access trail so as not to interrupt trail use.
- 4.3 Completion of Construction. Within thirty (30) days following NFP's completion of construction, maintenance or repairs to its Project or infrastructure on the CITY's Property, NFP or its successors or assigns will repair any construction related damages within the Property and restore the Property to the same or better condition as existed prior to NFP's maintenance or repairs, including, without limitation, compacting, grading and seeding, for the purposes of establishing and restoring grass or vegetation. NFP's repair and restoration plans shall be subject to prior review and approval by CITY, such approval not to be unreasonably withheld, conditioned, or delayed

ARTICLE V
MISCELLANEOUS

- 5.1 By execution of this Agreement, neither NFP of the CITY waive or relinquish any right which they may have under the law or constitution, state or federal. This Agreement does not constitute a conveyance or release of any real property rights held by the CITY. The parties are acting herein for their own benefit and no benefit shall accrue to any third party.
- 5.2 This Agreement shall run with the Property. Further, NFP shall assign all of its rights, responsibilities, and obligations under this Agreement to SAWS following completion of Improvements.

Remainder of page intentionally left blank
Signatures page to follow

IN WITNESS WHEREOF, the parties hereto have affixed their signatures effective this _____ day of _____, 2023 ("Effective Date").

CITY OF SAN ANTONIO

Homer Garcia III, Director
Department of Parks and Recreation

APPLEWHITE – NFP III, LLC,
a Texas limited liability company

By: **APPLEWHITE – NFP III, LLC**
a Texas limited liability company
Its Manager

By: _____
Name: John G. H. Leggett, Jr.
Title: MANAGER

STATE OF TEXAS

§

COUNTY OF BEXAR

§

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The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Homer Garcia III, Director of the Department of Parks and Recreation of the **CITY OF SAN ANTONIO**, on its behalf.

Notary Public Signature

STATE OF TEXAS

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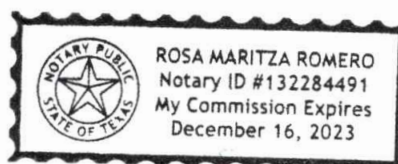
COUNTY OF ~~BEXAR~~ HARRIS

§

§

The foregoing instrument was acknowledged before me this 8 day of August 2023, by John G.H. Leggett, Jr., Manager of **APPLEWHITE – NFP III**, a Texas limited liability company, on behalf of said limited liability company.

Notary Public Signature



Approved by:

Assistant City Attorney

Exhibit "A"

Bexar County Appraisal District Parcel ID: 189353

Address: 16239 Lone Star Pass, San Antonio, TX 78224

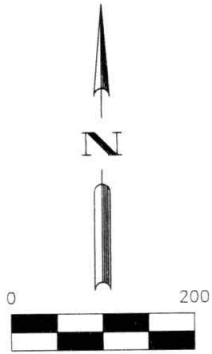
Legal Description: CB 4297 P-7B ABS 13 APPLEWHITE RESERVOIR (SOUTHSIDE STUDY AREA 3 ANNEXATION)

Latitude: 29.2591587745309

Longitude: -98.5694413587985



EXHIBIT "B"



LINE TABLE		
NUMBER	BEARING	DISTANCE
L1	N 55°57'47" W	28.98'
L2	S 33°47'53" W	471.00'
L3	S 09°10'15" W	53.69'
L4	S 56°30'58" E	313.29'
L5	N 56°30'58" W	13.17'
L6	N 09°10'15" E	53.17'
L7	N 33°47'53" E	480.95'
L8	S 55°57'47" E	41.02'
L9	S 34°00'58" W	12.00'

BALLARD EXPLORATION
COMPANY, INC.
CALLED 446.570 ACRES
VOL. 10040, PG. 2078
O.P.R.R.P.B.C.

0.409 OF ONE ACRE
17,832 SQUARE FEET
WASTEWATER EASEMENT

CITY OF SAN ANTONIO
CALLED 241.758 ACRES
VOL. 4991, PG. 1906
O.P.R.R.P.B.C.

APPLEWHITE-NFP III LLC
CALLED 43.732 ACRES
DOC. NO. 20220100701
O.P.R.B.C.

P.O.B.
"HOLLYHILLS"

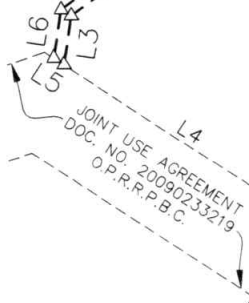
IGNACIO PEREZ SURVEY
ABS NO. 13

LOT 2,
BLOCK 3
NCB 16458

LOT 1,
BLOCK 3
NCB 16458

PROLOGIS CARRIER SA
VOL. 9707, PG. 13 P.R.B.C.

BY CARRIER
VOL. 9672, PG. 10
P.R.B.C.



BGE, Inc.
7330 San Pedro Ave., Suite 202, San Antonio, TX 78216
Tel: 210-581-3600 • www.bgeinc.com
TBPELS Licensed Surveying Firm No. 10194490

SCALE: 1"=200'

SHEET **3**

OF **4**

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LEGEND

DOC.	DOCUMENT
NO.	NUMBER
O.P.R.B.C.	OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY
O.P.R.R.P.B.C	OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY
PG.	PAGE
P.O.B.	POINT OF BEGINNING
P.R.B.C.	PLAT RECORDS OF BEXAR COUNTY
VOL.	VOLUME
"HOLLY HILLS" ●	FOUND 5/8" IRON ROD STAMPED W/CAP "HOLLY HILLS DESIGN"
●	FOUND 1/2" IRON ROD
△	CALCULATED POINT

GENERAL NOTES

1. BEARING ORIENTATION IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83.
2. A METES AND BOUNDS DESCRIPTION WITH LIKE JOB NUMBER AND DATE WAS PREPARED IN CONJUNCTION WITH THIS EXHIBIT.



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SCALE: ~

SHEET 4

OF 4

Copyright 2023

LEGAL DESCRIPTION

FIELD NOTES FOR A 0.409 OF ONE ACRE (17,832 SQUARE FEET) TRACT OF LAND IN THE IGNACIO PEREZ SURVEY, ABSTRACT 13, BEXAR COUNTY, TEXAS; BEING OUT OF A CALLED 241.758 ACRE TRACT OF LAND AS CONVEYED UNTO THE CITY OF SAN ANTONIO IN VOLUME 4991, PAGE 1906 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS; SAID 0.409 OF ONE ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a 5/8-inch iron rod with a cap stamped "HOLLYHILLS DESIGN" found on the southeast line of said 241.758 acre tract, at the common corner of a called 43.732 acre tract of land as conveyed unto Applewhite-NFP III, LLC in Document Number 20220100701 of the Official Public Records of Bexar County, Texas, and Lot 2, Block 3, New City Block 16458, Prologis Carrier SA, a subdivision as recorded in Volume 9707, Page 13 of the Plat Records of Bexar County, Texas, for an exterior corner and **POINT OF BEGINNING** of the herein described tract;

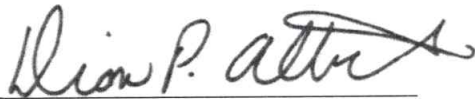
THENCE, over and across the 241.758 acre tract, the following nine (9) courses:

- 1) N 55°57'47" W, a distance of 28.98 feet to a calculated point for an interior corner of the herein described tract;
- 2) S 33°47'53" W, a distance of 471.00 feet to a calculated point for an angle point of the herein described tract;
- 3) S 53°36'50" W, a distance of 920.20 feet to a calculated point for an angle point of the herein described tract;
- 4) S 09°10'15" W, a distance of 53.69 feet to a calculated point on the northeast line of a Joint Use Agreement as recorded in Document Number 20090233219 of the Official Public Records of Real Property of Bexar County, Texas, for the southeast corner of the herein described tract, from which a 1/2-inch iron rod found on the common line of the 241.758 acre tract and the aforementioned Lot 2, at the most easterly corner of said Joint Use Agreement, bears S 56°30'58" E a distance of 313.29 feet;
- 5) N 56°30'58" W, coincident with the northeast line of said Joint Use Agreement, a distance of 13.17 feet to a calculated point for the southwest corner of the herein described tract;
- 6) N 09°10'15" E, departing said northeast line, a distance of 53.17 feet to a calculated point for an angle point of the herein described tract;
- 7) N 53°36'50" E, a distance of 923.00 feet to a calculated point for an angle point of the herein described tract;

- 8) N 33°47'53" E, a distance of 480.95 feet to a calculated point for the most northerly corner of the herein described tract;
- 9) S 55°57'47" E, a distance of 41.02 feet to a calculated point on the common line of the 241.758 acre tract and the aforementioned 43.732 acre tract, for an exterior corner of the herein described tract;

THENCE, S 34°00'58" W, coincident with the common line of the 43.732 acre tract and the 241.758 acre tract, a distance of 12.00 feet to the **POINT OF BEGINNING** and containing 0.409 of one acre (17,832 Sq. Ft.) of land, more or less.

I hereby certify that these notes were prepared from a survey made on the ground by employees of BGE, Inc and are true and correct to the best of my knowledge. The Basis of Bearing recited herein is the Texas State Plane Coordinate System, South Central Zone, NAD 83. An exhibit plat with like job number and date was prepared in conjunction with this exhibit.



Dion P. Albertson RPLS No. 4963
BGE, Inc.
7330 San Pedro Ave, Suite 202
San Antonio TX 78216
Telephone: 210-581-3600
TBPLS Licensed Surveying Firm No. 10194490



1/27/2023

Date

Date: January 27, 2023
Job No: 9902-00