

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.

PUBLIC ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This Access Easement Agreement ("Agreement") is made by and between **HEATHERWILDE HOMEOWNERS' ASSOCIATION**, a Texas non-profit corporation ("Owners") and the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule municipality ("City"), and is as follows:

RECITALS

A. Owners are the owners of certain real property located in Travis County, Texas, which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Easement Tract");

B. Owners have agreed to grant City a non-exclusive 10-ft wide permanent easement and right-of-way upon, over, through and across the Easement Tract ("Easement") more particularly described by metes and bounds and sketch on Exhibit "A", and a companion variable width temporary access and construction easement more particularly described in the sketch on Exhibit "A", subject to the terms, conditions and other matters set forth in this Agreement.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged and confessed, Owner hereby GRANTS, SELLS and CONVEYS, to City an access easement on, over, through and across the Easement Tract, and a temporary access and construction easement on over, though, and across a variable width area adjacent to the Easement Tract, subject to the reservations, terms and conditions of this Agreement and subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable. As additional consideration to the Grantor, the City hereby agrees to install trail lighting under the Heatherwilde Boulevard bridge at its crossing with the Gilleland Creek Trail to illuminate said trail within five (5) years of the date of this Agreement. The Easement shall be subject to the following terms and provisions:

1. **Character of Easement.** The Easement is an easement in gross.
2. **Duration of Easement.** The Easement is perpetual.

3. **Duration of Temporary Access and Construction Easement.** The variable width temporary access and construction easement shall terminate at the completion of the City of Pflugerville's Gilleland Creek Trail Project.

4. **Exclusiveness of Easement.** The Easement is non-exclusive and City's use shall be in common with Owners and their successors and assigns. Owners hereby reserve, for themselves and their successors and assigns, the right to enter upon and use the surface of the Easement Tract, subsurface of the Easement Tract and the air space over the Easement Tract for the purposes of installing, constructing, repairing, maintaining, operating, replacing, upgrading and using (i) landscaping, irrigation sleeves and other irrigation facilities; (ii) any other improvements that are permitted under the City of Pflugerville Code of Ordinances to encroach into any setbacks or private easements; and (iii) for any other purposes that do not unreasonably interfere with the rights granted to City hereunder. Notwithstanding anything contained herein to the contrary, Owners shall not use the Easement Tract in any other manner or grant any easement on or across the Easement Tract that interferes in any material way, or is inconsistent with, the easements, rights, and privileges granted hereunder or the terms and conditions hereof.

5. **Purpose of Easement.** The Easement shall incorporate a 10-ft wide concrete trail to be used only for the purpose of pedestrian ingress and egress over and across the Easement Tract by Grantee and Grantee's licensees, employees, agents, invitees, members, and the general public. The temporary access and construction easement is described in the Sketch to Accompany Field Notes for the permanent easement in Exhibit "A" and shall incorporate a variable width area located adjacent to and along the boundaries of the permanent easement and across Owner's property for the purpose of accessing the permanent easement and for construction of the concrete trail within the permanent easement.

6. **Repairs and Restoration.** In the event that City's operations and/or other activities on the Easement Tract result in any damage to or destruction of any improvements constructed or installed on the Easement Tract by Owners (or their successors and assigns), then City agrees to repair or replace, as necessary, at City's expense, any such improvements so damaged or destroyed. In the event that Owners' construction, repairs, operations and/or other activities on the Easement Tract result in any damage to or destruction of any improvements constructed or installed on the Easement Tract by City (or its successors and assigns), then Owners agree to repair or replace, as necessary, at Owners' expense, any such improvements so damaged or destroyed.

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

8. **Assignment.** The Easement may be assigned by City, its successors or assigns, without the prior written consent of Owner as long as the proposed successor or assign is a governmental entity that expressly assumes City's obligations under this Agreement.

9. **Attorney's Fees.** In the event of any controversy, claim, or dispute relating to this Agreement or the breach, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, attorney's fees, and costs.

10. **Binding Effect.** This Agreement, and the terms, covenants, and conditions shall be covenants running with the Easement Tract and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties.

11. **No Waiver.** Except for a written waiver signed by the party to be charged, any action or inaction by any party with respect to any provision of this Agreement, including, but not limited to, a party's failure to enforce any provision of this Agreement, shall not constitute a waiver of that provision or any other provision of this Agreement. Any waiver by any party of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement.

12. **Headings.** Any section headings in this Agreement are for reference only and shall not modify or affect the interpretation of this Agreement in any manner whatsoever.

IN WITNESS WHEREOF, this Agreement is executed this _____ day of _____, 2017 (the "Effective Date").

GRANTOR:

HEATHERWILDE HOMEOWNERS' ASSOCIATION,
a Texas non-profit corporation

By: Matthew Robertson
Name: Matthew Robertson
Title: HOA President

AGREED AND ACCEPTED:

CITY OF PFLUGERVILLE, TEXAS,
a Texas home-rule municipality

By: _____
Brandon Wade, City Manager

ATTEST:

Karen Thompson, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on Feb 16, 2017, by Matt Robertson, President of the Heatherwilde Homeowners' Association, a Texas non-profit corporation, on behalf of said corporation.



Sara F. Huff
Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2017, by Brandon Wade, City Manager of the City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public Signature

After Recording Return To:

City of Pflugerville
Attn: Karen Thompson, City Secretary
P.O. Box 589
Pflugerville, Texas 78691



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS - FIRM #101141-00

HEATHERWILDE
HOME OWNERS ASSOCIATION
TO
CITY OF PFLUGERVILLE

LEGAL DESCRIPTION OF

A 0.164 ACRE (7,128 SQUARE FOOT) TRACT OF LAND IN THE CITY OF PFLUGERVILLE, TRAVIS COUNTY TEXAS. SAID 0.164 ACRE TRACT BEING COMPRISED OF TWO (2) PARTS, PART 1 BEING 0.035 ACRE (1,517 SQUARE FEET) OF LAND OUT OF LOT 1, BLOCK 26 OF THE AMENDED PLAT OF HEATHERWILDE, SECTION ONE, RECORDED IN VOLUME 86, PAGE 150D-151B OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, HAVING BEEN CONVEYED TO THE HEATHERWILDE HOME OWNERS ASSOCIATION BY QUIT CLAIM DEED RECORDED IN VOLUME 11613, PAGE 568 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY TEXAS. PART 2 BEING 0.129 ACRE (5,611 SQUARE FEET) OF LAND OUT OF LOTS 1 AND 2, BLOCK A OF THE HEATHERWILDE RECREATION CENTER SUBDIVISION RECORDED IN VOLUME 87, PAGE 58B OF THE PLAT RECORDS OF TRAVIS COUTNY, TEXAS, HAVING BEEN CONVEYED TO THE HEATHERWILDE HOME OWNERS ASSOCIATION BY QUIT CLAIM DEED RECORDED IN VOLUME 11162, PAGE 617 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS. PARTS 1 & 2 OF SAID 0.164 ACRE TRACT SHOWN ON THE ACCOMPANYING SKETCH AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

PART 1 - (0.035 ACRE)

BEGINNING at a 60D nail set on the existing west right-of-way line of Heatherwilde Boulevard (right-of-way width varies), same being the east line of Lot 1, Block 26 of the aforementioned Amended plat of Heatherwilde, Section One, from which a ½ iron rod found at the southeast corner of Lot 34, Block 20 of said Amended plat of Heatherwilde, Section One bears, N27°41'13"E a distance of 80.56 feet. Said 60D nail having Texas Coordinate System (Central Zone-4203, NAD83) grid values of N= 10,139,795.9, E= 3,146,378.8, for the northeast corner and **POINT OF BEGINNING** of this tract;

THENCE S27°41'13"W, with said west right-of-way line, a distance of 10.03 feet to a 60D nail set at the point of curvature of a non-tangent curve to the right;

THENCE Departing said west right-of-way line and over said Lot 1, Block 26, the following nine (9) courses and distances:

Exhibit "A"

- 1) With a curve to the right, having a radius of 230.00 feet, an arc length of 31.67 feet and a chord which bears N53°49'32"W a distance of 31.64 feet to a 60D nail set at a point of tangency;
- 2) N49°52'52"W, a distance of 70.47 feet to 60D nail set at a point of curvature to the right;
- 3) With said curve to the right, having a radius of 155.00 feet, an arc length of 37.43 feet and a chord which bears N42°57'49"W a distance of 37.34 feet to a 60D nail set at a point of reverse curvature to the left;
- 4) With a said curve to the left, having a radius of 10.00 feet, an arc length of 13.99 feet and a chord which bears N76°08'10"W, a distance of 12.88 feet to a 60D nail set at the edge of an existing concrete walk;
- 5) N53°22'42"E, with the east edge of said existing concrete walk, a distance of 27.04 feet to a 60D nail set at the point of curvature of a non-tangent curve to the left;
- 6) With a said curve to the left, having a radius of 10.00 feet, an arc length of 14.43 feet and a chord which bears S05°23'22"W, a distance of 13.21 feet to a 60D nail set at a point of compound curvature to the left;
- 7) With a said curve to the left, having a radius of 145.00 feet, an arc length of 35.23 feet and a chord which bears S42°55'13"E, a distance of 35.14 feet to a 60D nail set at a point of tangency;
- 8) S49°52'52"E, a distance of 70.47 feet to a 60D nail set at a point of curvature to the left;
- 9) With a said curve to the left, having a radius of 220.00 feet, an arc length of 29.50 feet and a chord which bears S53°43'19"E, a distance of 29.47 feet to the **POINT OF BEGINNING** and containing 0.035 acre (1,517 square feet) of land.

PART 2 - (0.129 ACRE)

BEGINNING on a 60D nail set on the east right-of-way line of said Heatherwilde Boulevard, same being the west line of Lot 1, Block A of said Heatherwilde Recreation Center Subdivision, from which a ½" iron rod found on the north line of said Lot 1, Block A, at the northeast end of a curve return at the intersection of said Heatherwilde Boulevard and Pfenning Lane (a 70 foot right-of-way) bears, N27°39'29"E a distance of 172.55 feet to a point of curvature of a curve to the right; thence along said curve to the right having a radius of 25.00 feet, an arc length of 38.85 feet and a chord which bears N72°10'55"E, a distance of 35.06 feet. Said 60D nail having Texas Coordinate System (Central Zone-4203, NAD83) grid values of N=10,139,759.9, E=3,146,461.7, for the northwest corner and **POINT OF BEGINNING** of this tract;

THENCE Departing said east right-of-way line and over and across Lots 1 and 2, Block A of said Heatherwilde Recreation Center Subdivision the following seven (7) courses and distances:

- 1) N81°30'27"E a distance of 31.71 feet to a 60D nail set at a point of curvature of a curve to the right;

Exhibit "A"

- 2) With said curve to the right, having a radius of 55.00 feet, an arc length of 44.29 feet and a chord which bears S75°25'29"E, a distance of 43.10 feet to a 60D nail set at a point of tangency;
- 3) S52°21'26"E a distance of 172.19 feet to a 60D nail set at a point of curvature of a curve to the left;
- 4) With said curve to the left, having a radius of 220.00 feet, an arc length of 59.83 feet and a chord which bears S60°08'52"E, a distance of 59.64 feet to a 60D nail set at a point of tangency;
- 5) S67°56'17"E a distance of 146.56 feet to a 60D nail set at a point of curvature of a curve to the right;
- 6) With said curve to the right, having a radius of 155.00 feet, an arc length of 74.38 feet and a chord which bears S54°11'25"E, a distance of 73.67 feet to a 60D nail set at a point of reverse curvature of a curve to the left;
- 7) With said curve to the left, having a radius of 95.00 feet, an arc length of 31.69 feet and a chord which bears S49°59'57"E, a distance of 31.54 feet to a 60D nail set on the east line of Lot 2, Block A of said Heatherwilde Recreation Center Subdivision, same being the west line of a 19.79 acre tract conveyed to the City of Pflugerville by Special Warranty Deed recorded in Document Number 2006248858 of the Official Public Records of Travis County, Texas, from which the northeast corner of said Lot 2 bears N27°38'56"E a distance of 212.79 feet;

THENCE S27°38'56"W, with the east line of said Lot 2, same being the west line of said 19.79 acre tract, a distance of 10.01 feet;

THENCE Departing said common line and over and across said Lot 2 and Lot 1, Block A, the following seven (7) courses and distances:

- 1) with the arc of a curve to the right having a radius of 105.00 feet, an arc length of 35.52 feet and a chord which bears N50°07'57"W a distance of 35.35 feet to a 60D nail set at a point of reverse curvature of a curve to the left;
- 2) With said curve to the left, having a radius of 145.00 feet, an arc length of 69.58 feet and a chord which bears N54°11'25"W, a distance of 68.92 feet to a 60D nail set at a point of tangency;
- 3) N67°56'17"W a distance of 146.56 feet to a 60D nail set at a point of curvature of a curve to the right;
- 4) With said curve to the right, having a radius of 230.00 feet, an arc length of 62.55 feet and a chord which bears N60°08'52"W, a distance of 62.35 feet to a 60D nail set at a point of tangency;
- 5) N52°21'26"W a distance of 172.19 feet to a 60D nail set at a point of curvature of a curve to the left;

Exhibit "A"

- 6) With said curve to the left, having a radius of 45.00 feet, an arc length of 36.23 feet and a chord which bears N75°25'29"W, a distance of 35.26 feet to a 60D nail set at a point of tangency;
- 7) S81°30'27"W, a distance of 39.01 feet to a 60D nail set on the east right-of-way line of said Heatherwilde Boulevard, same being the west line of said Lot 1, Block A of said Heatherwilde Recreation Center Subdivision

THENCE N27°39'29"E, along and with said common line, a distance of 12.38 feet to the **POINT OF BEGINNING** and containing 0.129 acre (5,611 square feet) of land.

BEARING BASIS NOTE

The coordinates and bearings shown hereon are based on the Texas Coordinate System (Central Zone-4203, NAD83).

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Paul N. Guerrero, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 24th day of August, 2016, A.D.

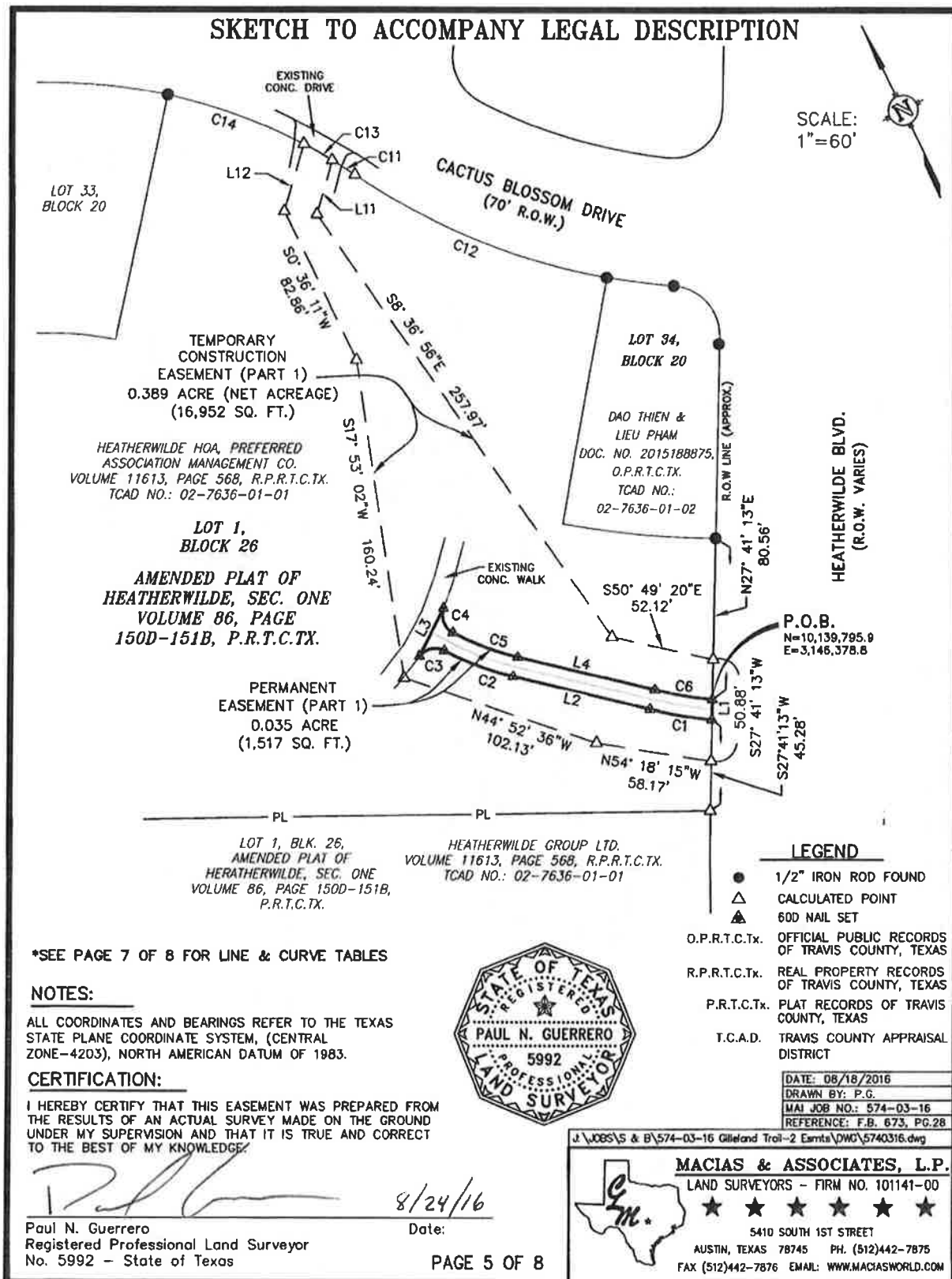


Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875

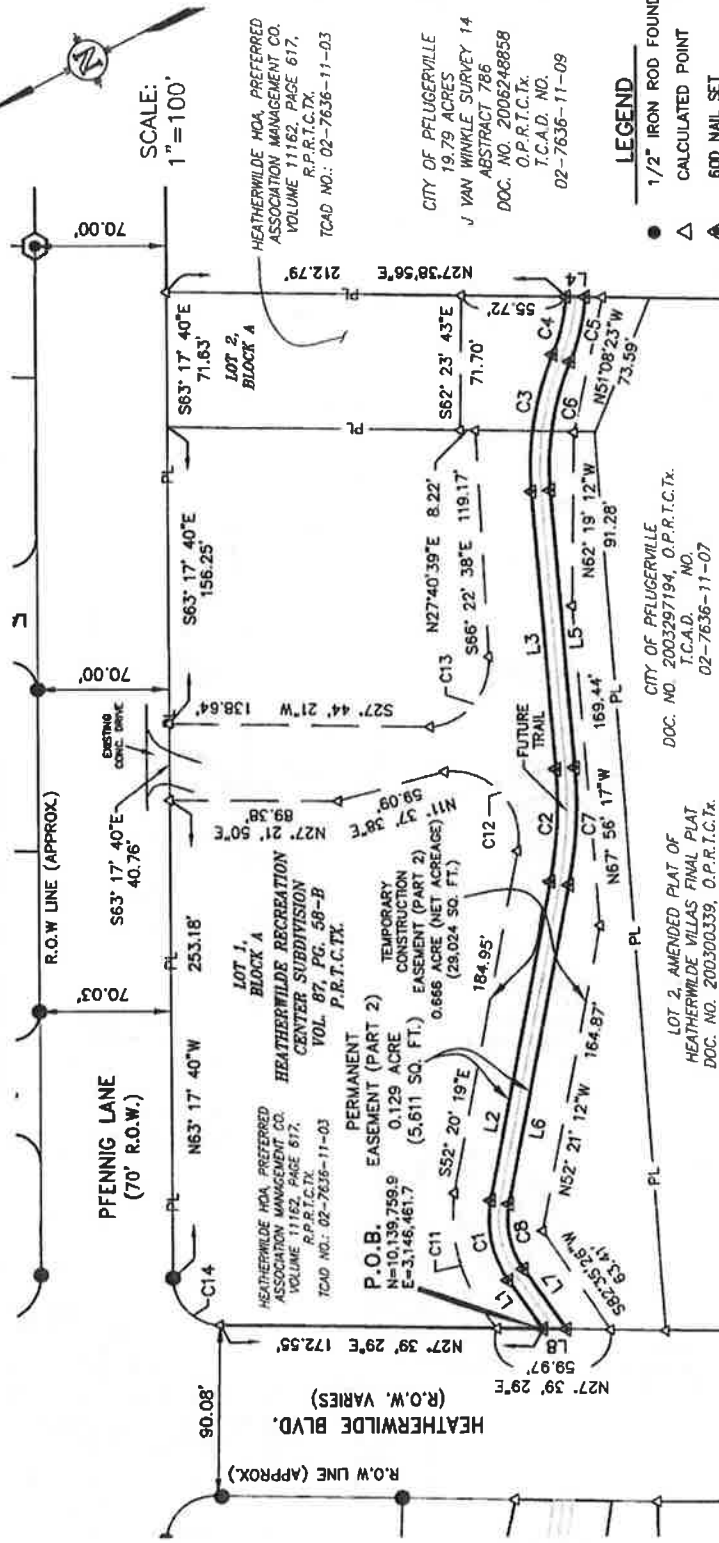
 8/24/16
Paul N. Guerrero
Registered Professional Land Surveyor
No. 5992 – State of Texas

REFERENCES

MAPSCO, 437-M
AUSTIN GRID NO. P-38
TCAD PARCEL ID NO. 02-7636-01-01 & 02-7636-11-03
MACIAS & ASSOCIATES, L.P., PROJECT NO. 574-03-16



SKETCH TO ACCOMPANY LEGAL DESCRIPTION



NOTES:

ALL COORDINATES AND BEARINGS REFER TO THE TEXAS STATE PLANE COORDINATE SYSTEM, (CENTRAL ZONE-4203), NORTH AMERICAN DATUM OF 1983.

CERTIFICATION:

I HEREBY CERTIFY THAT THIS EASEMENT WAS PREPARED FROM THE RESULTS OF AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Paul N. Guerrero
8/24/16

Paul N. Guerrero
Registered Professional Land Surveyor
No. 5992 - State of Texas

Date:



*SEE PAGE 8 OF 8 FOR LINE & CURVE TABLES

MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS - FIRM #101141-00
★ ★ ★ ★ ★
5410 SOUTH 1ST STREET
AUSTIN, TEXAS 78745 PH. (512)442-7875
FAX (512)442-7876 EMAIL: WWW.MACIASWORLD.COM

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

PERMANENT
EASEMENT (PART 1)
LINE TABLE

| NO. | BEARING | DISTANCE |
|-----|-------------|----------|
| L1 | S27°41'13"W | 10.03' |
| L2 | N49°52'52"W | 70.47' |
| L3 | N53°22'42"E | 27.04' |
| L4 | S49°52'52"E | 70.47' |

PERMANENT
EASEMENT (PART 1)
CURVE TABLE

| CURVE | RADIUS | ARC LENGTH | DELTA | CHORD BEARING | CHORD LENGTH |
|-------|---------|------------|-----------|---------------|--------------|
| C1 | 230.00' | 31.67' | 7°53'20" | N53° 49' 32"W | 31.64' |
| C2 | 155.00' | 37.43' | 13°50'05" | N42° 57' 49"W | 37.34' |
| C3 | 10.00' | 13.99' | 80°10'46" | N76° 08' 10"W | 12.88' |
| C4 | 10.00' | 14.43' | 82°41'53" | S5° 23' 22"W | 13.21' |
| C5 | 145.00' | 35.23' | 13°55'17" | S42° 55' 13"E | 35.14' |
| C6 | 220.00' | 29.50' | 7°40'54" | S53° 43' 19"E | 29.47' |

TEMPORARY CONSTRUCTION
EASEMENT (PART 1)
LINE TABLE

| NO. | BEARING | DISTANCE |
|-----|-------------|----------|
| L11 | S42°51'53"W | 28.17' |
| L12 | N42°51'53"E | 34.95' |

CURVE TABLE

| CURVE | RADIUS | ARC LENGTH | DELTA | CHORD BEARING | CHORD LENGTH |
|-------|---------|------------|-----------|---------------|--------------|
| C11 | 268.00' | 13.54' | 2°53'41" | S30° 54' 14"E | 13.54' |
| C12 | 332.00' | 137.71' | 23°45'59" | S41° 20' 23"E | 136.73' |
| C13 | 268.00' | 16.43' | 3°30'42" | S34° 06' 25"E | 16.42' |
| C14 | 268.00' | 72.62' | 15°31'33" | N43° 37' 33"W | 72.40' |

DATE: 08/18/2016
 DRAWN BY: P.G.
 MAI JOB NO.: 574-03-16
 REFERENCE: F.B. 673, PG.28

J:\OBS\5 & B\574-03-16 Gililand Trail-2 Earnit\DWG\5740316.dwg

MACIAS & ASSOCIATES, L.P.
 LAND SURVEYORS - FIRM NO. 101141-00

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5410 SOUTH 1ST STREET
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SKETCH TO ACCOMPANY LEGAL DESCRIPTION

PERMANENT
EASEMENT (PART 2)
LINE TABLE

| NO. | BEARING | DISTANCE |
|-----|-------------|----------|
| L1 | N81°30'27"E | 31.71' |
| L2 | S52°21'26"E | 172.19' |
| L3 | S67°56'17"E | 146.56' |
| L4 | S27°38'56"W | 10.01' |
| L5 | N67°56'17"W | 146.56' |
| L6 | N52°21'26"W | 172.19' |
| L7 | S81°30'27"W | 39.01' |
| L8 | N27°39'29"E | 12.38' |


PERMANENT
EASEMENT (PART 2)
CURVE TABLE

| CURVE | RADIUS | ARC LENGTH | DELTA | CHORD BEARING | CHORD LENGTH |
|-------|--------|------------|------------|---------------|--------------|
| C11 | 88.33' | 77.40' | 50°12'24" | S80°54'04"E | 74.95' |
| C12 | 35.53' | 66.47' | 107°11'40" | N73°54'08"E | 57.19' |
| C13 | 35.00' | 54.08' | 88°31'45" | S22°28'24"E | 48.86' |
| C14 | 25.00' | 38.85' | 89°02'52" | N72°10'55"E | 35.06' |

| CURVE | RADIUS | ARC LENGTH | DELTA | CHORD BEARING | CHORD LENGTH |
|-------|--------|------------|-----------|---------------|--------------|
| C1 | 55.00 | 44.29' | 46°08'07" | S75°25'29"E | 43.10' |
| C2 | 220.00 | 59.83' | 15°34'51" | S60°08'52"E | 59.64' |
| C3 | 155.00 | 74.38' | 27°29'44" | S54°11'25"E | 73.67' |
| C4 | 95.00 | 31.69' | 19°06'48" | S49°59'57"E | 31.54' |
| C5 | 105.00 | 35.52' | 19°22'47" | N50°07'57"W | 35.35' |
| C6 | 145.00 | 69.58' | 27°29'44" | N54°11'25"W | 68.92' |
| C7 | 230.00 | 62.55' | 15°34'51" | N60°08'52"W | 62.35' |
| C8 | 45.00 | 36.23' | 46°08'07" | N75°25'29"W | 35.26' |

DATE: 8/18/2016
DRAWN BY: P.G.
MUT JOB NO.: 574-03-16
C:\JOBS\5 & 8\574-03-16.dwg

MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS - FIRM #101141-00



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