

DEVELOPMENT AGREEMENT FOR SOUTHGATE

This DEVELOPMENT AGREEMENT FOR SOUTHGATE (this "Agreement") is made and entered into to be effective this 6th day of May, 2015, by the Town of Flower Mound, Texas (the "Town"), FLSS, Ltd., FLST, Ltd., FLCT, Ltd., and FLSC, Ltd. (collectively, the "Developer"). The Developer and the Town are individually referred to as a "Party" and collectively, the "Parties".

1. RECITALS

1.1 WHEREAS, the RECITALS contained in this Section 1 are true and correct, are incorporated as part of this Agreement for all purposes, and establish the basis upon which the Parties entered into this Agreement;

1.2 WHEREAS, capitalized terms that are defined in this Agreement shall have the meanings given to them in this Agreement unless the context in which they are used clearly requires a different meaning;

1.3 WHEREAS, capitalized terms used in, but not defined in, this Agreement shall have the meanings given to them in PD-134 unless the context in which they are used clearly requires a different meaning;

1.4 WHEREAS, unless otherwise specified, (1) all references in this Agreement to a "Section" shall mean a section of this Agreement, and (2) all references in this Agreement to an "Exhibit" shall mean an exhibit attached to and incorporated as part of this Agreement for all purposes;

1.5 WHEREAS, the Town is a Texas home-rule municipal corporation;

1.6 WHEREAS, each of FLSS, Ltd., FLST, Ltd., FLCT, Ltd., and FLSC, Ltd. is a Texas limited partnership;

1.7 WHEREAS, the Developer owns approximately 108 acres within the corporate limits of the Town at the intersection of FM 2499 (International Parkway) and Gerault Road, which property is described by metes and bounds on Exhibit A and depicted on Exhibit B (the "Property");

1.8 WHEREAS, the Property is divided into three tracts: (1) the approximately 30.964-acre tract south of FM 2499 as depicted on Exhibit C and described by metes and bounds on Exhibit D (the "South Tract"); (2) the approximately 29.009-acre tract at the northeast corner of FM 2499 and Gerault Road as depicted on Exhibit E and described by metes and bounds on Exhibit F (the "Northeast Tract"); and (3) the approximately 48.321-acre tract at the northwest corner of FM 2499 and Gerault Road as depicted on Exhibit G and described by metes and bounds on Exhibit H (the "Northwest Tract");

1.9 WHEREAS, the Northwest Tract is owned by FLSS, Ltd.;

1.10 WHEREAS, the Northeast Tract is owned, in undivided interests, by FLST, Ltd., FLCT, Ltd., and FLSC, Ltd.;

1.11 WHEREAS, the South Tract is owned, in undivided interests, by FLST, Ltd., FLCT, Ltd., and FLSC, Ltd.;

1.12 WHEREAS, the Property is zoned "PD 134";

1.13 WHEREAS, the Developer proposes to develop the Property in accordance with PD 134 as a unique, mixed-use project (commonly known as Southgate) that conforms to the Town's Master Plan (the "Project"), including, but not limited to, residential development that is constructed in phases with office and other non-residential development;

1.14 WHEREAS, the Parties desire to address in this Agreement various development issues related to the Project including, but not limited to: (1) the phasing of residential development; (2) the construction of drainage, roadway, water, and wastewater public infrastructure; (3) the waiver of certain development fees, and (4) the dedication of public easements;

1.15 WHEREAS, the Town's SMARTGrowth Program requires that public services and infrastructure to serve the Project must be consistent with: (1) the Town's Master Plan; (2) PD 134, and (3) development plans, record plats, and site plans for the Project;

1.16 WHEREAS, the Parties desire to address: (1) drainage, water, and wastewater infrastructure and related concerns associated with the Project due to its location; (2) traffic issues associated with ingress and egress to/from the Project and an anticipated

increase in traffic as a result of the Project; (3) the anticipated roadway and related improvements to be constructed at and near the Project necessitated by the development of the Project; and (4) the concern for the public health, safety and welfare due to the foregoing;

1.17 WHEREAS, the Parties acknowledge that the foregoing issues, along with other issues, if not addressed through this Agreement may result in the failure of the Project to satisfy the Town's SMARTGrowth Program; and

1.18 WHEREAS, due to the unique nature of the Project, the Parties acknowledge that it is in the best interests of the Parties that these issues be addressed in this Agreement while acknowledging that the Project, as contemplated by this Agreement, will be developed over several years.

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

2. RESIDENTIAL DEVELOPMENT

The following apply to residential development within the Property:

2.1 The number of single-family residential units within the Property may not exceed 475.

2.2 The number of Multi-Family residential units and Loft residential units within the Property may not exceed 275. The number of single-family units permitted under section 2.1 shall be reduced on a one-to-one basis for each Multi-Family residential unit and Loft residential unit that is permitted under this section 2.2.

2.3 Prior to commencing construction of the 51st Multi-Family residential unit within the Property, "building final" shall have been issued by the Town for at least 300,000 square feet of non-residential (excluding fast-food restaurants) shell space within the Property.

3. ADDITIONAL PROVISIONS

3.1 Project Subject to Town Ordinances. Except as otherwise provided in this Agreement, the Project including, but not limited to, all public improvements, shall be developed in accordance with all applicable Town ordinances, as amended, including, but not limited to, PD 134 and all ordinances, as amended, approving impact fees adopted in accordance with Chapter 395, Texas Local Government Code, as amended.

3.2 Storm Water. Subject to the following, the Developer is required to comply with the Town's storm water detention requirements.

3.2.1 In the event that Regional Toll Revenue ("RTR") funding is available, the Town will commence reconstruction and enlargement of the existing undersize drainage structure that crosses FM 2499 west of the FM 2499/Gerault intersection during the calendar year 2015 (the "Intersection Drainage Improvements"). It is the Town's intent for the Intersection Drainage Improvements to be sized to carry up to 1,519 cubic feet per second (cfs) from the watershed located upstream from the Intersection Drainage Improvements. The exact storm water capacity of the Intersection Drainage Improvements will be determined during the design of the project and might be less than the anticipated 1,519 cfs due to limiting factors revealed during the design of the project. If Regional Toll Revenue (RTR) funding is available, the Town will also construct a new drainage structure that will carry water from the proposed new drainage structure under FM 2499 or, with the consent of the Developer, from a point of connection to any detention pond that may need to be constructed by the Developer on the south side of FM 2499 to accommodate storm water flows from the development of the Property (the "FM 2499 Drainage Improvements"). The FM 2499 Drainage Improvements will run in an easterly to southerly direction along the western side of FM 2499 to Denton Creek. It is the Town's intent for the FM 2499 Drainage Improvements to be sized to carry up to 650 cfs. The exact storm water capacity of the FM 2499 Drainage Improvements will also be determined during the design of this project and may be less than the anticipated 650 cfs. Collectively, the Intersection Drainage Improvements and the FM 2499 Drainage Improvements shall be henceforth referred to as the "Comprehensive Drainage Improvements." In the event that

Regional Toll Revenue ("RTR") funding is not available, the Town is not required to construct the improvements, and the Developer will develop the Property in phases in accordance with all applicable Town ordinances, as amended, including, but not limited to, the Town's Subdivision Ordinance.

3.2.2 If RTR funding is available to construct the Comprehensive Drainage Improvements, the Developer (upon receipt by the Developer of sixty (60) days prior written notice from the Town), will dedicate to the Town the permanent and temporary construction easements within the Property that are necessary to construct and maintain the Comprehensive Drainage Improvements. The notice shall include a statement that funds are available for the construction of the Comprehensive Drainage Improvements. The Town will provide the easement dedication forms that will include the metes and bounds legal descriptions of the permanent and temporary easements along with representative drawings of the easements. The easements shall lie roughly along the boundary of the South Tract adjacent to FM 2499. The permanent easements will be perpetual, non-exclusive easements located within the building setbacks specified by the PD 34 zoning regulations and shall be for the sole purpose of constructing, operating, maintaining, repairing, and replacing the Comprehensive Drainage Improvements. The easement dedication forms shall be reasonably approved by both the Town and the Developer and may include reservations by the Developer of subsurface and surface rights necessary to develop the Property (including reasonable uses of the surface that do not materially interfere with the use of the easements by the Town for the purposes described) and an agreement by the Town to repair any damage done to said surface uses directly caused by the Town.

3.3 Roadway Improvements.

3.3.1 The Developer shall construct all roadways and access drives within the Property as needed for the phased development of the Property. Deceleration lanes, if required along FM 2499 or Gerault Road, shall also be constructed by the Developer within the Property as needed for the phased development of the Property.

3.3.2 If the Town receives RTR funding, the Town will construct (contemporaneously with the construction of the Comprehensive Drainage Improvements) the following improvements to the intersection of FM 2499 and Gerault Road including, but not limited to: (1) the extension of the Gerault Road "fly-over lane;" (2) a westbound left turn lane within FM 2499 thereby converting the intersection from a three-way to a four-way intersection; (3) an optional eastbound deceleration lane within FM 2499; (4) a south leg of the new 4-way intersection paved from the edge of the existing pavement to the south boundary of the drainage easement; (5) associated traffic signal modifications; and (6) associated roadway striping (collectively, the "FM 2499 Roadway Improvements"). Notwithstanding the foregoing, the Developer will be required to complete the upgrades to that portion of the FM 2499 Roadway Improvements described in the Traffic Impact Analysis performed by Deshazo Tang & Associates, Inc. dated August 7, 2014 if the Town does not receive RTR Funding for these improvements and the Developer shall escrow funds for that portion of the FM 2499 Roadway Improvements with the Town (in an amount reasonably estimated by the Town, not to exceed \$711,000.00) within 90 days after record plat approval of the development within the South Tract that triggers the construction of the FM 2499 Roadway Improvements, as determined by the Town pursuant to the Town's rules and regulations governing same. The Town will issue a receipt for funds escrowed by the Developer and the funds will be segregated from the Town's general fund and accounted for; and any balance remaining after the improvements are designed, constructed and accepted by the Town will be refunded to the Developer. If that portion of the FM 2499 Roadway Improvements identified in the traffic impact analysis are required to be completed by the Developer, they will be constructed as needed to provide access and in conjunction with the construction of any development located within the South Tract.

3.3.3 If RTR funding is available to construct the FM 2499 Roadway Improvements contemporaneously with the Comprehensive Drainage Improvements, the Developer (upon 60 days prior written notice from the Town) will dedicate to the Town a non-exclusive, permanent easement to construct and maintain that portion of the south leg of the new 4-way intersection located outside of the existing FM 2499 right-of-way. The notice shall include a statement that funds are available to commence and complete construction of the

FM 2499 Roadway Improvements. The Town will provide the easement dedication forms that will include the metes and bounds legal description of the easement along with representative drawings of the easement. The easement will be perpetual and non-exclusive for the sole purpose of constructing, maintaining, repairing, and replacing the new south leg of the intersection that includes concrete paving, traffic signage and traffic signal related installations. The form of the dedication shall be reasonably approved by the Town and the Developer and may include a reservation by the Developer of subsurface rights necessary to develop the Property, provided that the exercise of such subsurface rights does not materially interfere with the use of the easement by the Town to construct, reconstruct, repair, improve and perpetually maintain the south leg of the new 4-way intersection located outside of the existing FM 2499 right-of-way.

3.3.4 Except as provided in Section 3.3.6, Section 3.3.7, and Section 3.3.8, if the Town constructs the FM 2499 Roadway Improvements, no further improvements to FM 2499, Gerault Road, Old Gerault Road, or to any other road or transportation improvements outside the boundaries of the Property shall be required to fully develop the Property.

3.3.5 If RTR funding is not available to construct the FM 2499 Roadway Improvements, the Developer shall develop the Property in phases in accordance with all applicable Town ordinances, as amended, including, but not limited to, the Town's Subdivision Ordinance, as amended.

3.3.6 Regardless of whether RTR funding is available to the Town to construct the FM 2499 Roadway Improvements, the Developer shall pay a portion of the cost of a traffic signal when warranted (as determined by the Town) at the intersection of Gerault Road and Old Gerault Road. The Developer shall escrow one-half of the cost (in an amount reasonably estimated by the Town, not to exceed \$107,500.00), which payment shall be due within 90 days after written notice from the Town describing the record plat approval within the Property that resulted in the warrant and stating that funds are available to commence and complete installation of the signal.

3.3.7 Regardless of whether RTR funding is available to the Town to construct the FM 2499 Roadway Improvements, the Developer shall fund the cost of a new traffic signal when warranted (as determined by the Town) at the existing median break located in FM 2499 approximately 1,200 feet west of the intersection of FM 2499 and Gerault Road. The Developer shall escrow such funds (in an amount reasonably estimated by the Town, not to exceed \$215,000.00) within 90 days after written notice from the Town describing the record plat approval within the Property that resulted in the warrant.

3.3.8 Regardless of whether RTR funding is available to the Town to construct the FM 2499 Roadway Improvements, the Developer shall: (1) improve to the Town's current minimum construction standards for a local commercial section (but not reconstruct any portion of the existing roadway that currently complies with the minimum local commercial section standard) the southern one-half of Old Gerault Road that is contiguous to northern boundary of the northeast tract within the Property from the intersection of Gerault Road and Old Gerault Road east to the first entrance to the northeast tract within the Property from Old Gerault Road estimated at being 500 feet; and (2) dedicate right-of-way for the south one-half of the right-of-way required for Old Gerault Road along the entire common boundary of Old Gerault Road and the northeast tract within the Property. The Developer shall begin construction of such improvements (or escrow funds for such construction in an amount reasonably estimated by the Town not to exceed \$180,000.00) and dedicate such right-of-way within 90 days after the earlier of record plat approval of the first phase of development within the Northeast Tract that is adjacent to Old Gerault Road or the first phase of development within the Northeast Tract that connects to Old Gerault Road. A roadway connection from the Northeast Tract to Old Gerault Road shall not be permitted until the Developer's construction obligation for Old Gerault Road as described above is completed and accepted by the Town.

3.4 Water Infrastructure Improvements.

3.4.1 The Town (when funds are deposited by the Developer in an amount reasonably estimated by the Town, not to exceed \$900,000.00) shall construct pipe and pump improvements to the Pintail Pump Station (located on property owned by the Town) that are required for full build out of the Property. Such funds shall be provided for the

phased development of the Property; however, such funds must be provided as a condition to record plat approval of the first residential lot in the Northwest Tract. Once funds have been deposited, the Town will use the funds to complete the required improvements within 20 months of upon receipt of the funds.

3.4.2 The Developer will provide all easements shown to be necessary on the Town's Water Master Plan, upon at least a 60 days prior written notice by the Town, prior to or concurrently with seeking plat approval of the Property. All easements provided prior to the platting of the Property shall be incorporated into any future platting of the Property. The easements shall be perpetual and non-exclusive, and the forms of the easements shall be reasonably approved by the Town and the Developer, including reservations of sub-surface and surface rights necessary to develop the Property (including reasonable uses of the surface which, if damaged by the Town, will be repaired by the Town) that do not materially interfere with the use of the easements for the purposes granted.

3.5 Sewer Infrastructure Improvements.

3.5.1 The Town shall complete the upgrades to its existing wastewater collection and treatment system that are currently underway. Once the upgrades are completed, no additional improvements to the Town's wastewater system shall be required for full build out of the Property. The Developer will participate in the cost of the system upgrades in the amount of \$8,000.00 payable as a condition to record plat approval of the residential lot.

3.5.2 The Developer will dedicate to the Town upon at least 60 days' prior written Notice from the Town (which Notice shall include metes and bounds descriptions of the proposed easements and diagrams of the proposed easements) perpetual, non-exclusive easements for the sole and exclusive purpose of providing gravel surface access over and along an existing storm water culvert that lies within the building setback required by PD-134 from the intersection of FM 2499 and Gerault Road to an existing wastewater lift station located south of FM 2499 near the southeast corner of the South Tract (a distance of approximately one-eighth mile). The access road shall be funded, constructed and

maintained by the Town. The final dimensions and locations of the easements will be approved by the Developer, which approvals shall not be unreasonably withheld. The forms of the easements shall be reasonably approved by the Town and the Developer, including reservations of sub-surface and surface rights necessary to develop the Property (including reasonable uses of the surface which, if damaged by the Town, will be repaired by the Town) that do not materially interfere with the use of the easements for surface access. So long as the surface of the easement is gravel, the Developer shall have the right, at its sole cost and expense, to relocate the easement to accommodate development of the Property. The Town shall have the right, at its cost and expense, to convert the gravel surface to a concrete surface when development of the property burdened by and adjacent to the easement has occurred; whereupon, the right of the Developer to relocate the easement shall terminate.

3.5.3 The Developer will provide all easements shown to be necessary on the Town's Wastewater Master Plan, upon at least a 60 days prior written notice by the Town prior to or concurrently with the platting of the Property. All easements provided prior to the platting of the Property shall be incorporated into any future platting of the Property. The easements shall be perpetual and non-exclusive, and the forms of the easements shall be reasonably approved by the Town and the Developer, including reservations of sub-surface and surface rights necessary to develop the Property (including reasonable uses of the surface which, if damaged by the Town, will be repaired by the Town) that do not materially interfere with the use of the easements for the purposes granted.

3.6 SMARTGrowth Waivers.

3.6.1 The Town Council hereby finds that the development of the Property is part of an economic development program, as described and defined in the Town's SMARTGrowth Program and as a result is eligible for waivers to certain SMARTGrowth development conditions.

3.6.2 The riparian habitat mitigation requirements set forth in the Town's SMARTGrowth Program and as a result the associated fees are hereby waived except as applied to development within the "SG-R1" and "SG-R2" subzones of PD 134. Riparian

habitat fees applicable within the "SG-R1" and "SG-R2" subzones shall be determined in accordance with PD 134.

3.6.3 The upland habitat mitigation requirements set forth in the Town's SMARTGrowth Program and as a result the associated fees are hereby waived except as applied to development within the "SG-R1" and "SG-R2" subzones of PD 134. Upland habitat fees applicable within the "SG-R1" and "SG-R2" subzones shall be determined in accordance with PD 134.

3.6.4 Tree protection and tree mitigation requirements (included, but not limited to the requirements of Ordinance No. 49-12) are hereby waived except as applied to development within the "SG-R1" and "SG-R2" subzones of PD 134. Tree protection and tree mitigation requirements applicable within the "SG-R1" and "SG-R2" subzones shall be determined in accordance with PD 134.

3.6.5 The slope protection requirements (i.e., for slopes over 5%) set forth in the Town's SMARTGrowth Program are hereby waived.

3.6.6 Except as specifically provided in this Section 3.6 (and unless the development density within the Property has increased beyond that permitted by PD-134), no fees, charges, dedications, or requirements of any kind related to riparian habitat, upland habitat, tree protection, tree mitigation, or slope protection shall be required as a condition precedent to developing the Property including, but not limited to, conditions precedent to obtaining approval of subdivision plats or other permits required for development.

3.7 Public Areas.

3.7.1 Development of public areas within the Property (including, but not limited to, parks, park land, open space, trails, and other public areas) shall be subject to PD 134 and to Section 98-905(b), *Park land dedication and park development fees requirements*, of Ordinance No. 49-12, adopted October 1, 2012. In the event of a conflict between PD 134 and Section 98-905(b), PD 134 shall control. All parks, park land, open space trails, and related improvements shall be completed with each phase of development of the Property prior to the issuance of 75% of the building permits within such phase. Commercial

buildings are exempt from this requirement.

3.7.2 Any area within the Property that is designated as a public park, public open space, public trail, or other public area must be accessible through perpetual, non-exclusive public access easements dedicated concurrently with the dedication of such public areas. The final dimensions and locations of such access easements (which may follow the most direct routes) must be approved by the Town (which approval will not be unreasonably withheld, delayed, or conditioned). The forms of the access easements shall be reasonably approved by the Town and the Developer including reservations of sub-surface and surface rights necessary for development of the Property (including reasonable uses of the surface which, if damaged by the Town, will be repaired by the Town) that do not materially interfere with the use of the easements for the purposes described above. With the written consent of the Town (which shall not be unreasonably withheld), the Developer, at its sole cost and expense, may relocate the public access easements, from time to time, to accommodate development of the Property.

3.7.3 The provisions of Section 3.7 detail the reasonably anticipated fees, charges, dedications and requirements related to parks, parkland, open space, trails and other public areas necessitated by the development of the Property. Notwithstanding the foregoing, if density within the Property increases beyond that allowed by PD-134, the requirements of Section 3.7 shall not be construed as a limitation on any parks, parkland, open space, trails and other public areas necessitated by the changed development (including, but not limited to, easements for such improvements or facilities) and lawfully required by the rules and regulations of the Town.

3.8 Calculation of Impact Fees.

3.8.1 Roadway impact fees for buildings containing a mixture of uses shall be calculated based upon the square footage for ground floor space and the number of residential units, to-wit: (1) impact fees for multifamily residential units shall be assessed in accordance with the Town's Building Codes, and (2) impact fees for ground floor uses shall be assessed as "Shopping Center" (as defined in the Institute of Transportation Engineers Trip Generation Manual, 8th Edition, Land Use Code 820).

3.8.2 A building containing a mixture of uses shall have separate domestic and commercial water meters. The domestic water meter shall serve the domestic component of building and the commercial water meter shall serve the commercial component of the building. Impact fees for water and wastewater shall be calculated pursuant to the Town's ordinances.

3.9 Captions and Headings. The captions and headings of the Sections of this Agreement are for convenience and reference only and shall not affect the provisions of this Agreement, nor shall they be employed to interpret this Agreement.

3.10 Rough Proportionality; Takings. The Developer: (1) waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the specific exactions required by the Town and agreed to by the Developer in this Agreement (collectively, the "Agreed Exactions") are roughly proportional to the anticipated impact of the Project; (2) waives and releases the Town from any and all liability under Section 212.904, Texas Local Government Code, as amended, that arises from the Agreed Exactions; and (3) waives and releases the Town from any and all claims by the Developer that the Agreed Exactions constitute a "taking" (i.e., an inverse condemnation) under the Texas or United States Constitutions.

3.11 Covenants Running with the Land. The obligations of the Developer under this Agreement are intended to constitute covenants that run with the land and that bind the Developer and all successor owners of the Property or any portion thereof; however, this Agreement shall automatically terminate (without any further action by the Town) with respect to any lot for which a record plat has been approved by the Town and recorded in the real property records of Denton County, Texas (a "Fully Improved Lot") and with respect to any portion of the Property that has been dedicated (whether in the form of an easement or fee title) and accepted by the Town, as required by this Agreement. Notwithstanding such automatic termination: (1) upon the written request of the owner of a Fully Improved Lot (or any person or entity with a security interest in a Fully Improved Lot or that has contracted to purchase a Fully Improved Lot) (the "Owner Requestor"), the

Town Manager shall execute and deliver to the Owner Requestor a recordable, full and unconditional release of the Fully Improved Lot from this Agreement and from any duties, obligations, or liabilities that arise under this Agreement; and (2) upon the written request of the owner of any other parcel (or any person or entity with a security interest in the parcel or that has contracted to purchase the parcel) (a "Third Party Requestor") for which the Town Manager reasonably determines should no longer be subject to this Agreement, the Town Manager shall execute and deliver to the Third Party Requestor a recordable, full and unconditional release of the parcel from this Agreement and from any duties, obligations, or liabilities that arise under this Agreement. This Agreement or a memorandum of this Agreement shall be filed by the Town in the real property records of Denton County, Texas.

3.12 Notice of Sale or Transfer. The Developer shall provide Notice to the Town of any sale or transfer of the Property or any portion thereof (excluding the sale or transfer of a Fully Improved Lot or any parcel for which the Town Manager has executed a release from this Agreement), which Notice shall identify the purchaser/transferee and shall describe by metes and bounds (and depict by a drawing) the Property or portion thereof being sold or transferred.

3.13 Notices. Any notice or communication (a "Notice") required by or given in connection with this Agreement shall be in writing and shall be deemed given: (1) five business days after the Notice is deposited with the US Postal Service for delivery by CERTIFIED MAIL RETURN RECEIPT REQUESTED to the addresses set forth below; or (2) when delivered to the addresses set forth below by a nationally recognized delivery service (e.g., UPS or FedEx) with evidence of delivery signed by any person at the delivery address whether or not such person is the named recipient of the Notice.

If to the **Town:** **Town of Flower Mound, Texas**
Attn: Town Manager
2121 Cross Timbers Road
Flower Mound, Texas 75028

With a copy to: *Taylor Olson Adkins Sralla & Elam, LLP*
Attn: Bryn Meredith
6000 Western Place, Suite 200
200Fort Worth, Texas 76107

If to the **Developer:** **FLSS, Ltd.**
Attn: Stephen Williamson
P.O. Box 190746
Dallas, Texas 75219

With a copy to: *Shupe Ventura Lindelow & Olson, PLLC*
Attn: Dwight Shupe
500 Main Street, Suite 800
Fort Worth, Texas 76102

FLST, Ltd.
Attn: Stephen Williamson
P.O. Box 190746
Dallas, Texas 75219

With a copy to: *Shupe Ventura Lindelow & Olson, PLLC*
Attn: Dwight Shupe
500 Main Street, Suite 800
Fort Worth, Texas 76102

FLCT, Ltd.
Attn: Stephen Williamson
P.O. Box 190746
Dallas, Texas 75219

With a copy to: *Shupe Ventura Lindelow & Olson, PLLC*
Attn: Dwight Shupe
500 Main Street, Suite 800
Fort Worth, Texas 76102

FLSC, Ltd.

Attn: Stephen Williamson
P.O. Box 190746
Dallas, Texas 75219

*With a copy to: Shupe Ventura Lindelow & Olson, PLLC
Attn: Dwight Shupe
500 Main Street, Suite 800
Fort Worth, Texas 76102*

3.14 Representations and Warranties.

3.14.1 The Town represents and warrants to the Developer that: (1) the Town has the legal authority to enter into this Agreement; (2) this Agreement has been duly approved by the Town Council in compliance with all applicable requirements of Texas law including, but not limited to, the Texas Open Meetings Act; (3) the person executing this Agreement on behalf of the Town has been duly authorized by the Town Council to do so; and (4) this Agreement is binding on and enforceable against the Town in accordance with its terms.

3.14.2 The Developer represents and warrants to the Town that: (1) the Developer has the legal authority to enter into this Agreement; (2) this Agreement has been duly approved in accordance with the Developers' partnership agreements; (3) the persons executing this Agreement on behalf of the Developer have been duly authorized to do so; and (4) this Agreement is binding on and enforceable against the Developer in accordance with its terms.

3.15 Default. A Party shall be in "Default" under this Agreement if such Party fails to perform any obligation under this Agreement and such failure is not cured within 30 days after Notice of the failure is given by the other Party (which Notice shall set forth in reasonable detail the nature of the failure). If the failure is by the Developer, the Town shall concurrently give Notice to the Developer's lender if the lender's notice information has been provided by the Developer to the Town in accordance with Section 3.13. If the failure is not capable of being cured within 30 days, the non-performing Party shall have an additional reasonable period, not to exceed 30 additional days unless waived by the other

party in their sole discretion, within which to cure based on the nature of the failure and provided the non-performing Party is diligently pursuing a cure.

3.16 Remedies.

3.16.1 If any Party is in Default under this Agreement, the non-defaulting Party shall have the right to pursue all remedies available at law or in equity (including, but not limited to, a suit for declaratory judgment, injunctive relief, and specific performance); provided, however, the Parties waive the right to seek monetary damages and the right to terminate this Agreement. In the event of any action or proceeding by a Party to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable costs and attorneys' fees (including reasonable costs and attorneys' fees in connection with any appeal).

3.16.2 In addition to the remedies in Section 3.16.1, if the Developer or any subsequent owner of any portion of the Property is in Default with respect to the development of a phase or portion of the Property (a "Development Parcel"), all obligations of the Town with respect to the Development Parcel may be suspended during the continuance of the Default including, but not limited to, the approval of site plans and plats, issuance of building permits, waiver of impact fees and development fees, and the payment of economic development incentives, if any, for the Development Parcel.

3.17 Assignment. Except as provided in this section, neither Party may assign, in whole or in part, its rights or obligations under this Agreement without the prior written consent of the other Party, which consents shall not be unreasonably withheld, delayed, or conditioned. From and after any assignment permitted by this section, the Developer shall be released with respect to the obligations assigned and assumed by the assignees, and the Town shall look solely to the permitted assignees for performance; provided, however, that the Developer shall not be released from any Default caused by or attributed to the Developer that occurred prior to the date of assignment permitted by this section. Notwithstanding the foregoing:

3.17.1 the Developer has the right to assign to any affiliate (for the purposes of this Agreement, an “affiliate” means (i) a corporation, joint venture, partnership, or other entity that owns more than ten percent (10%) of the outstanding voting interest of the Developer or in which the Developer owns more than ten percent (10%) of the outstanding voting interest; or (ii) a corporation, joint venture, partnership or other entity in which, together with the Developer, more than ten percent (10%) of the outstanding voting interest of both the Developer and the other corporation, joint venture, partnership or other entities is owned or controlled by the same person or group of persons.) the rights and obligations of the Developer under this Agreement with Notice to but without the consent of the Town provided the Developer is not at the time of the assignment in Default and provided the affiliate/assignee agrees in writing (a complete, executed copy of which assignment must be provided to the Town within 10 days after the effective date of the assignment) to be bound by this Agreement pursuant to an assignment agreement, the provisions of which that directly affect the Town shall be subject to the reasonable approval of the Town.;

3.17.2 the Developer has the right to assign to any purchaser of the Property or portion thereof being sold the rights and obligations of the Developer under this Agreement that apply to the Property or portion thereof being sold with Notice to but without the consent of the Town provided the Developer is not at the time of the assignment in Default and provided the purchaser/assignee agrees in writing (a complete, executed copy of which assignment must be provided to the Town within 10 days after the effective date of the assignment) to be bound by this Agreement; and

3.17.3 the Developer has the right to collaterally assign to any lender the rights and obligations of the Developer under this Agreement with Notice to but without the consent of the Town provided the Developer is not at the time of the assignment in Default, and such lender/assignee shall have the right to cure any Default by the Developer without obligating the lender/assignee to assume the obligations of the Developer under this Agreement unless such lender/assignee expressly assumes such obligations in writing.

3.18 Estoppel Certificates. From time to time upon Notice from the Developer to the Town Manager with respect to the Property or any portion thereof (or from any person or

entity with a security interest in the Property or portion thereof or from any person or entity that has contracted to purchase the Property or any portion thereof), the Town Manager shall execute, in recordable form, a written estoppel certificate: (1) identifying any obligations of the Developer under this Agreement that are in Default or which, with the giving of Notice or passage of time would be in Default; and (2) stating, to the extent true, that to the best knowledge and belief of the Town, the Developer is in compliance with its obligations under this Agreement.

3.19 Applicable Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties under this Agreement are performable in Denton County, Texas; therefore, venue for any action or proceeding arising under this Agreement shall lie in Denton County, Texas.

3.20 Entire Agreement. This Agreement contains the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior agreements, oral or written, with regard to the subject matter hereof. The provisions of this Agreement shall not be construed strictly for or against any Party.

3.21 Severability. In the event any provision of this Agreement is determined by any court to be unenforceable for any reason, this remainder of this Agreement, to the extent reasonably possible, shall remain in full force and effect as if such unenforceable provision had never been part of this Agreement.

3.22 Term. The term of this Agreement shall commence on the effective date stated in the introductory paragraph of this Agreement and, except as provided by Section 3.11, shall continue until the earlier to occur of the date on which: (1) all duties and obligations of the Parties under this Agreement have been fully performed; or (2) the Parties agree, in writing, to terminate this Agreement.

3.23 Application of Town Ordinances. Except as otherwise provided in this Agreement, the Parties shall be subject to all applicable ordinances of the Town.

3.24 Exhibits. The following exhibits are attached to and made a part of this Agreement for all purposes:

- 3.24.1 Exhibit A **INTENTIONALLY LEFT BLANK**
- 3.24.2 Exhibit B **INTENTIONALLY LEFT BLANK**
- 3.24.3 Exhibit C Depiction of the South Tract
- 3.24.4 Exhibit D Metes and Bounds Description of the South Tract
- 3.24.5 Exhibit E Depiction of the Northeast Tract
- 3.24.6 Exhibit F Metes and Bounds Description of the Northeast Tract
- 3.24.7 Exhibit G Depiction of the Northwest Tract
- 3.24.8 Exhibit H Metes and Bounds Description of the Northwest Tract

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth in the introductory paragraph of this Agreement.

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ATTEST:

Theresa Scott

Theresa Scott, Town Secretary

TOWN OF FLOWER MOUND, TEXAS

Tom Hayden

Tom Hayden, Mayor

JEAN LEVENICK, MAYOR PRO TEM

APPROVED AS TO FORM:

Bryn Meredith

Bryn Meredith, Town Attorney

STATE OF TEXAS)
)
COUNTY OF DENTON)



JEAN LEVENICK

This instrument was acknowledged before me on the 14 day of MAY, 2015, by Tom Hayden, Mayor, ^{PRO TEM} Town of Flower Mound, Texas, a home-rule, Texas municipal corporation, on behalf of said municipal corporation.

Anne M. Carnes
Notary Public, State of Texas

My Commission Expires:
9.14.15

FLSS, LTD., a Texas limited partnership

By: Beverly Development Corporation,
a Texas corporation, its general partner

By: Stephen Williamson

Name: Stephen Williamson

Title: President

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 7 day of May, 2015, by Stephen Williamson, President of Beverly Development Corporation, on behalf of said corporation on behalf of said limited partnership.

Anne M. Carnes
Notary Public, State of Texas

My Commission Expires:

July 14, 2015



FLST, LTD., a Texas limited partnership

By: Beverly Development Corporation,
a Texas corporation, its general partner

By: Stephen Williamson

Name: Stephen Williamson

Title: President

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 8 day of MAY, 2015, by Stephen Williamson, President of Beverly Development Corporation, on behalf of said corporation on behalf of said limited partnership.

Anne M. Carnes
Notary Public, State of Texas

My Commission Expires:
July 14, 2015



FLCT, LTD., a Texas limited partnership

By: Beverly Development Corporation,
a Texas corporation, its general partner

By: Stephen Williamson

Name: *Stephen Williamson*

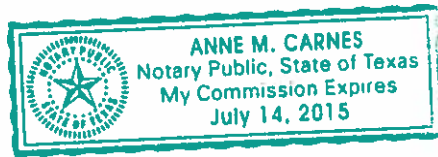
Title: President

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 8 day of MAY, 2015, by Stephen Williamson, President of Beverly Development Corporation, on behalf of said corporation on behalf of said limited partnership.

Anne M. Carnes
Notary Public, State of Texas

My Commission Expires:
July 14, 2015.



FLSC, LTD., a Texas limited partnership

By: **Beverly Development Corporation,**
a Texas corporation, its general partner

By: *Stephen Williamson*

Name: *Stephen Williamson*

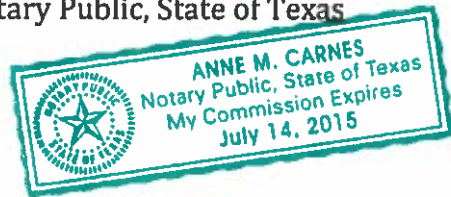
Title: President

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 8 day of May, 2015, by Stephen Williamson, President of Beverly Development Corporation, on behalf of said corporation on behalf of said limited partnership.

Anne M. Carnes
Notary Public, State of Texas

My Commission Expires:
July 14, 2015



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Exhibit D
Metes and Bounds Description of the South Tract

LEGAL DESCRIPTION:

BEING a tract of land located in the J. KNIGHT SURVEY, ABSTRACT NO. 692, and the J. TURNER SURVEY, ABSTRACT NO. 1251, Town of Flower Mound, Tarrant County, Texas and being all of a tract of land described as Tract C in Deed to D-F Fund VI, LLC, recorded in Document Number 98-105272, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set in the South right-of-way line of International Parkway (Farm-to-Market Road 2499), a 160 foot right-of-way, at the Northwest corner of said Tract C and the Northeast corner of a tract of land described as Tract 9 in Deed to KG Legacy Capital Investments, LLC, recorded in Document Number 2007-4511 and Document Number 2007-47997, Deed Records, Denton County, Texas and recorded in Document Number D207139731, Deed Records, Tarrant County, Texas;

THENCE North 89 degrees 33 minutes 50 seconds East, along said South right-of-way line, a distance of 951.49 feet to a Texas Department of Transportation (TXDOT) Brass Disk in concrete found for corner at the beginning of a curve to the right having a central angle of 30 degrees 51 minutes 42 seconds, a radius of 3,170.00 feet and a chord bearing and distance of South 75 degrees 00 minutes 19 seconds East, 1,686.91 feet;

THENCE Easterly, continuing along said South right-of-way line and along said curve to the right, an arc distance of 1,707.48 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Northeast corner of said Tract C and the Northwest corner of Lot 3 of SOUTHPOINT ADDITION, an Addition to the Town of Flower Mound, Tarrant County, Texas according to the Plat there of recorded in Cabinet M, Page 346, Plat Records, Denton County, Texas;

THENCE South 00 degrees 12 minutes 03 seconds East, leaving said South right-of-way line, a distance of 173.96 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Southeast corner of said Tract C and the Southwest corner of said Lot 3;

THENCE South 89 degrees 54 minutes 47 seconds West, a distance of 2,575.90 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "BRITTAIN&CRAWFORD" found at the Southwest corner of said Tract C and the Southeast corner of said Tract 9;

THENCE North 00 degrees 31 minutes 59 seconds West, a distance of 607.11 feet to the POINT OF BEGINNING and containing 30.964 acres of land, more or less.

Exhibit E

Depiction of the Northeast Tract

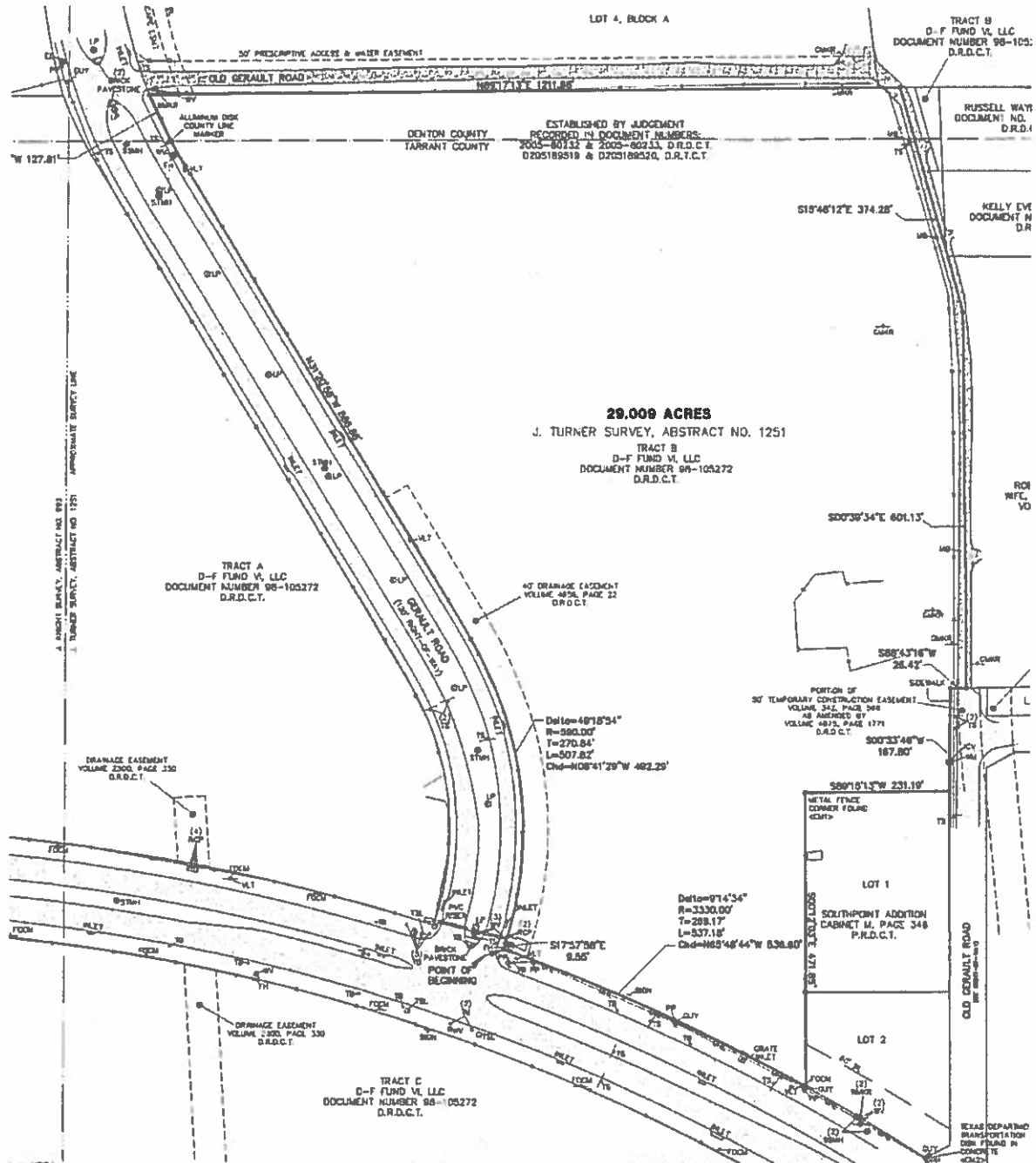


Exhibit F
Metes and Bounds Description of the Northeast Tract

BEING a tract of land located in the J. TURNER SURVEY, ABSTRACT NO. 1251, Town of Flower Mound, Denton and Tarrant Counties, Texas and being part of a tract of land described as Tract B in Deed to D-F Fund VI, LLC, recorded in Document Number 98-105272, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the intersection of the North right-of-way line of International Parkway (Farm-to-Market Road 2499), a 160 foot right-of-way, with the East right-of-way line of Gerault Road, a 120 foot right-of-way;

THENCE Northwesterly, along said East right-of-way line, the following four (4) courses and distances:

North 17 degrees 57 minutes 58 seconds East, a distance of 9.55 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 49 degrees 18 minutes 54 seconds, a radius of 590.00 feet and a chord bearing and distance of North 06 degrees 41 minutes 29 seconds West, 492.29 feet;

Northerly, along said curve to the left, an arc distance of 507.82 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 31 degrees 20 minutes 56 seconds West, a distance of 886.86 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 09 degrees 09 minutes 49 seconds, a radius of 800.00 feet and a chord bearing and distance of North 26 degrees 46 minutes 02 seconds West, 127.81 feet;

Northwesterly, along said curve to the right, an arc distance of 127.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the North line of said Tract B;

THENCE North 89 degrees 17 minutes 13 seconds East, leaving said East right-of-way line and along said North line, a distance of 1,211.68 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the approximate center of Old Gerault Road;

THENCE South 15 degrees 48 minutes 12 seconds East, along said approximate centerline, a distance of 374.28 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the West line of a tract of land described in Deed to Robert C. Douglas, and wife, Patricia Ann Douglas, recorded in Volume 458, Page 343, Deed Records, Denton County, Texas;

THENCE South 00 degrees 39 minutes 34 seconds East, continuing along said approximate centerline and along said West line, a distance of 601.13 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 88 degrees 43 minutes 16 seconds West, leaving said approximate centerline and said West line, a distance of 26.42 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the West right-of-way line of said Old Gerault Road, a 60 foot right-of-way;

THENCE South 00 degrees 33 minutes 49 seconds West, along said West right-of-way line, a distance of 167.80 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Northeast corner of Lot 1 of SOUTHPPOINT ADDITION, an Addition to the Town of Flower Mound, Denton County, Texas according to the Plat thereof recorded in Cabinet M, Page 346, Plat Records, Denton County, Texas;

THENCE South 89 degrees 15 minutes 13 seconds West, leaving said West right-of-way line, a distance of 213.19 feet to a Metal Fence Corner found at the Northwest corner of said Lot 1;

THENCE South 00 degrees 12 minutes 03 seconds East, passing a 1/2 inch iron rod with a yellow plastic cap stamped "4796" found at the Southwest corner of said Lot 1 and the Northwest corner of Lot 2 of said Addition at a distance of 320.55 feet and continuing for a total distance of 471.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "4796" found in said North right-of-way line at the Southwest corner of said Lot 2, said point being at the beginning of a non-tangent curve to the left having a central angle of 09 degrees 14 minutes 34 seconds, a radius of 3,330.00 feet and a chord bearing and distance of North 65 degrees 48 minutes 44 seconds West, 536.60 feet;

THENCE Northwesterly, along said North right-of-way line and along said curve to the left, an arc distance of 537.18 feet to the POINT OF BEGINNING and containing 29.009 acres of land, more or less.

Exhibit F
Metes and Bounds Description of the Northeast Tract

SAVE AND EXCEPT THE FOLLOWING RIGHT-OF-WAY DEDICATION:

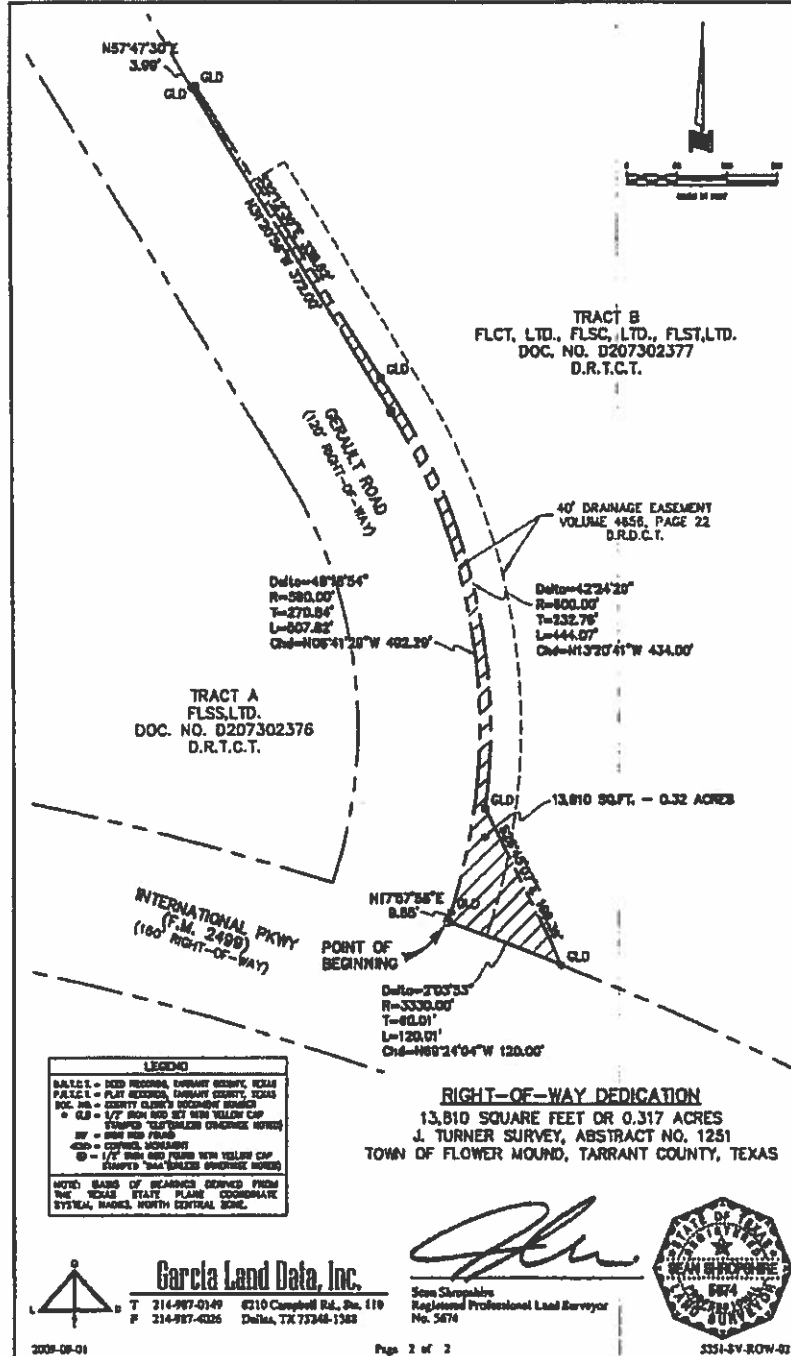


Exhibit F
Metes and Bounds Description of the Northeast Tract

SAVE AND EXCEPT THE FOLLOWING DRAINAGE EASEMENT:

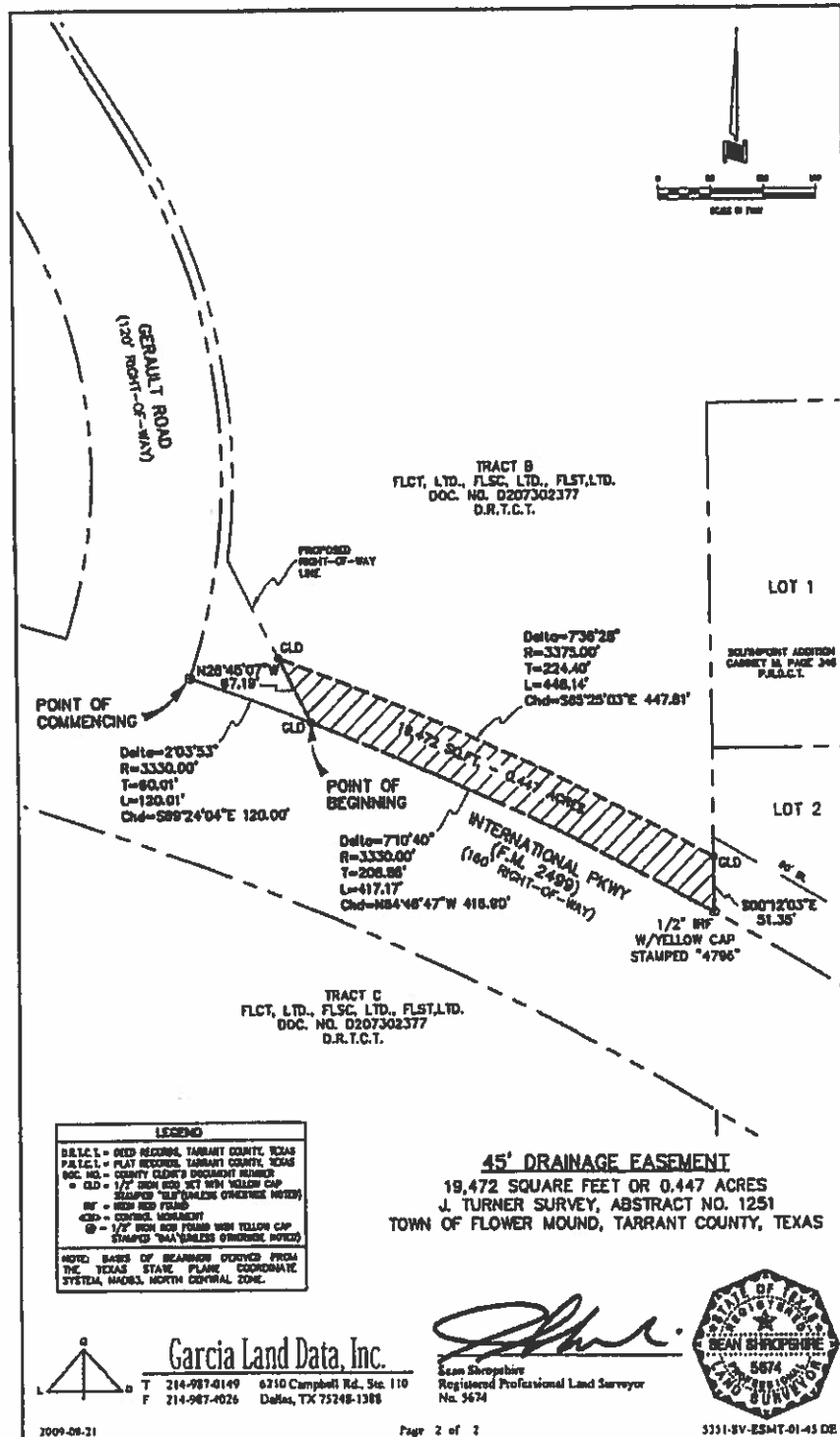


Exhibit G Depiction of the Northwest Tract

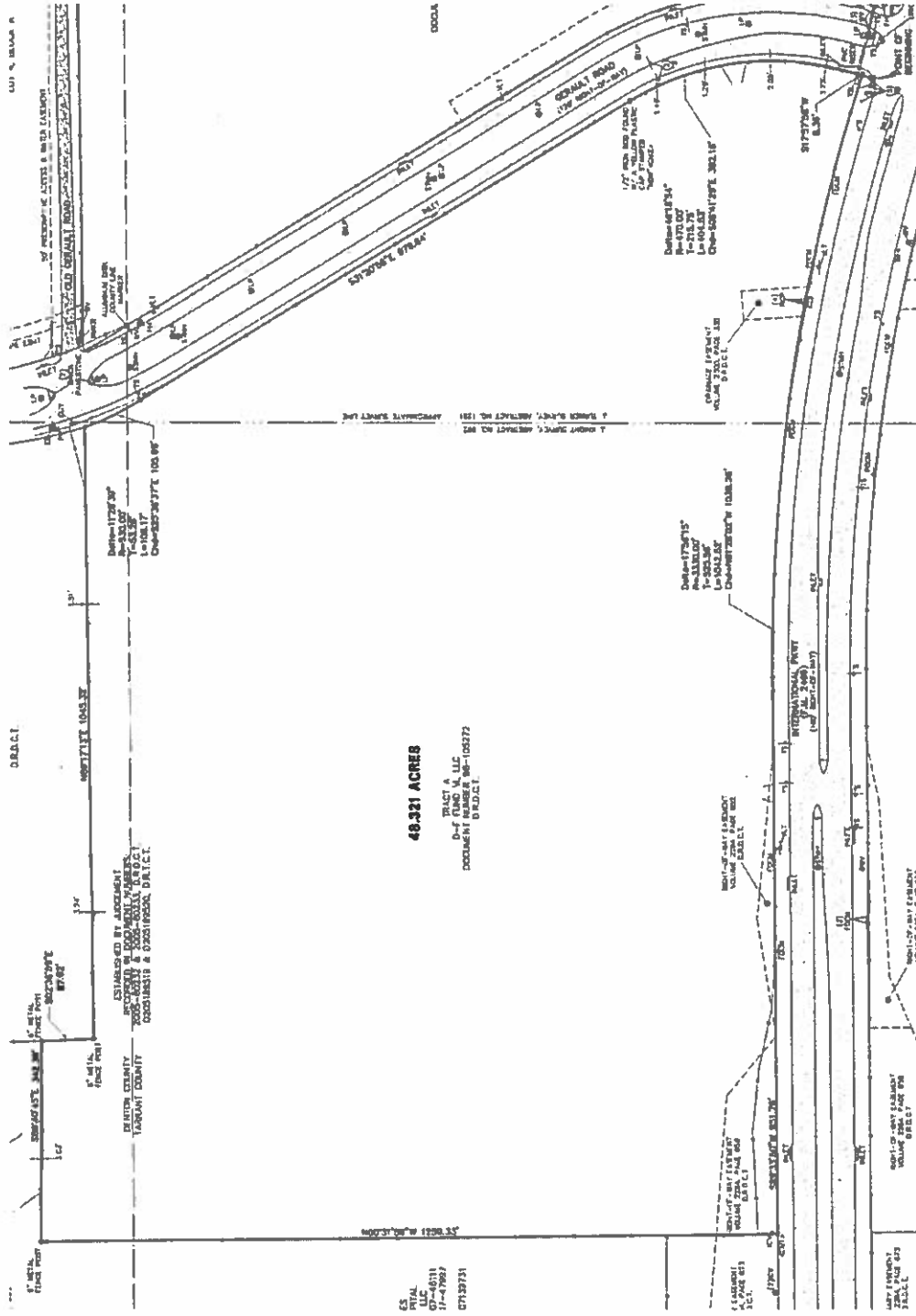


Exhibit H

Metes and Bounds Description of the Northwest Tract

BEING a tract of land located in the J. KNIGHT SURVEY, ABSTRACT NO. 692, and the J. TURNER SURVEY, ABSTRACT NO. 1251, Town of Flower Mound, Denton and Tarrant Counties, Texas and being all of a tract of land described as Tract A in Deed to D-F Fund VI, LLC, recorded in Document Number 98-105272, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch Iron rod with a yellow plastic cap stamped "DAA" set for corner at the intersection of the North right-of-way line of International Parkway (Farm-to-Market Road 2499), a 160 foot right-of-way, with the West right-of-way line of Gerault Road, a 120 foot right-of-way, said point being at the beginning of a curve to the left having a central angle of 17 degrees 56 minutes 15 seconds, a radius of 3,330.00 feet and a chord bearing and distance of North 81 degrees 28 minutes 02 seconds West, 1,038.26 feet;

THENCE Westerly, along said North right-of-way line and along said curve to the left, an arc distance of 1,042.52 feet to a 1/2 inch Iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 89 degrees 33 minutes 50 seconds West, continuing along said North right-of-way line, a distance of 951.76 feet to a 1/2 inch Iron rod with a yellow plastic cap stamped "BRITTAIN&CRAWFORD" found at the Southwest corner of said Tract A and the Southeast corner of a tract of land described as Tract 4 in Deed to KG Legacy Capital Investments, LLC, recorded in Document Number 2007-4511 and Document Number 2007-47997, Deed Records, Denton County, Texas and recorded in Document Number D207139731, Deed Records, Tarrant County, Texas;

THENCE North 00 degrees 31 minutes 59 seconds West, along the common line of said Tract A and said Tract 4, a distance of 1,259.33 feet to a 6 inch metal fence post found for corner;

THENCE South 89 degrees 40 minutes 45 seconds East, continuing along said common line, a distance of 342.39 feet to a 6 inch metal fence post found for corner;

THENCE South 02 degrees 36 minutes 59 seconds East, leaving said common line, a distance of 87.62 feet to a 6 inch metal fence post found for corner;

THENCE North 89 degrees 17 minutes 13 seconds East, a distance of 1,045.32 feet to a 1/2 inch Iron rod with a yellow plastic cap stamped "DAA" set in said West right-of-way line at the beginning of a non-tangent curve to the left having a central angle of 11 degrees 28 minutes 39 seconds, a radius of 530.00 feet and a chord bearing and distance of South 25 degrees 36 minutes 37 seconds East, 105.99 feet;

THENCE Southwesterly, along said West right-of-way line, the following four (4) courses and distances:

Southeasterly, along said curve to the left, an arc distance of 106.17 feet to a 1/2 inch Iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 31 degrees 20 minutes 56 seconds East, a distance of 979.64 feet to a 1/2 inch Iron rod with a yellow plastic cap stamped "NDM" found for corner at the beginning of a curve to the right having a central angle of 49 degrees 18 minutes 54 seconds, a radius of 470.00 feet and a chord bearing and distance of South 06 degrees 41 minutes 29 seconds East, 392.16 feet;

Southerly, along said curve to the right, an arc distance of 404.53 feet to a 1/2 inch Iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 17 degrees 57 minutes 58 seconds West, a distance of 8.36 feet to the POINT OF BEGINNING and containing 48.321 acres of land, more or less.