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This **Amended and Restated Facilities Agreement for Montgomery Blvd. and Watters Branch Creek Bridge** (“Amended and Restated Agreement”) is made by and between the City of Allen, Texas (the “City”) and Wretched Land L.P., a Texas limited partnership (the “Owner”) (each a “Party” or collectively referred to as the “Parties”), acting by and through their duly authorized representatives.

**RECITALS:**

**WHEREAS**, Owner is the owner of a certain parcel of real property as described in **Exhibit “A”** (the “Property”); and

**WHEREAS**, the Owner and City entered into that previous Facilities Agreement relating to design and construction of a bridge across Watters Branch Creek (the “Watters Creek Bridge”) and Montgomery Boulevard from the bridge to the U.S. 75 frontage road (the “East Project”) dated December 12, 2008 (the “Original Agreement”); and

**WHEREAS**, the Parties desire to amend the Original Agreement as set forth herein; and

**WHEREAS**, Owner, pursuant to the Original Agreement, conveyed and dedicated to the City necessary right-of-way from the Property for the East Project and the Watters Creek Bridge; and

**WHEREAS**, in the Original Agreement, the City agreed to limit the Owner's cost for the East Project and Watters Creek Bridge to Five Hundred Thousand Dollars (\$500,000.00) (the "Owner's Payment"); and

**WHEREAS**, the Parties desire to enter into this Amended and Restated Agreement to provide for the City to design and construct the East Project and Watters Creek Bridge as described herein, and for the Owner to design and construct Montgomery Boulevard between Watters Creek Bridge and Montgomery Ridge Phase 1 Development, as defined herein, (the “West Project”);

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

## Article I

### Definitions

“City” shall mean the City of Allen, Texas.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the respective portion of the Project; (ii) Owner or City, as the case may be, has applied for the necessary permits to begin the construction of the respective portion of the Project pursuant to the respective plans therefor; (iii) all necessary permits for the construction of the respective portion of the Project pursuant to the respective plans therefore having been issued by all applicable governmental authorities; (iv) a construction contract has been of the respective portion of the Project has been executed; and (v) grading of the right of way for the respective portion of the Project has commenced.

“Completion of Construction” shall mean that (i) the construction has been substantially completed; and (ii) the City has inspected the respective portion of the Project and issued a written acceptance of the respective portion of the Project.

“Contractor(s)” means the contractor(s) selected by Owner, approved by the Owner and City, with such approval not being unreasonably withheld by the City, and contractually hired by Owner to act as a contractor under any Construction Agreement.

“Construction Agreement” shall mean an agreement for the design, construction management, and/or construction of West Project as approved by the City and the Owner, with such approval not being unreasonably withheld by the City, including all amendments and change orders related thereto.

“East Project” shall mean the design, construction and construction management of the extension of Montgomery Boulevard from the eastern termination of the West Project to US 75, as generally depicted in **Exhibit “B”**, and in accordance with plans approved by the City.

“Effective Date” shall mean the last date of execution of this Agreement.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations under this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, terrorism, explosions or floods, strikes, slowdowns or work stoppages, discovery and/or handling of hazardous material.

“Montgomery Boulevard” shall mean the design and construction of roadway as generally depicted in **Exhibit “B”** as a City collector, concrete roadway with curbs, measuring 37-foot wide (as measured from back-of-curb to back-of-curb) which will provide two travel lanes with room for a continuous left turn lane through the middle as illustrated on the City of Allen Thoroughfare Plan and to include paving, sidewalks, underground storm sewer and water, in accordance with plans approved by the City.

“Montgomery Ridge Phase 1 Development” shall mean that single-family residential development project, with zoning approved by Allen City Council by amending Planned Development 74 through Zoning Case Z-11/19/13-83, as depicted in **Exhibit “B”**.

“Montgomery Ridge Phase 2 Development” shall mean that proposed mixed-use development project as depicted in **Exhibit “B”**.

“Owner” shall mean Wretched Land, L.P., a Texas limited partnership.

“Project” shall mean the East Project, the West Project or the Watters Creek Bridge, as applicable.

“Project Plans” shall mean the plans and specifications for the West Project as approved by the City, including all modifications and amendments thereto.

“Property” shall mean the real property described in **Exhibit “A”**.

“Watters Creek Bridge” shall mean a bridge across Watters Branch Creek, as generally depicted in **Exhibit “B”**.

“West Project” shall mean the design, construction, and construction management of the extension of Montgomery Boulevard from its proposed termination point with the Montgomery Ridge Phase 1 Development Project to within approximately forty feet of the Watters Branch Creek Bridge deck, as generally depicted in **Exhibit “B”**.

## **Article II**

### **Term**

The term of this Agreement shall commence Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article III**

### **Project**

3.1 **General.** Owner agrees to design and construct the West Project as provided here in. In addition, Owner shall pay to the City the sum of Five Hundred Thousand Dollars (\$500,000.00) (the “Owner’s Payment”) within seven (7) days after the Effective Date of this Amended and Restated Agreement.

3.2 **Construction Schedule.** (a) Owner shall, subject to events of Force Majeure or delays in obtaining permits necessary for the Commencement of Construction, cause Commencement of Construction of the West Project to occur within ninety (90) days after the first building permit is issued by the City for a single-family dwelling in the Montgomery Ridge Phase 1 Development, and, subject to events of Force Majeure, cause Completion of

Construction thereof to occur before the earlier of (i) December 31, 2015, and (ii) the issuance of a certificate of occupancy for any building in Montgomery Ridge Phase 2 Development.

(b) West Project Right-of-Way. Prior to Commencement of Construction of the West Project, Owner shall dedicate a 72-foot wide right-of-way for said West Project.

(c) East Project and Watters Creek Bridge. City shall use its best commercial efforts, subject to events of Force Majeure or delays in obtaining permits necessary for the Commencement of Construction, to cause Completion of Construction of the East Project and the Watters Creek Bridge to occur on or before March 31, 2016.

3.3 Design and Construction of West Project. Owner shall contract with Bury+Partners, or another professional engineering firm (the "Engineer"), and cause the Engineer to submit the design plans and specifications for the West Project to the City for review and approval, with such approval not being unreasonably withheld. The City shall provide objections and comments within fourteen (14) calendar days after receipt of the West Project plans and specifications. The Owner shall, within fourteen (14) calendar days after receipt of City comments and objections, cause the Engineer to revise and modify the West Project plans and specifications, as necessary, to satisfy any reasonable objections and reasonable comments to the plans and specifications by the City. This process shall be followed until the City has approved the plans for the West Project, with such approval not being unreasonably withheld.

3.4 Permit Applications. Prior to construction, the Owner shall obtain any necessary permits and approvals required by the City and any applicable governmental authorities for the construction of the West Project. The Owner shall require the design, inspection and supervision of the construction of the West Project to be undertaken in accordance with City standards and regulations.

3.5 Construction Agreements. The following requirements shall apply to Construction Agreements for the West Project:

(i) Each Construction Agreement shall provide that the Contractor shall indemnify the City and Owner for the negligent acts or omissions of the Contractor;

(ii) Each Construction Agreement shall require the Contractor and its subcontractors to carry the following types of insurance:

(A) Commercial general liability insurance insuring the City, the Contractor, and the Owner against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Owner, the Contractor, or the City and their respective agents, contractors, or employees, in the amount of \$1,000,000 Per Occurrence, \$2,000,000 General Aggregate Bodily Injury and Property Damage. The Contractor may procure and maintain a Master or Controlled Insurance policy to satisfy the requirements of this section, which may cover other property or locations of the Contractor and its affiliates, so long as the coverage required in this section is separate;

- (B) Worker's Compensation insurance as required by law;
  - (C) Builder's Risk insurance in the amount of the construction values;
  - (D) Automobile insurance covering all operations of the Contractor pursuant to the Construction Agreement involving the use of motor vehicles, including all owned, non owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.
- (iii) Each Construction Agreement shall include the following with respect to insurance coverage required by this Agreement:
- (A) To the extent available, each policy shall be endorsed to provide that insurer waives all rights of subrogation against the City;
  - (B) Each policy of insurance, with the exception of Workers Compensation and professional liability, shall be endorsed to include the City (including its former, current, and future officers, agents, and employees) as additional insureds;
  - (C) Policies shall be procured from financially sound and reputable insurers licensed to do business in the State of Texas and having an A.M. Best rating of not less than A-8 or, if not rated with A.M. Best, the equivalent of A.M. Best's surplus size of A-8 (or otherwise approved by the City Manager);
  - (D) Each policy, with the exception of Workers Compensation and professional liability, shall be endorsed to provide the City thirty (30) days' written notice prior to any cancellation, termination or material change of coverage; and
  - (E) The Contractor shall deliver or cause to be delivered to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage prior to the Commencement of Construction of the West Project and upon any renewal of any insurance policies. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

3.6 Compliance with Law. Owner and its Contractors shall comply with all local and state laws and regulations regarding the design and construction of the West Project applicable to similar facilities constructed by the City, including, but not limited to, any applicable requirement relating to payment, performance and maintenance bonds.

3.7 Project Inspection. City Engineer shall have the right to inspect the West Project to determine whether the West Project construction is in accordance with City standards, ordinances, and regulations pertaining to the construction of public improvements.

3.8 Pre-Construction Conference. Prior to Commencement of Construction, the Owner, its Contractors and subcontractors, shall attend a pre-construction conference with the City Engineering Department staff and the applicable private and public utility companies. The Owner shall be required to comply with the requirements of and apply for a Development Permit from the City Engineering Department before Commencement of Construction., including payment of the construction inspection fee to the City.

3.9 NCTCOG Standards. Except as otherwise provided in this Agreement, the construction of the West Project shall be in accordance with the Section I Standard Specifications of the Public Works Construction Standards published by the North Central Texas Council of Governments, as amended and modified by the City, except for Division 100 and Appendix A, and to the extent applicable and not excepted are hereby incorporated by reference. The Owner or its Contractor shall provide construction management services to ensure that construction of the West Project is accomplished in accordance with the approved plans.

#### **Article IV Project Payments**

4.1 Payments. (a) Owner shall be responsible to its Contractors for payment of all work performed by all Contractors for the West Project. Owner shall retain or withhold at least five percent (5%) of all sums due each Contractor authorization from the City as provided in 4.1(b), below (“the “Retainage”).

(b) Completion and Final Payment. When: (i) all of the West Project work is finally complete; (ii) as-built drawings prepared by the engineer of record, reflecting the actual constructed improvements, have been submitted to the City in hardcopy and electronic format (mylar and dwg. and pdf. formats respectively); a maintenance bond equivalent to 10% of the construction costs of the West Project and for a duration of two (2) years has been submitted to the City; and (iv) the Owner is ready for a final inspection, the Owner shall notify the City thereof in writing. Thereupon, the City shall make final inspection of the applicable West Project work and, if the applicable West Project work is complete in substantial accordance with this Amended and Restated Agreement and the aforesaid documents have been submitted, the City shall promptly issue authorization for Owner to pay the Contractor the Retainage.

(c) Prior to City acceptance of the West Project, Owner shall submit to the City the Contractor’s statutory lien waiver that all payment applications for materials and equipment connected with the West Project work for which the City, or the City's property, have been fully paid or otherwise satisfied, statutory lien waivers from Contractors; and assignment of any warranties. If any Contractor fails or refuses to provide a statutory lien waiver as reasonably required by the City, the Owner shall furnish a bond satisfactory to the City to discharge any such lien, provide evidence of a payment bond purchased to extinguish such lien, or indemnify

the City from such liability. Warranties shall: (a) be at least standard industry warranties; and (b) obligate the Owner's Contractors to repair all defects in the applicable portion of the West Project for a period of two (2) year following Completion of Construction of the West Project.

## **Article V**

### **Security, Insurance and Indemnification**

5.1 Letter of Credit. Prior to the Commencement of Construction of the West Project but no later than December 31, 2014, Owner shall provide the City with a declining balance Letter of Credit for the full amount of the contract awarded to the Contractor for the construction of the West Project in an amount and form reasonably approved by the City. Owner may at any time request the City to recalculate the remaining unpaid portion of the contract costs for the West Project based on progress payments made by Owner for approval by the City, which approval shall not be unreasonably withheld, denied or delayed. Within, thirty (30) days after receipt of such request, City Manager, or designee shall recalculate the unpaid portion of the contract costs and shall convey a letter to the issuer of the Letter of Credit releasing all but the remaining unpaid portion of the contract amount from the Letter of Credit. Upon Completion of Construction and City acceptance of the West Project, the Letter of Credit shall be fully released.

5.2 Indemnification. THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE OWNER PURSUANT TO THIS AGREEMENT. THE OWNER HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE CITY'S BREACH OF THIS AGREEMENT, NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT. THE OWNER DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM THE OWNER'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF THE OWNER, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED, IN WHOLE OR IN PART, TO THE NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL ACT OF THE CITY). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY AND OWNER, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR

AGAINST CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM FOR WHICH THE CITY IS INDEMNIFIED HEREIN, THE OWNER SHALL BE REQUIRED, ON NOTICE FROM CITY, OR SHALL HAVE THE RIGHT TO DEFEND SUCH ACTION OR PROCEEDINGS AT THE OWNER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

## **Article VI Termination**

6.1 This Agreement shall terminate on the Expiration Date, or may be terminated earlier upon any one of the following:

- (a) by written agreement of the Parties;
- (b) by notice from either Party in the event the other Party materially breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof; provided, however, neither Party may terminate this Amended and Restated Agreement if the other Party is proceeding to cure such material breach.

## **Article VII Miscellaneous**

7.1 Successors and Assigns. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. Other than an assignment to an affiliate of or related party to the Owner, this Agreement may not be assigned by the Owner without the prior written consent of the City Manager.

7.2 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below, or (ii) on the day actually received if sent by facsimile, electronic mail, courier, or otherwise hand delivered.



If intended for City, to:

Attn: City Manager  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

With a copy to:

Attn: City Engineer  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
1800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201

If intended for Owner, to:

Attn: Leland Montgomery  
P.O. Box 43658  
Montclair, NJ 07043  
lelandmont@gmail.com

With a copy to:

Attn: William S. Dahlstrom  
Jackson Walker L.L.P.  
901 Main St., Ste. 6000  
Dallas, Texas 75202

7.3 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There are no other collateral oral or written agreements between the Parties that in any manner relate to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

7.4 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.5 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.6 Recordation of Agreement. A certified copy of this Agreement shall be recorded in the Deed Records of Collin County, Texas.

7.7 Recitals. The statements recited and declared in the Recitals to this Agreement are hereby incorporated herein as part of this Agreement.

7.8 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.10 Covenants Running with the Property. The provisions of this Amended and Restated Agreement are hereby declared covenants running with the Property and are fully binding on the Owner and each and every subsequent owner of all or any portion of the Property but only during the term of such Party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors, heirs, and assigns of the Owner which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Amended and Restated Agreement with respect to the right, title or interest in such Property. The City agrees to provide a release in recordable form reasonably satisfactory to the Owner upon each Party's full and complete satisfaction of the respective obligations herein. A copy of this Amended and Restated Agreement shall be recorded in the Collin County deed records.

***[Signature Page to Follow]***

**EXECUTED** in duplicate originals this the \_\_\_\_ day of August, 2014

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Shelley B. George, City Secretary

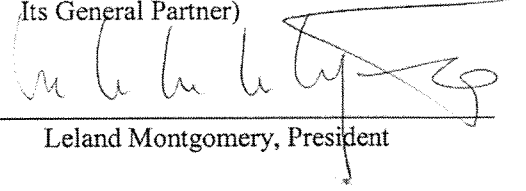
**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

EXECUTED in duplicate originals this the 21 day of August, 2014.

WRETCHED LAND, L.P.,  
a Texas limited partnership

By: **Monery, Inc.**  
Its General Partner)

By:   
Leland Montgomery, President

**EXECUTED** in duplicate originals this the \_\_\_\_ day of \_\_\_\_\_, 2014.

**WRETCHED LAND, L.P.,**  
a Texas limited partnership

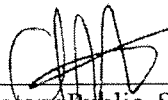
By: **Monery, Inc.**  
Its General Partner)

By: \_\_\_\_\_  
Leland Montgomery, President

**Owner's Acknowledgment**

State of Ohio §  
County of Monroe §

This instrument was acknowledged before me on the 22 day of August, 2014,  
by Leland Montgomery, as President of Wretched Land, L.P. a Texas limited  
partnership, on behalf of said partnership.

  
Notary Public, State of Ohio

My Commission Expires: 10-29-2018



MICHELLE L. TUCKER-BRADFORD  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
10-29-2018

## Exhibit "A"

### Legal Description of the Property

BEING A TRACT OF LAND SITUATED IN THE THOMAS G. KENNEDY SURVEY, ABSTRACT NO. 500, CITY OF ALLEN, COLLIN COUNTY, TEXAS, AND BEING ALL OF A CALLED 111.43 ACRE TRACT OF LAND DESCRIBED IN GENERAL WARRANTY DEEDS FROM NENA MONTGOMERY MURDOCK, TRUSTEE OF THE NENA MONTGOMERY MURDOCK DECLARATION OF TRUST TO BLESSED ACRES, L.P., (10.237% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 20090324000335940, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS, (O.P.R.C.C.T.); LELAND MILLER MONTGOMERY TO BLESSED ACRES, L.P., (10.50% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 20090324000335950, O.P.R.C.C.T.; ELLEN MONTGOMERY McCAFFERTY TO BLESSED ACRES, L.P., (10.50% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 20090324000335960, O.P.R.C.C.T.; WILLIAM S. MONTGOMERY, J.R. TO BLESSED ACRES L.P., (10.50% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 20090324000335970, O.P.R.C.C.T., AND A PORTION OF A CALLED 111.789 ACRE TRACT OF LAND DESCRIBED IN GENERAL WARRANTY DEEDS FROM MONERY, INC. TO WRETCHED LAND, L.P. (0.13263% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 20061012001474620, O.P.R.C.C.T.; MARIAN MILLER MONTGOMERY TO WRETCHED LAND, L.P., (13.13037% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 20061012001474590, O.P.R.C.C.T.; A SPECIAL WARRANTY DEED FROM WELLS FARGO BANK, N.A., TRUSTEE OF THE WILLIAM S. MONTGOMERY FAMILY TRUST 1994 TO WILLIAM S. MONTGOMERY, J.R., TRUSTEE OF THE WILLIAM S. MONTGOMERY, JR. FAMILY TRUST 1994 U/A (11.25% INTEREST); NENA CARROLL MONTGOMERY, TRUSTEE OF THE NENA CARROLL MONTGOMERY FAMILY TRUST 1994 U/A (11.25% INTEREST); ELLEN MONTGOMERY McCAFFERTY, TRUSTEE OF THE ELLEN MONTGOMERY McCAFFERTY FAMILY TRUST 1994 U/A (11.25% INTEREST) AND LELAND MILLER MONTGOMERY, TRUSTEE OF THE LELAND MILLER MONTGOMERY FAMILY TRUST 1994 U/A (11.25% INTEREST), RECORDED IN COUNTY CLERK'S FILE NO. 2005-0135155, O.P.R.C.C.T.; ALSO BEING ALL OF THAT CALLED 20.2036 TRACT DESCRIBED IN DEED TO WRETCHED LAND, L.P. IN COUNTY CLERK'S FILE NO. 20061012001474610, O.P.R.C.C.T.; SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF SAID 111.789 ACRE TRACT OF LAND SAME BEING THE SOUTHWEST CORNER OF A CALLED 14.438 ACRE TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED TO EMERSON FARM COMPANY, LTD. RECORDED IN VOLUME 5034, PAGE 158, O.P.R.R.P.C.C.T.;

THENCE ALONG THE COMMON LINE OF SAID 111.789 ACRE TRACT OF LAND AND SAID 14.438 ACRE TRACT OF LAND, THE FOLLOWING:

SOUTH 88°27'27" EAST, A DISTANCE OF 290.92 FEET;

SOUTH 01°03'21" WEST, A DISTANCE OF 203.73 FEET;

SOUTH 88°17'55" EAST, AT A DISTANCE OF 381.61 FEET PASSING THE SOUTHEAST CORNER OF SAID 14.438 ACRE TRACT OF LAND SAME BEING THE SOUTHWEST CORNERS OF MONTGOMERY BOULEVARD (F.K.A. BELAIR DRIVE, A 90-FOOT RIGHT-OF-WAY AT THIS POINT) AS CONVEYED TO THE CITY OF ALLEN IN THE AGREED FINAL JUDGMENT, RECORDED IN VOLUME 5724, PAGE 38 OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF COLLIN COUNTY, TEXAS (O.P.R.R.P.C.C.T.) CONTINUING ALONG COMMON LINE OF SAID 111.789 ACRE TRACT OF LAND AND THE SOUTH TERMINUS LINE OF SAID MONTGOMERY BOULEVARD AT A DISTANCE OF 471.61 FEET PASSING THE SOUTHEAST CORNER OF SAID MONTGOMERY BOULEVARD SAME BEING THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO MONTGOMERY FARM GARDEN DISTRICT, LTD. IN COUNTY CLERK'S FILE NO. 20060929001402580, O.P.R.C.C.T., CONTINUING ALONG THE COMMON LINE OF SAID 111.789 ACRE TRACT OF LAND AND SAID MONTGOMERY FARM GARDEN DISTRICT, LTD. TRACT OF LAND IN ALL FOR A DISTANCE OF 1753.04 FEET TO A POINT IN THE APPROXIMATE CENTERLINE OF WATTERS CREEK;

THENCE ALONG THE APPROXIMATE CENTERLINE OF WATTERS CREEK, THE FOLLOWING:

SOUTH 01°54'12" EAST, A DISTANCE OF 126.85 FEET;

SOUTH 23°30'59" EAST, A DISTANCE OF 265.21 FEET;

SOUTH 35°11'39" EAST, A DISTANCE OF 148.76 FEET;

SOUTH 09°31'20" EAST, A DISTANCE OF 95.41 FEET;

SOUTH 07°54'52" WEST, A DISTANCE OF 66.45 FEET;

SOUTH 38°05'47" WEST, A DISTANCE OF 76.80 FEET;

SOUTH 13°50'25" WEST, A DISTANCE OF 63.08 FEET;

SOUTH 26°00'36" EAST, A DISTANCE OF 90.60 FEET;

SOUTH 22°35'12" WEST, A DISTANCE OF 177.64 FEET TO THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO CITY OF ALLEN, IN VOLUME 4859, PAGE 2837, DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.);

THENCE ALONG THE COMMON LINE OF SAID CITY OF ALLEN TRACT AND THE HEREIN DESCRIBED TRACT, THE FOLLOWING:

SOUTH 85°30'21" WEST, A DISTANCE OF 190.21 FEET;

SOUTH 76°30'03" WEST, A DISTANCE OF 33.67 FEET;

SOUTH 61°03'58" WEST, A DISTANCE OF 58.05 FEET;



SOUTH 54°26'24" WEST, A DISTANCE OF 64.32 FEET;

SOUTH 52°03'43" WEST, A DISTANCE OF 67.85 FEET;

SOUTH 09°23'43" WEST, A DISTANCE OF 427.36 FEET;

SOUTH 02°30'57" EAST, A DISTANCE OF 433.65 FEET TO THE SOUTHWEST CORNER OF SAID CITY OF ALLEN TRACT;

NORTH 88°18'19" EAST, AT A DISTANCE OF 687.08 FEET PASSING THE SOUTHEAST CORNER OF SAID CITY OF ALLEN TRACT SAME BEING THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED TO WATTERS CREEK OWNER, LLC IN THE DEED RECORDED IN 20130719001017670, O.P.R.C.C.T. CONTINUING ALONG THE COMMON LINE OF THE HEREIN DESCRIBED TRACT OF LAND AND SAID WATTERS CREEK TRACT OF LAND IN ALL FOR A DISTANCE OF 810.62 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 75, (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY);

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 75, THE FOLLOWING:

SOUTH 13°12'00" WEST, A DISTANCE OF 212.42 FEET;

SOUTH 14°45'16" WEST, A DISTANCE OF 622.08 FEET;

SOUTH 22°56'16" WEST, A DISTANCE OF 293.54 FEET;

SOUTH 17°48'46" WEST, A DISTANCE OF 921.71 FEET TO THE SOUTHEAST CORNER OF THE AFOREMENTIONED 20.2036 ACRE TRACT;

THENCE NORTH 66°25'14" WEST ALONG THE SOUTH LINE OF SAID 20.2036 ACRE TRACT, A DISTANCE OF 130.30 FEET TO THE APPROXIMATE CENTERLINE OF WATTERS CREEK, SAME BEING IN THE EAST LINE OF CHASE OAKS GOLF CLUB-ALLEN, AN ADDITION TO THE CITY OF ALLEN AS SHOWN ON THE PLAT FILED FOR RECORD IN CABINET F, PAGE 524, P.R.C.C.T.;

THENCE ALONG THE CENTERLINE OF SAID WATTERS CREEK AND THE EAST LINE OF SAID CHASE OAKS GOLF CLUB-ALLEN, THE FOLLOWING:

NORTH 41°47'11" EAST, A DISTANCE OF 130.96 FEET;

NORTH 14°58'30" WEST, A DISTANCE OF 82.98 FEET;

NORTH 46°36'07" EAST A DISTANCE OF 129.40 FEET;

NORTH 15°23'14" WEST, A DISTANCE OF 27.90 FEET;

NORTH 75°55'31" WEST, A DISTANCE 37.17 FEET;

SOUTH 73°12'27" WEST, A DISTANCE OF 76.47 FEET;

NORTH 71°21'49" WEST, A DISTANCE OF 32.31 FEET;  
NORTH 40°45'59" WEST, A DISTANCE OF 36.96 FEET;  
NORTH 34°09'15" WEST, A DISTANCE OF 30.87 FEET;  
NORTH 88°01'29" EAST, A DISTANCE OF 21.45 FEET;  
SOUTH 82°25'41" EAST, A DISTANCE OF 104.68 FEET;  
NORTH 71°13'07" EAST, A DISTANCE OF 34.83 FEET;  
NORTH 18°04'49" WEST, A DISTANCE OF 44.69 FEET;  
NORTH 55°54'23" WEST, A DISTANCE OF 172.36 FEET;  
NORTH 40°19'33" WEST, A DISTANCE OF 40.18 FEET;  
NORTH 53°31'56" EAST, A DISTANCE OF 52.74 FEET;  
NORTH 48°06'38" EAST, A DISTANCE OF 102.73 FEET;  
NORTH 46°20'17" WEST, A DISTANCE OF 36.49 FEET;  
NORTH 78°08'17" WEST, A DISTANCE OF 61.39 FEET;  
NORTH 28°28'14" WEST, A DISTANCE OF 19.25 FEET;  
NORTH 07°21'14" WEST, A DISTANCE OF 28.09 FEET;  
NORTH 02°37'25" WEST, A DISTANCE OF 79.55 FEET;

THENCE NORTH 62°39'42" WEST, DEPARTING THE CENTERLINE OF SAID WATTERS CREEK AND ALONG THE NORTHEASTERLY LINE OF AFOREMENTIONED CHASE OAKS GOLF CLUB-ALLEN ADDITION, A DISTANCE OF 711.40 FEET;

THENCE NORTH 46°47'21" WEST CONTINUING ALONG THE NORTHEASTERLY LINE OF SAID CHASE OAKS GOLF CLUB-ALLEN ADDITION, A DISTANCE OF 317.03 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID CHASE OAKS GOLF CLUB-ALLEN TRACT AND THE MOST EASTERLY CORNER OF THAT CALLED 145.3 ACRE TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED TO MONTGOMERY TREE FARMS, LLC RECORDED IN COUNTY CLERK'S FILE NO. 20090713000874160, O.P.R.C.C.T.;

THENCE ALONG THE COMMON LINE OF THE HEREIN DESCRIBED TRACT AND SAID 145.3 ACRE TRACT, THE FOLLOWING:

NORTH 47°13'33" WEST, A DISTANCE OF 874.49 FEET;  
NORTH 22°18'24" WEST, A DISTANCE OF 98.31 FEET;  
NORTH 38°47'23" WEST, A DISTANCE OF 133.38 FEET;

THENCE NORTH 03°47'53" WEST, CONTINUING ALONG SAID COMMON LINE, AT A DISTANCE OF 59.8 FEET PASSING A NORTHEASTERLY CORNER OF SAID 145.3 ACRE TRACT OF LAND SAME BEING THE MOST SOUTHERLY CORNER OF A CALLED 203.0 ACRE TRACT OF LAND DESCRIBED IN SPECIAL WARRANTY DEED TO EMERSON FARM COMPANY, LTD RECORDED IN VOLUME 5688, PAGE 738, O.P.R.R.P.C.C.T, CONTINUING ALONG THE COMMON LINE OF SAID 111.789 ACRE TRACT OF LAND AND SAID 203.0 ACRE TRACT OF LAND IN ALL FOR A DISTANCE OF 321.42 FEET;

THENCE CONTINUING ALONG THE COMMON LINE OF SAID 111.789 ACRE TRACT OF LAND AND SAID 203.0 ACRE TRACT OF LAND, THE FOLLOWING:

NORTH 54°32'53" WEST, A DISTANCE OF 216.22 FEET;

NORTH 01°52'00" EAST, A DISTANCE OF 1,594.96 FEET TO THE **POINT OF BEGINNING**;

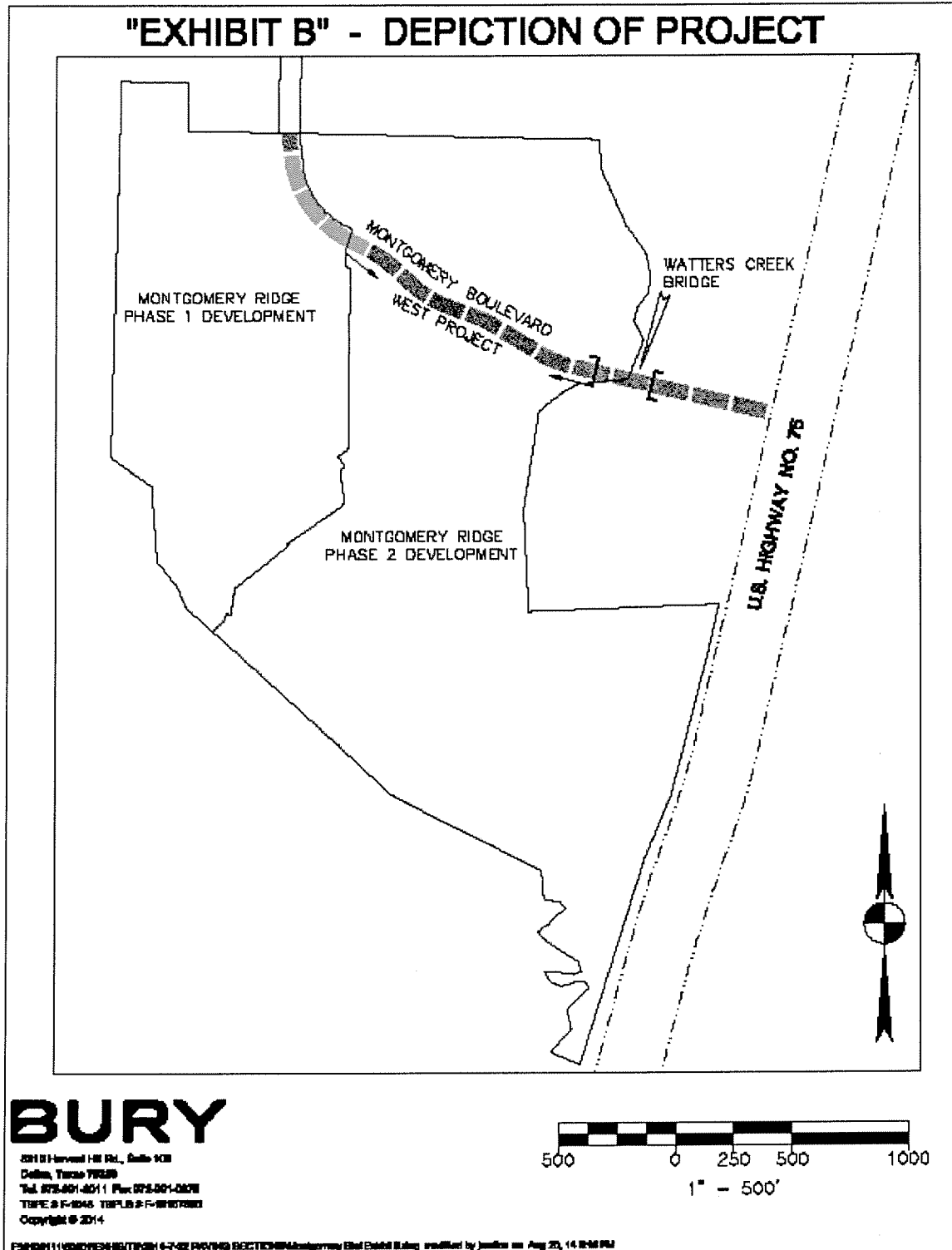
CONTAINING A COMPUTED AREA OF 132.14 ACRES OF LAND, MORE OR LESS.

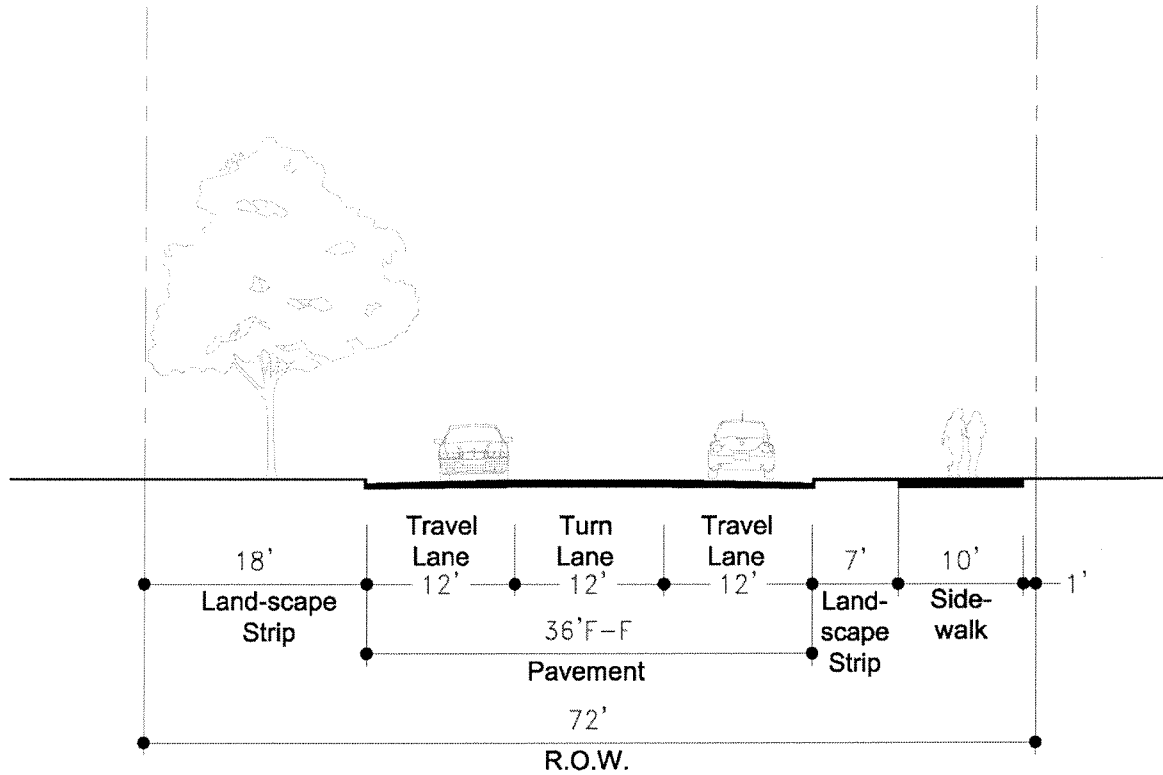
*NOTES:*

*BEARINGS CALLED FOR HEREIN ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM (NORTH CENTRAL ZONE, NAD 83) BASED ON LEICA GEOSYSTEMS NORTH TEXAS SMARTNET NETWORK.*

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## "EXHIBIT B" - DEPICTION OF PROJECT





MONTGOMERY BOULEVARD  
STREET CROSS SECTION  
**SECTION 2**

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