

**Right of Way Encroachment  
License Agreement No. #\_\_\_\_\_**

The City of Pflugerville, a home-rule municipal corporation located in Travis and Williamson Counties, State of Texas (the “**CITY**”), acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement (as hereinafter defined) is the Officer, Office of Planning, City of Pflugerville (the “**PROPERTY MANAGER**” or “**City**”), and landowner’s heirs, successors and assigns, a Texas limited liability company (“**LICENSEE**”), enter into this License Agreement (this “**AGREEMENT**”), effective upon final signature under the terms and conditions set forth below.

1. **Premises.** The City grants Licensee the right to use approximately 0.0033 acres out of the right-of-way within the alley located between 3<sup>rd</sup> Street and 4<sup>th</sup> Street and West Wilbarger Street and Walnut Street, Pflugerville, Texas (the “**LICENSED PROPERTY**”), as shown on the attached and incorporated **Exhibit “A”** (the “**ADJOINING PROPERTY**”).

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

2. **Purpose.** The City grants Licensee permission to use the Licensed Property solely to repair, maintain and remove the existing residential structure (the “**Improvements**”).
3. **Consideration.** In consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, Licensee is not required to pay any monetary consideration. However, Licensee covenants to properly and timely maintain the Improvements.
4. **Damages and Destruction.** The parties agree the City is not obligated to restore or repair the Improvements that may be removed, altered, damaged or destroyed as a result of the City’s use, maintenance, and repair of the underlying right-of-way or easement.

If the City causes damage to or destruction of Licensee’s Improvements, Licensee covenants not to sue the City, or pursue other remedies, legal or equitable, against the City to recover costs of repairing or replacing the Improvements.

If the City’s uses of the Licensed Property substantially interfere with or destroy Licensee’s use of the Licensed Property, or any Improvements placed or existing thereon or therein by Licensee, then this Agreement automatically terminates, and Licensee must immediately remove its Improvements at its sole cost.

5. **Term.** This Agreement begins on the execution date and continues thereafter for so long as the Licensed Property is used solely for the purposes set out in this Agreement, subject to earlier termination as set out in this Agreement.
6. **Limits on License.** The existence of this Agreement is expressly subordinate to the present and future right of the City, its successors, assigns, lessees, and grantees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, transportation facilities, franchised public utilities, rights-of-way, roadways, sidewalks, or streets on, beneath,

or above the surface of the Licensed Property (the “**FACILITIES**”).

The City may enter the Licensed Property without giving notice and without incurring any obligation to Licensee and remove the Improvements or any alteration thereof. Such removal will occur only if the Property Manager deems it is necessary: (a) to exercise the City’s rights or duties with respect to the Licensed Property; (b) to protect persons or property; or (c) for the public health or safety with respect to the Licensed Property.

**7. Conditions.**

- A. Repair or Relocate Existing Facilities.** Licensee must pay all costs required to repair damage to or relocate existing Facilities, which are damaged or destroyed or need to be relocated as a result of activities under this Agreement by, or on behalf of, Licensee.
- B. Covenant on Adjoining Property.** This Agreement, until its expiration or revocation, runs as a covenant on the Adjoining Property; therefore, the conditions set forth herein inure to and bind each party’s heirs, successors and assigns. Licensee, and its assigns, if any, must notify any immediate successors-in-interest to the Licensed Property or Adjoining Property about the existence of this Agreement.
- C. Remove or Modify Improvements.** Licensee agrees to pay all costs required to remove or modify any Improvements now existing or to be replaced if the Property Manager determines that the Improvements need to be removed or modified. If Licensee voluntarily removes all Improvements, Licensee must provide at least thirty (30) days’ written notice to the other owners of the Adjoining Property at the time, if any.
- D. Maintenance.** Licensee shall maintain the Licensed Property by keeping the area free of debris and litter on an ongoing basis. Further, Licensee must timely and properly maintain all Improvements. After any installation or repair of any Facilities is complete, Licensee must repair or replace any damaged Improvements such that pedestrian safety and accessibility within the Licensed Property, if applicable, is reestablished within forty-eight (48) hours.
- E. Security Deposits.** Licensee is not required to post a security deposit.
- F. Recording.** The City will file both this Agreement and an Affidavit of License in the applicable official public records to inform all future owners of any interest in the Adjoining Property of the existence of this Agreement and the obligations hereunder.

- 8. Insurance.** Licensee at its expense shall provide a homeowner’s liability insurance policy with a combined single limit of not less than \$150,000 written by a company acceptable to the Property Manager and licensed to do business in Texas. The coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The insurance must cover all perils arising from the activities of Licensee, its officers, employees, agents, contractors, and invitees, related to the Improvements authorized to be placed on the Licensed Property by this Agreement. Licensee must pay all deductibles stated in the policy.

The insurance must specifically name the City of Pflugerville as an additional insured and

provide a waiver of subrogation in favor of the City. A certificate of insurance evidencing coverage must be provided and delivered to the Property Manager with this executed Agreement.

Licensee must ensure that the Property Manager receives written notice of any cancellation, non-renewal, reduction, restriction or other limitation of the insurance policy. This notice is required to be provided thirty (30) days before any of the above actions are taken on the insurance policy. A substitute certificate of insurance evidencing equivalent substitute insurance must be received by the Property Manager prior to the date shown on the notice. All certificates must affirmatively show that the City of Pflugerville is named as an additional insured.

- 9. INDEMNIFICATION. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND INSURERS, INCLUDING WITHOUT LIMITATION THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (THE “INDEMNIFIED PARTIES”), FROM ALL LIABILITY, LOSS, CLAIMS, SUITS, ACTIONS, AND PROCEEDINGS WHATSOEVER (“CLAIMS”) THAT MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF OR GROWING OUT OF ANY AND ALL INJURIES OR DAMAGES, INCLUDING DEATH, TO PERSONS OR PROPERTY RELATING TO THE USE OR OCCUPANCY OF THE LICENSED PROPERTY DURING THE TERM INCLUDING CLAIMS THAT ARISE OUT OF OR RESULT FROM THE ACTIVE OR PASSIVE NEGLIGENCE, OR SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR ALLEGED AGAINST SUCH INDEMNIFIED PARTIES, AND ALL LOSSES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS, PENALTIES, DAMAGES, AND EXPENSES RELATING THERETO, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS’ FEES AND OTHER ACTUAL OUT OF POCKET COSTS OF DEFENDING AGAINST, INVESTIGATING, AND SETTLING THE CLAIMS.**

**LICENSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Licensee**

of any obligations in this Agreement. In no event may Licensee admit liability on the part of an Indemnified Party without the written consent of the City Attorney.

Maintenance of the insurance referred to in this Agreement does not affect Licensee's obligations under this Section. Licensee shall be relieved of its obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of Licensee and either (a) paid to City or (b) paid for City's benefit in reduction of any liability, penalty, damage, expense, or charge actually imposed upon, or incurred by, City in connection with the Claims. Licensee may contest the validity of any Claims, in the name of the City, as the City may in good faith deem appropriate, provided that the expenses thereof are paid by Licensee, or Licensee shall cause the same to be paid by its insurer, and provided further Licensee maintains adequate insurance to cover any loss(es) that might be incurred if such contest is ultimately unsuccessful.

Licensee shall require its general partner, if applicable, and all subcontractors to indemnify City as provided in this Section.

Licensee accepts the Licensed Property "AS IS," and its duty to indemnify extends to injuries caused by defective conditions present on the Licensed Property, INCLUDING DEFECTS ALLOWED TO EXIST BY THE CITY'S OWN NEGLIGENCE.

**10. Termination.**

**A. Termination by Licensee.** Licensee may terminate this Agreement by delivering written notice of termination to the Property Manager not later than 30 days before the effective date of termination. Licensee shall remove all Improvements from the Licensed Property within the 30-day notice period at its sole cost and expense. Failure to do so constitutes a breach of this Agreement and authorizes the Property Manager to notify Licensee of the cost of such removal and disposal and Licensee shall pay such costs within 30 days of such notice. The Property Manager may file a lien against the Adjoining Property and the cost of such removal and disposal if the Licensee fails to timely pay these costs. Additionally, in such an event, the Property Manager may draw down the Security Deposit, if any.

**B. Termination by City.** Subject to prior written notification to Licensee or its successor-in-interest, this Agreement is revocable by the Property Manager if:

1. The Improvements, or a portion of them, interfere with the City's rights in the right-of-way;
2. Use of the right-of-way area becomes necessary for a public purpose;

3. The Improvements, or a portion of them, constitute a danger to the public, which the Property Manager deems not to be remediable by alteration or maintenance of such Improvements;
4. Despite forty-eight (48) hours' prior notice to Licensee, maintenance or alteration to the Improvements necessary to alleviate a danger to the public has not been made;
5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to properly and timely maintaining the Improvements;
6. Despite thirty (30) days' written notice to Licensee, Licensee has not provided certificates of insurance to the Property Manager;
7. Licensee fails to properly and timely maintain the Improvements as set out herein; or
8. City provides ninety-one (91) days' prior written notice of such termination for any reason.

**C. Termination by Abandonment.** If Licensee abandons or fails to maintain the Licensed Property, and the Property Manager receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all Improvements. Licensee covenants to pay the City's actual expenses incurred in connection therewith within 30 days after being billed therefor. All of Licensee's Improvements not removed are deemed property of the City when abandoned by Licensee.

11. **Eminent Domain.** If eminent domain is exerted on the Licensed Property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to affect the removal of Licensee's affected Improvements thereon, at Licensee's sole expense. Licensee may retain all monies paid by the condemning authority for Licensee's Improvements taken, if any.
12. **Venue/Controlling Law.** Venue for all claims, actions, lawsuits or damages of any kind arising under this Agreement shall lie exclusively in Travis County, Texas. This Agreement shall be subject to and construed under Texas law.
13. **Assignment.** Licensee shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the Property Manager. Such consent shall not be unreasonably withheld, subject to the assignee's compliance with the insurance requirements set forth herein, if any and the assignee's promise to comply with all covenants and obligations herein. Licensee shall provide the Property Manager a copy of any such proposed assignment or transfer of any of Licensee's rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.
14. **Notice.** Notice may be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand delivered or on the third day after deposit if sent certified mail. Notice must be sent as follows:

**If to City:**

City of Pflugerville  
Attn. Planning Department  
PO Box 589  
Pflugerville, TX 78691-0589  
Phone: 512-990-6300

**If to Licensee:**

Property Owner  
303 W. Wilbarger  
Street  
Pflugerville, Texas  
78660

15. **Default.** If Licensee fails to provide certificates of insurance, maintain the Licensed Property, comply with the insurance requirements of this Agreement, or otherwise comply with the terms or conditions herein, then the Property Manager shall give Licensee written notice as set forth herein. Licensee will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required, and, if Licensee does not satisfactorily remedy the same within that thirty (30) day period, the City may remedy the default or contract to remedy the default. However, if the default is a monetary default, Licensee must cure that within ten (10) business days' of notice. Licensee covenants to pay within ten (10) days of written demand by the Property Manager, all reasonable costs expenses incurred by the City in remedying the default.

Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

16. **Compliance with Laws.** Licensee covenants that all construction, installation, repair, maintenance, and removal of the Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.
17. **Interpretation.** This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.
18. **Application of Law.** This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

Terms and Conditions Accepted on \_\_\_\_\_, 20\_\_.

**CITY OF PFLUGERVILLE, a Texas home rule  
municipal corporation**

By: \_\_\_\_\_  
Sereniah Breland, City Manager  
City of Pflugerville

**LICENSEE:**

By: \_\_\_\_\_  
Victor Gonzales Jr., Property Owner

By: \_\_\_\_\_  
Carlotta Gonzales, Property Owner

**THE STATE OF TEXAS           §  
COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by  
Sereniah Breland, City Manager, City of Pflugerville, a Texas municipal corporation, on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS           §  
COUNTY OF TRAVIS       §**

Before me, the undersigned Notary Public of the State of Texas, on this day personally  
appeared Victor Gonzales, Jr., known to me to be the person whose name is subscribed to the  
foregoing instrument and acknowledged to me that he executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2018.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS**                   §  
**COUNTY OF TRAVIS**           §

Before me, the undersigned Notary Public of the State of Texas, on this day personally appeared Carlotta Gonzales, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2018.

\_\_\_\_\_  
Notary Public, State of Texas



**After recording, return to:**

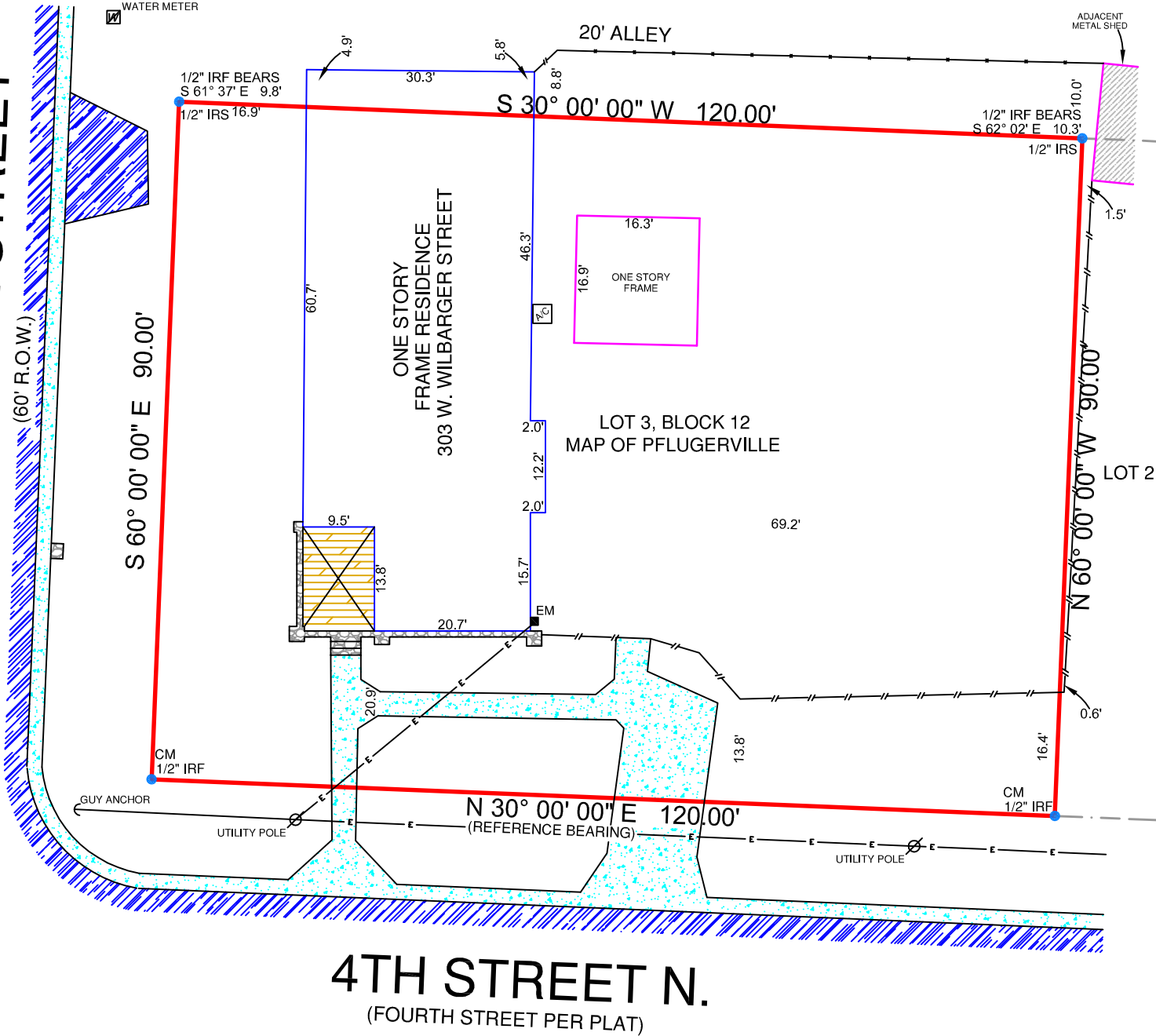
City of Pflugerville Planning Department

Attn. Emily Barron

PO Box 589

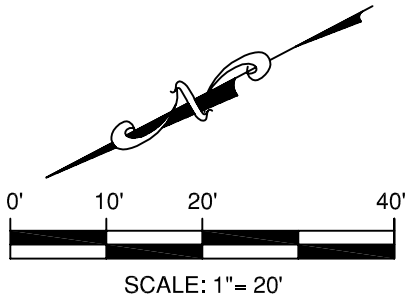
Pflugerville, Texas 78691-0589

W. WILBARGER STREET



LEGEND:	
—x—x—	WIRE FENCE
—o—o—	CHAINLINK FENCE
—□—□—	WROUGHT IRON FENCE
—//—//—	WOOD FENCE
—v—v—	VINYL FENCE
—E—E—	ELECTRIC LINE
GM =	GAS METER
EM =	ELECTRIC METER
IPF =	IRON PIPE FOUND
IRS =	IRON ROD SET WITH "PREMIER" CAP
IRF =	IRON ROD FOUND
CM =	CONTROLLING MONUMENT
(WOOD) RAILROAD TIE =	
ASPHALT =	
CONCRETE =	
GRAVEL =	
TILE =	
WOOD =	
BRICK =	
STONE =	

NOTES:  
BEARINGS ARE BASED ON THE RECORDED PLAT.  
THE HOUSE EXTENDS BEYOND THE EAST PROPERTY LINE AS SHOWN ABOVE.



LEGAL DESCRIPTION:  
BEING LOT 3, BLOCK 12, MAP OF PFLUGERVILLE, AN ADDITION TO TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 2, PAGE 156, OF THE MAP RECORDS OF TRAVIS COUNTY, TEXAS.

SURVEYOR'S CERTIFICATION:  
THIS IS TO CERTIFY THAT ON THIS DATE A SURVEY WAS MADE ON THE GROUND, UNDER MY SUPERVISION AND REFLECTS A TRUE AND CORRECT REPRESENTATION OF THE DIMENSIONS AND CALLS OF PROPERTY LINES AND LOCATION AND TYPE OF IMPROVEMENTS. THERE ARE NO VISIBLE AND APPARENT EASEMENTS, CONFLICTS, INTRUSIONS OR PROTRUSIONS, EXCEPT AS SHOWN. THIS SURVEY IS NOT TO BE USED FOR CONSTRUCTION PURPOSES AND IS FOR THE EXCLUSIVE USE OF THE HEREON NAMED PURCHASER, MORTGAGE COMPANY, AND TITLE COMPANY ONLY AND THIS SURVEY IS MADE PURSUANT TO THAT CERTAIN TITLE COMMITMENT UNDER THE GF NUMBER SHOWN HEREON, PROVIDED BY THE TITLE COMPANY NAMED HEREON AND THAT THIS DATE, THE EASEMENTS, RIGHTS-OF-WAY, OR OTHER LOCATABLE MATTERS OF RECORD THAT THE UNDERSIGNED HAS KNOWLEDGE OR HAS BEEN ADVISED ARE AS SHOWN OR NOTED HEREON. THIS SURVEY IS SUBJECT TO ANY AND ALL COVENANTS AND RESTRICTIONS PERTAINING TO THE RECORDED PLAT REFERENCED HEREON.

GF. NO.	18-381612-AM
BORROWER	RACHEL ELLIOT LAPOINT
TITLE CO.	CAPITAL TITLE
TECH	TAG
FIELD	OR

FLOOD INFORMATION:  
THE SUBJECT PROPERTY DOES NOT APPEAR TO LIE WITHIN THE LIMITS OF A 100-YEAR FLOOD HAZARD ZONE ACCORDING TO THE MAP PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, AND HAS A ZONE "X" RATING AS SHOWN BY MAP NO. 48453C0280 J, DATED AUGUST 18, 2014.

DATE: 09/13/18 JOB NO.: 18-07594  
FIELD: 09/12/18

303 W. WILBARGER STREET, PFLUGERVILLE, TX 78660  
LOT 3, BLOCK 12, MAP OF PFLUGERVILLE



Robert T. Paul, Jr.  
Registered Professional Land Surveyor



Capital Title<sup>SM</sup>  
A Shaddock Company

DATE: \_\_\_\_\_

ACCEPTED BY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Premier  
Surveying LLC  
5700 W. Plano Parkway  
Suite 1200  
Plano, Texas 75093  
Office: 972-612-3601  
Fax: 855-892-0468  
Firm Registration No. 10146200