

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the 10th day of October, 2017 (“**Effective Date**”), by and between **HUNT SOUTHWEST – WILMETH, LLC**, a Texas limited liability company (“**Hunt Southwest**”), and **COLLIN COUNTY**, a Texas governmental authority (“**Collin County**”).

RECITALS

A. Hunt Southwest is the owner of that certain tract of land containing approximately 13.3197 acres, and more particularly described on Exhibit “A”, attached hereto (the “**Hunt Tract**”), and illustrated on the drawing as “TVF BB McKinney” tract less the “R.O.W Dedication” tract shown on Exhibit “C”, attached hereto (the “**Site Plan**”).

B. Collin County is the owner of that certain tract of land containing approximately 13.192 acres of land, and more particularly described on Exhibit “B”, attached hereto (the “**County Tract**”), and illustrated on the Site Plan.

C. The Hunt Tract and County Tract are located adjacent to one another and are, collectively, referred to herein as the “**Tracts**” and, individually, as the “**Tract**.”

D. There presently is a driveway from Wilmeth Road onto the County Tract. Hunt Southwest desires an easement to reconstruct a portion of the driveway on the County Tract and, thereafter, to use the driveway to provide for access from Wilmeth Road to the Hunt Tract and Collin County will agree to such easements in consideration for Hunt’s agreement to reconstruct certain driveway improvements and maintain those driveway improvements.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners agree as follows:

1. **Definitions.**

1.1 **Certain Definitions.** The words set forth below, when used in this Agreement, shall have the following meanings:

“**Access Expenses**” shall mean the reasonable costs and expenses of rebuilding, improving, repairing and maintaining the Access Improvements on the Access Tract (including, without limitation, all costs of materials and labor; licenses and permits; costs of complying with applicable Legal Requirements; capital repairs; and such other costs and expenses as may be incurred pursuant to this Agreement).

“**Access Improvements**” shall mean the concrete pavement constituting a driveway constructed, or to be constructed, and maintained on the Access Tract.

"Access Tract" shall mean that certain portion of the County Tract, more fully described by metes and bounds set forth on Exhibit "D", attached hereto and incorporated herein by reference, and as shown on the Site Plan, attached hereto as Exhibit "C", on which the Access Improvements are constructed to provide a driveway from Wilmeth Road to the Hunt Tract.

"Affiliate" shall mean any Person controlling, controlled by, or under common control with, another Person. **"Control"** shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled Person (the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting interests of, or possession of the right to vote, in the ordinary direction of the affairs of the Person shall be presumed to constitute control).

"Easement" or **"Easements"** shall mean any easements created under this Agreement.

"Interest Rate" shall mean the lesser of (i) the **"Prime Rate"** as published on the date the payment is made by an Affected Party or is due the Affected Party (or the last date published before such date, if not published on such date) by *The Wall Street Journal* in its listing of **"Money Rates"**, plus 300 basis points, or (ii) the then applicable maximum interest rate allowed to be charge by laws of the State of Texas.

"Mortgage" shall mean a bona fide third party lien, mortgage, deed of trust, deed to secure debt or other similar instruments securing the repayment of a debt and which encumbers all or any portion of a Tract or any interest therein; provided, however, the term shall not include judgment or mechanics liens.

"Mortgagee" shall mean the holder or beneficiary of a Mortgage.

"Owner" shall mean the Person which is from time to time the record owner of fee simple title to any Tract; provided, however, that such term shall not include any Mortgagee unless and until such Mortgagee shall acquire record fee simple title through foreclosure or deed in lieu of foreclosure or otherwise. **"Owners"** shall mean the collective of all those who are an Owner.

"Permittees" shall mean any Owner, and its tenants, sub-tenants or authorized occupants of any portion of a Tract and/or the improvements located on the Tract and the respective employees, agents, contractors, licensees, concessionaires, invitees and governing persons of any such Person.

"Person" or **"Persons"** shall mean individuals, partnerships, associations, corporations, companies or any other forms of organization or entity, or one or more of them, as the context may require.

"Tract" shall mean the Hunt Tract or the County Tract as the context may require. The term **"Tracts"** shall mean both the Hunt Tract and the County Tract.

1.2 **Other Definitions.** Those other terms denoted by an initial capital letter and not defined in this Section 1.1 shall have the meaning ascribed to them elsewhere in this

Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

1.3 **Property Subject to this Agreement.** All of the Tracts, and any right, title or interest therein, shall be owned, held, leased, sold and/or conveyed by the existing Owner, and any subsequent Owner of all or any part thereof, subject to this Agreement and the covenants, easements, charges, and liens set forth herein (except as set forth in Section 7.4, below). Any rights not expressly granted by an Owner under this Agreement to another Owner are expressly reserved and shall remain the rights of the original Owner.

2. **Grant of Easements.**

2.1 **Access Easement; Access Maintenance Easement.** Collin County grants to Hunt Southwest (i) a non-exclusive, perpetual easement, for the benefit of the Hunt Tract over, upon, across and through the Access Tract and to use the Access Improvements, for the purposes of pedestrian and vehicular access, ingress and egress to and from the Hunt Tract and Wilmeth Road (the “**Access Easement**”), (ii) a non-exclusive, perpetual easement, for the benefit of the Hunt Tract, over, upon, across and through the Access Tract for the purpose of constructing, operating, repairing, maintaining and (to the extent permitted herein) altering the Access Improvements (the “**Access Maintenance Easement**”), and (iii) such rights appurtenant to the foregoing. The Access Maintenance Easement shall be deemed to include a non-exclusive, perpetual easement of twenty feet (20') on either side of a center line down the Access Tract for the purpose of reconstructing and repairing the Access Improvements from time to time. Notwithstanding the foregoing to the contrary, should the Access Easement and right to use the Access Improvements located on the Access Tract become dedicated to the public as a public roadway, then the Easements granted herein shall terminate so long as the Access Easement remains a public roadway.

2.2 **Construction Easement.** Collin County grants to Hunt Southwest, its successors and assigns, a construction easement (the “**Construction Easement**”) on the portion of the County Tract encumbered by the Access Maintenance Easement, and shown on the Site Plan, to use the County Tract for the purpose of constructing any of the Access Improvements not in existence on the Effective Date, including connecting the Access Improvements to the Hunt Tract. Hunt Southwest shall deliver to Collin County engineering drawings and specifications for the Access Improvements (the “**Plans**”) prior to commencing any construction. The proposed Access Improvements, as reflected in the Plans, shall be designed and use materials in compliance with all applicable laws, including any applicable municipal building codes of the City of McKinney. Collin County shall have thirty (30) days from the date of submittal of the proposed Plans to approve or disapprove. If disapproving, Collin County shall specify in writing the reasons for such disapproval. Thereafter, Hunt Southwest shall address the concerns of Collin County and re-submit the proposed Plans for approval. Collin County shall have an additional period of ten (10) days to approve or disapprove of the revised Plans. This process shall continue until the Plans have been approved. Notwithstanding the foregoing to the contrary, should Collin County fail to respond to any submission by Hunt Southwest in a timely manner, the proposed Plans shall be “deemed” approved by Collin County. Nothing contained herein shall require Hunt to construct the Access Improvements prior to construction of any building improvements on the Hunt Tract.

The Construction Easement shall terminate upon substantial completion of the Access Improvements; provided, however, the termination of the Construction Easement shall not diminish the other rights afforded Hunt Southwest to enter on the County Tract to reconstruct the Access Improvements or to make repairs, including replacements, and maintain the Access Improvements as otherwise permitted under this Agreement.

3. **No Obstruction; Use Restrictions.** An Owner shall not construct or erect any walls, fences or other barriers of any kind if the effect thereof will prevent vehicular or pedestrian access or use of the Easements granted hereby, as applicable. Notwithstanding anything to the contrary, however, each Owner reserves the right to temporarily close all or any portion of the Access Easement located on its Tract from time to time to make repairs and perform other maintenance on the Access Improvements. Before closing off all or any portion of the Access Easement, (x) an Owner shall give at least ten (10) days prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the Access Easement occurs, (y) any such closure shall be limited to the minimum period and minimum amount of closure reasonably necessary to achieve the applicable purpose and, to the extent reasonably feasible (except during emergencies), one drive lane shall be kept open for vehicular traffic at all times, and (z) to the extent reasonably feasible (except for emergencies) any such closure shall not occur during normal business hours (during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday, excluding holidays) ("**Normal Business Hours**"). Should an Owner require entry onto the other Owner's Tract to perform any construction, maintenance, repair or replacing of Access Improvements, as otherwise permitted under this Agreement, such Owner shall give prior written notice to the other Owner a minimum of ten (10) days before such entry (except during emergencies). The Owners agree to cooperate with one another so that the Access Easement is utilized at times and in a manner to minimize interference with the use of the other improvements on a Tract.

4. **Repair and Maintenance of Easements.** Except as hereinafter provided, Hunt Southwest agrees to maintain (or cause to be maintained) the Access Improvements in good condition and repair, clean and free of rubbish and other hazards. Unless and until Hunt Southwest, or its successors and assigns, constructs any building improvements on the Hunt Tract, Hunt shall have no obligation under this Agreement to construct, repair or maintain the existing improvements in the Access Easement in any manner or to construct the Access Improvements. Once Hunt constructs the building improvements on the Hunt Tract and the associated Access Improvements, Collin County shall only be obligated, at its sole cost and expense, to repair any damage to the Access Improvements caused by Collin County, its employees, agents, contractors and other invitees. All work performed by an Owner with respect to the Easements will be performed in accordance with applicable governmental laws, rules, and regulations, and no Owner will permit, or cause, any lien to be filed on the other Owner's Tract. Notwithstanding anything to the contrary, should the Access Easement become a public roadway at any time, then the obligation of Hunt Southwest to repair and maintain shall cease and shall be assumed by the applicable governmental authority.

5. **Default.**

5.1 **Legal and Equitable Relief.** In the event any Owner (“**Defaulting Party**”) defaults on any of its obligations under this Agreement or in the event of any violation of this Agreement by a Defaulting Party or such Defaulting Party’s Permittees and such Defaulting Party fails to cure such default or stop such violation within thirty (30) days after written notice from the other Owner (the “**Affected Party**”), or if such default is not capable of being cured within such thirty (30) day period, such Defaulting Party has not commenced the cure within such thirty (30) day period and diligently pursued the completion of such cure (in a period not to exceed one hundred twenty (120) days from the date of the original notice), the Affected Party shall have the right to (i) institute legal action against the Defaulting Party for specific performance, injunctive relief, declaratory relief, damages, or any other remedy provided by law; or (ii) take such self-help action to the extent and only to the extent permitted under Section 5.2 below. All remedies under this Agreement or at law shall be cumulative. As used herein, any reference to rights or remedies “at law” or “under applicable law” shall also include any rights or remedies “in equity.”

5.2 **Right to Cure.** In the event an Owner fails to cure a default within the time period provided in Section 5.1 above, the Affected Party which sent the default notice shall have the right, but not the obligation, upon the expiration of such period, to cure such default for the account of and at the expense of the Defaulting Party. Prior to taking any such action, such Affected Party shall deliver twenty (20) days’ prior written notice (which notice shall be in addition to the notice required under Section 5.1 hereof) to the Defaulting Party specifying with details the nature of the actions that such Affected Party giving such notice proposes to take in order to cure the claimed default.

5.3 **Interest.** If any Affected Party so performs any of the Defaulting Party’s obligations hereunder or if a Defaulting Party fails to make a payment under this Agreement to an Affected Party, the full amount of the cost and expense incurred by the Affected Party or the damage so sustained or the payment not made by the Defaulting Party to the Affected Party, as the case may be, shall immediately be due and owing by the Defaulting Party to the Affected Party and the Defaulting Party shall pay to the Affected Party the full amount thereof, together with interest at the Interest Rate thereon if not paid within thirty (30) days after written demand, such interest to accrue from the date of payment by the Affected Party (or in the case of a monetary default, the date such sum was due) until such payment is actually received by the Affected Party.

5.4 **Lien.** The Affected Party is hereby granted a lien upon the Tract of the Defaulting Party (if such Defaulting Party is a lessee, such lien shall attach to the leasehold interest of the lessee only) in the amount of any such payment made by the Affected Party or amount not paid by the Defaulting Party, pursuant to Sections 5.1 and 5.2, together with interest at the Interest Rate thereon not paid within thirty (30) days after written demand is made, and said lien may be enforced by judicial foreclosure proceedings against the Defaulting Party’s Tract in accordance with then applicable Texas law. The Affected Party shall have the right to file with the appropriate governmental office or offices a memorandum of lien, *lis pendens* or other notice or notices as may be required by law to give notice of such lien and the amount thereof, said notice or notices to be filed after the expiration of said thirty (30) day period in the appropriate official records of Dallas County, Texas. The notice of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien;
- (iii) An identification of the owner or reputed owner of the property or interest therein against which the lien is claimed;
- (iv) A description of the property against which the lien is claimed; and
- (v) A statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date and document number of recordation hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Defaulting by personal service or by mailing pursuant to the notice provisions hereof. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including, without limitation, a suit in the nature of a suit to foreclose a lien under the applicable provisions of the law of the State of Texas. The lien herein granted shall be prior to and superior to any other liens or encumbrances on the Defaulting Party's Tract, including any liens arising or attaching before, on and/or after the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices, but excluding the lien held by a third party holder of a bona fide first lien Mortgage affecting the Defaulting Party's Tract recorded prior to the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices. Additionally, notwithstanding the foregoing, in no event shall the foreclosure or any other enforcement of such lien created by this Section 5.4 result in a termination of any lease of any portion of the Tracts. The holder of a Mortgage on all or any portion of a Tract shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Section 5.4 affecting the property secured by its Mortgage upon payment of the amount secured by such lien.

5.5 No Waiver. No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Agreement will operate as a waiver of any of the rights provided hereunder or by law or equity, nor will any waiver of any prior default operate as the waiver of any subsequent default, and no express waiver will affect any term or condition other than the one specified in such waiver and the express waiver will apply only for the time and manner specifically stated.

5.6 No Termination. A breach of this Agreement shall not entitle any party or person to cancel, rescind or otherwise terminate its obligations hereunder.

6. Mortgagee Protection. Each Affected Party giving a notice of default under this Agreement shall send, in accordance with Section 9.7 hereof, a copy of such notice to the Mortgagee under any Mortgage on the Tract and/or improvements of the Defaulting Party provided such Mortgagee or Defaulting Party shall have previously sent such Affected Party a notice informing it of the existence of such Mortgage and the name of the person or officer and the address

to which copies of the notices of defaults are to be sent, and such Mortgagee as recipient of notice pursuant to Section 9.7 below shall be permitted to cure any such default not later than sixty (60) days after a copy of the notice of default shall have been sent to such Mortgagee, provided that in the case of a default which cannot with diligence be remedied within such sixty (60) day period if such Mortgagee has commenced within such sixty (60) day period and is proceeding with diligence to remedy such default, then such Mortgagee shall have such additional period as may be reasonably necessary to remedy such default with diligence and continuity. Initiation of foreclosure proceedings against a Defaulting Party shall constitute "diligence" by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued (provided that a stay issued during any bankruptcy, insolvency, or reorganization proceeding shall not be deemed to defeat continuous pursuance of such foreclosure proceedings). The foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not preclude the exercise of self-help remedies by an Affected Party, pursuant to Sections 5.1 and 5.2.

7. Assignment, Transfer And Mortgage, Limitation Of Liability.

7.1 Owner Not Released Except as Provided Herein. In the event of the assignment, transfer or conveyance of the whole of the interest of any Owner in and to a Tract in which such Owner then had an interest, without such Owner retaining any beneficial interest (other than as a Mortgagee), then the powers conferred on such Owner shall be deemed assigned, transferred or conveyed to such Owner's transferee, and the obligations shall be deemed assumed by such transferee, as fully as if such transferee was originally a party hereto, and such obligations shall run with and be binding upon the Tract and be binding upon all subsequent Owner thereof, including any claims or liens arising under this Agreement against a prior Owner of a Tract which shall continue as to any transferee of such Tract. Whenever the rights, powers and obligations conferred upon any of the Owners are vested in another Person pursuant to the provisions hereof, the transferor shall be released or discharged from the obligations thereafter accruing under the terms of this Agreement, and the transferee of such interest shall be bound by the covenants and restrictions herein contained arising on or after the date of the transfer. The provisions set forth in this paragraph are subject to the provisions of Section 5.4 of this Agreement. If an Owner shall sell, transfer or assign all or any portion of its Tract, the conveying Owner shall give notice to the other Owner of any such sale, transfer, conveyance or assignment concurrently with the filing for record of the instrument effectuating the same. Failure to deliver any such written statement shall not affect the running of any covenants herein with the Tracts, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

7.2 Rights of Parties. Notwithstanding anything to the contrary contained in this Agreement, each Owner may mortgage its Tract or its interest therein or lease and sublease back its Tract or its interest therein, and, in connection with any such transaction, assign its interest in this Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, any person or entity who has acquired, or shall thereafter acquire, title to such Tract shall hold the same subject to all other terms, provisions, covenants, conditions and restrictions contained in this Agreement.

7.3 **Limitation of Liability.** No Owner or its partners, venturers, employees, shareholders, affiliates, officers, directors, managers, agents, representatives, advisors, or consultants shall have any personal liability for its or their failure to perform any covenant, term or condition of this Agreement, it being expressly declared that any money judgment recovered against any Owner shall be satisfied only out of, and the sole and exclusive recourse of any Owner damaged as a result of such default shall be against the right, title and interest of such Owner in the Tract involved and the improvements thereon including the proceeds of sale received upon execution of such judgment thereon against the right, title and interest of such Owner in the Tract involved and the improvements thereon including the rents or other income or revenue from such property receivable by such Owner or the consideration received by such Owner from the sale or other disposition (including a condemnation) of all or any part of such Owner's right, title and interest in the Tract involved and improvements thereon or the insurance proceeds received by such Owner respecting any casualty affecting the improvements.

7.4 **Priority of Agreement.** This Agreement and the rights, interests, liens (subject to the provisions of Sections 6 and 7 above), and Easements created hereunder shall be prior and superior to any Mortgage or other lien upon or against any Owner's Tract other than such liens as by law have priority over the lien and operation of this Agreement.

8. GENERAL INSURANCE, CASUALTY AND CONDEMNATION PROVISIONS.

8.1 **Waiver of Subrogation.** EACH OWNER SHALL WAIVE ANY AND ALL CLAIMS WHICH ARISE, OR MAY ARISE, IN ITS FAVOR AGAINST ANY OTHER OWNER, FOR ANY AND ALL LOSS OF, OR DAMAGE TO, ANY OF ITS TRACT, INSURABLE UNDER ALL RISK POLICIES OF INSURANCE CUSTOMARILY AVAILABLE AT THE APPLICABLE TIME.

8.2 Insurance.

8.2.1 Each Owner shall continuously maintain separate policies of commercial general liability insurance issued by and binding upon insurance companies authorized to transact business in Texas and of good financial standing, such insurance to afford minimum protection of not less than \$3,000,000 in respect of bodily injury or death and/or property damage in respect of any one occurrence on such Owner's Tract. Each Owner shall be primarily liable for coverage of an occurrence on such Owner's Tract. A portion of the coverage hereunder may be maintained as part of an umbrella policy maintained by the Owner for its Tract.

8.2.2 From and after the time an Owner constructs, and so long as there is maintained on the Tract, building improvements, such Owner shall continuously maintain separate policies of casualty insurance, known as "all risk" insurance or causes of loss – special form insurance, issued by and binding upon insurance companies authorized to transact business in Texas and of good financial standing in an amount sufficient to cover the full replacement cost of the Improvements constructed by such Owner, with a reasonable deductible.

8.2.3 Each Owner shall, on the request of another Owner, promptly furnish the requesting Owner a certificate evidencing the Owner's compliance with the insurance coverage requirements of this Section 8. No Owner shall be required during any given 365-day period to honor more than one such request from each other Owner, unless an Owner has reason to believe a policy has been cancelled. Upon request, any Owner shall permit any other Owner or its representative to inspect and copy any insurance policy required under this Section 8. Such inspection shall be at the place of business of the Owner requested to produce such policy or policies.

8.2.4 The limits of coverage and deductibles required hereunder may be adjusted from time to time by agreement of all Owners, each acting reasonably, to limits then applicable for comparable projects within a three (3) mile radius of the Tracts.

8.2.5 Each Owner shall have the right, at its option, to comply with and satisfy its obligations under this Section 8.2.1 by means of any so-called blanket policy or policies of insurance covering this and other locations of such Owner, provided that such policy or policies by the terms thereof shall allocate to the liabilities to be insured hereunder an amount not less than the amount of insurance required to be carried pursuant to this Section 8 and shall not diminish the obligations of the particular Owner to carry insurance, so that the proceeds from such insurance shall be an amount not less than the amount of proceeds that would be available if the Owner were insured under a policy applicable only to the applicable Tract. Any Owner with a net worth in excess of \$100 million may "self-insure" the coverage required under Section 8.2.1, provided such Owner shall notify the other Owner of its election to self-insure and provide to the other Owner evidence of its net worth.

8.3 **Indemnification by Owners.** Subject to Section 8.1 hereof, each Owner shall defend, indemnify and save the other Owner harmless against and from all claims, loss, damages, costs and expenses (including, without limitation, reasonable attorney's fees) because of bodily injury or death of persons or destruction of property resulting from or arising out of such Owner's, or Affiliate's, or its employee's, agent's or contractor's, construction on and/or use, occupancy or possession of its Tract or the use of the Easements, except to the extent caused by the acts or omissions of the other Owner or an Affiliate of such other Owner or any employee, agent or contractor then acting subject to such other Owner's or Affiliate's direction or control.

8.4 **Taking.** If a Taking affecting any Tract occurs, the following shall apply:

8.4.1 any award of compensation or damages for a Taking of a Tract, or any portion thereof or the improvements thereon, shall belong and be payable solely to the Owner that owns the Tract taken and no other Owner shall share in such award, except as expressly provided below;

8.4.2 any Owner shall use such proceeds to restore the improvements on its Tract as nearly as possible to its condition immediately prior to such Taking to permit the continued use thereof. To the extent the cost of restoring such improvements exceeds the amount of proceeds available therefor, the Owner shall be responsible therefor; and

8.4.3 if, as a result of a Taking, an Access Easement is extinguished or materially impaired or the Access Improvements may no longer be maintained on the Tract, then changes shall be made to provide an access easement comparable to the extent commercially practicable under the circumstances to the Access Easement created or reserved under this Agreement.

8.5 **Casualty.** Unless and until the Owner of the Hunt Tract constructs building improvements on the Hunt Tract, if a casualty occurs to any improvements constructed within the Easements, the Owner of the County Tract shall undertake the repair and restoration of such improvements. Once the Owner of the Hunt Tract constructs building improvements on the Hunt Tract, if a casualty occurs to the Access Improvements in conjunction with the Easements, subject to receipt of sufficient proceeds, the Owner on whose Tract the Access Improvements are located shall undertake the repair and restoration of the Access Improvements on its Tract to substantially the same condition as before the casualty with reasonable diligence. Each Owner shall cooperate in good faith with one another as to the repair and restoration. If the proceeds from insurance are inadequate or otherwise unavailable, then the Owner shall make up the difference so that it has paid to repair and restore the portion of the Access Improvements within the Easements on its Tract to substantially the same condition as before the casualty. Each Owner shall be liable for the amount of any deductible associated with the casualty insurance maintained by such Owner.

8.6 **Tax Payments and Contests.** Each Owner shall pay all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excess levies, license and sales and permit fees and taxes, and other charges by public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall be assessed, levied, charged, confirmed, imposed or applicable to Tracts owned by such Owner. Each of the Owners may, at its expense, by appropriate proceedings, contest the validity, applicability, or amount of any such taxes and assessments applicable to its Tract. Such contest must be made in good faith and must not allow the affected Tract to be forfeited or placed in jeopardy of being forfeited.

9. MISCELLANEOUS

9.1 **Covenants Run with the Land.** Subject to the express termination provisions as to the any of the Easements, all of the provisions, rights, powers, easements, covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Owners, their respective successors and assigns and each covenant to do or refrain from doing some act on each Tract hereunder (i) is for the benefit of the other Tract and is a burden upon each Tract, (ii) runs with each Tract, and (iii) shall benefit or be binding upon each successive Owner during its period of ownership of each Tract.

9.2 **Recordation.** This Agreement shall become effective and binding upon the Owners and their respective successors in interest upon the Effective Date and shall be promptly recorded in the Real Property Records of Collin County, Texas.

9.3 **Cancellation and Amendment.** Except as otherwise specified in this Agreement, this Agreement may be canceled, changed, modified or amended in whole or in part

only by written instrument executed by all of the Owners together with the written consent of each Mortgagee with respect to the Tracts. Any amendment shall be executed and acknowledged by such Owners and Mortgagee(s), and properly recorded in the Real Property Records of Collin County, Texas.

9.4 **Approvals.** Whenever approval or consent is required of any Owner, unless provision is made for a specific time period in this Agreement, approval or consent shall be deemed given within twenty (20) days after such Owner's receipt of the written request for approval or consent (provided such notice conspicuously states that failure to respond within such twenty (20) day period shall be deemed consent). If an Owner shall disapprove any matter as to which its consent is requested hereunder, the reasons therefor shall be stated in reasonable detail in writing. The consent or approval by an Owner to or of any act or request by any Owner shall not be deemed to waive or render unnecessary consent or approval to or of any similar or subsequent acts or requests.

9.5 **Force Majeure.** Whenever performance is required of any Owner hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, inclement weather, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of an Owner ("**Force Majeure**") (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. If Force Majeure is applicable, the Owner invoking Force Majeure (i) shall notify the other Owner of such event and the estimated time of delay by reason of such events of Force Majeure and (ii) shall notify the other Owner when such events have terminated, permitting continuation, and the actual number of days of delay by reason of such event of Force Majeure.

9.6 **Severability.** Invalidity of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.7 **Notice.** Any notice to an Owner shall be in writing and given by delivering the same to such Owner in person, by expedited, private carrier service (such as Federal Express), or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Owner's mailing address. Copies of certain notices are required to be sent to Mortgagees pursuant to Section 6.1 of this Agreement, provided that written notice of Mortgagees' addresses have been furnished to the other Owner, and shall be sent in the same manner. The address of the Owner, as of the Effective Date, is the following:

Collin County:

Collin County

2300 Bloomdale Rd. Suite 4112

McKinney, TX 75071

Attention: County Judge

and with a copy to:

Collin County

2300 Bloomdale Rd. Suite 4112

McKinney, TX 75071

Attention: County Judge

Hunt Southwest:

Hunt Southwest - Wilmett, LLC

5956 Sherry Lane, Suite 1500

Dallas, Texas 75225

Attention: General Counsel

and with a copy to:

Coats Rose, P.C.

14755 Preston Road, Suite 600

Dallas, Texas 75254

Attention: Michael H. Saks

Any Owner may change its mailing address at any time by giving written notice of such change to the other Owner in the manner provided herein at least ten (10) days prior to the date such change is to be effective. Additionally, each Owner may designate up to two (2) additional addresses to which copies of all notices shall be sent. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery (including any delivery by courier or expedited, private carrier) is effected, or if mailed, on the delivery date or attempted delivery date shown on the return receipt, provided that any such notice set forth above is tendered during Normal Business Hours (failing which such notice shall be deemed given, received, made or communicated on the next day during which Normal Business Hours occurs).

9.8 Litigation Expenses. If any party shall bring an action against any other party to this Agreement by reason of the breach or alleged violation of any covenant, terms or obligation hereof, or for the enforcement of any provision hereof or otherwise arising out of this Agreement, the prevailing party in such suit shall be entitled to its costs of suit and reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

9.9 Governing Law; Place of Performance. This Agreement and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Agreement is performable only in Collin County, Texas.

9.10 Non-Merger. The ownership, at any time during the term of this Agreement, of more than one Tract by the same Owner shall not create a merger of title or estate, or other merger, including any merger of the dominant and servient estate with respect to easements created in this Agreement, and shall therefore not terminate any of the easements, restrictive covenants, or other terms or provisions of this Agreement.

9.11 **Term; Termination.** Notwithstanding anything to the contrary, nothing contained in this Agreement shall require an Owner to construct any improvements on its Tract. The terms, covenants, provisions and conditions of this Agreement shall be effective as of the Effective Date and, with respect to any improvements that are constructed, shall continue, as applicable, in full force and effect in perpetuity.

9.12 **Time.** Time is of the essence of this Agreement and each and every provision hereof

9.13 **Estoppel Certificate.** Any Owner shall, at any time and from time to time, deliver written notice to any other Owner requesting of such other Owner to certify in writing (i) that to the best knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any and all defaults, and (ii) to such other reasonable factual matters as the requesting Owner may request. Each Owner receiving such request shall execute and return such certificate within twenty (20) days following the receipt thereof. Such certificate may be relied upon by actual or prospective purchasers, tenants, transferees, lenders, mortgagees, deed of trust beneficiaries and leaseback lessors.

9.14 **No Partnership, Joint Venture or Principal-Agent Relationship.** Neither anything in this Agreement nor any acts of an Owner shall be deemed by the Owners, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Owners, and no provisions of this Agreement are intended to create or constitute any person or entity a third party beneficiary hereof.

9.15 **Not A Public Dedication.** Except as to the Access Easement and the Access Improvements, should they be dedicated to the public, nothing in this Agreement may be considered to be a gift or dedication of the Tracts, or any portion thereof, to the general public, for the general public or for any public use or purpose.

9.16 **List of Exhibits.** The following exhibits are attached to this Agreement:

- Exhibit "A" - Legal Description of Hunt Tract
- Exhibit "B" - Legal Description of County Tract
- Exhibit "C" - Site Plan
- Exhibit "D" - Legal Description of Access Easement/Construction Easement

[Remainder of page left intentionally blank. Signature pages follow.]

EXECUTED to be effective on the day and date first set forth above.

HUNT SOUTHWEST – WILMETH, LLC,
a Texas limited liability company

By: Hunt Southwest Real Estate Development, LLC,
a Texas limited liability company,
its Sole Member

By: T. Preston Herold
Name: T. PRESTON HEROLD
Title: VICE PRESIDENT

THE STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 10th day of Oct., 2017, by T. Preston Herold, the Vice President of Hunt Southwest Real Estate Development, LLC, a Texas limited liability company, the Sole Member of HUNT SOUTHWEST – WILMETH, LLC, a Texas limited liability company, on behalf of said limited liability companies.



Kathy H. McDaniel
Notary Public in and for the State of Texas
Kathy H. McDaniel
Printed or Typed Name of Notary

COLLIN COUNTY
a Texas governmental authority

By: *Keith Self*

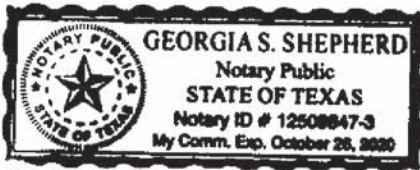
Name: Keith Self

Title: County Judge

THE STATE OF TEXAS

COUNTY OF Collin

This instrument was acknowledged before me on the 8th day of August, 2017, by Keith Self, County Judge the Authorized Representative of Collin County, a Texas governmental authority, on behalf of Collin County.



Georgia S. Shepherd
Notary Public in and for the State of Texas

Georgia S. Shepherd
Printed or Typed Name of Notary

EXHIBIT A

LEGAL DESCRIPTION OF HUNT TRACT

LEGAL DESCRIPTION

BEING a tract of land situated in TOLA DUNN SURVEY, Abstract Number 284, City of McKinney, Collin County, Texas and being a part of a called 14.501 acre tract of land described in deed to TVF BB McKinney, a Georgia limited liability company, as recorded in Instrument No. 20140221000162670 of the Official Public Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found on the west line of said 14.501 acre tract and at the northwest corner of a called 1.192 acre right-of-way dedication to the City of McKinney, Texas for Wilmeth Road as recorded in Volume 4004, Page 77 of said Official Public Records and at the southeast corner of Lot 1, Block A of The Blockbuster Addition, an addition to the City of McKinney, Collin County, Texas according to the plat thereof recorded in Volume J, Page 651 of the Plat Records of Collin County, Texas;

THENCE North 0°03'04" East, along the west line of said 14.501 acre tract and the east line of said Lot 1, a distance of 1011.15 feet to a 1/2" iron pipe found at the northwest corner of said 14.501 acre tract and at the northeast corner of said Lot 1 and on the south line of a called 69.625 acre tract described in deed to Exmar, Inc., as recorded in Volume 5089, Page 1200 of said Official Public Records;

THENCE North 87°51'52" East, along the north line of said 14.501 acre tract and the south line of said 69.625 acre tract, a distance of 594.65 feet to a I-beam metal fence post found at the northeast corner of said 14.501 acre tract on said south line of 69.625 acre tract and at the northwest corner of the remainder of a called 14.516 acre tract described in deed to County of Collin, State of Texas as recorded in Volume 1872, Page 599 of the Deed Records of Collin County, Texas from which a 5/8" iron rod found at the southeast corner of said 69.625 acre tract and at a reentrant corner of a called 14.231 acre tract described in deed to Donald M. Motsenbocker, as recorded in Instrument No. 20071217001671490 of said Official Public Records, bears North 87°51'52" East, along the south line of said 69.625 acre tract and the north line of said 14.516 acre tract, to and along a north line of said 14.231 acre tract, a distance of 720.37 feet;

THENCE South 0°03'27" West, along the east line of said 14.501 acre tract and the west line of said 14.516 acre tract, a distance of 951.34 feet to a 1/2" iron rod found on the east line of said 14.501 acre tract and on the west line of said 14.516 acre tract and at northwest corner of a called 1.324 acre right-of-way dedication to the City of McKinney, Texas for Wilmeth Road as recorded in Volume 3969, Page 3667 of said Official Public Records, and at the northeast corner of said 1.192 acre right-of-way dedication;

THENCE over and across said 14.501 acre tract and along the north line of said 1.192 acre right-of-way dedication the following:

North 89°56'45" West, a distance of 100.11 feet to a 5/8" iron rod found (disturbed) at the beginning of a tangent curve to the left;

In a southwesterly direction, with said curve to the left having a central angle of 16°23'26", a radius of 620.00 feet, an arc distance of 177.36 feet and a chord bearing and distance of South 81°51'32" West, 176.76 feet to a 5/8" iron rod found;

South 73°39'49" West, a distance of 121.79 feet to a 5/8" iron rod found (disturbed) at the beginning of a tangent curve to the right;

In a southwesterly direction, with said curve to the right having a central angle of 14°14'50", a radius of 500.00 feet, an arc distance of 124.33 feet and a chord bearing and distance of South 80°47'13" West, 124.01 feet to a 5/8" iron rod found (disturbed);

South 87°54'20" West, a distance of 79.86 feet the POINT OF BEGINNING and containing 13.3197

acres or 580,204 square feet of land.

EXHIBIT B

LEGAL DESCRIPTION OF COUNTY TRACT

SITUATED in Collin County, Texas, in the Tola Dunn Survey, Abst. No. 284, and being all of a called 14.516 acres conveyed by David H. Parent and wife, to Sam E. Roach and wife, Ann Haggard Roach by deed dated November 1, 1979, and recorded in Volume 1208, Page 867, of the Deed Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron rod at the southwest corner of said 14.516 acre tract and in the south line of a 71.60 acre tract, said iron rod lies North 88 deg. 10 min. East, 595.22 feet from the southwest corner of said 71.60 acre tract;

THENCE NORTH 88 deg. 10 min. 00 sec. East, 598.30 feet along the south line of said Tola Dunn Survey to an iron rod for corner approximately 40 feet south of Wilmeth Road;

THENCE NORTH 0 deg. 51 min. 00 sec. East, 1055.27 feet across a cultivated field to an iron rod for corner in the north line of said 71.60 acre tract in an old crooked turn row;

THENCE SOUTH 88 deg. 41 min. 34 sec. West, 598.07 feet generally along said turn row to an iron rod for corner;

THENCE SOUTH 0 deg. 51 min. 00 sec. West, 1060.77 feet to the PLACE OF BEGINNING; and,

CONTAINING 14.516 acres of land, more or less.

SAVE AND EXCEPT:

Being a 1.324 acre tract of land situated in the Tola Dunn Survey, Abstract Number 284, in the City of McKinney, Collin County, Texas and being a portion of a 14.516 acre tract of land according to the deed recorded in Volume 1872, Page 599 of the Deed Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point for the southwest corner of said 14.516 acre tract of land;

THENCE along the westerly line of said 14.516 acre tract of land NORTH 00°51'45" EAST a distance of 110.26 feet to a point for corner located in the future northerly right-of-way line of future Wilmeth Road (a proposed 120 feet wide right-of-way);

THENCE departing the westerly line of said 14.516 acre tract of land and following the future northerly right-of-way of said Wilmeth Road SOUTH 89°11'23" EAST a distance of 597.65 feet to a point for corner located in the easterly line of said 14.516 acre tract of land;

THENCE SOUTH 00°51'45" WEST a distance of 82.80 feet to the southeast corner of said 14.516 acre tract of land;

THENCE along the southerly line of said 14.516 acre tract of land SOUTH 88°10'45" WEST a distance of 598.30 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 1.324 acres of 57,690 square feet of land, more or less.

SITE PLAN

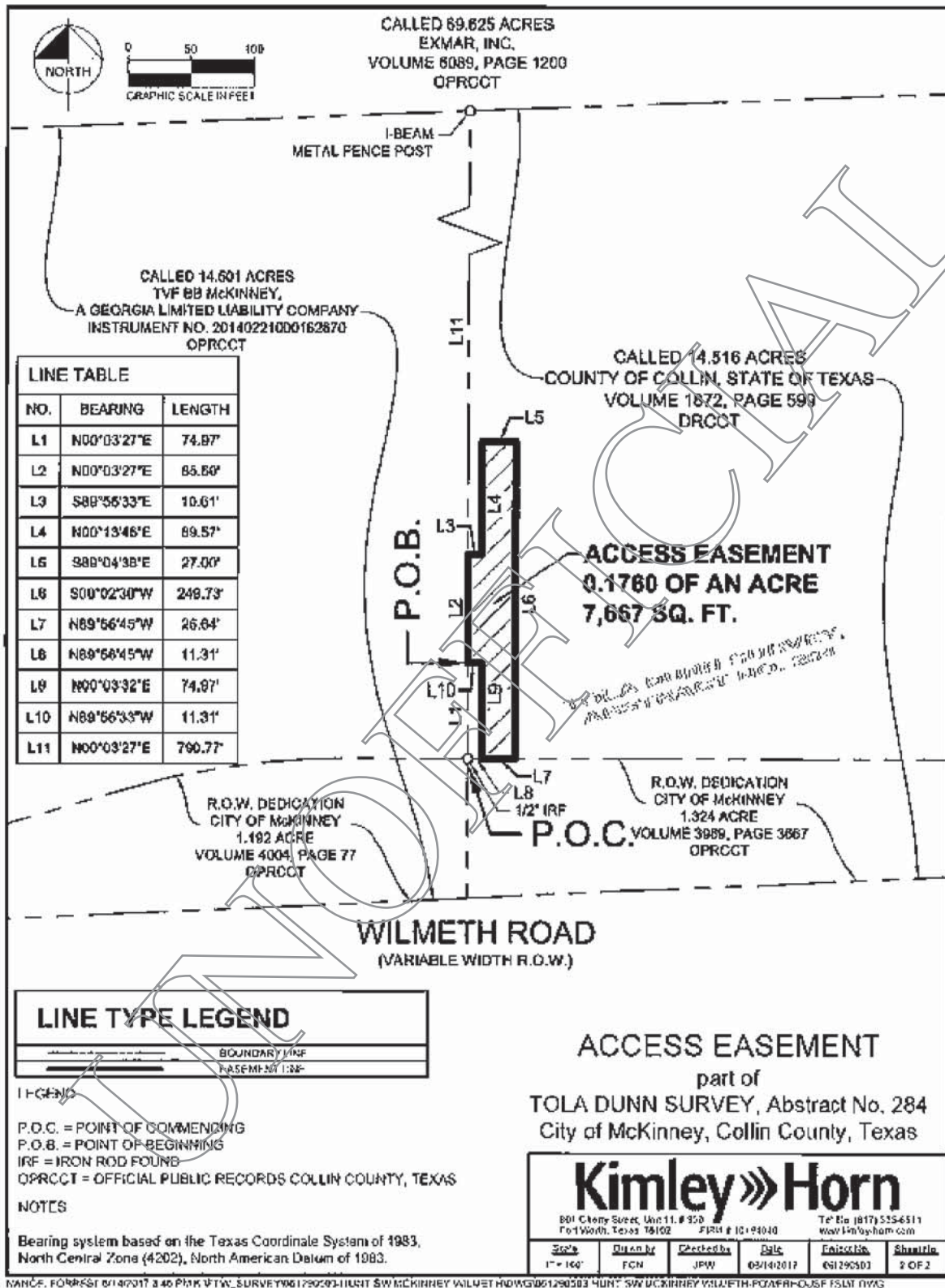


EXHIBIT D

LEGAL DESCRIPTION OF ACCESS EASEMENT/CONSTRUCTION EASEMENT

LEGAL DESCRIPTION

BEING a tract of land situated in TOLA DUNN SURVEY, Abstract Number 284, City of McKinney, Collin County, Texas and being a part of a called 14.516 acre tract of land described in deed to County of Collin, State of Texas, as recorded in Volume 1872, Page 599 of the Official Public Records of Collin County, Texas and being more particularly described by metes and bounds as follows.

COMMENCING at a 1/2" iron rod found on the west line of said 14.516 acre tract and on the east line of a called 14.501 acre tract described in deed to LVI-BU McKinney, a Georgia limited liability company as recorded in Instrument No. 20140221000162870 of said Official Public Records and being the northwest corner of a called 1.324 acre right-of-way dedication to the City of McKinney, Texas for Wilmeth Road, as recorded in Volume 3569, Page 3667 of said Official Public Records, and at the northeast corner of called 1.192 acre right-of-way dedication to the City of McKinney, Texas for Wilmeth Road, as recorded in Volume 4004, Page 77 of said Official Public Records;

THENCE North 0°03'27" East, along said west line of 14.516 acre tract and said east line of 14.501 acre tract, a distance of 74.97 feet to the POINT OF BEGINNING of easement being described;

THENCE North 0°03'27" East, along said west line of 14.516 acre tract and said east line of 14.501 acre tract, a distance of 85.60 feet to a point for corner from which a I-beam metal fence post found at the northwest corner of said 14.516 acre tract and at the northeast corner of said 14.501 acre tract and on the south line of a called 69.625 acre tract of land described in deed to Exmar, Inc., as recorded in Volume 5089, Page 1200 of said Official Public Records bears North 0°03'27" East, along said west line of 14.516 acre tract and said east line of 14.501 acre tract, a distance of 790.77 feet;

THENCE departing said west line of 14.516 acre tract and said east line of 14.501 acre tract, over and across said 14.516 acre tract the following:

South 89°56'33" East, a distance of 10.61 feet to a point for corner;

North 0°13'46" East, a distance of 89.57 feet to a point for corner;

South 89°04'38" East, a distance of 27.00 feet to a point for corner;

South 0°02'30" West, a distance of 249.73 feet to a point for corner on the north right-of-way line of said Wilmeth Road;

THENCE North 89°56'45" West, along said north right-of-way line of Wilmeth Road, a distance of 26.64 feet to a point for corner from which said 1/2" iron rod found bears North 89°56'33" West, along said north right-of-way line of Wilmeth Road, a distance of 11.31 feet;

THENCE departing said north right-of-way line of Wilmeth Road, over and across said 14.516 acre tract the following:

North 0°03'32" East, a distance of 74.97 feet to a point for corner;

North 89°56'33" West, a distance of 11.31 feet to the POINT OF BEGINNING and containing 7,667 square feet or 0.1760 of an acre of land.

JAMES PAUL WARD
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5606
801 CHERRY STREET, UNIT 11
SUITE 950
FORT WORTH, TEXAS 76102
PH. 817-335-6511
paul.ward@kimley-horn.com



ACCESS EASEMENT

part of

TOLA DUNN SURVEY, Abstract No. 284
City of McKinney, Collin County, Texas

Kimley»Horn

801 Cherry Street, Unit 11, # 850
Fort Worth, Texas 76102
Tel: 817/335-6511
www.kimley-horn.com

State	Drawn by	Checked by	Date	Project No.	Sheet No.
TX	FCR	SPV	06/14/2017	06120503	1 OF 1



Stacey Kemp