

RIGHT OF ENTRY, POSSESSION AND USE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

This Right of Entry, Possession and Use Agreement (“Agreement”) is entered into by and between THE COUNTY OF LUBBOCK (hereinafter “LUBBOCK COUNTY” or “Condemnor”) and CHAD TURNBOW AND STEFANIE TURNBOW (hereinafter “OWNER”).

WHEREAS, LUBBOCK COUNTY and OWNER are parties in an Eminent Domain Proceeding, in Cause No. CC-2022-CD-0025, styled “*The County of Lubbock, Texas v. Chad Turnbow, Stefanie Turnbow, Mortgage Electronic Registration Systems, Inc. as nominee for Lender, Broker Solutions, Inc. D/B/A New American Funding, Lienholder, American Express Centurion Bank, Lienholder, and Centennial Bank, Lienholder*” pending in the County Court at Law No. 3 in Lubbock County, Texas, a court of competent and proper jurisdiction, whereby LUBBOCK COUNTY seeks to condemn and acquire a permanent easement and right of way to construct, operate and maintain a public roadway and related improvements as more particularly described and depicted in LUBBOCK COUNTY’s Original Petition and Statement in Condemnation and exhibits thereto (the “Petition”). The Petition is attached hereto as Exhibit “AA”;

WHEREAS, OWNER is the owner in fee of the land upon, over, under, along, and across which LUBBOCK COUNTY’s easement is sought, as described and depicted in Exhibits “A” and “B” to the Petition (“Easement Property”);

WHEREAS, LUBBOCK COUNTY desires to have a right of entry upon and possession of the Easement Property for the purposes stated in the Petition so as to allow LUBBOCK COUNTY to construct and operate the planned improvements;

WHEREAS, OWNER is agreeable to permit LUBBOCK COUNTY, including its employees, agents, contractors, successors and assigns the right to enter upon and take possession of the Easement Property so that LUBBOCK COUNTY may use and possess the Easement Property to the same effect as if: (i) negotiations had been completed and conveyance of the easement and right-of-way to LUBBOCK COUNTY had been irrevocably made; or alternatively, (ii) a Special Commissioners' Hearing had been held in a condemnation proceeding and the award of Special Commissioners had been deposited in the registry of the Court;

WHEREAS, OWNER and LUBBOCK COUNTY agree that the sole remaining issue in dispute relating to the easement sought is the amount of compensation OWNER should receive in relation to the rights being acquired which the parties agree may be resolved through either: (i) further negotiation and agreement, or (ii) if no agreement is reached, the above-referenced lawsuit;

WHEREAS, OWNER and LUBBOCK COUNTY agree that the Entry Deposit, defined below, will be paid directly to the OWNER with a check made payable directly to the OWNER and that by paying the OWNER, OWNER specifically agrees that OWNER waives any and all of the OWNER's rights to challenge LUBBOCK COUNTY's right to take the easement and right-of-way or file any other jurisdictional challenges. LUBBOCK COUNTY recognizes and acknowledges that OWNER's consent to the entry upon and possession of the Easement Property by LUBBOCK COUNTY shall not be construed as a waiver of OWNER's right to seek additional compensation for the Easement Property; and

WHEREAS, it is necessary for LUBBOCK COUNTY to construct and reconstruct Woodrow Road (the "Road"), and to place any other related public improvements over, under, across, and upon the Easement Property, as more specifically stated in the Petition.

NOW, THEREFORE, in consideration of the above-stated Recitals, which are incorporated herein for all purposes, and LUBBOCK COUNTY'S agreement to pay monies to OWNER in the amount of Four Thousand Dollars and No/100 (\$4,000.00) (the "Entry Deposit"), the receipt and sufficiency of which are hereby acknowledged and confessed, OWNER hereby consents and agrees to allow LUBBOCK COUNTY, and its employees, agents, contractors, successors and assigns the right to enter upon and take irrevocable possession of the Easement Property as follows:

1. The "Effective Date" of this Agreement shall be when this Agreement is signed by both parties (hereafter "Effective Date"). LUBBOCK COUNTY (hereinafter including its employees, agents, contractors, successors and assigns) shall have the right of entry upon and possession of the

Easement Property on the Effective Date, and LUBBOCK COUNTY shall promptly pay the Entry Deposit to OWNER with a check made payable to OWNER. The Entry Deposit is made for the purpose of allowing LUBBOCK COUNTY the right to enter upon and take possession of the Easement Property for the purposes stated in the Petition so as to allow LUBBOCK COUNTY to construct and operate the planned improvements.

2. OWNER agrees to permit LUBBOCK COUNTY to enter immediately upon the Easement Property and perform any and all activities necessary for carrying out the purposes of the easement as stated in the Petition;

3. LUBBOCK COUNTY shall have the right of ingress and egress on the Easement Property. LUBBOCK COUNTY will use reasonable efforts to avoid construction activities outside of the Easement Property during construction of the planned improvements.

4. It is further agreed that the granting of this Agreement shall not preclude or prejudice OWNER in any manner from contesting the consideration for such easement and any damages to OWNER's remaining property or from seeking additional compensation as allowed by law, in the event that the parties fail to agree on the terms and/or consideration for the easement, and the Eminent Domain proceedings are pursued through a commissioners' hearing and/or an appeal and trial de novo. Further, this Agreement does not preclude or prohibit OWNER from pursuing and seeking any damages allowed by law caused by LUBBOCK COUNTY to OWNER'S property as a result of LUBBOCK COUNTY'S activities on the OWNER's property.

5. OWNER and LUBBOCK COUNTY agree that the Entry Deposit: (i) is independent consideration for the possession and use of Easement Property and represents no part of LUBBOCK COUNTY's compensation to be paid for the anticipated purchase of the Easement Property; and (ii) will not be refunded to LUBBOCK COUNTY upon any acquisition of the Easement Property by LUBBOCK COUNTY and shall not offset or reduce any amount of just compensation owed to OWNER by LUBBOCK COUNTY as a result of the acquisition of the Easement Property.

6. **OWNER HEREBY EXPRESSLY WAIVES ANY RIGHT TO CHALLENGE, CONTEST OR OBJECT TO LUBBOCK COUNTY'S RIGHT TO TAKE THE EASEMENT PROPERTY SOUGHT IN THE CONDEMNATION CASE OR TO ACQUIRE THE RIGHTS INCLUDED IN THE EASEMENTS ATTACHED HERETO, AND SUCH WAIVERS SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

7. OWNER and LUBBOCK COUNTY agree to and hereby designate the Effective Date as the date of taking for all purposes, including the determination of just compensation owed to OWNER.

8. If LUBBOCK COUNTY and OWNER are unable to agree on the amount of adequate compensation for the acquisition of the Easements and damages to the remainder, if any, prior to a Special Commissioners' hearing, LUBBOCK COUNTY and OWNER agree to work together in the setting of said Special Commissioners' hearing. In the event that the parties are unable to agree within twenty (20) days of the Effective Date on a date for such hearing, either party may then request that a Special Commissioners' hearing be set and convened, provided that such setting requested shall not be earlier than ninety (90) days from the Effective Date of this agreement.

9. LUBBOCK COUNTY's right of entry upon Easement Property is limited to carrying out the intent of this Agreement.

10. OWNER and LUBBOCK COUNTY agree that if any portion of this Agreement is deemed to be illegal, invalid or unenforceable, such illegal, invalid or unenforceable provision shall not affect the legality, validity or enforceability of the remainder of this Agreement.

11. OWNER and LUBBOCK COUNTY agree that Texas law governs this Agreement and all obligations of the parties are performable in Lubbock County, Texas.

12. This Agreement shall continue from the Effective Date defined in Paragraph 1, above and terminate upon the earlier of the following two events:

- (a) The execution and delivery of an easement and right of way by OWNER to LUBBOCK COUNTY conveying the easement rights sought in the condemnation and identified in Exhibit "AA", attached hereto, or an alternative easement that is acceptable to LUBBOCK COUNTY; or,
- (b) Upon the conclusion of a Special Commissioners' hearing and subsequent deposit of the monies awarded by the Special Commissioners, pursuant to Texas Property Code §21.021(a)(1), with a credit to LUBBOCK COUNTY for the Entry Deposit already paid to OWNER, and further compliance with the obligations of Texas Property Code §21.021, this Agreement shall terminate and all rights, obligations and privileges of

possession and use shall be governed by LUBBOCK COUNTY'S condemnation pleadings. It is further agreed that LUBBOCK COUNTY shall comply with its obligations under Texas Property Code §21.021 and pay any and all sums which exceed the Entry Deposit, make deposits or post bonds within forty-five (45) days from the date that the Award by Special Commissioners is filed with the Court in this condemnation case. It is expressly agreed that this Agreement may be presented to the trial court as evidence that LUBBOCK COUNTY has complied with Texas Property Code §21.021(a)(1) by the tender and payment of the Entry Deposit described above. Upon Final Judgment or upon the execution of a final easement between the parties, the rights defined in said judgment or easement will be the final, sole and exclusive rights acquired by LUBBOCK COUNTY.

13. Nothing in the Agreement is intended to limit any rights, including rights of ingress and egress, which LUBBOCK COUNTY may have pursuant to any existing easement it owns burdening any property owned by OWNER.

14. This Agreement runs with the land and will extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties; however, LUBBOCK COUNTY and OWNER agree that only a memorandum of this Agreement that LUBBOCK COUNTY drafts may be filed of record in the real property records of Lubbock County.

15. Time is of the essence in this Agreement.

EXECUTED the 14th day of November, 2022, to be effective as set forth above.



OWNER: CHAD TURNBOW



OWNER: STEFANIE TURNBOW

Curtis Parrish
Lubbock County Judge

Terence Kovar, Commissioner, Pct. 1

Jason Corley, Commissioner, Pct. 2

Gilbert A. Flores, Commissioner, Pct. 3

Chad Seay, Commissioner, Pct. 4

ATTEST:

Kelly Pinion, County Clerk

EXHIBIT AA
CC-2022-CD-0025

CAUSE NO. _____

THE COUNTY OF LUBBOCK, TEXAS	§	EMINENT DOMAIN PROCEEDING
	§	
V.	§	IN THE COUNTY COURT AT
	§	
CHAD TURNBOW, STEFANIE	§	
TURNBOW, MORTGAGE	§	
ELECTRONIC REGISTRATION	§	
SYSTEMS, INC. AS NOMINEE FOR	§	LAW NO. #3
LENDER, BROKER SOLUTIONS, INC.	§	_____
D/B/A NEW AMERICAN FUNDING,	§	
LIENHOLDER, AMERICAN EXPRESS	§	
CENTURION BANK, LIENHOLDER,	§	
AND CENTENNIAL BANK, LIENHOLDER	§	LUBBOCK COUNTY, TEXAS

ORIGINAL PETITION AND STATEMENT IN CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

The County of Lubbock, Texas (“Lubbock County”) files this Original Petition and Statement in Condemnation, respectfully showing as follows:

I. DISCOVERY

Discovery is intended to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure, upon completion of the administrative phase of this case.

II. STATEMENT REGARDING CLAIMS FOR RELIEF

Pursuant to Texas Rule of Civil Procedure 47(c)(2), Lubbock County believes this case involves monetary relief of \$250,000 or less and non-monetary relief.

III. PARTIES

Lubbock County was created in 1876 by act of the Texas Legislature. *See* Act of Aug. 21, 287, 15th Leg., ch. 144, 1876 Tex. Gen. Laws 238. Lubbock County was organized in February of 1891 and is vested with the power of eminent domain pursuant to Chapters 261 and 561 of the Texas Local Government Code and the general laws of the State of Texas. *See* Tex. Loc. Gov’t

Code §§ 261.001, (LexisNexis, Lexis Advance through the 2021 Regular Session of the 87th legislature.)

To the best of Lubbock County's knowledge, Chad Turnbow, Stefanie Turnbow, Mortgage Electronic Registration Systems, Inc. as nominee for Lender, Broker Solutions, Inc. D/B/A New American Funding, Lienholder, American Express Centurion Bank, Lienholder, and Centennial Bank, Lienholder (collectively "Defendants") are the owners of and/or possess title to or some interest in property, more particularly described in Exhibits "A" and "B" attached hereto, consisting of a total of 0.072 acres of land, more or less, and all improvements thereon (the "Property"). Service is not requested at this time.

Defendants are, to the best of Lubbock County's knowledge, the only persons and/or entities owning, holding, or claiming any interest in the Property. However, should it be disclosed or discovered that other persons or entities own or claim some interest in the Property, Lubbock County reserves the right to amend this Petition and join such persons or entities as parties to this proceeding.

Pursuant to Section 21.012 of the Texas Property Code, Lubbock County will serve Defendants by providing a copy of this Petition to the Defendants by certified mail, return receipt requested and first class mail. If the Defendants have given Lubbock County notice that they are represented by an attorney, Lubbock County will also concurrently provide a copy of the petition to Defendants' attorney by first class mail, commercial delivery service, fax, or e-mail.

IV. JURISDICTION AND VENUE

Lubbock County seeks the acquisition of certain real property rights in the Property by eminent domain pursuant to Chapter 21 of the Texas Property Code. This Court has jurisdiction under Texas Property Code § 21.001. Under Texas Property Code § 21.013, venue is proper in

Lubbock County because all or part of the real property at issue in this lawsuit is located in Lubbock County, and all or a part of the cause of action arises in Lubbock County.

**V. NECESSITY FOR ACQUISITION OF DEFENDANT'S PROPERTY AND
LUBBOCK COUNTY'S EASEMENT RIGHTS**

Lubbock County has determined and declared that there exists a public necessity and that it is in the public interest for Lubbock County to acquire by condemnation a permanent and perpetual street easement and right-of-way (the "Easement") upon, over, under, along, and across a portion of the Property. The Easement will encompass 0.072 acres (approximately 3,123 square feet) of the Property (the "Easement Tract"). The Property and the Easement Tract are more particularly described and depicted in Exhibits "A" and "B" attached hereto and incorporated herein by reference.

Due to increased growth of Lubbock County and increased traffic and development along Woodrow Road, it is necessary for Lubbock County to acquire the Easement across the Property in order to have the right to widen and improve Woodrow Road between Highway 87 and Slide Road for the public's use, such improvements to include the construction and reconstruction of Woodrow Road ("the Road"), an adjoining sidewalk, at the discretion of Lubbock County, public utilities, and other related public improvements on the Property for the purpose of serving the public convenience and necessity. Lubbock County is acquiring the following rights, privileges, and easements with respect to the Easement Tract:

(a) The right to use and utilize the Easement Tract for the construction, maintenance, repair, replacement, and operation of a public street and other related public improvements, including but not limited to sidewalks, public utilities, traffic control facilities, drainage facilities and other such improvements for the control of flooding, whether by Lubbock County or by others acting with the permission of Lubbock County;

(b) The right to build canals, drains, levees, and other improvements to provide for flood control and water outlets within the Easement Tract; and

(c) The right to have access across, along, under, and upon the Easement Tract and to enter upon the Easement Tract to engage in such activities as may be necessary, requisite, convenient, or appropriate in connection with the exercise of such rights, including without limitation the right to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purposes for which the Easement is being acquired.

Lubbock County shall have exclusive use of the Easement Tract for the purposes set forth herein, and no use of the Easement Tract shall be permitted for any purpose that is inconsistent with the purposes of the Easement.

The easement rights acquired in the Property shall be exclusive, perpetual rights and a permanent easement and right-of-way over, across, under and upon the Property for the purposes sought herein.

VI. LIMITATIONS ON LUBBOCK COUNTY'S RIGHTS

Lubbock County shall have no right to permanently occupy any part of the Property, except the Easement Tract, and shall have no right to use such land for any purpose other than as set forth herein.

The rights to be acquired by Lubbock County in this proceeding are limited to the Easement Tract described in Exhibits "A" and "B" attached hereto, and do not extend onto Defendants' adjacent lands.

VII. MINERAL RIGHTS

Lubbock County is not acquiring the rights to any oil, gas, and other minerals (whether by law classified as part of the mineral estate or the surface estate) and groundwater in, on and under the Property, but is acquiring all surface rights of any kind to explore for or develop any mineral interests on or under the Easement Tract; provided, however, that the acquisition of such surface rights shall not prevent the owners of any mineral estate, interest, or lease from extracting oil, gas,

and other minerals in, on and under the Easement Tract by directional drilling or other means, so long as no part of the surface of the Easement Tract is used or affected and Lubbock County's use of the Easement Tract is not disturbed, as well as the right that the Road and other related public improvements, including but not limited to drainage facilities and other such improvements for the control of flooding shall not be endangered, obstructed, or interfered with by such operations. which use shall include the right of Lubbock County to physical and/or lateral support for the improvements, as well as the right that the improvement shall not be endangered, obstructed, or interfered with by such operations.

VIII. LUBBOCK COUNTY'S COMPLIANCE WITH EMINENT DOMAIN PROCEDURES

This proceeding is brought under the applicable provisions of Chapter 21 of the Texas Property Code and all other pertinent provisions of law. Lubbock County specifically states that it has provided Defendants, with the Landowner's Bill of Rights in accordance with Section 21.0112 of the Texas Property Code, and made a bona fide offer to acquire the easement from the Defendants voluntarily as provided by Section 21.0113 of the Texas Property Code, but those efforts have failed, and Lubbock County and the Defendants are unable to agree on compensation and/or easement terms. Further, because any further attempts to reach an agreement would be futile, it has become necessary for Lubbock County to institute this proceeding.

Defendants or Defendants' heirs, successors, or assigns may be entitled to (a) repurchase the property under Subchapter E of the Texas Property Code, or (b) request from Lubbock County certain information relating to the use of the property and any actual progress made toward that use. The repurchase price for the property is the price paid to Defendants by Lubbock County at the time Lubbock County acquires the property through eminent domain.

IX. PRAYER

WHEREFORE, Lubbock County prays that: (1) this Court appoint three disinterested real property owners who reside in Lubbock County, Texas, as Special Commissioners and two disinterested real property owners who reside in Lubbock County, Texas, as Alternate Special Commissioners; (2) the Commissioners promptly set a time and place for a hearing; (3) the Commissioners assess the compensation owed for the Property being acquired; (4) the Court grant Lubbock County a Writ of Possession to enforce the decision of the Special Commissioners; (5) the Court, upon final judgment herein, grant to Lubbock County the property rights sought in this condemnation proceeding; and (6) the Court award Lubbock County its respective costs of suit, and any other relief, both general and special, legal and equitable, to which it may be entitled.

Respectfully submitted,



C. MATTHEW TERRELL

State Bar No. 00785092

matt.terrell@phelps.com

REGINA VASQUEZ-ESPINOSA

State Bar No. 24028188

regina.vasquez-espinoza@phelps.com

CHRISTOPHER R. JONES

State Bar No. 24070018

chris.jones@phelps.com

PHELPS DUNBAR LLP

115 Grand Avenue, Suite 222

Southlake, Texas 76092

Telephone: (817) 488-3134

Facsimile: (817) 488-3214

AMBER S. MILLER

State Bar No. 24050320

Crenshaw, Dupree & Milam, L.L.P.

4411 98th Street, Suite 400

Lubbock, TX 79424

Telephone: 806-762-5281

Facsimile: 806-762-3510

amiller@cdmlaw.com

**ATTORNEYS FOR PLAINTIFF
THE COUNTY OF LUBBOCK, TEXAS**



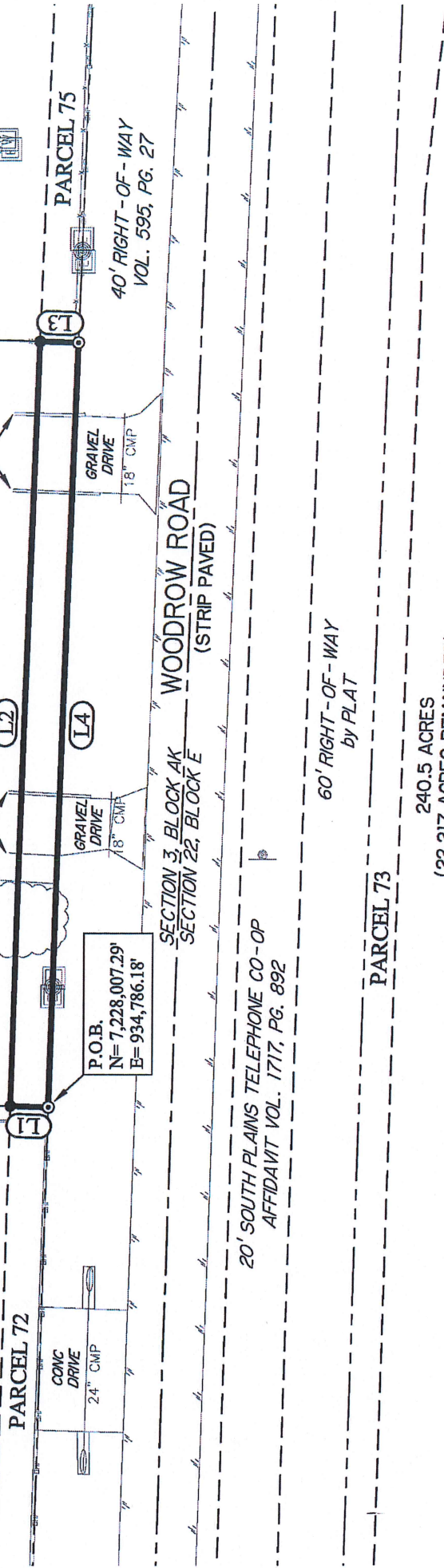
SCALE: 1"=50'

30 ACRES
WOODROW ROAD/DISCOUNT RV STORAGE, LLC
CCFN 2019020237
15820 CR 2100

3.929 ACRES
CHAD & STEFANIE TURNBOW
CCFN 2015035402
3510 WOODROW ROAD

2 ACRES
CORY & DENNIE MORTENSEN
CCFN 2008014731
3420 WOODROW ROAD

Line Table		
Line #	Length	Direction
L1	12.50'	N01° 44' 40"E
L2	249.84'	S88° 15' 55"E
L3	12.50'	S01° 42' 52"W
L4	249.85'	N88° 15' 55"W



20' SOUTH PLAINS TELEPHONE CO - OP
AFFIDAVIT VOL. 1717, PG. 892

60' RIGHT-OF-WAY
by PLAT

PARCEL 73

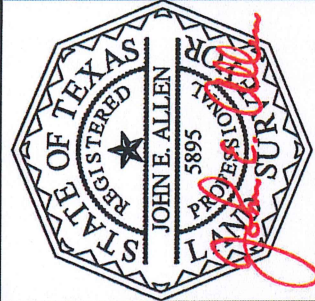
240.5 ACRES
(22.217 ACRES REMAINDER)
LUBBOCK SADDLE CLUB DEVELOPMENT LTD
VOL. 7066, PG. 274

Note: Recorded or unrecorded documents other than those shown on this survey may exist and encumber this property.

WOODROW ROAD DESIGN PROJECT
STATE LOOP 493 TO SLIDE ROAD

Parcel 74 - Permanent Easement
PERIMETER SURVEY OF A
0.072 ACRE PARCEL LOCATED IN
SECTION 3, BLOCK AK
LUBBOCK COUNTY, TEXAS

John E. Allen, Registered Professional Land Surveyor No. 5895
State of Texas



Surveyed on the ground.
August 11, 2021

HR HUGO REED
AND ASSOCIATES, INC.

LAND SURVEYORS
CIVIL ENGINEERS
1601 AVENUE N
LUBBOCK, TEXAS 79401
PHONE: 806 / 763-5642
FAX: 806 / 763-3891
TEXAS LICENSED SURVEYING FIRM 100876-00
TEXAS REGISTERED ENGINEERING FIRM F-760

Bearings are relative to the Texas Coordinate System of 1983,
North Central Zone, NAD 83 (2011), Epoch 2010.0
Distances and coordinates are surface, U.S. Survey feet.
Combined Scale Factor: 1.0002539

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LEGEND:

- SURVEYED PROPERTY
- ADJACENT PROPERTY
- RIGHT-OF-WAY
- EASEMENT
- - SET 1/2" ROD w/CAP
- ⊙ - FD. 1/2" ROD w/CAP



P.O.B. - POINT OF BEGINNING
CCFN - COUNTY CLERK FILE NUMBER,
LUBBOCK COUNTY, TEXAS

DESCRIPTION FOR PARCEL 74

METES AND BOUNDS DESCRIPTION of a 0.072 acre parcel located in Section 3, Block AK, Lubbock County, Texas, being a portion of 3.929 acres described in County Clerk File Number (CCFN) 2015035402, Official Public Records, Lubbock County, Texas (OPRLCT), being further described as follows:

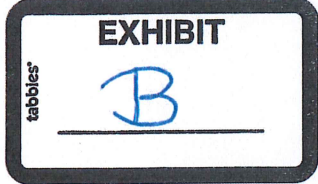
BEGINNING at a 1/2" iron rod with cap (N=7,228,007.29', E=934,786.18') found in the West line of said 3.929 acre tract and in the East line of a 30 acre tract described in CCFN 2019020237, OPRLCT, and in the North line of a 40.00 foot Right-of-Way described in Volume 595, Page 27, Deed Records, Lubbock County, Texas, which bears N. 88° 15' 55" W. a distance of 865.92 feet and N. 01° 44' 05" E. a distance of 40.00 feet from a 3/8" iron rod found in the North line of Section 22, Block E, and at the Southwest corner of Section 2, Block AK, and at the Southeast corner of said Section 3, Block AK, for the Southwest corner of this parcel;

THENCE N. 01° 44' 40" E. along the common line of said 3.929 acre tract and said 30 acre tract a distance of 12.50 feet to a 1/2" iron rod with yellow cap marked "HUGO REED & ASSOC." set, for the Northwest corner of this parcel;

THENCE S. 88° 15' 55" E. parallel with and 52.50 feet from the South line of said Section 3, Block AK, a distance of 249.84 feet to a 1/2" iron rod with yellow cap marked "HUGO REED & ASSOC." set in the East line of said 3.929 acre tract and in the West line of a 2 acre tract described in CCFN 2008014731, OPRLCT, for the Northeast corner of this parcel;

THENCE S. 01° 42' 52" W. along the common line of said 3.929 acre tract and said 2 acre tract a distance of 12.50 feet to a 1/2" iron rod with cap found in the North line of said 40.00 foot Right-of-Way, for the Southeast corner of this parcel;

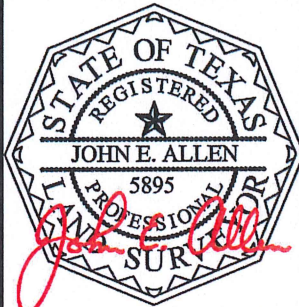
THENCE N. 88° 15' 55" W. along said North line of said 40.00 foot Right-of-Way a distance of 249.85 feet to the Point of Beginning. Containing 0.072 acre (3,123 sq. ft.) of land, more or less.



WOODROW ROAD DESIGN PROJECT
STATE LOOP 493 TO SLIDE ROAD

Parcel 74 - Permanent Easement
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