



**MEMORANDUM**

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TO: Conner Kenny, Chair  
Planning Commission Members

FROM: Mark Graham, Senior Planner  
Planning and Zoning Department

DATE: July 13, 2020

RE: **C14-2020-0016, – 7113 Burnet Road**  
Late Backup – Reciprocal Access Easement Agreement

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On Thursday, July 9, 2020, Michael Gaudini, Agent with Armbrust and Brown, submitted a copy of the executed and recorded “Reciprocal Access Easement Agreement” that provides signalized access to 7113 Burnet Road. The Agreement was reviewed by Austin Transportation Engineering, Sangeeta Jain, and her comments were revised in the Amanda system on Friday July 10, 2020. These comments were received after the staff report was submitted for the July 14, 2020 Planning Commission meeting. Please see Sangeeta Jain comments below.

**Updated July 10, 2020:**

*“A reciprocal access easement has been created and recorded by the owner with the tract to the north of this site. This will allow for safe ingress and egress from this property at the Greenlawn Parkway, which has a traffic signal. Additional mitigations may be required at the time of site plan, when the land uses and intensities have been finalized.*”

Attachment: Reciprocal Access Easement Agreement



Dart Owner and Ronan Owner agree as follows:

1. Access Easement on Dart Property.

(a) *Grant of Easement.* Dart Owner hereby GRANTS, SELLS and CONVEYS to Ronan Owner, a perpetual non-exclusive easement for pedestrian and vehicular access, ingress and egress to, from, across, through and over the portion of the Dart Property, which portion initially is outlined on Exhibit A attached hereto for purposes of access to and from the Ronan Property and the controlled intersection of Burnet Road and Greenlawn Parkway (the "Dart Easement"). The Dart Easement granted herein is subject to any matters of record. Dart Owner reserves the right to redevelop, reconfigure, modify or otherwise alter the Dart Property from time to time in Dart Owner's sole discretion, so long as any such redevelopment, reconfiguration, modification or alteration does not materially impair ingress, egress and access to, from and between the Ronan Property and the controlled intersection of Burnet Road and Greenlawn Parkway via the Dart Easement; provided, however, temporary closures to facilitate such redevelopment shall be permitted. Dart Owner reserves for itself, its successors and assigns the right to continue to use and enjoy the surface of the Dart Property for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Dart Easement.

(b) *Location of Easement.* The initial location of the Dart Easement is generally shown on Exhibit A attached hereto and may be modified by the Dart Owner as provided above. However, Ronan Owner or Dart Owner may elect by written notice to the other at any time to have the then current location of the Dart Easement fixed by causing a metes and bounds description of its location prepared, and promptly thereafter Dart Owner and Ronan Owner will enter into a written recorded amendment to this Agreement for such purpose so long as such proposed fixed location for the Dart Easement is consistent with the location shown in Exhibit A and permits continued ingress, egress and access to, from and between the Ronan Property and the controlled intersection of Burnet Road and Greenlawn Parkway which is reasonably acceptable to Ronan Owner.

(c) *Prohibition on Construction Traffic.* Ronan Owner understands and agrees that the Dart Easement may only be used for pedestrians and vehicles except that any construction vehicles or equipment are prohibited from using the Dart Easement. In furtherance of the foregoing, Dart Owner may fence off the Dart Easement at the boundary line during the period of construction of any new improvements on the Ronan Property until the construction of such improvements is substantially complete and a certificate of occupancy has been issued therefor. Ronan Owner understands and agrees that it may not use the Dart Easement for construction traffic and agrees to indemnify Dart Owner from any loss, injury, or damage Dart Owner incurs as a result Ronan Owner's unauthorized use or parking by construction-related vehicles or equipment on the Dart Property. Ronan Owner shall cause all of its construction contractors and agents to not park nor loiter anywhere on the Dart Property unless otherwise agreed by the parties.

(d) *Repair and Maintenance.* Dart Owner is generally responsible for maintenance and repair of the Dart Property. However, Ronan Owner shall be responsible, at its sole cost and expense, for repairing any damage to the Dart Property caused by the use of the Dart Easement by Ronan Owner and any tenants or occupants of the Ronan Property, including, without limitation, any repaving. Furthermore, if the use of the Dart Easement by Ronan Owner or any tenants or occupants of the Ronan Property causes any material increase in maintenance costs (in excess of maintenance that would ordinarily be required under normal use solely by Dart Owner and its tenants and occupants), then Ronan Owner will be solely responsible for the reasonable costs of such additional maintenance costs upon demand by Dart Owner. If any costs or expenses which are the obligation of Ronan Owner under this paragraph are not paid within thirty (30) days after written demand from Dart Owner, then Dart Owner may elect to repair such damage or perform such maintenance and Ronan Owner will be obligated to reimburse Dart Owner for its actual reasonable costs therefor ("Self-Help Expenses"). Any Self-Help Expenses which are not reimbursed by Ronan Owner will bear interest at the rate of ten (10) percent per annum until paid. In addition to any other rights or remedies available at law or in equity, Dart Owner shall be entitled to pursue an action against Ronan Owner in a court of applicable jurisdiction to recover any Self-Help Expenses incurred by Dart Owner together with any accrued unpaid interest and its reasonable attorneys' fees.

2. Access Easement on Ronan Property.

(a) *Grant of Easement.* Ronan Owner hereby GRANTS, SELLS and CONVEYS to Dart Owner, a perpetual non-exclusive easement for pedestrian and vehicular access, ingress and egress to, from, across, through and over the paved areas, roadways, driveways, aisles, curb cuts and sidewalks located on the Ronan Property from time to time for purposes of access to and from the Dart Property and Burnet Road (the "Ronan Easement"), but excluding any portions of the Ronan Property containing buildings, structures, or other vertical improvements ("Excluded Areas"). Ronan Owner reserves the right to redevelop, reconfigure, modify or otherwise alter the Excluded Areas and any other portions of the Ronan Property from time to time in Ronan Owner's sole discretion, so long as any such redevelopment, reconfiguration, modification or alteration does not materially impair ingress, egress and access to, from and between the Dart Property and Burnet Road via the Ronan Easement. Furthermore, Ronan Owner may elect to have the location of the Ronan Easement fixed by causing a metes and bounds description of its location prepared and Dart Owner will enter into a written recorded amendment to this Agreement for such purpose so long as such proposed fixed location for the Ronan Easement permits continued ingress, egress and access to, from and between the Dart Property and Burnet Road which is reasonably acceptable to Dart Owner.

(b) *Prohibition on Construction Traffic.* Dart Owner understands and agrees that the Ronan Easement may only be used for pedestrians and vehicles except that any construction vehicles or equipment are prohibited from using the Ronan Easement. In furtherance of the foregoing, Ronan Owner may fence off the Ronan Easement at the

boundary line during the period of construction of any new improvements on the Dart Property until the construction of such improvements is substantially complete and a certificate of occupancy has been issued therefor. Dart Owner understands and agrees that it may not use the Ronan Easement for construction traffic and agrees to indemnify Ronan Owner from any loss, injury, or damage Ronan Owner incurs as a result of Dart Owner's unauthorized use or parking by construction-related vehicles or equipment on the Ronan Property. Dart Owner shall cause all of its construction contractors and agents to not park nor loiter anywhere on the Ronan Property unless otherwise agreed by the parties.

(c) *Repair and Maintenance.* Ronan Owner is generally responsible for maintenance and repair of the Ronan Property. However, Dart Owner shall be responsible, at its sole cost and expense, for repairing any damage to the Dart Property caused by the use of the Ronan Easement by Dart Owner and any tenants or occupants of the Dart Property, including without limitation repaving. Furthermore, if the use of the Ronan Easement by Dart Owner or any tenants or occupants of the Dart Property causes any material increase in maintenance costs (in excess of maintenance that would ordinarily be required under normal use solely by Ronan Owner and its tenants and occupants), then Dart Owner will be solely responsible for the reasonable costs of such additional maintenance costs upon demand by Ronan Owner. If any costs or expenses which are the obligation of Dart Owner under this paragraph are not paid within thirty (30) days after written demand from Ronan Owner, then Ronan Owner may elect to repair such damage or perform such maintenance and Dart Owner will be obligated to reimburse Ronan Owner for its Self-Help Expenses. Any Self-Help Expenses which are not reimbursed by Dart Owner will bear interest at the rate of ten (10) percent per annum until paid. In addition to any other rights or remedies available at law or in equity, Ronan Owner shall be entitled to pursue an action against Dart Owner in a court of applicable jurisdiction to recover any Self-Help Expenses incurred by Ronan Owner together with any accrued unpaid interest and its reasonable attorneys' fees.

3. Notices. All notices (including any demand for reimbursement) to be given hereunder shall be in writing and shall be sent by (i) the United States Postal Service or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage and addressed as hereinafter provided, or (ii) a nationally-recognized overnight or express delivery service, and addressed as hereinafter provided. Notices shall be addressed at the address(es) of the then current owners of each property as reflected in the Travis County appraisal records or at such other addresses(es) as the other party shall designate from time to time by prior written notice. Notices shall be deemed to be given on the earlier of (i) the first business day after being deposited with an overnight courier, or (ii) on the third day after being prepared in the manner provided above and deposited in the mail.

4. Attorney's Fees. If a party hereto is a prevailing party in any legal proceeding brought under or with relation to this Agreement, then such party shall be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorneys' fees.

5. Amendment; Termination. This Agreement constitutes the entire agreement between

the parties hereto with respect to entry and access between and among the Dart Property and Ronan Property, and any prescriptive rights of entry or access between and among such properties are hereby waived. The easements granted herein fulfill any obligation of Dart Owner or Ronan Owner to provide joint access to the property of the other. This Agreement may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of Travis County, Texas, executed, acknowledged and approved by all of the owners of the Dart Property and Ronan Property (collectively, the "Land"), or any portion thereof, at the time of the modification, amendment, or termination.

6. Governing Law; Runs with the Land. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement, including the easements, rights and obligations contained herein, run with the Land. Accordingly, the Dart Easement is binding on the owner of the Dart Property and inures to the benefit of any owner of the Ronan Property, and the Ronan Easement is binding on the owner of the Ronan Property and inures to the benefit of any owner of the Dart Property. Any subsequent purchaser of all or any portion of the Ronan Property or Dart Property by acceptance of delivery of a deed and/or conveyance regardless of form, shall be deemed to have consented to and become bound by these presents.

7. Indemnity. Ronan Owner further agrees to indemnify and hold Dart Owner harmless from any loss, injury or damage occasioned by the Ronan Owner's (including its affiliates, agents, and assigns) use of the Dart Easement, except to the extent arising from any negligence by Dart Owner, its affiliates, agents and assigns. Dart Owner further agrees to indemnify and hold Ronan Owner harmless from any loss, injury or damage occasioned by the Dart Owner's (including its affiliates, agents, and assigns) use of the Ronan Easement, except to the extent arising from any negligence by Ronan Owner, its affiliates, agents and assigns

8. Counterparts. This Agreement may be executed in several counterparts, and all of which shall constitute one and the same agreement.

*[Remainder of page intentionally left blank; Signatures follow]*

EXECUTED to be EFFECTIVE as of the date first set forth above.

**DART OWNER:**

**FEEL THE LOVE FUND, LLC,**  
a Texas limited liability company

By: [Signature]  
Name: owner/landlord  
Title: Gina Fant-Simon

STATE OF TX

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§  
§

COUNTY OF TRAVIS

This instrument was acknowledged before me this 17 day of June, 20  ,  
by Gina Fant-Simon, owner of FEEL THE LOVE FUND, LLC, a Texas  
limited liability company, on behalf of said limited liability company.

[Signature]  
Notary Public in and for  
the State of Texas

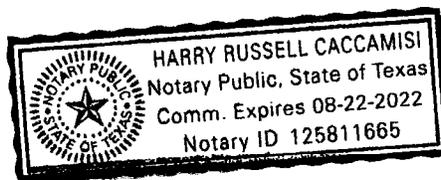
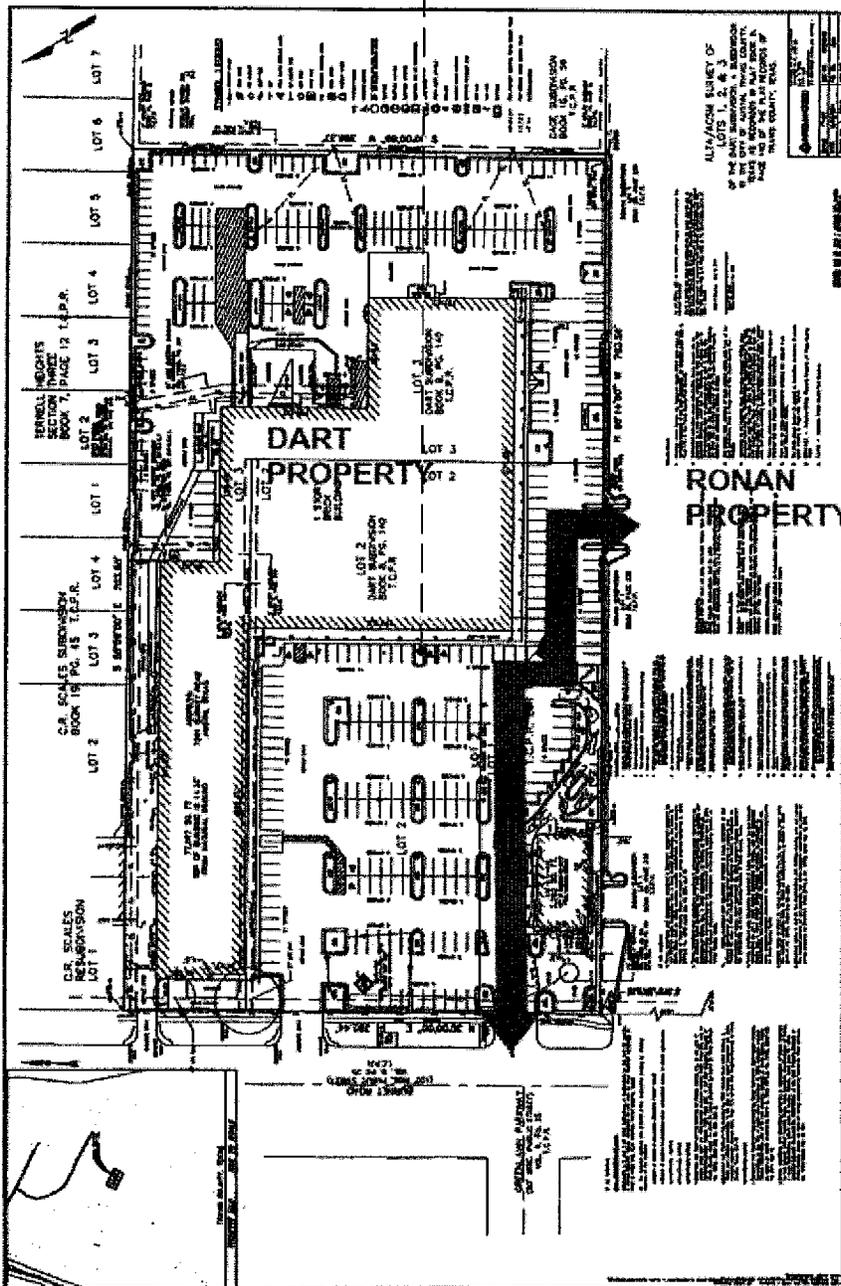




EXHIBIT A

Dart Easement



**CONSENT AND SUBORDINATION OF MORTGAGEE**

Texas Capital Bank, National Association (“**Lender**”), is the legal owner and holder of that certain Promissory Note in the principal amount of \$11,500,000 (“**Note**”), executed by Feel the Love Fund, LLC, a Texas limited liability company (“**Borrower**”), which note is secured by a deed of trust lien granted in a deed of trust dated October 22, 2019, from Borrower to John G. Turpen, Trustee, recorded under Document Nos. 2019166398 and 2019166511 of the Official Public Records of Travis County, Texas (the “**Deed of Trust**”).

Lender has executed and delivered this Consent and Subordination of Mortgagee (“**Consent**”) for the sole purpose of evidencing its consent to the Reciprocal Access Easement Agreement and subordinating the lien of the Deed of Trust and all other liens it may have securing the indebtedness evidenced by the Note (the “**Liens**”) to this Reciprocal Access Easement Agreement. Any foreclosure of the Liens will not extinguish the Reciprocal Access Easement Agreement. The undersigned has the authority to execute this Consent on behalf of Lender and represents, in that regard, that all necessary action has been taken by Lender to make this Consent binding on Lender.

**TEXAS CAPITAL BANK, NATIONAL ASSOCIATION**

By: Jennifer Guthrie  
Name: Jennifer Guthrie  
Title: Sr Vice President

**THE STATE OF TEXAS §**

**COUNTY OF Travis §**

This instrument was acknowledged before me on May 20, 2020, by Jennifer Guthrie, Sr. Vice President of Texas Capital Bank, National Association, on behalf of said national association.

[Signature]  
Notary Public Signature  
(seal)

