

**POSSESSION AND USE AGREEMENT FOR ROAD PURPOSES**

3:00 FILED P  
AD 01/17/2017

JAN 17 2017

**STATE OF TEXAS**

§  
§  
§

Project: Linear Park Project  
Parcel No.: 29

ROBERTO GONZALEZ, JR., COUNTY CLERK  
HIDALGO COUNTY, TEXAS  
NGC DEPUTY

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.

Grantors:

[Signature]

Julian Zendejas

[Signature]

David Seal

PASSED, APPROVED AND ORDERED this \_\_\_\_\_ day of January, 2017.

COUNTY OF HIDALGO

By: Ramon Garcia  
Ramon Garcia, County Judge

ATTEST:

By: [Signature]  
Arturo Guajardo, Jr. Hidalgo County Clerk



APPROVED BY  
COMMISSIONERS' COURT  
ON: 1/10/17 [Signature]

APPROVED AS TO FORM:

ATLAS & HALL, LLP

By: [Signature]  
STEPHEN L. CRAIN

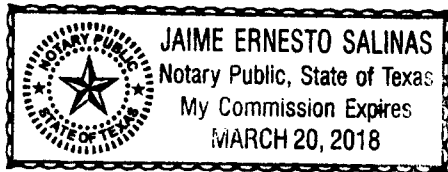
ACKNOWLEDGMENT

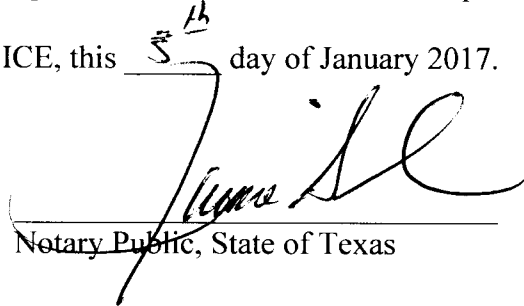
THE STATE OF TEXAS

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 5<sup>th</sup> day of January 2017.



  
Notary Public, State of Texas

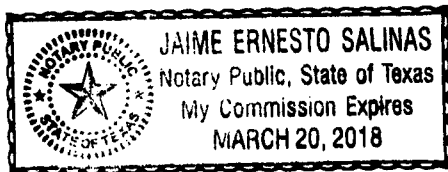
ACKNOWLEDGMENT

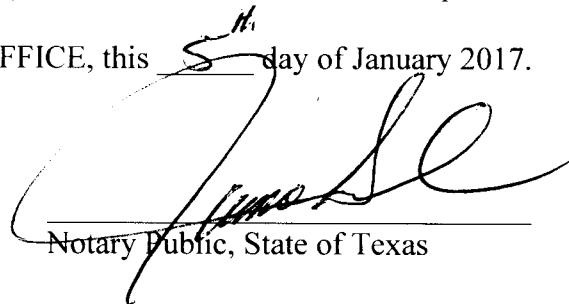
THE STATE OF TEXAS

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 5<sup>th</sup> day of January 2017.



  
Notary Public, State of Texas

County: Hidalgo, Precinct 2  
Yuma and McColl- 0.618 of an Acre Tract of Land

Exhibit: A  
FIELD NOTES FOR A 0.618 OF AN ACRE TRACT OF LAND

Being a 26,901 square foot or 0.618 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, to David Seal and Julian Zendejas as described in Document No. 1540418 of the Official Records, Hidalgo County, Texas, said 26,901 square foot or 0.618 of an acre tract of land being more particularly described by metes and bounds as follows;

**Commencing** at a Mag Nail set at the intersection of McColl Road and Yuma Avenue, for the Northwest corner of said Lot 1, Block 16, Steele and Pershing Subdivision, for the Northwest corner of said called 0.95 of an acre tract of land,

**Thence** with McColl Road and the West line of said Lot 1, Block 16, Steele and Pershing Subdivision, South 08°37' 54" West a distance of 20.00 feet to a Mag Nail set (N=16,590,625.080, E=1,077,143.317) for the Northwest corner and **Point of Beginning** of this herein described tract of land;

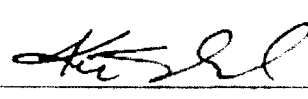
1. **Thence** departing McColl Road, across and through said called 0.95 of an acre tract of land, South 81°22'06" East, at a distance of 20.00 feet passing a Mag Nail set in the recorded East Right of Way line of McColl Road, as shown by map of said Steele and Pershing Subdivision, continuing a total distance of 50.00 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." set for corner;
2. **Thence**, South 08°37'54" West a distance of 30.00 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." set for a corner in the proposed South 90.00 foot Right of Way line of Yuma Avenue and for a corner of this herein described tract of land;
3. **Thence** with the proposed South Right of Way line of Yuma Avenue, South 81°22'06" East, a distance of 216.38 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." found in the existing Northwesterly 130.00 foot Right of Way line of the Hidalgo County Irrigation District No. 2 Lateral "E" canal, as recorded in Volume 120, Page 546, of the Deed Records, Hidalgo County, Texas, for the East corner of this herein described tract of land;

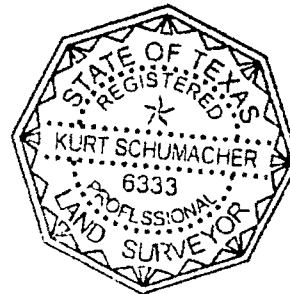
4. **Thence** with the Northwesterly Right of Way line of said Hidalgo County Irrigation District No. 2 Lateral "E" canal, South 63°01'53" West, at a distance of 303.02 feet passing a Mag Nail set in the recorded East Right of Way line of McColl Road, continuing a total distance of 327.62 feet to a Mag Nail set in the West line of said Lot 1, Block 16, for the South corner of this herein described tract of land;
5. **Thence** with McColl Road and the West line of said Lot 1, Block 16, North 08°37'54" East a distance of 220.71 feet to the **Point of Beginning** and being a 26,901 square foot or 0.618 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.

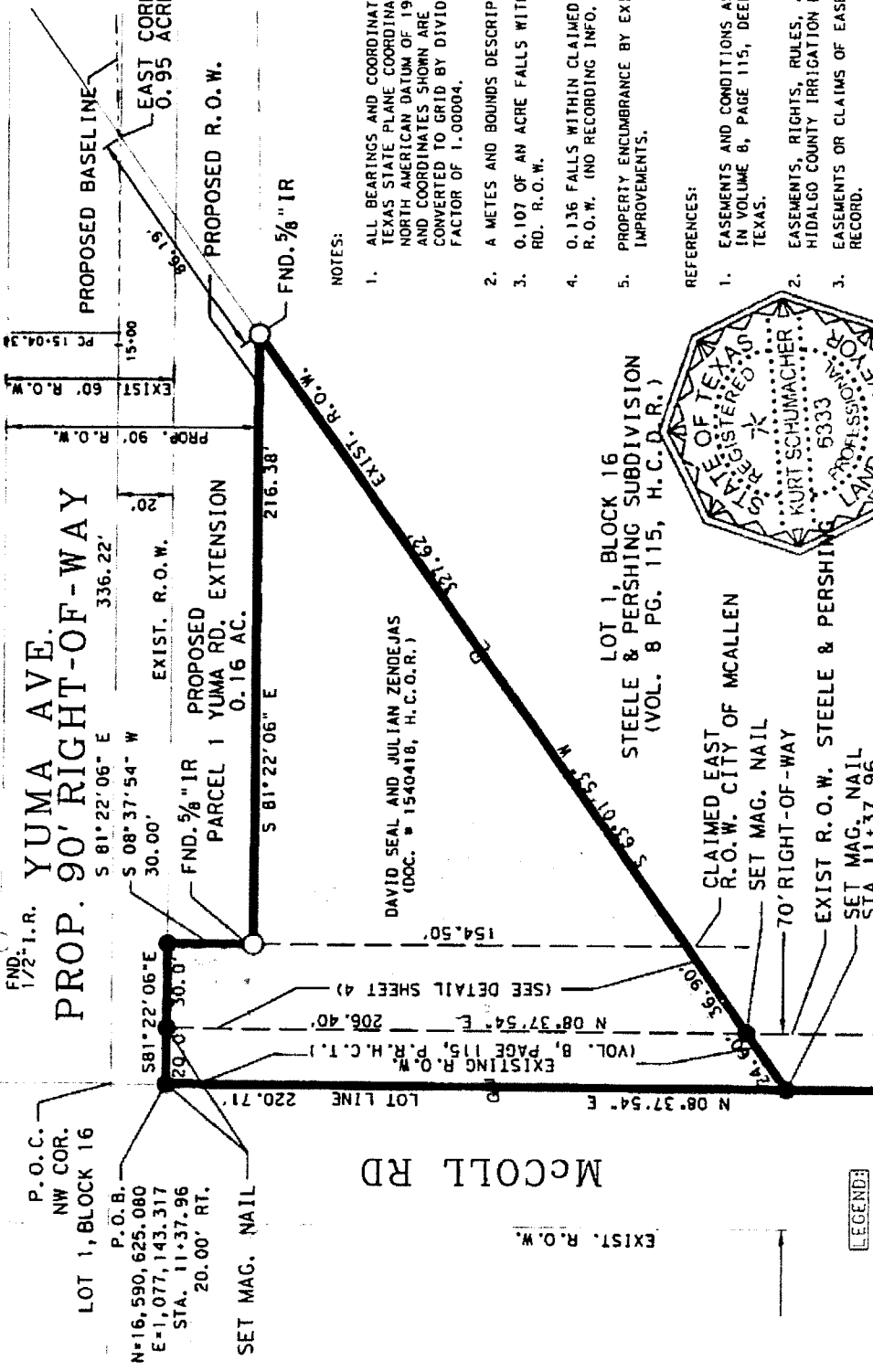
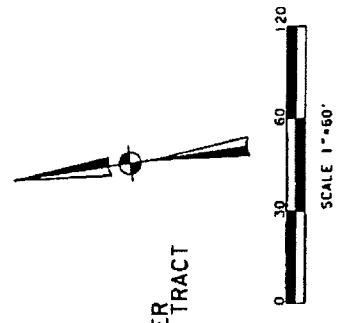
A plat survey of even survey date herewith accompanies this description.

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.

 11/17/2016  
\_\_\_\_\_  
Kurt Schumacher  
Registered Professional Land Surveyor  
Texas Registration No. 6333



**YUMA AVE.  
PROP. 90' RIGHT-OF-WAY**



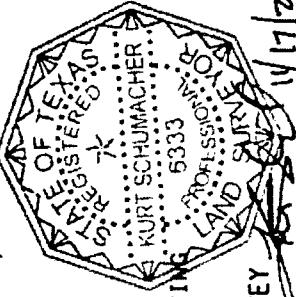
NOTES:

- ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NORTH AMERICAN DATUM OF 1983, NA2011. 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.
- 0.107 OF AN ACRE FALLS WITHIN STEELE & PERSHING MCCOLL RD. R.O.W.
- 0.136 FALLS WITHIN CLAIMED CITY OF MCALLEN MCCOLL RD. R.O.W. (NO RECORDING INFO. FOUND).
- PROPERTY ENCUMBRANCE BY EXISTING MCCOLL RD. STREET IMPROVEMENTS.

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 INSURED LAND LIEING 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.

LOT 1, BLOCK 16  
STEELE & PERSHING SUBDIVISION  
(VOL. 8 PG. 115, H.C.D.R.)

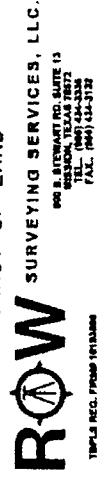


PLAT OF SURVEY

A 26,901 SQ. FT. (0.618 AC.)  
TRACT OF LAND SITUATED IN LOT 1, BLOCK 16  
STEELE AND PERSHING SUBDIVISION, OUT OF  
A CALLED 0.95 OF AN ACRE TRACT OF LAND  
AS RECORDED IN DOCUMENT NO. 1540418,  
OFFICIAL RECORDS, HIDALGO COUNTY, TEXAS.

DATE: REVISED NOVEMBER 16, 2016

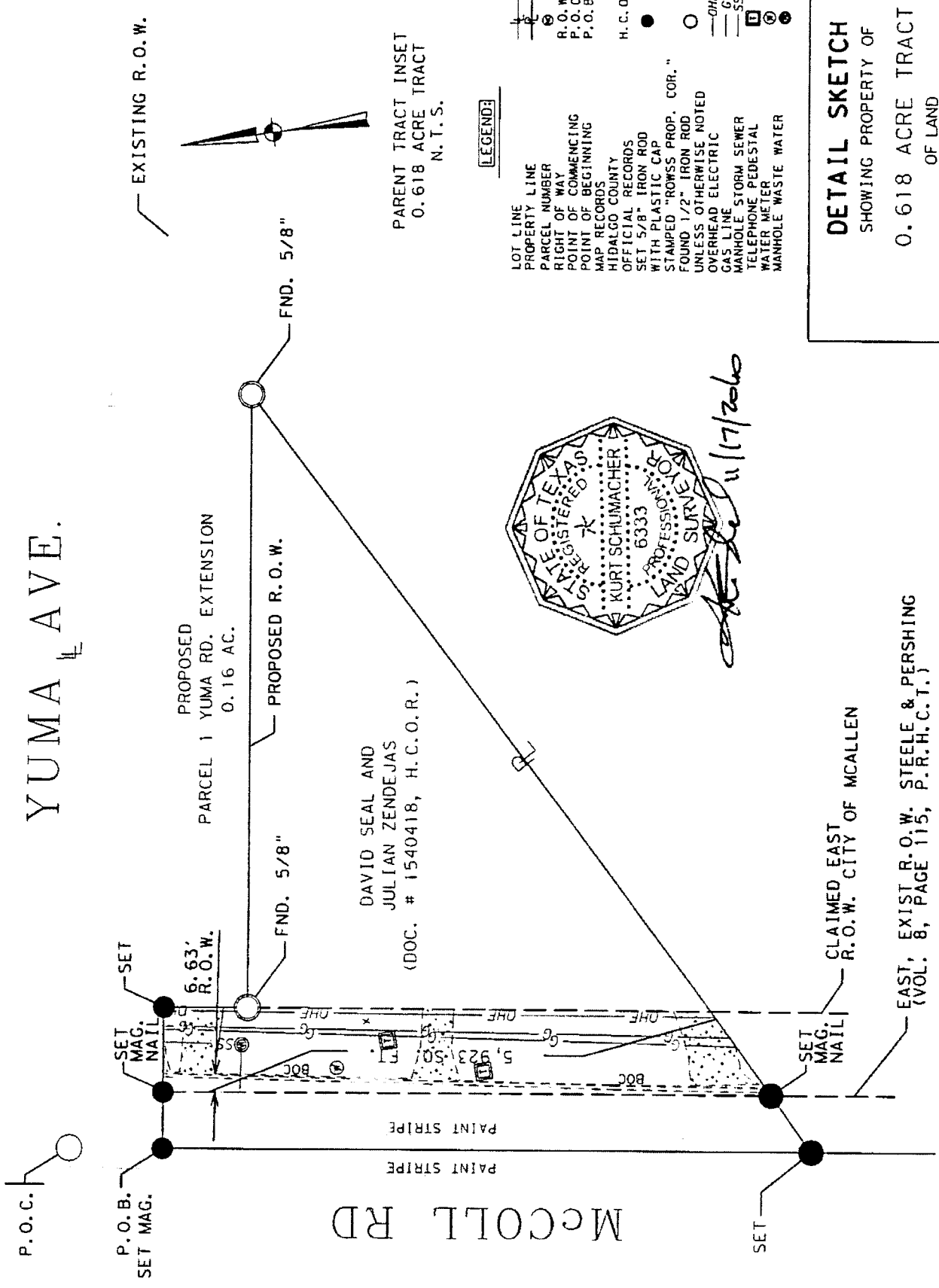
**PARCEL SKETCH**  
SHOWING PROPERTY OF  
0.618 ACRE  
TRACT OF LAND



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

EXHIBIT \_\_\_\_\_

YUMA AVE.



McCOLL RD

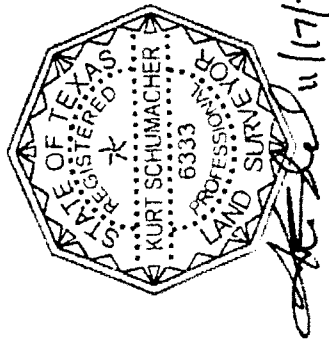
PROPOSED  
PARCEL 1 YUMA RD. EXTENSION  
0.16 AC.

DAVID SEAL AND  
JULIAN ZENDEJAS  
(DOC. # 1540418, H.C.O.R.)

PARENT TRACT INSET  
0.618 ACRE TRACT  
N.T.S.

**LEGEND:**

- LOT LINE
- PROPERTY LINE
- PARCEL NUMBER
- RIGHT OF WAY
- POINT OF COMMENCING
- POINT OF BEGINNING
- MAP RECORDS
- HIDALGO COUNTY
- OFFICIAL RECORDS
- SET 5/8" IRON ROD
- WITH PLASTIC CAP
- STAMPED "ROWSS PROP. COR."
- FOUND 1/2" IRON ROD
- UNLESS OTHERWISE NOTED
- OVERHEAD ELECTRIC
- GAS LINE
- MANHOLE STORM SEWER
- TELEPHONE PEDESTAL
- WATER METER
- MANHOLE WASTE WATER



CLAIMED EAST  
R.O.W. CITY OF MCALEN

EAST, EXIST R.O.W. STEELE & PERSHING  
(VOL. 8, PAGE 115, P.R.H.C.T.)

**DETAIL SKETCH**  
SHOWING PROPERTY OF  
0.618 ACRE TRACT  
OF LAND

**ROW** SURVEYING SERVICES, LLC.  
800 S. STEWART RD. SUITE 113  
MCKINNEY, TEXAS 75069  
TEL: (972) 434-1247  
FAX: (972) 434-2112

52

AI-57956 *regular*

Precinct #2

CC CONSENT *10*

Meeting Date: 01/24/2017

Submitted For: Eddie Cantu, COMM. PCT. #2

Submitted By: Carlos Jasso, COMM. PCT. #2

Department: COMM. PCT. #2

Information

CAPTION

Requesting approval for Possession Use Agreement for Right of Way Entry to Parcel 29 prior to construction on the Linear Park Project. ✓

BACKGROUND

Fiscal Impact

FISCAL YEAR:

ACCT. #:

FUNDS AVAILABLE Y/N?:

MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

No Fiscal Impact. ✓

Attachments

Parcel 29 ✓

Form Review

Inbox

Reviewed By

Date

(Originator)

Carlos Jasso

01/05/2017 03:59 PM

Form Started By: Carlos Jasso

Started On: 01/05/2017 03:59 PM