

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS

§

Parcel No.: 339P1

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 **TDW DEVELOPMENT, LLC** (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 Exhibits "A" 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, the 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 the Grantor payment in the amount of **ONE HUNDRED NINE THOUSAND SEVEN HUNDRED FIFTY-NINE and no/100 DOLLARS (\$109,759.00)** (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 for Parcel 339 Part 1, 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 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 acquisition of the Property is less than the amount of the Entry Deposit, then the

Grantor agrees that the difference between the amount of the Entry Deposit tendered and the amount of such final settlement or judgment for acquisition of the Property represents an overpayment and, upon written notice from the County, the 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. The 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 other than identified in the title commitment T-166261 effective September 22, 2023 issued 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. 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.

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 17, 2024.
 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. 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, 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 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 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 the 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 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 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. There shall be no drinking liquor, hunting, or fishing on the Property or any of Grantor's lands by the County, its officers, agents, employees, contractors, invitees, guests, or representatives at any time. No firearms or fishing equipment shall be taken on the property by the County, its officers, agents, employees, contractors, invitees, guests or representatives at any time. The County, its contractors, and any and all persons entering the Property under this Agreement shall not perform disorderly conduct and a portable sanitary facility shall be made available for the County's contractors and any and all persons entering the Property under this agreement.
12. The County shall have the right to remove any fence that now crosses the Property. Prior to cutting any fence, however, the County shall give timely notice to the Grantor to brace the existing fence to be cut adequately on both sides of the proposed cut by suitable H-braces to prevent the remainder of the fence from sagging. If applicable, the County shall take reasonable steps to ensure that cattle, horses and/or other livestock cannot stray from the fenced pastures, including but not limited to informing Grantor of any fence removal and allowing for

reasonable time to relocate said livestock. The County and its designated contractors, employees, and invitees agree to keep any and all gates and fences closed and locked at all times except when passing through same.

13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest, and assigns of the parties.

14. It is agreed the County will record this document.

15. Other conditions:

- (a) Any condemnation petition filed by County to acquire the Property shall provide that the existing detention pond facilities shall be permitted to remain on the Property in the currently approved and permitted capacity according to standard TxDOT utility joint use agreement terms, and that any modifications to the pond design and capacity shall be allowed in the future only after permit application, plan review and approval by the necessary city, governmental agencies and approval of the applicable regulatory entity operating the roadway facilities which approval shall not be unreasonably withheld or delayed. All parties acknowledge that the existing detention pond will have to be modified to accommodate the drainage from the future adjacent approximately 32-acre mixed use development. Allowable modifications of the detention facilities include enlargement of the facilities, landscape improvements, and maintenance of the detention area. All modifications, improvements, and maintenance by the Grantor will be at the sole expense of Grantor.
- (b) Upon written request from either party to the Agreement, any final prerequisites to and including filing a condemnation suit shall be completed by County within (90) ninety days following such request, and the parties shall use best efforts to schedule a special commissioners' hearing at on a mutually agreeable date within ninety (90) days after filing of the condemnation petition.
- (c) Should the Special Commissioners' Award (if any) be greater than the Entry Deposit paid pursuant to paragraph 2 herein, the County shall tender the difference to the registry of the court within sixty (60) days of the date that the Special Commissioners' Award is entered.

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:

TDW DEVELOPMENT, LLC

By: Tempa D. Herman

Name: Tempa D. Herman

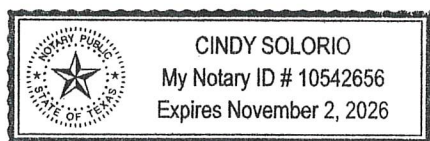
Its: Manager

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the 15th day of January, 2024, by Tempa D. Herman, in the capacity and for the purposes and consideration recited herein.



Cindy Solorio
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

EXHIBIT A

County: Williamson
Parcel: 339 Part 1
Highway: FM 2243

METES & BOUNDS DESCRIPTION FOR PARCEL 339 PART 1

METES & BOUNDS DESCRIPTION FOR A 0.278 ACRE TRACT OF LAND OUT OF THE TALBOT CHAMBERS SURVEY, ABSTRACT NO. 125, WILLIAMSON COUNTY, TEXAS; BEING A PORTION OF TRACT 9, KITTIE HILL ACRES, A SUBDIVISION AS RECORDED IN CABINET F, SLIDES 45 AND 46 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING A PORTION OF A REMAINDER OF A CALLED 27.07 ACRE TRACT OF LAND AS CONVEYED TO JGHTDH #1, LLC, BY GENERAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN DOCUMENT NUMBER 2016075658 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 0.278 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS AND SHOWN ON THE ATTACHED SKETCH:

BEGINNING at a 1/2-inch iron rod found on the north right-of-way line of Hero Way (f/k/a County Road 269) (width varies) (no deed of reference found), at the southwest corner of the above described Tract 9 and the southeast corner of Tract 5 of AMENDED PLAT KITTIE HILL ACRES TRACT 5 AND TRACT 6, a subdivision as recorded in Cabinet X, Slides 378 and 379 of the Plat Records of Williamson County, Texas, as conveyed to Zoomers Investment Group LLC by Special Warranty Deed with Vendor's Lien recorded in Document Number 2021055330 of the Official Public Records of Williamson County, Texas, for the southwest corner and **POINT OF BEGINNING** of the herein described tract, from which a cotton spindle found at an angle point in the north right-of-way line of said Hero Way, bears S 70°03'21" W a distance of 213.57 feet;

THENCE, with the west line of said Tract 9 and the east line of said Tract 5, N 21°01'05" W a distance of 19.19 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" (NAD-83, Central Zone Grid Coordinates: N: 10,188,839.05, E: 3,088,335.88) set for the northwest corner of the herein described tract, 238.00 feet left of FM 2243 baseline station 173+84.58, from which a 1/2-inch iron rod found on the west line of said Tract 9, at the northeast corner of original Tract 5 of said KITTIE HILL ACRES, bears N 21°01'05" W a distance of 405.61 feet;

THENCE, over and across said Tract 9, N 69°25'18" E a distance of 106.10 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" set at the beginning of a non-tangent curve to the right, 238.00 feet left of FM 2243 baseline station 174+90.68;

THENCE, continuing over and across said Tract 9, along said curve to the right, an arc distance of 78.15 feet, having a radius of 8,147.00 feet, a central angle of 00°32'59" and a chord which bears N 69°43'20" E a distance of 78.15 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" set at the beginning of a non-tangent curve to the left, 237.59 feet left of FM 2243 baseline station 175+68.82;

THENCE, continuing over and across said Tract 9, along said curve to the left, an arc distance of 169.78 feet, having a radius of 1,320.00 feet, a central angle of 07°22'10" and a chord which bears N 44°15'01" E a distance of 169.66 feet to a 1/2-inch iron rod with cap stamped "WILCO ROW 5777" set on the east line of said Tract 9 and the west line of Tract 10 of said KITTIE HILL ACRES, as conveyed to TDW Development LLC by Special Warranty Deed recorded in Document Number 2022013182 of the Official Public Records of Williamson County, Texas, for the northeast corner of the herein described tract, 310.58 feet left of FM 2243 baseline station 177+17.80, from which a 1/2-inch iron rod found at the northeast corner of said Tract 9 and the northwest corner of said Tract 10, bears N 20°59'56" W a distance of 552.35 feet;

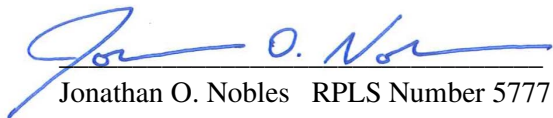
THENCE, with the east line of said Tract 9 and the west line of said Tract 10, S 20°59'56" E a distance of 93.08 feet to a calculated point on the north right-of-way line of said Hero Way, at the southeast corner of said Tract 9 and the southwest corner of said Tract 10, for the southeast corner of the herein described tract, from which a 1/2-inch iron rod with cap stamped "FOREST RPLS 1847" found at the southeast corner of said Tract 10 and the southwest corner of the remaining portion of Tract 13 of said KITTIE HILL ACRES, bears N 69°40'48" E a distance of 336.56 feet;

THENCE, with the north right-of-way line of said Hero Way, and the south line of said Tract 9, S 69°40'48" W a distance of 218.68 feet to a 1/2-inch iron rod with cap stamped "FOREST RPLS 1847" found for an angle point;

THENCE, continuing with the north right-of-way line of said Hero Way and the south line of said Tract 9, S 69°58'26" W a distance of 119.66 feet to the **POINT OF BEGINNING** and containing 0.278 acre (12,097 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.

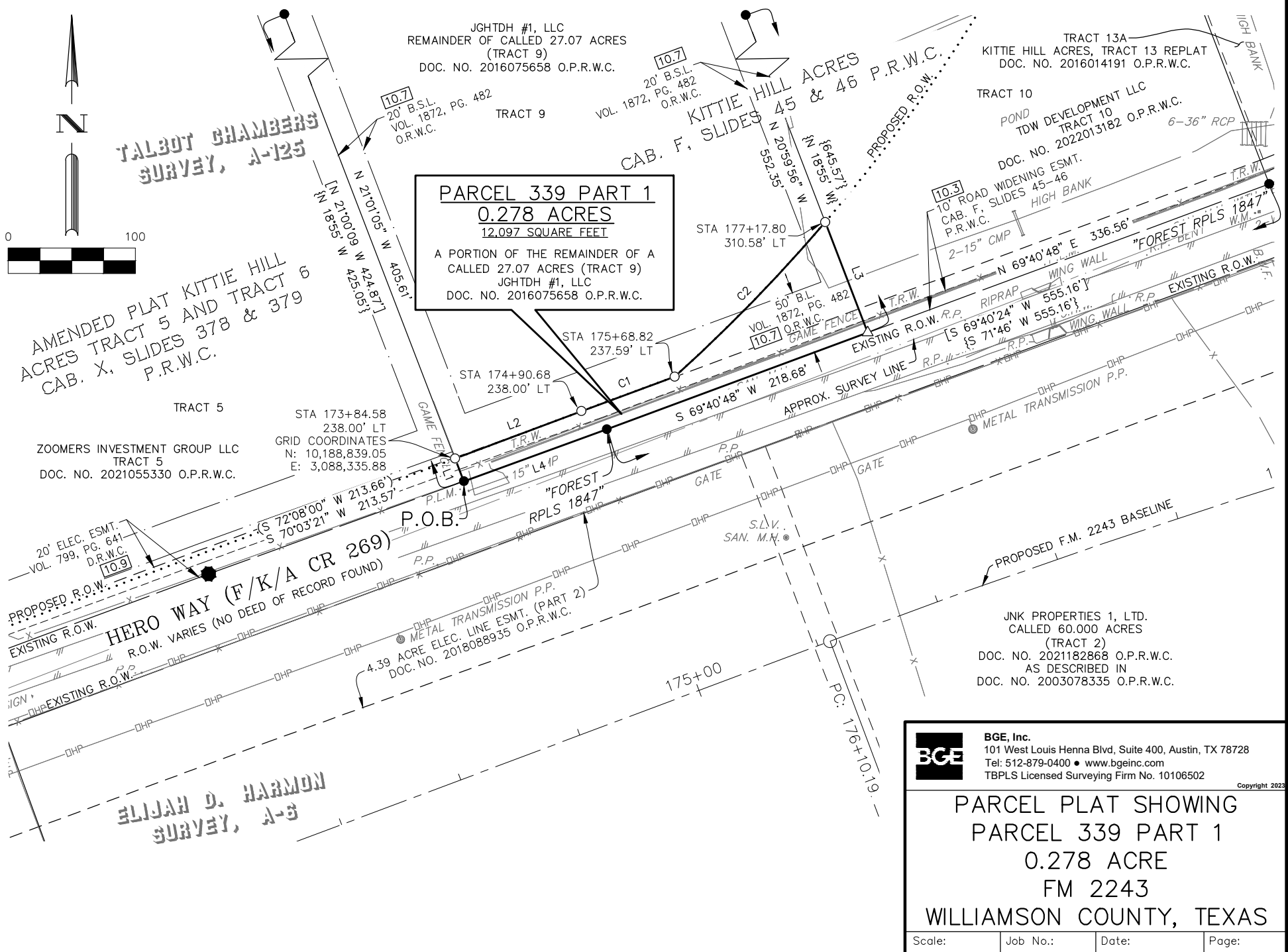
101 West Louis Henna Blvd., Suite 400
Austin, TX 78728
Telephone: 512-879-0400
TBPELS Licensed Surveying Firm Number 10106502



09/08/2023

Date

Client: Williamson County
Date: September 8, 2023
Project Number: 7473-00



BGE, Inc.
101 West Louis Henna Blvd, Suite 400, Austin, TX 78728
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TBPLS Licensed Surveying Firm No. 10106502

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PARCEL PLAT SHOWING
PARCEL 339 PART 1
0.278 ACRE
FM 2243
WILLIAMSON COUNTY, TEXAS

Scale:	Job No.:	Date:	Page:
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LEGEND

B.W.F.	BARBED WIRE FENCE
CAB.	CABINET
C.H.W.	CONCRETE HEADWALL
CMP	CORRUGATED METAL PIPE
DOC.	DOCUMENT
D.R.W.C.	DEED RECORDS OF WILLIAMSON COUNTY
ELEC.	ELECTRIC
ESMT.	EASEMENT
G.R.	GUARD RAIL
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
PG.	PAGE
P.L.M.	PIPELINE MARKER
P.O.B.	POINT OF BEGINNING
P.P.	POWER POLE
P.R.W.C.	PLAT RECORDS OF WILLIAMSON COUNTY
RCP	REINFORCED CONCRETE PIPE
R.O.W.	RIGHT-OF-WAY
R.P.	REFLECTOR POST
SAN.	SANITARY
S.L.V.	SANITARY LINE VENT
T.R.W.	TIMBER RETAINING WALL
VOL.	VOLUME
W.M.	WATER METER
W.V.	WATER VALVE
()	RECORD INFO FOR CAB. X, SLIDES 378-379 P.R.W.C.
{ }	RECORD INFO FOR CAB. F, SLIDES 45-46 P.R.W.C.
[]	RECORD INFO FOR DOC. NO. 2016075658 O.P.R.W.C.
●	FOUND 1/2" IRON ROD (UNLESS OTHERWISE NOTED)
○	SET 1/2" IRON ROD W/CAP "WILCO ROW 5777"
⊗	COTTON SPINDLE FOUND
△	CALCULATED POINT
—X—	WIRE FENCE
—OHT—	OVERHEAD TELEPHONE
—OHP—	OVERHEAD POWER
///	EDGE OF ASPHALT
10.9	SCHEDULE B ITEM

CURVE TABLE

NUMBER	ARC LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	78.15'	8,147.04'	0°32'59"	N 69°43'20" E	78.15'
C2	169.78'	1,320.00'	7°22'10"	N 44°15'01" E	169.66'

LINE TABLE

NUMBER	BEARING	DISTANCE
L1	N 21°01'05" W	19.19'
L2	N 69°25'18" E	106.10'
L3	S 20°59'56" E	93.08'
L4	S 69°58'26" W	119.66'

RECORD LINE TABLE

NUMBER	BEARING	DISTANCE
{L4}	{N 72°08' W}	
[L4]	[S 70°02'24" W]	[119.74']



BGE, Inc.
 101 West Louis Henna Blvd, Suite 400, Austin, TX 78728
 Tel: 512-879-0400 • www.bgeinc.com
 TBPLS Licensed Surveying Firm No. 10106502

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PARCEL PLAT SHOWING
 PARCEL 339 PART 1
 0.278 ACRE
 FM 2243
 WILLIAMSON COUNTY, TEXAS

Scale: 1"=100'	Job No.: 7473-00	Date: 09/08/2023	Page: 4 of 5
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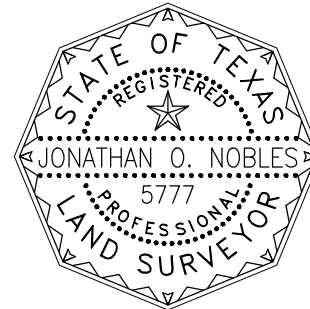
G:\TXC\Projects\County_Williamson\7473-00_RM 2243\06_Survey\04_Finals\Drawings\7473-00_P339-P1_EX1.dwg, 9/8/2023 2:02 PM, Stephen Barger

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 FIRST AMERICAN TITLE GUARANTY COMPANY AND TEXAS NATIONAL TITLE, INC. UNDER G.F. NO. T-166261, DATED EFFECTIVE MAY 5, 2023 AND ISSUED ON JULY 31, 2023.

RESTRICTIVE COVENANT AND EASEMENT NOTES:

1. RESTRICTIVE COVENANTS OF RECORD ITEMIZED IN CABINET F, SLIDE 45, PLAT RECORDS, AND VOLUME 1872, PAGE 482, OFFICIAL RECORDS, WILLIAMSON COUNTY, TEXAS, DO AFFECT THE SUBJECT TRACT.
- 10.2 ANY AND ALL EASEMENTS, BUILDING LINES AND CONDITIONS, COVENANTS AND RESTRICTIONS AS SET FORTH IN PLAT RECORDED IN CABINET F, SLIDE 45, PLAT RECORDS, WILLIAMSON COUNTY, TEXAS, DO AFFECT THE SUBJECT TRACT, AS SHOWN HEREON.
- 10.3 A 10 FOOT ROAD WIDENING EASEMENT RESERVED ALONG THE SOUTHERLY PROPERTY LINE, AS SHOWN ON THE PLAT OF RECORD IN CABINET F, SLIDE 45 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES AFFECT THE SUBJECT TRACT, AS SHOWN HEREON.
- 10.5 AIR SPACE EASEMENT AS SET FORTH IN INSTRUMENT RECORDED IN VOLUME 1872, PAGE 482 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES AFFECT THE SUBJECT TRACT. (BLANKET)
- 10.7 BUILDING SETBACK LINE(S) AS PROVIDED IN RESTRICTIONS OF RECORD IN VOLUME 1872, PAGE 482 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, DO AFFECT THE SUBJECT TRACT, AS SHOWN HEREON.
- 10.9 AN ELECTRIC TRANSMISSION EASEMENT GRANTED TO PEDERNALES ELECTRIC COOPERATIVE, INC. AS DESCRIBED IN VOLUME 799, PAGE 641, DEED RECORDS, WILLIAMSON COUNTY, TEXAS, DOES AFFECT THE SUBJECT TRACT, AS SHOWN HEREON.
- 10.14 ALL TERMS, CONDITIONS AND PROVISIONS OF THAT CERTAIN DEVELOPMENT AGREEMENT OF RECORD IN DOCUMENT NO. 2010083086 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, DO AFFECT THE SUBJECT TRACT.



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.

09/08/2023


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



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