20150325000327150 03/25/2015 11:07:58 AM AG 1/15

AFTER RECORDING, RETURN TO:
City Secretary
City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

STATE OF TEXAS §
§
COUNTY OF COLLIN §

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement") is made and entered into as of this 23 day of MARCH, 2015, ("Effective Date") by and between the City of McKinney, Texas, ("City") and Westgold Realtors Inc (hereinafter referred to as "Owner," whether one or more) on the terms and conditions hereinafter set forth.

WHEREAS, Owner owns approximately 123.254 acres (CollinCAD Property ID No. 1061941), more or less, situated in the MEREDITH HART Survey, Abstract No. A0371, Collin County, Texas, as is more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes allowed by law ("Property"); and

WHEREAS, the City desires to involuntarily annex certain lands including the Property; and

WHEREAS, the Owner objects to involuntary annexation by the City and desires to have the Property remain in the City's extraterritorial jurisdiction as well as retain the agricultural, wildlife management or timber land ad valorem tax exemption status on a certain portion thereof, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, the Owner's above-recited objection to involuntary annexation by the City shall not be construed as: (1) satisfying the requirements of filing a written protest under Chapter 43 of the Texas Local Government Code, including but not limited to Section 43.063(b); or (2) negating or having any effect on the Property being deemed to be voluntarily annexed if same should occur pursuant to Section 3 or Section 5 of this Agreement; and

WHEREAS, the City does not make any guarantee as to the Property retaining any specific tax status or classification, whether agriculture, wildlife management, timber land or otherwise, as such tax classifications are determined by the Central Appraisal District of Collin County and not by the City; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

WHEREAS, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the Full Term (as defined in Section 6 of this Agreement); and

WHEREAS, this Development Agreement is to be recorded in the Real Property Records of Collin County;

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. Land Subject to Agreement. The land that is subject to this Agreement is the Property. Owner represents that it is the sole owner of the Property.

2. Continuation of Extraterritorial Status. The City guarantees and agrees to the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the City, and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as specifically provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the Term of this Agreement.

3. Owner's Obligations to Maintain Extraterritorial Status. The Owner covenants and agrees not to use the Property for any use other than for agriculture, including the raising of livestock and crops, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, without the prior written consent of the City, save and except "Floodplain Reclamation Activities" (defined herein-below).

The Owner further covenants and agrees that the Owner will not file any type of subdivision plat or related development document for the Property with Collin County or the City until the Property has been annexed into, and zoned by, the City.

It is understood that Owner obtained a Conditional Letter of Map Revision ("CLOMR") from the Federal Emergency Management Agency ("FEMA") prior to the Effective Date of this Agreement. The Owner shall be allowed to proceed with construction activities related solely to the CLOMR without notification to the City and without City approval specifically including, but not limited to, excavation, grading, stockpiling, erosion control and equipment storage (collectively "Floodplain Reclamation Activities"). In addition, the Owner will be allowed to build a job trailer ("Construction Facilities") for the purpose of overseeing Floodplain Reclamation Activities. Said Construction Facilities shall not be subject to City development standards, reviews, permits or fees. Furthermore, the City agrees that no permits or fees will be required for any portion of the Floodplain Reclamation Activities.

The Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the City's corporate limits, until the Property has been annexed into, and zoned by, the City unless such construction is related solely to Floodplain Reclamation Activities or is otherwise allowed in an AG-Agricultural District zone within the City save and except to the extent that the construction of such building(s) terminates or invalidates the agricultural, wildlife management, or timber land ad valorem tax exemption applicable to the Property. Owner agrees to obtain permits and inspections from the City, and pay all related fees therefore, when constructing or allowing the construction, on the Property, of buildings that are otherwise allowed in an AG-Agricultural District zone within the City and which buildings do not terminate or invalidate the agricultural, wildlife management, or timber land ad valorem tax exemption applicable to the Property excluding Floodplain Reclamation Activities. The Owner also covenants and agrees that the City's AG-Agricultural District zoning requirements, as such requirements may be amended, apply to the Property; and, that the Property shall be used only for AG- Agricultural District zoning uses that exist on that Property at the time of the execution of this Agreement, unless otherwise provided in this Agreement. However, the Owner may construct an accessory structure to an existing single-family dwelling in compliance with all applicable City ordinances and codes.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and **the Owner who signs this Agreement covenants and agrees, jointly and severally, to indemnify, hold harmless, and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.**

4. City Regulation of Use and Development. Pursuant to Sections 43.035(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce all of the City's regulations and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's corporate limits. The use and development of the Property before and after annexation shall conform to the uses, space limitations, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to architectural and site standards requirements, parking standards and landscaping standards) set forth by the ordinances of the City (including but not limited to the Comprehensive Zoning Ordinance and the Subdivision Regulations), as they presently exist or may be amended. Prior to annexation, the Property shall be developed as if it has been designated with agricultural zoning. The City states and specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

5. Annexation and Zoning. The City will not annex the Property, unless requested to do so by Owner, during the term of this Agreement, provided that Owner complies with the terms and conditions of this Agreement. The parties agree that the City shall determine whether Owner is in compliance with the Agreement and whether it will approve annexation of the Property, which determination shall not be unreasonably withheld. Simultaneously with the termination of this Agreement, the City and Owner agree that the City may, initiate annexation proceedings for the Property (the "Annexation").

6. Term. This Agreement is an agreement authorized by Section 212.172 of the Texas Local Government Code. This Agreement is effective as of the date that both the City and the Owner have duly approved, executed and delivered this Agreement. The initial term of this Agreement (the "Initial Term") is five (5) years from the effective date. Upon expiration of the Initial Term, this Agreement shall automatically renew for up to one (1) additional extension term of five (5) years unless — at least 120 days prior to the expiration of the Initial Term or any extension term — the City or Owner provides written notice as set forth in Section 8 of this Agreement that either party intends to terminate the Agreement upon expiration of the Initial Term or any extension thereof, as applicable. The "Full Term" of this Agreement is defined as the period beginning on the effective date and ending on the date that this Agreement terminates. The term of this Agreement shall not be affected by the fact that some or all of the Property is annexed into the corporate limits of the City.

The Owner, and all of the Owner's heirs, successors and assigns, shall be deemed to have filed a petition for voluntary annexation far enough in advance of the end of the Full Term, to allow for annexation of the Property, or any portion thereof, to be completed on or after the end of the Term. The Owner agrees that any such annexation shall be conclusively presumed to have been adopted with the consent of all appropriate and necessary persons and entities as though a petition for annexation had been duly tendered by all of the owners of the Property. The City may initiate procedures in preparation for such an annexation of all or a portion of the Property under this Section 6 before the expiration of this Agreement, provided, however, that the City may not annex any part of the Property under this Section 6 before the expiration of this Agreement. Further, as an express condition to City's right to annex the Property or any portion thereof under this Section 6, the City must first approve a service plan to provide full municipal services to any portion of the Property annexed in the manner set forth in Section 43.056(b), (c), (e), (f), and (g) of the Texas Local Government Code, as such provisions exist as of the effective date of this Agreement.

If annexation proceedings begin pursuant to this Section 6, the Owner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures under an annexation plan and the Owner further agrees that the Owner will not in any manner contest any annexation of the Property or any portion thereof initiated by the City under this Section 6 or any annexation of the Property or any portion thereof otherwise completed by the City after the Full Term. In connection with annexation pursuant to

this section, the Owner hereby waives any vested rights they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

7. Default. If any party breaches any of the terms of this Agreement, then that party shall be in default ("Defaulting Party") of this Agreement ("Event of Default"). If an Event of Default occurs, the non-defaulting party shall give the Defaulting Party written notice of such Event of Default, and if the Defaulting Party has not cured such Event of Default within thirty (30) days of said written notice, this Agreement is breached. Each party is entitled to all remedies available to it at law or in equity.

The Owner acknowledges that if any plat or related development document is filed in violation of this Agreement or if the Owner commences development of the Property in violation of this Agreement, then any provision of this Agreement that restricts or otherwise limits the City's ability to annex the Property or any portion thereof is void. Upon such an occurrence, in addition to the City's other remedies, such act shall constitute a petition for voluntary annexation by the Owner and the Property will be subject to annexation at the discretion of the City Council. The Owner, and all of the Owner's heirs, successors and assigns, agrees that such annexation shall be conclusively presumed voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner with the consent of all appropriate and necessary persons and entities. Notwithstanding the foregoing, the Owner and City agree that any plan, exhibit, design, permit, or other document related to the CLOMR and/or the Floodplain Reclamation Activities are not to be considered development documents and are not subject to City oversight. Additionally, the City acknowledges that Floodplain Reclamation Activities do not act as a petition for voluntary annexation pursuant to this Section 7.

If annexation proceedings begin pursuant to this Section, the Owner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures under an annexation plan. However, as an express condition to City's right to annex the Property, the City must approve a service plan to provide full municipal services to any portion of the Property annexed in the manner set forth in Section 43.056(b), (c), (e), (f), and (g) of the Texas Local Government Code, as such provisions exist as of the effective date of this Agreement. The Owner further agrees that the Owner will not in any manner contest any annexation of the Property or any portion thereof initiated by the City under this Section 7 or any annexation of the Property or any portion thereof completed by the City after the conclusion of the full term of this Agreement. Furthermore, the Owner hereby waives any and all vested rights and claims that they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section 3 herein and this Section 7.

8. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained below:

City: City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069
Attn: City Manager

With copy to: Mark S. Houser, City Attorney
Brown & Hofmeister, L.L.P.
740 E. Campbell Road
Suite 800
Richardson, Texas 75081

Owner: Westgold Realtors Inc
4545 ALLSTATE DR
RIVERSIDE, CA 92501-1701

9. Miscellaneous.

(a) Agreement Runs With the Property. This Agreement shall run with the Property and shall be binding on and inure to the benefit of the Owner's successors and assigns.

(b) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual written agreement of the parties hereto.

(c) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(e) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall

be construed as if such invalid illegal or unenforceable provision had never been contained herein.

(f) Subsequent Statutory Changes. Unless specifically citing its retroactive effect, no subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

(g) No Chapter 245 Permit. Pursuant to Section 43.035(e) of the Texas Local Government Code this Agreement, and any requirement contained in this Agreement, shall not constitute a "permit" as defined in Chapter 245 of the Texas Local Government Code. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

CITY OF McKINNEY

By: _____
TOM MUEHLENBECK
Interim City Manager

Date Signed: 3/23/15

ATTEST:

_____
SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

CITY OF McKINNEY
COUNTY OF COLLIN, TEXAS

[Signatures continued on following page.]

OWNER:
WESTGOLD REALTORS INC, *a California corporation*

By: Niels T. Sorensen
Name: ~~NIELS T. SORENSEN~~
Title: President
Date Signed: 3-18-15

THE STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **TOM MUEHLENBECK**, Interim City Manager of the City of McKinney, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on CITY's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 23rd DAY OF March, 20 15

SHELAI Y. MULLINS
Notary Public
STATE OF TEXAS
My Comm. Exp. November 21, 2018

Shelai Mullins
Notary Public Collin County, Texas
My commission expires 11-21-18

THE STATE OF ~~TEXAS~~, CALIFORNIA
COUNTY OF RIVERSIDE

BEFORE ME, the undersigned authority, in and for said County, ~~Texas~~ CALIFORNIA, on this day personally appeared NIELS T. SORENSEN in his capacity as PRESIDENT of ***WESTGOLD REALTORS INC***, a California corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of and as the act of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 18th DAY OF March, 20 15.

DORIS C. PEREZ
COMM. #2044370
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Comm. Expires Nov. 2, 2017

Notary Public RIVERSIDE County, Texas ~~CALIFORNIA~~
My commission expires NOV. 2, 2017

OWNER:
WESTGOLD REALTORS INC, *a California corporation*

By: _____
Name: ~~NIELS T. SORENSEN~~
Title: President
Date Signed: 3-18-15

THE STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **TOM MUEHLENBECK**, Interim City Manager of the City of McKinney, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on CITY's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 20___.

_____
Notary Public _____ County, Texas
My commission expires _____

THE STATE OF ~~TEXAS~~, CALIFORNIA
COUNTY OF RIVERSIDE

BEFORE ME, the undersigned authority, in and for said County, ~~Texas~~, CALIFORNIA on this day personally appeared NIELS T. SORENSEN in his capacity as PRESIDENT of ***WESTGOLD REALTORS INC***, a California corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of and as the act of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 18th DAY OF March, 20 15.

_____
Notary Public RIVERSIDE County, ~~Texas~~ CALIFORNIA
My commission expires NOV. 2, 2017

DORIS C. PEREZ
COMM. #2044370
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Comm. Expires Nov. 2, 2017

Exhibit "A"
Description and Depiction of Property

Situated in Collin County, Texas in the Meredith Hart Survey, Abstract No. 371 and being a consolidation of a called (1) 5.715 acre tract, (2) 24.601 acre tract, (3) 38.998 acre tract, (4) part of a 43.950 acre tract and (5) part of a 30 acre tract of land said tracts of land being more fully referenced as follows:

(1) Being called 5.715 acres, all of that same tract of land conveyed to James R. Caton and wife from Tom B. Wilson, Sr., et al by deed dated November 1, 1979 and recorded in Volume 1206, Page 511 of the Deed Records of Collin County, Texas.

(2) Being called 24.601 acres, all of that same tract of land conveyed to James R. Caton and from James R. Caton, Jr. by deed dated March 31, 1978 and recorded in Volume 1288, Page 716 of the Deed Records of Collin County, Texas.

(3) Being called Tract C: 38.998 acres, all of that same tract of land conveyed to James R. Caton and wife from Tom B. Wilson, Sr., et al by deed dated November 1, 1979 and recorded in Volume 1206, Page 511 of the Deed Records of Collin County, Texas.

(4) Being part of a called 43.950 acre tract of land described in a contract sale and purchase to James Ray Caton from Texas Veterans Land Board, dated June 14, 1976 and recorded in Volume 1004, Page 620 of the Deed Records of Collin County, Texas.

(5) Being part of a called 30 acre tract of land conveyed to James Ray Caton from Bessie M. Orenduff by deed dated November 30, 1976 and recorded in Volume 1028, Page 489 of the Deed Records of Collin County, Texas.

Said consolidation being more particularly described by metes and bounds as follows:

Beginning at an iron rod set in the Southeast Right-of-Way line of U.S. 75 (Central Expressway) and at the North corner of said 5.715 acre tract said iron rod lies North 47 degrees 21 minutes East, 191.4 feet from a Right-of-Way monument, South 47 degrees 21 minutes West, 51.7 feet from a Right-of-Way monument and North 0 degrees 56 minutes 34 seconds East, 1.6 feet from a found iron rod;

Thence South 0 degrees 56 minutes 34 seconds West, 1613.38 feet with the West lines of said 5.715 acre tract and 24.601 acres tract along and near a hedge row to an iron rod at a fence corner post at the Southeast corner of said 24.601 acre tract of land;

Thence North 88 degrees 07 minutes 58 seconds West, 1458.80 feet along and near a fence and with the South line of said 24.601 acre tract to an iron rod for corner at the Southwest corner of said 24.601 acre tract and in the East line of a 50.00 foot wide drainage easement from U.S. 75 to

Honey Creek for which a recorded instrument could not be found;

Thence South 1 degrees 51 minutes 46 seconds West, 531.64 feet with the East line of said 38.998 acre tract and the East Right-of-Way of said drainage easement to an iron rod found at a Right-of-Way monument for corner;

Thence South 88 degrees 08 minutes 28 seconds East, 1459.35 feet along and near a fence and with the North line of said 43.950 acre tract to an iron rod for corner at a fence corner post;

Thence South 1 degrees 47 minutes 22 seconds West, 492.36 feet along and near a fence across said 43.950 acres tract to a fence corner post at an interior corner of said 43.950 acre tract;

Thence South 2 degrees 04 minutes 59 seconds West, 404.22 feet with the most Southerly East line of said 43.950 acre tract to an iron rod found for corner;

Thence South 1 degrees 56 minutes 33 second West, with the East line of said 30 acre tract passing an iron rod found at a crosstie post on line at 344.69 feet and continuing South 1 degrees 56 minutes 33 seconds West, across said 30 acre tract for a total distance of 726.69 feet to a point in the center of the East Fork Trinity from which an iron rod for reference bears North 1 degrees 56 minutes 33 seconds East, 50.0 feet;

Thence South 36 degrees 29 minutes 25 seconds West, 153.60 feet with the center of the East Fork Trinity and with the East line of said 30 acre tract to a point for corner from which a fence post bears North 88 degrees 13 minutes 19 seconds West, 20.7 feet;

Thence North 88 degrees 13 minutes 19 seconds West, 1372.8 feet along and near a fence and with the South line of said 30 acres tract to a 2 inch iron pipe for corner at the Southwest corner of said 30 acre tract, the East line of said 38.998 acre tract and in the East Right-of-Way of said drainage easement;

Thence South 1 degrees 53 minutes 24 seconds West, 736.04 feet with the East line of said 38.998 acre tract and the East Right-of-Way of said drainage easement to a point for corner in the Northeast Right-of-Way of F.M. 543 from which a Right-of-Way monument bears South 22 degrees 27 minutes East, 272.4 feet;

Thence with the Northeast Right-of-Way of F.M. 543 and the West line of said 38.998 acre tract as follows:

North 29 degrees 43 minutes 38 seconds West, 29.59 feet to a point;

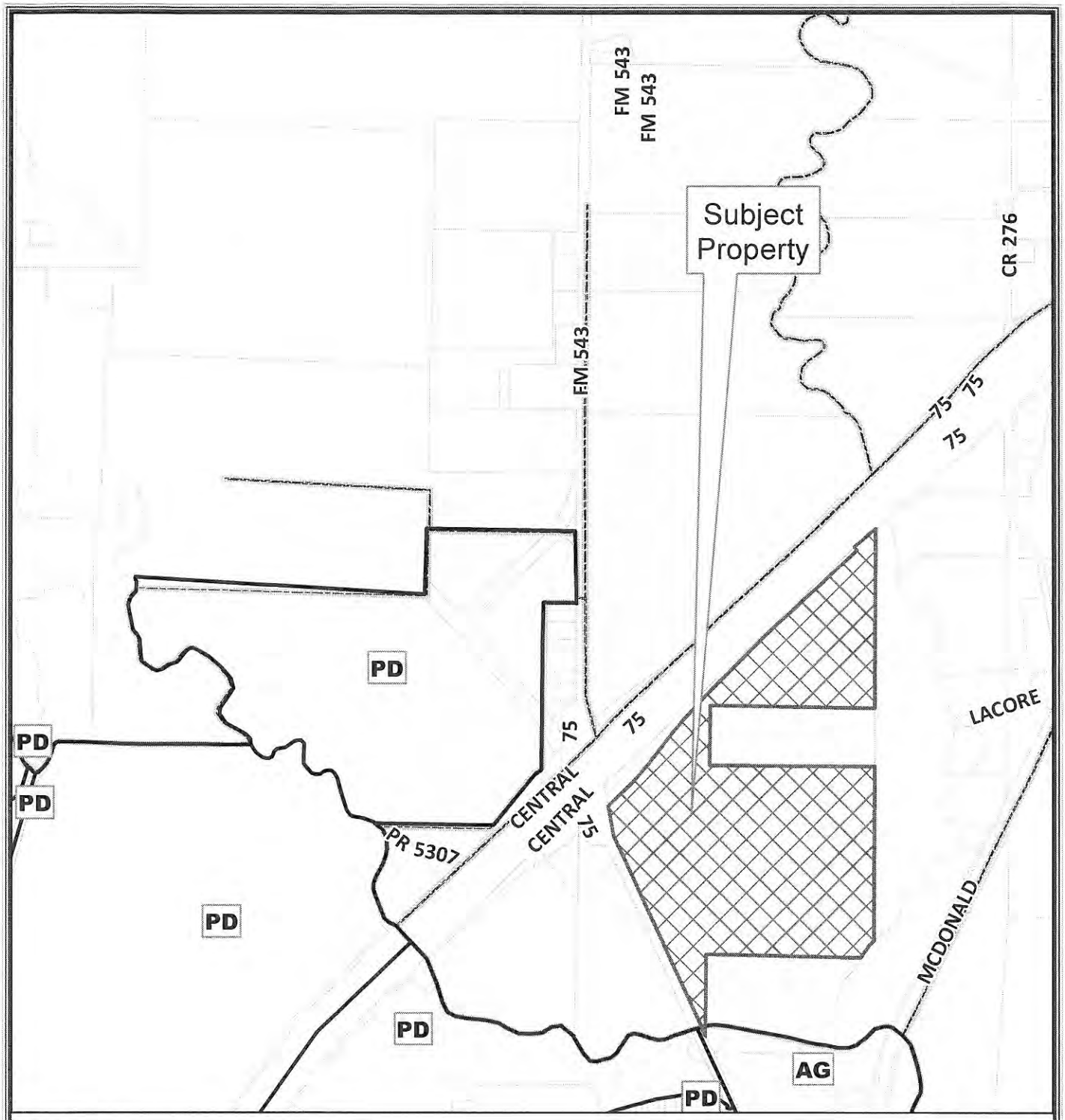
North 24 degrees 01 minutes 00 seconds West, passing a Right-of-Way monument at 1402.9 feet and continuing for a total distance of 1951.9 feet to an iron rod at a Right-of-Way monument in the South Right-of-Way of U.S. 75 (Central Expressway);

Thence with the Southeast Right-of-Way of U.S. 75 and the Northwest line of said 38.998 acre tract, 24.601 acre tract and 5.715 acre tract as follows:

North 10 degrees 33 minutes West, 517.17 feet to an iron rod at a Right-of-Way monument;

North 48 degrees 39 minutes East, passing a Right-of-Way monument on line at 376.95 feet and continuing for a total distance of 878.09 feet to an iron rod;

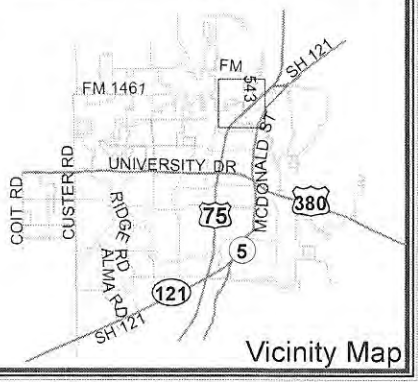
North 47 degrees 21 minutes East, passing a Right-of-Way monument at 409.0 feet, an iron rod at 479.15 feet, and Right-of-Way monuments on line at 799.30 feet, 1498.23 feet, 2297.15 feet and continuing for a total distance of 2488.55 feet to the Point of Beginning.



Location Map

CollinCAD Property ID: 1061941

McKINNEY TEXAS
Unique by nature.



Vicinity Map

DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
03/25/2015 11:07:58 AM
$78.00 DFOSTER
20150325000327150