

**CROSS REFERENCE INSTRUMENT NOS.:
19003472 AND PLAT VOL. 17 PGS 181 - 182**

CONSENT TO ENCROACHMENT

THIS CONSENT TO ENCROACHMENT (this "Consent") is made and entered into as of this _ day of _ , 2020 (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas municipal corporation ("GRANTOR") and **ELLA LOFTS FUNDING COMPANY LLC**, a Delaware limited liability company ("GRANTEE").

WITNESSETH:

WHEREAS, GRANTEE 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 twenty-five (25) foot Public Access, Drainage and Public Utility Easement as depicted on that certain State House Addition plat, signed September 5, 2013 and recorded in Plat Book Volume 17, Pages 181 – 182 of the Plat 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, Grantee'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 student housing facility on the Real Estate (the "Student Housing Facility"), with such improvements being depicted on Exhibit C attached hereto (collectively, the "Public Easement Improvements");

WHEREAS, GRANTEE has requested GRANTOR's consent to keep and maintain the Public Easement Improvements within the Public Easement Area; and

WHEREAS GRANTEE 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.

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, GRANTOR does hereby grant unto GRANTEE, 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 Student Housing Facility (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 GRANTEE's prior written consent.

2. Grantee Obligations. GRANTEE shall, at GRANTEE'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 GRANTEE 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 GRANTEE, GRANTOR shall have the right to correct and remedy such failure in a manner deemed reasonably necessary by GRANTOR and GRANTEE shall reimburse GRANTOR for the actual, documented out-of-pocket costs incurred by GRANTOR to cure such failure within thirty (30) days of GRANTOR's written request thereof to GRANTEE; provided, however, GRANTOR shall have no obligation to GRANTEE 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 GRANTOR 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, GRANTEE shall pay to GRANTOR an additional reasonable amount equal to such reasonable additional cost within 30 days after receipt of an itemized invoice therefor from GRANTOR, to the extent GRANTEE does not relocate the same to such a location that does not make such installation, reinstallation, relocation or repair more costly.

4. Grantor Restrictions. GRANTOR acknowledges and agrees that GRANTOR shall not have the right to remove or relocate any portion of the Public Easement Improvements without the prior written consent of GRANTEE, which consent shall not be unreasonably withheld, conditioned or denied. Notwithstanding the foregoing, GRANTOR 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 GRANTEE, any portion of the Public Easement Improvements prevent the ongoing repair, replacement, maintenance or operation of GRANTOR'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 GRANTOR'S utility facilities in the Public Easement Area; provided, however, that GRANTOR shall give GRANTEE such reasonable time not to exceed 90 days to allow GRANTEE 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.

6. Limitation of Liability, Indemnification. Except to the extent caused by the gross negligence or willful misconduct of GRANTOR, its employees, agents, contractors or subcontractors, GRANTEE shall indemnify, defend, and hold GRANTOR 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 GRANTEE, its employees, agents, or invitees. GRANTEE 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 GRANTOR have any liability with respect to the same, except to the extent caused by the gross negligence or willful misconduct of GRANTOR, its employees, agents, contractors and subcontractors. GRANTEE hereby releases GRANTOR of and from every right, claim, and demand that GRANTEE may hereafter have against GRANTOR 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 GRANTOR, 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, GRANTEE, 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 GRANTOR as an additional insured. On the Effective Date, GRANTEE shall provide GRANTOR with evidence reasonably acceptable to GRANTOR, by way of a certificate of insurance reasonably acceptable to GRANTOR that the required insurance is in effect. GRANTOR may, from time to time, request evidence confirming that such required insurance remains in effect. GRANTEE 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 GRANTOR 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 GRANTOR or GRANTEE under or in connection with the Public Easement Area other than the right of GRANTEE 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 be 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.

GRANTOR:

CITY OF SAN MARCOS, TEXAS
a Texas municipal corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

This instrument was acknowledged before me on _____, 2020 by _____, _____ of the City of San Marcos, , a Texas home rule municipality, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

GRANTEE:

ELLA LOFTS FUNDING COMPANY LLC,
a Delaware limited liability company

By: GSS Property Services XXV,
Inc. a Delaware corporation, its sole
member

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT FOR GRANTOR

STATE OF NEW YORK _____ §

COUNTY OF _____ §

On this the ____ day of February, 2020, before me, a Notary Public, personally appeared _____, who acknowledged [himself/herself] to be the _____ of GSS Contract Property Services XXV, Inc., a Delaware corporation, the sole member of Ella Lofts Funding Company, LLC, a Delaware limited liability company, and that [he/she], in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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 _____
My Commission Expires: _____

EXHIBIT A

REAL ESTATE

(description attached)

[illegible]

VICINITY MAP - NOT TO SCALE

[illegible][illegible]

A CONCRETE RETAINING WALL AND CURBING CROSSES THE PUBLIC ACCESS, DRAINAGE AND UTILITY EASEMENT AS SHOWN HEREON.

POLICYHOLDERS IN ZONE 1,3, COVERED BY SOLE-AGENCY LOCATIONS GRAPHIC FLOTTING ONLY, THE PROPERTY IS IN ZONE 1,3 OF THE FLOOD INSURANCE RATE MAP. COMMUNITY PANEL NO. 480900000, WHICH BEARS AN EFFECTIVE DATE OF SEPTEMBER 2, 2006 AND IS NOT A SPECIAL FLOOD HAZARD AREA, AS SHOWN ON THE FEMA WEBSITE (<http://www.fema.gov>) BY LETTER DATED ON NOVEMBER 13, 2010 HAS BEEN LAMINATED TO THIS COMMUNITY DATA CURRENTLY PARTICIPATING IN THE PROGRAM. NO FURTHER ACTION WAS REQUIRED TO DETERMINE THIS POLICY AND AN ELEVAION CERTIFICATE MAY BE NEEDED TO VERIFY THIS DETERMINATION FOR APRIL 17, 2011.

VARIANCE FROM THE FEDERAL EXCESS SURPLUS MANAGEMENT AGENCY.

DATE	DESCRIPTION	DATE	DESCRIPTION
11/30/2018	FIRST DRAFT	12/20/2018	ADDED ADDITIONAL ZONING INFO
12/11/2018	3RD DRAFT OF THE COMPREHENSIVE ZAO ADDED COMMENTS	01/03/2019	CORRECTED CERTIFICATION NAME
12/18/2018	CLIENT COMMENTS		
FIELD WORK:	DRAFTED 3, J. P.	CHECKED BY: H. H.	F8 & PG.

THE USE OF THIS DOCUMENT'S FORMAT IS STRICTLY PROHIBITED AND CONTINGENT UPON THE WRITTEN CONSENT AND PERMISSION OF BOKF & CLARK CORP.
© 2018 BOKF & CLARK CORP.

THIS SURVEY WAS PREPARED FOR THE PURPOSE OF THIS REAL ESTATE TRANSACTION ONLY AND FURTHER PARTIES OTHER THAN THOSE IDENTIFIED ABOVE SHALL RELY ON IT FOR ANY OTHER PURPOSE OR TRANSACTION.

[illegible]

1641 STATE HOUSE ADDITION, a subdivision in Hays County, Texas, according to the map or plat of record in Volume 17, Page(s) 181-182, of the Plat Records of Hays County, Texas.

[illegible]

Sidra-Vie Portfolio Project

Elia Lofis
817 Chestnut St., San Marcos, TX
Based upon The Comptroller 844603(S)-TX-CF-5GJE
of Stewart Title Guaranty Company
bearing an effective date of October 3, 2018 at 8:00 AM
Surveyor's Certification

This is to certify that this map or plan and the survey of which it is based were made in accordance with the 2015 edition of the International Geomatics Engineering Code of Practice (IGEMP) 2015, published by the Institution of Surveyors, and the relevant standards of the American Institute of Professional Surveyors (AIPs) and the National Society of Professional Surveyors (NSPS), and in accordance with the following details: 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19 and 20 of the AIPs. This plan was completed on November 15, 2018.



SURVEY PERFORMED BY:
BOCK & CLARK CORP.
501 THOMSON PARK DRIVE
CRANBERRY TOWNSHIP, PA 16006
PHONE: (800) 787-2834 FAX: (724) 314-0002
WWW.BOCKANDCLARK.COM
EMAIL: JIBOWILL@BOCKANDCLARK.COM
THE SURVEY IS CERTIFIED TO DATE OF FIELD SURVEY, NOT DATE OF SIGNATURE.
NOT VALID UNLESS SIGNED, DATED AND STAMPED WITH SURVEYOR'S SEAL.

Boeckh & Clark
AN INVIS COMPANY

National Coordinators
1-(800)-SURVEYS (787-8397)

Boeckh & Clark Corporation
3550 W. Market Street, Suite 200, Avon, Ohio 44333
maymehelpyou@boeckhandclark.com
www.boeckhandclark.com

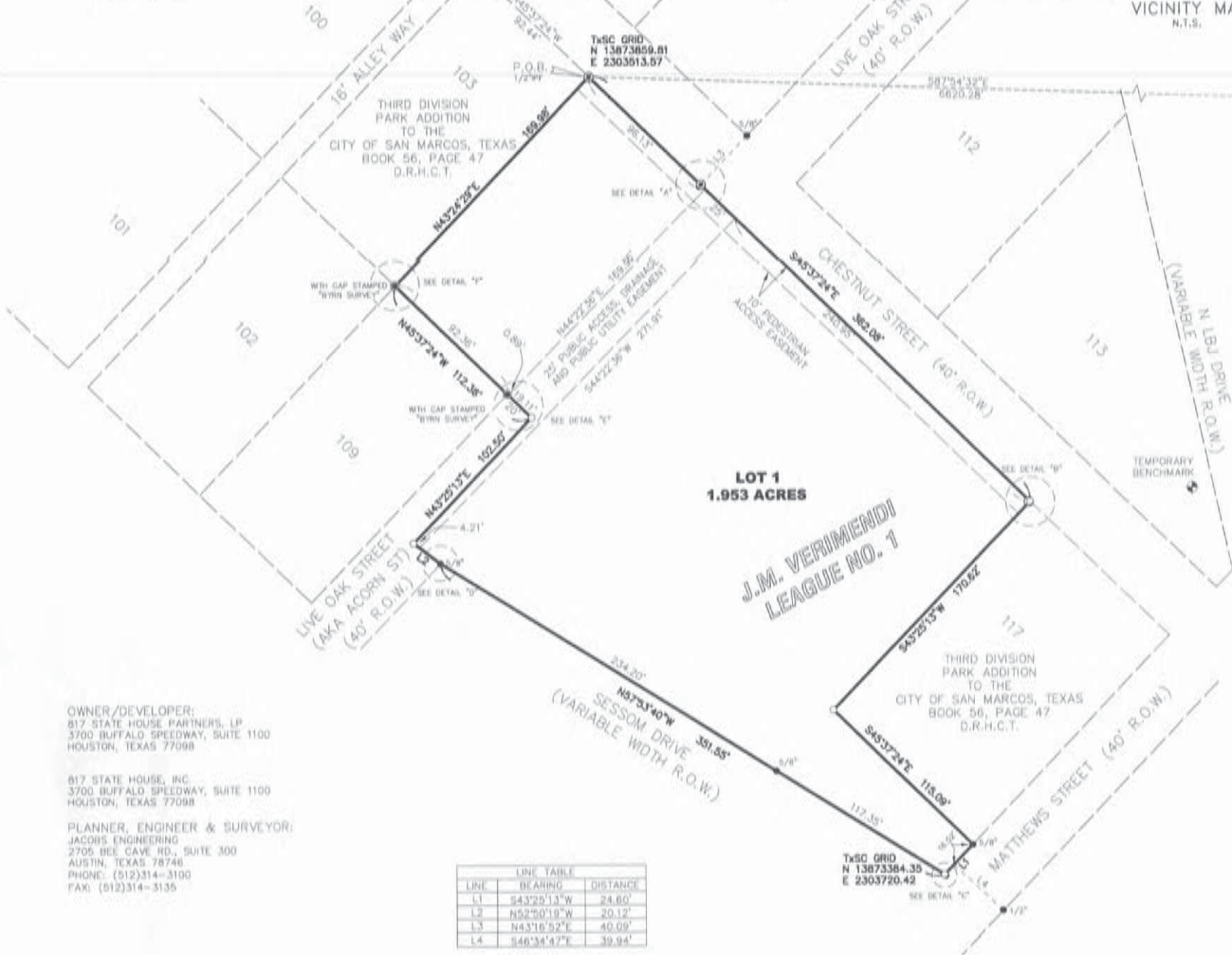
PITTSBURGH PROJECT NO. 4201800704

EXHIBIT B

PUBLIC EASEMENT AREA

(description attached)

vol. 17 Pa. 181



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S43°25'13"W	24.60'
L2	N52°50'19"W	20.12'
L3	N43°16'52"E	40.09'
L4	S46°34'47"E	39.94'

LEGEND

- BEARING BASES:
ALL BEARINGS SHOWN ON PLAT ARE BASED ON THE TEXAS
COORDINATE SYSTEM NAD83/96CDRS ADJUSTMENT SOUTH
CENTRAL ZONE, BASED ON CITY OF SAN MARCOS
HORIZONTAL CONTROL POINT GPS#23 HAVING HORIZONTAL
GRID VALUES OF NORTHING 13873618.27, EASTING
2310128.67, ALL DISTANCES SHOWN ON PLAT ARE
SURFACE DISTANCES.
COMBINED SCALE FACTOR IS 0.9999883.

TEMPORARY BENCHMARK:
"SQUARE" CUT ON THE NORTHEAST CORNER OF A CURB
PAVEMENT, ALONG THE SOUTHWEST SIDE OF N. LBJ DRIVE,
NEAR THE NORTHEAST LOT LINE OF LOT 113, THIRD
DIVISION PARK ADDITION TO THE CITY OF SAN MARCOS
TEXAS, APPROXIMATELY 363' SOUTHEAST OF THE EAST
RIGHT-OF-WAY LINE OF LIVE OAK STREET AND 12'
SOUTHWEST OF THE NORTHEAST LOT LINE OF LOT 113,
THIRD DIVISION PARK ADDITION.
ELEVATION = 651.18

NOTES:
THE AFOREMENTIONED BENCHMARK WAS ESTABLISHED BY
USING THE CITY OF SAN MARCOS BENCHMARK NO. 36, A
1" REBAR SET IN CONCRETE FILLED 6" PVC PIPE AT THE
NORTHEAST CORNER OF LBJ AND SESSOM DRIVE @ EDGE
OF SIDEWALK. ELEVATION = 630.74

0.203 ACRE PORTION OF LIVE OAK STREET RIGHT-OF-WAY
WAS VACATED PER CITY OF SAN MARCOS ORDINANCE NO.
2012-03, RECORDED IN DOC. NO. 201212017950
O.P.R.H.C.T.



JACOBS PLAT No
WJXK5401

Exhibit B: Public Easement Area
For: Consent To Encroachment

DESCRIPTION OF PLATTED AREA

THE STATE OF TEXAS
COUNTY OF HAYS

THAT, 817 STATE HOUSE PARTNERS, L.P., BE PRESENTED BY KENDALL PHINNEY BEING THE OWNER OF A CALL 1.387 ACRE TRACT OF LAND IN THE J.M. VERAMENDI LEAGUE NO. ONE IN HAYS COUNTY, TEXAS, AS DESCRIBED IN A DEED RECORDED UNDER DOCUMENT NUMBER 90010866 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS AND OF A CALL 0.203 ACRE TRACT OF LAND IN THE J.M. VERAMENDI LEAGUE NO. ONE IN HAYS COUNTY, TEXAS, AS DESCRIBED IN A DEED RECORDED UNDER DOCUMENT NUMBER 12017950 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND THAT, 817 STATE HOUSE INC., BEING THE OWNER OF LOT 108, OF THIRD DIVISION PARK ADDITION, IN THE J.M. VERAMENDI LEAGUE NO. ONE IN HAYS COUNTY, TEXAS, AS DESCRIBED IN A DEED RECORDED UNDER DOCUMENT NUMBER 10024168 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE A 1.953 ACRE TRACT IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT, TO BE KNOWN AS:

"STATE HOUSE ADDITION"

SUBJECT TO THE COVENANTS AND RESTRICTIONS SHOWN HEREON, AND WE DO HEREBY DEDICATE TO THE PUBLIC THE USE OF ALL STREETS AND EASEMENTS AS SHOWN HEREON.

817 STATE HOUSE PARTNERS, L.P.

BY: Kendall Phinney ITS GENERAL PARTNER

BY: Kendall Phinney

NAME: Kendall Phinney

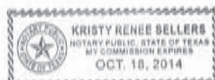
ITS: Manager

817 STATE HOUSE PARTNERS, L.P.
3700 BUFFALO SPEEDWAY, SUITE 1100
HOUSTON, TEXAS 77098

THE STATE OF TEXAS
COUNTY OF HARRIS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 5th DAY OF September, 2013, A.D., BY:
KENDALL PHINNEY, MANAGING MEMBER OF, 817 STATE HOUSE PARTNERS, L.P.,
WITNESS MY HAND AND SEAL OF OFFICE, THIS 5th DAY OF September, 2013, A.D.

K. Sellers
NOTARY PUBLIC IN AND
FOR HARRIS COUNTY, TEXAS



817 STATE HOUSE INC.

BY: 817 State House, Inc. ITS GENERAL PARTNER

BY: Kendall Phinney

NAME: Kendall Phinney

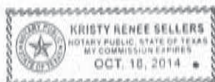
ITS: Manager

817 STATE HOUSE INC.
3700 BUFFALO SPEEDWAY, SUITE 1100
HOUSTON, TEXAS 77098

THE STATE OF TEXAS
COUNTY OF HARRIS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 5th DAY OF September, 2013, A.D., BY:
KENDALL PHINNEY, MANAGING MEMBER OF, 817 STATE HOUSE INC.,
WITNESS MY HAND AND SEAL OF OFFICE, THIS 5th DAY OF September, 2013, A.D.

K. Sellers
NOTARY PUBLIC IN AND
FOR HARRIS COUNTY, TEXAS



1. ACCORDING TO THE NATIONAL FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 48209C0389F, DATED SEPTEMBER 2, 2005 FOR HAYS COUNTY TEXAS, NO PORTION OF THE TRACT SHOWN HEREON IS LYING WITHIN THE 100-YEAR FLOODPLAIN.
2. THIS TRACT IS WITHIN THE SAN MARCOS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT BOUNDARIES.
3. THIS TRACT LIES WITHIN THE CITY OF SAN MARCOS JURISDICTION, AND THAT THE PROVISIONS OF THE PDD ZONING APPROVED FOR THIS PROJECT SHALL GOVERN THIS PROJECT PER CITY OF SAN MARCOS ORDINANCE 2011-21 APPROVED MAY 3, 2011.
4. NO STRUCTURE MAY BE OCCUPIED UNTIL CONNECTED TO A WATER SYSTEM AND TO THE PUBLIC SEWER SYSTEM.
5. ALL BEARINGS SHOWN ON THE REPLAT ARE BASED ON THE TEXAS COORDINATE SYSTEM NAD83/96CORS SOUTH CENTRAL ZONE. ALL DISTANCES SHOWN ON PLAT ARE SURFACE DISTANCES. COMBINED SCALE FACTOR IS 0.999883.
6. SIDEWALKS ARE REQUIRED AT THE TIME OF DEVELOPMENT PER CITY OF SAN MARCOS STANDARDS.
7. THE SUBJECT PROPERTY IS CURRENTLY ZONED MIXED USE (MU).

THE STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS:

THAT I, DAVID PAUL CARR, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY TO THE BEST OF MY SKILL AND KNOWLEDGE THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY UNDER MY SUPERVISION ON THE GROUND AND THE CORNER MONUMENTS SHOWN THEREON AS "SET" WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF SAN MARCOS.

David Paul Carr
DAVID PAUL CARR
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 3907 - STATE OF TEXAS
JACOBS ENGINEERING GROUP, INC.
2705 BEE CAVE RD., SUITE 300
AUSTIN, TEXAS 78746
PHONE: (512)314-3100
FAX: (512)314-3135



ENGINEER:

STATE OF TEXAS

COUNTY OF HAYS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS,

HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT.

John L. Boock
JOHN L. BOOCK
LICENSED PROFESSIONAL ENGINEER
NO. 98441 - STATE OF TEXAS
JACOBS ENGINEERING GROUP, INC.
2705 BEE CAVE RD., SUITE 300
AUSTIN, TEXAS 78746
PHONE: (512)314-3100
FAX: (512)314-3135



APPROVED AND AUTHORIZED TO BE RECORDED ON THE 20 DAY OF August, 2013 BY THE PLANNING AND DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN MARCOS.

Francis Berna
FRANCIS BERNA, DIRECTOR,
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

Francis Berna
FRANCIS BERNA,
RECORDING SECRETARY

APPROVED AND AUTHORIZED TO BE RECORDED ON THE 20 DAY OF August, 2013 BY THE ENGINEERING DEPARTMENT OF THE CITY OF SAN MARCOS.

Debra Moyer
DEBRA MOYER, P.E.
DIRECTOR OF ENGINEERING & CIP

Francis Berna
FRANCIS BERNA,
RECORDING SECRETARY

THE STATE OF TEXAS
COUNTY OF HAYS:

I, LIZ GONZALES, COUNTY CLERK OF HAYS COUNTY TEXAS DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 10th DAY OF September, 2013, AT 11:00 O'CLOCK P.M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN BOOK 17 PAGE 101-102

Liz Gonzales
LIZ GONZALES
COUNTY CLERK
HAYS COUNTY, TEXAS



PROJECT: LOFTS OF SAN MARCOS

JOB NUMBER: WJXK5401

DATE: JULY, 2013

SCALE: 1"=50'

SURVEYOR: DAVID PAUL CARR, RPLS NO. 3907

TECHNICIAN: B. PAUL

DRAWING:

DESCRIPTION: N/A

PARTY CHIEF: C. DORSEY

FIELDBOOKS: 501

JACOBS

TBPE REGISTRATION NO. 2066

2705 Bee Cave Road, Suite 300

Austin, Texas 78746

(512) 314-3100 Fax (512) 314-3135

STATE HOUSE
ADDITION

SHEET

2

OF

2

JACOBS PLAT No

WJXK5401

EXHIBIT C

PUBLIC EASEMENT IMPROVEMENTS

(attached)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY 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.

CITY OF SAN MARCOS DRAINAGE EASEMENT

Date: _____

Grantor: Ella Lofts Funding Company LLC, a Delaware limited liability company, 817 Chestnut, San Marcos, Hays County, Texas 78666

Grantee: City of San Marcos, Texas, a Texas municipal corporation, 639 East Hopkins Street, San Marcos, Hays County, Texas 78666

Easement Area: Being a 0.340 ACRE or 14,822 SQFT tract of land in the Thomas Jefferson Chambers Survey, Abstract No. 2 City of San Marcos, Hays County, Texas being a portion of Lot 1 of State House Addition, as further described by metes and bounds in the attached **Exhibit B**, which is incorporated herein for all intents and purposes.

Consideration: Ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Reservations from and Exceptions to Conveyance and Warranty: None

Grantor, for the Consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants and conveys to Grantee a non-exclusive easement (the "**Easement**") for storm water drainage purposes along, within across, over and through the Easement Area, together with the right to construct, reconstruct, excavate, fill, grade and regrade, install, maintain and operate drainage ways, drainage channels and drainage and detention facilities, and all related equipment and appurtenances upon, across, over and within the Easement Area (collectively, the "**Drainage Improvements**"); together with a right of ingress and egress at all times upon and across the Easement Area for these purposes and for the purposes of clearing or removing any obstructions interfering with the purposes of this easement, TO HAVE AND TO HOLD the Easement to Grantee, its successors and assigns, forever. Grantor binds Grantor and Grantor's successors and assigns to forever defend Grantee and Grantee's successors and assigns title in the Easement against every person whomsoever lawfully claiming or to claim rights therein, except as to the Reservations from and Exceptions to Conveyance and Warranty.

The Grantor covenants for itself and its successors and assigns, not to place or maintain any building, structure, or any other obstruction on or within the Easement Area, or to use the surface of the Easement Area for any purpose that would interfere with or prevent the use of the Easement

Area for the purposes set forth herein without the consent of Grantee. Grantee shall have the right to remove any building, structure or other improvements in the Easement Area to which it has not consented, together with the right to cut, trim, and control the growth of trees and other vegetation in the Easement Area. Notwithstanding the foregoing or anything to the contrary herein, Grantor reserves the right to use the Easement Area for any purpose that is not inconsistent with or will not interfere with the rights and privileges granted to Grantee by this easement.

Grantee, at its sole cost, shall maintain, repair, replace, and service the Drainage Improvements in good condition and repair, ordinary wear and tear excepted, as reasonably necessary for the safe and efficient operation of the Drainage Improvements without damage to Grantor's retained rights of use of the Easement Area.

Each of Grantee and Grantor and their respective successors and assigns (each, an **Indemnifying Party**) shall indemnify and hold the other party and its successors, assigns, tenants and subtenants (each an **"Indemnified Party"**) harmless from and against any and all losses, damages, claims, liabilities and expenses, including without limitation reasonable attorneys' fees and court costs (collectively **"Losses"**), incurred by the Indemnified Party and arising out of or in connection with (i) acts, omissions or work performed by the Indemnifying Party, its contractors, employees, agents, licensees, tenants, subtenants, licensees or invitees on the Indemnified Party's parcel, and (ii) the exercise of any rights under this Agreement by the Indemnifying Party, its contractors, employees, agents, tenants, subtenants, licensees or invitees, unless and to the extent such Losses were sustained as a result of any negligence or intentional misconduct of the Indemnified Party, its contractors, employees, agents, licensees, lessees or invitees. This paragraph shall apply to Grantee only to the extent permitted by law and subject to any immunity or limitations on liability granted by the Texas Constitution or laws.

If, as a result of the exercise of any easement rights created under this Agreement, a party shall damage or disturb the improvements of another party, the party causing such damage or disturbance shall, at its sole expense, promptly repair or restore the property of such other party to, as nearly as reasonably possible, the condition it existed immediately prior to such damage or disturbance.

This Agreement shall be governed in all respects by the laws of the State of Texas. Venue for any dispute arising under this Easement shall be in a 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.

When the context requires, singular nouns and pronouns include the plural.

[signatures on following pages]

Ella Lofts Funding Company LLC,
a Delaware limited liability company

By: GSS Property Services XXV,
Inc. a Delaware corporation, its sole
member

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT FOR GRANTOR

STATE OF NEW YORK _____ §

COUNTY OF _____ §

On this the ____ day of June, 2020, before me, a Notary Public, personally appeared _____, who acknowledged [himself/herself] to be the _____ of GSS Contract Property Services XXV, Inc., a Delaware corporation, the sole member of Ella Lofts Funding Company, LLC, a Delaware limited liability company, and that [he/she], in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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 _____

My Commission Expires: _____

CITY OF SAN MARCOS, TEXAS
a Texas municipal corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

This instrument was acknowledged before me on _____, 2020 by _____, _____ of the City of San Marcos, , a Texas home rule municipality, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

**DRAFT
SIGNED VERSION DOCUMENT
TO BE USED ON EXECUTED DOCUMENT
(EASEMENT WILL SIGNED
AFTER COUNCIL APPROVAL OF ENCROACHMENT)**

CONSENT OF LIENHOLDER

[name of lienholder], as the holder of liens(s) against the Easement Area, consents to the above grant of an easement, including the terms and conditions of such grant, and Lienholder hereby subordinates any interest in the Easement Area to the rights of Grantee under the easement and agrees that a foreclosure of Lienholder's lien(s) will not extinguish the rights and interests created by the easement in the Easement Area.

[NAME OF LIENHOLDER]

By: _____

[name and title]

ACKNOWLEDGMENT

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, by _____, _____ of _____, in such capacity, on behalf of said entity.

Notary Public, State of Texas

EXHIBIT A

~ NOT USED ~

DRAFT
SIGNED VERSION
TO BE USED ON EXECUTED DOCUMENT
(EASEMENT WILL SIGNED
AFTER COUNCIL APPROVAL OF ENCROACHMENT)

Exhibit B

Description of Easement Area

DRAFT
SIGNED VERSION
TO BE USED ON EXECUTED DOCUMENT
(EASEMENT WILL SIGNED
AFTER COUNCIL APPROVAL OF ENCROACHMENT)

**A METES AND BOUNDS
DESCRIPTION OF A
0.340 ACRE TRACT OF LAND**

BEING a 0.340 acre (14,822 square feet) tract of land situated in the Thomas Jefferson Chambers Survey, Abstract No. 2, City of San Marcos, Hays County, Texas; being a portion of Lot 1 of State House Addition, plat of which recorded in Volume 17, Pages 181-182 of the Plat Records of Hays County; and being more particularly described as follows:

COMMENCING at a PK nail with a washer found on the southwesterly right-of-way line of Chestnut Street (40 feet wide) marking the northern-most northeast corner of said Lot 1, same being the northern-most corner of a called 0.530 acre tract of land described in instrument to Aponte Investments LP recorded in Document No. 18039600 of the Official Public Records of Hays County;

THENCE, South 43°25'17" West, 170.54 feet, departing the southwesterly right-of-way line of said Chestnut Street and along the northwesterly line of said 0.530 acre tract to a 1/2-inch iron rod with a plastic cap found marking the western-most corner of said 0.530 acre tract for the **POINT OF BEGINNING** of the herein described tract;

THENCE, South 45°39'26" East, 115.19 feet, along the southwesterly line of said 0.530 acre tract to a 1/2-inch iron rod found marking the eastern-most southeast corner of said Lot 1 on the northerly right-of-way line of Sessom Drive (variable width);

THENCE, departing the southwesterly line of said 0.530 acre tract and along the northerly right-of-way line of said Sessom Drive, the following three (3) courses and distances:

1. North South 43°56'14" West, 24.71 feet to a 1/2-inch iron rod with a plastic cap stamped (JACOBS PROP COR) found for corner;
2. North 57°53'40" West, 351.74 feet to a 1/2-inch iron rod found for corner;
3. North 52°47'30" West, 15.73 feet to a point for corner on the southeasterly line of a 25 foot Public Access, Drainage and Public Utility Easement recorded in aforesaid State House Addition; from which a 5/8-inch iron rod with a plastic cap stamped (JACOBS PROP COR) found marking the western-most southwest corner of said Lot 1 bears North 52°47'30" West, 4.21 feet;

THENCE, departing the northerly right-of-way line of said Sessom Drive and crossing said Lot 1, the following three (3) courses and distances:

1. North 44°22'36" East, 49.68 feet along the southeasterly line of said 25 foot Public Access, Drainage and Public Utility Easement to a point for corner;
2. South 54°18'54" East, 247.06 feet, departing said 25 foot Public Access, Drainage and Public Utility Easement to a point for corner;
3. North 43°10'20" East, 14.35 feet to the **POINT OF BEGINNING**, and containing 0.340 acre of land in Hays County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System, South Central Zone (FIPS 204) (NAD'83). All distances are on the Surface and shown in U.S. Survey Feet. To convert grid distances to grid, apply the combined Surface to Grid scale factor of 0.999882934. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.

JOHN G. MOSIER
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DRAINAGE EASEMENT
THOMAS JEFFERSON CHAMBERS SURVEY,
ABSTRACT NO. 2
CITY OF SAN MARCOS HAYS COUNTY, TEXAS

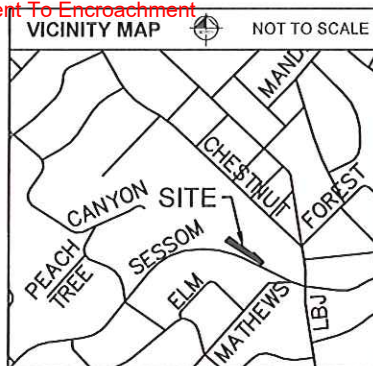
Kimley»Horn

601 NW Loop 410, Suite 350
San Antonio, Texas 78216

FIRM # 10193973

Tel. No. (210) 541-9166
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
NA	APS	JGM	6/12/2019	069227309	1 OF 2



CHESTNUT STREET
(40' R.O.W.)

P.O.C.
PKF

10' PEDESTRIAN
ACCESS EASEMENT
VOL.17, PGS.181-182
PRHC

LOT 1
STATE HOUSE ADDITION
VOL.17, PGS.181-182
PRHC

0.530 ACRE
APONTE INVESTMENTS LP
DOC# 18039600
OPRHC

P.O.B.
PKF

DRAINAGE
EASEMENT

0.340 ACRE

14,822 SQ. FT.

SESSOM DRIVE
(VARIABLE WIDTH R.O.W.)

1/2" IRF

5/8" IRFC
(JACOBS PROP COR)

OI

LEGEND:

P.O.C. = POINT OF COMMENCING

P.O.B. = POINT OF BEGINNING

IRFC = IRON ROD W/CAP FOUND

IRF = IRON ROD FOUND

PKF = PK NAIL W/ WASHER FOUND

R.O.W. = RIGHT-OF-WAY

PRHC = PLAT RECORDS OF HAYS COUNTY

OPRHC = OFFICIAL PUBLIC RECORDS HAYS COUNTY

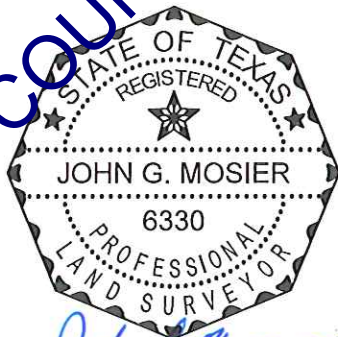
NOTES:

The bearings shown hereon are based on the Texas State Plane Coordinate System, South Central Zone (FIPS 4203) (NAD'83), as determined by the Global Positioning System (GPS). All distances shown hereon are on the SURFACE. To convert SURFACE distances to the GRID, apply the combined SURFACE to GRID scale factor of 0.999882934. The unit of linear measurement is U.S. Survey Feet.

LINE TABLE

NO.	BEARING	LENGTH
L1	S43°56'14"W	24.71'
L2	N52°47'30"W	15.73'
L3	N52°47'30"W	4.21'
L4	N44°22'36"E	49.68'
L5	N43°10'20"E	14.35'

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John G. Mosier
6-12-2019

DRAINAGE EASEMENT

THOMAS JEFFERSON CHAMBERS SURVEY,
ABSTRACT NO. 2
CITY OF SAN MARCOS HAYS COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	APS	JGM	6/12/2019	039227309	2 OF 2