

POSSESSION AND USE AGREEMENT

RM 620 Safety Improvement Project

STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

WHEREAS, HENDERSON CLEVELAND INTERESTS, LTD., hereinafter referred to as "GRANTOR", whether one or more, is the owner of that certain piece, parcel or tract of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibit "A", (more specifically referred to as **Parcel 4** in pending right of way acquisition) which is attached hereto and made a part hereof; and

WHEREAS, THE STATE OF TEXAS acting by and through WILLIAMSON COUNTY, TEXAS, "collectively GRANTEE", plan to acquire a fee simple interest in the tract(s) of land described in Exhibit "A", whether through contract and conveyance or through eminent domain proceedings; and

WHEREAS, the GRANTEE must have possession of said-described tract of land for the Construction of the RM 620 roadway improvements (Project).

NOW THEREFORE, BE IT KNOWN:

That in consideration of the payment of FIVE HUNDRED THIRTY EIGHT THOUSAND NINE HUNDRED SEVENTY SEVEN AND 00/100 Dollars (\$538,977.00), which amount represents 90% of the GRANTEE'S estimated compensation for the acquisition of the Property to be acquired and any damages to the remaining property of Grantor, GRANTOR has GRANTED and CONVEYED and by these presents does GRANT and CONVEY unto the GRANTEE, its employees, agents and assigns an irrevocable right-of-entry, possession, and construction easement, with the right of exclusive possession over, upon, and across those tracts of land described in Exhibit "A".

GRANTOR warrants and represents by, through, and under the GRANTOR, but not otherwise, that the title to the Property is free and clear of all liens on the title to the Property, or that any necessary and proper releases will be executed for the Property prior to or simultaneously with the first payment of funds being disbursed under this agreement. GRANTOR further agrees to indemnify the GRANTEE from all unreleased or undisclosed liens, claims or encumbrances that are known to GRANTEE and that affect the Property. This conveyance is made by GRANTOR and accepted by GRANTEE 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) that affect the Property and are presently of record in the Official Public Records of the county in which the Property Is located, but only to the extent that said items are still valid and in force and effect at this time.

It is expressly agreed, acknowledged, and understood that the consideration paid hereunder shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property interests described in Exhibit "A", and any other real property situated on Exhibit "A" or on the remainder property adjacent to Exhibit "A" to be acquired from GRANTOR.

It is expressly agreed, acknowledged, and understood that the easements, rights, and privileges herein granted are assignable and shall be used by the GRANTEE, its employees, agents, contractors and assigns, for the purposes of entering upon the above-described property, before the closing of the contemplated real estate transaction or the acquisition of title through condemnation, and proceeding with surveying, site review and analysis, utility relocation, actual construction on the Project, and all manner of preparation and work attendant thereto. Utility relocation, if any, shall include, but not be limited to, the relocation of water and wastewater lines, electrical lines, cable television lines, telephone lines, gas lines, and their attendant facilities from the existing roadway right-of-way on the property described in Exhibit "A".

The GRANTEE, its employees, agents, and assigns shall have the full and exclusive right to control and use the above-described tract, including the right to erect and maintain fencing and traffic and pedestrian control and devices and signs, the right to clear trees and vegetation, and the right to excavate, trench, fill, and grade the real property itself.

At no time during the possession of the property by GRANTEE for the purposes described herein shall GRANTOR be denied reasonable access and/or ingress to or egress from the remaining property.

The easement, rights, and privileges herein granted shall automatically terminate upon the contemplated closing of the above-described real estate transaction or the deposit by GRANTEE of any amount by which a special commissioners' award exceeds the consideration paid for this Agreement or the date of the special commissioners award if it does not exceed the amount of the consideration paid for this Agreement. However, this grant shall survive the termination of any purchase contract agreement and shall also survive any institution of condemnation proceedings.

The parties further agree as follows:

1. That by virtue of the granting of permission to the GRANTEE to take temporary possession of the Property in accordance with this Agreement, GRANTOR does not waive any legal rights or defenses under the Constitution of the United States, the Constitution and Statutes of the State of Texas or any other provisions of the law that GRANTOR may have in connection with the acquisition of any rights to the Property by the GRANTEE.
2. That this Right of Entry and Possession is irrevocable by GRANTOR but only valid for no more than twenty (20) days after the filing of a Special Commissioners' award in the Cause as set out above. Thereafter, continued possession, if at all, will be pursuant to a deposit of a Special Commissioners' award according to Texas law governing possession in a statutory eminent domain case or the filing of the commissioners' award if there is no increase in the consideration paid for this agreement.
3. The date of valuation for purposes of determining the value of the just compensation for the Property to be acquired shall be the date of the deposit by GRANTEE of any amount by which a special commissioners' award exceeds the consideration paid for this Agreement or the date of the special commissioners award if it does not exceed the amount of the consideration paid for this Agreement. The Property shall be valued, as of the date of valuation, as if the improvements located thereon as of the date the consideration is paid for this Agreement are still located on the Property.
4. This Agreement shall be binding upon the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. Specifically, Grantor's heirs, devisees, executors, administrators, legal representatives, successors or assigns are bound by terms of this agreement which state that the consideration paid hereunder to Grantor shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property described herein, whether said Grantor is or is not the owner of said property, now or in the future.
5. The easement, right, and privileges granted herein are exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by this grant. This grant shall be binding upon legal representatives, successors, and assigns of GRANTOR for the term of this grant.
6. GRANTEE and GRANTOR agree that any special commissioners' award which exceeds \$538,977.00 will be deposited in the registry of the court within twenty (20) days following the award made by the special commissioners. If the compensation issue is settled through negotiations, a fixed date for receipt of the additional funds, if any, will be agreed upon as part of the negotiation process.

TO HAVE AND TO HOLD the possession of the above-described tracts of land for the purposes and subject to the limitations described above, and GRANTOR warrants that he knows of no persons or business entity owns a present possessory interest in the fee title to the above-described premises other than GRANTOR, and that there are no parties in possession of any portion of the referenced real property as lessees other than identified herein.

Executed this the 22nd day of November, 2011.

GRANTOR:

Henderson Cleveland Interests, Ltd.

By: Blaire Henderson Address: 15709 RR 620
Its: MANAGING PARTNER Austin TX 78717

GRANTEE:

WILLIAMSON COUNTY, TEXAS

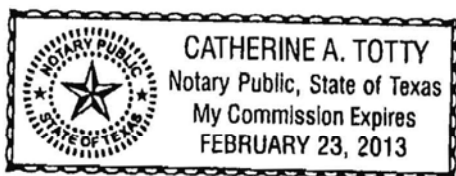
By: [Signature]
Dan A. Gattis
County Judge 12-20-11

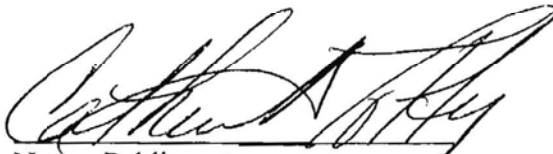
Address: 710 Main Street, Suite 101
Georgetown, Texas 78626

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the 22 day of NOVEMBER, 2011 by BLAKE HENDERSON, in the capacity and for the purposes and consideration recited herein.




Notary Public
Printed Name: CATHERINE A. TOTTY
My Commission Expires: FEB 23, 2013

STATE OF TEXAS
COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ___ day of _____, 2011, by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.

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

After recording return to:

Don Childs
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

EXHIBIT "A"

County: Williamson
Parcel No.: Henderson Cleveland (4)
Highway: R.M. 620
ROW CSJ: 0683-01-079

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11/1/2010

DESCRIPTION FOR PARCEL HENDERSON CLEVELAND

BEING A 0.5064 ACRE (22,057 SQUARE FEET) TRACT SITUATED IN THE JOHN MCQUEEN SURVEY, ABSTRACT NUMBER 425, WILLIAMSON COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 2.258 ACRES TRACT AS DESCRIBED IN A WARRANTY DEED WITH VENDOR'S LIEN TO HENDERSON CLEVELAND INTERESTS, LTD. AND RECORDED IN DOCUMENT NO. 2008020769 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the southeast right-of-way line of Ranch to Market Road No. 620 (RM620), a 100-foot wide right-of-way, for the west corner of said 2.258 acres tract, and from which a 1/2-inch iron rod found bears N54°25'58"W a distance of 0.76 feet;

THENCE with said southeast right-of-way line of RM620, same being the northwest line of said 2.258 acres tract, N35°06'11"E a distance of 401.03 feet to a point for the north corner of said 2.258 acres tract, same being an angle point in said southeast right-of-way line of RM620;

THENCE with said southeast right-of-way line of RM620, same being the northeast line of said 2.258 acres tract, S21°35'20"E, passing at a distance of 1.07 feet a 1/2-inch iron rod found, continuing in all a distance of 24.08 feet to a 1/2-inch iron rod found for the west corner of Lot 10, Block O, Highland Horizon Phase II, a subdivision according to the plat of record in Cabinet FF, Slides 293-296 of the Plat Records of Williamson County, Texas;

THENCE leaving said southeast right-of-way line of RM620, continuing with said northeast line of the 2.258 acres tract, same being the southwest line of Lot 10, Block O, S21°35'20"E a distance of 107.70 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ASSOC INC." set, and from which a 1/2-inch iron rod found in said southwest line of Lot 10, Block O for the east corner of said 2.258 acres tract bears S21°35'20"E a distance of 272.73 feet;

THENCE leaving said northeast line of the 2.258 acres tract and said southwest line of Lot 10, Block O, crossing said 2.258 acres tract, the following three (3) courses and distances:

1. N54°53'49"W a distance of 31.14 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ASSOC INC." set for an angle point,
2. S80°06'11"W a distance of 35.36 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ASSOC INC." set for an angle point, and

EXHIBIT "A"

County: Williamson
Parcel No.: Henderson Cleveland
Highway: R.M. 620
ROW CSJ: 0683-01-079

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DESCRIPTION FOR PARCEL HENDERSON CLEVELAND

3. S35°06'11"W a distance of 304.10 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ASSOC INC." set in the southwest line of said 2.258 acres tract and from which a 1/2-inch iron rod found for the south corner of said 2.258 acres tract bears S54°25'58"E a distance of 282.25 feet;

THENCE with said southwest line of the 2.258 acres tract, N54°25'58"W a distance of 54.00 feet to said POINT OF BEGINNING and containing 0.5064 acre (22,057 square feet).

NOTES:

All bearings shown hereon are based upon the Texas Coordinate System of 1983, Central Zone. All distances shown hereon are surface distances. The Grid to Surface adjustment scale factor is 1.00011.

I, Dan H. Clark, a Registered Professional Land Surveyor, do hereby certify that the above description and the accompanying plat of even date herewith, are true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey on the ground under my direction and supervision.



Dan H. Clark, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6011
Halff Associates, Inc.,
4030 W. Braker Ln, Suite 450, Austin, Texas 78759, 512-252-8184

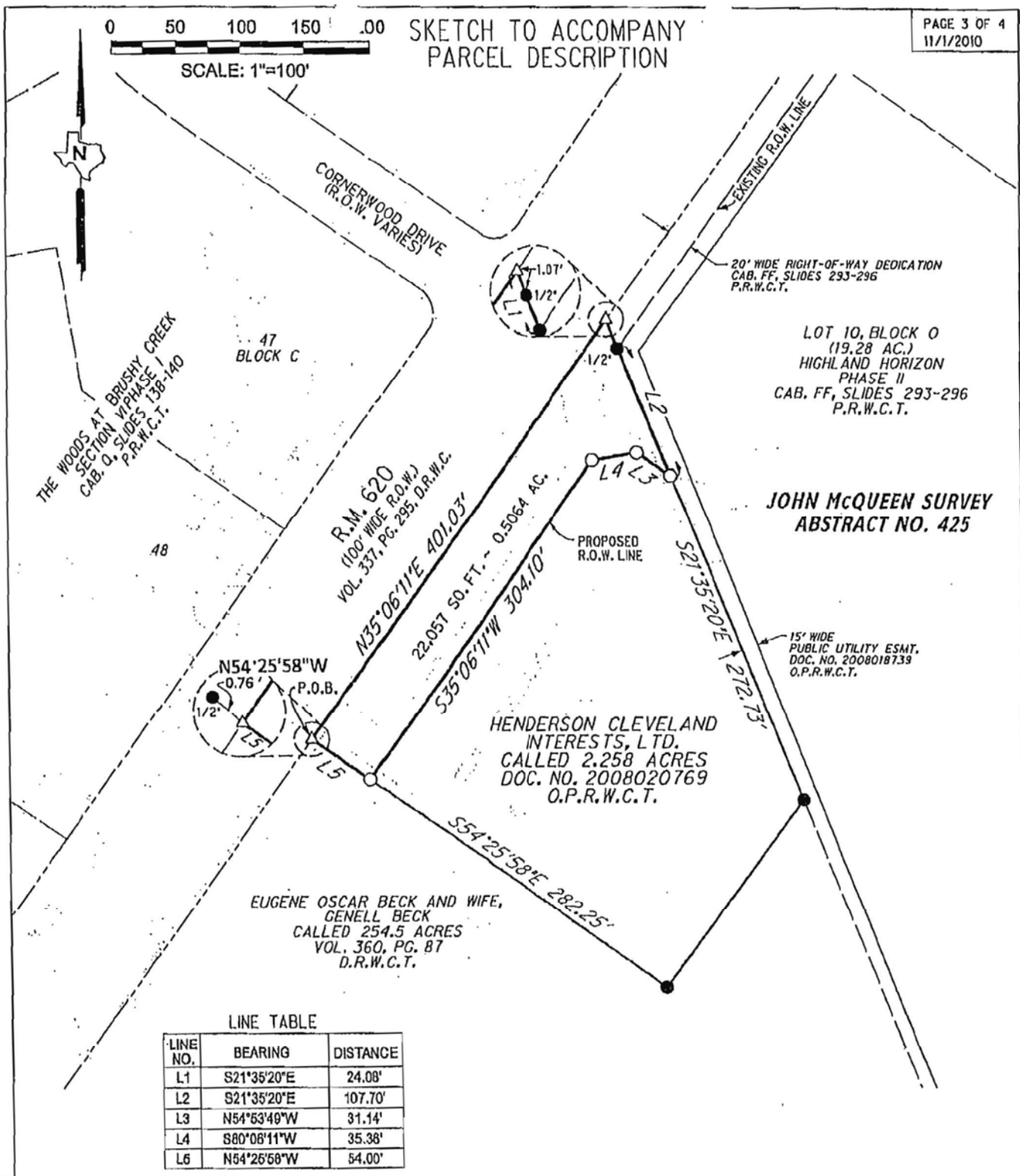
11/1/2010
Date



0 50 100 150 .00
SCALE: 1"=100'

SKETCH TO ACCOMPANY PARCEL DESCRIPTION

PAGE 3 OF 4
11/1/2010



4030 WEST BRAKER LANE, SUITE 450
AUSTIN, TEXAS 78759-5350
TEL (512) 252-8104
FAX (512) 252-8141

RIGHT-OF-WAY ACQUISITION HENDERSON CLEVELAND INTEREST, LTD.

PROJECT NO.
26671

R.M. 620

SCALE
1" = 100'

ACCOMPANYING FILE:
SV-HENDERSON.doc

COUNTY
WILLIAMSON

	ACRES	SQUARE FEET
ACQUISITION	0.5064	22,057
DEED AREA	2.258	89,358
REMAINDER AREA	1.7516	67,301

LEGEND

■	TXDOT TYPE I CONCRETE MONUMENT FOUND
■	TXDOT TYPE II CONCRETE MONUMENT FOUND
□	TXDOT TYPE III CONCRETE MONUMENT SET
○	1/2" IRON ROD SET WITH 'HALFF' CAP (UNLESS NOTED)
●	IRON ROD FOUND (SIZE NOTED)
⊗	1/2" IRON ROD FOUND W/CAP STAMPED 'BAKER-AICKLEN & ASSOC.'
●	SQUARE-HEAD BOLT FOUND
⊙	IRON PIPE FOUND (SIZE NOTED)
▲	FOUND 'X' CUT (UNLESS NOTED)
△	CALCULATED POINT
○	FENCE POST
N.T.S.	NOT TO SCALE
(XXX)	RECORD INFORMATION PARENT TRACT
[XXX]	RECORD INFORMATION ADJOINER TRACT
R.O.W.	RIGHT-OF-WAY
ESMT.	EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
D.R.W.C.T.	DEED RECORDS OF WILLIAMSON COUNTY TEXAS
P.R.W.C.T.	PLAT RECORDS OF WILLIAMSON COUNTY TEXAS
O.P.R.W.C.T.	OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY TEXAS
DOC.#	DOCUMENT NUMBER
D.E.	DRAINAGE EASEMENT
B.L.	BUILDING SETBACK LINE
—	DISTANCE NOT SHOWN TO SCALE
—	PROPERTY LINE
X — X	R.M. 620 PROPOSED RIGHT-OF-WAY LINE
—	FENCE
---	APPROXIMATE SURVEY LINE
---	PROPOSED EASEMENT LINE
P.D.C.	POINT OF COMMENCING
P.D.B.	POINT OF BEGINNING

SKETCH TO ACCOMPANY
PARCEL DESCRIPTION

1) THE BEARINGS SHOWN HEREON ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE, ALL DISTANCES SHOWN HEREON ARE SURFACE DISTANCES, THE GRID TO SURFACE ADJUSTMENT SCALE FACTOR IS 1.00011.

2) THE ACREAGE CALCULATED AND SHOWN HEREON IS CONVERTED FROM THE SQUARE FOOTAGE SHOWN HEREON, AND IS FOR INFORMATIONAL PURPOSES ONLY.

3) THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT OR REPORT. THE SURVEYOR HAS NOT ABSTRACTED THE SUBJECT PROPERTY, NOR MADE ANY INDEPENDENT INVESTIGATION OR SEARCH FOR EASEMENTS OF RECORD, RESTRICTIVE COVENANTS OR ANY OTHER ENCUMBRANCES.



I HEREBY CERTIFY THAT THIS PLAT AND THE ACCOMPANYING DESCRIPTION OF EVEN DATE HERewith ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE PROPERTY SHOWN HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

4/1/2010

DAN H. CLARK
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6011

DATE



HALFF

4030 WEBB BRAKER LANE, SUITE 450
AUSTIN, TEXAS 78709-5356
TEL (512) 252-8184
FAX (512) 252-8141

RIGHT-OF-WAY ACQUISITION
HENDERSON CLEVELAND INTEREST, LTD.

PROJECT NO.
26671

R.M. 620

SCALE
1" = 100'

ACCOMPANYING FILE:
SV-HENDERSON.doc

COUNTY
WILLIAMSON

ACQUISITION

DEED AREA

REMAINDER AREA

ACRES SQUARE FEET

0.5064

22,057

2.258

89,358

1.7516

67,301