

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS

§

Parcel No.: 5

COUNTY OF WILLIAMSON

§

Project: CR 176 @ RM2243

§

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between WILLIAMSON COUNTY, TEXAS ("County"), and THOMAS D. DIAZ, III and MELISSA R. SHARPE-DIAZ (the "Grantor" whether one or more), grants to the County, their contractors, agents and all others deemed necessary by the County, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of CR 176 and related appurtenances and utility relocations (the "Roadway Construction Project"). The property subject to this Agreement is described more fully in field notes, plat map or other description (attached 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 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the County the right of entry and exclusive possession and use of the Property for the purpose of constructing a roadway, utility adjustments and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Roadway Construction Project. This Possession and Use Agreement will extend to the County, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the County in the future, and all others deemed necessary by the County for the purpose of the Roadway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the County will tender to the Grantor the sum of ONE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED THIRTY-FIVE and 00/100 Dollars (\$174,835.00). The Grantor 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 as set out herein, subject to the conditions in paragraph 14 below, if any. The parties agree that the sum tendered represents 100% of the County's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the County's determination of the just compensation owed to the Grantor for the real property 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 the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the County has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the County, the

Grantor will promptly refund the overpayment to the County.

3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above was tendered to the Grantor by the County, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the County from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
5. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the County in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date.
6. This Agreement is made with the understanding that the County will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and other interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the County, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), all as the Property exists on the Effective Date of this Agreement. The County's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. No beneficial project influence will impact the appraised value of the Property to be acquired. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
7. In the event the County institutes or has instituted eminent domain proceedings, the County will not be liable to the Grantor 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 Roadway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the County's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Roadway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Roadway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

9. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. 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.
10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property until the Effective Date, including prorated taxes until the Effective Date for the year in which the County takes title to the Property.
11. Notwithstanding the acquisition of right of possession to the Property by the County in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the County acquires title to the Property either by negotiation, settlement, or final court judgment.
12. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
13. It is agreed the County will record this document.
14. Other conditions:

(a). Should the Special Commissioners' Award (if any) be greater than the amount paid in paragraph 2 (two), the County shall tender the difference to the registry of the court within 60 (sixty) days of said Award.

(b). The County will use its best efforts to coordinate any required utility adjustment process using standard practices to avoid or minimize any intentional service interruptions to the remaining property of Grantor. No less than 10 business days prior to the commencement of the utility relocation, the County will arrange and/or coordinate a meeting with the Grantor, their attorney and the contractor for the utility relocation to discuss the relocation/service interruptions to the remaining property.

At no time during the possession of the Property by County for the purposes described herein shall Grantor be denied reasonable access and/or ingress to or egress from the remainder of Grantor's land for its current uses, unless otherwise agreed to in writing in advance.

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

GRANTOR:

Thomas D. Diaz III

Thomas D. Diaz, III

Melissa R. Sharpe-Diaz

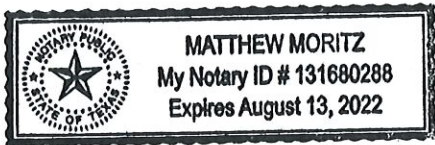
Melissa R. Sharpe-Diaz

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Willbango

This instrument was acknowledged before me on this the 25 day of September, 2018 by Thomas D. Diaz, III and Melissa R. Sharpe-Diaz, in the capacity and for the purposes and consideration recited herein.



Matthew Moritz

Notary Public, State of Texas

Printed Name: Matthew Moritz

My Commission Expires:

08/13/2022

COUNTY:

WILLIAMSON COUNTY, TEXAS

By: _____
Dan A. Gattis
County Judge

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ___ day of _____, 2018 by Dan A. Gattis, County Judge of Williamson County, Texas, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas
Printed Name: _____
My Commission Expires

EXHIBIT A

County: Williamson
Parcel: 5
Highway:County Road 176

FIELD NOTES
FOR

A 0.506 ACRE, OR 22,056 SQUARE FEET MORE OR LESS, TRACT OF LAND, BEING OUT OF A CALLED 1.000 ACRE TRACT, DESCRIBED IN CONVEYANCE TO THOMAS D. DIAZ, III AND MELISSA R. SHARPE-DIAZ IN WARRANTY DEED RECORDED IN DOCUMENT NO. 2003019309 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, OUT OF THE JOHN T. CHURCH SURVEY, ABSTRACT NO. 140, WILLIAMSON COUNTY, TEXAS. SAID 0.506 ACRE TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS, WITH BEARINGS BASED ON THE NORTH AMERICAN DATUM OF 1983 (NA 2011) EPOCH 2010.00, FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE:

COMMENCING at a ½” iron rod found, on the south line of a called 50.0 acre tract recorded in Document No. 2011065655 of the Official Public Records of Williamson County, Texas, the northwest corner of a called 1.998 acre tract recorded in Document No. 9667430 of the Official Records of Williamson County, Texas, same being the northeast corner of a remnant of a called 26.045 acre tract recorded in Document No. 2002058098 of the Official Public Records of Williamson County, Texas, from which a ½” iron rod found, on the west line of a called 44.31 acre tract recorded in Document No. 2006038439 of the Official Public Records of Williamson County, Texas, the southeast corner of said called 50.0 acre tract, same being the northeast corner of said called 1.998 acre tract bears **N 68°45'56" E**, a distance of **294.91 feet**;

THENCE S 69°07'32" W, with the south line of said called 50.0 acre tract, same being the north line of said remnant of a called 26.045 acre tract, a distance of **88.65 feet** to a ½” iron rod with a yellow cap marked “Pape-Dawson set, (Grid Coordinates determined as N=10190097.43, E=3102111.15), the **POINT OF BEGINNING** of the herein described tract;

THENCE S 21°03'14" E, departing the south line of said called 50.0 acre tract, with the west line of said remnant of a called 26.045 acre tract, same being the east line of said called 1.000 acre tract, a distance of **102.44 feet** to a ½” iron rod with a yellow cap marked “Pape-Dawson set;

THENCE departing the west line of said remnant of a called 26.045 acre tract, through the interior of said called 1.000 acre tract, the following two (2) courses and distances:

1. **S 38°32'35" W**, a distance of **30.93 feet** to a ½” iron rod with a yellow cap marked “Pape-Dawson set, a point of curvature, and

2. with said tangent curve to the left having radius of **1011.00 feet**, a central angle of **08°20'16"**, a chord bearing and distance of **S 34°22'27" W, 146.99 feet**, an arc length of **147.12 feet** to a ½" iron rod with a yellow cap marked "Pape-Dawson set, on the east line of a "2nd" remnant of said called 26.045 acre tract, same being the west line of said called 1.000 acre tract;

THENCE N 21°03'14" W, with the east line of said "2nd" remnant of a called 26.045 acre tract, same being the west line of said called 1.000 acre tract, a distance of **201.97 feet** to a ½" iron rod with a yellow cap marked "Pape-Dawson set, on the south line of the aforementioned 50.0 acre tract, a northeast corner of said "2nd" remnant of a called 26.045 acre tract, same being the northwest corner of said called 1.000 acre tract;

THENCE N 69°07'32" E, with the south line of said called 50.0 acre tract, same being the north line of said called 1.000 acre tract, a distance of **147.72 feet** to the **POINT OF BEGINNING** and containing 0.506 of an Acre in Williamson County, Texas. Said tract being described in accordance with an exhibit prepared by Pape Dawson Engineers, Inc. under Job No. 59006-16.

PREPARED BY: Pape-Dawson Engineers, Inc.

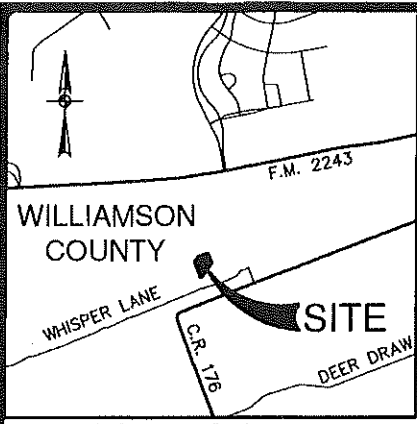
DATE: January 18, 2018

JOB No.: 59006-16

DOC.ID.: H:\survey\SURVEY16\16-59006\Exhibits\Word\SHARPE-DIAZ-0.506Acre.docx

TBPE Firm Registration #470

TBPLS Firm Registration #100288-01



LOCATION MAP

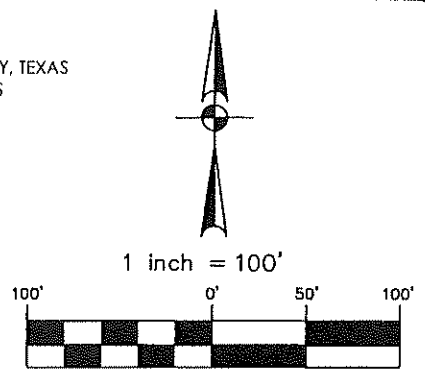
NOT-TO-SCALE

LEGEND:

- D.R. DEED RECORDS OF WILLIAMSON COUNTY, TEXAS
- O.P.R. OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS
- O.R. OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS
- P.R. PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS
- FD. FOUND
- I.R. IRON ROD

NOTES:

1. THE PROFESSIONAL SERVICES PROVIDED HERewith INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. THE BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE FROM THE NORTH AMERICAN DATUM OF 1983 NAD 83 (NA2011) EPOCH 2010.00.



MATCHLINE SHEET 2 OF 2

OWNER: MMA RANCH LIMITED PARTNERSHIP
A CALLED 50.0 ACRE TRACT
DOC. NO. 2011065655 (O.P.R.)

0.506 OF AN ACRE
(22,056 SQUARE FEET MORE OR LESS)

STA. 110+40.27
98.76 RT.

**JOHN T. CHURCH
SURVEY
ABSTRACT NO. 140**

AERIAL UTILITY EASEMENT
DOC. NO. 2016001535 (O.P.R.)

OWNER: IRMA DIAZ
REMNANT OF A
CALLED 26.045 ACRE
TRACT
DOC. NO. 2002058098
(O.P.R.)

STA. 111+53.69
67.47 LT.

PT: 109+13.68
L5

P.O.B.
GRID COORDINATES
N=10190097.43
E=3102111.15
STA. 109+15.17
23.35 RT.

P.O.C.
FD. 1/2" I.R.

OWNER: KENNETH E.
KIRK AND THERESA M.
KIRK
A CALLED 1.998 ACRE
TRACT
DOC. NO. 9667430
(O.R.)

STA. 109+67.02
65.00 LT.

OWNER: THOMAS D.
DIAZ, III AND MELISSA
R. SHARPE-DIAZ
A CALLED 1.000 ACRE
TRACT
DOC. NO. 2003019309
(O.P.R.)

OWNER: IRMA DIAZ
CALLED REMNANT OF A
TRACT
26.045 ACRE
DOC. NO. 2002058098 (O.P.R.)

113+00

112+00

111+00

110+00

109+00

108+00

N68°45'56"E ~ 294.91'

**EXHIBIT
OF**

A 0.506 ACRE, OR 22,056 SQUARE FEET MORE OR LESS, TRACT OF LAND, BEING OUT OF A CALLED 1.000 ACRE TRACT, DESCRIBED IN CONVEYANCE TO THOMAS D. DIAZ, III AND MELISSA R. SHARPE-DIAZ IN WARRANTY DEED RECORDED IN DOCUMENT NO. 2003019309 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, OUT OF THE JOHN T. CHURCH SURVEY, ABSTRACT NO. 140, WILLIAMSON COUNTY, TEXAS.



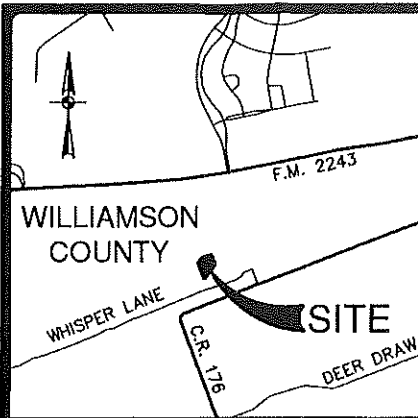
AUSTIN | SAN ANTONIO | HOUSTON | FORT WORTH | DALLAS
10801 N MoPAC EXPY., BLDG. 3, SUITE 200 | AUSTIN, TX 78759 | 512.454.8711
TYBE FIRM REGISTRATION #470 | TBPLS FIRM REGISTRATION #10028801

JANUARY 18, 2018

JOB No.: 59006-16

SHEET 3 OF 4

Date: Mar 22, 2018, 3:00pm User ID: PORAHAM
File: H:\survey\SURV16\16-59006\Exhibits\SHARPE-DIAZ.dwg



LOCATION MAP

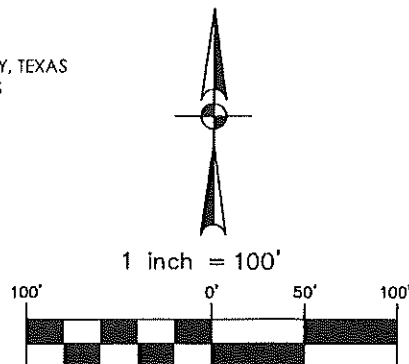
NOT-TO-SCALE

LEGEND:

- D.R. DEED RECORDS OF WILLIAMSON COUNTY, TEXAS
- O.P.R. OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS
- O.R. OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS
- P.R. PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS
- FD. FOUND
- I.R. IRON ROD

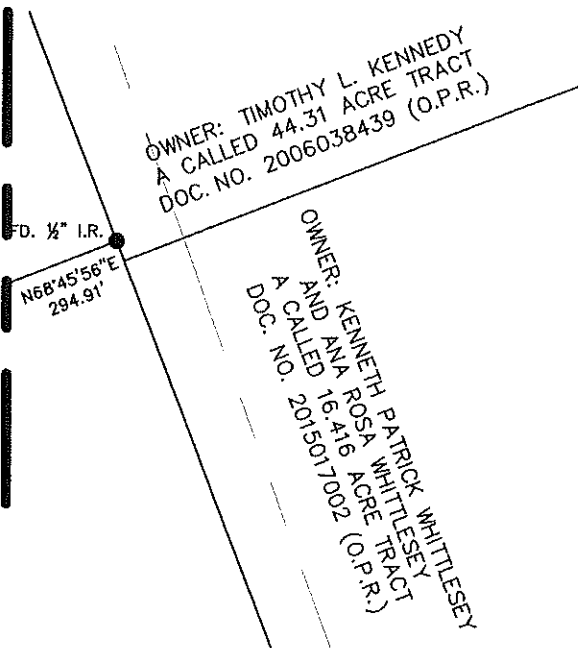
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LINE TABLE		
LINE	BEARING	LENGTH
L1	S69°07'32"W	88.65'
L2	S21°03'14"E	102.44'
L3	S38°32'35"W	30.93'
L4	N21°03'14"W	201.97'
L5	N69°07'32"E	147.72'

MATCHLINE SHEET 1 OF 2



CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C2	1011.00'	8°20'16"	S34°22'27"W	146.99'	147.12'

EXHIBIT
OF

A 0.506 ACRE, OR 22,056 SQUARE FEET MORE OR LESS, TRACT OF LAND, BEING OUT OF A CALLED 1,000 ACRE TRACT, DESCRIBED IN CONVEYANCE TO THOMAS D. DIAZ, III AND MELISSA R. SHARPE-DIAZ IN WARRANTY DEED RECORDED IN DOCUMENT NO. 2003019309 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, OUT OF THE JOHN T. CHURCH SURVEY, ABSTRACT NO. 140, WILLIAMSON COUNTY, TEXAS.



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TBPE FIRM REGISTRATION #470 | TBPLS FIRM REGISTRATION #10028801

JANUARY 18, 2018

JOB No.: 59006-16

SHEET 4 OF 4