

THE STATE OF TEXAS

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COUNTY OF FORT BEND

### POSSESSION AND USE AGREEMENT

THIS POSSESSION AND USE AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners Court and Tidwell Tract LTD, (hereinafter referred to as "Owner"), an irrevocable right to possession and use of the Owner's property for the purpose of construction of a portion of Bryan Road (the "Project"). The property subject to this Agreement is described more fully in Exhibit "A", and made a part of this Agreement by reference (the "Property"). The County and the Owner may be individually referred to as a "Party" or collectively as the "Parties."

1. The County is seeking to negotiate the County's acquisition of the Property. In order to expedite and facilitate the necessary work to complete the Project, the County desires that the Owner provides the County the right of entry and exclusive possession and use of the Property for the purpose of constructing a public roadway and appurtenances thereto and the right to remove any improvements. In exchange for the right of entry and exclusive possession and use of the Property in advance of acquisition, the County agrees to pay to the Owner the appraised value of the Property in the sum of ninety-three thousand three hundred forty-seven dollars and no/100 (\$93,347.00), as initial payment towards complete acquisition of the Property (the "Initial Payment").
2. This Agreement is made with the understanding that the County will continue to proceed with acquisition of a real property interest in the Property. The Owner reserves all rights of compensation for the title and interest in and to the Property which the Owner holds as of the time immediately prior to the Effective Date of this Agreement. The Parties agree that the Initial Payment shall be deducted from any final settlement amount, Special Commissioners' award or court judgment in an eminent domain proceeding, if necessary. Further, the Parties agree that in the event the amount of the full settlement, judgment or award for acquisition of the Property is less than the Initial Payment made under this Agreement, the Owner agrees that the difference between the Initial Payment and such final settlement, judgment, or award amount will constitute an overpayment, and upon written notice from the County, the Owner will promptly refund the overpayment to the County no later than sixty (60) days after written notice after Owner's receipt of such notice provided by the County. This Agreement shall in no way prejudice the Owner's rights to receive full and just compensation as allowed by law for all of the Owner's interests in and to the Property to be acquired by the County, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Owner'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 County'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 Owner in eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Owner's rights to any relocation benefits for which the Owner may be eligible.

3. Authorized activities under this Agreement shall 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 Project. This Agreement will extend to the County, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the County in the future, and all others deemed necessary by the County for the purpose of the Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
4. The County will be entitled to take possession and use of the Property upon full execution of the Agreement.
5. The Owner warrants and represents that the Property is free and clear of all liens or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Owner further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the County from all unreleased or undisclosed liens affecting the Property.

The above made warranties are made by Owner and accepted by the County 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) presently of record in the Official Public Records of Fort Bend County, Texas, that affect the property, but only to the extent that said items are still valid and in force and effect at this time.
6. In the event the County institutes eminent domain proceedings, the County will not be liable to the Owner 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 County until entry of judgment.
    - A. 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 County in the Property, for negotiation or eminent domain proceeding purposes, will be the date the Special Commissioners' Award is tendered to the registry of the court, or if the Special Commissioners' Award is not greater than the consideration paid for this Agreement, the date of the Special Commissioners' Hearing.
    - B. The Owner expressly acknowledges that the proposed Project is for a valid public use and voluntarily waives any right the Owner 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 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.

- C. Notwithstanding the acquisition of right of possession to the Property by the County in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, this Agreement shall continue to remain in effect until the County acquires title to the Property either by negotiation, settlement, or final court judgment.
7. The Owner 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 County to take and use all other minerals and materials thereon, and thereunder.
8. The undersigned Owner 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 County takes title to the Property.
9. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by the County.

FORT BEND COUNTY:

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Laura Richard, County Clerk

Approved:

\_\_\_\_\_  
J. Stacy Slawinski, P.E., County Engineer

Approved as to legal form:

\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

OWNER:

EXECUTED this the 20<sup>th</sup> day of NOVEMBER, 2019.

Tidwell Tract LTD:

By: A. A. M.

Name: AMAR AMANCHARLA

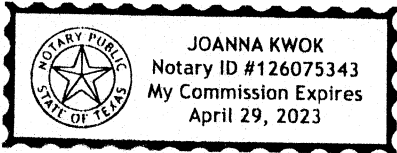
Title: PRESIDENT OF GENERAL PARTNER

THE STATE OF TEXAS       §  
  §  
COUNTY OF FORT BEND     §

This instrument was acknowledged before me on this 20<sup>th</sup> day of NOVEMBER, 2019, by AMAR AMANCHARLA, PRES OF GP, on behalf of Tidwell Tract LTD.

Joanna Kwok  
\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)



# EXHIBIT A

BRYAN ROAD  
TIDWELL TRACT LTD.  
EUGENE WHEAT SURVEY, A-396  
FORT BEND COUNTY, TEXAS

## PARCEL 3

Being a 0.5357-acre (23,337 square foot) parcel of land situated in the Eugene Wheat Survey, A-396, Fort Bend County, Texas, and being out of that certain called 15.432-acre tract of land conveyed to Tidwell Tract LTD., as recorded under Fort Bend County Clerk's File No. 2009048080 in the Official Public Records of Fort Bend County, Texas and being more particularly described as follows with the bearings shown hereon being based on the Texas Coordinate System, South Central Zone 4204, NAD-83 (2011 adj.), the coordinates shown hereon are grid and may be converted to surface by multiplying by the combined scale factor of 1.00013, all distances are surface:

**COMMENCING (N=13,751,624.10, E=3,000,757.54)** at a 5/8-inch iron rod with cap marked "LJA ENG." found in the northwest right-of-way line of F.M. 2977 (a.k.a. Minonite Road) (Width Varies) and for the southeast corner of said 15.432-acre tract;

THENCE North 22° 22' 48" East, a distance of 779.16 feet, with the southeast line of said 15.432-acre tract and with the northwest right-of-way line of said F.M. 2977 to a 5/8-inch iron rod with cap stamped "WEISSER ENG. HOUSTON, TX" set in the proposed southwest right-of-way line of Bryan Road, for the southeast corner and **POINT OF BEGINNING** of the herein described parcel, said point having a grid coordinate of **N=13,752,344.48, E=3,001,054.17**;

THENCE North 22° 42' 27" West, a distance of 21.18 feet, with the proposed southwest right-of-way cut-back line of said Bryan Road to a 5/8-inch iron rod with cap stamped "WEISSER ENG. HOUSTON, TX" set for an angle point of the herein described parcel;

THENCE North 67° 47' 42" West, a distance of 1,146.19 feet, with the proposed southwest right-of-way line of said Bryan Road to a 5/8-inch iron rod found in the existing southwest right-of-way line of Bryan Road (width varies) for the southwest corner of the herein described parcel;

THENCE North 22° 12' 18" East, a distance of 20.00 feet, with the existing right-of-way line of said Bryan Road and with a northwest line of said 15.432-acre tract to a point for the northwest corner of the herein described parcel;

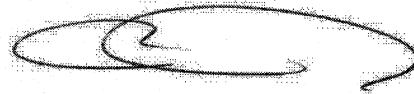
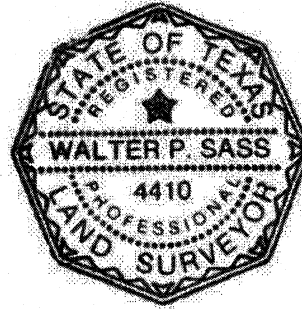
THENCE South 67° 47' 42" East, a distance of 1,161.25 feet, with the existing southwest right-of-way line of said Bryan Road and with a northeast line of said 15.432-acre tract to a point for the southwest corner of the intersection of Bryan Road at F.M. 2977 and for the northeast corner of the herein described parcel;

THENCE South 22° 22' 48" West, a distance of 35.00 feet, with the existing northwest right-of-way line of said Minonite Road, with the southeast line of the herein described parcel and to the **POINT OF BEGINNING** and containing 0.5357-acre (23,337 square feet) of land.

See Exhibit "B" for plat of herein described parcel.

Compiled By:  
Weisser Engineering Company  
19500 Park Row, Suite 100  
Houston, Texas 77084  
TBPLS Reg. No. 100518-00  
TBPE Reg. No. F-68

Job No.: IL051  
Date: 11/21/18





MATCHLINE SEE SHT 3

16" WATER LINE  
(PER PLANS)

20' W.L.E.  
F.B.C.C.F. NO. 2004105734  
O.P.R.F.B.C.

ROSE RANCH BLVD.  
(R.O.W. VARIES)

N 22° 12' 18" E - 20.00'

BASELINE

FND 5/8" IRON ROD W/CAP "LM ENG"

FND 5/8" IRON ROD

N 67° 47' 42" W - 1,146.19'

S 67° 47' 42" E - 1,161.25'

BRYAN RD.  
(R.O.W. VARIES)

S 67° 58' 47" E

EXISTING R.O.W.

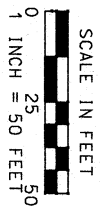
EXISTING R.O.W.

PROPOSED R.O.W.

MATCHLINE SEE SHT 5

CALLED 82.08 ACRES  
KB HOME LONE STAR INC.  
F.B.C.C.F. NO. 2018016555  
O.P.R.F.B.C.

CALLLED 15.432 ACRES  
TIDWELL TRACT LTD.  
F.B.C.C.F. NO. 2009048080  
G.F. NO. 634063



SHEET 4 OF 6



19500 Park Row, Suite 100  
Houston, Texas 77084  
(281) 579 - 7300  
TBPLS Firm Reg No. 100518-00

PARCEL PLAT SHOWING

PARCEL 3

BRYAN ROAD, FORT BEND COUNTY, TEXAS

DATE: 11/2018 SCALE: 1" = 50' JOB No.: 11051  
RCSJ No.: DWG. No.: P-3-02

MATCHLINE SEE SHT 4

16" WATER LINE  
(PER PLANS)

20' W.L.E.  
F.B.C.C.F. NO. 2004105734  
O.P.R.F.B.C.

BASELINE

100'-00"

S 67° 47' 42" E 164.25'

BRYAN RD.  
(R.O.W. VARIES)

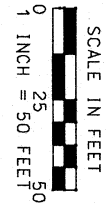
(3)

EXISTING R.O.W.

N 67° 47' 42" W - 1,146.19'

PROPOSED R.O.W.

CALLED 82.08 ACRES  
KB HOME LONE STAR INC.  
F.B.C.C.F. NO. 2018016555  
O.P.R.F.B.C.



MATCHLINE SEE SHT 6

CALLED 15.432 ACRES  
TIDWELL TRACT LTD.  
F.B.C.C.F. NO. 2009048080  
G.F. NO. 634063

**WEISSER Engineering Co.**  
19500 Park Row, Suite 100  
Houston, Texas 77084  
(281) 579 - 7300  
TBP L.S. Firm Reg No. 100518-00

PARCEL PLAT SHOWING  
PARCEL 3  
BRYAN ROAD, FORT BEND COUNTY, TEXAS

SHEET 5 OF 6

DATE: 11/2018 SCALE: 1" = 50' JOB No.: L051  
RCSJ No.: DWG. No.: P-3-03

MATCHLINE SEE SHT 5

CALLED 82.08 ACRES  
 KB HOME LONE STAR INC.  
 F.B.C.C.F. NO. 2018016555  
 O.P.R.F.B.C.

RESIDUE OF CALLED 93.890 ACRES  
 (8,834 ACRES CALCULATED)  
 PYP YOG FOUNDATION, INC. NFP  
 F.B.C.C.F. NO. 2015000476  
 O.P.R.F.B.C.

16" WATER LINE  
 (FBMUD NO. 152)  
 (PER PLANS)

20' W.L.E.  
 F.B.C.C.F. NO. 2004105734  
 O.P.R.F.B.C.

20' U.E.  
 F.B.C.C.F. NO. 2015056304  
 O.P.R.F.B.C.

PROPOSED R.O.W.

BASELINE

BRYAN RD.  
 (R.O.W. VARIES)

EXISTING R.O.W.

3

N 67° 47' 42" W-1,146.19'

S 67° 47' 42" E-1,161.25'

EXISTING R.O.W.

N 22° 42' 27" W-21.18'

N 22° 22' 48" E-779.16'

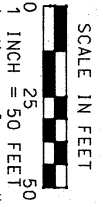
MINONITE RD.  
 (R.O.W. VARIES)

S 22° 22' 48" W-35.00'

P.O.B.  
 PARCEL 3  
 N-13,752.34 4.48  
 E-3,001.05 4.17  
 S/O 107+11.93,  
 67.39 RT.

CALLLED 15.432 ACRES  
 TIDWELL TRACT LTD.  
 F.B.C.C.F. NO. 2009048080  
 G.F. NO. 634063

P.O.C.  
 PARCEL 3  
 FND 5/8" IRON ROD  
 W/CAP "IJA ENG."  
 N-13,751.62 4.10  
 E-3,000.75 7.54



19500 Park Row, Suite 100  
 Houston, Texas 77084  
 (281) 579-7300  
 TBPUS Firm Reg No. 100518-00

PARCEL PLAT SHOWING  
 PARCEL 3  
 BRYAN ROAD, FORT BEND COUNTY, TEXAS

SHEET 6 OF 6

DATE: 11/2018 SCALE: 1" = 50' JOB No.: IL051  
 RCSJ No.: DWG. No.: P-3-04