

POSSESSION AND USE AGREEMENT FOR UTILITY EASEMENT PURPOSES

STATE OF TEXAS	§	
	§	Parcel No.: 3
CITY OF MANOR	§	Project: WATERLINE EASEMENT FM 973

*Peter A. Dwyer,
Assignee of
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01/11/2024*

This Possession and Use Agreement For Waterline Easement Purposes (the "Agreement") between **CITY OF MANOR, TEXAS** ("City" or "Grantee"), and **COTTONWOOD HOLDINGS, LLC** (the "Grantor" whether one or more), grants to the City, its contractors, agents, and all others deemed necessary by the City, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of the proposed City of Manor Waterline Easement FM 973 Project and related appurtenances, drainage, and utility relocations (the "Waterline Easement FM 973 Project"). The property subject to this Agreement is described more fully in field notes, plat map, or other description attached as Exhibits "A" which are made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the City, 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 City the right of entry and exclusive possession and use of the Property for the purpose of constructing a waterline t, utility adjustments, and appurtenances thereto and the right to remove any improvements. 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 Waterline Easement FM 973 Project. This Possession and Use Agreement will extend to the City, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the City in the future, and all others deemed necessary by the City for the purpose of the Waterline Easement FM 973 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 City will tender to the Grantor the sum of **NINETY-SIX THOUSAND and 00/100 Dollars (\$96,000.00)** (the "Entry Deposit"). The Grantor agrees that the Entry Deposit represents adequate and full compensation for the possession and use of the Property. The City will immediately be entitled to take possession and use of the Property upon full execution of this Agreement and tender of payment of the Entry Deposit to Grantor as set forth in paragraph 3 herein.

The parties agree that the Entry Deposit tendered represents 100% of the City's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the City's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the City in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil,

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gas, and sulfur. The parties agree that the Entry Deposit 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 the acquisition of the Property is less than the Entry Deposit, then the Grantor agrees that the difference between the Entry Deposit tendered and the amount of such final settlement or judgement for acquisition of the Property represents an overpayment and upon written notice from the City, the Grantor will promptly refund the difference between the Entry Deposit and the amount of the settlement or judgement to the City.

3. The effective date of this Agreement will be the date on which payment of the Entry Deposit pursuant to Paragraph 2 above was tendered in full to the Grantor by the City or delivered to a title company acting as escrow agent for the transaction (the "Effective Date").
4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances except as disclosed to Grantee in that certain title commitment numbered GT2301872 issued June 29, 2024, by Texan Title Insurance Company. (and any subsequent updates prior to the Effective Date of June 12, 2023), and that proper releases, if any, will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the City from all unreleased or undisclosed liens, claims, or encumbrances affecting the Property.

The above-made warranties are made by Grantor and accepted by the City, 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 Travis 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.
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 City 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. Should the Special Commissioners' Award be greater than the amount paid in paragraph 2, the City shall use best efforts to tender the difference to the registry of the court as soon as possible following the date the Award of Special Commissioners is signed by the Judge and filed with the Court but in no event no later than 90 (ninety) days following the date the Award of Special Commissioners is signed by the Judge and filed with the court.



6. This Agreement is made with the understanding that the City will continue to proceed with the acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and other 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 City, 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"), all as the Property exists on the Effective Date of this Agreement. The City'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. No beneficial project influence will impact the appraised value of the Property to be acquired. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
7. If the City institutes or has instituted eminent domain proceedings, the City 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 City until the entry of Judgment.
8. The purpose of this Agreement is to allow the City to proceed with its Waterline Easement FM 973 Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the City's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Waterline Easement FM 973 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 Waterline Easement FM 973 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 oil, gas, and sulfur in and under the land herein conveyed but waives all rights 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 City 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 City takes possession of the Property.
11. Notwithstanding the acquisition of the right of possession to the Property by the City in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court within forty-five (45) days after filing of said Award, less any amounts tendered to



the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the City 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 City will record this document.

14. Other conditions: None.

At no time during the possession of the Property by the City for the purposes described herein shall Grantor be denied reasonable access and/or ingress to or egress from the remainder of Grantor's land, unless otherwise agreed to in writing in advance.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the City and its assigns forever, for the purposes and subject to the limitations set forth above.

[signature pages follow]

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GRANTOR: Peter A. Dwyer, Assignee of
COTTONWOOD HOLDINGS, LLC LTD'

By: [Signature]

Name: Peter A. Dwyer

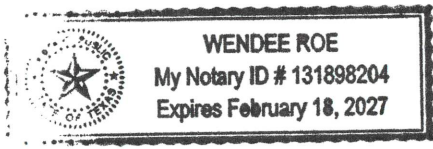
Title: President
Cottonwood Holdings, Ltd

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 16 day of June, 2024
by Peter A. Dwyer in the capacity and for the purposes and
consideration recited herein.

Wendee Roe
Notary Public, State of Texas
Printed Name: Wendee Roe
My Commission Expires: February 18, 2027



CITY OF MANOR:

By: _____
Scott Moore
City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this _____, 2024 by Scott Moore, City Manager of City of Manor, Texas, 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:

City of Manor
Attn: City Secretary
105 E. Eggleston Street
Manor, Texas 78653



Exhibit "A"

[ATTACHED]



FIELD NOTES FOR A 18,921 SQUARE FOOT WATERLINE EASEMENT:

A **18,921 Square Foot Waterline Easement**, located in the Green Berry Gates Survey, Abstract No. 315, Travis County, Texas, being a portion of a called 11.781 Acre tract of land described as Tract 2 in Document No. 2022196885, of the Official Public Records of Travis County, Texas. Said 18,921 Square Foot Waterline Easement being more particularly described by metes and bounds as follows:

BEGINNING at a point in the common line between said 11.781 Acre tract and F.M. 973, a variable width right-of-way, as depicted on State Department of Transportation, Plan of Proposed Right of Way Project, Account Number 8014-2-10, CSJ Number 1200-02-022, from which a found 1/2" iron rod, in the southeast line of said F.M. 973, for a northwesterly corner of said 11.781 Acre tract, bears N 27° 42' 44" E, with said common line, a distance of 145.69 feet;

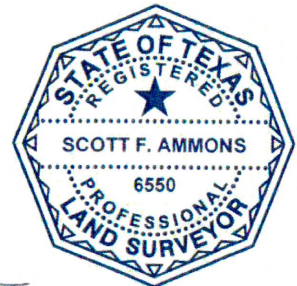
THENCE: Over and across said 11.781 Acre tract, the following two (2) courses:

1. S 77° 14' 07" E, a distance of **15.53 feet**, to a point for corner;
2. S 27° 42' 44" W, a distance of **1,263.43 feet**, to a point in the common line between said 11.781 Acre tract and a called 27.4 Acre tract of land recorded in Volume 5278, Page 1904, of the Official Public Records of Travis County, Texas, for corner;


THENCE: N 62° 17' 16" W, with said common line, a distance of **15.00 feet**, to a point in the southeast line of said F.M. 973, for the westerly most common corner between said 11.781 Acre tract and said 27.4 Acre tract, for corner;

THENCE: N 27° 42' 44" E, with the common line of said 11.781 Acre tract and said F.M. 973, at 443.26 feet, passing a 1/2" iron rod in said common line, a total distance of **1,259.43 feet**, to the **POINT OF BEGINNING** and containing **18,921 Square Feet** of land, situated in Travis County, Texas.

Bearings are based on the State Plane Coordinate System of the Texas, Central Zone (4203), North American Datum of 1983. A survey plat was prepared by a separate document. Field work was completed on June 22, 2023.



Scott F. Ammons

 © George Butler Associates, Inc. 2023	2301 Double Creek Drive Building 1, Suite 110 Round Rock, Texas 78664 512.616.0055 www.gbateam.com TBPELS FIRM #10194808	PROJECT NUMBER 15416.00	TITLE Exhibit "A" Waterline Easement Manor, Travis Co., TX	SHEET NUMBER 1 of 5
		DATE 08/04/2023		

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FIELD NOTES FOR A 32,704 SQUARE FOOT TEMPORARY CONSTRUCTION EASEMENT:

A **32,704 Square Foot Temporary Construction Easement**, located in the Green Berry Gates Survey, Abstract No. 315, Travis County, Texas, being a portion of a called 11.781 Acre tract of land described as Tract 2 in Document No. 2022196885, of the Official Public Records of Travis County, Texas. Said 32,704 Square Foot Temporary Construction Easement being more particularly described by metes and bounds as follows:

BEGINNING at a point in the common line between said 11.781 Acre tract and F.M. 973, a variable width right-of-way, as depicted on State Department of Transportation, Plan of Proposed Right of Way Project, Account Number 8014-2-10, CSJ Number 1200-02-022, from which a found 1/2" iron rod, in the southeast line of said F.M. 973, for a northwesterly corner of said 11.781 Acre tract, bears N 27° 42' 44" E, with said common line, a distance of 145.69 feet;

THENCE: N 27° 42' 44" E, with said common line, a distance of **25.88 feet**, to a point for corner;

THENCE: Over and across said 11.781 Acre tract, the following two (2) courses:

1. **S 77° 14' 07" E**, a distance of **41.40 feet**, to a point for corner;
2. **S 27° 42' 44" W**, a distance of **1,295.98 feet**, to a point in the common line between said 11.781 Acre tract and a called 27.4 Acre tract of land recorded in Volume 5278, Page 1904, of the Official Public Records of Travis County, Texas, for corner;

THENCE: N 62° 17' 16" W, with said common line, a distance of **25.00 feet**, to a point for corner;


THENCE: Over and across said 11.781 Acre tract, the following two (2) courses:

1. **N 27° 42' 44" E**, a distance of **1,263.43 feet**, to a point for corner;
2. **N 77° 14' 07" W**, a distance of **15.53 feet**, to the **POINT OF BEGINNING** and containing **32,704 Square Feet** of land, situated in Travis County, Texas.

Bearings are based on the State Plane Coordinate System of the Texas, Central Zone (4203), North American Datum of 1983. A survey plat was prepared by a separate document. Field work was completed on June 22, 2023.

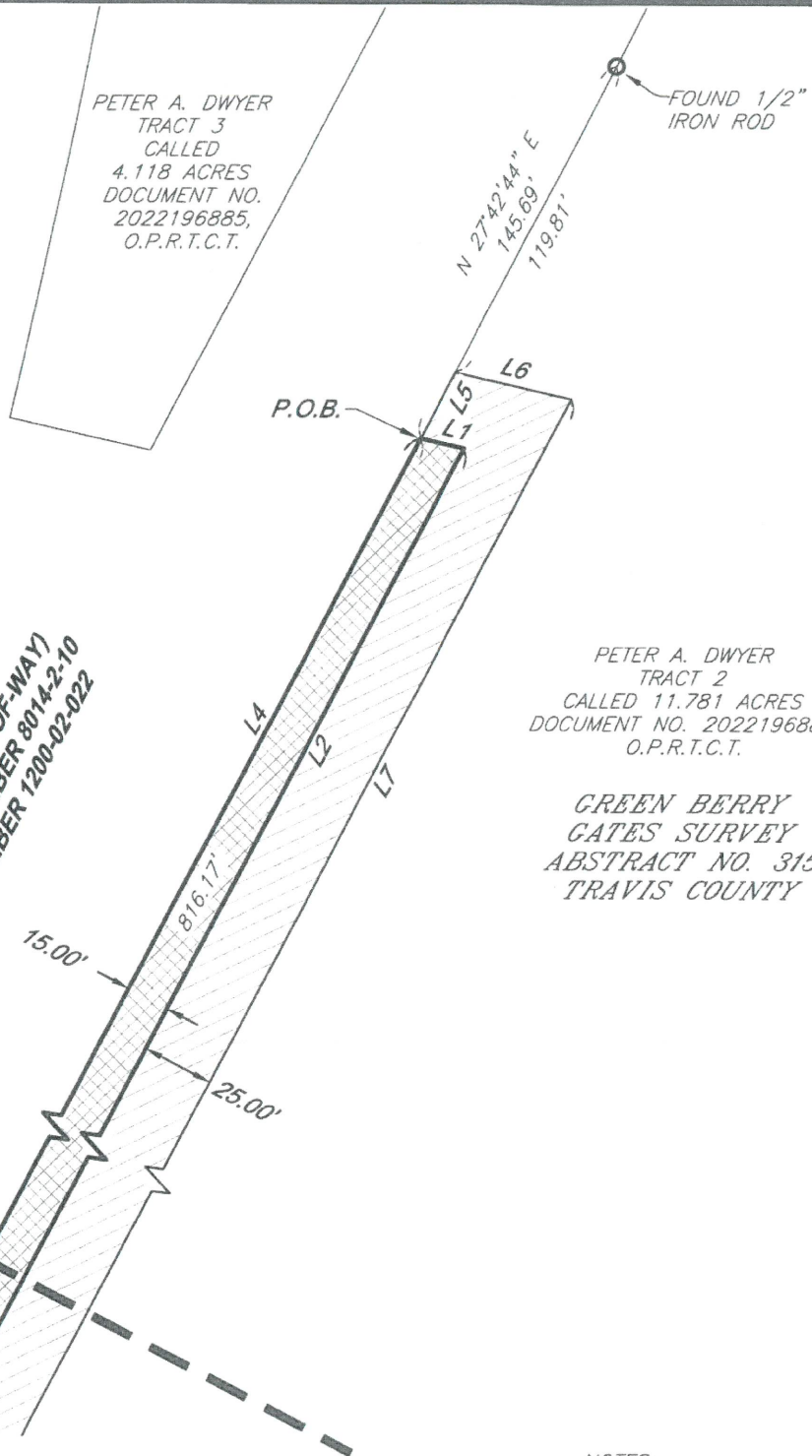


Handwritten signature of Scott F. Ammons

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		DATE 08/04/2023		

Handwritten mark resembling the letter 'P' in a circle

Scale : 1"=60'



F.M. 973
 (VARIABLE WIDTH RIGHT-OF-WAY)
 TXDOT ACCOUNT NUMBER 8014-2-10
 TXDOT CSJ NUMBER 1200-02-022

PETER A. DWYER
 TRACT 2
 CALLED 11.781 ACRES
 DOCUMENT NO. 2022196885,
 O.P.R.T.C.T.

GREEN BERRY
 GATES SURVEY
 ABSTRACT NO. 315
 TRAVIS COUNTY


MATCH LINE
 SEE THIS SHEET
 MATCH LINE
 SEE SHEET 4

NOTES:

1. BEARINGS BASED ON TEXAS STATE PLANE COORDINATES, CENTRAL ZONE, 4203, NAD83-US SURVEY FEET.

 Denotes W.E.
 18,921 Square Feet

 Denotes T.C.E.
 32,704 Square Feet

 GBA architects engineers © George Butler Associates, Inc. 2023	2301 Double Creek Drive Building 1, Suite 110 Round Rock, Texas 78664 512.616.0055 www.gbateam.com TBPELS FIRM #10194808	PROJECT NUMBER 15416.00	TITLE Exhibit "A" Waterline Easement Manor, Travis Co., TX	SHEET NUMBER 3 of 5
		DATE 08/04/2023		





Scale : 1"=60'

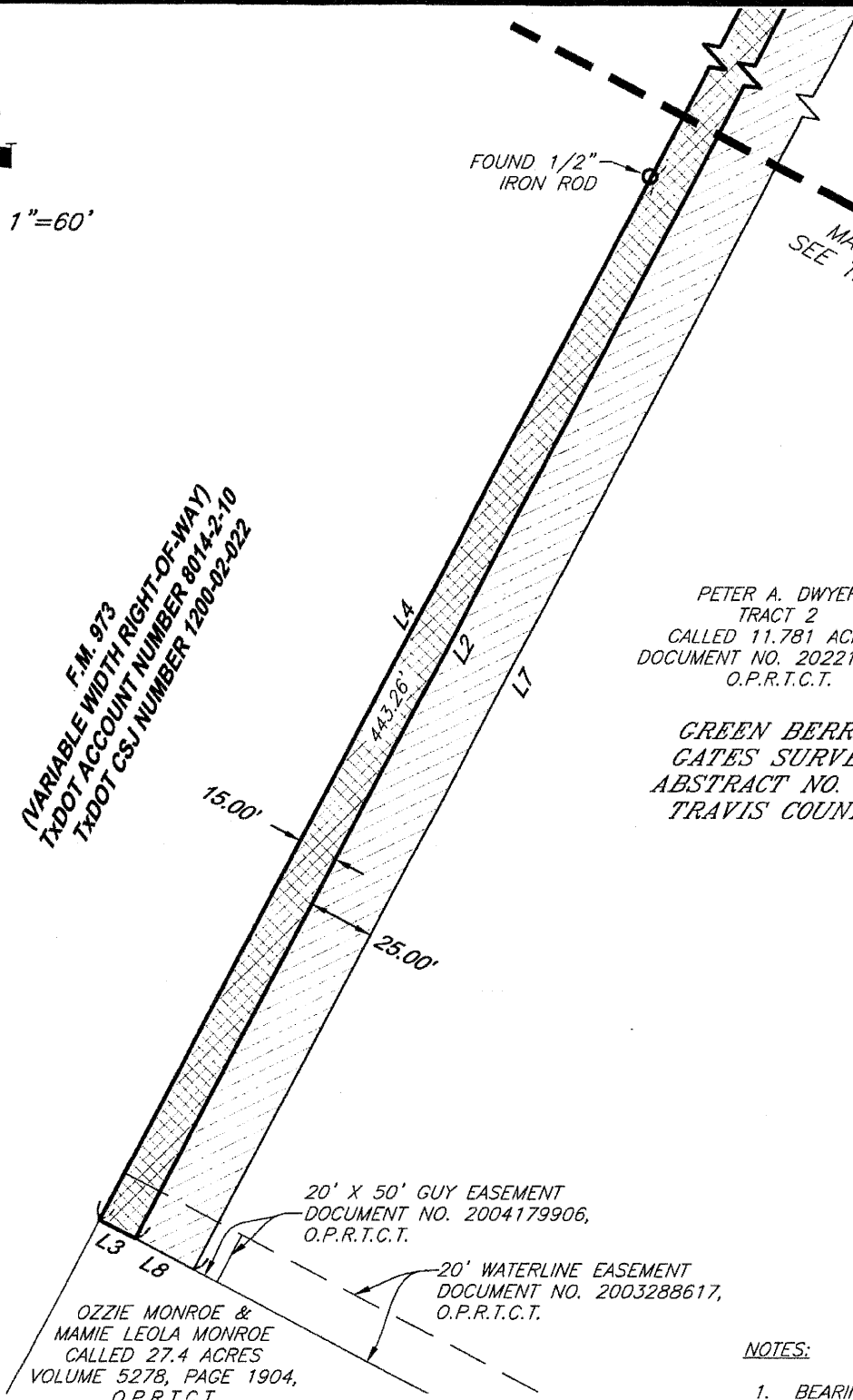
F.M. 973
 VARIABLE WIDTH RIGHT-OF-WAY
 TxDOT ACCOUNT NUMBER 8014-2-10
 TxDOT CSJ NUMBER 1200-02-022

FOUND 1/2" IRON ROD

MATCH LINE
 SEE SHEET 3
 MATCH LINE
 SEE THIS SHEET

PETER A. DWYER
 TRACT 2
 CALLED 11.781 ACRES
 DOCUMENT NO. 2022196885,
 O.P.R.T.C.T.

GREEN BERRY
 GATES SURVEY
 ABSTRACT NO. 315
 TRAVIS COUNTY




20' X 50' GUY EASEMENT
 DOCUMENT NO. 2004179906,
 O.P.R.T.C.T.


20' WATERLINE EASEMENT
 DOCUMENT NO. 2003288617,
 O.P.R.T.C.T.

OZZIE MONROE &
 MAMIE LEOLA MONROE
 CALLED 27.4 ACRES
 VOLUME 5278, PAGE 1904,
 O.P.R.T.C.T.

NOTES:

1. BEARINGS BASED ON TEXAS STATE PLANE COORDINATES, CENTRAL ZONE, 4203, NAD83-US SURVEY FEET.

 Denotes W.E.
 18,921 Square Feet

 Denotes T.C.E.
 32,704 Square Feet

GBA
 architects
 engineers
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 2301 Double Creek Drive
 Building 1, Suite 110
 Round Rock, Texas 78664
 512.616.0055
 www.gbateam.com
 TBPELS FIRM #10194808

PROJECT NUMBER
 15416.00
 DATE
 08/04/2023

TITLE
 Exhibit "A"
 Waterline Easement
 Manor, Travis Co., TX

SHEET NUMBER
4 of 5



<i>Line Table</i>		
<i>Line #</i>	<i>Bearing</i>	<i>Distance</i>
L1	S 77° 14' 07" E	15.53'
L2	S 27° 42' 44" W	1263.43'
L3	N 62° 17' 16" W	15.00'
L4	N 27° 42' 44" E	1259.43'
L5	S 27° 42' 44" W	25.88'
L6	S 77° 14' 07" E	41.40'
L7	S 27° 42' 44" W	1295.98'
L8	N 62° 17' 16" W	25.00'

LEGEND

○	PROPERTY CORNER FOUND AS NOTED
P.O.B.	POINT OF BEGINNING
T.C.E.	TEMPORARY CONSTRUCTION EASEMENT
W.E.	WATERLINE EASEMENT
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY TEXAS

This is to certify that this real property exhibit was prepared by me or under my direct supervision. This exhibit does not warrant that a boundary survey was performed upon the hereon shown tract of land.



SCOTT F. AMMONS 08/04/2023
REGISTERED PUBLIC LAND SURVEYOR NO. 6550
STATE OF TEXAS



2301 Double Creek Drive
Building 1, Suite 110
Round Rock, Texas 78664
512.616.0055
www.gbateam.com
TBPELS FIRM #10194808

PROJECT NUMBER

15416.00

DATE

08/04/2023

TITLE

Exhibit "A"
Waterline Easement
Manor, Travis Co., TX

SHEET NUMBER

5 of 5

