

POSSESSION AND USE AGREEMENT FOR DRAINAGE PURPOSES

STATE OF TEXAS

§

Project: Minnesota Drain Project

§

Parcel No.: 20

COUNTY OF HIDALGO

§

This agreement, effective the _____ day of _____, (the "Effective Date") between the County of Hidalgo, State of Texas, acting by and through the Hidalgo County Commissioners Court (the "County"), and David Bernal and wife Reyes Bernal (the "Grantor(s)"), grants an irrevocable right to possession and use to the County, its contractors, agents and all others deemed necessary by the County for the purpose of constructing a portion of the Minnesota Drainage Project. The property involved is described more fully in field notes and plat map (attached hereto as Exhibit A) and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the County which is set forth in Paragraph two below, the receipt and sufficiency of which is acknowledged, Grantor(s) grant, bargain, sell and convey to the County of Hidalgo exclusive possession and use of the Property for the purpose of constructing a drain ditch and appurtenances thereto and the right to remove any improvements. This Possession and Use Agreement will extend to the, County its contractors, assigns and/or owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the County in the future. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of these utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use, the County will tender to the Grantor(s) the sum of **Seven Thousand Four Hundred Thirty Eight Dollars and No 100ths**, Dollars (\$7,438.00). The Grantor(s) agrees that this sum represents adequate and full compensation for the possession and use of the Property. The County will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents the County's approved value. The approved value is the County's determination of the just compensation owed to the Grantor(s) for the full easement interest to be acquired by the County in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that this sum will be deducted from any final settlement amount, award or verdict. In the event the final award or verdict for the easement is less than the amount the County has paid for the possession and use of the Property, then the Grantors agree that the original amount tendered represents an overpayment and that the County is entitled to seek a refund.
3. The Grantor(s) warrants and represents that the title to the Property is free and clear of all liens and encumbrances and that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. Grantors further warrant that no other person or corporation owns an interest in the fee title to the Property.

The Grantor(s) further agree(s) to indemnify the County from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

4. This Agreement is made with the understanding that the County will continue to negotiate in good faith with the Grantor(s) to acquire an easement interest in the Property by direct purchase. It is further understood in the event a settlement is not reached within sixty (60) days of the Effective Date of this Agreement; the County shall begin proceedings in eminent domain to acquire an easement over and across the Property. The County will not unreasonably delay the commencement of proceedings under eminent domain once the time provided for in this paragraph has expired.
5. The parties agree that the valuation date for determining the amount of just compensation for the easement over and across the Property, for negotiation or eminent domain proceeding purposes, will be the date on which payment was tendered to the Grantor(s) pursuant to paragraph two above.
6. This grant will not prejudice Grantor's rights to receive full and just compensation for the easement interest to be acquired by the County in the Property, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of Grantors' lands, save and except all oil, gas and sulphur. This grant will not prejudice Grantor(s) rights to any relocation benefits for which they may be eligible.
7. In the event the County institutes eminent domain proceedings, the County will not be liable to Grantor(s) for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the County until entry of judgment.
8. The purpose of this Agreement is to allow the County to proceed with its construction project without delay and to allow the Grantor(s) to avoid litigation at this time.
9. Grantors reserve all of the oil, gas and sulphur in and under the land herein conveyed but waive all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. Nothing in this reservation will affect the title and rights of the County to take and use all other minerals and materials thereon, and thereunder. The extraction of oil, gas and minerals may not affect the geological stability of the surface.
10. The undersigned Grantor(s) agree(s) to pay all taxes, including prorated taxes for the current year, and special assessments due at the time the County takes possession of the Property.
11. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties.
12. It is agreed the County will record this document
13. Other conditions:

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the County of Hidalgo and its assigns forever, for the purposes and subject to the limitations set forth above.

IN WITNESS WHEREOF, THIS INSTRUMENT IS EXECUTED ON THIS THE DAY OF ,

Grantors:



David Bernal



Reyes Bernal

PASSED, APPROVED AND ORDERED this _____ day of _____, 2012.

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

ATTEST:

By: _____
Arturo Guajardo, Jr. Hidalgo County Clerk

APPROVED AS TO FORM:

ATLAS & HALL, LLP

By: _____
STEPHEN L. CRAIN

Grantors:

David Bernal

Reyes Bernal

PASSED , APPROVED AND ORDERED this ____ day of _____, 2012.

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

ATTEST:

By: _____
Arturo Guajardo, Jr. Hidalgo County Clerk

APPROVED AS TO FORM:

ATLAS, HALL & RODRIGUEZ, LLP

By:  _____
STEPHEN L. CRAIN

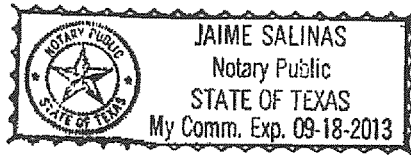
ACKNOWLEDGMENT

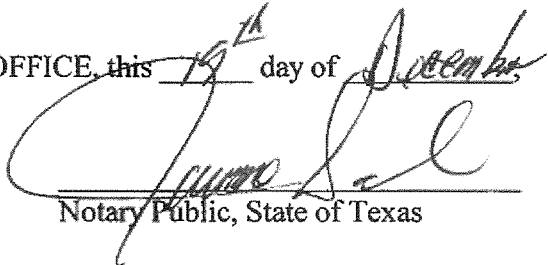
THE STATE OF TEXAS

COUNTY OF HIDALGO

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared David Bernal, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19th day of December, 2012.




Notary Public, State of Texas

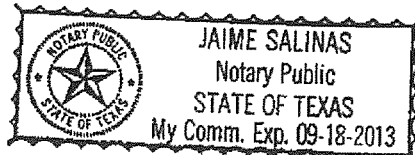
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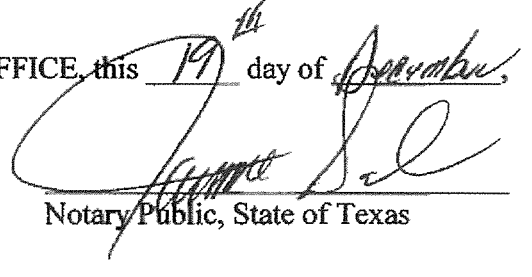
THE STATE OF TEXAS

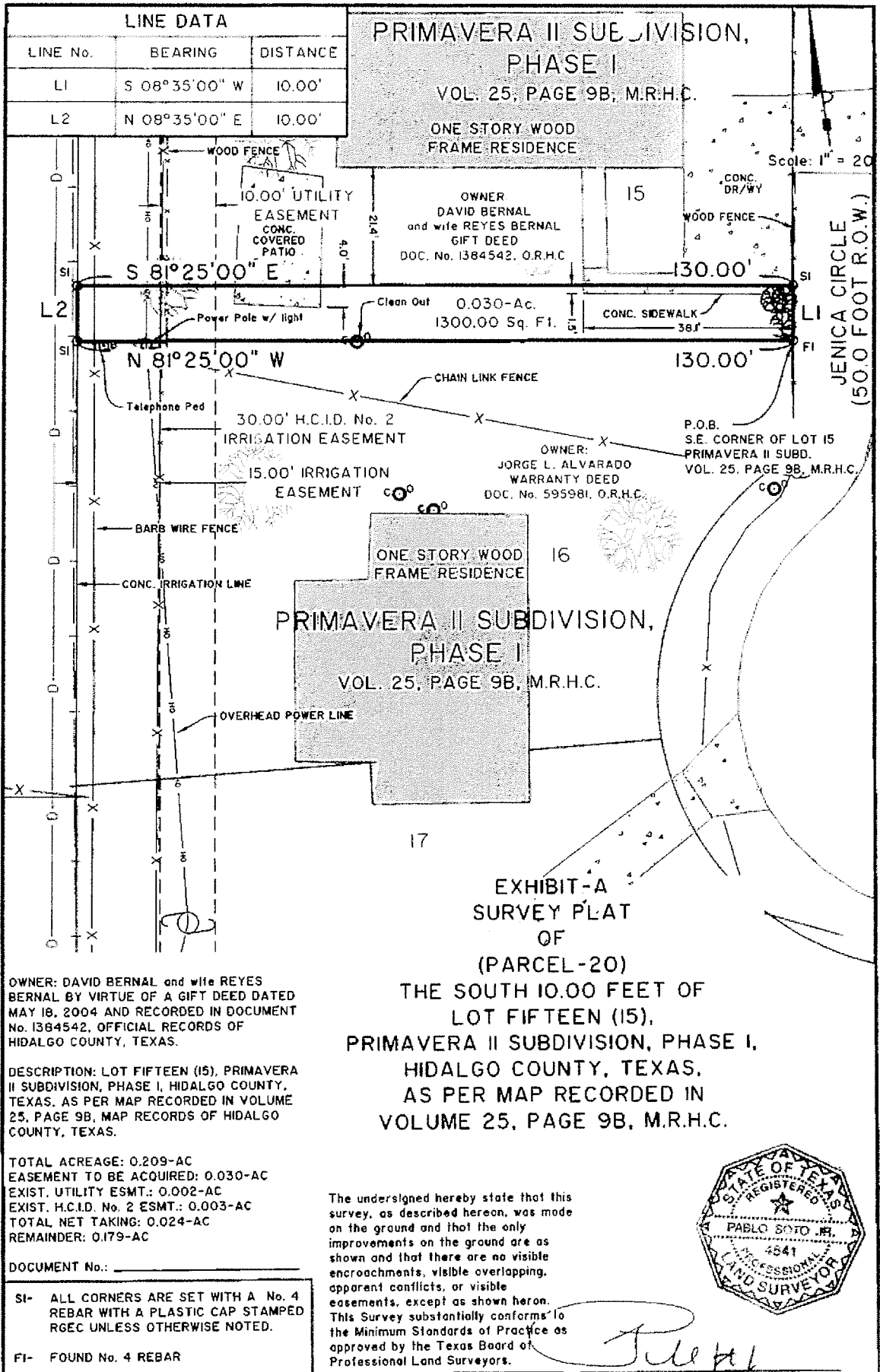
COUNTY OF HIDALGO

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared Reyes Bernal, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that she executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19th day of December, 2012.




Notary Public, State of Texas



OWNER: DAVID BERNAL and wife REYES BERNAL BY VIRTUE OF A GIFT DEED DATED MAY 18, 2004 AND RECORDED IN DOCUMENT No. 1384542, OFFICIAL RECORDS OF HIDALGO COUNTY, TEXAS.

DESCRIPTION: LOT FIFTEEN (15), PRIMAVERA II SUBDIVISION, PHASE I, HIDALGO COUNTY, TEXAS, AS PER MAP RECORDED IN VOLUME 25, PAGE 9B, MAP RECORDS OF HIDALGO COUNTY, TEXAS.

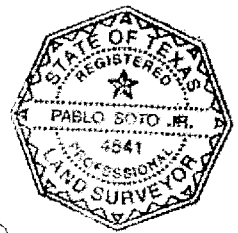
TOTAL ACREAGE: 0.209-AC
 EASEMENT TO BE ACQUIRED: 0.030-AC
 EXIST. UTILITY ESMT.: 0.002-AC
 EXIST. H.C.I.D. No. 2 ESMT.: 0.003-AC
 TOTAL NET TAKING: 0.024-AC
 REMAINDER: 0.179-AC

DOCUMENT No.:

SI- ALL CORNERS ARE SET WITH A No. 4 REBAR WITH A PLASTIC CAP STAMPED RGEC UNLESS OTHERWISE NOTED.

FI- FOUND No. 4 REBAR

The undersigned hereby state that this survey, as described hereon, was made on the ground and that the only improvements on the ground are as shown and that there are no visible encroachments, visible overlapping, apparent conflicts, or visible easements, except as shown hereon. This Survey substantially conforms to the Minimum Standards of Practice as approved by the Texas Board of Professional Land Surveyors.



Pablo Soto, Jr.
 PABLO SOTO, JR. - R.P.L.S. No. 4541
 Date: 8/7/12

R. Gutierrez Engineering Corporation Professional Engineers & Land Surveyors
 130 E. PARK AVENUE • PHARR, TEXAS 78577
 (TEL) 956 782-2557 • (FAX) 956 782-2558
 ENGINEERING FIRM No. 486 • SURVEYING FIRM No. 101650-00

JOB No.: ENG09 001	DATE: AUG. 06, 2012
DRAWN BY: RG	PAGE: 1 OF 1