

ORDINANCE NO. 2020-O-014

AN ORDINANCE ANNEXING THE HEREINAFTER DESCRIBED TERRITORY TO THE CITY OF ATHENS, HENDERSON COUNTY, TEXAS, AND EXTENDING THE BOUNDARY LIMITS OF SAID CITY SO AS TO INCLUDE SAID HEREINAFTER DESCRIBED PROPERTY WITHIN SAID CITY LIMITS, AND GRANTING TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF SAID CITY; AND ADOPTING A SERVICE PLAN OR AGREEMENT.

WHEREAS, Chapter 43 of the Texas Local Government Code authorizes the annexation of territory, subject to the laws of this state.

WHEREAS, the procedures prescribed by the Texas Local Government Code and the laws of this state have been duly followed with respect to the following described territory, to wit:

0.80 acres in the Charles W. Jackson Survey, Abstract 398 in Henderson County Texas, and further described as being a part of a called 4.376-acre tract described by deed recorded in Instrument 2019-00006648 of the Deed Records of Henderson County, Texas. The metes and bounds description and survey are attached as exhibits A & B.

NOW, THEREFORE, be it ordained by the City Council of the City of Athens, Texas:

1. That the heretofore described property hereby annexed to the City of Athens, Henderson County, Texas, and that the boundary limits of the City of Athens be and the same are hereby extended to include the above described territory within the city limits of the City of Athens, and the same shall hereafter be included within the territorial limits of said city, and the inhabitants thereof shall hereafter be entitled to all the rights and privileges of other citizens of the city of Athens and they shall be bound by the acts, ordinances, resolutions, and regulations of said city.
2. A service plan or agreement for the area is hereby adopted and attached as exhibit C.

The City Clerk Secretary is hereby directed to file with the County Clerk of Henderson, Texas, a certified copy of this ordinance.

First reading this the 27th day of January 2020.

PASSED, APPROVED and ADOPTED this the 10th day of **February 2020** at a regular meeting of the City Council of the City of Athens, Texas, with the following record vote:

Monte Montgomery, Mayor	Aye
Ed McCain, Mayor Pro Tem	Aye
Aaron Smith, Councilmember	Aye
Toni Clay, Councilmember	Aye
Robert Gross, Councilmember	Aye

Voted in favor of the motion	5
Voted against the motion	0
Motion carried	5-0

Monte Montgomery, Mayor

ATTEST:

Bonnie Hambrick

EXHIBIT A

FIELD NOTES

CORNELIOUS TRACT
0.80 ACRES

CHARLES W. JACKSON SURVEY
ABSTRACT 398

HENDERSON COUNTY

All that certain lot, tract, or parcel of land situated in the C.W. Jackson Survey Abstract 398, Henderson County, Texas, and being part of a called 4.376 acre tract described by deed recorded in Instrument 2019-00006648 of the Deed Records of Henderson County, Texas. Said tract or parcel of land being more fully described by metes and bounds as follows.

BEGINNING at a set 1/2" iron rod for the southeast corner of the above mentioned 4.376 acre tract and this tract located at the intersection of the west R.O.W. of F.M. Highway 2495 and the north margin of County Road 4807;

THENCE with said north margin S87°44'03"W 155.35 feet to a set 1/2" iron rod for the southwest corner of this tract;

THENCE N05°43'08"W 196.65 feet to a set 1/2" iron rod for the northwest corner of this tract;

THENCE N84°16'52"E 190.90 feet to a set 1/2" iron rod for the northeast corner of this tract located in said west R.O.W. of F.M. Highway 2495; Witness: N04°08'59"E 139.04 feet, a found 1/2" iron rod.

THENCE with said R.O.W. and the line of directional control S04°08'59"W 209.10 feet to the place of beginning and containing 0.80 acres of land.

SURVEYOR'S CERTIFICATE

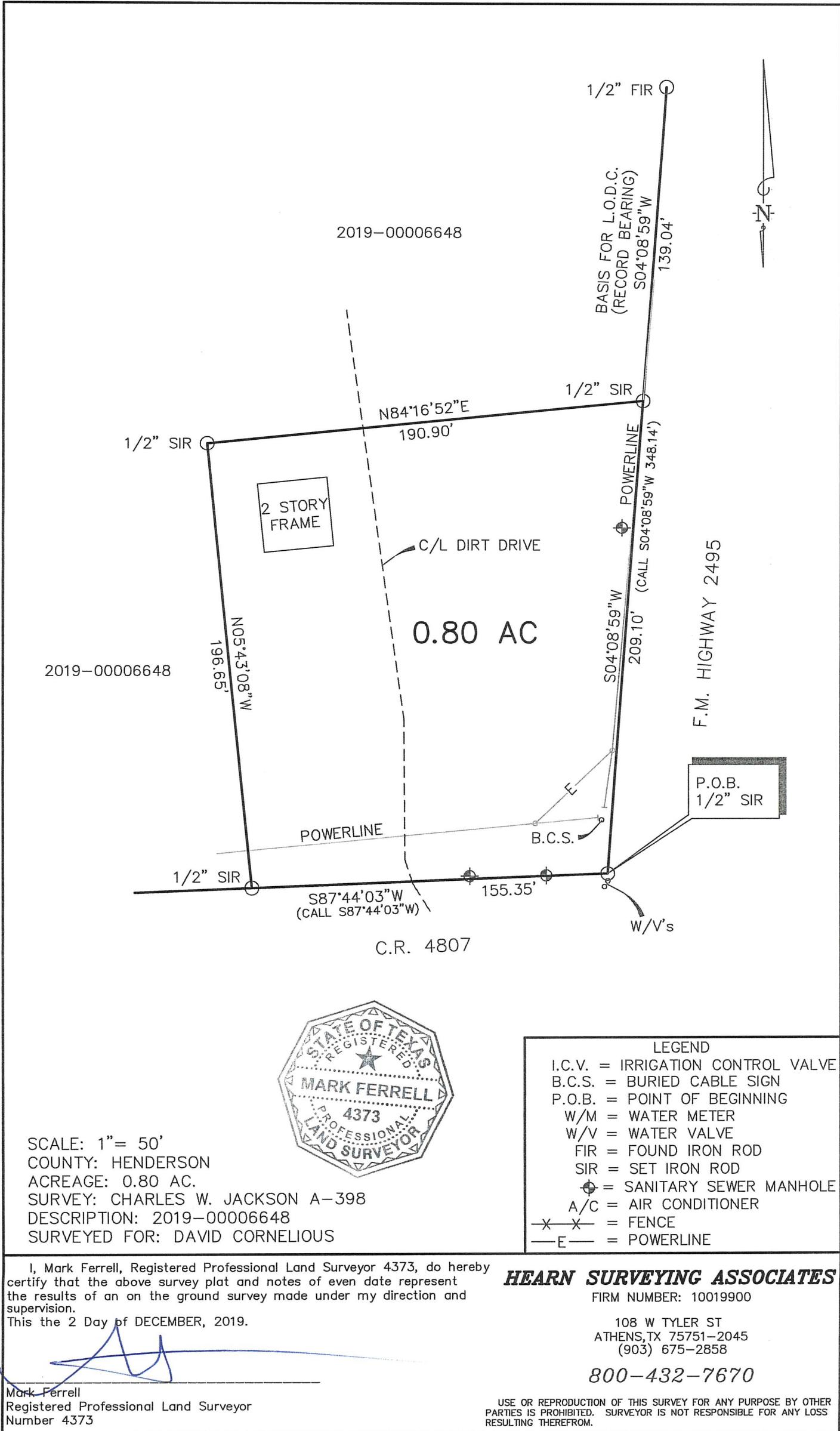
I, Mark Ferrell, Registered Professional Land Surveyor 4373, do hereby certify that I directed an on the ground survey of the property described above and prepared the above field notes and plat of even date describing the boundaries of same just as they were found and surveyed upon the ground.

Witness my hand and seal at Athens, Texas, this the 2nd day of December, 2019.




Mark Ferrell
Registered Professional Land
Surveyor Number 4373
Firm No. 10019900

EXHIBIT B



SCALE: 1" = 50'
 COUNTY: HENDERSON
 ACREAGE: 0.80 AC.
 SURVEY: CHARLES W. JACKSON A-398
 DESCRIPTION: 2019-00006648
 SURVEYED FOR: DAVID CORNELIOUS

LEGEND	
I.C.V.	= IRRIGATION CONTROL VALVE
B.C.S.	= BURIED CABLE SIGN
P.O.B.	= POINT OF BEGINNING
W/M	= WATER METER
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FIR	= FOUND IRON ROD
SIR	= SET IRON ROD
⊕	= SANITARY SEWER MANHOLE
A/C	= AIR CONDITIONER
-X-X-	= FENCE
-E-	= POWERLINE

I, Mark Ferrell, Registered Professional Land Surveyor 4373, do hereby certify that the above survey plat and notes of even date represent the results of an on the ground survey made under my direction and supervision.
 This the 2 Day of DECEMBER, 2019.

[Signature]
 Mark Ferrell
 Registered Professional Land Surveyor
 Number 4373

HEARN SURVEYING ASSOCIATES
 FIRM NUMBER: 10019900
 108 W TYLER ST
 ATHENS, TX 75751-2045
 (903) 675-2858
800-432-7670

USE OR REPRODUCTION OF THIS SURVEY FOR ANY PURPOSE BY OTHER PARTIES IS PROHIBITED. SURVEYOR IS NOT RESPONSIBLE FOR ANY LOSS RESULTING THEREFROM.

**MUNICIPAL SERVICES AGREEMENT
BETWEEN THE CITY OF ATHENS, TEXAS
AND DAVID CORNELIUS**

This Municipal Services Agreement (“Agreement”) is entered into on the 10th day of February 2020 by and between the City of Athens, Texas, a home-rule municipality of the State of Texas, (“City”) and David Cornelius (“Owner”).

RECITALS

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

WHEREAS, the City is currently classified as a Tier 2 municipality for purposes of annexation under the Texas Local Government Code (“LGC”);

WHEREAS, Section 43.0671 of the LGC permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the city elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, Owner owns certain parcels of land situated in Henderson County, Texas, which consists of approximately 0.80 acres of land in the City’s extraterritorial jurisdiction, such property being more particularly described below and set forth in Exhibit A attached and incorporated herein by reference (“Property”):

0.80 acres in the Charles W. Jackson Survey, Abstract 398 in Henderson County Texas, and further described as being a part of a called 4.376-acre tract described by deed recorded in Instrument 2019-00006648 of the Deed Records of Henderson County, Texas;

WHEREAS, Owner has filed a written petition with the City for full-purpose annexation of the Property;

WHEREAS, City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the annexation petition and execution of this Agreement are subject to approval by Athens City Council; and

NOW, THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:

1. **PROPERTY.** This agreement is only applicable to the Property, which is the subject of the annexation petition.
2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means as permitted by law.

3. MUNICIPAL SERVICES.

- a. Commencing on the effective date of annexation, the City will provide the municipal services set forth below. As used in this Agreement, “providing services” included having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City’s infrastructure extension policies and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.
 - i. Fire – The City’s Fire Department will provide emergency and fire protection services.
 - ii. Police – The City’s Police Department will provide protection and law enforcement services.
 - iii. The City will provide Emergency Medical Services.
 - iv. Planning, Zoning, and Building – The City’s Development Services Department will provide comprehensive planning, land development, land use, and building review and inspection services in accordance with all applicable laws, rules, and regulations.
 - v. Publicly Owned Parks, Facilities, and Buildings
 1. Residents of the Property will be permitted to utilize all existing publicly-owned and available parks, facilities, and buildings throughout the City.
 2. In the event that the City acquires any other parks, facilities, or buildings necessary for City services within the Property, the appropriate City department will provide maintenance and operations of the same.
 - vi. Streets – The City’s Public Works Department will maintain the public streets and streetlights over which the City has jurisdiction. The City will provide regulatory signage services in accordance with the City policies, procedures, and applicable laws.
 - vii. Water and Wastewater
 1. New homes will be required to connect to the City’s water and sewer system at the owner’s expense.
 - viii. Solid Waste Services – The City will provide solid waste collection services in accordance with existing City ordinances and policies, except where prohibited by law.
 - ix. Code Compliance – The Development Services Department will provide education, enforcement, and abatement services relating to code violations within the Property.
 - b. It is understood and agreed that the City is not required to provide a service that is not included in this Agreement.
 - c. Owner understands and acknowledges that the City departments listed above may change names or be re-organized by the City Manager. Any reference to a specific department also includes any subsequent City department that will provide the same or similar services.
4. **AUTHORITY.** City and Owner represent that they have full power, authority, and legal right to execute, deliver, and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the annexation petition is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

5. **SEVERABILITY.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not effect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never a part of the Agreement.
6. **INTERPRETATION.** The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that each of them was represented by legal counsel in the negotiation and drafting of this Agreement.
7. **GOVERNING LAW AND VENUE.** Venue shall be in the state courts located in Henderson County, Texas or the United States District Court for the Eastern District of Texas, Tyler Division and construed in conformity with the provisions of Texas Local Government Code Chapter 43.
8. **NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on future occasion.
9. **GOVERNMENTAL POWERS.** It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.
10. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
11. **CAPTIONS.** The captions to the various clauses of this Agreement are more informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
12. **AGREEMENT BINDS SUCCESSORS AND RUNS WITH THE LAND.** This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. The term of this Agreement constitutes covenants running with the land comprising the Property and is binding on the Owner.
13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. This Agreement shall not be amended unless executed in writing by both parties.

Executed as the day and year first written above to be effective on the effective date of annexation of the Property.

CITY OF ATHENS

DAVID CORNELIUS

By: _____
 Elizabeth Borstad
 City Manager

By: _____
 David Cornelius
 Property Owner

Approved as to Form and Legality:

City Attorney

Attest:

City Secretary

Approvals:

Ordinance No. _____

State of Texas §
County of Henderson §

This instrument was acknowledged before me on the ____ day of _____, 2020, by Elizabeth Borstad, City Manager of the City of Athens, a Texas municipal corporation, on behalf of said corporation.

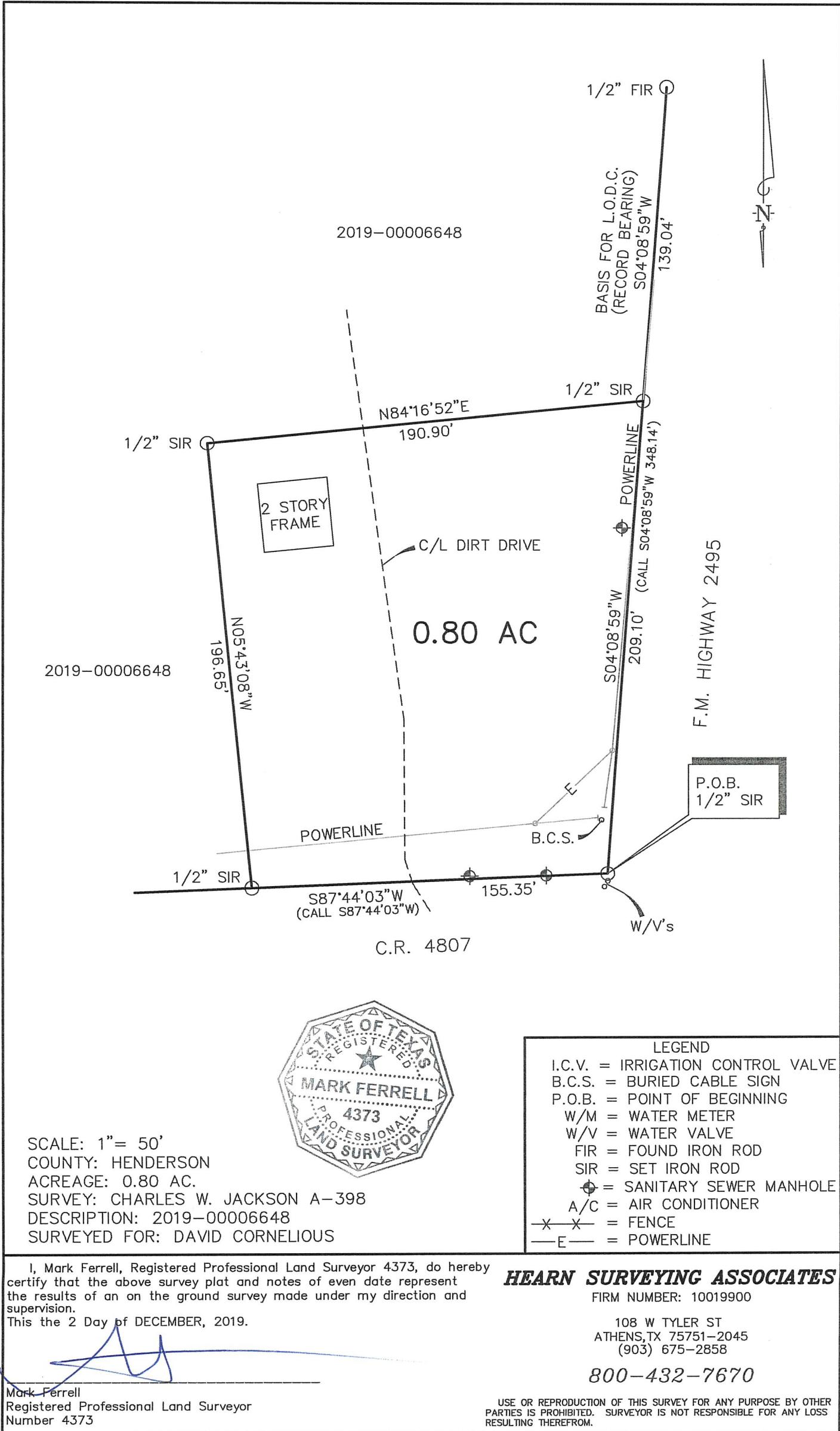
By: _____
Notary Public, State of Texas

State of Texas §
County of Henderson §

This instrument was acknowledged before me on the ____ day of _____, 2020, by David Cornelius, Property Owner.

By: _____
Notary Public, State of Texas

EXHIBT A



SCALE: 1" = 50'
 COUNTY: HENDERSON
 ACREAGE: 0.80 AC.
 SURVEY: CHARLES W. JACKSON A-398
 DESCRIPTION: 2019-00006648
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I, Mark Ferrell, Registered Professional Land Surveyor 4373, do hereby certify that the above survey plat and notes of even date represent the results of an on the ground survey made under my direction and supervision.
 This the 2 Day of DECEMBER, 2019.

[Signature]
 Mark Ferrell
 Registered Professional Land Surveyor
 Number 4373

HEARN SURVEYING ASSOCIATES
 FIRM NUMBER: 10019900
 108 W TYLER ST
 ATHENS, TX 75751-2045
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