

UNRECORDED

15/ITC/MMH/742942 ARB

AGREEMENT OF JOINT ACCESS EASEMENT

THIS EASEMENT AGREEMENT ("Agreement") is entered into on the 13th day of April, 2018, by and between Lawrence Alan Kroman and Debbie G. Kroman, ("Lot 2 Owner"), whose address is 6709 Jester Blvd., Austin, Texas 78750, and Art Investment and Mortgage Co., ("Lot 3 Owner"), whose address is PO Box 161775 Austin, Texas 78716. Lot 2 Owner and Lot 3 Owner may be referred to herein, collectively, as the "Parties" and individually as a "Party".

RECITALS:

A. Concurrently herewith, Lot 2 Owner is acquiring from the Lot 3 Owner that certain real property known as Lot 2, Block A, a Resubdivision of the Beard Family Subdivision, Section One, Lot One in Travis County, Texas, according to the map or plat thereof recorded in Document No. 200700248 in the Official Public Records of Travis County, Texas ("Lot 2").

B. Lot 3 Owner is also the owner of that certain real property known as Lot 3, Block A, a Resubdivision of the Beard Family Subdivision, Section One, Lot One in Travis County, Texas, according to the map or plat thereof recorded in Document No. 200700248 in the Official Public Records of Travis County, Texas ("Lot 3").

C. The Plat of the Resubdivision of the Beard Family Subdivision, Section One, Lot One in Travis County, Texas, according to the map or plat thereof recorded in Document No. 200700248 in the Official Public Records of Travis County, Texas (the "Plat"), described a certain 30' Access Easement across Lot 1 and Lot 2, which provided ingress to and egress from Lot 2 and Lot 3 to Jester Boulevard.

D. That portion of the 30' Access Easement across Lot 1 was also defined by that certain Non-Exclusive Joint Access Easement executed August 15, 2000, recorded at Document No. 2001127889 in the Official Public Records of Travis County, Texas, as further clarified and amended by that certain Easement Agreement for Access dated November 12, 2014, recorded at Document No. 2015008408 in the Official Public Records of Travis County, Texas, which provides access for the benefit of Lot 2 and Lot 3.

E. That portion of the 30' Access Easement across Lot 2 was not built in accordance with the Plat and is currently located outside of the Plat depicted access easement.

F. The Parties have agreed as a condition to the closing of the sale of Lot 2 to Lot 2 Owner to execute this Agreement to abandon that portion of the 30' Access Easement across Lot 2 as depicted on the Plat, replace it with the that access easement that is currently being used, which is described on Exhibit "A" attached hereto, and incorporated herein ("Easement Tract"). As a further condition to the closing of the sale of Lot 2 to Lot 2 Owner, Lot 3 Owner has agreed to cause the City of Austin and the owner of Lot 1, Block A, a Resubdivision of the Beard Family Subdivision, Section One, Lot One in Travis County, Texas, according to the map or plat thereof recorded in Document No. 200700248 in the Official Public Records of Travis County, Texas ("Lot 1") within six (6) months of the date of this Agreement to also abandon, waive, release and vacate that portion of the 30' Access Easement across Lot 2 as depicted on the Plat, replace it with the that access easement that is currently being used, which is described on Exhibit "A" attached hereto.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the benefits accruing or to accrue under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereto each acknowledge, the Parties agree as follows:

1. **Grant of Easement.** Lot 2 Owner hereto does hereby grant, bargain, sell and convey to Lot 3 Owner, and their successors and assigns, a non-exclusive easement ("Easement") on, over and across the Easement Tract, for purposes of providing vehicular and pedestrian ingress, egress and regress from Lot 1 to Lot 3 across Lot 2, and for purposes of exercising its rights to inspect, construct, maintain, repair and replace, as necessary, the Driveway (as hereinafter defined) in accordance with this Agreement. Each Party does hereby agree and shall be bound to warrant and forever defend the Easement and rights conveyed herein to the Parties and their successors and assigns against every person lawfully claiming or to claim all or any part thereof by, through or under the indemnifying party, but not otherwise; subject to those easements, restrictions, reservations and other encumbrances described in Exhibit "B" attached hereto and made a part hereof for all purposes.

2. **Easement Term.** The term of the Easement shall be perpetual, unless terminated by written agreement of Lot 2 Owner and Lot 3 Owner.

3. **Abandonment of Easement Tract Depicted by Plat.** Notwithstanding the 30' Access Easement as depicted on the Plat, the Owner of Lot 3, on its own behalf and on behalf of its successors and assigns, hereby abandons, waives and releases any and all rights, titles, and interests they have in that certain 30' Access Easement located on Lot 2 as depicted in the Plat. The Parties agree that the Easement Tract shall replace the Plat depicted 30' Access Easement on Lot 2 in its entirety. The waiver and release of the Lot 3 Owner above shall run with the land and be binding on all future owners of any interest in Lot 3.

4. **Maintenance of Easement Tract.** Lot 2 Owner and Lot 3 Owner shall be jointly responsible for the expense of constructing, maintaining, repairing, and replacing the Easement Tract and the existing driveway and existing related improvements (collectively, "Driveway") in good, attractive condition and repair, at a level of appearance and utility consistent with the highest industry standards then prevailing for similarly used properties in the market in which the Property is located. Lot 3 Owner has the right to eliminate any encroachments into the Easement Tract. Lot 3 Owner has the right to remove or relocate any fences within the Easement Tract or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Driveway, subject to the replacement of the fences to their original condition on the completion of the work. Subject to the approval of the Lot 2 Owner, the Lot 3 Owner at its sole cost and expense will install planters and other landscaping improvements or dividers in mutually approved locations to provide a visual separation between the Easement Tract and the existing driveway entrance for the residence on Lot 2 (labeled as "CONCRETE DRIVE" on the drawing of the Easement Tract attached as part of Exhibit "A") to discourage persons that are using the Easement Tract to access Lot 3 from entering the Lot 2 driveway. Lot 2 Owner and Lot 3 Owner shall be jointly responsible for maintaining such dividers.

5. **Default.** If any Party hereto fails to maintain, repair and replace the Driveway in the manner required in this Agreement ("Defaulting Party"), then the other Party hereto shall have the right ("Self Help Remedy"), upon giving such Defaulting Party at least thirty (30) days written notice and opportunity to cure, to cause the remediation of the Driveway, to the condition of repair and maintenance required hereunder and charge the Defaulting Party for all costs and expenses incurred by the Party exercising such remedy in connection with such work (collectively, "Cure Costs"). Within thirty (30) days following written demand, the Defaulting Party shall reimburse the Party exercising such Self Help Remedy for all Cure Costs. Any amount owed by a Defaulting Party hereunder and not paid when due shall accrue interest at the

lesser of eight percent (8%) per annum or the maximum rate allowed by law, from the date due until paid. If the non-defaulting Party does not exercise the Self-Help Remedy, then such non-defaulting Party may pursue any other right, claim or remedy as may be available to such non-defaulting Party under applicable law, including but not limited to restraining orders and injunctions prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefited by this Agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. **Rights Reserved.** The Owner of Lot 2 expressly reserves unto itself and its successors and assigns, the right to use and enjoy the Easement Tract (and the Driveway located thereon) for any other purposes whatsoever, except insofar as such use and enjoyment unreasonably interferes with the rights hereby granted to the Owner of Lot 3, and its successors and assigns.

7. **Modification or Termination.** This Agreement may be modified, amended, or terminated only by written agreement executed by the then current owners of Lot 2 and Lot 3. Such a joint action shall only become effective after it has been reduced to writing, executed, and filed in the Official Public Records of Travis County, Texas.

8. **Conformity with all Applicable Laws.** Nothing herein shall be construed as requiring or permitting any person or entity to perform any act or omission in violation of any local, state or federal law, regulation or requirement in effect at the time the act or omission would occur. Provisions herein which may require or permit such a violation shall yield to such law, regulation or requirement.

9. **Binding Effect.** The grants, obligations, benefits and burdens herein contained shall be covenants running with the land and shall apply to, be binding upon and inure to the benefit of all present and future owners and mortgagees of the Property and the Easement Tract, and their respective successors and assigns.

10. **Severability.** If any part of this Agreement or the application of this Easement or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable the validity of the remaining portions hereof shall not be affected thereby. All provisions hereof are therefore severable for the purpose of maintaining in full force and effect the remaining provisions hereof.

11. **Attorney's Fees.** If any Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

12. **Indemnification.** Each Party agrees to indemnify, defend, and hold harmless the other Party from and against any loss, attorney's fees, expenses, or claims attributable to the breach or default of any provision of this Agreement by the indemnifying Party. The obligations of the Parties under this provision will survive termination of this Agreement.

13. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

14. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created by this Agreement are performable in Travis County, Texas.

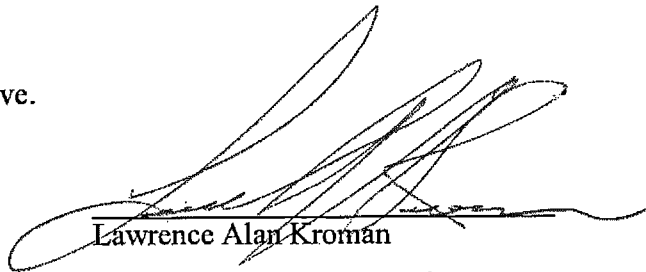
15. **Notices.** Any notice required or permitted under this Agreement shall be in writing. Such notice (whether actually received or not) will be deemed to be given the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and address to the intended recipient at the address specified above. Notice may also be given by regular mail, personal delivery, courier, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

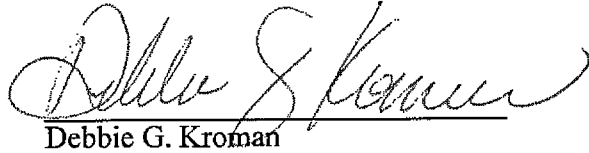
16. **Release of Easement by Lot 1 Owner and City of Austin; Escrow.** As a further condition to the closing of the sale of Lot 2 to Lot 2 Owner, Lot 3 Owner has agreed to cause the City of Austin ("City of Austin") and the owner of Lot 1 (the "Lot 1 Owner") and each lienholder holding a lien against Lot 1, within six (6) months of the date of this Agreement, to also abandon, waive, release and vacate that portion of the 30' Access Easement across Lot 2 as depicted on the Plat, and replace it with the that access easement that is currently being used, which is described on Exhibit "A" attached hereto. To secure this obligation, the Lot 3 Owner has agreed to escrow the sum of \$20,000.00 (the "Escrowed Sums") with Sprouse Shrader Smith PLLC closing the sale of Lot 2 to the Lot 2 Owner. In the event that the City of Austin, the Lot 1 Owner and each lienholder holding a lien against Lot 1 have not executed all such documents reasonably required to evidence that such 30' Access Easement across Lot 2 as depicted on the Plat has been abandoned, waived, released and vacated of record, by the date six (6) months from the date of this Agreement, the Escrowed Sums will be released to the Lot 2 Owner.

[SIGNATURE PAGE FOLLOWS]

Executed on the date first written above.

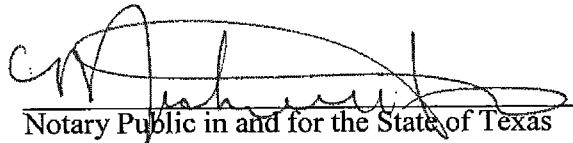
Lot 2 Owner:


Lawrence Alan Kroman

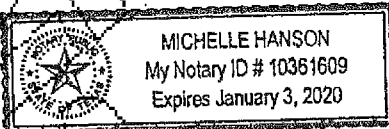

Debbie G. Kroman

THE STATE OF TEXAS
COUNTY OF TRAVIS

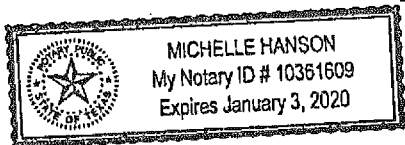
This instrument was acknowledged before me on the 16th day of April, 2018, by Lawrence Alan Kroman.

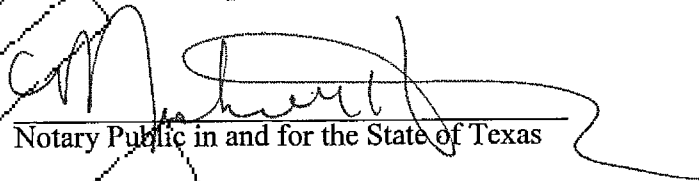

Notary Public in and for the State of Texas

THE STATE OF TEXAS
COUNTY OF TRAVIS


MICHELLE HANSON
My Notary ID # 10361609
Expires January 3, 2020

This instrument was acknowledged before me on the 16th day of April, 2018, by Debbie G. Kroman.


MICHELLE HANSON
My Notary ID # 10361609
Expires January 3, 2020


Notary Public in and for the State of Texas

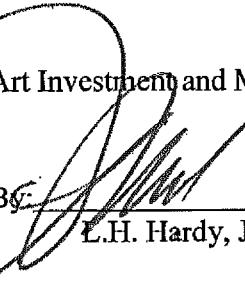
[signatures continued on following page]

UNOFFICIAL COPY

Executed on the date first written above.

Lot 3 Owner:

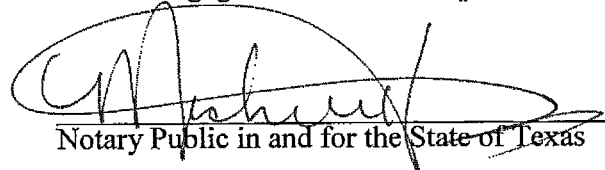
Art Investment and Mortgage Co.

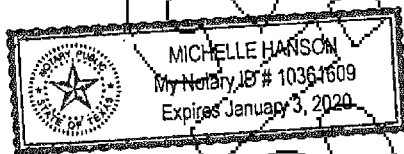
By: 
E.H. Hardy, Jr., President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 13th day of April, 2018, by L. H. Hardy, Jr., President of Art Investment and Mortgage Co., a Texas corporation, on behalf of said corporation.


Notary Public in and for the State of Texas



CONSENT AND SUBORDINATION OF LOT 3 LIENHOLDER

The undersigned, holder of the following liens against Lot 3: (i) vendor's lien retained in a deed recorded under Document No. 2016029177 of the Official Public Records of Travis County, Texas, and (ii) deed of trust recorded under Document No. 2016029978 of the Official Public Records of Travis County, Texas, hereby consents to the execution and recordation of this Agreement and subordinates its lien rights to this Agreement.

Westridge Mortgage, Ltd.

By: R. Hardy Interests, LLC

By: [Signature]
Name: Member of Westridge Mortgage, Ltd. L.H. Hardy, Jr.
Title: Member

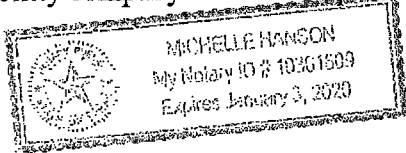
By: D. Hardy Interests, LLC

By: [Signature]
Name: Debra Sue Hardy
Title: Member

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 13th day of April, 2018, by L.H. Hardy, Jr. Member of R. Hardy Interests, LLC, as General Partner on behalf of Westridge Mortgage, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

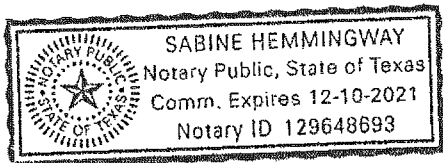


[Signature]
Notary Public in and for the State of Texas

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 13th day of April, 2018, by Debra Sue Hardy, member of D. Hardy Interests, LLC, as General Partner on behalf of Westridge Mortgage, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.



[Signature]
Notary Public in and for the State of Texas

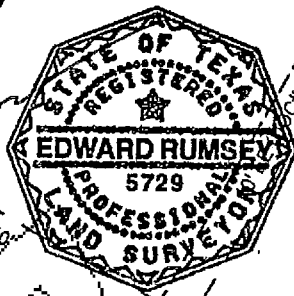
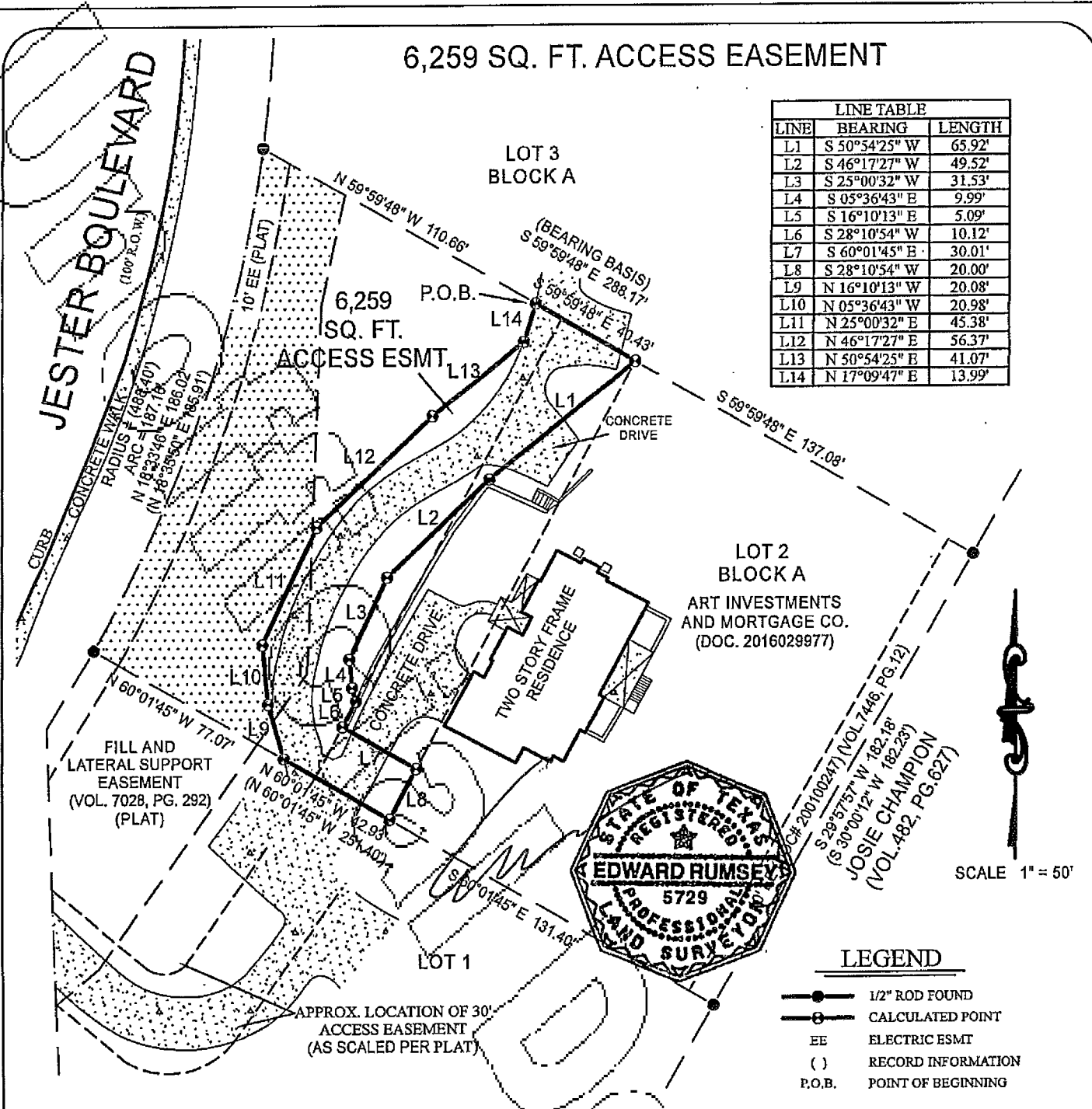
EXHIBIT "A"
Easement Tract

See attached.

UNOFFICIAL DOCUMENT

6,259 SQ. FT. ACCESS EASEMENT

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 50°54'25" W	65.92'
L2	S 46°17'27" W	49.52'
L3	S 25°00'32" W	31.53'
L4	S 05°36'43" E	9.99'
L5	S 16°10'13" E	5.09'
L6	S 28°10'54" W	10.12'
L7	S 60°01'45" E	30.01'
L8	S 28°10'54" W	20.00'
L9	N 16°10'13" W	20.08'
L10	N 05°36'43" W	20.98'
L11	N 25°00'32" E	45.38'
L12	N 46°17'27" E	56.37'
L13	N 50°54'25" E	41.07'
L14	N 17°09'47" E	13.99'



LEGEND

- 1/2" ROD FOUND
- CALCULATED POINT
- EE ELECTRIC ESMT
- () RECORD INFORMATION
- P.O.B. POINT OF BEGINNING

SURVEY DATE	JANUARY 24, 2018
JOB NO.	A0105218
FIELD BY:	JAKEB NOWLIN 11/15/2017
CALC. BY:	CHRIS ZOTTER 11/16/2017
DRAWN BY:	SEAN SUTTON 11/16/2017
RPLS CHECK	EDWARD RUMSEY 01/24/2018

LEGAL DESCRIPTION

BEING 6,259 SQUARE FEET OF LAND, BEING OUT OF THE O. DALTON SURVEY, ABSTRACT NO. 427, TRAVIS COUNTY, TEXAS, SAME BEING THAT LOT 2, BLOCK A, BEARD FAMILY SUBDIVISION SECTION ONE LOT ONE, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN DOCUMENT NUMBER 200700248, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, AND BEING THAT SAME TRACT OF LAND CONVEYED TO ART INVESTMENT & MORTGAGE CO. IN WARRANTY DEED RECORDED IN DOCUMENT NUMBER 2016029977, OFFICIAL PUBLIC RECORDS; SAID 6,259 SQUARE FEET OF LAND TO BE MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF.

ALLSTAR
Land Surveying
9020 ANDERSON MILL RD
AUSTIN, TEXAS 78729
(512) 249-8149 PHONE
(512) 331-5217 FAX
TBPLS FIRM NO. 10135000

BEING 6,259 SQUARE FEET OF LAND OUT OF LOT 2, BLOCK A, BEARD FAMILY SUBDIVISION, SECTION ONE, LOT ONE, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN DOCUMENT NUMBER 200700248, SAME BEING THAT CERTAIN ART INVESTMENTS AND MORTGAGE CO. RECORDED IN DOCUMENT NUMBER 2016029977, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, SAID 6,259 SQUARE FEET OF LAND TO BE MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING at a point in the southerly line of Lot 3, Block A, said subdivision, in the northerly line of said Lot 2, for the northwest corner hereof, from which an iron rod found for the northwest corner of said Lot 2, Block A, bears North 59 degrees 59 minutes 48 seconds West, a distance of 110.66 feet;

THENCE South 59 degrees 59 minutes 48 seconds East, along said Lot 2 and Lot 3 common line, a distance of 40.43 feet to a point said in line, for the northeast corner hereof, from which an iron rod found at the northeast corner of said Lot 2 bears, South 59 degrees 59 minutes 48 seconds East, 137.08 feet;

THENCE leaving said Lot 3 and said Lot 2 common line and through said Lot 2 the following 8 calls;

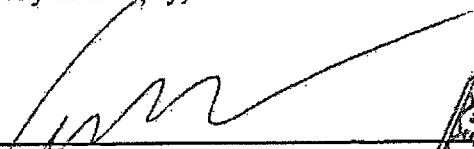
1. South 50 degrees 54 minutes 25 seconds West, 65.92 feet,
2. South 46 degrees 17 minutes 27 seconds West, 49.52 feet,
3. South 25 degrees 00 minutes 32 seconds West, 31.53 feet,
4. South 05 degrees 36 minutes 43 seconds East, 9.99 feet,
5. South 16 degrees 10 minutes 13 seconds East, 5.09 feet,
6. South 28 degrees 10 minutes 54 seconds West, 10.12 feet,
7. South 60 degrees 01 minutes 45 seconds East, 30.01 feet,
8. South 28 degrees 10 minutes 54 seconds West, 20.00 feet to a point in the common line of Lots 1 and 2, of said subdivision, for the southeast corner hereof;

THENCE North 60 degrees 01 minutes 45 seconds West, along the common line of said Lots 1 and 2, 42.93 feet to a point in said line, for the southwest corner hereof;

THENCE through said Lot 2, the following 6 calls.

1. North 16 degrees 10 minutes 13 seconds West, 20.08 feet,
2. North 05 degrees 36 minutes 43 seconds West, 20.98 feet,
3. North 25 degrees 00 minutes 32 seconds East, 45.38 feet,
4. North 46 degrees 17 minutes 27 seconds East, 56.37 feet,
5. North 50 degrees 54 minutes 25 seconds East, 41.07 feet,
6. North 17 degrees 09 minutes 47 seconds East, 13.99 feet to the Point of Beginning.

I, Edward Rumsey, licensed to practice Land Surveying in the State of Texas, hereby certify that the foregoing metes and bounds legal description and sketch were based on an on the ground survey, that all protrusions and encroachments into the easement area are accounted for including but not limited to, building footprint, eaves and roof overhangs and all visible improvements whatsoever.
Witness my hand and seal this, 18th day of January, 2018.


EDWARD C. RUMSEY, TX. RPLS #5729
ALL STAR LAND SURVEYING
9020 ANDERSON MILL ROAD
AUSTIN, TEXAS 78729
PROP. I.D.# 754284
JOB # A1108817

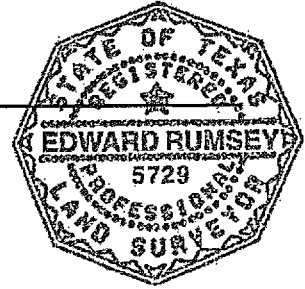


Exhibit "B"

Permitted Encumbrances

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests, and other instruments, other than conveyances of the surface fee estate, that affect the Easement Tract; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; and any encroachments or overlapping of improvements