

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WATER AND WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF COMAL §

GRANT OF EASEMENT:

LIB HOLDINGS, LTD., a Texas limited partnership, with offices at 12710 Cranes Mill, San Antonio, Bexar County, Texas 78230 ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF SCHERTZ, TEXAS**, a Texas home-rule city, with offices located at 1400 Schertz Parkway, Schertz, Texas 78154 ("Grantee"), an easement and right-of-way ("Easement") upon and across the property of Grantor which is more particularly described on **Exhibit "A"**, attached hereto and incorporated herein by reference ("Easement Property"),

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights, and privileges and on the terms and conditions set forth below; and Grantor, subject to the Exceptions to Warranty, does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

The conveyance of the rights described herein is made "AS IS", "WHERE IS", WITH ALL FAULTS AND CONDITIONS THEREON. GRANTOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUITABILITY OF THE EASEMENT PROPERTY FOR ANY ACTIVITIES OR USES.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - (a) "Holder" shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.
 - (b) "Public Utility" shall mean potable water, wastewater, and reclaimed wastewater facilities.

2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." Nevertheless, the Easement rights herein granted shall pass to Grantee's successors and assigns, subject to all of the Terms hereof. The Easement rights of use granted herein are nonexclusive and irrevocable. The Easement is for the benefit of Holder. Notwithstanding any provision in this Easement Agreement to the contrary, Grantee shall only be entitled to assign its rights hereunder to public and private utility providers, and any such assignment shall only be effective upon written notice thereof to Grantor.

3. *Purpose of Easement.* The Easement shall be used solely for public utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of Public Utility facilities and related appurtenances ("Facilities"), or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Public Utility facilities and related appurtenances.

4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.

5. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantor and Grantor's heirs, successors, and assigns retain the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not (i) interfere with the use of the Easement Property by Holder for the Easement Purpose, nor (ii) may Grantor construct any building, structure or obstruction on the Easement Property; provided however, that paving and landscaping shall be expressly permitted to be maintained upon the Easement Property. The right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement.

6. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 7 immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property that interfere with the Holder's use of the Easement Property for the Easement Purpose. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences or other encroachments within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will restore the surface of the Easement Property and Grantor's adjacent property to substantially the same condition it existed in immediately prior to each use by Holder of the Easement Property, including without limitation any landscaping, driveways or parking areas that were in existence prior to such use and are damaged in connection with the work. In performing any use for which Grantee is entitled to take hereunder, Grantee shall use reasonable efforts and shall cause its agents, contractors, employees, and assigns to use reasonable efforts to not damage, disrupt, harm, destroy, or interfere with Grantor's use and enjoyment of any of Grantor's property, including the Easement Property.

7. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash. Any permitted improvement made by Grantor must comply with applicable ordinances, development codes and engineering guidelines of the City of Schertz, and must not conflict with use of the easement for its intended purpose as described herein.

8. *Insurance.* Prior to the initial installation of the utilities, any major maintenance or repair work on the Easement Property or the installation of additional utilities in the Easement Property, Grantee shall have or obtain or require all of its contractors and subcontractors to have or obtain and thereafter maintain, so long as such construction activity is occurring: (a) commercial general liability insurance applicable to the Easement Property and its appurtenances providing, on an occurrence basis, a per occurrence limit of no less than \$1,000,000 and in aggregate \$2,000,000.00. All such policies shall name Grantor as an "additional insured" and shall contain endorsements that the insurer(s) shall give the Grantor and its designees at least thirty (30) days' advance written notice of any change, cancellation, termination or lapse of insurance. Upon request from time to time, and prior to the commencement of construction on the Easement Property, Grantee shall provide the Grantor a copy of the executed policy and a certificate of insurance with all required endorsements evidencing Grantee's insurance coverage.

9. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; 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 available at law or in equity.

10. *Attorney's Fees.* If either 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.

11. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

12. *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 the county or counties in which the Easement Property is located.

13. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

14. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

15. *Further Assurances.* Each signatory party 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.

16. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

17. *Exceptions to Warranty.* This grant is subject to (i) all easements, rights-of-way and prescriptive rights of record pertaining to any portion(s) of the Easement Tract, in existence as of the date this easement becomes effective; (ii) all valid mineral reservations and other instruments constituting mineral interest severances of any kind that are of record as of the date this Easement becomes effective;

(iii) all restrictive covenants, terms, conditions, contracts, provisions, encumbrances and other items that are of record as of the date the easement becomes effective, (iv) all laws, rules, regulations, and ordinances as may now or at any time hereafter be in effect; (v) all instruments that are of record as of the date the easement becomes effective; and (vi) all matters which would be disclosed by a current on-the-ground survey of the Property.

18. *Legal Construction.* 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. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

19. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be 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.

20. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.

21. *Entire Agreement.* This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

[Signature Pages Follow]

IN WITNESS WHEREOF, this instrument is executed this 18th day of July, 2019.

GRANTOR:

LIB HOLDINGS, LTD., a Texas limited partnership

By: LIB Management, L.L.C., a Texas limited liability company, its General Partner

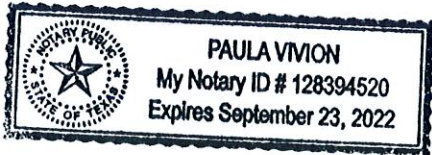
By: *Carlos Lomelin*
Carlos Lomelin, President

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on July 18, 2019, by Carlos Lomelin, the President of LIB Management, L.L.C., a Texas limited liability company, the general partner of LIB Holdings, Ltd., a Texas limited partnership, on behalf of such limited liability company and limited partnership.

Paula Vivion
Notary Public Signature

(seal)



GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Mark Browne, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

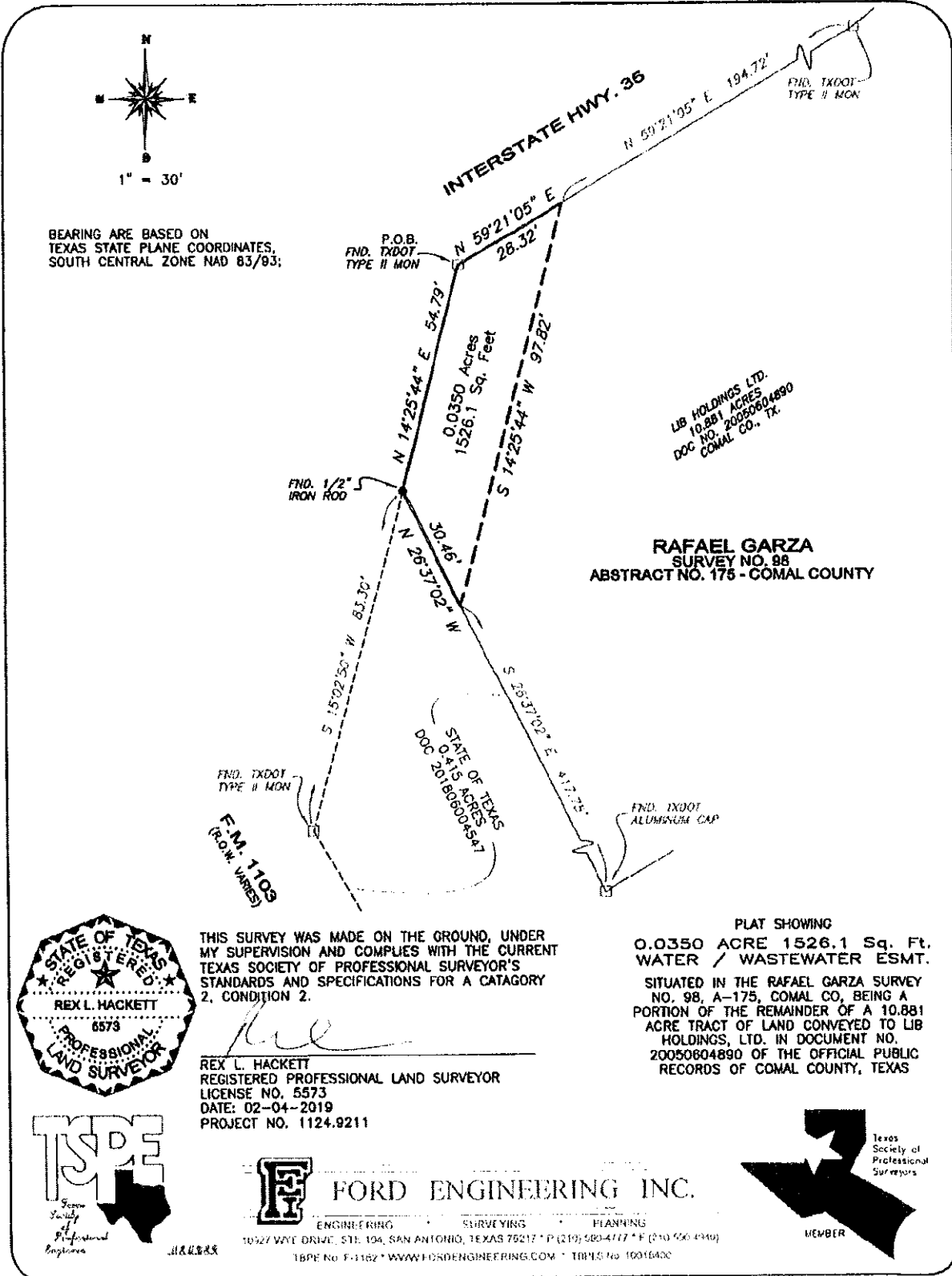
This instrument was acknowledged before me on _____, 20__, by Mark Browne, City Manager of the City of Schertz, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public Signature

(seal)

EXHIBIT "A"

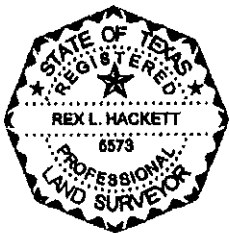
EASEMENT TRACT



BEARING ARE BASED ON TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93;

LIB HOLDINGS LTD.
10.881 ACRES
DOC NO. 20050604890
COMAL CO., TX.

RAFAEL GARZA
SURVEY NO. 98
ABSTRACT NO. 175 - COMAL COUNTY



THIS SURVEY WAS MADE ON THE GROUND, UNDER MY SUPERVISION AND COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYOR'S STANDARDS AND SPECIFICATIONS FOR A CATEGORY 2, CONDITION 2.

Rex L. Hackett
REX L. HACKETT
 REGISTERED PROFESSIONAL LAND SURVEYOR
 LICENSE NO. 5573
 DATE: 02-04-2019
 PROJECT NO. 1124.9211

PLAT SHOWING
 0.0350 ACRE 1526.1 Sq. Ft.
 WATER / WASTEWATER ESMT.
 SITUATED IN THE RAFAEL GARZA SURVEY NO. 98, A-175, COMAL CO, BEING A PORTION OF THE REMAINDER OF A 10.881 ACRE TRACT OF LAND CONVEYED TO LIB HOLDINGS, LTD. IN DOCUMENT NO. 20050604890 OF THE OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS



F **FORD ENGINEERING INC.**
 ENGINEERING SURVEYING PLANNING
 10527 WYV DRIVE, STE. 104, SAN ANTONIO, TEXAS 78217 * P (210) 580-4117 * F (210) 580-4140
 1BPE No. F-1162 * WWW.FORDENGINEERING.COM * TBM'S No. 10016400





FORD ENGINEERING, INC

Date: February 4, 2019
Project No: 1124.9211

FIELD NOTES DESCRIPTION
0.0350 Acres (1526.1 Sq. Ft.)
Water / Wastewater Easement

0.0350 acres (1526.1 Sq. Ft.) easement, situated in the Rafael Garza Survey No. 98, Abstract No. 175, Comal County, Texas, being a portion of the remainder of a 10.881 acre tract of land conveyed to LIB Holdings Ltd. in Document No. 200506048900 of the Official Public Records of Comal County, Texas; being more particularly described as follows:

BEGINNING: at a Texas Department of Transportation Type II monument found on the Southeastern line of Interstate Highway 35 for the Northwestern corner of the said 10.881 acre tract, for the Northwestern corner of this easement;

THENCE: N 59°21'05" E – 28.32 feet along the Southeastern line of Interstate Highway 35, the Northwestern line of the remainder of the said 10.881 acre tract to a point for the Northeastern corner of this easement, from which a Texas Department of Transportation Type II monument found for a corner of said Interstate Highway 35, a corner of the remainder of the said 10.881 acre tract bears N 59°21'05" E – 194.72 feet;

THENCE: S 14°25'44" W – 97.82 feet across the remainder of the said 10.881 acre tract to a point on the Northeastern line of a 0.415 acre tract of land out of the said 10.881 acre tract of land conveyed to the State of Texas in Document No. 201806004547 of the Official Public Records of Comal County, Texas, for the Southernmost corner of this easement, from which a Texas Department of Transportation Aluminum disk found for the Southeastern corner of the said 0.415 acre tract, a corner of the remainder of the said 10.881 acres bears S 26°37'02" E – 417.75 feet;

THENCE: N 26°37'02" W – 30.46 feet along Northeastern line of the said 0.415 acre tract, a line of the remainder of the said 10.881 acre tract to a ½ inch iron rod found at the Cutback line of Farm Market Road 1103 and Interstate Highway 35, for the Northernmost corner of the said 0.415 acre tract, a corner of the remainder of the said 10.881 acre tract, for a corner of this easement, from which a Texas Department of Transportation Type II monument found for the Northwestern corner of the said 0.415 acre tract, being the original Northwestern corner of the said 10.881 acre tract bears S 15°02'50" W – 83.30 feet;

THENCE: N 14°25'44" E – 54.79 feet along a Northern line of the remainder of the said 10.881 acre tract, a cutback line of Farm Market Road 1103 and Interstate Highway 35 to the **POINT OF BEGINNING** and containing 0.0350 acres (1526.1 Sq. Ft.) of land.

10927 WYE DRIVE
1-800-332-3109

SUITE 104 SAN ANTONIO, TX 78217
www.fordengineering.com

P. (210) 590-4777
TBPE No. F-1162

F. (210) 590-4940
TBPLS No. 10018400



FORD ENGINEERING, INC

1124.9211 LIB Holdings LTD Water-Wastewater Esmt..docx

**BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM
ESTABLISHED FOR THE TEXAS SOUTH CENTRAL ZONE, 4204, NAD 83.**



Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573

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