

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS §

§ Parcel No.: 26

COUNTY OF WILLIAMSON § Project: Gattis School Road (Ph. 6)

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between CITY OF ROUND ROCK, TEXAS ("Grantee"), and MARKET PLAZA, LLC (the "Grantor" whether one or more), grants to the Grantee, its contractors, agents and all others deemed necessary by the Grantee, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing improvements to Gattis School Road and related utility adjustments (the "Project"). The property subject to this Agreement is described more fully in field notes, plat map or other description (attached as "Exhibit A") and made a part of this Agreement by reference (the "Property").

- 1. For the consideration from the Grantee which is set forth in Paragraph 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, and conveys to Grantee the right of entry and exclusive possession and use of the Property for the purpose of constructing a roadway, utility adjustments and all related 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 Projects. This Possession and Use Agreement will extend to the Grantee, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the Grantee in the future, and all others deemed necessary by the Grantee for the purpose of the Projects. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property only.
- 2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the Grantee will tender to the Grantor the sum of ONE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED SIXTY-FIVE and 00/100 Dollars (\$185,165.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. Grantee will be entitled to take possession and use of the Property upon tender of payment as set out herein, subject to the conditions in paragraph 14 below, if any. The parties agree that the sum tendered represents 90% of the Grantee's approved value, which assumes no adverse environmental conditions affecting the value of the Property. approved value is the Grantee's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the Grantee 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 Grantee 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 Grantee, the Grantor will promptly refund the overpayment to the Grantee.



- 3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above was tendered to the Grantor by the Grantee, or disbursed to the Grantor by 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 1827489-KFO effective March 9, 2020 by Independence Title/Title Resources Guaranty Company, and that proper releases 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 Grantee from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
- 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 Grantee in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
- 6. This Agreement is made with the understanding that the Grantee 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 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 Grantee, 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 Grantee'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. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
- 7. In the event the Grantee institutes or has instituted eminent domain proceedings, the Grantee 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 Grantee until entry of judgment.
- 8. The purpose of this Agreement is to allow the Grantee to proceed with its Project without delay and to allow the Grantor to avoid proceeding with condemnation litigation at the current time and continue voluntary investigation and negotiation for the proposed Property acquisition. The Grantor expressly acknowledges that the proposed Project are 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 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 Grantee 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 until the Effective Date, including prorated taxes until the Effective Date for the year in which the Grantee takes title to the Property.
- 11. Notwithstanding the acquisition of right of possession to the Property by the Grantee 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 Grantee 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 Grantee will record this document.
- 14. Other conditions: N/A
- 15. By its authorized signature below the following Tenants which have a leasehold interest in the Property hereby 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:

Tenants:	Dellriff Ice,	LLC	

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 remainder of Grantor's land for its current uses without prior advance agreement between Grantor/Tenant and Grantee.

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

[signature pages follow]

GRANTOR:

MARKET PLAZA, LLC

Name: Osvaldo Merrado

Its: MANA JON

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Travis

This instrument was acknowledged before me on this the <u>27</u> day of <u>August</u>, 2020 by <u>Osvaldo Mercado</u> in the capacity and for the purposes and consideration recited herein.

STEVEN R. HAKE ID #11809600 My Commission Expires November 30, 2023

Notary Public, State of Texas

Printed Name: Steven R. Hake

My Commission Expires: 11-30-2013

GRANTEE:		
CITY OF ROUND ROCK, TEXAS		
By:		
By: Craig Morgan, Mayor		
<u>A</u>	<u>CKNOWLEDGMENT</u>	
STATE OF TEXAS		
COUNTY OF WILLIAMSON		
	ed before me on this the day of purposes and consideration recited herein.	, 2020 by
	Notary Public, State of Texas	
	Printed Name:	
	My Commission Expires	

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DELLRIF ICE, LLC

Name: JOHN W. PURSER Its: PRESIDENT DEURIF ICE, LLC

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Welliams

This instrument was acknowledged before me on this the 1st day of approximately, 2020 by Parson, in the capacity and for the purposes and consideration recited herein.

Printed Name: March DUESON

My Commission Expires:

Marcy C Dickson

REV: 06-24-2019 Page 1 of 4

EXHIBIT A

County:

Williamson

Parcel:

26

Project:

Gattis School Road

PROPERTY DESCRIPTION FOR PARCEL 26

DESCRIPTION OF A 0.064 ACRE (2,784 SQUARE FOOT) TRACT OF LAND SITUATED IN THE JOHN H. RANDALL SURVEY, ABSTRACT NO. 531, IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF LOT 2A (1.629 ACRES), HIGHLAND ESTATES, SECTION IIA AMENDED PLAT OF LOTS 1 AND 2, A SUBDIVISION OF RECORD IN CABINET BB, SLIDES 353-354 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, DESCRIBED IN WARRANTY DEED WITH VENDOR'S LIEN TO MARKET PLAZA, LLC RECORDED IN DOCUMENT NO. 2006050685 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.064 ACRE (2,784 SQUARE FOOT) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a 1/2" iron rod with plastic cap stamped "Chaparral Boundary" found 331.97 feet left of proposed Gattis School Road Baseline Station 186+20.12, being the northeasterly corner of said Lot 2A, same being the northwesterly corner of Lot 2, Block A, Autrey Ranch, a subdivision of record recorded in Cabinet EE, Slide 88 of the Plat Records of Williamson County, Texas, also being in the southerly boundary of Lot 1, Block A of said Autrey Ranch subdivision;

THENCE, with the common boundary line of said Lot 2A and said Lot 2, S 02°33'32" E, for a distance of 268.43 feet a 1/2 inch iron rod with plastic cap stamped "Chaparral Boundary" found being a point of curvature to the right, continuing along said curve to the right having a delta angle of 17°59'45", a radius of 15.24 feet, an arc length of 4.79 feet and a chord which bears S 07°42'30" E, for a distance of 4.77 feet to an iron rod with aluminum cap stamped "ROW 4933" (Grid Coordinates determined as N=10155081.09, E=3153715.52 TXSPC Zone 4203) set 58.91 feet left of proposed Gattis School Road Baseline Station 186+26.13 in the proposed northerly right-of-way (ROW) line of Gattis School Road (ROW width varies), for the northeasterly corner and POINT OF BEGINNING of the herein described tract:

- 1) THENCE, departing said proposed ROW line, continuing with said common boundary line, along said curve to the right having a delta angle of 71°20'42", a radius of 15.24 feet, an arc length of 18.98 feet and a chord which bears \$ 52°22'44" W, for a distance of 17.77 feet to a 1/2 inch iron rod with plastic cap stamped "Chaparral Boundary" found in the existing northerly ROW line of Gattis School Road (ROW width varies), being the southeasterly corner of said Lot 2A, same being the southwesterly corner of said Lot 2, for the southeasterly corner of the herein described tract;
- 2) THENCE, departing said Lot 2, with the common boundary line of said Lot 2A and said existing northerly ROW line of Gattis School Road, S 88°26'23" W, for a distance of 283.14 feet to the calculated southwesterly corner of said Lot 2A, same being the southeasterly corner of Lot 1A of said Amended Plat, for the southwesterly corner of the herein described tract, and from which a 1/2" iron rod with plastic cap stamped "Stearns 4990" found, being the southwesterly corner of said Lot 1A, in said existing northerly ROW line of Gattis School Road bears S 88°26'23" W, at a distance of 198.79 feet;
- 3) THENCE, departing said existing northerly ROW line, with the common boundary line of said Lot 1A and said Lot 2A, N 02°15'05" W, for a distance of 14.96 feet to an iron rod with aluminum cap stamped "ROW 4933" set 61.12 feet left of proposed Gattis School Road Baseline Station 183+28.42 in said proposed northerly ROW line of Gattis School Road, for the northwesterly corner of the herein described tract, and from which a calculated point of curvature of a non-tangent curve to the left, being in the common boundary line of said Lot 1A and Lot 2A, bears N 02°15'05" W, at a distance of 31.11 feet;

THENCE, departing said Lot 1A, with said proposed ROW line, through the interior of said Lot 2A, the following three (3) courses:

- 4) N 88°27'22" E, for a distance of 52.49 feet to an iron rod with aluminum cap stamped "ROW 4933" set 61.51 feet left of proposed Gattis School Road Baseline Station 183+80.91, for an angle point;
- 5) S 02°56'25" E, for a distance of 8.77 feet to an iron rod with aluminum cap stamped "ROW 4933" set 52.74 feet left of proposed Gattis School Road Baseline Station 183+81.19, for an angle point;
- 6) N 87°26'12" E, for a distance of 245.02 feet to the POINT OF BEGINNING, containing 0.064 acre (2,784 square feet) of land, more or less.

This property description is accompanied by a separate parcel plat.

All bearings recited herein are based on the Texas State Plane Coordinate System, Central Zone No. 4203, NAD 83.

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WILLIAMSON

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That I, M. Stephen Truesdale, 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 direct supervision.

WITNESS MY HAND AND SEAL at Round Rock, Williamson County, Texas.

M. Stephen Truesdale

Registered Professional Land Surveyor No. 4933

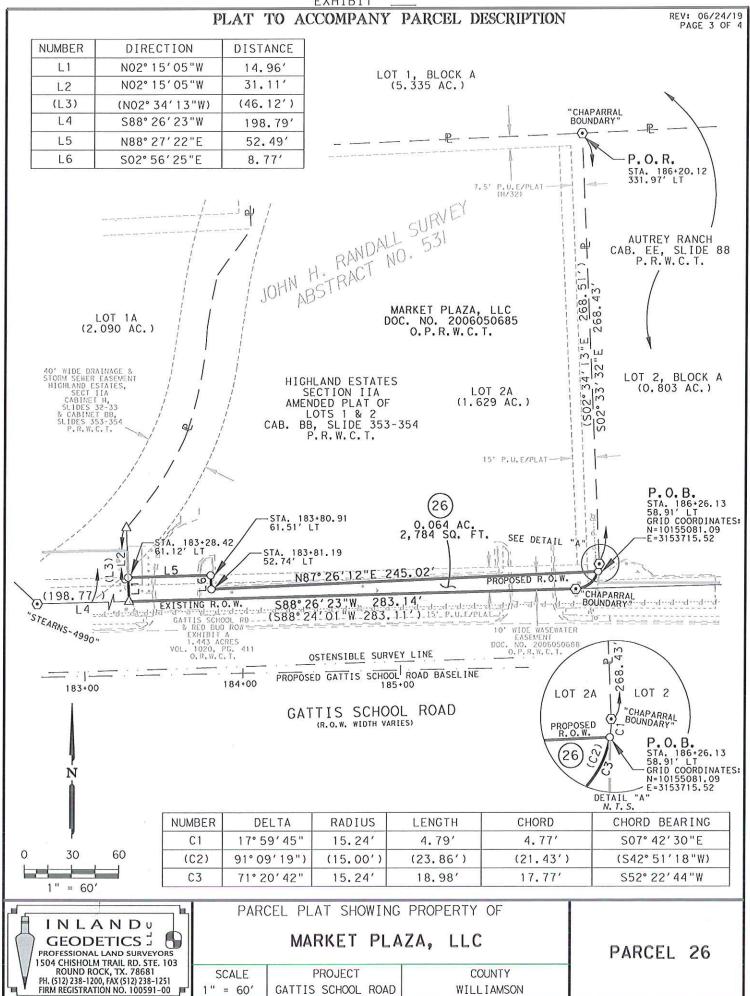
Licensed State Land Surveyor

Inland Geodetics, LLC

Firm Registration No: 100591-00 1504 Chisholm Trail Road, Suite 103

Round Rock, TX 78681





REV: 06/24/19 PLAT TO ACCOMPANY PARCEL DESCRIPTION LEGEND - PAGE 4 OF 4 CENTER LINE FENCE CORNER POST FOUND PROPERTY LINE 0 1/2" IRON ROD FOUND UNLESS NOTED) RECORD INFORMATION (0) 1/2" IRON ROD FOUND W/PLASTIC CAP LINE BREAK DENOTES COMMON OWNERSHIP COTTON GIN SPINDLE FOUND POINT OF BEGINNING POINT OF REFERENCE P.O.B. 0 1/2" IRON PIPE FOUND UNLESS NOTED P.O.R. X CUT FOUND N. T. S. NOT TO SCALE D. R. W. C. T. DEED RECORDS 60/D NAIL FOUND WILLIAMSON COUNTY, TEXAS CALCULATED POINT Λ O. R. W. C. T. OFFICIAL RECORDS WILLIAMSON COUNTY, TEXAS 1/2" IRON ROD W/ ALUMINUM CAP OFFICIAL PUBLIC RECORDS WILLIAMSON COUNTY, TEXA O. P. R. W. C. T. STAMPED "ROW-4933" SET TEXAS (UNLESS NOTED OTHERWISE) P.R.W.C.T. PLAT RECORDS WILLIAMSON COUNTY, TEXAS

1) All bearings shown hereon are based on grid bearing. All distances are surface distances. Coordinates are surface values based on the Texas State Plane Coordinate System, NAD 83, Central Zone.

THE SURVEY SHOWN HEREON WAS PREPARED IN CONJUNCTION WITH THAT COMMITMENT FOR TITLE INSURANCE GF NO.1827489-KFO, ISSUED BY TITLE RESOURCES GUARANTY COMPANY, EFFECTIVE DATE JULY 3, 2018, ISSUE DATE JULY 13 2018.

- RESTRICTIVE COVENANTS: CABINET H, SLIDES 32-33 AND CABINET BB, SLIDES 353-354, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, AND DOCUMENT NO. 199958216, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SUBJECT TO.
- 10B. DRAINAGE EASEMENT VARYING IN WIDTH ALONG THE WESTERLY PROPERTY LINE AS SHOWN ON THE PLAT RECORDED IN CABINET H, SLIDES 32-33, AND CABINET BB, SLIDES 353-354, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, AFFECTS AS SHOWN.
 - C. 7.5 FOOT PUBLIC UTILITY EASEMENT ALONG THE EASTERLY LOT LINE AS SHOWN ON THE PLAT RECORDED IN CABINET H, SLIDES 32-33, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS: AND SET OUT IN SCHEDULE A HEREOF, AFFECTS AS SHOWN.
 - D. 7.5 FOOT PUBLIC UTILITY EASEMENT ALONG THE NORTHERLY LOT LINE AS SHOWN ON THE PLAT RECORDED IN CABINET H, SLIDES 32-33, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS: AND SET OUT IN SCHEDULE A HEREOF, DOES NOT AFFECT AS SHOWN.
 - E. 15 FOOT PUBLIC UTILITY EASEMENT ALONG THE SOUTHERLY AND THE EASTERLY LOT LINE AS SHOWN ON THE PLAT RECORDED IN CABINET BB, SLIDES 353-354, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS: AND SET OUT IN SCHEDULE A HEREOF, AFFECTS AS SHOWN.
 - F. PIPELINE EASEMENT TO MANVILLE WATER SUPPLY CORP. RECORDED IN VOLUME 581, PAGE 662, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, FROM ITS DESCRIPTION CANNOT BE LOCATED.
 - G. PIPELINE EASEMENT TO MANVILLE WATER SUPPLY CORP. RECORDED IN VOLUME 581, PAGE 639, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, FROM ITS DESCRIPTION CANNOT BE LOCATED.
 - H. ELECTRIC AND TELEPHONE EASEMENT TO TEXAS POWER & LIGHT COMPANY AND SOUTHWESTERN BELL TELEPHONE COMPANY RECORDED IN VOLUME 611, PAGE 520, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT.
 - I. PIPELINE EASEMENT TO MANVILLE WATER SUPPLY CORP. RECORDED IN VOLUME 843, PAGE 541, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT.
 - J. ELECTRIC AND TELEPHONE EASEMENT TO TEXAS POWER & LIGHT COMPANY AND SOUTHWESTERN BELL TELEPHONE COMPANY RECORDED IN VOLUME 848, PAGE 669, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT.
 - K. ELECTRIC EASEMENT TO TEXAS POWER & LIGHT COMPANY RECORDED IN VOLUME 304, PAGE 568, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, FROM ITS DESCRIPTION CANNOT BE LOCATED.
 - L. ELECTRIC AND TELEPHONE EASEMENT TO TEXAS POWER & LIGHT COMPANY RECORDED IN VOLUME 1102, PAGE 41, OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, FROM ITS DESCRIPTION CANNOT BE LOCATED.
 - M. ELECTRIC EASEMENT TO TEXAS UTILITIES ELECTRIC COMPANY RECORDED IN VOLUME 2621, PAGE 560, OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT.
 - N. WASTEWATER EASEMENT TO K.A.F. II DEVELOPMENT L.P. RECORDED IN DOCUMENT NO. 2004009319, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, DOES NOT AFFECT.
 - P. TERMS, CONDITIONS, AND STIPULATIONS IN THE AGREEMENT: RECORDED IN DOCUMENT NO. 199958216, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SUBJECT TO.
 - Q. TERMS, CONDITIONS, AND STIPULATIONS IN THE AGREEMENT: RECORDED IN DOCUMENT NO. 2006050688, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AFFECTS AS SHOWN.

I HEREBY CERTIFY THAT ITS TRUE AND CORRECT TO THE BEST OF MY KNOWEDGE AND BELIEF AND THAT THE PROPERTY SHOWN HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION.

M. STEPHEN TRUESDALE
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4933
LICENSED STATE LAND SURVEYOR
INLAND GEODETICS, LLC
FIRM REGISTRATION NO. 100591-00
1504 CHISHOLM TRAIL ROAD, SUITE 103
ROUND ROCK, TEXAS 78681

M. STEPHEN TRUESDALE

ACRES SQUARE FEET

ACQUISITION 0.064 2,784

CALC/DEED AREA 1.629 70,959

REMAINDER AREA 1.565 68,175

INLANDU
GEODETICS J
PROFESSIONAL LAND SURVEYORS
1504 CHISHOLM TRAIL RD. STE. 103
ROUND ROCK, TX. 78681
PH. (512) 238-1200, FAX (512) 238-1251

FIRM REGISTRATION NO. 100591-00

PARCEL PLAT SHOWING PROPERTY OF

MARKET PLAZA, LLC

SCALE PROJECT COUNTY
1" = 60' GATTIS SCHOOL ROAD WILLIAMSON

PARCEL 26