

**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE CENTRAL TEXAS  
REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 10-48**

**RESOLUTION AUTHORIZING ACQUISITION OF PROPERTY RIGHTS BY  
AGREEMENT OR CONDEMNATION OF CERTAIN PROPERTY IN TRAVIS  
COUNTY FOR THE US 290 EAST TOLL PROJECT  
(Parcel 3)**

WHEREAS, pursuant to and under the authority of Subchapter E, Chapter 370, Texas Transportation Code and other applicable law, the Central Texas Regional Mobility Authority ("CTRMA") has found and determined that to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its roadways and the roadways of the State of Texas, public convenience and necessity requires acquisition of fee simple title to that certain 19.29 acres described by metes and bounds in Exhibit "A" to this Resolution (the "Subject Property"), owned by Kemco Properties (the "Owner"), for the construction, reconstruction, maintaining, widening, straightening, lengthening, and operating of the US 290 East Toll Project (the "Project"), as a part of the improvements to the Project, but excluding all the oil, gas, and sulphur which can be removed from beneath the Subject Property, without any right whatever remaining to the owner of such oil, gas, and sulphur of ingress to or egress from the surface of the Subject Property for the purpose of exploring, developing, or mining of the same, and that such constructing, reconstructing, maintaining, widening, straightening, lengthening, and operating of the Project shall extend across and upon, and will cross, run through, and be upon the Subject Property; and

WHEREAS, an independent, professional appraisal report of the Subject Property has been submitted to the CTRMA, and an amount has been established to be just compensation for the property rights to be acquired; and

WHEREAS, the Executive Director of the CTRMA, through agents employed or contracted with the CTRMA, has transmitted an official written offer to the Owner, based on the amount determined to be just compensation, and has entered into good faith negotiations with the Owner of the Subject Property to acquire the Subject Property; and

WHEREAS, as of the date of this Resolution, the Executive Director and the Owner have failed to agree on the amount determined to be just compensation and damages, if any, due to said Owner for the Subject Property; and

WHEREAS, notwithstanding the failure to reach an agreement on the amount determined to be just compensation and damages, if any, due to said Owner for the Subject Property, the Executive Director, the Owner, and the owners of all leasehold interests in the Subject Property as lessees of the Owner have reached an agreement on terms and conditions of a Possession and Use Agreement for the Subject Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors hereby approves the execution by the Executive Director of a Possession and Use Agreement in the form or substantially in the same form as attached to this Resolution as Attachment "A", if that Possession and Use Agreement is first duly executed by all other parties; and


BE IT FURTHER RESOLVED that the Executive Director is specifically authorized and directed to acquire the Subject Property and all leasehold interests in the Subject Property for the Project by agreement, subject to approval of the purchase contract by the Board of Directors of the CTRMA; and

BE IT FURTHER RESOLVED that at such time as the Executive Director concludes that further negotiations with Owner to acquire the Subject Property by agreement would be futile, the Executive Director or his designee is hereby authorized and directed to file or cause to be filed a suit in eminent domain to acquire the property interests for the aforesaid purposes against the Owner and the owners of any interest in, and the holders of any lien secured by, the Subject Property described in the attached Exhibit "B" to this Resolution; and


BE IT FURTHER RESOLVED that the Executive Director or his designee is hereby authorized and directed to incur such expenses and to employ such experts as he shall deem necessary to assist in the prosecution of such suit in eminent domain, including, but not limited to, appraisers, engineers, and land use planners.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26<sup>th</sup> day of May, 2010.

Submitted and reviewed by:

  
\_\_\_\_\_  
Andrew Martin  
General Counsel for the Central  
Texas Regional Mobility Authority

Approved:

  
\_\_\_\_\_  
Ray A. Wilkerson  
Chairman, Board of Directors  
Resolution Number 10-48  
Date Passed 05/26/10

## **Exhibit A: Description of Parcel 3**

## **Exhibit B: Description of Parcel 3**



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 temporary possession of the Property in accordance with this Agreement, GRANTOR does 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 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 October 1, 2010. GRANTOR shall fully vacate the Property, including the removal of any personal property desired to be retained by GRANTOR or any Tenant, on or before November 1, 2010. Prior to October 1, 2010 GRANTEE shall be allowed to access the improvements on the Property for the sole purpose of hazardous materials testing, with such testing to be performed at a time mutually agreeable between the parties and in the presence of GRANTOR or its representatives if so desired. GRANTEE agrees to indemnify and hold harmless GRANTOR and Tenants from any claims, causes of action, or damages to third parties, including attorney's fees, arising out of and caused by GRANTEE'S testing activities upon the Property as set out in this paragraph.
7. By their authorized signatures below the following Tenants which have a leasehold interest in the Property hereby consent and agree to vacate the premises on or before November 1, 2010, and further consent 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: Austex Office Products, Inc.

Tenant: Reagan National Advertising of Austin, Inc.

All of the parties to this Agreement further warrant and agree that in the event that GRANTOR or any Tenant should fail to fully vacate the Property, including the removal of any and all personal property to be retained by GRANTOR or any Tenant, on or before November 1, 2010 or upon other date agreed to by GRANTEE in writing, that as liquidated damages for such breach and failure to perform the obligations of this Agreement, and to enforce its rights herein GRANTOR shall automatically be legally entitled to remove all of GRANTOR'S property from the premises and place any such items in a licensed storage facility at the expense of GRANTOR, and hereby waive any right or requirement of GRANTEE to first seek or obtain any judicial determination, authorization or order to enforce its possessory rights as set out herein.

8. GRANTEE agrees that once the GRANTOR, in writing, asks for a special commissioner's hearing to be scheduled, a Petition in Condemnation will be filed within thirty (30) days after said written request is received. Furthermore, 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 \$1,080,000 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 \_\_\_\_ day of \_\_\_\_\_, 2010.

**GRANTOR:**

Kemco Properties, a Texas partnership

By: \_\_\_\_\_

Address: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_



**TENANTS:**

Austex Office Products, Inc.

By: \_\_\_\_\_

Jim Washington

Its: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Reagan National Advertising of Austin, Inc.

By: \_\_\_\_\_

William H. Reagan

Its: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**GRANTEE:**

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: \_\_\_\_\_

Mike Heiligenstein

Executive Director

Address: 301 Congress Ave.

Suite 650

Austin, Texas 78701

**ACKNOWLEDGMENT**

**STATE OF TEXAS**  
**COUNTY OF \_\_\_\_\_**

This instrument was acknowledged before me on this the \_\_\_ day of \_\_\_\_\_, 2010  
by \_\_\_\_\_, in the capacity and for the purposes and consideration recited herein.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires:

**STATE OF TEXAS**  
**COUNTY OF \_\_\_\_\_**

This instrument was acknowledged before me on this the \_\_\_ day of \_\_\_\_\_, 2010  
by Jim Washington, in the capacity and for the purposes and consideration recited herein.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires:

**STATE OF TEXAS**  
**COUNTY OF \_\_\_\_\_**

This instrument was acknowledged before me on this the \_\_\_ day of \_\_\_\_\_, 2010  
by William H. Reagan, in the capacity and for the purposes and consideration recited herein.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires:

**STATE OF TEXAS**

**COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the \_\_\_ day of \_\_\_\_\_, 2010, by Mike Heiligenstein, 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:

Don Childs  
Sheets & Crossfield, P.C.  
309 E. Main St.  
Round Rock, Texas 78664

**EXHIBIT** \_\_\_\_\_

**County:** Travis  
**Parcel No.:** 3  
**Highway:** U.S. Highway 290  
**Project Limits:** From: E of US 183  
                          To: E of SH 130  
**Right of Way CSJ:** 0114-02-085

**PROPERTY DESCRIPTION FOR PARCEL 3**

DESCRIPTION OF 1.929 ACRES (84,009 SQUARE FEET) OF LAND OUT OF THE H.T. DAVIS SURVEY NO. 30, ABSTRACT NO. 214, IN AUSTIN, TRAVIS COUNTY, TEXAS, SAME BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED AS 2 ACRES IN A DEED TO KEMCO PROPERTIES, OF RECORD IN DOCUMENT 1999122667, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS; SAID 1.929 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod set with a TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) aluminum cap, in the proposed south right-of-way (ROW) line of U.S. Highway 290, 221.00 feet right of Engineer's Baseline Station 275+19.20, at the southeast corner of this tract, being in the east line of said Kemco Properties tract, and the west line of Lot 6, Block A, 290/Tuscany Business Park, a subdivision of record in Book 101, Pages 65-67, Plat Records, Travis County, Texas, said Lot 6 being described in a deed to 1825 Fortview, Inc., of record in Volume 13189, Page 6, Real Property Records, Travis County, Texas from which a 3/4" iron pipe found at the south corner of said Kemco Property tract and at an angle point in the west line of said 1825 Fortview tract and said Lot 6 bears S03°57'13"W 54.52 feet;

- 1) THENCE, with the proposed south ROW line of U.S. Highway 290 and the south line of this tract crossing said Kemco Properties tract, S84°02'32"W 123.74 feet to a 1/2" iron rod set with a TxDOT aluminum cap, 221.00 feet right of Engineer's Baseline Station 273+95.47, at the southwest corner of this tract, same being in the southwest line of said Kemco Properties tract and the northeast line of that certain tract of land described as 176.74 acres (save and except 16.326 acres), Tract Two, in a distribution conveyance deed to J.P. Morgan Chase Bank, as Trustee of Frederic Clarke Morse, Jr.

**EXHIBIT**

Exempt Family Trust, of record in Document 2004113210, Official Public Records, Travis County, Texas;

- 2) THENCE, with the southwest line of this tract and said Kemco Properties tract, same being the northeast line of said JP Morgan Chase Bank tract,  $N70^{\circ}47'58''W$  39.55 feet to a TxDOT Type II concrete monument found 204.19 feet right of Engineer's Baseline Station 273+59.67, at the northeast corner of said J.P. Morgan Chase Bank tract, an angle point in the existing irregular south ROW line of U.S. Highway 290, and the east corner of that certain tract of land described as 16.32 acres in an Agreed Judgement to the State of Texas, of record in Document 2006144438, Official Public Records, Travis County Texas, from which point a TxDOT Type II concrete monument found, 191.68 feet right of Engineer's Baseline Station 265+20.65, in the existing south ROW line of U.S. Highway 290, and the south line of said 16.32 acre State of Texas tract, same being the north line of said JP Morgan Chase Bank tract, bears  $S84^{\circ}07'38''W$  830.28 feet;

THENCE, continuing with the southwest line of this tract and of said Kemco Properties tract, same being the existing irregular south ROW line of U.S. Highway 290, same being the northeast line of said 16.32 acre State of Texas tract, the following two (2) courses, numbered 3 and 4;

- 3)  $N70^{\circ}47'58''W$  293.46 feet to a 1/2" iron rod found;
- 4)  $N70^{\circ}00'36''W$  183.77 feet to a calculated point, at the northwest corner of this tract and of said Kemco Properties tract, same being the northeast corner of said 16.32 acre State of Texas tract, also being in the existing south ROW line of said U.S. Highway 290, and at the southwest corner of that certain tract of land described as 4.228 acres (Part 1) in a deed to the State of Texas, of record in Volume 3138, Page 2243, Deed Records, Travis County, Texas, and the east corner of that certain tract of land described as 2.014 acres in a deed to the State of Texas, of record in Volume 3100, Page 864, Deed Records, Travis County, Texas, from which point a 1/2" iron rod found bears  $S05^{\circ}57'50''E$  0.26 feet;
- 5) THENCE, with the north line of this tract and of said Kemco Properties tract, same being the existing south ROW line of U.S. Highway 290, and the south line of said 4.228 acre State of Texas tract,  $N84^{\circ}02'10''E$  629.20 feet to a 1/2" iron rod found at the northeast corner of this tract and said Kemco Properties tract, same being the northwest corner of said 1825 Fortview tract and said Lot 6;

**EXHIBIT** \_\_\_\_\_

- 6) THENCE, with the east line of this tract and of said Kemco Properties tract, same being the west line of said 1825 Fortview tract and said Lot 6,  $S03^{\circ}57'13''W$  225.41 feet to the POINT OF BEGINNING and containing 1.929 acres of land within these metes and bounds, more or less.

All bearings are based on the Texas State Plane Coordinate System, Central Zone, NAD83(93) HARN. All distances and coordinates were adjusted to surface using a combined scale factor of 1.00011.

ACCESS MAY BE PERMITTED TO AND FROM THE TRANSPORTATION FACILITY ACROSS THE PROPOSED RIGHT-OF-WAY LINE AS DESCRIBED HEREIN, BEING THE COMMON BOUNDARY LINE BETWEEN THE PROPOSED U.S. 290 HIGHWAY FACILITY AND THE REMAINDER OF THE ABUTTING PROPERTY.

STATE OF TEXAS       §  
                                  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF TRAVIS   §

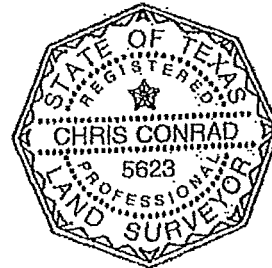
That I, Chris Conrad, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

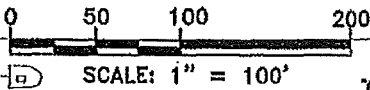
WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 16th day of September, 2009 A.D.

SURVEYED BY:  
**McGRAY & McGRAY LAND SURVEYORS, INC.**  
3301 Hancock Dr., Ste. 6 Austin, TX 78731 (512) 451-8591

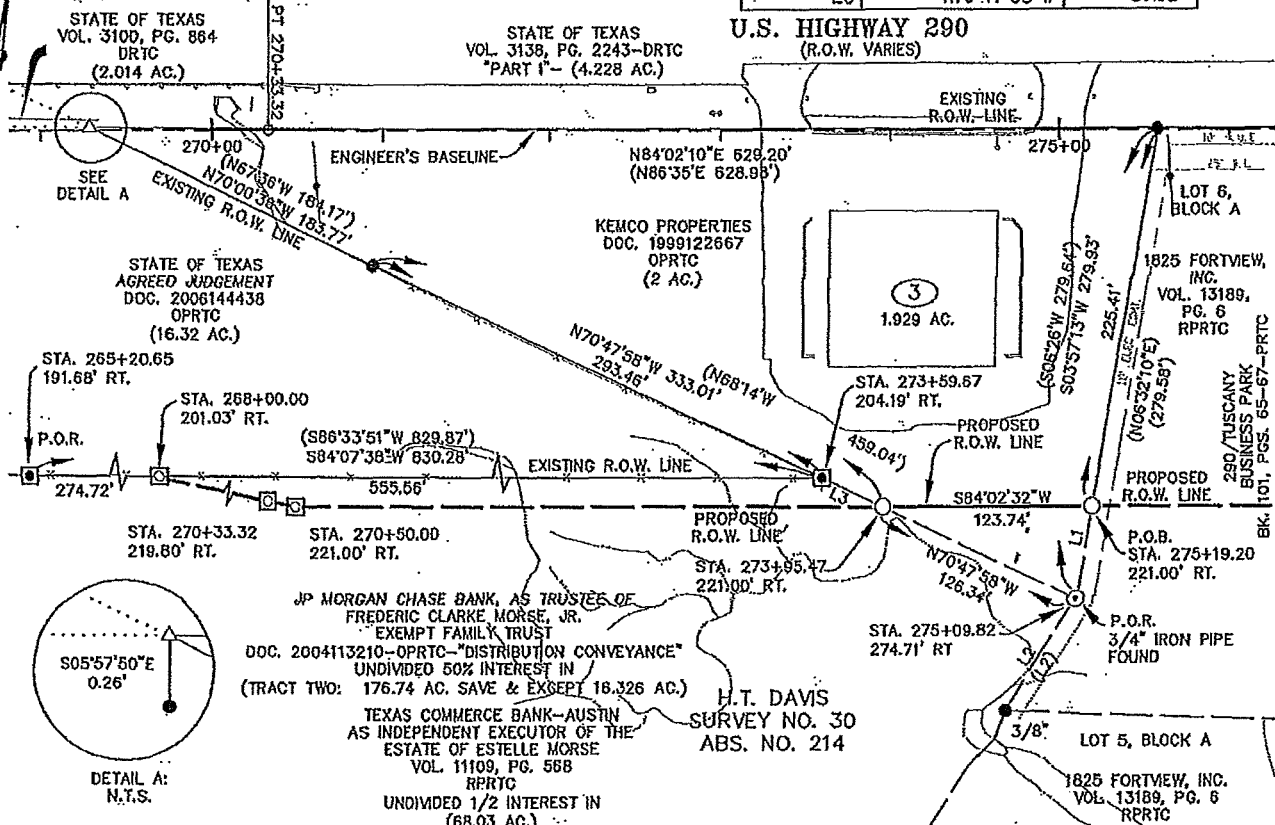


Chris Conrad, Reg. Professional Land Surveyor No. 5623  
Note: There is a plat to accompany this description. US 290 P3  
Issued 02/02/07; Revised 03/20/07, 07/17/09, 09/16/09





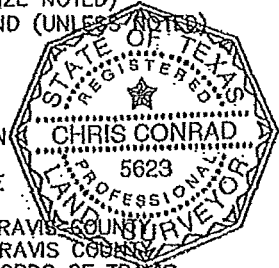
LINE TABLE		
LINE	BEARING	LENGTH
L1	S03°57'13"W	54.52'
L2	S25°28'14"W	77.09'
(L2)	(N28°30'49"E)	(77.57')
L3	N70°47'58"W	39.55'



SURVEYED ACREAGE	ACQUISITION ACREAGE	ACQUISITION SQUARE FEET	REMAINDER ACREAGE	REMAINDER SQUARE FEET
2.005 AC.	1.929 AC.	84,009	0.076 AC.	3,323

**LEGEND**

- TXDOT TYPE I CONCRETE MONUMENT FOUND
- TXDOT TYPE II CONCRETE MONUMENT FOUND
- ⊗ 1/2" IRON ROD SET WITH TXDOT ALUM. CAP TO BE REPLACED WITH A TXDOT TYPE II CONCRETE MONUMENT AFTER ACQUISITION
- 1/2" IRON ROD SET WITH TXDOT ALUM. CAP
- ⊙ IRON PIPE FOUND (SIZE NOTED)
- 1/2" IRON ROD FOUND (UNLESS NOTED)
- ▲ 60D NAIL FOUND
- CALCULATED POINT
- FENCE POST
- N.T.S. NOT TO SCALE
- (XXX) RECORD INFORMATION
- P.O.B. POINT OF BEGINNING
- P.O.R. POINT OF REFERENCE
- ACCESS DENIAL LINE
- PRTC PLAT RECORDS OF TRAVIS COUNTY
- DRTC DEED RECORDS OF TRAVIS COUNTY
- RPRTC REAL PROPERTY RECORDS OF TRAVIS COUNTY
- OPRTC OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY



- NOTES:**
- 1) BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD83(93) HARN. ALL DISTANCES AND COORDINATES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.00011.
  - 2) SEE PAGES 1, 2, AND 3 OF 4 FOR A DESCRIPTION OF THIS PARCEL.
  - 3) IMPROVEMENTS SHOWN ARE TAKEN FROM TXDOT AERIAL SURVEY DIGITAL FILES.
  - 4) THIS SURVEY WAS DONE WITHOUT A TITLE REPORT OR EASEMENT SEARCH.
  - 5) ENGINEER'S BASELINE IS NOT THE SAME AS THE ORIGINAL SURVEY "CENTERLINE".

SURVEYED BY: MCGRAY & MCGRAY LAND SURVEYORS, INC.  
3301 HANCOCK DR., STE 6, AUSTIN, TX 78731 512/451-8591

*Chris Conrad*

09/16/09

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE  
SURVEYED ON GROUND UNDER MY DIRECT SUPERVISION

**McGRAY & McGRAY**  
LAND SURVEYORS, INC.  
8301 HANCOCK DRIVE #8  
AUSTIN, TEXAS 78731  
(612) 451-8591

PLAT OF 1.929 AC. OF LAND OUT OF THE H.T. DAVIS SURVEY NO. 30, ABSTRACT NO. 214, SAME BEING ALL OF THAT CERTAIN TRACT DESCRIBED AS 2 AC. IN A DEED TO KEMCO PROPERTIES, OF RECORD IN DOCUMENT 1999122667, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS.

TRAVIS COUNTY  
U.S. 290  
CSJ 0114-02-085  
PARCEL 3  
PAGE 4 OF 4