

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.

WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF COMAL §

GRANT OF EASEMENT:

NOLLEY CARIBBEAN PROPERTIES, L.L.C., a Wyoming limited liability company, with offices located at 300 Arcadia Court Pittsburgh, PA 15237 (“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 shown on the sketch in **Exhibit “A”** and more particularly described on **Exhibit “B”**, 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.

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 sanitary sewer 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.

3. *Purpose and Scope of Easement.* The Easement shall be used solely for one sanitary sewer pipeline, with the pipe measuring no more than 12 inches in diameter, and related necessary appurtenant facilities to the sanitary sewer pipeline, such pipeline to be buried to a minimum depth of 4 feet from the top of the pipeline to the surface of the ground, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of one 12 inch sanitary sewer pipeline and related necessary appurtenant facilities, to the sanitary sewer pipeline. Above-ground appurtenances are limited to air release valves for the sanitary sewer pipeline. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, and replacement of the sanitary sewer pipeline and related necessary appurtenant facilities. After construction of the sanitary sewer pipeline, Holder shall grade the surface of the ground within the Easement Property and restore it to the condition in which it existed before construction of the sanitary sewer pipeline and related necessary appurtenances, and if Holder replaces, repairs, maintains, relocates, or removes the sanitary sewer pipeline and/or related necessary appurtenances, Holder shall restore Grantee's Property to the condition in which it existed before such replacement, repair, maintenance, relocation, or removal. Holder shall have no right to fence or enclose the Easement Property. The Easement is granted subject to other existing easements of record at the time of this grant.
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 under the following conditions: such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose; and Grantor may not construct any building, vertical structure or obstruction on the Easement Property, but Grantor may construct streets, driveways, drive aisles and parking facilities, together with the necessary paving, on the Easement Property. Grantor retains 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. Written approval of Holder must be obtained prior to any use or improvement of Easement Property not permitted herein, which approval shall not be unreasonably withheld.
6. *Temporary Construction Easement.* Holder has the right (the "Temporary Construction Easement") to use the surface of the 10-foot wide area adjacent to the Easement Property ("Temporary Construction Area"), to assist in the initial installation of the sanitary sewer pipeline, which Temporary Construction Easement shall expire on the 180th day after construction begins on the sanitary sewer pipeline on the property. Holder shall promptly restore the area of the

Temporary Construction Area to its previous physical condition if changed by use of the rights granted by this Temporary Construction Easement.

7. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 8, immediately below, improvement and maintenance of the Easement Property and the sanitary sewer pipeline and related necessary appurtenant facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments installed on the Easement Property in violation of the terms set forth in this instrument, but Holder agrees that Grantor shall have the right to construct streets, driveways and drive aisles, and parking facilities, together with the necessary parking, on the Easement Property. Holder has the right to construct, install, maintain, replace, and remove the sanitary sewer pipeline and related necessary appurtenant facilities under or across any portion of the Easement Property. Above-ground appurtenances are limited to air release valves for the sanitary sewer pipeline. All matters concerning the sanitary sewer pipeline and related necessary appurtenant 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 its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and are damaged in connection with the work.
8. *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 within the Easement Property 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.
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, with 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 any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
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.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2020.

GRANTOR:

NOLLEY CARIBBEAN PROPERTIES, L.L.C.,
a Wyoming limited liability company

By: _____

Name: _____

Title: _____

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020, by _____, as _____ of NOLLEY CARIBBEAN PROPERTIES, L.L.C., a Wyoming limited liability company, on behalf of said company.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
_____, _____

ATTEST:

Brenda Dennis, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 2020, by
_____, _____ of the City of Schertz, Texas, a Texas
home-rule municipality, on behalf of said municipality.

(seal)

Notary Public Signature

EXHIBIT "A"

SKETCH OF EASEMENT PROPERTY



EXHIBIT "A"

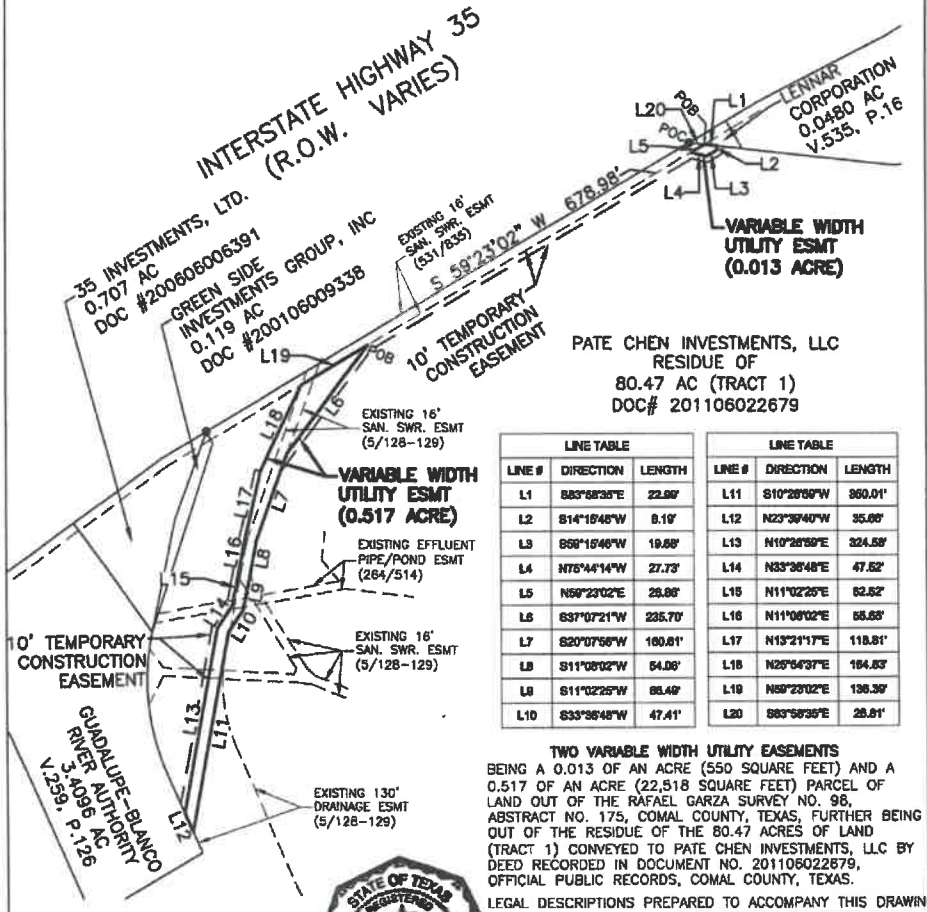
Scale: 1" = 200'

THIS EXHIBIT WAS CREATED WITHOUT BENEFIT OF A TITLE COMMITMENT AND MAY NOT SHOW ALL EASEMENTS OR OTHER MATTERS AFFECTING THE PROPERTY AND MAY NOT MEET COMAL COUNTY SUBDIVISION REQUIREMENTS

NOTE: BEARINGS SHOWN HEREON ARE BASED ON NAD 83 (COR98) STATE PLANE COORDINATES, SOUTH CENTRAL TEXAS ZONE.

LEGEND:

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 FOUND TIED MONUMENT
 SET 1/2" REBAR (CAPPED "RPLS 4607")



LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	S83°28'38"E	22.60'	L11	S10°28'59"W	860.01'
L2	S14°16'46"W	8.16'	L12	N23°38'40"W	35.06'
L3	S69°16'46"W	19.66'	L13	N10°26'59"E	324.58'
L4	N76°44'14"W	27.73'	L14	N83°36'48"E	47.62'
L5	N69°23'02"E	28.86'	L15	N11°02'26"E	62.62'
L6	S37°07'21"W	236.70'	L16	N11°06'02"E	68.68'
L7	S20°07'56"W	100.61'	L17	N13°21'17"E	118.61'
L8	S11°06'02"W	64.06'	L18	N25°54'37"E	164.63'
L9	S11°02'26"W	86.46'	L19	N69°23'02"E	136.39'
L10	S33°36'48"W	47.41'	L20	S83°58'58"E	28.61'

TWO VARIABLE WIDTH UTILITY EASEMENTS
 BEING A 0.013 OF AN ACRE (550 SQUARE FEET) AND A 0.517 OF AN ACRE (22,518 SQUARE FEET) PARCEL OF LAND OUT OF THE RAFAEL GARZA SURVEY NO. 96, ABSTRACT NO. 175, COMAL COUNTY, TEXAS, FURTHER BEING OUT OF THE RESIDUE OF THE 80.47 ACRES OF LAND (TRACT 1) CONVEYED TO PATE CHEN INVESTMENTS, LLC BY DEED RECORDED IN DOCUMENT NO. 201106022679, OFFICIAL PUBLIC RECORDS, COMAL COUNTY, TEXAS.

LEGAL DESCRIPTIONS PREPARED TO ACCOMPANY THIS DRAWING



DAVID A. LAMBERTS
 REGISTERED PROFESSIONAL LAND SURVEYOR

4907
 TEXAS REGISTRATION NO.
 SURVEY NOT VALID UNLESS ORIGINAL
 SIGNATURE IS IN RED INK
 JOB # 6037-02-P7
 DATE: 3/21/17

**RIVER CITY
 ENGINEERING**

Civil, Environmental and Surveying

Texas Registration Form F-12616 Texas Survey Form 12528-06

3001 SOUTH 1
 AUSTIN, TEXAS 78704-7047
 PHONE - (512) 442-2000
 FAX - (512) 442-6522

1011 W. COUNTY LINE ROAD, SUITE C
 NEW BRAUNFELS, TEXAS 78130
 PHONE - (830)-625-2058
 FAX - (830)-624-3601



INTERSTATE HIGHWAY 35
 COMAL COUNTY, TEXAS

20' UTILITY EASEMENT

EXHIBIT "B"
LEGAL DESCRIPTION OF EASEMENT PROPERTY

River City Engineering
1011 W. County Line Road * NEW BRAUNFELS, TX. 78130
PHONE (830) 625-0337 FAX (830) 625-0858
dlamberts@rcetx.com
Firm Registration #10193949

VARIABLE WIDTH UTILITY EASEMENT
EXHIBIT "B"

Being a 0.517 of an acre (22,518 square feet) parcel of land out of the Rafael Garza Survey No. 98, Abstract No. 175, Comal County, Texas, further being out of the residue of that certain called 80.47 acre parcel (Tract 1) conveyed to Pate Chen Investments, LLC by deed recorded in Document No. 201106022679 of the Official Public Records of Comal County, Texas; Said 0.517 of an acre parcel being more particularly described by metes and bounds as follows with all bearings called for herein based on the Texas Coordinate System as established from the North American Datum of 1983 (CORS96) for the South Central Zone:

COMMENCING at a ½ inch rebar set (capped "RPLS 4907") on the southeasterly right-of-way line of Interstate Highway 35 for the most northerly corner of said residue of said 80.47 acre parcel, same being the most westerly corner of that certain called 0.0480 of an acre parcel conveyed to Lennar Corporation (U.S. Home Corporation) by deed recorded in Volume 535, Page 16 of said Official Public Records;

THENCE departing said right-of-way line and with the common line of said residue of said 80.47 acre parcel with said 0.0480 of an acre parcel, South 83 deg 58' 35" East, a distance of 26.81 feet to a point on the southeasterly line of an existing 16' wide sanitary sewer easement recorded in Volume 531, Page 835 of said Official Public Records;

THENCE with the southeasterly line of said 16' sanitary sewer easement, South 59 deg 23' 02" West, a distance of 678.98 feet to a point for a the northeasterly corner and POINT OF BEGINNING of this parcel;

THENCE into said residue of said 80.47 acre parcel, South 37 deg 07' 21" West, a distance of 235.70 feet to a point for angle;

THENCE South 20 deg 07' 56" West, a distance of 160.61 feet to a point for angle;

THENCE South 11 deg 08' 02" West, a distance of 54.06 feet to a point for angle;

THENCE South 11 deg 02' 25" West, a distance of 66.49 feet to a point for angle;

THENCE South 33 deg 36' 48" West, a distance of 47.41 feet to a point for angle;

EXHIBIT "B"
VARIABLE WIDTH UTILITY EASEMENT
(cont.)

THENCE South 10 deg 26' 59" West, a distance of 350.01 feet to a point on the common line of said residue of said 80.47 acre parcel with that certain called 3.4096 acre parcel conveyed to Guadalupe-Blanco River Authority by deed recorded in Volume 259, Page 126 of the Deed Records of Comal County, Texas for the southeasterly corner of this parcel;

THENCE with said common line, North 23 deg 39' 40" East, a distance of 35.66 feet to a point for the southwesterly corner of this parcel;

THENCE crossing said residue of said 80.47 acre parcel, North 10 deg 26' 59" East, a distance of 324.58 feet to a point for angle;

THENCE North 33 deg 36' 48" East, a distance of 47.52 feet to a point for angle;

THENCE North 11 deg 02' 25" East, a distance of 62.52 feet to a point for angle;

THENCE North 11 deg 08' 02" East, a distance of 55.65 feet to a point for angle;

THENCE North 13 deg 21' 17" East, a distance of 118.81 feet to a point for angle;

THENCE North 25 deg 54' 37" East, a distance of 164.83 feet to a point on the southeasterly line of the aforementioned 16' sanitary sewer easement for the northwesterly corner of this parcel;

THENCE with said southeasterly line of said easement, North 59 deg 23' 02" East, a distance of 136.39 feet to the POINT OF BEGINNING and containing 0.517 of an acre (22,518 square feet) of land.



David A. Lamberts 04-06-17

David A. Lamberts R.P.L.S. No. 4907

J.O. No. 6097-02-P7B

(Drawing prepared to accompany this description)

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WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
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GRANT OF EASEMENT:

NOLLEY CARIBBEAN PROPERTIES, L.L.C., a Wyoming limited liability company, with offices located at 300 Arcadia Court Pittsburgh, PA 15237 (“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 shown on the sketch in **Exhibit “A”** and more particularly described on **Exhibit “B”**, 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.

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 sanitary sewer 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.

3. *Purpose and Scope of Easement.* The Easement shall be used solely for one sanitary sewer pipeline, with the pipe measuring no more than 12 inches in diameter, and related necessary appurtenant facilities to the sanitary sewer pipeline, such pipeline to be buried to a minimum depth of 4 feet from the top of the pipeline to the surface of the ground, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of one 12 inch sanitary sewer pipeline and related necessary appurtenant facilities, to the sanitary sewer pipeline. Above-ground appurtenances are limited to air release valves for the sanitary sewer pipeline. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, and replacement of the sanitary sewer pipeline and related necessary appurtenant facilities. After construction of the sanitary sewer pipeline, Holder shall grade the surface of the ground within the Easement Property and restore it to the condition in which it existed before construction of the sanitary sewer pipeline and related necessary appurtenances, and if Holder replaces, repairs, maintains, relocates, or removes the sanitary sewer pipeline and/or related necessary appurtenances, Holder shall restore Grantee's Property to the condition in which it existed before such replacement, repair, maintenance, relocation, or removal. Holder shall have no right to fence or enclose the Easement Property. The Easement is granted subject to other existing easements of record at the time of this grant.
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 under the following conditions: such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose; and Grantor may not construct any building, vertical structure or obstruction on the Easement Property, but Grantor may construct streets, driveways, drive aisles and parking facilities, together with the necessary paving, on the Easement Property. Grantor retains 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. Written approval of Holder must be obtained prior to any use or improvement of Easement Property not permitted herein, which approval shall not be unreasonably withheld.
6. *Temporary Construction Easement.* Holder has the right (the "Temporary Construction Easement") to use the surface of the 10-foot wide area adjacent to the Easement Property ("Temporary Construction Area"), to assist in the initial installation of the sanitary sewer pipeline, which Temporary Construction Easement shall expire on the 180th day after construction begins on the sanitary sewer pipeline on the property. Holder shall promptly restore the area of the

Temporary Construction Area to its previous physical condition if changed by use of the rights granted by this Temporary Construction Easement.

7. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 8, immediately below, improvement and maintenance of the Easement Property and the sanitary sewer pipeline and related necessary appurtenant facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments installed on the Easement Property in violation of the terms set forth in this instrument, but Holder agrees that Grantor shall have the right to construct streets, driveways and drive aisles, and parking facilities, together with the necessary parking, on the Easement Property. Holder has the right to construct, install, maintain, replace, and remove the sanitary sewer pipeline and related necessary appurtenant facilities under or across any portion of the Easement Property. Above-ground appurtenances are limited to air release valves for the sanitary sewer pipeline. All matters concerning the sanitary sewer pipeline and related necessary appurtenant 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 its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and are damaged in connection with the work.
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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, with 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 any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
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.
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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.

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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.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2020.

GRANTOR:

NOLLEY CARIBBEAN PROPERTIES, L.L.C.,
a Wyoming limited liability company

By: _____

Name: _____

Title: _____

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020, by _____, as _____ of NOLLEY CARIBBEAN PROPERTIES, L.L.C., a Wyoming limited liability company, on behalf of said company.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
_____, _____

ATTEST:

Brenda Dennis, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 2020, by
_____, _____ of the City of Schertz, Texas, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public Signature

(seal)

EXHIBIT "A"

SKETCH OF EASEMENT PROPERTY

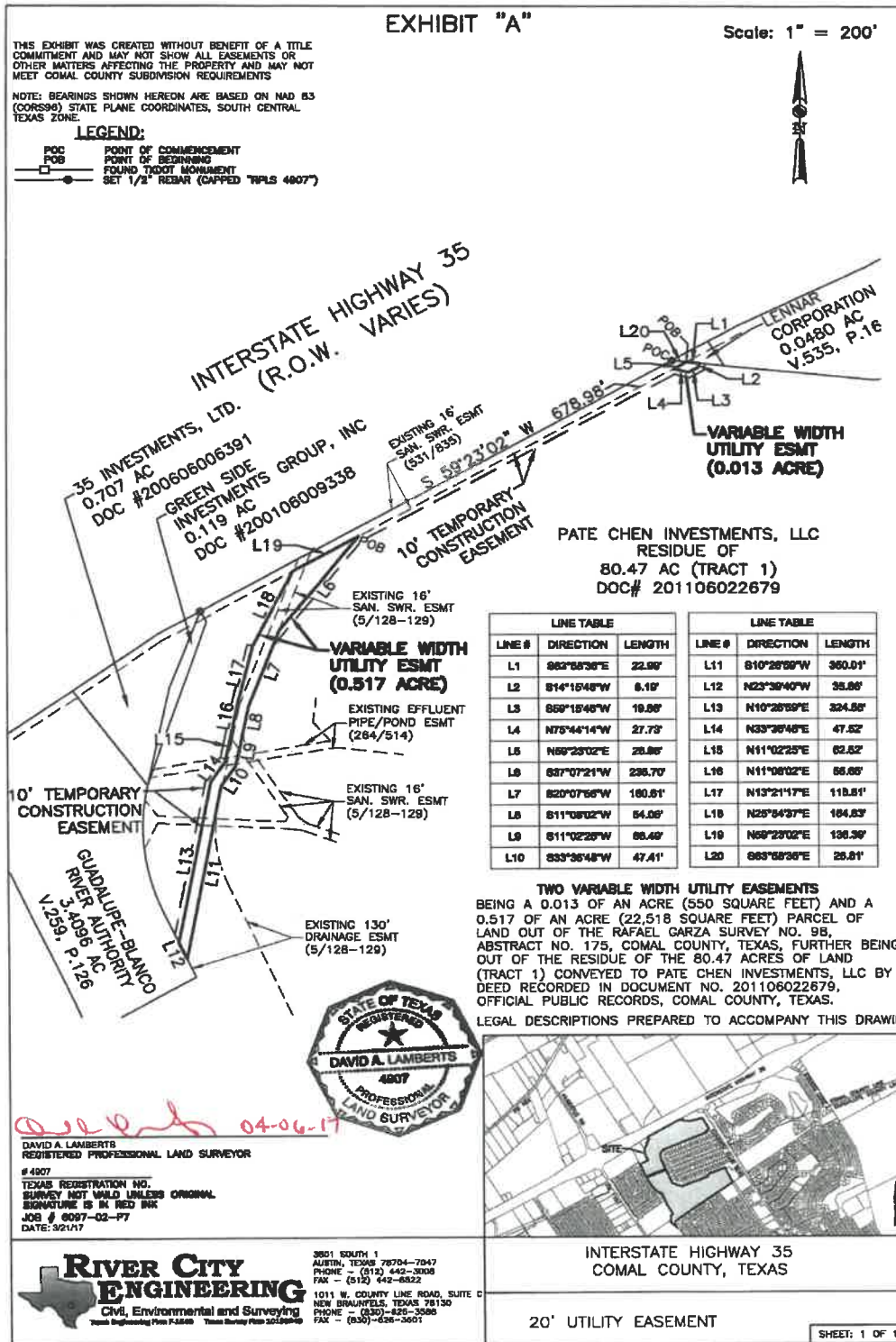


EXHIBIT "B"
LEGAL DESCRIPTION OF EASEMENT PROPERTY

River City Engineering
1011 W. County Line Road * NEW BRAUNFELS, TX. 78130
PHONE (830) 625-0337 FAX (830) 625-0858
dlamberts@rcetx.com
Firm Registration #10193949

VARIABLE WIDTH UTILITY EASEMENT
EXHIBIT "B"

Being a 0.013 of an acre (550 square feet) parcel of land out of the Rafael Garza Survey No. 98, Abstract No. 175, Comal County, Texas, further being out of the residue of that certain called 80.47 acre parcel (Tract 1) conveyed to Pate Chen Investments, LLC by deed recorded in Document No. 201106022679 of the Official Public Records of Comal County, Texas; Said 0.013 of an acre parcel being more particularly described by metes and bounds as follows with all bearings called for herein based on the Texas Coordinate System as established from the North American Datum of 1983 (CORS96) for the South Central Zone:

COMMENCING at a ½ inch rebar set (capped "RPLS 4907") on the southeasterly right-of-way line of Interstate Highway 35 for the most northerly corner of said residue of said 80.47 acre parcel, same being the most westerly corner of that certain called 0.0480 of an acre parcel conveyed to Lennar Corporation (U.S. Home Corporation) by deed recorded in Volume 535, Page 16 of said Official Public Records;

THENCE departing said right-of-way line and with the common line of said residue of said 80.47 acre parcel with said 0.0480 of an acre parcel, South 83 deg 58' 35" East, a distance of 26.81 feet to a point on the southeasterly line of an existing 16' wide sanitary sewer easement recorded in Volume 531, Page 835 of said Official Public Records for the most northerly corner and POINT OF BEGINNING of this parcel;

THENCE continuing with said common line, South 83 deg 58' 35" East, a distance of 22.99 feet to a point for a corner of this parcel;

THENCE into said residue of said 80.47 acre parcel, South 14 deg 15' 46" West, a distance of 8.19 feet to a point for angle;

THENCE South 59 deg 15' 46" West, a distance of 19.88 feet to a point for the most southerly corner of this parcel;

THENCE North 75 deg 44' 14" West, a distance of 27.73 feet to a point on the southeasterly line of the aforementioned 16' sanitary sewer easement for the most westerly corner of this parcel;

EXHIBIT "B"
VARIABLE WIDTH UTILITY EASEMENT
(cont.)

THENCE with said southeasterly line of said easement, North 59 deg 23' 02" East, a distance of 26.86 feet to the POINT OF BEGINNING and containing 0.013 of an acre (550 square feet) of land.



David A. Lamberts 04-26-17

David A. Lamberts R.P.L.S. No. 4907

J.O. No. 6097-02-P7A

(Drawing prepared to accompany this description)

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.

WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF COMAL §

GRANT OF EASEMENT:

NOLLEY CARIBBEAN PROPERTIES, L.L.C., a Wyoming limited liability company, with offices located at 300 Arcadia Court Pittsburgh, PA 15237 (“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 shown on the sketch in **Exhibit “A”** and more particularly described on **Exhibit “B”**, 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.

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 sanitary sewer 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.

3. *Purpose and Scope of Easement.* The Easement shall be used solely for one sanitary sewer pipeline, with the pipe measuring no more than 12 inches in diameter, and related necessary appurtenant facilities to the sanitary sewer pipeline, such pipeline to be buried to a minimum depth of 4 feet from the top of the pipeline to the surface of the ground, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of one 12 inch sanitary sewer pipeline and related necessary appurtenant facilities, to the sanitary sewer pipeline. Above-ground appurtenances are limited to air release valves for the sanitary sewer pipeline. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, and replacement of the sanitary sewer pipeline and related necessary appurtenant facilities. After construction of the sanitary sewer pipeline, Holder shall grade the surface of the ground within the Easement Property and restore it to the condition in which it existed before construction of the sanitary sewer pipeline and related necessary appurtenances, and if Holder replaces, repairs, maintains, relocates, or removes the sanitary sewer pipeline and/or related necessary appurtenances, Holder shall restore Grantee's Property to the condition in which it existed before such replacement, repair, maintenance, relocation, or removal. Holder shall have no right to fence or enclose the Easement Property. The Easement is granted subject to other existing easements of record at the time of this grant.
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 under the following conditions: such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose; and Grantor may not construct any building, vertical structure or obstruction on the Easement Property, but Grantor may construct streets, driveways, drive aisles and parking facilities, together with the necessary paving, on the Easement Property. Grantor retains 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. Written approval of Holder must be obtained prior to any use or improvement of Easement Property not permitted herein, which approval shall not be unreasonably withheld.
6. *Temporary Construction Easement.* Holder has the right (the "Temporary Construction Easement") to use the surface of the 10-foot wide area adjacent to the Easement Property ("Temporary Construction Area"), to assist in the initial installation of the sanitary sewer pipeline, which Temporary Construction Easement shall expire on the 180th day after construction begins on the sanitary sewer pipeline on the property. Holder shall promptly restore the area of the

Temporary Construction Area to its previous physical condition if changed by use of the rights granted by this Temporary Construction Easement.

7. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 8, immediately below, improvement and maintenance of the Easement Property and the sanitary sewer pipeline and related necessary appurtenant facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments installed on the Easement Property in violation of the terms set forth in this instrument, but Holder agrees that Grantor shall have the right to construct streets, driveways and drive aisles, and parking facilities, together with the necessary parking, on the Easement Property. Holder has the right to construct, install, maintain, replace, and remove the sanitary sewer pipeline and related necessary appurtenant facilities under or across any portion of the Easement Property. Above-ground appurtenances are limited to air release valves for the sanitary sewer pipeline. All matters concerning the sanitary sewer pipeline and related necessary appurtenant 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 its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and are damaged in connection with the work.
8. *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 within the Easement Property 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.
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, with 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 any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
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.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2020.

GRANTOR:

NOLLEY CARIBBEAN PROPERTIES, L.L.C.,
a Wyoming limited liability company

By: _____

Name: _____

Title: _____

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020, by _____, as _____ of NOLLEY CARIBBEAN PROPERTIES, L.L.C., a Wyoming limited liability company, on behalf of said company.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
_____, _____

ATTEST:

Brenda Dennis, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 2020, by
_____, _____ of the City of Schertz, Texas, a Texas
home-rule municipality, on behalf of said municipality.

(seal)

Notary Public Signature

EXHIBIT "A"

SKETCH OF EASEMENT PROPERTY

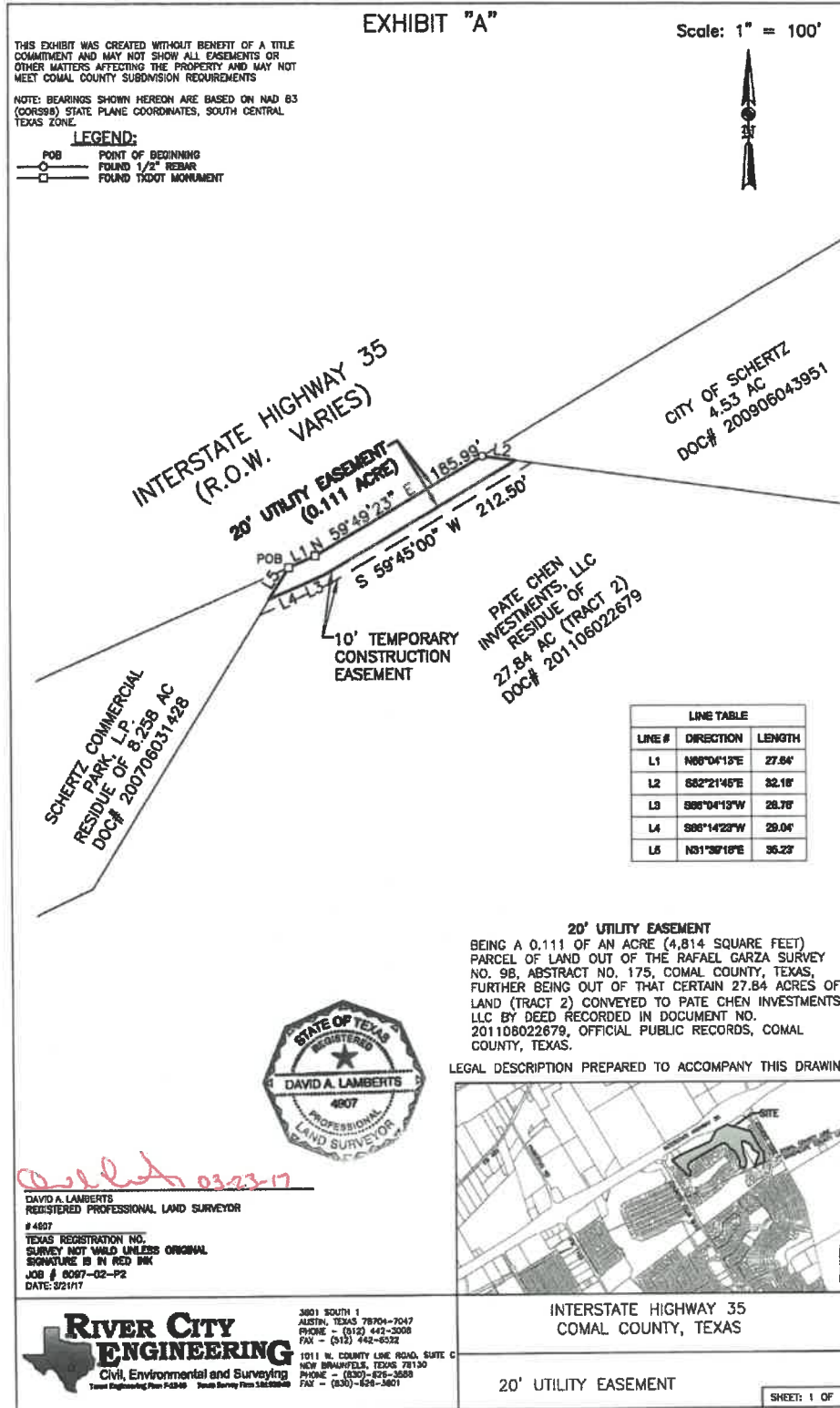


EXHIBIT "B"
LEGAL DESCRIPTION OF EASEMENT PROPERTY

River City Engineering
1011 W. County Line Road * NEW BRAUNFELS, TX. 78130
PHONE (830) 625-0337 FAX (830) 625-0858
dlamberts@rcetx.com
Firm Registration #10193949

20' UTILITY EASEMENT
EXHIBIT "B"

Being a 0.111 of an acre (4,814 square feet) parcel of land out of the Rafael Garza Survey No. 98, Abstract No. 175, Comal County, Texas, further being out of the residue of that certain called 27.84 acre parcel (Tract 2) conveyed to Pate Chen Investments, LLC by deed recorded in Document No. 201106022679 of the Official Public Records of Comal County, Texas; Said 0.111 of an acre parcel being more particularly described by metes and bounds as follows with all bearings called for herein based on the Texas Coordinate System as established from the North American Datum of 1983 (CORS96) for the South Central Zone:

BEGINNING at a TXDOT monument found on the southeasterly right-of-way line of Interstate Highway 35 for the most westerly corner and POINT OF BEGINNING of this parcel, same being the most westerly corner of said residue of said 27.84 acre parcel and the most northerly corner of the residue of that certain called 8.258 acre parcel conveyed to Schertz Commercial Park, L.P. by deed recorded in Document No. 200706031428 of said Official Public Records;

THENCE with said right-of-way line, the following two (2) courses:

- 1). North 66 deg 04' 13" East, a distance of 27.64 feet to a TXDOT monument found for angle;
- 2). North 59 deg 49' 23" East, a distance of 185.99 feet to a ½ inch rebar found for the most northerly corner of this parcel, same being the most northerly corner of said residue of said 27.84 acre parcel and the most westerly corner of that certain called 4.53 acre parcel conveyed to the City of Schertz by deed recorded in Document No. 200906043951 of said Official Public Records;

THENCE departing said right-of-way line and with the common line of said residue of said 27.84 acre parcel with said 4.53 acre parcel, South 82 deg 21' 45" East, a distance of 32.18 feet to a point for the most easterly corner of this parcel;

THENCE with a line 20.00 feet from and parallel to said right-of-way line of Interstate Highway 35, the following three (3) courses:

- 1). South 59 deg 45' 00" West, a distance of 212.50 feet to a point for angle;
- 2). South 66 deg 04' 13" West, a distance of 28.76 feet to a point for angle;
- 3) South 66 deg 14' 23" West, a distance of 29.04 feet to a point on the common line of said residue of said 27.84 acre parcel with the residue of said 8.258 acre parcel for the most southerly corner of this parcel;

EXHIBIT "B"
20' UTILITY EASEMENT
(cont.)

THENCE with said common line, North 31 deg 39' 18" East, a distance of 35.23 feet to the POINT OF BEGINNING and containing 0.111 of an acre (4,814 square feet) of land.



David A. Lamberts 03-23-17
David A. Lamberts R.P.L.S. No. 4907
J.O. No. 6097-02-P2
(Drawing prepared to accompany this description)