

STATE OF TEXAS §

COUNTY OF BRAZOS §

**NOTICE OF ENCROACHMENT**

WHEREAS, Bryan College Station Habitat for Humanity, Inc., Raul Luna, and Maria Veronica Luna (“Owner”) are the current and prospective owners of 1604 Cassib Street, which is more particularly described as Lot 10-R, Block 3 of the replat of the Stovall Subdivision which is recorded in Volume 7595, Page 189 of the Official Real Property Records of Brazos County, Texas (“Property”); and

WHEREAS, the City of Bryan, Texas (“City”) is the record owner of a fifteen foot (15’) Public Utility Easement (“Easement”) that runs across the Property, which includes a storm sewer line in the location shown on **Exhibit A**; and

WHEREAS, Owner has constructed a single family residential structure on the Property which encroaches into the City’s Easement, as shown on **Exhibit A**, and which is located dangerously close to the City’s storm sewer line; and

WHEREAS, the parties acknowledge that the City has a superior right to the use of the Easement area, and that while the Owner retains the right to use the surface of the Easement in any manner that does not interfere the City’s use, the City retains the right to remove any improvement, obstruction, or other hindrance, without compensation to Owner, in the course of construction, repair, or maintenance of its infrastructure; and

WHEREAS, the City is willing to waive any objection to the encroachment by the residential structure provided that it does not impose a burden on the City or pose a risk to the existing infrastructure; and

WHEREAS, the Owner is willing to agree to the conditions set forth herein in exchange for the City’s waiver of any objection to the encroachment; and

NOW WHEREFORE PREMISES CONSIDERED the parties agree as follows:

1. With the exception of the residential structure shown on **Exhibit A**, Owner covenants and agrees not to place any additional structures, or parts thereof, within the Easement, excluding landscaping, fences, driveways, or walkways. In the event that Owner places landscaping, fences, driveways, or walkways within the Easement, Owner acknowledges that the City retains the right to remove same during the course of construction, repair, or maintenance of the storm sewer line, without compensation to Owner.
2. Owner hereby releases and holds harmless the City, as well as its representatives, officers, employees, contractors, and assigns, from any and all liability for damage to the residential structure shown on **Exhibit A**, or to any personal property contained therein, sustained as a result of future maintenance, repair, or replacement of the storm sewer line within the Easement, except in the case of willful conduct or gross negligence.
3. This agreement shall run with the land and shall be binding on the heirs, successors, and assigns of the parties.

4. Except as otherwise explicitly stated herein, the City retains any and all rights with respect to the use of the Easement. Owner's right to use the surface of the Easement is limited as stated herein and to the extent that Owner may not unreasonably interfere with City's use of the Easement.
5. Grantee understands that the City has underground storm sewer utilities within this easement and agrees not to do any excavation, construction, or any other activity which endangers the structural integrity of the City's infrastructure.
6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
7. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
8. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
9. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
10. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
11. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

Executed on this the \_\_\_\_ day of \_\_\_\_\_, 2016.

**B/CS HABITAT FOR HUMANITY, INC.**

**CITY OF BRYAN, TEXAS**

\_\_\_\_\_  
Andy York, Interim Executive Director

\_\_\_\_\_  
Jason P. Bienski, Mayor

**RAUL LUNA**

**ATTEST:**

\_\_\_\_\_  
Raul Luna

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**MARIA VERONICA LUNA**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Maria Veronica Luna

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**STATE OF TEXAS** §  
**COUNTY OF BRAZOS** §

This instrument was acknowledged before me the undersigned notary on the \_\_\_\_ day of \_\_\_\_\_, 2016 by Raul Luna, for the purposes stated herein.

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

**STATE OF TEXAS** §  
**COUNTY OF BRAZOS** §

This instrument was acknowledged before me the undersigned notary on the \_\_\_\_ day of \_\_\_\_\_, 2016 by Maria Veronica Luna, for the purposes stated herein.

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

**STATE OF TEXAS** §  
**COUNTY OF BRAZOS** §

This instrument was acknowledged before me the undersigned notary on the \_\_\_\_ day of \_\_\_\_\_, 2016 by Andy York, Interim Executive Director of B/CS Habitat for Humanity, Inc. on behalf of said entity, for the purposes stated herein.

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

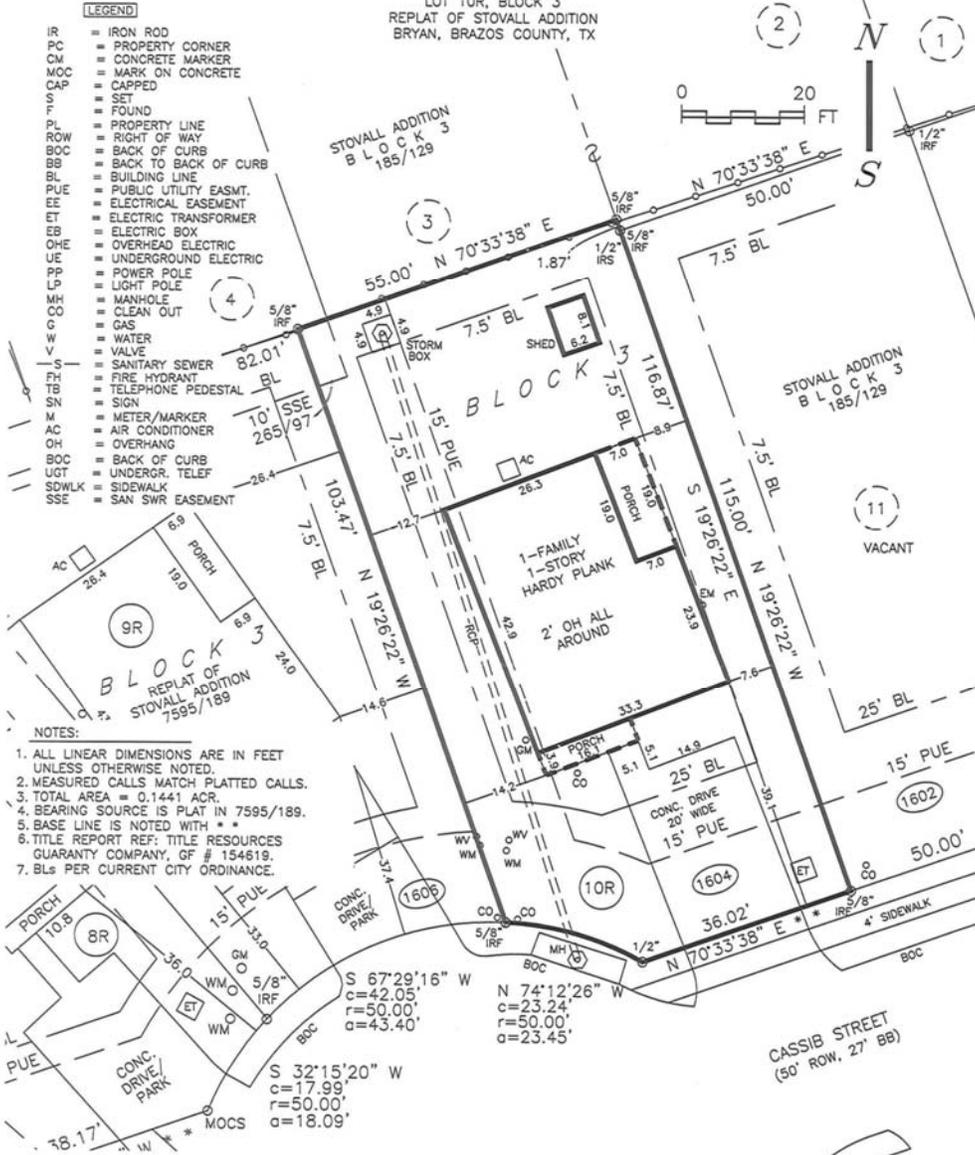
# EXHIBIT A

**ALINDO ENGINEERS AND PLANNERS, INC.**

3833 SOUTH TEXAS AVE., SUITE 213 BRYAN, TEXAS 77802 979-846-8868  
FIRM LICENSES: ENGINEERING F-1799, SURVEYING 100269-00

8-15-3-10R

RAUL LUNA, MARIA VERONICA LUNA  
1804 CASSIB STREET  
LOT 10R, BLOCK 3  
REPLAT OF STOVALL ADDITION  
BRYAN, BRAZOS COUNTY, TX



- NOTES:**
1. ALL LINEAR DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
  2. MEASURED CALLS MATCH PLATTED CALLS.
  3. TOTAL AREA = 0.1441 ACR.
  4. BEARING SOURCE IS PLAT IN 7595/189.
  5. BASE LINE IS NOTED WITH \*\*
  6. TITLE REPORT REF: TITLE RESOURCES GUARANTY COMPANY, GF # 154619.
  7. BLs PER CURRENT CITY ORDINANCE.

THIS IS TO CERTIFY THAT ON NOVEMBER 2, 2015, A SURVEY WAS COMPLETED UNDER MY DIRECTION, SUPERVISION AND CONTROL ON THE GROUND OF THE PROPERTY SHOWN HEREON, LEGALLY DESCRIBED AS LOT 10R, BLOCK 3, REPLAT OF STOVALL SUBDIVISION, AN ADDITION TO THE CITY OF BRYAN, TX, PLATTED AND RECORDED IN VOLUME 7595, PAGE 189, OFFICIAL RECORDS, BRAZOS COUNTY, TX.

THIS ALSO CERTIFIES THAT, TO THE BEST OF MY KNOWLEDGE BASED ON THE INFORMATION CURRENTLY AVAILABLE TO ME, THERE ARE NO BUILDING STRUCTURES, BUILDING STRUCTURES INTRUSIONS OR PROTRUSIONS, APPARENT CONFLICTS OR VISIBLE EVIDENCE OF EASEMENTS OTHER THAN WHAT IS SHOWN HEREON. FURTHERMORE THIS PROPERTY DOES NOT LIE WITHIN AN IDENTIFIED 100-YR FLOOD PLAIN PER FEMA PANEL 48041C0195E FOR BRAZOS COUNTY, TEXAS, DATED APR. 2, 2014, REVISED BY LOMR DATED JUL. 7, 2014.

THIS SURVEY IS BEING PROVIDED SOLELY FOR THE USE OF THE CURRENT BUYER. NO LICENSE, EXPRESSED OR IMPLIED, IS BEING CREATED TO COPY THE SURVEY EXCEPT AS NEEDED IN CONJUNCTION WITH THE CURRENT TRANSACTION WHICH IS TO BE COMPLETED NO LATER THAN SIX MONTHS AFTER THE DATE OF SIGNATURE OF THIS SURVEY.  
SURVEYING INQUIRIES: TBP.S 512-239-5263

*Christian Galindo*

CHRISTIAN A. GALINDO, P.E. # 53425, R.P.L.S. # 4473  
NOVEMBER 4, 2015  
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