

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS

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§

Project No.: SH195

Parcel No.: 109A

COUNTY OF WILLIAMSON

CSJ No.: 0440-02-0112

This agreement, effective the 29 day of March, 2011, between the State of Texas, acting by and through Williamson County, Texas (the "State"), and JOHN B. SCHNEIDER, Trustee, (the "Grantor(s)"), grants an irrevocable right to possession and use to the State, its contractors, agents and all others deemed necessary by the State for the purpose of constructing a portion of Highway No. 195. The property involved is described more fully in field notes and plat map (attached as Exhibit "A") and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the State 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 State of Texas exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. This Possession and Use Agreement will extend to the State, 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 State 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 State will tender to the Grantor(s) the sum of ONE HUNDRED FORTY THOUSAND FIVE HUNDRED NINE and 00/100 Dollars (\$140,509.00). The Grantor(s) agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents 90 percent of the State's approved value. The approved value is the State's determination of the just compensation owed to the Grantor(s) for the full fee title interest to be acquired by the State 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 State 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 State 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 State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

4. This agreement is made with the understanding that the State 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 within ninety (90) days of the effective date of this agreement, the State shall begin proceedings in eminent domain to acquire fee title to the Property. The State 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 or any easement interest to be acquired by the State 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 State institutes eminent domain proceedings, the State 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 State until entry of judgment.
8. The purpose of this agreement is to allow the State 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 State 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 State 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 State will record this document
13. Other conditions: None.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas 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 22 DAY OF March, 2011.

Grantors:



John B. Schneider, Trustee

ACCEPTED AND AGREED TO BY THE STATE OF TEXAS, ACTING BY AND THROUGH
WILLIAMSON COUNTY, THIS THE _____ DAY OF _____, 2011.

WILLIAMSON COUNTY, TEXAS

By:



Dan A. Gattis, County Judge

Acknowledgement

State of Texas
County of FAYETTE

This instrument was acknowledged before me on MARCH 22, 2011

by John B. Schneider, Trustee, in the capacity and for the purposes and consideration recited herein.



Gerrie Seger
Notary Public's Signature

State of Texas
County of Williamson

This instrument was acknowledged before me on _____

by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.

Notary Public's Signature

After recording return to:

EXHIBIT A

County: Williamson
Highway: SH 195
Limits: From 8.105 Miles South of S. H. 138 to I.H. 35
ROW CSJ: 0440-02-012

Legal Description Parcel 109 A

BEING a 2.108 acre (91,836 square feet) tract of land located in the Burrell Eaves Survey, Abstract No. 216, of Williamson County, Texas, said 2.108 acre tract of land is out of and a part of a 10.22 acre tract conveyed by Wilford C. Schneider, et al to John B. Schneider, by deed recorded May 10, 2010 as Document No. 2010030327 of the Official Public Records of Williamson County, Texas, said 2.108 acre tract of land is further described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod with a plastic yellow cap stamped "RODS SURVEYING, INC." set for the most southerly corner of the 1.00 acre tract of land conveyed by Steven L. Prayter and wife, Ronda Prayter, to John Cahill and wife, Debra Cahill, by deed recorded August 16, 2000 as Document No. 2000054348 of said Official Public Records, said 1.00 acre tract being previously conveyed out of the referenced 419.34 acre tract and said point is located 175.04 feet right of Proposed State Highway 195 (SH 195) Baseline Station 1650+93.19;

THENCE North 59° 31' 26" East with the southeast line of the said 1.00 acre tract for a distance of 62.66 feet to a 5/8 inch iron rod with TxDOT aluminum cap set in the proposed southwest right of way line of SH 195 for the POINT OF BEGINNING of the herein described tract, said rod is located 120.44 feet right of Proposed SH 195 Baseline Station 1651+24.02;

1. THENCE North 59° 31' 26" East continuing with the southeast line of the said 1.00 acre tract for a distance of 161.47 feet to a calculated point on the existing southwest right of way line of SH 195 for the east corner of the said 1.00 acre tract, from which a found 1/2 inch iron rod found bears South 59° 31' 26" West a distance of 0.63 feet;
2. THENCE South 59° 50' 49" East with the existing southwest right of way line of SH 195 for a distance of 626.36 feet to a calculated point for the north corner of a 1.00 acre tract of land conveyed by Wilford Schneider and wife, Mary Lois Schneider, to Janis Johnson and Richard W. Johnson, by deed recorded May 30,

EXHIBIT _____

2003 in Document No. 2003049663, of said Official Public Records, from which a 1/2 inch iron rod found bears South 44° 56' 18" West a distance of 0.32 feet;

3. THENCE South 44° 56' 18" West with the west line of the said 1.00 acre tract for a distance of 147.82 feet to a 5/8 inch iron rod with TxDOT aluminum cap set on the proposed southwest right of way line of SH 195, said rod is located 122.84 feet right of Proposed SH 195 Baseline Station 1657+91.77;
4. THENCE North 59° 39' 26" West with the proposed southwest right of way line of SH 195 for a distance of 667.84 feet to the POINT OF BEGINNING, said described tract containing 2.108 acres (91,836 square feet) of land, more or less.

This survey is referenced to the National Spatial Reference System. The projection and datum are the Texas State Plane Coordinate System, Central Zone, North American Datum of 1983. All bearings are relative to National Geodetic Survey, 1993 Adjustment, monuments T27 A (PID AB2837), Austin RRP (PID AF9537) and, Georgeport (PID BM1093). All distances are surface values expressed in U. S. Survey feet and may be converted to grid by dividing by the TxDOT surface adjustment factor of 1.00012.

This description was prepared in conjunction with, and is accompanied by a plat of an even date herewith.

Surveyed by:
RODS Surveying, Inc.
6810 Lee Road, Spring Texas 77379
Phone (281) 379-6388

I, Scott Morris, hereby certify that the above description is true and correct and depicts a survey made under my supervision and on the ground and is based on data gathered from February 2001 to October 2006.

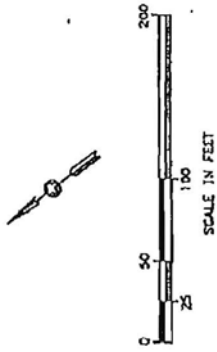
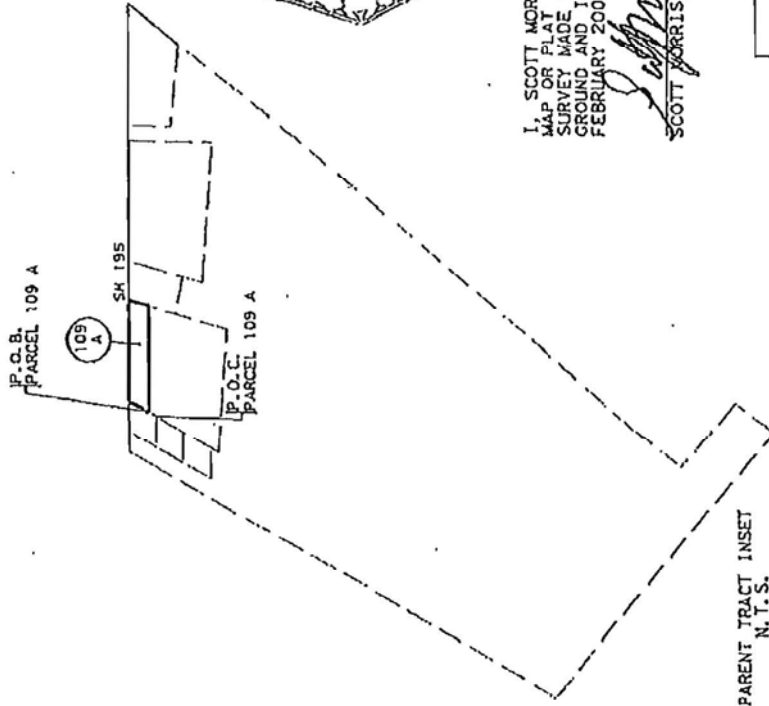
Scott Morris, Registered Professional Land Surveyor No. 5076

Date as of: 2-10-2011



LEGEND

- FOUND CONCRETE MONUMENT (TXDOT TYPE I)
- FOUND CONCRETE MONUMENT (TXDOT TYPE II)
- CONCRETE MONUMENT SET (TXDOT TYPE II)
- FOUND 1/2" IRON ROD UNLESS NOTED
- 5/8" IRON ROD SET WITH TXDOT ALUMINUM CAP (UNLESS NOTED)
- CALCULATED POINT
- FOUND CORNER (AS DESCRIBED)
- 5/8" IRON ROD SET WITH YELLOW CAP "RODS SURVEYING INC."
- PROPERTY LINE
- RECORD INFORMATION
- SURVEY LINE
- PROPOSED DRAINAGE EASEMENT
- ACCESS DENIAL LINE
- EXISTING R.O.W. LINE
- PARCEL BOUNDARY
- RIGHT OF WAY
- POINT OF BEGINNING
- P.O.B.
- POINT OF COMMENCEMENT
- P.O.C.
- POINT OF CURVATURE
- PT
- POINT OF TANGENCY
- CHB
- CHORD BEARING
- CHD
- CHORD DISTANCE
- B.L.
- BUILDING SETBACK LINE (PER PLAT)
- NOT TO SCALE
- N.T.S.
- P.U.E.
- PUBLIC UTILITY EASEMENT
- W.C.D.R.
- WILLIAMSON COUNTY DEED RECORDS
- W.C.O.R.
- WILLIAMSON COUNTY OFFICIAL RECORDS
- W.C.O.P.R.
- WILLIAMSON COUNTY PLAT RECORDS
- W.C.P.R.
- ON SITE SEWERAGE FACILITY SETBACK



EXHIBIT

I, SCOTT MORRIS, HEREBY CERTIFY THAT THE HEREON MAP OR PLAT IS TRUE AND CORRECT AND DEPICTS A SURVEY MADE UNDER MY SUPERVISION AND ON THE GROUND AND IS BASED ON DATA GATHERED FROM FEBRUARY 2001 TO OCTOBER 2006

Scott Morris 2-80-2011
SCOTT MORRIS, R.P.L.S. # 5076 DATE AS OF

REVISED: NOVEMBER, 2010



RIGHT OF WAY PLAT
SHOWING PROPERTY OF
JOHN B. SCHNEIDER
PARCEL 109 A
PAGE 3 OF 4

ROW CSJ NO. 0440-02-012
STATE HIGHWAY 195 WILLIAMSON COUNTY, TEXAS
RODS SURVEYING INC.
6810 LEE ROAD SPRING, TX 77379
(281) 257-4020
SCALE: 1"=100' NOVEMBER 23, 2010

PARENT TRACT INSET
N.T.S.

NOTES:
1. IMPROVEMENTS SHOWN HEREON ARE BASED UPON TXDOT AERIAL SURVEY; DIGITAL FILES DATED FEBRUARY, 2001 AND MAY, 2002 UPDATED BY ON THE GROUND SURVEYS MADE IN FEBRUARY, 2006.
2. THIS SURVEY IS REFERENCED TO THE NATIONAL SPATIAL REFERENCE SYSTEM. THE PROJECTION AND DATUM ARE THE TEXAS STATE PLANE COORDINATE SYSTEM. CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL BEARINGS ARE RELATIVE TO NATIONAL GEODETIC SURVEY, 1993 ADJUSTMENT. MONUMENTS T27 A (PID AB2837), AUSTIN RRP (PID AF9537) AND, GEORGETOWN (PID BM1093). ALL DISTANCES ARE SURFACE VALUES EXPRESSED IN U. S. SURVEY FEET AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE TXDOT SURFACE ADJUSTMENT FACTOR OF 1.00012.

PARCEL NO.	RECORD AREA		ACQUIRED AREA		APPROXIMATE REMAINDER			
	ACRES	SQ. FT.	ACRES	SQ. FT.	LEFT		RIGHT	
109 A	10.22	445,183	2.108	91,836			8.112	353,347

DATE: 10/27/10

TITLE: 11/10/10

