

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, DETERMINING THE EXISTENCE OF A PUBLIC NEED AND NECESSITY AND A PUBLIC PURPOSE FOR THE ACQUISITION OF THE LAND DESCRIBED IN EXHIBIT “A” ATTACHED HERETO FOR SANITARY SEWER EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS RELATING TO THE CONSTRUCTION, MAINTENANCE, REPAIR, REPLACEMENT, AND REMOVAL OF SANITARY SEWER MAINS AND RELATED FACILITIES FOR THE SLOAN CREEK SANITARY SEWER MAIN PROJECT; AUTHORIZING THE PURCHASE OF SAID EASEMENTS FOR JUST COMPENSATION; AUTHORIZING A LAST AND FINAL OFFER AND AUTHORIZING THE CITY ATTORNEY TO FILE PROCEEDINGS IN EMINENT DOMAIN TO ACQUIRE SUCH PROPERTY IF SUCH LAST AND FINAL OFFER IS REFUSED OR NOT TIMELY ACCEPTED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, recent sanitary sewer modeling efforts on behalf of the North Texas Municipal Water District (NTMWD) along Cottonwood Creek, and additional information provided by the City of Allen, determined that capacity may not exist within the trunk system owned by NTMWD to serve areas to be developed within the north central areas of the City along the U.S. 75 corridor; and,

WHEREAS, the need for a regional lift station to include flows from both the City of Allen and the Town of Fairview was identified and recommended as part of the assessment; and,

WHEREAS, the City Council for the City of Allen finds that a public need and necessity exists to acquire the necessary permanent and temporary construction easements described in Exhibit “A,” attached hereto and incorporated herein by reference to facilitate the construction, maintenance, repair, replacement, and removal of sanitary sewer mains and related facilities; and,

WHEREAS, it is hereby determined that the construction, maintenance, repair, replacement, and removal of the Sloan Creek Sanitary Sewer Main Project (“the Project”) and related facilities constitutes a public purpose and will provide a benefit for the welfare and convenience of the citizens such that acquisition of the described easements is required to further that public purpose; and,

WHEREAS, the City Council desires the City Manager or his designee take the necessary steps under applicable law to negotiate with the owners of the property described in Exhibit “A” to purchase the easements necessary for the Project; and,

WHEREAS, the City Council recognizes that despite the most earnest of intentions to reach an agreement on the transaction of land, in some cases an agreement cannot be reached, and other legal means must be employed to secure the property rights to make necessary improvements for the public welfare, and,

WHEREAS, in the event negotiations for purchase of the easements are unsuccessful, the City Council of the City of Allen, Collin County, Texas finds it to be in the public interest and to the benefit of the health, safety, and welfare of its citizens to authorize the use of the power of eminent domain to acquire the necessary interests in real property to construct the Sloan Creek Sanitary Sewer Main Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The facts, recitations, and findings contained in the recitals of this Resolution are found to be true and correct and are hereby incorporated herein for all purposes.

SECTION 2. The City Council of the City of Allen, Texas, hereby finds and determines that a public need and necessity exists for the welfare of the City and its citizens and it is in the public interest to acquire permanent utility easements and temporary construction easements for the construction, maintenance, repair, removal, and replacement of the Project on, over, under, and across the various tracts of real property described in Exhibit “A,” attached hereto and incorporated herein by reference (collectively, the “Easement Property”) and further finds that the Project constitutes and will serve a public purpose.

SECTION 3. The City Manager or designee is hereby authorized on behalf of the City to acquire title to the Easement Property for the construction of the Project and, if necessary, to attempt to agree on damages and compensation to be paid from City funds available for such purpose to the owners of the Easement Property in an amount which is not less than the fair market value for the interest in the respective tracts of the Easement Property to be acquired, including any damages to the remainder of the owners’ adjacent properties, if any, said offer being an amount which is not less than the amount set forth in the independent appraisal of the interest in the respective tracts obtained by the City and provided to said property owners. In the event such offer is accepted, the City Manager or designee is hereby authorized to negotiate and sign such contracts and other documents the City Manager determines to be reasonable and necessary in order to close on the acquisition of the various tracts constituting the Easement Property. If the City Manager or designee is unable to acquire the necessary property interests or determines that an agreement as to damages and compensation cannot be reached, then the City Manager or designee is authorized to make a last and final offer of just and adequate compensation to the owners of the portion(s) of the Easement Property for which a negotiated purchase price has not been obtained. If the last and final offer is not timely accepted, the City Attorney or designee is hereby authorized to file or cause to be filed against the owners and interested parties of the portion of the Easement Property to be acquired, proceedings in eminent domain to acquire such portion of the Easement Property.

SECTION 4. If it is later determined there are any errors in the descriptions contained herein, if later surveys contain more accurate revised descriptions, or if the description of the property interest to be acquired are revised pursuant to an agreement with the property owner, the City Attorney or designee is authorized to have such errors corrected or revisions made without the necessity of obtaining City Council approval authorizing the condemnation of the corrected or revised property.

SECTION 5. This resolution shall become effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8TH DAY OF OCTOBER 2019.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

Exhibit "A"
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WP Sloan Creek VII, LLC
9/4/2019

City of Allen, TX
Sloan Creek Trunk Sewer

EXHIBIT "A"
FIELD NOTE DESCRIPTION
PERMANENT UTILITY EASEMENT
CITY OF ALLEN, TEXAS

Being a strip of land, generally 9.84-feet in width for a Permanent Utility Easement, under, over and across Tract 22 of the Jonathan Phillips Survey, Abstract 719, Collin County, Texas, a called 14.754 acre tract of land conveyed to WP Sloan Creek VII, LLC by deed recorded in Instrument No. 2014001001068950 of the Deed Records of Collin County, Texas (D.R.C.C.T.), said 25-foot Permanent Utility Easement being more particularly described as follows:

BEGINNING at a point for corner, said point being in the west property line of said 14.754 acre WP Sloan Creek VII, LLC tract and the east line of U.S. Highway 75 (a variable width right-of-way), said point bearing N 13°06'12" E, a distance of 73.94 feet from a 3-inch wooden Texas Department of Transportation (TxDOT) monument found in said east right-of-way line of U.S. Highway 75, said point also bearing S 16°28'48" W, a distance of 1083.92 feet from a 1/2-inch iron rod found in said east right-of-way line of U.S. Highway 75 and in the southwest corner of a called 215.144 acre tract of land conveyed to Sloan Creek II, LLC by deed recorded in Instrument No. 20080221000205890 (D.R.C.C.T.), said iron rod being the northwest property corner of said 14.754 acre WP Sloan Creek VII, LLC tract;

THENCE S 73°23'17" E, departing the west property line of said 14.754 acre WP Sloan Creek VII, LLC tract and said east right-of-way line of U.S. Highway 75, a distance of 47.92 feet to a point for corner;

THENCE N 89°46'25" E, being at all times a 9.84-foot perpendicular distance from and parallel with the deed called south property line of said 14.754 acre WP Sloan Creek VII, LLC tract, a distance of 714.71 feet to a point for corner, said point being in the east property line of said 14.754 acre WP Sloan Creek VII, LLC tract and in the west property line of said 215.144 acre Sloan Creek II, LLC tract;

THENCE S 00°41'56" E, along the called east property line of said 14.754 acre WP Sloan Creek VII, LLC tract and the west property line of said 215.144 acre Sloan Creek II, LLC tract, a distance of 9.84 feet to a point for corner, said point being in the southeast corner of said 14.754 acre WP Sloan Creek VII, LLC tract;

THENCE S 89°46'25" W, departing the west property line of said 215.144 acre Sloan Creek II, LLC tract, along the called south property line of said 14.754 acre WP Sloan Creek VII, LLC tract and passing along parts of an existing fence line, and being at all times a 15.16-foot perpendicular distance from and parallel with the deed called north property line of a 99.51839 acre tract of land conveyed to H. Roger Lawler by deed recorded in Instrument No. 20180904001110750 (D.R.C.C.T.) and the centerline of Bush Road (a 15-foot wide called public road, See Note 4), a distance of 762.60 feet to a point for corner, said point being in said east right-of-way line of U.S. Highway 75 and in the southwest corner of said 14.754 WP Sloan Creek VII, LLC tract;

THENCE N 16°36'43" E, along said east right-of-way line of U.S. Highway 75 and the west line of said 14.754 acre WP Sloan Creek VII, LLC tract, a distance of 17.52 feet to a point for corner;

THENCE N 24°40'41" W, continuing along said east right-of-way line of U.S. Highway 75 and the west property line of said 14.754 acre WP Sloan Creek VII, LLC tract, a distance of 7.60 feet to a point for corner;

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WP Sloan Creek VII, LLC
9/4/2019

City of Allen, TX
Sloan Creek Trunk Sewer

EXHIBIT "A"

THENCE N 16°32'40" E, continuing along said east right-of-way line of U.S. Highway 75 and the west property line of said 14.754 acre WP Sloan Creek VII, LLC tract, a distance of 0.04 feet to the POINT OF BEGINNING, said 25-foot Permanent Utility Easement containing 0.179 acre (7,780 square feet) of land, more or less.

Also, a 50-foot wide Temporary Construction Easement being immediately adjacent to and parallel with the north line of said 25-foot Permanent Utility Easement and containing 0.867 acre (37,753 square feet) of land, more or less.

Notes:

1. Bearings and distances cited in this field note description are based on the Texas State Plane Coordinate System, NAD-83, Texas North Central Zone 4202.
2. Field survey concluded on July 02, 2019.
3. An Easement Plat of even date herewith accompanies this Field Note Description.
4. Public road as called and referenced in deed from Sam H. Crawford and Nina M. Crawford to the Lawler Family Trust recorded in Vol. 742, Pg. 579, dated October 1, 1969, D.R.C.C.T.

Gary C. Hendricks, P.E., R.P.L.S.
Texas Registration No. 5073
Birkhoff, Hendricks & Carter, L.L.P.
TBPLS Firm No. 100318-00
11910 Greenville Ave., Suite 600
Dallas, Texas 75243
Phone: 214-361-7900



[Handwritten Signature]
09/03/2019

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REVISED: 8/8/19 - CREINBOLD

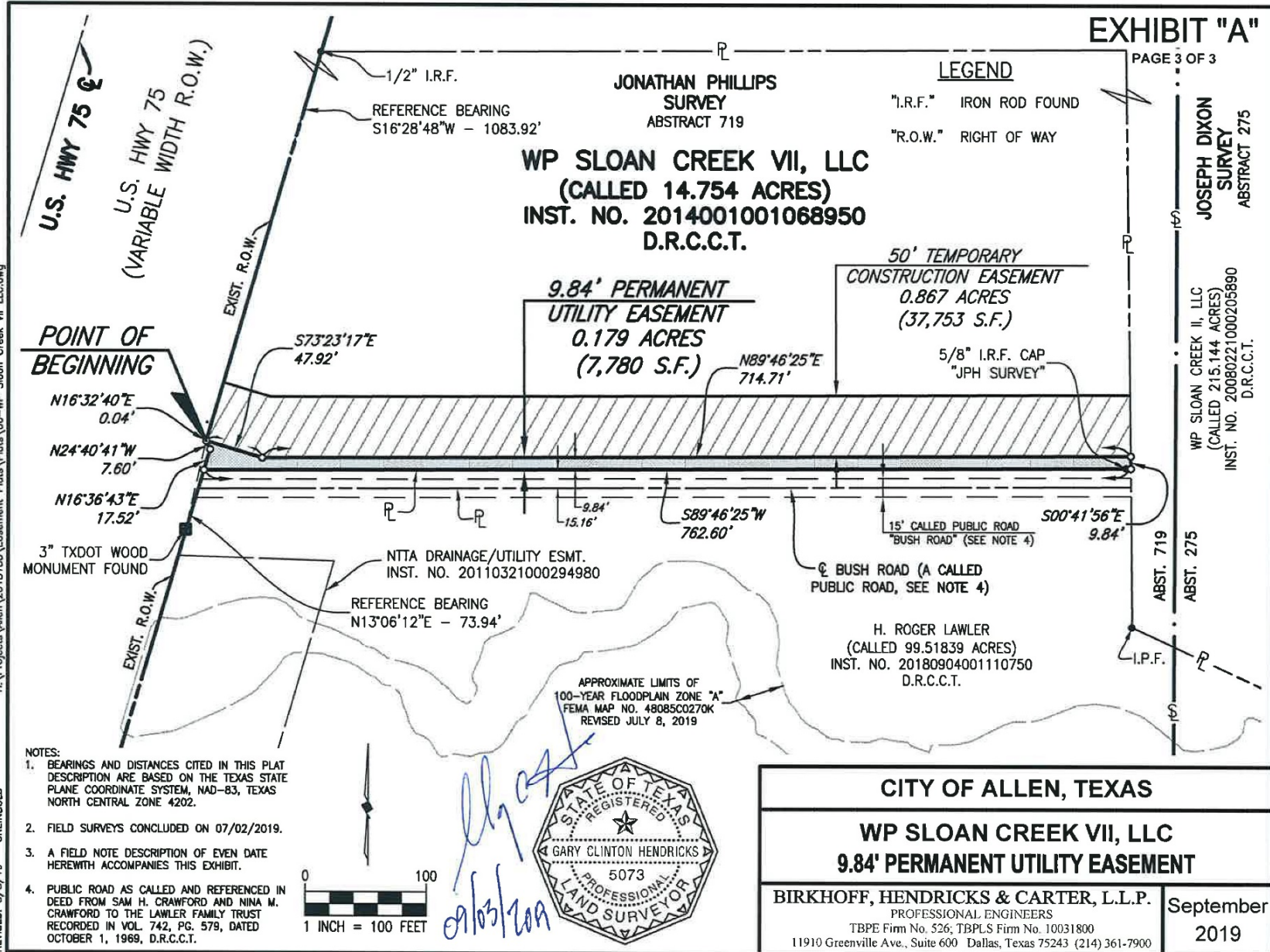


Exhibit "A"
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Sloan Creek II, LLC
9/3/2019

City of Allen, TX
Sloan Creek Trunk Sewer

EXHIBIT "A"
FIELD NOTE DESCRIPTION
PERMANENT UTILITY EASEMENT
CITY OF ALLEN, TEXAS

Being a strip of land, 25-feet in width for a Permanent Utility Easement, under, over and across Tract 23 of the Joseph Dixon Survey, Abstract 275, Collin County, Texas, a called 215.144 acre tract of land conveyed to Sloan Creek II, LLC by deed recorded in Instrument No. 20080221000205890 of the Deed Records of Collin County, Texas (D.R.C.C.T.), said 25-foot Permanent Utility Easement being more particularly described as follows:

BEGINNING at a point for corner, said point being in the west property line of said 215.144 acre Sloan Creek II, LLC tract and in the north property line of a called 99.51839 acre tract of land conveyed to H. Roger Lawler by deed recorded in Inst. No. 20180904001110750 (D.R.C.C.T.), said point also being in the centerline of Bush Road (a 15-foot wide called public road, See Note 4), said point bearing S 15°22'07" E, a distance of 15.82 feet from a 5/8-inch iron rod with a cap stamped "JPH Survey" found in the called south line of a called 14.754 acre tract of land conveyed to WP Sloan Creek VII, LLC by deed recorded in Inst. No. 2014001001068950 (D.R.C.C.T.), said point also bearing N 00°41'56" W, a distance of 113.78 feet from an iron pin found for a northeastern property corner of said 99.51839 acre Lawler tract and a southwestern property corner of said 215.144 acre Sloan Creek II, LLC tract;

THENCE N 00°41'56" W, departing the north property line of said 99.51839 acre Lawler tract, along the west property line of said 215.144 acre Sloan Creek II, LLC tract, a distance of 25.00 feet to a point for corner, said point being in the east property line of said 14.754 acre WP Sloan Creek VII, LLC tract;

THENCE N 89°46'25" E, departing the west property line of said 215.144 acre Sloan Creek II, LLC tract and the east property line of said 14.754 acre WP Sloan Creek VII, LLC tract, a distance of 29.85 feet to a point for corner;

THENCE S 71°51'19" E, a distance of 306.58 feet to a point for corner;

THENCE N 58°24'34" E, a distance of 308.21 feet to a point for corner;

THENCE S 74°48'46" E, a distance 268.31 feet to a point for corner;

THENCE S 66°33'36" E, a distance 475.46 feet to a point for corner;

THENCE S 23°26'24" W, a distance 25.00 feet to a point for corner;

THENCE N 66°33'36" W, a distance 473.66 feet to a point for corner;

THENCE N 74°48'46" W, a distance 255.70 feet to a point for corner;

THENCE S 58°24'34" W, a distance 308.98 feet to a point for corner;

THENCE N 71°51'19" W, a distance of 314.13 feet to a point for corner;

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Sloan Creek II, LLC
9/3/2019

City of Allen, TX
Sloan Creek Trunk Sewer

EXHIBIT "A"

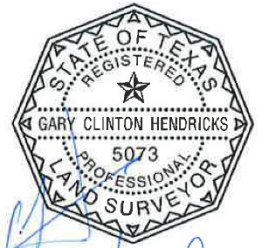
THENCE S 89°46'25" W, a distance 25.60 feet to the POINT OF BEGINNING, said 25-foot Permanent Utility Easement containing 0.794 acre (34,581 square feet) of land, more or less.

Also, a 50-foot wide Temporary Construction Easement being immediately adjacent to and parallel with the north line of said 25-foot Permanent Utility Easement and containing 1.606 acre (69,938 square feet) of land, more or less.

Notes:

1. Bearings and distances cited in this field note description are based on the Texas State Plane Coordinate System, NAD-83, Texas North Central Zone 4202.
2. Field survey concluded on July 02, 2019.
3. An Easement Plat of even date herewith accompanies this Field Note Description.
4. Public road as called and referenced in deed from Sam H. Crawford and Nina M. Crawford to the Lawler Family Trust recorded in Vol. 742, Pg. 579, dated October 1, 1969, D.R.C.C.T.

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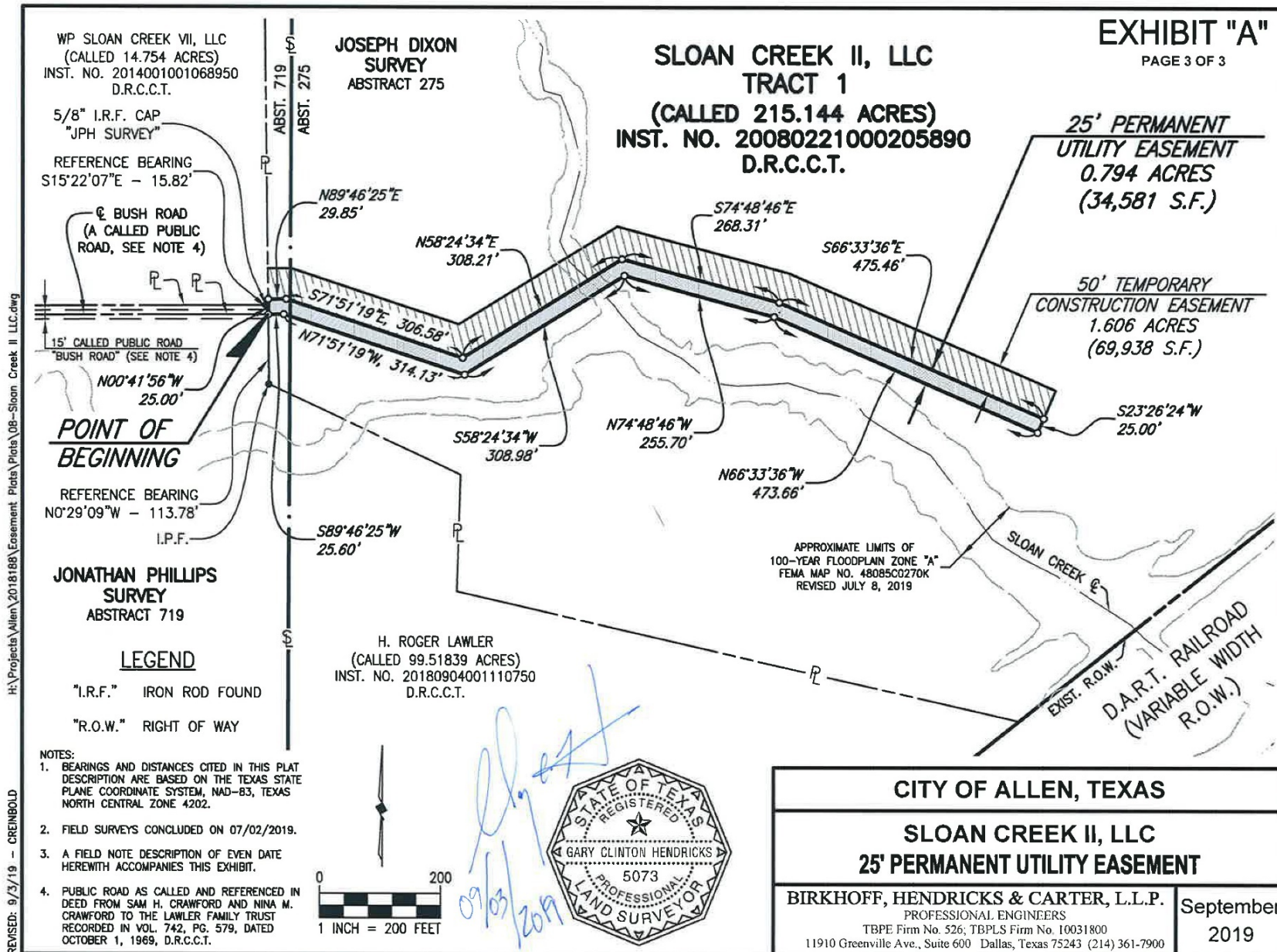


Exhibit "A"
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*Allen Retail Center, Lot 5
9/4/2019*

*City of Allen, TX
Sloan Creek Trunk Sewer*

EXHIBIT "A"
FIELD NOTE DESCRIPTION
PERMANENT UTILITY EASEMENT
CITY OF ALLEN, TEXAS

Being a strip of land, generally 10-feet in width for a Permanent Utility Easement, under, over and across Lot 5 of Allen Retail Center, an addition to the City of Allen as recorded by plat in Cabinet C, Page 583 of the Plat Records of Collin County, Texas (P.R.C.C.T.), and being within the Jonathan Phillips Survey, Abstract 719, Collin County, Texas, said 10-foot Permanent Utility Easement being more particularly described as follows:

BEGINNING at a point for corner, said point being in the west line of an existing variable width drainage and utility easement conveyed to the North Texas Tollway Authority (NTTA) by deed recorded in Instrument No. 20090116000052310 of the Deed Records of Collin County, Texas (D.R.C.C.T.), said point bearing S 85°34'24" W, a distance of 428.26 feet from a 3-inch wooden Texas Department of Transportation (TxDOT) monument found in the east line of U.S. Highway 75 (a variable width right-of-way), said point also bearing S 33°16'53" W, a distance of 1368.99 feet from a 1/2-inch iron rod found in said east right-of-way line of U.S. Highway 75 and in the most westerly property line of a called 215.144 acre tract of land conveyed to Sloan Creek II, LLC by deed recorded in Instrument No. 20080221000205890 (D.R.C.C.T.), said iron rod being the northwest property corner of a called 14.754 acre tract of land conveyed to WP Sloan Creek VII, LLC by deed recorded in Instrument No. 2014001001068950 (D.R.C.C.T.);

THENCE S 16°34'41" W, along the west line of said variable width NTTA drainage and utility easement, and being at all times a 30-foot perpendicular distance from and parallel with the west right-of-way line of U.S. Highway 75, a distance of 78.87 feet to a point for corner;

THENCE S 42°41'12" W, continuing along the west line of said variable width NTTA drainage and utility easement, a distance of 22.72 feet to a point for corner;

THENCE N 16°34'41" E, departing the west line of said variable width NTTA drainage and utility easement, being at all times a 40-foot perpendicular distance from and parallel with said west right-of-way line of U.S. Highway 75, a distance of 106.69 feet to a point for corner, said point being in the west line of said variable width NTTA drainage and utility easement;

THENCE S 36°53'04" E, along the west line of said variable width NTTA drainage and utility easement, a distance of 12.45 feet to the POINT OF BEGINNING, said 10-foot Permanent Utility Easement containing 0.021 acre (928 square feet) of land, more or less.

Notes:

1. Bearings and distances cited in this field note description are based on the Texas State Plane Coordinate System, NAD-83, Texas North Central Zone 4202.
2. Field survey concluded on July 02, 2019.
3. An Easement Plat of even date herewith accompanies this Field Note Description.

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09/03/2019*

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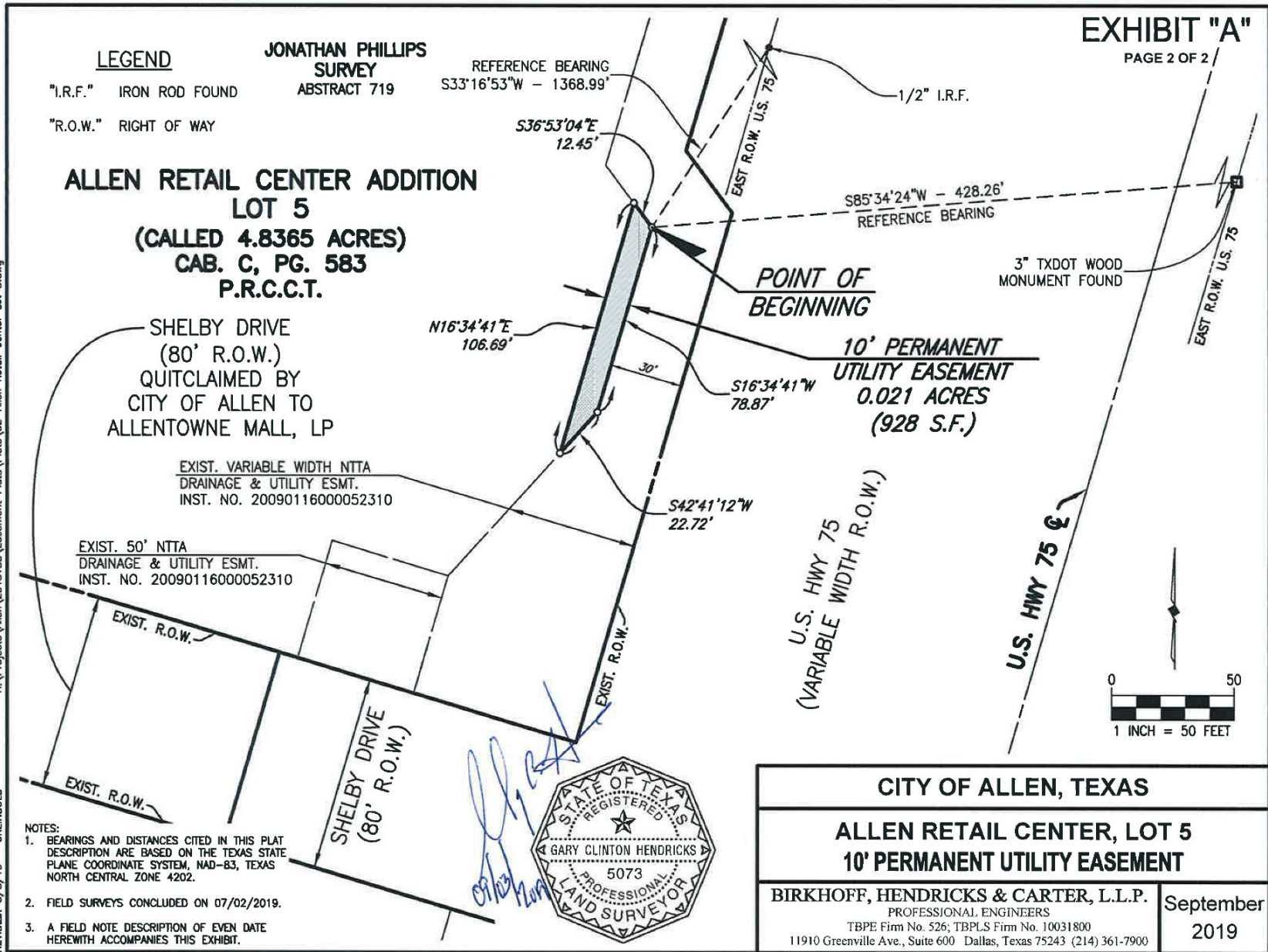


Exhibit "A"
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Allentowne Mall, LP
9/4/2019

City of Allen, TX
Sloan Creek Trunk Sewer

EXHIBIT "A"
FIELD NOTE DESCRIPTION
PERMANENT UTILITY EASEMENT
CITY OF ALLEN, TEXAS

Being a strip of land, generally 25-feet in width for a Permanent Utility Easement, under, over and across Tract 15 of the Jonathan Phillips Survey, Abstract 719, Collin County, Texas, a called 173.0607 acre tract of land conveyed to Allentowne Mall, LP by deed recorded in Instrument No. 20060403000429310 of the Deed Records of Collin County, Texas (D.R.C.C.T.), said 25-foot Permanent Utility Easement being more particularly described as follows:

BEGINNING at a point for corner, said point being in the north property line of said 173.0607 acre Allentowne Mall, LP tract and the south line of Shelby Drive (an existing 80-foot wide right-of-way), said point bearing S 62°46'45" W, a distance of 641.40 feet from a 3-inch wooden Texas Department of Transportation (TxDOT) monument found in the east line of the U.S. Highway 75 (a variable width right-of-way), said point also bearing S 32°29'24" W, a distance of 1665.46 feet from a 1/2-inch iron rod found in said east right-of-way line of U.S. Highway 75 and in the most westerly property line of a called 215.144 acre tract of land conveyed to Sloan Creek II, LLC by deed recorded in Instrument No. 20080221000205890 (D.R.C.C.T.), said iron rod being the northwest property corner of a called 14.754 acre tract of land conveyed to WP Sloan Creek VII, LLC by deed recorded in Instrument No. 2014001001068950 (D.R.C.C.T.);

THENCE S 28°23'17" E, departing the north property line of said 173.0607 acre Allentowne Mall, LP tract and said south right-of-way line of Shelby Drive, a distance of 89.35 feet to a point for corner, said point being in the west line of an existing 30-foot drainage and utility easement conveyed to the City of Allen by deed recorded in Instrument No. 20090116000052310 (D.R.C.C.T.);

THENCE S 16°34'47" W, along the west line of said 30-foot City of Allen drainage and utility easement, and being at all times a 30-foot perpendicular distance from and parallel with the west right-of-way line of U.S. Highway 75, a distance of 35.38 feet to a point for corner, said point being in the west line of said 30-foot City of Allen drainage and utility easement;

THENCE N 28°23'17" W, departing the west line of said 30-foot City of Allen drainage and utility easement, a distance of 124.99 feet to a point for corner;

THENCE N 16°36'43" E, a distance of 10.18 feet to a point for corner, said point being in the north property line of said 173.0607 acre Allentowne Mall, LP tract and in said south right-of-way line of Shelby Drive;

THENCE S 73°23'17" E, along the north property line of said 173.0607 acre Allentowne Mall, LP tract and said south right-of-way line of Shelby Drive, a distance of 25.18 feet to the POINT OF BEGINNING, said 25-foot Permanent Utility Easement containing 0.064 acre (2,807 square feet) of land, more or less.

Also, a 50-foot wide Temporary Construction Easement being immediately adjacent to and parallel with the west line of said 25-foot Permanent Utility Easement and containing 0.208 acre (9,045 square feet) of land, more or less.

Notes:

1. Bearings and distances cited in this field note description are based on the Texas State Plane Coordinate System, NAD-83, Texas North Central Zone 4202.
2. Field survey concluded on July 02, 2019.
3. An Easement Plat of even date herewith accompanies this Field Note Description.

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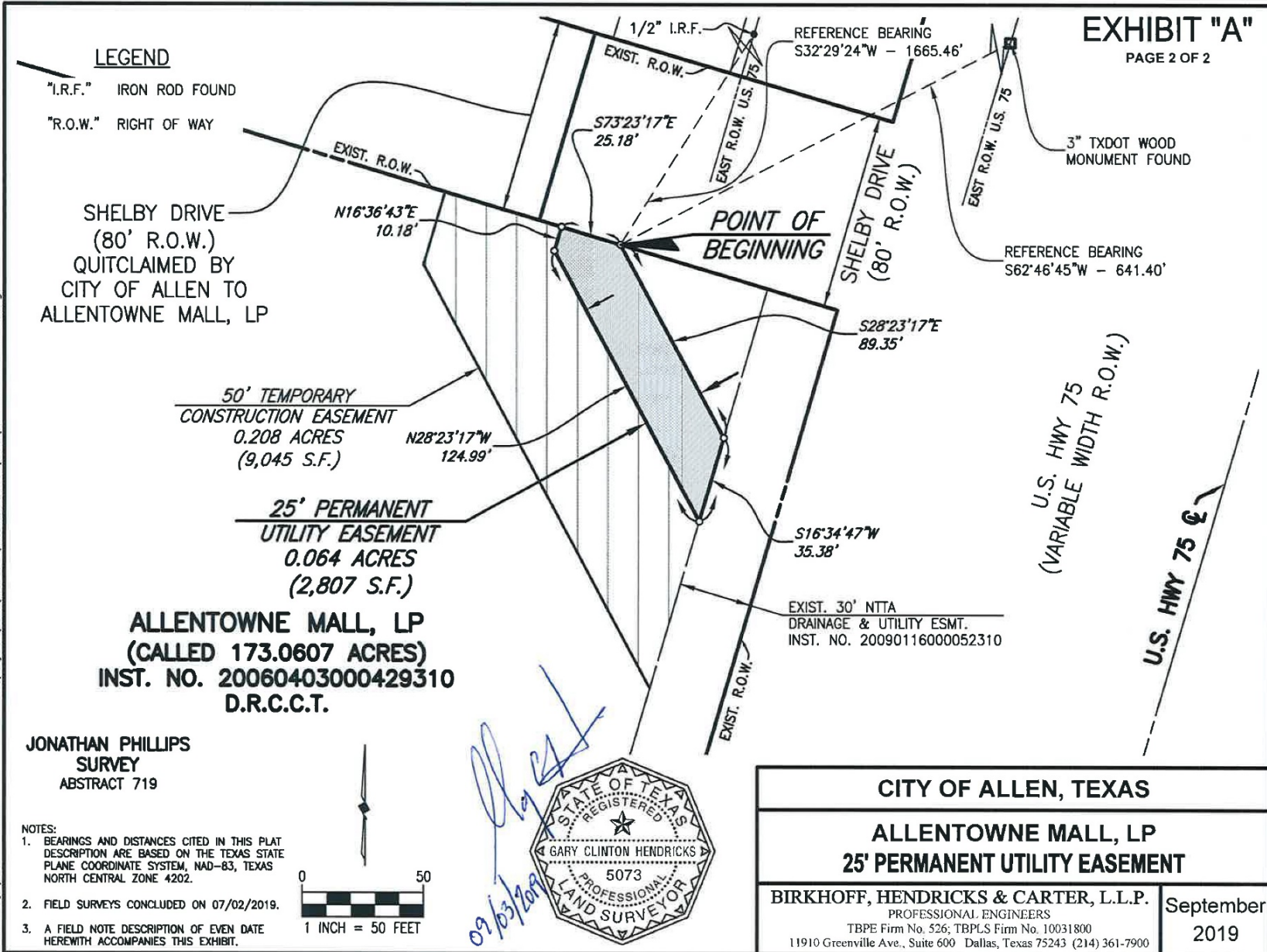


EXHIBIT "A"
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