

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 The Commons at Heatherwilde and Pecan, LP, a Texas limited partnership (“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, notwithstanding the foregoing, CITY will take reasonable steps to notify OWNER as soon as possible after it becomes aware that any immediate repair or maintenance is necessary. CITY may enter and complete such maintenance and repair without

prior notice to the OWNER. The OWNER shall reimburse the CITY for the reasonable 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 30<sup>th</sup> day of January, 2018.

OWNER:

The Commons at Heatherwilde and Pecan, LP  
a Texas limited partnership

By: The Commons Land Development Company, LLC  
a Texas limited liability company  
its General Partner

By: Presidium Pflugerville, LLC,  
a Texas limited liability company  
its Manager

By: [Signature]  
Cross Mocerri, Manager

**ACKNOWLEDGMENT**

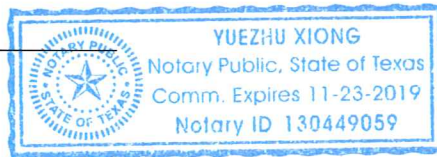
THE STATE OF Texas §

COUNTY OF Travis §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared Cross Mocerri, 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 30<sup>th</sup> day of January, 2018.

Yuezhu Xiong  
Notary Public, State of 11/23/2019



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

CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
City Manager, Official

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

**EXHIBIT A**  
**PROPERTY LEGAL DESCRIPTION**

LEGAL DESCRIPTION

BEING a 1.622 acre tract of land situated in the Thomas J. Chambers Survey, Abstract No. 7 in Travis County, Texas; and being a portion of a called 38.465 acre tract of land described in a Special Warranty Deed with Vendor's Lien to The Commons at Heatherwilde and Pecan, LP recorded in Document No. 2016010717 of the Official Public Records of Travis County, Texas; said 1.622 acre tract of land being more particularly described by metes and bounds as follows, with bearings based on the Texas Coordinate System of 1983, Central Zone:

COMMENCING at a concrete monument found at the intersection of the southerly right-of-way line of Pecan Street (120' wide public right-of-way) and the northwesterly right-of-way line of Old Austin Pflugerville Road (60' wide public right-of-way) for the northeasterly corner of said 38.465 acre tract of land;

THENCE with said northwesterly right-of-way line of Old Austin Pflugerville Road, South 27°56'39" West a distance of 202.19 feet to the most easterly corner and POINT OF BEGINNING of the herein described tract;

THENCE continuing with said northwesterly right-of-way line of Old Austin Pflugerville Road, South 27°56'39" West a distance of 202.19 feet to a point from which a 1/2" iron rod with cap stamped "CARSON" found bears South 27°56'39" West a distance of 678.45 feet;

THENCE departing said northwesterly right-of-way line of Old Austin Pflugerville Road, over and across said 38.465 acre tract of land the following courses and distances:

South 77°59'35" West a distance of 281.75 feet to a point;

South 12°00'28" East a distance of 11.82 feet to a point for the beginning of a curve to the right;

Southwesterly with said curve to the right having a radius of 215.00 feet and a delta angle of 33°12'54", an arc distance of 124.64 feet (the chord of said curve bears South 04°35'59" West a distance of 122.90 feet) to a point;

South 21°12'26" West a distance of 45.41 feet to a point;

North 69°01'16" West a distance of 30.00 feet to a point;



North 21°12'26" East a distance of 45.53 feet to a point for the beginning of a curve to the left;

Northeasterly with said curve to the left having a radius of 185.00 feet and a delta angle of 33°12'54", an arc distance of 107.25 feet (the chord of said curve bears North 04°35'59" East a distance of 105.75 feet) to a point;

North 12°00'27" West a distance of 166.82 feet to a point;

North 77°59'35" East a distance of 306.22 feet to a point;

North 12°03'20" West a distance of 283.64 feet to a point;

North 77°59'29" East a distance of 25.00 feet to a point;

South 12°03'20" East a distance of 283.64 feet to a point;

North 77°59'35" East a distance of 110.37 feet to the POINT OF BEGINNING and CONTAINING an area of 1.622 acres of land.

This description has been prepared as a result of an on the ground survey completed on July 21, 2017.



Gary C. Bowes  
Registered Professional Land Surveyor No. 4053

11/2/2017  
Date

Austin Grid: P-37  
TCAD ID: 363072



# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

SCALE 1" = 100'

## LEGEND

△ CALCULATED POINT



POINT OF COMMENCING FOUND CONCRETE MONUMENT

PECAN ST (F.M. 1825)  
120' RIGHT-OF-WAY

15' PUBLIC UTILITY EASEMENT  
VOL. 7650, PG. 326  
D.R.T.C.

10' SOUTHWESTERN BELL  
TELEPHONE COMPANY EASEMENT  
VOL. 4378, PG. 1184  
D.R.T.C.

THE COMMONS AT  
HEATERWILDE AND PECAN, L.P.  
CALLED 38.465 ACRES  
DOC NO. 2016010717  
O.P.R.T.C.T.

POINT OF BEGINNING

BLOCK A

N 77°59'35" E 306.22'

DRAINAGE  
EASEMENT  
1.622 ACRES

LOT 5

WELLS POINT  
COMMERCIAL - FILING 1  
VOL. 88, PG. 272-273  
P.R.T.C.T.

LOT 6

Sheet 1 of 2



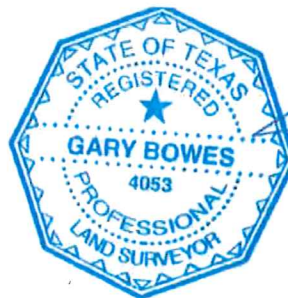
**JONES | CARTER**

Texas Board of Professional Engineers Registration No. F-439  
Texas Board of Professional Land Surveying Registration No. 10046101  
3100 Arvin Devane Boulevard, Suite 150 • Austin, Texas 78741 • 512.441.9493

# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 12°00'28" E	11.82'
L2	S 21°12'26" W	45.41'
L3	N 69°01'16" W	30.00'
L4	N 21°12'26" E	45.53'
L5	N 77°59'29" E	25.00'

CURVE TABLE					
CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	215.00'	124.64'	33°12'54"	S 04°35'59" W	122.90'
C2	185.00'	107.25'	33°12'54"	N 04°35'59" E	105.75'



*[Handwritten Signature]*  
11/2/2017

Sheet 2 of 2



**JONES | CARTER**

Texas Board of Professional Engineers Registration No. F-439  
Texas Board of Professional Land Surveying Registration No. 10046101  
3100 Alvin Devane Boulevard, Suite 150 • Austin, Texas 78741 • 512.441.9493

**EXHIBIT B**  
**PERMANENT STORMWATER MAINTENANCE PLAN**

## PERMANENT STORMWATER MAINTENANCE PLAN

### BMPs for On-site Stormwater

The storm water runoff originating from the Pecan District- Phase 1 site will be captured and conveyed to the proposed off-site detention facility within the property described in **Exhibit A** by a combination of inlets, storm drain pipe, and curb cuts. The pond will then discharge via storm pipe into the existing channel on the same subject property.

### Inspection, Maintenance, Repair, and Retrofit Plan

<b>Project:</b>	<b>Pecan District- Phase 1</b>
<b>Address:</b>	<b>Unaddressed. See Exhibit A</b>
<b>City, State, Zip:</b>	<b>Pflugerville, Texas 78660</b>

#### General Site Maintenance

The following guidelines should be used as an inspection and maintenance plan that should be performed at least twice annually:

- (1) Identify, replant, and restore any eroded areas that have developed. Add a level spreader, energy dissipation, or other repairs as required to ensure that erosion is not repeated.
- (2) Identify areas that do not have acceptable vegetated covers (90% or higher for most BMPs). Reseed, add soil, and irrigate as required to ensure that coverage requirements are met.
- (3) Mow sites twice annually and as required to keep grass height under 18 inches. Additional mowing may be performed for site aesthetics. Fine mulch clippings or export to reduce any potential clogging or buildup of decaying plant matter. Remove any woody growth, especially from embankments, berms, and swales. For swales, grass should not be regularly mowed below four inches.
- (4) Use non-chemical methods for maintaining health of vegetation. Pesticides, herbicides, or fertilizers should only be used as a last option, and then as minimally as possible. Fertilizer should rarely be required because runoff will typically contain sufficient nutrient loads. Utilize City of Austin Innovative Pest Management (IPM) recommendations to control pests.
- (5) Irrigation may be required to maintain acceptable levels of vegetated coverage, especially for engineered vegetated strips, at the discretion of the owner.
- (6) Never deposit grass clippings, brush, or other debris in BMPs or buffers.
- (7) Remove any built-up sediment and debris, especially along uphill edges, berms, swales, and level spreaders; and around BMP inlets and outlets

- (8) Identify any other problems. A detailed inspection may be required.

The following tasks should be performed every 5 years or as needed to maintain design drawdown time and volume; Clean outlet structure, orifice openings, and outlet piping to remove any sediment buildup, survey pond(s) to ascertain grading remains per original approved grading plan and grade/revegetate as necessary to maintain approved detention volumes.

The responsible party will provide the City of Pflugerville with an annual report to the City's Development Services Center on or before December 31<sup>st</sup> of each subsequent year detailing inspection and maintenance obligations undertaken to maintain the facilities during the current calendar year. The city will notify the responsible party at the address provided below if the annual report has not been received by its due date and will allow 30 additional days after said notification for the responsible party to remediate the missing report.

The indicated party below is responsible for maintaining the permanent BMPs after construction until such time as the maintenance obligation is either assumed in writing by another entity having ownership or control of the property (such as without limitation, an owner's association, new property owner or lessee, a district, or municipality) or the ownership of the property is transferred to the entity. Such entity shall then be responsible for maintenance until another entity assumes such obligation in writing or ownership is transferred.

Responsible Party for Maintenance: The Pecan District Master Association, Inc.  
Address: 411 Brazos Street, Suite 99  
Austin, TX 78701

After recording, return to:

City of Pflugerville  
Office of Development Services  
201 E. Pecan St. Bldg. B  
Pflugerville, TX. 78660

Attn: Cynthia Pierce