

**CROSS REFERENCE INSTRUMENT NOS.:  
Volume 420, Pages 783-785, and Document Number 23029354**

**CONSENT TO ENCROACHMENT**

THIS CONSENT TO ENCROACHMENT (this "Consent") is made and entered into as of this \_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas municipal corporation (the "CITY"), **NANCY MILBURN GRANAGHAN also known as Nancy Milburn Granagan and Nancy Louise Granaghan, GENE BUCKNER, MELINDA LOVELACE, BONNIE SUZANNE BUCKNER BUMPUS, WILLIAM DAVID BUCKNER, and SARAH ANN MCBRYDE also known as Sally Buckner McBryde ("BUCKNER"), and SAN MARCOS PUBLISHING, LP. ("LESSEE").**

**WITNESSETH:**

WHEREAS, BUCKNER is the owner of certain real estate located in Hays County, Texas, which real estate is more fully described in Exhibit A attached hereto and incorporated herein by this reference (the "Real Estate");

WHEREAS, a portion of the Real Estate is subject to that certain fifteen (15) foot Electric Easement, dated February 20, 1984, executed by T. A. Buckner and Sons to Lower Colorado River Authority, recorded in Volume 420, Pages 783-785, of the Real Property Records of Hays County Texas, and further assigned to the City of San Marcos with the effective date of October 30, 1986, as stated in the Second Correction Transfer, Assignment, Grant, Sale and Conveyance of Easement Rights, recorded in Document Number 23029354 of the Official Real Property Records of Hays County, Texas (the "Public Easement"), whereby an easement has been reserved for the use of the public as shown on Exhibit B attached hereto (the "Public Easement Area");

WHEREAS, BUCKNER'S predecessor in title has developed and constructed certain improvements in the Public Easement Area in connection with the development and construction of that certain one story metal and stucco building on the Real Estate (the "Improvements"), with such improvements being depicted on Exhibit C attached hereto (collectively, the "Public Easement Improvements");

WHEREAS, BUCKNER has requested the CITY'S consent to keep and maintain the Public Easement Improvements within the Public Easement Area; and

WHEREAS the CITY is willing to authorize the encroachment of the Public Easement Improvements into the Public Easement Area, upon and subject to the terms and conditions contained herein.

WHEREAS, LESSEE joins in the execution hereof for the purposes of its consent, approval, and acceptance of the Consent to Encroachment.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Consent to Encroachment. Upon and subject to the terms and conditions set forth herein, the CITY does hereby grant unto, its successors and assigns, the right to keep, maintain, repair, replace, use, operate and reconstruct the Public Easement Improvements on, over, above and across the Public Easement Area in connection with the use and operation of the Improvements (collectively, the "Permitted Use"). The Public Easement Improvements shall be limited to the areas as depicted on Exhibit C hereto and shall not be expanded or relocated within the Public Easement Area without BUCKNER's prior written consent.

2. Buckner Obligations. BUCKNER shall, at BUCKNER's sole cost and expense, keep, maintain, repair, replace, use, operate and reconstruct the Public Easement Improvements in a good, safe and orderly condition and in accordance with all applicable statutes, laws, codes, rules, orders and ordinances. In the event BUCKNER fails to maintain and/or use the Public Easement Improvements in accordance with the terms and conditions of this Consent within thirty (30) days after written notice to BUCKNER, the CITY shall have the right to correct and remedy such failure in a manner deemed reasonably necessary by the CITY and BUCKNER shall reimburse the CITY for the actual, documented out-of-pocket costs incurred by the CITY to cure such failure within thirty (30) days of the CITY's written request thereof to BUCKNER; provided, however, the CITY shall have no obligation to BUCKNER or any other party to perform any maintenance, repair or replacement with respect to the Public Easement Improvements and/or the Public Easement Area.

3. Extra Costs. In the event that any installation, reinstallation, relocation or repair of any existing or future utility lines or utility improvements within the Public Easement Area on the Real Estate owned by, constructed by or on behalf of the CITY at public expense is made materially more costly solely by virtue of the construction, maintenance or existence of the Public Easement Improvements and no reasonable alternative location is available for such utility lines or utility improvements or their repair that would not result in such additional material costs, BUCKNER shall pay to the CITY an additional reasonable amount equal to such reasonable additional cost within 30 days after receipt of an itemized invoice therefor from THE CITY, to the extent BUCKNER does not relocate the same to such a location that does not make such installation, reinstallation, relocation or repair more costly.

4. City Restrictions. The CITY acknowledges and agrees that the CITY shall not have the right to remove or relocate any portion of the Public Easement Improvements without the prior written consent of BUCKNER, which consent shall not be unreasonably withheld, conditioned or denied. Notwithstanding the foregoing, the CITY may remove or alter all of parts of the Public Easement Improvements when: a) reasonably necessary to prevent imminent threats of injury to persons or damage to property as a result of the Public Easement Improvements' location within the Public Easement Area; or b) after providing at least 30 days' written notice to

BUCKNER, any portion of the Public Easement Improvements prevent the ongoing repair, replacement, maintenance or operation of the CITY'S utility facilities in the Public Easement Area and no reasonable alternative to such removal or alteration is available in connection with remedying such ongoing repair, replacement, maintenance or operation of the CITY'S utility facilities in the Public Easement Area; provided, however, that the CITY shall give BUCKNER such reasonably time not to exceed 90 days to allow BUCKNER to remove, alter or relocate such portions of the Public Easement Improvements in such a manner or to such a location within or outside the Public Easement Area that will reasonably allow such ongoing repair, replacement, maintenance or operation.

5. Runs with the Land. This Consent shall run with the land, be for the benefit for the parties hereto and their successors and assigns. This Consent binds and inures to the benefit of the parties hereto and their respective heirs, successors, and assigns.

6. Limitation of Liability, Indemnification. Except to the extent caused by the gross negligence or willful misconduct of the CITY, its employees, agents, contractors or subcontractors, BUCKNER shall indemnify, defend, and hold the CITY and its trustees, directors, members, officers, agents, employees, invitees, contractors and subcontractors harmless from and against all damages, injuries to or death of persons, claims, liability, lawsuits, judgments, costs and expenses, including without limitation reasonable attorneys' fees and costs of enforcement of this indemnification, arising out of or in connection with the use of the Public Easement Area for the Public Easement Improvements by BUCKNER, its employees, agents, or invitees. BUCKNER assumes all risks of injury to or death of persons in connection with its or its invitees use of the Public Easement Area and the Public Easement Improvements or the exercise of the privileges granted hereunder and in no event shall the CITY have any liability with respect to the same, except to the extent caused by the gross negligence or willful misconduct of the CITY, its employees, agents, contractors and subcontractors. BUCKNER hereby releases the CITY of and from every right, claim, and demand that BUCKNER may hereafter have against the CITY and from all liability for any accident, damage, or injury or death caused to person or property on or about the Public Easement Area except to the extent caused solely by the gross negligence or willful misconduct of the CITY, its employees, agents, contractors and subcontractors.

7. Insurance; Waiver of Subrogation. From the Effective Date and at all times any portion of the Public Easement Improvements are located in the Public Easement Area, BUCKNER, at its sole cost and expense, shall obtain a policy or policies of commercial general liability insurance with coverage for bodily injury, personal injury, death, and loss or property damage arising out of the use of the Public Easement Improvements in the Public Easement Area, in the amount of not less than \$2,000,000 per occurrence. Such policy shall name the CITY as an additional insured. On the Effective Date, BUCKNER shall provide the CITY with evidence reasonably acceptable to the CITY, by way of a certificate of insurance reasonably acceptable to the CITY that the required insurance is in effect. the CITY may, from time to time, request evidence confirming that such required insurance remains in effect. BUCKNER waives and releases and shall, to the extent reasonably available in the jurisdiction in which the Real Estate is located, cause its insurance carriers to waive and release any and all rights of recovery

which it and/or they might have against the CITY for any loss or damage to the extent such damage is or could be covered by commercial general liability insurance.

8. Applicable Law and Venue. This Consent shall be governed by, and construed under, the laws of the State of Texas. Venue for any dispute between the parties arising under this Consent shall be in the state court having appropriate jurisdiction in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

9. Modification. This Consent shall not be construed as a release of any rights or obligations of the CITY or BUCKNER under or in connection with the Public Easement Area other than the right of BUCKNER to keep and maintain the Public Easement Improvements in the Public Easement Area upon and subject to the terms, covenants, conditions and provisions of this Consent. The terms, covenants, conditions and provisions of this Consent may be modified or amended in whole or in part only with the written agreement of the parties hereto. Any such agreement shall memorialized by an instrument in writing duly executed by the appropriate parties in interest and recorded in the Office of the Recorder of Hayes County, Texas.

10. Attorneys' Fees. In the event either party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Consent, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable costs and attorneys' fees.

11. Entire Agreement. This Consent constitutes the entire agreement by the parties hereto, and supersedes all prior discussions, undertakings or agreements with respect to the subject matter of this Consent.

12. Severability. If any term, covenant or restriction established by this Consent shall be invalid or unenforceable, the remainder of this Consent shall not be affected thereby, and each term, covenant or restriction shall be valid and enforceable to the fullest extent permitted by law.

13. Counterparts. This Consent may be executed in multiple counterparts, each of which, when taken together, shall constitute an original.

[signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Consent as of the Effective Date.

**CITY OF SAN MARCOS, TEXAS**  
a Texas municipal corporation

By: \_\_\_\_\_  
Stephanie Reyes, City Manager

ACKNOWLEDGMENT

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Stephanie Reyes, City Manager of the City of San Marcos, a Texas home rule municipality, in such capacity, on behalf of said municipality.

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

**BUCKNER:**

---

NANCY MILBURN GRANAGHAN also  
known as Nancy Milburn Granagan and  
Nancy Louise Granaghan

---

GENE BUCKNER

---

MELINDA LOVELACE

---

BONNIE SUZANNE BUCKNER BUMPUS

---

WILLIAM DAVID BUCKNER

---

SARAH ANN MCBRYDE

SAN MARCOS PUBLISHING, LP

By: SAN MARCOS PUBLICATIONS, LLC  
General Partner

By: \_\_\_\_\_  
JAMES E. MOSER, Managing Member

ACKNOWLEDGMENT FOR BUCKNER

STATE OF \_\_\_\_\_ §

\_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Nancy Milburn Granaghan also known as Nancy Milburn Granagan and Nancy Louise Granaghan.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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

STATE OF \_\_\_\_\_ §

\_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Gene Buckner.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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

STATE OF \_\_\_\_\_ §

\_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Melinda Lovelace.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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

STATE OF \_\_\_\_\_ §  
\_\_\_\_\_  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Bonnie Suzanne Buckner Bumpus.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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

STATE OF \_\_\_\_\_ §  
\_\_\_\_\_  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by William David Buckner.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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

STATE OF \_\_\_\_\_ §  
\_\_\_\_\_  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Sarah Ann McBryde.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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



STATE OF

§

§

COUNTY OF

§

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by James P. Moser, Managing Member of San Marcos Publications, LLC, a Texas limited liability company, General Partner of San Marcos Publishing, LP, a Texas limited partnership, on behalf of the company and partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

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

**EXHIBIT A**

**REAL ESTATE**

Lot 12-A, Weatherford Subdivision, a subdivision in Hays County, Texas, according to the map or plat of record in Volume 4, Page 84, of the Plat Records of Hays County, Texas

**EXHIBIT B**

**PUBLIC EASEMENT AREA**

(description attached)

**EXHIBIT C**

**PUBLIC EASEMENT IMPROVEMENTS**

(attached)