

**REQUEST FOR VARIANCE/EXEMPTION FROM
SUBDIVISION REGULATIONS**

DATE: August 16th, 2021

OWNER'S NAME: Sherry A. Atherton & Atherton Enterprises Ltd.

MAILING ADDRESS: 3321 SUNSET CLIFF RD BURNET, TX 78611-3455

OWNER'S PHONE #: Sherry Atherton: 512-656-7698 / Chad Calhoun (broker): 512-755-0395

PROPERTY ID FROM C.A.D: 68767 & 115487

(Central Appraisal District)

LEGAL DESCRIPTION: The waterfront portion of the 15.968 acre Atherton Enterprises Ltd. tract
and a 10' strip off of the 3.494 acre Sherry Atherton tract. See Exhibit.

REASON FOR DIVIDING PROPERTY Sell the unimproved lakefront portion of the property as
a single family home site for new construction.

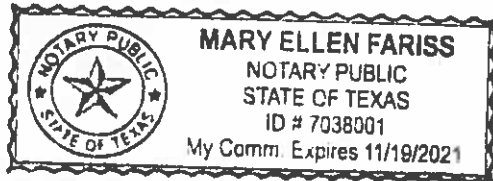
A copy of my Deed with full metes and bounds description, attached along with a survey or sketch of the property showing the boundaries of the lots, adjacent roads, and adjacent property owners are attached hereto. A variance request requires Commissioner Court approval.

I hereby acknowledge that all lots will remain subject to the on-site wastewater rules and development permit requirements of the County. I am also aware that other entities may have restrictions to the division of property that may limit the use of that property. Those entities include but are not limited to the Central Texas Groundwater Conservation District and the Lower Colorado River Authority.

Sherry A. Atherton
Signature (Notarized)
Sherry Atherton
Printed Name

STATE OF TEXAS
COUNTY OF BURNET

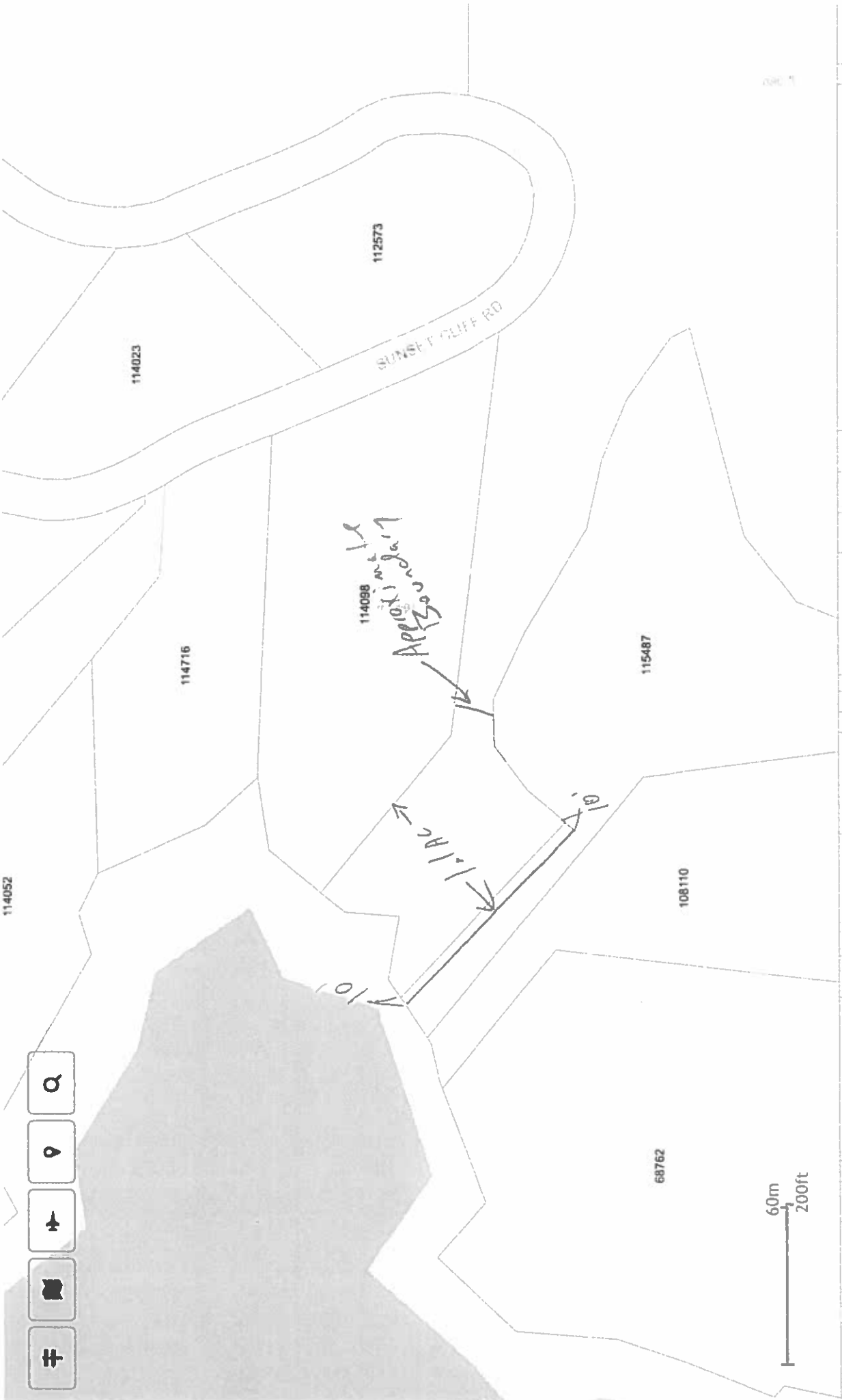
This instrument was sworn to before me on the 16 day of August, 2021.



Mary Ellen Fariss
Notary Public, State of Texas

Exemption Approval: _____ Date: _____

Variance Approval: *J. L. L. L.* Date: 9/14/21



FIRST AMENDED ROAD MAINTENANCE AGREEMENT

Date: _____, 2021

Parties: **SHERRY A. ATHERTON**, 3321 Sunset Cliff Road, Burnet, Burnet County, Texas 78611 ("Atherton"), **ATHERTON ENTERPRISES, LTD.**, a Texas limited partnership ("AEL"); **PAUL SANTELER** and **LAURA SANTELER**, 3345 Sunset Cliff Road, Burnet, Burnet County, Texas 78611 (collectively, "Santeler") and **GREGORY D. JORDAN** and **AMY S. JORDAN**, 4011 Sierra Drive, Austin, Travis County, Texas 78731 (collectively, "Jordan"). Atherton and AEL are sometimes collectively referred to herein as the "Atherton Parties." All of the parties to this First Amended Road Maintenance Agreement are sometimes referred to herein as the "Parties."

Consideration: TEN AND NO/100 DOLLARS and other good and valuable consideration

Background:

A. Atherton and Santeler are parties to a Road Maintenance Agreement (the "Original Agreement") dated November 14, 2014, and recorded at Document No. 201409526 of the Official Public Records of Burnet County, Texas, which provides for the maintenance of a roadway located in the easements described as Tracts II and III in the Original Agreement (the "Santeler Easement Tracts") to provide access to a 5.017 acre tract described as Tract I in the Original Agreement (the "Santeler Residence Tract").

B. The Atherton Parties have contracted to sell and convey to Jordan a tract of approximately 1.1 acres more fully described below as Tract IV in this First Amended Road Maintenance Agreement (the "Jordan Residence Tract"), and access to the Jordan Residence Tract will be provided by an access easement described as Tract V in this First Amended Road Maintenance Agreement (the "Jordan Easement Tract").

C. The Original Agreement provides for the maintenance costs of the roadway in the Santeler Easement Tracts to be shared by Atherton and Santeler.

D. The Jordan Easement Tract is located within the Santeler Easement Tracts. The portion of the Santeler Easement Tracts located OUTSIDE of the Jordan Easement Tract is sometimes referred to herein as the "Santeler Exclusive Easement Tract."

E. The roadway in the Santeler Easement Tracts also provides access to a

2.134 acre tract (the "Atherton Residence Tract") that is more fully described below as Tract VI.

F. The roadway in the Santeler Easement Tracts also provides access to a 16 acre tract (the "AEL Business Tract") that is more fully described below as Tract VII.

G. The roadway in the Santeler Easement Tracts also provides access to a 3.494 acre tract (the Atherton Ranch Tract) owned by Atherton that is more fully described below as Tract VIII, and upon which there is currently no residence.

H. The parties to this First Amended Roadway Maintenance Agreement desire to revise the manner in which the maintenance costs for the roadway located in the Santeler Easement Tracts are shared.

NOW, THEREFORE, in consideration of the mutual promises and covenants set for below, the parties hereto agree that the Original Agreement is amended and restated as follows:

Property (including any improvements):

Tract I of the Original Agreement (the Santeler Residence Tract):

Being 5.017 acres of land, more or less, out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, and being more fully described by metes and bounds in Exhibit "A" attached to the Original Agreement, which description is incorporated herein by reference for all pertinent purposes.

Tract II of the Original Agreement (a Santeler Easement Tract):

Being a twenty-five foot (25') wide non-exclusive access easement containing 0.153 acres of land, more or less, out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, and being more fully described by metes and bounds in Exhibit "B" attached to the Original Agreement, which description is incorporated herein by reference for all pertinent purpose.

Tract III of the Original Agreement (a Santeler Easement Tract):

Being a twenty-five foot (25') wide non-exclusive access easement out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, and being more fully described by metes and bounds in Exhibit "C" attached to the Original Agreement, which description is incorporated herein by reference for all pertinent purposes.

Tract IV (the Jordan Residence Tract):

Being 1.10 acres of land, more or less, out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, currently described on Exhibit "D" attached hereto and made a part hereof, but which will be more fully described by

surveyed metes and bounds in an Exhibit "D" substituted herein prior to the recording of this instrument in the Official Public Records of Burnet County, Texas.

Tract V (the Jordan Easement Tract):

The entire Tract III described above as one of the Santeler Easement Tracts, together with the easternmost ten feet (10') of the Santeler Easement Tract described above as Tract II.

Tract VI (the Atherton Residence Tract):

Being 2.134 acres of land, more or less, out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, being the remnant of the called 7.15 acre tract as conveyed to Atherton in document recorded on Volume 1067, page 946 of the Official Public Records of Burnet County, Texas, after Atherton conveyed the Santeler Residence Tract to Santeler, and more fully described in Exhibit "E" attached hereto and incorporated herein by reference for all pertinent purposes.

Tract VII (the AEL Business Tract):

Being 16 acres of land, more or less, out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, and being the remnant currently owned by AEL of a called 16.00 acre tract as conveyed to SSA Community Ltd. in document recorded in Volume 949, Page 609 of the Official Public Records of Burnet County, Texas, further being described to Atherton Enterprises, Ltd. in document recorded in Volume 1206, Page 784 of the Official Public Records of Burnet County, Texas, and more fully described in Exhibit "F" attached hereto and incorporated herein by reference for all pertinent purposes.

Tract VIII (the Atherton Ranch Tract):

Being 3.494 acres of land, more or less, out of the Jephtha Boyce Survey No. 400, Abstract No. 57 in Burnet County, Texas, as conveyed to Sherry A. Atherton in Document No. 201806676 of the Official Public Records of Burnet County, Texas, and more fully described in Exhibit "G" attached hereto and incorporated herein by reference for all pertinent purposes.

Agreement: Atherton, AEL, Santeler and Jordan hereby agree that the non-exclusive access easement across the Santeler Easement Tracts is subject to the following understandings, obligations and agreements:

- (1) If the Jordan Easement Tract is damaged by traffic or other matters caused by or attributable to construction on the Jordan Residence Tract, the owner of the Jordan Residence Tract shall pay all expenses arising therefrom for the maintenance and repair of the access road located within Jordan Easement Tract.

- (2) Except for damage to the Jordan Easement Tract caused by or attributable to construction on the Jordan Residence Tract, or emergency situations, the owners of the Atherton Residence Tract, the Jordan Residence Tract and the Santeler Residence Tract shall each pay one-third (1/3) of all expenses for the maintenance and repair of the access road located within the Jordan Easement Tract, and the consent of all Parties shall be required prior to authorization of any such maintenance or repair work or incurring any such expenses. In an emergency situation (i.e., failure of or damage to any portion of the access road which materially threatens the health or safety of owners of the Atherton Residence Tract, the Jordan Residence Tract, the Santeler Residence Tract, their family members, guests, employees or invitees, or which is likely to cause material damage to vehicles of any of the aforementioned persons using the road), either of the owners of the Atherton Residence Tract, the Jordan Residence Tract or the Santeler Residence Tract shall have the right to act unilaterally to correct the emergency situation and shall be reimbursed one-third (1/3) of the reasonable costs associated with said emergency repairs by each of the owners of the other tracts.
- (3) Except for damage to the Santeler Exclusive Easement Tract caused by or attributable to emergency situations, the owners of the Atherton Residence Tract and the Santeler Residence Tract shall each pay one-half (1/2) of all expenses for the maintenance and repair of the access road located within the Santeler Exclusive Easement Tract, and the consent of both the owner of the Atherton Residence Tract and the owner of the Santeler Residence Tract shall be required prior to authorization of any such maintenance or repair work or incurring any such expenses. In an emergency situation (i.e., failure of or damage to any portion of the access road which materially threatens the health or safety of the owners of the Atherton Residence Tract, the Santeler Residence Tract, their family members, guests, employees or invitees, or which is likely to cause material damage to vehicles of any of the aforementioned persons using the road), either of the owners of the Atherton Residence Tract or the Santeler Residence Tract shall have the right to act unilaterally to correct the emergency situation and shall be reimbursed one-half (1/2) of the reasonable costs associated with said emergency repairs by the owner of the other tract.
- (4) If any additional residences are constructed within the Atherton Residence Tract, the Atherton Ranch Tract, the AEL Business Tract, the Santeler Residence Tract or the Jordan Residence Tract which are accessed through the Jordan Easement Tract, the fractions for the reimbursement of costs as described above will be revised so that the costs are shared equally by the affected owners of the residences. For example, if an additional residence is constructed on the AEL Business Tract which is accessed through the Jordan Easement Tract or a residence is constructed on the Atherton Ranch Tract which is accessed through the Jordan Easement Tract, then the costs to be shared for the repair of the roadway within the Jordan Easement Tract will be allocated with one-fourth (1/4) of the cost paid by each residence owner. Further, each such residence owner shall have such rights and obligations as described in paragraph (2) above.

(5) The owners of the Atherton Residence Tract, the Atherton Ranch Tract, the AEL Business Tract, the Santeler Residence Tract and the Jordan Residence Tract (and/or their respective heirs, successors or assigns) may amend or terminate this Road Maintenance Agreement (the "Agreement") by written instrument recorded in the Official Public Records of Burnet County, Texas.

(6) The following additional provisions apply to this Agreement:

a. *Equitable Rights of Enforcement.* This Agreement may be enforced by equitable remedies, provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies provided by this Agreement or available at law or in equity. All rights and remedies provided by this Agreement or available at law or in equity are cumulative, not exclusive, and may be exercised successively or concurrently.

b. *Attorney's Fees.* If any Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

c. *Force Majeure.* Any provision in this Agreement to the contrary notwithstanding, if a Party is delayed in the performance of an obligation under this Agreement due to an event of Force Majeure, that Party will be given an extension of one day for each day in which the Party was unable to perform its obligation due to the event of Force Majeure.

d. *Binding Effect.* This Agreement binds and inures to the benefit of the Parties hereto and their respective heirs, successors, and assigns. The covenants and conditions stated in this Agreement run with all of the tracts described above.

e. *Choice of Law.* This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Burnet County, Texas.

f. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all Parties hereto had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

g. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting Party fails to immediately declare a default or delays in taking action on a default. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

h. *Further Assurances.* Each Party hereto agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or

appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.

i. Entire Agreement. This Agreement and all attached exhibits constitute the entire agreement of the Parties concerning the maintenance and repair of the access road located in Tracts II and III, and there are no representations, warranties, agreements, or promises pertaining thereto not set forth herein.

j. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

k. Notices. Any notice required or permitted under this Agreement must be in writing and will be deemed delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

l. Recitals. Any recitals in this Agreement are represented by the Parties to be accurate and constitute a part of the substantive agreement.

m. Dispute Resolution. If a dispute arises between the Parties with regard to the rights or obligations of the Parties as set forth in this Agreement, the aggrieved Party will provide written notice of its complaint or claim to the other Party with sufficient specificity to enable the recipient to determine the cause and nature of the complaint. On receipt of the notice, the receiving Party will have a reasonable period of time, not to exceed thirty days, in which to respond in writing to the aggrieved Party. If the Parties are not able to resolve the issues to their mutual satisfaction through negotiation within thirty days after the commencement of negotiations, or within such longer period as the Parties may agree, the Parties agree to mediate the matter in good faith before instituting a suit for damages.

n. Time. Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day. (Business days exclude Saturdays, Sundays, and legal public holidays.)

SHERRY A. ATHERTON

Address: 3321 Sunset Cliff Road
Burnet, Texas 78611

ATHERTON ENTERPRISES, LTD., a
Texas limited partnership

By:

Address: 3321 Sunset Cliff Road
Burnet, Texas 78611

PAUL SANTELER

LAURA SANTELER

Address: 3345 Sunset Cliff Road
Burnet, Texas 78611

GREGORY D. JORDAN

AMY S. JORDAN

Address: 4011 Sierra Drive
Austin, Texas 78731

STATE OF TEXAS

COUNTY OF BURNET

§
§
§

This instrument was acknowledged before me on _____, 2021,
by SHERRY A. ATHERTON, Individually and as _____, General
Partner of Atherton Enterprises, Ltd., a Texas limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2021,
by PAUL
SANTELER.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2021,
by
LAURA SANTELER.

Notary Public, State of Texas

STATE OF TEXAS

§

§

COUNTY OF _____

§

This instrument was acknowledged before me on _____, 2021,
by GREGORY D. JORDAN.

Notary Public, State of Texas

STATE OF TEXAS

§

§

COUNTY OF _____

§

This instrument was acknowledged before me on _____, 2021,
by AMY S. JORDAN.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

**Attorney's Abstract & Title Company
201 S. Pierce
Burnet, Texas 78611**