

POSSESSION AND USE AGREEMENT FOR ROAD PURPOSES

STATE OF TEXAS

§

Project: Yuma Avenue Extension

§

Parcel No.: 1

COUNTY OF HIDALGO

§

This agreement, effective the 5 day of January, 2017 between the County of Hidalgo, State of Texas, acting by and through the Hidalgo County Commissioners Court (the "County") , and Julian Zendejas and David Seal (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 Yuma Avenue Extension Project (the "Project"). The property involved is described more fully in field notes and plat map (attached) 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 the Project 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 10.00 Dollars (\$ 10.00). 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 fee title 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 fee title 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 a fee interest in the Property by direct purchase. It is further understood in the event a settlement is not reached; the County shall begin proceedings in eminent domain to acquire fee title to 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 fee title for 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 fee title 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 5 DAY OF January 2017.

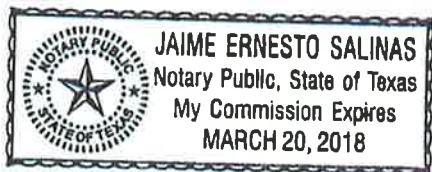
ACKNOWLEDGMENT

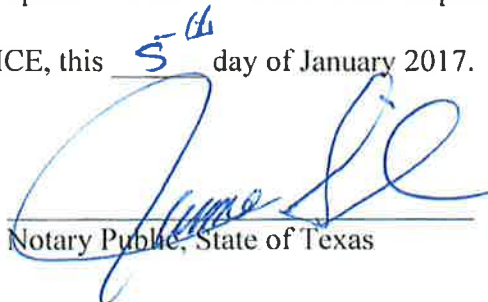
THE STATE OF TEXAS

COUNTY OF HIDALGO

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared Julian Zendejas, 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 5th day of January 2017.




Notary Public, State of Texas

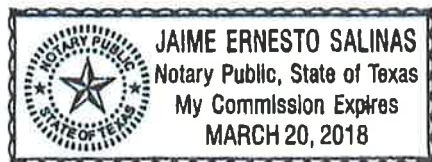
ACKNOWLEDGMENT

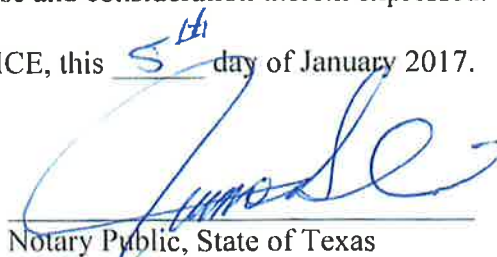
THE STATE OF TEXAS

COUNTY OF HIDALGO

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared David Seal, 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 5th day of January 2017.




Notary Public, State of Texas

Grantors:



Julian Zendejas



David Seal

PASSED, APPROVED AND ORDERED this _____ day of January, 2017.

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

County: Hidalgo, Precinct 2
WA#22 Supplemental #2: Yuma Extension

Exhibit: A
FIELD NOTES FOR PARCEL 1

Being a 7,120 square foot or 0.16 of an acre tract of land, out of Lot 1, Block 16, Steele and Pershing Subdivision, as recorded in Volume 8, Page 115, of the Deed Records, Hidalgo County, Texas, and being out of a called 0.95 of an acre tract of land, conveyed by Warranty Deed with Vendor's Lien dated October 20, 2005, as described in Document No. 1540418 of the Official Records, Hidalgo County, Texas, said 7,120 square foot or 0.16 of an acre tract of land being more particularly described by metes and bounds as follows;

Commencing at McColl Road, for the Northwest corner of said called 0.95 of an acre tract of land, for the Northwest corner of said Lot 1, Block 16, Steele and Pershing Subdivision;

Thence with the West line of said Lot 1, Block 16, South 08°37'54" West a distance of 50.00 feet to a point;

Thence departing the West line of said Lot 1, Block 16, and across and through said called 0.95 of an acre tract of land, South 81°22'06" East a distance of 50.00 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." (N=16,590,644.854, E=1,077,146.319) set in the apparent East Right of Way line of McColl Road, for the Southwest corner and **Point of Beginning** of this herein described tract of land;

1. **Thence** departing the South line of said called 0.95 of an acre tract of land, and with the apparent East Right of Way line of McColl Road, North 08°37'54" East a distance of 30.00 feet to the existing South Right of Way line of Yuma Avenue (60' R.O.W.) for the Northwest corner of this herein described tract to of land;
2. **Thence** with the existing South Right of Way line of Yuma Road, South 81°22'06" East a distance of 258.29 feet to the existing West Right of Way line of the Hidalgo County Irrigation District No. 2 Lateral "E" canal, described as Tract No.2, Volume 120, Page 546, of the Deed Records, Hidalgo County, Texas, for the Northeast corner of this herein described tract of land;
3. **Thence** with the Northwesterly line of the Hidalgo County Irrigation District No.2 Lateral "E", South 63°01'53" West a distance of 51.54 feet to a 5/8" iron pin with plastic cap stamped "R.O.W.S. PROP. COR." set in the South line of said of said Lot 1, Block 16, for the Southeast corner of this herein described tract of land;

4. **Thence with the South line of said Lot 1, Block 16, across and through said 0.95 of an acre tract of land, with the South proposed Right of Way line of Yuma Avenue, North 81°22'06" West a distance of 216.38 feet to the Point of Beginning and being a 7,120 square foot or 0.16 of an acre tract of land.**

Bearings based on the Texas Coordinate System, South Zone, NAD83 (NA2011), adjusted to surface using a grid to surface adjustment factor of 1.00004.

A plat survey of even survey date herewith accompanies this description.

I, Kurt Schumacher, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.

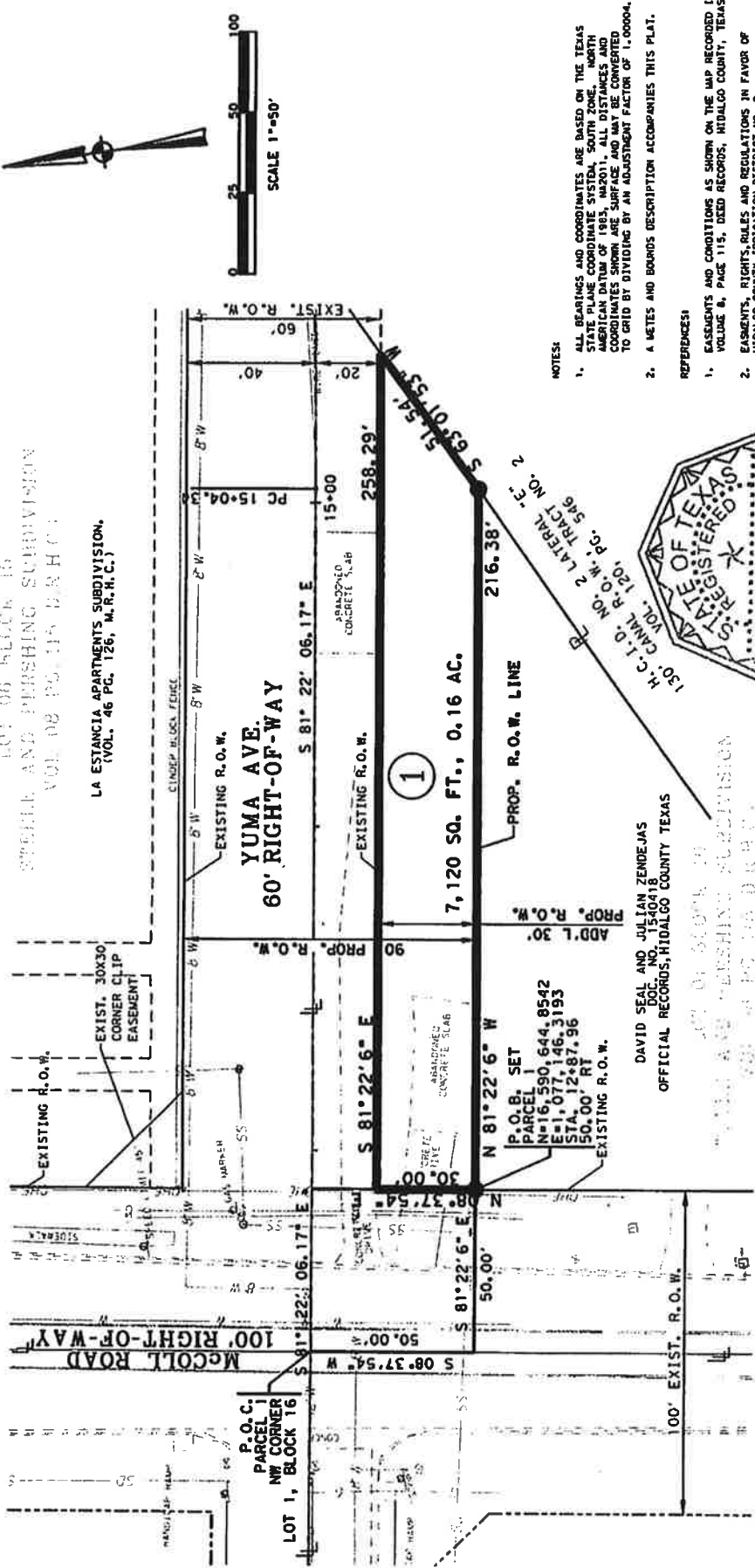

06/01/2016

Kurt Schumacher
Registered Professional Land Surveyor
Texas Registration No. 6333



LOT 06 BLOCK 16
STEELE AND PERSHING SUBDIVISION
VOL. 08 PG. 115 D.B.H.C.

LA ESTANCIA APARTMENTS SUBDIVISION
(VOL. 46 PG. 126, M.R.H.C.)



LEGEND

- LOT LINE
- PROPERTY LINE
- PARCEL NUMBER
- RIGHT OF WAY
- POINT OF COMMENCING
- POINT OF BEGINNING
- HIDALGO COUNTY
- DEED RECORDS
- HIDALGO COUNTY
- MAP RECORDS
- HIDALGO COUNTY
- OFFICIAL RECORDS
- SET 5/8" IRON ROD
- WITH PLASTIC CAP
- STAMPED "ROSS PROP. COR."
- FOUND 1/2" IRON ROD
- UNLESS OTHERWISE NOTED
- OVERHEAD ELECTRIC

- R.O.W.
- P.O.C.
- P.O.B.
- H.C.D.R.
- H.C.M.R.
- H.C.O.R.
- — ONE

PLAT OF SURVEY
FOR PCT. 2 REGIONAL LINEAR PARK PROJECT
A 7,120 SQ. FT. (0.16 AC.)
TRACT OF LAND SITUATED IN LOT 1, BLOCK 16
STEELE AND PERSHING SUBDIVISION,
OUT OF A CALLED 0.95 ACRES OF LAND
AS RECORDED IN DOCUMENT NO. 1540418,
OFFICIAL RECORDS, HIDALGO COUNTY, TEXAS.

DAVID SEAL AND JULIAN ZENDEJAS
DOC. NO. 1540418
OFFICIAL RECORDS, HIDALGO COUNTY TEXAS



NOTES:

- ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM. SOURCE: NATIONAL AMERICAN DATUM OF 1983. MARCH 2011. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY AN ADJUSTMENT FACTOR OF 1.00004.
- A METES AND BOUNDS DESCRIPTION ACCOMPANIES THIS PLAT.

REFERENCES:

- EASEMENTS AND CONDITIONS AS SHOWN ON THE MAP RECORDED IN VOLUME 8, PAGE 115, DEED RECORDS, HIDALGO COUNTY, TEXAS.
- EASEMENTS, RIGHTS, RULES AND REGULATIONS IN FAVOR OF HIDALGO COUNTY IRRIGATION DISTRICT NO. 2.
- EASEMENTS OR CLAIMS OF EASEMENTS WHICH ARE NOT OF PUBLIC RECORD.
- ALL RIGHTS, TITLES, AND INTERESTS IN AND TO ALL PORTIONS OF THE PROPOSED ENSURED LAND LYING WITHIN A DRAINAGE DITCH, DRAINAGE PIPE, DRAINAGE LINE, A CANAL OR IRRIGATION LINE AS MAY BE CLAIMED IN FEE BY HIDALGO COUNTY IRRIGATION DISTRICT NO. 2.

RIGHT OF WAY SKETCH
SHOWING PROPERTY OF
PARCEL 1
PCT. 2 REGIONAL LINEAR PARK PROJECT

TITLE COMMITMENT:
CHICAGO TITLE INSURANCE COMPANY
PROPOSED INSURED/BORROWER:
HIDALGO COUNTY
OWNER: DAVID SEAL AND JULIAN ZENDEJAS
GF NO. 1 0003166520
EFFECTIVE DATE: MAY 4, 2016

ROW SURVEYING SERVICES, L.L.C.
600 S. STEWART AVE. SUITE 119
DALLAS, TEXAS 75201
TELE: (972) 624-3333
FAX: (972) 624-3333

TEMPLE RECORDS, PREPARED 10/1/2016

EXHIBIT _____
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