

POSSESSION AND USE AGREEMENT

STATE OF TEXAS	§	Parcel No.: 6E
	§	
COUNTY OF DALLAS	§	Project No.:

This Possession and Use Agreement For Transportation Purposes (the “Agreement”) between the Town of Addison, Texas (the “Town”), and Portfolio Addison Town Center Retail, L.P. (the “Grantor” whether one or more), grants to the Town, its contractors, agents and all others deemed necessary by the Town, an irrevocable right to possession and use of the Grantor’s property for the purpose of constructing a portion of Belt Line Road from Marsh Lane to Midway Road, and relocating utilities in connection with road construction (the “Construction Project”). The property subject to this Agreement 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 Town 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 Town the right of entry and exclusive possession and use of the Property for the purpose of relocating utilities and constructing a highway and appurtenances thereto including the right to remove any improvements located on the Property, subject to the terms of that certain Easement for sidewalk and utilities the terms of which have been agreed by the parties. 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 Construction Project. This Possession and Use Agreement will extend to the Town, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the Town in the future, and all others deemed necessary by the Town for the purpose of the 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 and other Grantor covenants, warranties, and obligations under this Agreement, the Town will tender to the Grantor the sum of Four Thousand Four Hundred Twenty-Eight Dollars (\$4,428.00). The approved value is the Town’s determination of the just compensation owed to the Grantor for the real property interest to be acquired by the Town 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 the sum 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 the Town has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the Town, the Grantor will promptly refund the overpayment to the Town.

3. The effective date of this Agreement will be the date on which is executed by Grantor(the “Effective Date”). The Town shall forward payment of the above sum to Grantor within 14 days of execution of this Agreement.

4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and

encumbrances or that proper releases or subordination agreements will be executed for the Property prior to funds being disbursed under this Agreement.

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 Town in the Property, for negotiation or eminent domain proceeding purposes in the event settlement is not reached, will be the Effective Date of this Agreement.
6. This Agreement is made with the understanding that the Town will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and 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 Town, 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"), if any; all as the Property exists on the Effective Date of this Agreement. The Town'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. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
7. In the event the Town institutes or has instituted eminent domain proceedings, the Town 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 Town until entry of judgment.
8. The purpose of this Agreement is to allow the Town to proceed with its Construction Project without delay and to allow the Grantor to have the use at this time of the estimated compensation for the Town's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed 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 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 Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the Town to take and use all other minerals and materials thereon, and thereunder.
10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the Town takes title to the Property.
11. Notwithstanding the acquisition of right of possession to the Property by the Town 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 Town acquires title to the Property either by negotiation, settlement, or final court judgment.

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

13. It is agreed the Town will record this document.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the Town 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 ____ DAY OF _____, 2015.

Grantor(s):

Portfolio Addison Town Center Retail, L.P.,

a Delaware limited partnership

By: Portfolio Addison Town Center GP, L.L.C.

a Delaware limited liability company

Its: General Partner

By: Cencor Retail Opportunity Portfolio, L.P.,

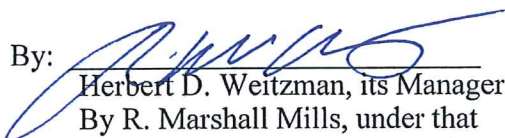
a Delaware limited partnership

Its: Sole Member

By: SWSC, L.L.C.,

a Texas limited liability company

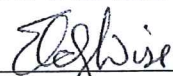
Its: Sole General Partner

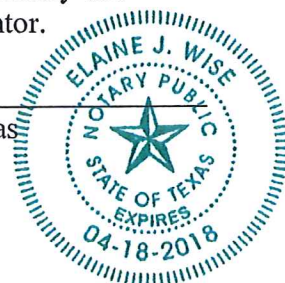
By: 
Herbert D. Weitzman, its Manager and President
By R. Marshall Mills, under that
certain Texas Statutory Durable
Power of Attorney and Irrevocable
Proxy dated February 22, 2015.

Corporate Acknowledgment

State of Texas,
County of Dallas:

This instrument was acknowledged before me on February 25, 2015, by R. Marshall Mills on behalf of Herbert D. Weitzman, under that certain Texas Statutory Durable Power of Attorney and Irrevocable Proxy dated February 22, 2015, on behalf of Herbert D. Weitzman and Grantor.


Notary Public, State of Texas



AGREED TO AND ACCEPTED by the Town of Addison, Texas this ___ day of _____, 2015.

Town of Addison, Texas

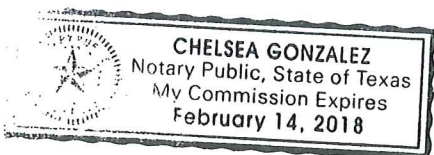
By: Lea Dunn
Lea Dunn, City Manager

Acknowledgment

State of Texas,
County of Dallas:

Before me, the undersigned authority, on this day personally appeared Lea Dunn, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3rd day of March, 2015.

(seal) 

Chelsea Gonzalez
Notary Public, State of Texas

PARCEL 6E
0.0151 ACRE (656 SQUARE FOOT)
EASEMENT
OUT OF
LOT 1, BLOCK D OF
LOTS 1 & 3, BLOCK D, LOTS 1-19, BLOCK A,
LOTS 1-6, BLOCK B, LOTS 1-18, BLOCK C,
LOT 2, BLOCK D, LOT 4, BLOCK D
ADDISON TOWN CENTER
TOWN OF ADDISON, DALLAS COUNTY, TEXAS

BEING a 656 square foot tract of land situated in the T.L. CHENOWETH SURVEY, Abstract Number 273, Town of Addison, Dallas County, Texas, and being part of Lot 1, Block D of LOTS 1 & 3, BLOCK D, LOTS 1-19, BLOCK A, LOTS 1-6, BLOCK B, LOTS 1-18, BLOCK C, LOT 2, BLOCK D, LOT 4, BLOCK D, ADDISON TOWN CENTER, an addition to the Town of Addison, Texas, as recorded in Volume 93237, Page 3840 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), said tract also being part of that tract of land described as Tract 1 in deed to Portfolio Addison Town Center Retail, L.P., as recorded in Volume 2004250, Page 05256, D.R.D.C.T., and being more particularly described as follows:

BEGINNING at a 5/8-inch found iron rod with "RPLS 1890" cap for the northwest corner of said Lot 1 and for the most northerly northeast corner of Lot 3A, Block D of LOTS 3A, 3B, 3C-1, 4R-1 AND 5, BLOCK D OF ADDISON TOWN CENTER, an addition to the Town of Addison, Texas, as recorded in Volume 94176, Page 01630, D.R.D.C.T., on the south right-of-way line of Belt Line Road (variable width right-of-way);

THENCE North 89 degrees 37 minutes 20 seconds East, with the common south right-of-way line of said Belt Line Road and with the north line of said Lot 1, a distance of 18.54 feet to a 5/8-inch found iron rod with "RPLS 1890" cap for corner;

THENCE North 89 degrees 28 minutes 18 seconds East, continuing with said common line, a distance of 5.79 feet to a 1/2-inch set iron rod with blue plastic cap stamped "HALFF ESMT" (hereinafter referred to as "with easement cap") for the northeast corner of the proposed easement;

THENCE South 15 degrees 34 minutes 44 seconds West, departing said common line, over and across said Lot 1, with the east line of said proposed easement, a distance of 15.76 feet to a 1/2-inch set iron rod with easement cap for corner;

THENCE South 00 degrees 22 minutes 40 seconds East, continuing with the east line of said proposed easement and over and across said Lot 1, a distance of 16.09 feet to a 1/2-inch set iron rod with easement cap for the southeast corner of said proposed easement;

PARCEL 6E
0.0151 ACRE (656 SQUARE FOOT)
EASEMENT
OUT OF
LOT 1, BLOCK D OF
LOTS 1 & 3, BLOCK D, LOTS 1-19, BLOCK A,
LOTS 1-6, BLOCK B, LOTS 1-18, BLOCK C,
LOT 2, BLOCK D, LOT 4, BLOCK D
ADDISON TOWN CENTER
TOWN OF ADDISON, DALLAS COUNTY, TEXAS

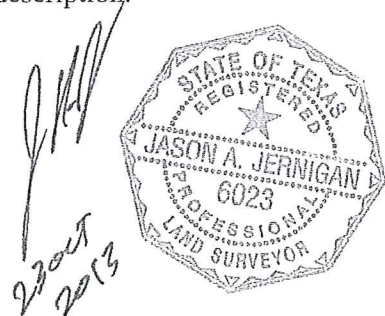
THENCE North 90 degrees 00 minutes 00 seconds West, continuing over and across said Lot 1 and with the south line of said proposed easement, a distance of 20.00 feet to a 1/2-inch set iron rod with easement cap for the southwest corner of said proposed easement on the common west line of said Lot 1 and on an east line of said Lot 3A;

THENCE North 00 degrees 22 minutes 40 seconds West, with said common line, a distance of 31.09 feet to the POINT OF BEGINNING and containing 0.0151 of an acre (656 square feet) of land, more or less.

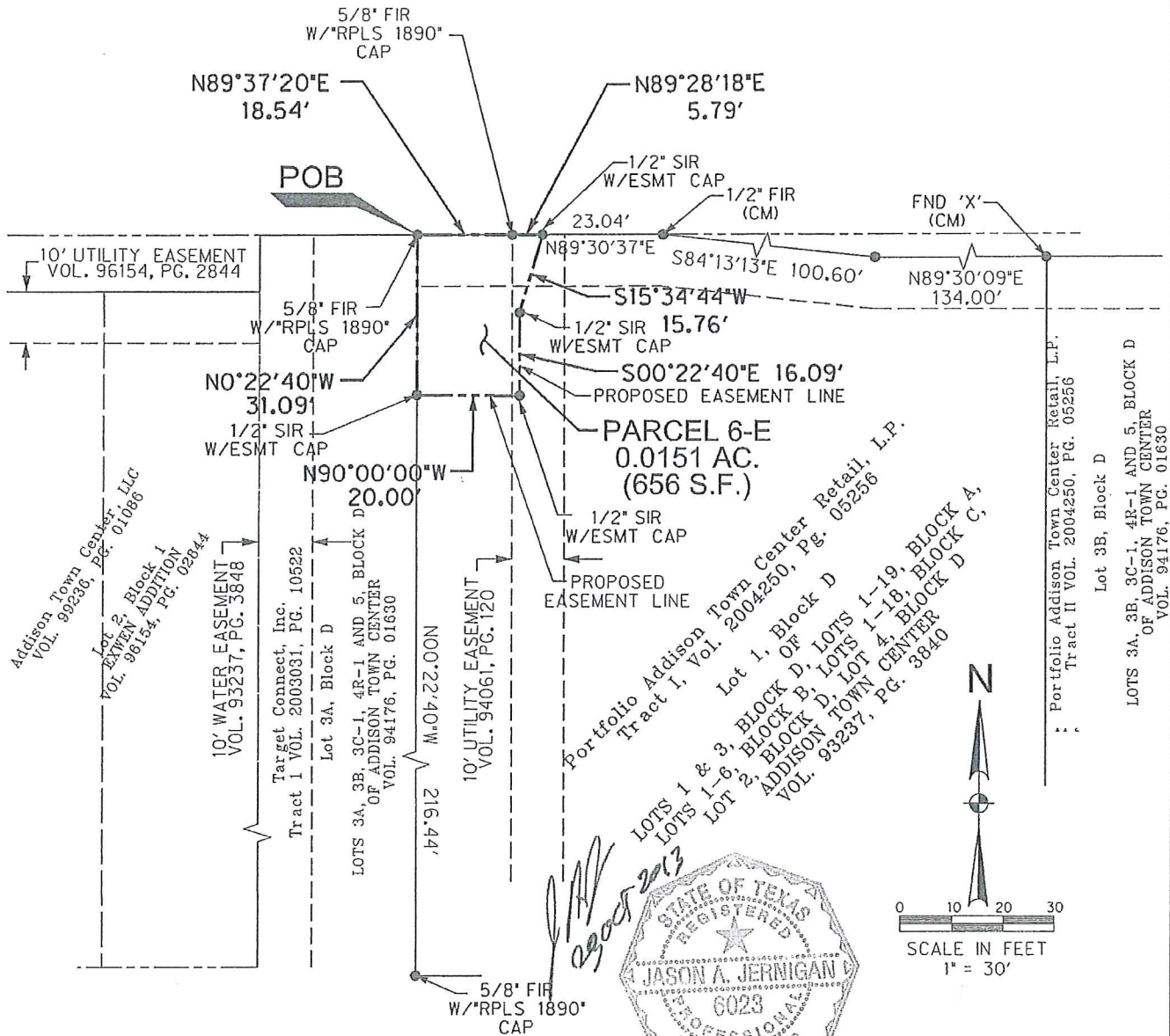
NOTES:

The basis of bearing is the Town of Addison Survey Control Network (December 2007 update) based on Monument Numbers COA-3, COA-4, COA-5, COA-10, & COA-11. All distance are surface distances using the TXDOT Dallas County Scale Factor 1.000136506.

A survey exhibit of even date accompanies this metes & bounds description.



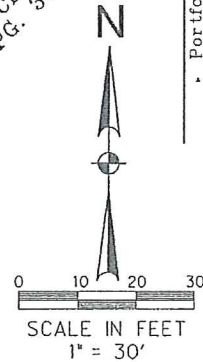
T.L. CHENOWETH SURVEY, ABSTRACT NUMBER 273
 BELT LINE ROAD
 (VARIABLE WIDTH RIGHT-OF-WAY)



LEGEND

(CM)	CONTROLLING MONUMENT
SIR	SET IRON ROD
W/CAP	WITH YELLOW PLASTIC CAP STAMP "HALFF"
W/ESMT CAP	WITH BLUE PLASTIC CAP STAMP "HALFF ESMT"
FIR	FOUND IRON ROD
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
AC.	ACRES
S.F.	SQUARE FEET

- NOTES
- The basis of bearing is the Town of Addison Survey Control Network (December 2007 update) based on Monument Numbers COA-3, COA-4, COA-5, COA-10, & COA-11. All distance are surface distances using the TXDOT Dallas County Scale Factor 1.000136506.
 - A metes & bounds description of even date accompanies this survey exhibit.
 - This survey was prepared without the benefit of a title commitment. Easements may exist where none are shown.



PARCEL 6E

0.0151 AC. (656 S.F.)

Lot 1, Block D

OF

LOTS 1 & 3, BLOCK D, LOTS 1-19, BLOCK A,
 LOTS 1-6, BLOCK B, LOTS 1-18, BLOCK C,
 LOT 2, BLOCK D, LOT 4, BLOCK D
 ADDISON TOWN CENTER

TOWN OF ADDISON, DALLAS COUNTY, TEXAS

DATE: 10-23-2013 AVO: 29350



1201 NORTH BOWSER ROAD RICHARDSON, TEXAS 75081
 (214) 346-6200 TPBLS FIRM NO. 10029600

10/22/2013 4:33:37 PM ah2481 HALFF H:\29350\29350\CADD\Sheets\Survey Exhibit\VEH-PARCEL 6E-29350.dwg