

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.

STORM WATER FACILITIES MAINTENANCE COVENANT, LICENSE AND AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement (“Agreement”) is made by and between David O’Mary (“OWNER”) the owner of a tract of land being more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes (“PROPERTY”), and City of Pflugerville, Texas (“CITY”), collectively referred to herein as the Parties. For purposes of this Agreement, the term OWNER refers to the current owner of the PROPERTY, and the OWNER’s successors, heirs, and assigns.

WHEREAS, the OWNER of the PROPERTY possesses full authority to execute deeds, mortgages, and other covenants affecting the PROPERTY and desires to enter into this Agreement, as required by the City of Pflugerville’s Code of Ordinances, including without limitation the Unified Development Code and associated Engineering Design and Construction Standards Manual, and the City’s Texas Commission on Environmental Quality-issued Municipal Separate Storm Sewer System (“MS4”) TPDES General Permit (TXR040000), collectively, the “Regulations”; and

WHEREAS, the OWNER acknowledges and agrees that, in order to ensure perpetual compliance with the Regulations, the PROPERTY must be impressed with certain covenants and restrictions;

WHEREAS, the Regulations generally and specifically require the design, construction and perpetual maintenance of permanent post construction storm water best management practices (“BMPs”) developed and included within a Storm Water Management Site Plan (“SWMSP”) required as a part of, and incident to, development, and OWNER acknowledges that compliance therewith by virtue of this Agreement and the terms hereof shall enable OWNER to develop the PROPERTY, which is accepted in consideration of this Agreement; and

WHEREAS, the CITY is charged with the responsibility of protecting the public health, safety and welfare through implementation of storm water pollution prevention measures, including ensuring that SWMSPs are developed, and post construction storm water BMPs are implemented and perpetually maintained by property owners.

NOW, THEREFORE, AND IN CONSIDERATION OF, the mutual covenants and obligations herein expressed, the Parties hereto agree as follows:

1. RECITALS INCORPORATED. The above Recitals and all terms defined therein are incorporated into this Agreement for all purposes.

2. DECLARATION OF COVENANTS AND RESTRICTIONS. It is declared that the OWNER of PROPERTY, shall hold, sell and convey the PROPERTY, subject to the following covenants and restrictions (the "Restrictive Covenants"), which are impressed upon the PROPERTY by this Agreement. OWNER further declares that these Restrictive Covenants shall run with the land, and shall be binding upon the OWNER, its heirs, successors and assigns, and that 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. The OWNER shall record this Agreement in the Official Land Records of Travis County, Texas.

(a) The OWNER covenants, declares and agrees that the OWNER shall perpetually preserve, protect, inspect and maintain the permanent post construction storm water BMPs developed by the OWNER in accordance with the SWMSP for the PROPERTY to ensure that the post construction storm water BMPs are and remain in proper condition in accordance with the SWMSP and the Regulations. The permanent post construction storm water BMPs specifically consist of those provided in **Exhibit B**, attached hereto and incorporated herein.

(b) The OWNER covenants and declares that OWNER shall maintain and inspect the permanent BMPs in accordance with the "Maintenance and Repair Plan" also provided in **Exhibit B**, and the Regulations. OWNER acknowledges and agrees that the Maintenance and Repair Plan may not be modified without the CITY Development Director's, or designee's, written consent, which shall not be unreasonably withheld, conditioned or delayed. OWNER acknowledges and agrees that the CITY is a beneficiary of OWNER's obligations under this Agreement and that failure to preserve, protect, inspect and maintain the post construction storm water BMPs is a breach of this Agreement.

(c) OWNER covenants and declares that any maintenance or repair needs identified by OWNER through periodic inspection shall be performed by the OWNER within thirty (30) days of discovery, or immediately upon notification by the CITY. If maintenance and repair cannot be performed immediately upon written notification by the CITY, the OWNER shall provide CITY with a schedule of activities to be completed, which shall be completed within a reasonable time as agreed to by the Parties. In the event the work is not performed within the specified time, the OWNER acknowledges and agrees that the CITY, or its employees, agents or contractors, may enter the PROPERTY and complete the required maintenance, as determined necessary in the CITY's sole discretion, at the OWNER's sole cost and expense. In the event that immediate maintenance and repair is necessary to protect public health, safety or welfare, as determined in the CITY'S sole discretion, CITY may enter and complete such maintenance and repair without prior notice to the OWNER. The OWNER shall reimburse the CITY for the costs incurred for the maintenance of the post construction storm water BMPs immediately upon demand. OWNER further acknowledges and agrees that failure to reimburse CITY for all such costs shall be deemed a breach of this Agreement and will subject OWNER to all actions at law or in equity as the CITY

may deem prudent, including without limitation, the placement of a judicially enforceable lien on the PROPERTY to secure the payment of all CITY costs incurred.

(d) The OWNER covenants, declares and agrees to modify or increase the inspection and maintenance or repair requirements, as deemed reasonably necessary by the CITY upon receipt of written notification thereof to OWNER, to ensure proper functioning and maintenance of the said post construction storm water BMP's.

(e) Notwithstanding anything in this Agreement to the contrary, OWNER acknowledges and agrees that the CITY is under no obligation to maintain or repair said post construction storm water BMP's, and in no event shall this Agreement be construed to impose any such obligation, duty or liability upon the CITY.

3. EASEMENT RESERVATION. OWNER hereby reserves a perpetual access and maintenance easement to all post construction storm water BMPs shown on the SWMSP for the purpose of inspection, repair and perpetual maintenance.

4. LICENSE. OWNER hereby GRANTS, SELLS AND CONVEYS TO CITY A NON-EXCLUSIVE IRREVOCABLE LICENSE OVER, UPON, ACROSS AND THROUGHOUT THE PROPERTY FOR ACCESS, INSPECTION AND MAINTENANCE OF THE POST CONSTRUCTION STORM WATER BMPs, AS APPLICABLE AND NECESSARY, UNTIL SUCH TIME AS THIS AGREEMENT IS MODIFIED, AMENDED OR TERMINATED AS PROVIDED HEREIN.

5. INDEMNIFICATION. In the event of the OWNER's failure to maintain the post construction storm water BMPs or OWNER's creation of a hazard, and the City's subsequent maintenance of the post construction storm water BMPs, the OWNER, whether one or more, shall be jointly and severally liable to the City for any reasonable expenses incurred by the City while maintaining the post construction storm water BMPs and, TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS, OWNER, AND ITS HEIRS, SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, SAVE HARMLESS, AND DEFEND THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INSURERS, INCLUDING WITHOUT LIMITATION THE TEXAS MUNICIPAL INTERGOVERNMENTAL RISK POOL, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL DEMANDS, LIABILITIES, CLAIMS, PENALTIES, FORFEITURES, SUITS, AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT, AND REASONABLE ATTORNEY'S FEES), WHICH CITY MAY HEREAFTER INCUR, BECOME RESPONSIBLE FOR, OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURIES TO ANY PERSON, DESTRUCTION OR DAMAGE TO ANY PROPERTY, CONTAMINATION OF OR ADVERSE EFFECTS ON THE ENVIRONMENT, OR ANY VIOLATION OF GOVERNMENTAL LAWS, REGULATIONS, OR RULES NOT RESULTING FROM THE CITY'S OWN NEGLIGENCE, BUT TO THE EXTENT CAUSED BY THE OWNER'S BREACH OF ANY WARRANTY, TERM OR PROVISION OF THIS AGREEMENT, OR ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE OWNER, ITS EMPLOYEES,

AGENTS OR SUBCONTRACTORS IN THE PERFORMANCE, OR OMISSION, OF ANY ACT CONTEMPLATED BY THIS AGREEMENT.

6. GENERAL PROVISIONS.

(a) Severability. If any part of this Agreement 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 Agreement shall remain in full effect.

(b) Non-Waiver. If at any time the CITY fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

(c) Modification and Amendment. The Restrictive Covenants and License provided by this Agreement 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.

(d) Attorney's Fees. In the event the CITY brings an action or proceeding to enforce the terms hereof or declare rights hereunder, and is determined to be the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, CITY shall be entitled to reasonable attorneys' fees, costs and expert witness fees as the court shall determine. The term "Prevailing Party" shall mean a party who substantially obtains or defeats the relief sought, as the case may be, by the entering of a judgment or arbitration award in such party's favor.

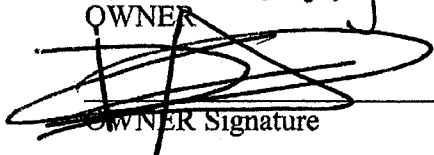
(e) Governing Law. This Agreement and all rights and obligations created hereby will be governed by the laws of the State of Texas and venue shall be located in Travis County, Texas.

(f) Entire Agreement. This Agreement, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and the exhibits attached hereto. The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any party.

Executed and effective on this 21 day of JUNE, 2018.

DAVID O'Mary

OWNER


OWNER Signature

DAVID O'Mary-Owner
OWNER Print Name/Title

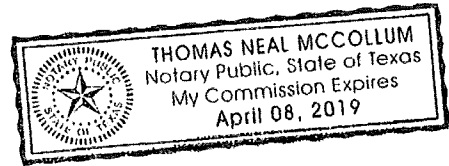
ACKNOWLEDGMENT

THE STATE OF Texas §
COUNTY OF Williamson §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared David O'Mary, OWNER, known to me (or proved to me on the oath of, a credible witness) to be the person(s) whose name(s) is (are) subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21 day of June, 2018

Thomas Neal McCollum
Notary Public, State of TEXAS



The City of Pflugerville does hereby accept the above described license in accordance with the terms of this Agreement.

CITY OF PFLUGERVILLE, TEXAS

By: _____
~~Trey Fletcher, Interim City Manager~~
Sereniah Bretand, City Manager

ATTEST:

Karen Thompson, City Secretary

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

**LOT 3-A, BLOCK E OF THE AMENDING PLAT OF BLOCK E
685 COMMERCIAL BUSINESS PARK,
AN ADDITION TO THE CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS,
ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 100, PAGE 260,
PLAT RECORDS, TRAVIS COUNTY, TEXAS.**

**ATTACHMENT: PLAT SHEET P-001
C.A.C.I. OFFICE BUILDINGS
1705 ROWE LANE
PFLUGERVILLE, TEXAS 78660**

**AMENDING PLAT OF BLOCK E
685 COMMERCIAL PARK
FINAL PLAT
RECORDED: JANUARY 20th, 1998
VOLUME 100 PAGE 260
OF THE PLAT RECORDS, TRAVIS COUNTY, TEXAS**

\$31.00 JANUARY 20, 1998 A1825

VOL 100 Page 260

AMENDING PLAT OF BLOCK E 685 COMMERCIAL PARK

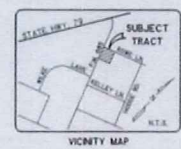
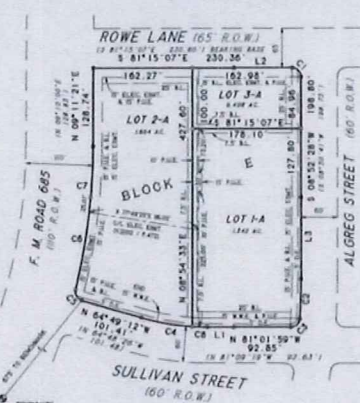
FINAL PLAT

CURVE TABLE

C1	A=23.63	R=15.00'
C2	A=65.81	R=1082.54'
C3	A=22.67	R=15.00'
C4	A=85.73	R=387.71'
C5	A=22.91	R=15.00'
C6	A=155.04	R=1014.93'
C7	A=84.48	R=1014.93'
C8	A=24.77	R=387.71'

LINE TABLE

L1	N 81°11'13"W	43.88'
L2	S 81°15'07"E	94.88'
L3	S 08°44'19"W	135.27'



SUBDIVIDER
RICHARD G. GUTHRIE AND
JENNIFER L. JOHNSON
20200 ALGREG STREET
PFLUGERVILLE, TEXAS 78660
512.1.231.2889

LEGEND
● 1/2" IRON PIN FOUND
○ 1/2" IRON PIN SET
- RECORD INFORMATION



STATE OF TEXAS | KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS |

THAT WE, RICHARD G. GUTHRIE AND JENNIFER L. JOHNSON, OWNERS OF THAT CERTAIN 3.354 ACRE TRACT OUT OF THE JOHN C. LEE SURVEY 35, ABSTRACT 488, IN THE CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS, BEING THE SAME LAND CONVEYED TO US BY DEED RECORDED IN VOLUME 2376, PAGE 826 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID 3.354 ACRES OF LAND IN ACCORDANCE WITH THE FOREGOING PLAT TO BE KNOWN AS 'AMENDING PLAT OF BLOCK E 685 COMMERCIAL PARK' AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON. SAID TRACT IS SUBJECT TO ANY EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED.

WITNESS MY HAND THIS 12TH DAY OF DECEMBER, 1997, A.D.
Richard G. Guthrie
RICHARD G. GUTHRIE

WITNESS MY HAND THIS 12TH DAY OF DECEMBER, 1997, A.D.
Jennifer L. Johnson
JENNIFER L. JOHNSON

STATE OF TEXAS | KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS |

BEFORE ME THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED RICHARD G. GUTHRIE AND JENNIFER L. JOHNSON, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 12TH DAY OF DECEMBER, 1997, A.D.
Anna Callahan
NOTARY PUBLIC



- NOTES:
1. ALL LOTS IN THIS SUBDIVISION ARE TO BE USED FOR COMMERCIAL PURPOSES.
2. SIDEWALKS 6' IN WIDTH SHALL BE INSTALLED ALONG THE FRONT OF ALL LOTS IN THIS SUBDIVISION.
3. NO STRUCTURE SHALL BE LOCATED WITHIN THE DRAINAGE EASEMENTS AS SHOWN HEREON.

APPROVED THIS 29TH DAY OF DECEMBER, 1997, BY THE CITY MANAGER OF THE CITY OF PFLUGERVILLE, TEXAS, ON BEHALF OF THE CITY OF PFLUGERVILLE.

CITY MANAGER: CITY OF PFLUGERVILLE, TEXAS
Steve Jones
STEVE JONES, CITY MANAGER
Attest:
Laura Williams
LAURA WILLIAMS, CITY SECRETARY, CITY OF PFLUGERVILLE

STATE OF TEXAS | KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS |

THAT I, ROBERT M. BARCOWB, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE ON-THE-GROUND SURVEY OF THE LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF PFLUGERVILLE, TEXAS. NO PORTION OF THIS SUBDIVISION LIES WITHIN THE 100 YEAR FLOODPLAIN.

Robert M. Barcoub
ROBERT M. BARCOWB, R.P.L.S. NO. 4772
1801 CAMERON ROAD, SUITE 108
AUSTIN, TEXAS 78734 (512) 832-1232
JUNE 3, 1997



STATE OF TEXAS | KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS |

I, DANA DEBAUVOIR, TRAVIS COUNTY CLERK, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING, WITH ITS CERTIFICATE OF AUTHENTICATION, WAS FILED FOR RECORD IN MY OFFICE ON THE 20TH DAY OF JANUARY, 1998, AT 1:47 O'CLOCK P.M., AND WAS DULY RECORDED IN VOLUME 100, PAGE 260, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, ON THE 20TH DAY OF JANUARY, 1998, AT 1:47 O'CLOCK P.M.

WITNESS MY HAND AND SEAL OF OFFICE OF THE COUNTY CLERK THE DATE LAST WRITTEN ABOVE.
DANA DEBAUVOIR, COUNTY CLERK, TRAVIS COUNTY, TEXAS
Madalyn Angleton



SHEET 1 OF 1

SITE PLAN APPLICATION - NOT FOR CONSTRUCTION

DESIGNED BY: T. LINDS
DRAWN BY: D. KELLER
CHECKED BY: D. KELLER
P-001

PLAT SHEET
FOR
C.A.C.I. OFFICE BUILDINGS
1705 ROWE LANE
PFLUGERVILLE, TEXAS 78660

MATKINHOOPER
ENGINEERING & SURVEYING
4830 HUNTER ROAD SUITE 110
IRVING, TEXAS 75039
OFFICE: 972.247.0500
CONTACT: MATKINHOOPER.COM
TEXAS REGISTERED ENGINEERING FIRM 6-64252 (SINCE 11/01/87) F-124266

REVISIONS

DATE PLOTTED: 05/11/2018
TIME PLOTTED: 10:58:11 AM

EXHIBIT B

STORM WATER DETENTION FACILITIES MAINTENANCE SCHEDULE

STORM WATER MANAGEMENT PLAN [CG401]

STORM WATER DETENTION FACILITIES MAINTENANCE SCHEDULE

1. Inspection:
 - 1.1. Immediate - upon the immediate recognition that the drainage system is showing signs of slow or no flow conditions an inspection of the cause of such failure shall be conducted by facility management and / or an approved agent.
 - 1.2. Quarterly - owner/operator will conduct, at a minimum, every three (3) months a routine inspection of the detention system per the manufacturers recommendation. The drainage system will be inspected for free/unobstructed flow into and out of the detention system along with observations of notable material and construction failures.
 - 1.3. Inspection Log Documentation - an inspection log shall be kept on site containing a minimum of;
 - 1.3.1. Date of inspection.
 - 1.3.2. General condition of system, notable issues or lack thereof.
 - 1.3.3. Inspectors full name and company of employment.
2. Repair and Cleaning Log
 - 2.1. Cleanings - cleanings can be performed by facility maintenance and / or approved agent. In general, this will constitute debris removal and flushing / rinsing processes to the system.
 - 2.2. Repairs - any system repairs shall be completed per the manufacturer's recommendations by a qualified agent that has experience with contech underground detention systems. Under no circumstances shall the detention system be modified from its original design without the written review and approval of an engineer.
 - 2.3. Repair and Cleaning Log Documentation:
 - 2.3.1. List of all repair items.
 - 2.3.2. Date that repair / cleaning was completed.
 - 2.3.3. Agent / company that completed repair / cleaning.
3. Annual Reporting
 - 3.1. The property owner shall provide a written annual report to the City of Pflugerville Developmental Services Center on or before December 31st of each subsequent year specifically detailing all inspection and maintenance obligations undertaken to maintain the facilities during the current calendar year.

Property Owner Contact Information

Capital Acoustical Company, Inc.
2995 Dawn Dr. #103
Georgetown, Texas 78628
David O'Mary
ofc: (512) 930-5284 m: (512) 748-3934
email: david@caci-tx.com