

POSSESSION AND USE AGREEMENT

STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

WHEREAS, SOVRAN ACQUISITION LIMITED PARTNERSHIP, a Delaware limited partnership, 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", which is attached hereto and made a part hereof; and

WHEREAS, CAPITOL DISPLAYS, LP, herein referred to as "Tenant", has a leasehold interest in the property described by metes and bounds in Exhibit "A"; and

WHEREAS, WILLIAMSON COUNTY, TEXAS, "GRANTEE", plans 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 purposes described below,

Construction of the CR 170/A.W. Grimes roadway improvements (Project).

NOW THEREFORE, BE IT KNOWN:

That in consideration of the payment of ONE HUNDRED FIFTY TWO THOUSAND FIVE HUNDRED FIFTY AND 00/100 Dollars (\$152,550.00), 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 and encumbrances 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. The 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.

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 tracts, 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 rendition of a final judgment in condemnation proceedings. 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 possession of the Property in accordance with this Agreement, GRANTOR and Tenant do 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 or Tenant may have in connection with the acquisition of any rights to the Property by the GRANTEE.
2. That this Right of Entry, Possession, and Construction Easement is irrevocable by GRANTOR but only valid until sixty (60) business days after the filing of a Special Commissioners' award in the Cause. 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.
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 final execution of this Agreement by all of the parties.

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 agrees that it will not take possession of the Property for the purposes set out in this easement prior to September 15, 2012. GRANTOR shall fully vacate the Property, including the removal of any personal property desired to be retained by GRANTOR, on or before September 14, 2012.
7. By its authorized signature below the following Tenant which has a leasehold interest in the Property hereby consents in all things to GRANTEE taking exclusive and sole possession of the Property pursuant to the terms of this Agreement and to GRANTOR receiving the consideration recited herein:

Tenant: Capitol Displays, LP

8. GRANTEE and GRANTOR agree that both parties will undertake all reasonable efforts to hold a special commissioners' hearing within ninety (90) days after the GRANTOR asks for a special commissioners' hearing to be scheduled. Any award that exceeds \$152,550.00 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.

[signature page follows]

Executed this the 23 day of August, 2012.

GRANTOR:

Sovran Acquisition Limited Partnership,
a Delaware limited partnership
by Sovran Holdings, Inc. - general partner

By: Michael J. Rogers

Its: V.I.

Address: 6467 Main St
Buffalo N.Y. 14221

ACKNOWLEDGMENT

STATE OF New York

COUNTY OF Erie

This instrument was acknowledged before me on this the 23rd day of August, 2012
by Michael J. Rogers in the capacity and for the purposes and consideration recited herein.

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

TAMMY GARDNER
No. 01GA6080914
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Sept. 23, 2014

TENANT:

Capitol Displays, LP

By: _____

Address: _____

Its: _____

STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on this the ____ day of _____, 2012
by _____, in the capacity and for the purposes and consideration
recited herein.

Notary Public, State of Texas

Printed Name: _____

My Commission Expires: _____

GRANTEE:

WILLIAMSON COUNTY, TEXAS

By: 

Dan A. Gattis
County Judge

11-27-2012

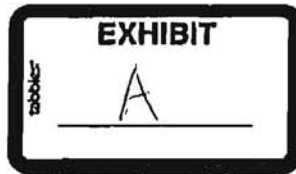
Address: 710 Main Street, Suite 101
Georgetown, Texas 78664

STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ___ day of _____, 2012, 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: _____



**TRACT 18
DESCRIPTION**

FOR A 0.746 ACRE TRACT OF LAND SITUATED IN THE W. N. BARKER SURVEY, ABSTRACT NO. 107, WILLIAMSON COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 20.522 ACRE TRACT AS DESCRIBED IN THAT DEED TO SOVRAN ACQUISITION LIMITED PARTNERSHIP AND RECORDED IN DOCUMENT NO. 2004062343 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY, SAID 0.746 ACRE TRACT OF LAND, AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 60D nail found for the north corner of said 20.522 acre tract, same being the east corner of a called 1.52 acre tract as described in a deed to Adolph Priem and recorded in Volume 107, Page 488 of the Deed Records of said County, same being an angle point on the southwest right-of-way line of A. W. Grimes (County Road 170), for the north corner and **POINT OF BEGINNING** hereof, from which a ½" iron rod found for the north corner of said 1.52 acre tract bears, N 35° 16' 11" W a distance of 38.61 feet;

THENCE with the northeast line of said 20.522 acre tract, same being the southwest right-of-way line of said A. W. Grimes, S 30° 11' 32" E for a distance of 926.05 feet to the east corner of said 20.522 acre tract, same being an angle point on the southwest right-of-way line of said A. W. Grimes, for the east corner hereof;

THENCE with the southeast line of said 20.522 acre tract, same being the southwest right-of-way line of said A. W. Grimes, S 70° 45' 26" W for a distance of 2.21 feet for an angle point hereof;

THENCE continuing with the southeast line of said 20.522 acre tract, S 29° 12' 22" W passing at a distance of 7.34 feet a ½" iron rod found for the north corner of a 6' right-of-way reserve from Cambridge Heights, Phase A, Section 1-A, a subdivision recorded in Cabinet R, Slides 181-184 of the Plat Records of said County for a total distance of 36.78 feet to a ½" iron rod with "Baker-Aicklen" cap set for the south corner hereof;

THENCE through the interior of said 20.522 acre tract, the following two (2) courses and distances:

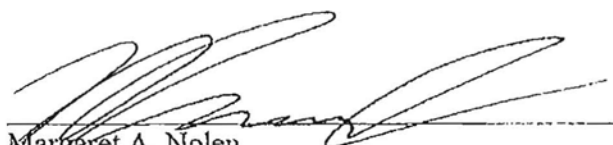
- 1) N 30° 11' 32" W for a distance of 739.76 feet to a ½" iron rod with "Baker Aicklen" cap set for a point of curvature hereof, and
- 2) with the arc of a curve to the left, having a radius of 1450.00 feet, an arc length of 192.22 feet, a central angle of 007° 35' 43", and a chord which bears, N 33° 59' 24" W for a distance of 192.08 feet to a ½" iron rod with "Baker Aicklen" cap set on the northwest line of said 20.522 acre tract, same being the southeast line of said 1.52 acre tract, for the west corner hereof;

THENCE with the northwest line of said 20.522 acre tract, same being the southeast line of said 1.52 acre tract, the following two (2) courses and distances:

- 1) N 27° 34' 18" E for a distance of 29.60 feet to a ½" iron rod found for an angle point hereof, and
- 2) N 67° 19' 39" E for a distance of 21.70 feet to the POINT OF BEGINNING hereof and containing 0.746 acre of land.

Bearing basis is grid north for the Texas Central Zone NAD 83/93 HARN, per GPS survey performed during August, 2010.

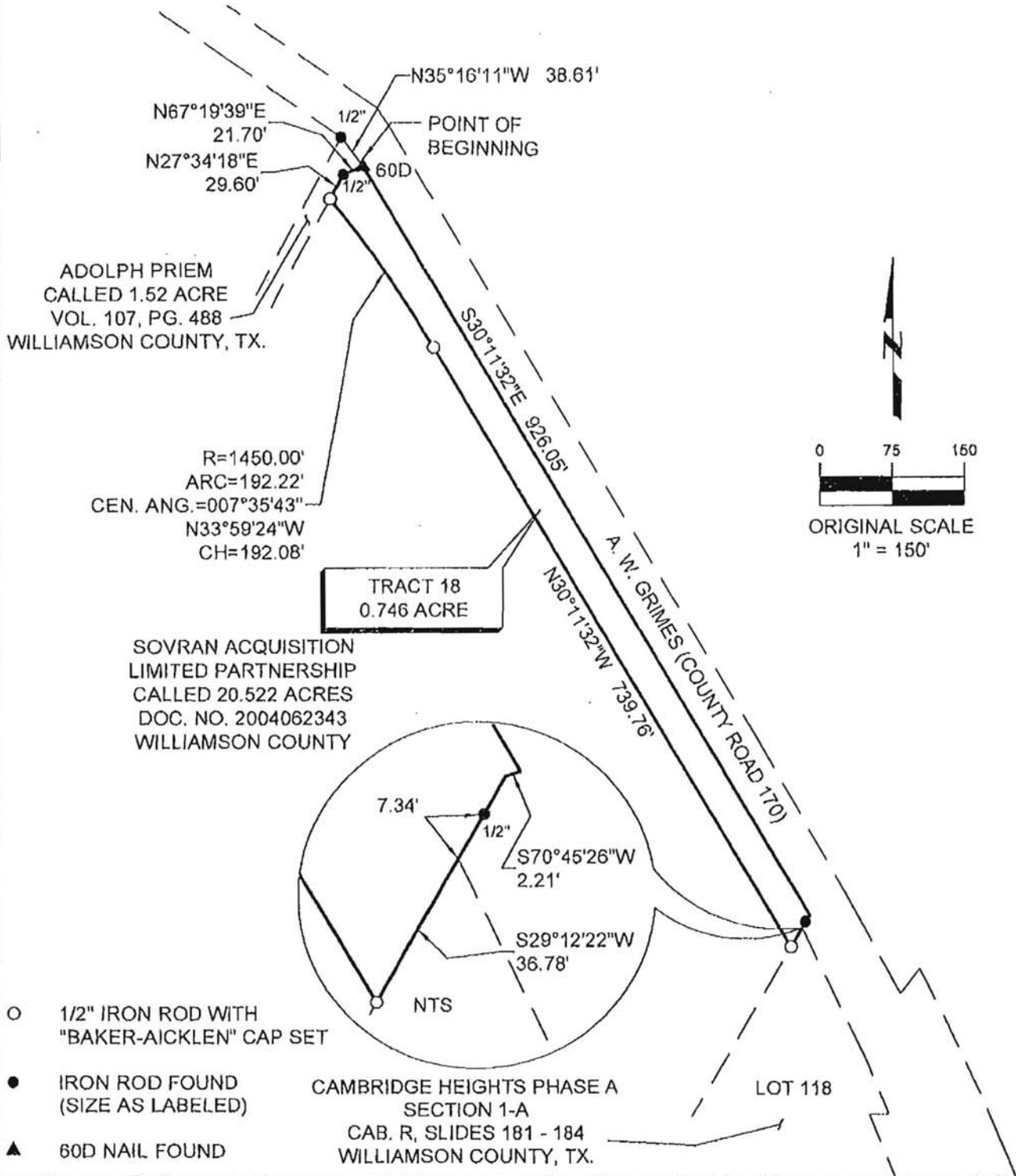
Surveyed under the direct supervision of the undersigned during August, 2010:


Margaret A. Nolen
Registered Professional Land Surveyor No. 5589
BAKER-AICKLEN & ASSOCIATES, INC.
405 Brushy Creek Road
Cedar Park, Texas 78613
(512) 260-3700



SKETCH TO ACCOMPANY DESCRIPTION

W.N. BARKER SURVEY, ABSTRACT NO. 107



SOVRAN ACQUISITION
LIMITED PARTNERSHIP
DOC. NO. 2004062343
WILLIAMSON COUNTY, TEXAS

DATE: AUGUST, 2010
JOB NO.: 0711-2-039-41
BY: R. BROOKS
CHK: M. NOLEN
PAGE 3 OF 3

BAKER-AICKLEN & ASSOCIATES, INC.
Engineers • Surveyors • GIS • Planning

408 BRUSHY CREEK RD.
CEDAR PARK, TX 78613
(512) 260-3700