

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS

§

Parcel No.: 321

§

COUNTY OF WILLIAMSON

§

Project: Hero Way/RM 2243

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between **WILLIAMSON COUNTY, TEXAS** (the "County"), and **JNK PROPERTIES 1, LTD.** (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 the Hero Way/RM 2243 roadway project and related appurtenances, drainage facility/grading and utility relocations (the "Roadway Construction Project"). The property subject to this Agreement is described more fully in field notes, plat maps, or other descriptions attached hereto as "Exhibit "A" respectively and are 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, Grantor grants, bargains, sells, and conveys to the County the right of entry and 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, the County will tender to Grantor payment in the amount of **ONE MILLION TWO HUNDRED TWENTY THOUSAND SEVEN HUNDRED FORTY and 00/100 DOLLARS (\$1,220,740.00)** (the "Entry Deposit"). The County will be entitled to take possession and use of the Property upon tender of payment as set forth in paragraph 3 herein, subject to the conditions in paragraph 13 below, if any. The parties agree that the Entry Deposit tendered represents 100% payment 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 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 sulfur. The parties agree that the Entry Deposit 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 the acquisition of the Property is less than the amount of the

Entry Deposit, then Grantor agrees that the difference between the amount of the Entry Deposit tendered and the amount of such final settlement or judgment for the acquisition of the Property represents an overpayment and, upon written notice from the County, Grantor will promptly refund the difference between the Entry Deposit and the amount of the settlement or judgment to the County.

3. The effective date of this Agreement will be the date on which payment of the Entry Deposit pursuant to Paragraph 2 above was tendered in full to the Grantor by the County or delivered to a title company acting as escrow agent for the transaction (the "Effective Date").
4. Grantor warrants and represents by, through, and under Grantor but not otherwise, that the title to the Property is free and clear of all liens and encumbrances identified in the title commitment T-157573 issued October 12, 2022 by Texas National Title (and any subsequent updates prior to the Effective Date), and that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. 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.

The above-made warranties are made by Grantor and accepted by the County subject to the following:

- A. Visible and apparent easements not appearing of record;
 - B. Any discrepancies, conflicts, or shortages in area or boundary lines or any encroachments or any overlapping of improvements which a current survey would show; and,
 - C. Easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and encumbrances for taxes and assessments (other than liens and conveyances) presently of record in the Official Public Records of Williamson County, Texas, that affect the Property, but only to the extent that said items are still valid and in force and effect as of the Effective Date.
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 January 18, 2024. Should the Special Commissioners' Award 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.
 6. This Agreement is made with the understanding that the County will continue to proceed with the acquisition of a real property interest in the Property. 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 Grantor in the eminent domain proceedings, except as such removal or construction of improvements may impact or damage the Remainder. No beneficial project influence will impact the appraised value of the Property to be acquired. This grant will not prejudice 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 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 the 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 Grantor to have the use at this time of 100% of the Entry Deposit. The Grantor expressly acknowledges that the proposed Roadway Construction Project is for a valid public use and voluntarily waives any right 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 undersigned Grantor agrees to pay as they become due, all unpaid ad valorem property taxes and special assessments assessed against Property as of the Effective Date.
10. Notwithstanding the acquisition of the 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.
11. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
12. It is agreed the County will record this document.
13. Other conditions: Upon receipt of a request from Grantor to file a petition in the lawsuit, Grantee agrees that it shall file a petition withing thirty (30) days of having received said notice. In the case of a special commissioners' hearing setting, upon receipt of notice from Grantor to set a special commissioners hearing, Grantee shall work with Grantor on a hearing setting which shall be within ninety (90) days of the date on which Grantee received notice from Grantor unless the parties agree otherwise.

14. By its authorized signature below the following Tenants which have a leasehold interest in the Property hereby consent in all things to Grantee taking exclusive possession of the Property pursuant to the terms of this Agreement, and to Grantor receiving the consideration recited herein:

Tenants: None

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.

[signature pages follow]

GRANTOR:

JNK PROPERTIES 1, LTD.

By: 

Name: Vivek Mahendru

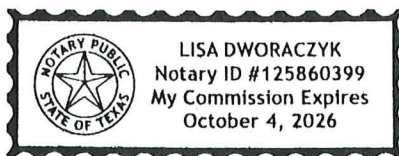
Its: President


ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Williamson

This instrument was acknowledged before me on this the 19th day of October, 2023 by JNK Properties 1, Ltd. in the capacity and for the purposes and consideration recited herein.




Notary Public, State of Texas

COUNTY:

WILLIAMSON COUNTY, TEXAS

By: _____
Bill Gravell, Jr.
County Judge

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ____ day of _____, 2023 by Bill Gravell, Jr., County Judge of Williamson County, Texas, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas

TENANT:

Name: _____

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ____ day of _____, 2023
by _____, in the capacity and for the purposes and
consideration recited herein.

Notary Public, State of Texas

County: Williamson
Parcel: 321
Highway: FM 2243

METES & BOUNDS DESCRIPTION FOR PARCEL 321

METES & BOUNDS DESCRIPTION FOR A 2.820 ACRE TRACT OF LAND OUT OF THE ELIJAH D. HARMON SURVEY, ABSTRACT NO. 6, WILLIAMSON COUNTY, TEXAS; BEING A PORTION OF A CALLED 19.9973 ACRE TRACT OF LAND DESCRIBED AS TRACT 6 AND A PORTION OF A CALLED 19.95 ACRE TRACT OF LAND DESCRIBED AS TRACT 7, BOTH AS CONVEYED TO JNK PROPERTIES 1, LTD. BY CONTRIBUTION DEED RECORDED IN DOCUMENT NUMBER 2021182868 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID TRACT 6 BEING DESCRIBED IN DOCUMENT NUMBER 2004073246 AND SAID TRACT 7 BEING DESCRIBED IN DOCUMENT NUMBER 2004073628, BOTH OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 2.820 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS AND SHOWN ON THE ATTACHED SKETCH:

BEGINNING at a 3/4-inch iron rod found on the south right-of-way line of Hero Way (f/k/a County Road 269) (width varies) (no deed of record found), at the northwest corner of the above described JNK Tract 6, and at the northeast corner of a called 4.95 acre tract of land as conveyed to Jerry Wayne Droptini and Jan Droptini by Warranty Deed with Vendor's Lien recorded in Volume 1919, Page 373 of the Official Records of Williamson County, Texas, for the northwest corner and **POINT OF BEGINNING** of the herein described tract, from which a 3/8-inch iron rod found at the northwest corner of said Droptini Tract, bears S 68°59'05" W a distance of 239.86 feet;

THENCE, with the south right-of-way line of said Hero Way and the north line of said JNK Tract 6, N 51°21'07" E a distance of 49.92 feet to a 3/4-inch iron rod found for an angle point;

THENCE, continuing with the south right-of-way line of said Hero Way and the north line of said JNK Tract 6, N 68°38'27" E a distance of 359.28 feet to a 1/2-inch iron rod found at the northeast corner of said JNK Tract 6 and the northwest corner of the above described JNK Tract 7, for an angle point;

THENCE, continuing with the south right-of-way line of said Hero Way and the north line of said JNK Tract 7, N 68°44'21" E a distance of 412.71 feet to a 3/8-inch iron rod found at the northeast corner of said JNK Tract 7 and the northwest corner of a called 27.868 acre tract of land as conveyed to Heroway Crossing LLC by Special Warranty Deed with Vendor's Lien recorded in Document Number 2020158793 of the Official Public Records of Williamson County, Texas, for the northeast corner of the herein described tract, from which a 1/2-inch iron rod found at the northeast corner of said Heroway Crossing Tract, bears N 68°37'36" E a distance of 576.26 feet;

THENCE, with the east line of said JNK Tract 7 and the west line of said Heroway Crossing Tract, S 21°10'49" E a distance of 191.29 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" (NAD-83, Central Zone Grid Coordinates: N: 10,187,448.94, E: 3,085,391.31) set for the southeast corner of the herein described tract, 201.00 feet right of FM 2243 baseline station 141+51.78, from which a 1/2-inch iron rod with cap stamped "Watson" found at the southeast corner of said JNK Tract 7 and the southwest corner of said Heroway Crossing Tract bears S 21°10'49" E a distance of 1,913.96 feet;

THENCE, over and across said JNK Tract 7, S 75°22'22" W a distance of 209.47 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" set for an angle point, 201.00 feet right of FM 2243 baseline station 139+42.31;

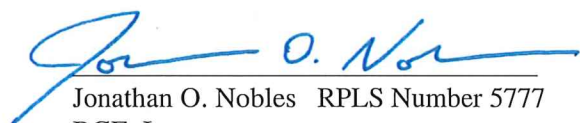
THENCE, continuing over and across said JNK Tract 7 and said JNK Tract 6, S 73°03'05" W a distance of 296.24 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" set for an angle point, 213.00 feet right of FM 2243 baseline station 136+46.32;

THENCE, continuing over and across said JNK Tract 6, S 75°22'22" W a distance of 318.79 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" set on the west line of said JNK Tract 6 and the east line of said Droptini Tract, for the southwest corner of the herein described tract, 213.00 feet right of FM 2243 baseline station 133+27.53, from which a 1/2-inch iron rod found leaning on the west line of said JNK Tract 6, at the southeast corner of said Droptini Tract bears S 20°46'53" E a distance of 810.10 feet;

THENCE, with the west line of said JNK Tract 6 and the east line of said Droptini Tract, N 20°46'53" W a distance of 92.46 feet to the **POINT OF BEGINNING** and containing 2.820 acre (122,859 square feet) of land, more or less.

Bearing orientation is based on the Texas State Plane Coordinate System NAD-83, Central Zone 4203. All distances are surface and may be converted to grid by dividing by a scale factor of 1.00012.

I hereby certify that these notes were prepared by BGE from a survey made on the ground under my supervision on May 12, 2022 and are true and correct to the best of my knowledge. A sketch accompanies this description.



Jonathan O. Nobles RPLS Number 5777
BGE, Inc.
101 West Louis Henna Blvd., Suite 400
Austin, TX 78728
Telephone: 512-879-0400
TBPELS Licensed Surveying Firm Number 10106502



05/20/2022

Date

Client: Williamson County
Date: May 20, 2022
Project Number: 7473-00

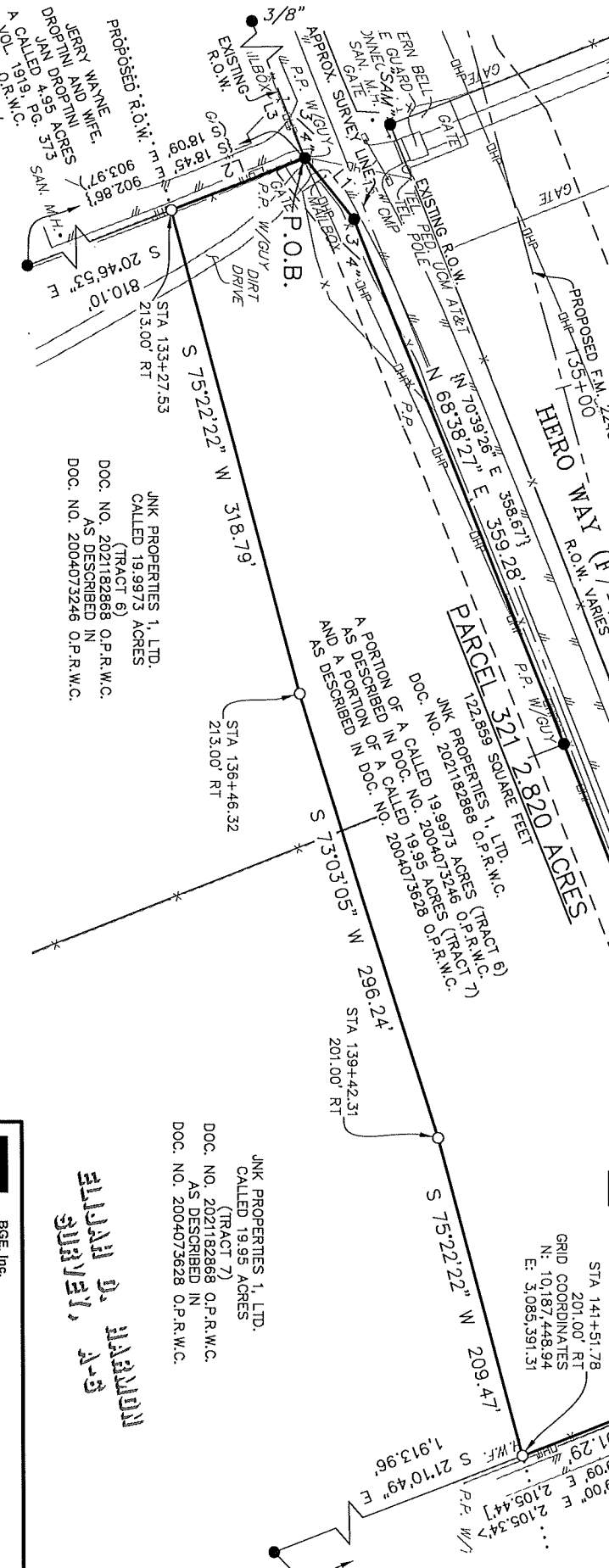
SKETCH TO ACCOMPANY LEGAL DESCRIPTION

PROPOSED R.O.W. SURVEY, A-125

HERO WAY CAPITAL, LLC
CALLED 41.56 ACRES
DOC. NO. 2021121563 O.P.R.W.C.

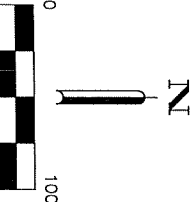
STELLA CARTER
CALLED 4.41 ACRES
VOL. 894, PG. 532 D.R.W.C.
VOL. 2059, PG. 702 O.R.W.C.
HARMONY PUBLIC SCHOOLS
CALLED 27.99 ACRES
DOC. NO. 2021088010 O.P.R.W.C.

HEROWAY CROSSING LLC
CALLED 27.868 ACRES
DOC. NO. 2020158793
HERO WAY (E/K/A CR 269)
PROPOSED E.W. 2243 BASELINE
SIGN
METAL TRANSMISSION P.P. @
GATE
DRAINAGE EASEMENT
VOL. 799, PG. 655 D.R.W.C.
10.3
STA 141+51.78
201.00' RT
GRID COORDINATES
N: 10,187.448 94
E: 3,085.391 31



GENERAL NOTES:

1. BEARING ORIENTATION IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE 4203, NAD83. DISTANCES SHOWN HEREON ARE IN SURFACE AND CAN BE CONVERTED TO GRID BY DIVIDING BY THE COMBINED SCALE FACTOR = 1.00012
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE WAS PREPARED IN CONJUNCTION WITH THIS SKETCH.
3. THIS PARCEL PLAT WAS MADE IN RELIANCE UPON THAT CERTAIN COMMITMENT FOR TITLE INSURANCE ISSUED BY TITLE RESOURCES GUARANTY COMPANY AND TEXAS NATIONAL TITLE, INC. UNDER G.F. NO. T-157573, DATED EFFECTIVE DECEMBER 14, 2021 AND ISSUED ON DECEMBER 23, 2021.



ELIAB D. HARMON
SURVEY, A-3

BGE
BGE, Inc.
101 West Louis Henna Blvd, Suite 400, Austin, TX 78728
Tel: 512-679-0400 • www.bgeinc.com
TBPLS Licensed Surveying Firm No. 10106502

PARCEL PLAT
SHOWING PARCEL 321
2.820 ACRES
FM 2243

WILLIAMSON COUNTY, TEXAS

Scale:	Job No.:	Date:	Page:
1"=100'	7473-00	05/20/2022	3 of 4

LEGEND

B.F.	BOARD FENCE
CMP	CORRUGATED METAL PIPE
C.R.S.	CATHODIC READING STATION
DOC.	DOCUMENT
D.R.W.C.	DEED RECORDS OF WILLIAMSON COUNTY
H.W.F.	HOG WIRE FENCE
M.H.	MANHOLE
NO.	NUMBER
O.P.R.W.C.	OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY
O.R.W.C.	OFFICIAL RECORDS OF WILLIAMSON COUNTY
PED.	PEDESTAL
PG.	PAGE
P.L.M.	PIPELINE MARKER
P.O.B.	POINT OF BEGINNING
P.P.	POWER POLE
R.O.W.	RIGHT-OF-WAY
SAN.	SANITARY
TRANS.	TRANSFORMER
TEL.	TELEPHONE
U.C.M.	UNDERGROUND CABLE MARKER
VOL.	VOLUME
W.M.	WATER METER
W.V.	WATER VALVE
()	RECORD INFO FOR VOL. 1919, PG. 373 O.R.W.C.
[]	RECORD INFO FOR DOC. NO. 2004073628 O.P.R.W.C.
{ }	RECORD INFO FOR DOC. NO. 2004073246 O.P.R.W.C.
< >	RECORD INFO FOR DOC. NO. 2020158793 O.P.R.W.C.
●	FOUND 1/2" IRON ROD (UNLESS OTHERWISE NOTED)
● "SAM"	FOUND 5/8" IRON ROD W/CAP "SAM INC"
○	SET 1/2" IRON ROD W/CAP "WILCO ROW 5777"
△	CALCULATED POINT
—x—	WIRE FENCE
—o—	CHAIN LINK FENCE
—DHT—	OVERHEAD TELEPHONE
—DHP—	OVERHEAD POWER
—//—	EDGE OF ASPHALT

RESTRICTIVE COVENANT AND EASEMENT NOTES:

1. RESTRICTIVE COVENANTS OF RECORD ITEMIZED IN VOLUME 653, PAGE 611, VOLUME 763, PAGE 360 AND VOLUME 782, PAGE 891, DEED RECORDS, WILLIAMSON COUNTY, TEXAS, DO AFFECT THE SUBJECT TRACT.
- 10.2 A CHANNEL EASEMENT GRANTED TO STATE OF TEXAS AS DESCRIBED IN VOLUME 409, PAGE 383 OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT THE SUBJECT TRACT.
- 10.3 AN ELECTRIC TRANSMISSION AND/OR DISTRIBUTION LINE AND/OR SYSTEM EASEMENT GRANTED TO PEDERNALES ELECTRIC COOPERATIVE, INC. AS DESCRIBED IN VOLUME 799, PAGE 655 OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES AFFECT THE SUBJECT TRACT, AS SHOWN HEREON.
- 10.4 ALL TERMS, CONDITIONS AND PROVISIONS OF THAT CERTAIN DEVELOPMENT AGREEMENT OF RECORD IN DOCUMENT NO. 2013051965 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT THE SUBJECT TRACT.
- 10.4 NOTICE REGARDING ORDINANCE NO. 18-026-00 RECORDED IN DOCUMENT NO. 2018041030 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT THE SUBJECT TRACT.

LINE TABLE		
NUMBER	BEARING	DISTANCE
L1	N 51°21'07" E	49.92'
L2	N 20°46'53" W	92.46'
L3	S 68°59'05" W	239.86'
L4	N 68°37'36" E	576.26'

RECORD LINE TABLE		
NUMBER	BEARING	DISTANCE
{L1}	{N 53°53'12" E}	{50.46'}
(L3)	(S 71°37' W)	(240.00')
<L4>	<N 70°40'08" E>	<576.23'>

I hereby certify that this survey was made on the ground by BGE, Inc. under my supervision on May 12, 2022 and is true and correct to the best of my knowledge. The property has access to a public roadway and there are no visible encroachments, except as shown hereon.



05/20/2022

JONATHAN O. NOBLES RPLS NO. 5777
BGE, INC.
101 WEST LOUIS HENNA BLVD., SUITE 400
AUSTIN, TEXAS 78728
TELEPHONE: (512) 879-0400

BGE
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101 West Louis Henna Blvd, Suite 400, Austin, TX 78728
Tel: 512-879-0400 • www.bgeinc.com
TBPLS Licensed Surveying Firm No. 101065602

PARCEL PLAT
SHOWING PARCEL 321
2.820 ACRES
FM 2243
WILLIAMSON COUNTY, TEXAS

Scale: 1"=100'
Job No.: 7473-00
Date: 05/20/2022
Page: 4 of 4