

TEMPORARY CONSTRUCTION EASEMENT

THIS **TEMPORARY CONSTRUCTION EASEMENT** ("Agreement"), dated _____, 2020 is made by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, whose address is 702 S.W. 8th Street Bentonville, AR 72716, with a mailing addresses of Sam M. Walton Development Complex, 2001 S.E. 10th Street Bentonville, AR 72716-0550, Attn: Realty Management ("Grantor") and the **CITY OF SAGINAW, TEXAS**, whose address is 333 E. McLeroy Blvd., Saginaw, Texas 76179 ("Grantee"). The following statements are a material part of this Agreement:

WHEREAS, Grantor is the owner of two tracts of land depicted as Tract 1 and Tract 2 on **Exhibit A**, attached; and

WHEREAS, Grantee is the purchaser of a tract of land depicted as Tract 1 and Tract 2 on **Exhibit A**, attached; and

WHEREAS, Grantor wishes to quitclaim, and Grantee wishes to receive, a temporary easement over, under and across Tract 1 and Tract 2 solely for the purposes set forth herein.

THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Grantor quitclaims to Grantee a temporary, non-exclusive easement for the benefit of Grantee to reconstruct existing driveways over and across the real property described and depicted on **Exhibit A** (the "Easement"). Grantee, through its officers, employees and agents, at Grantee's sole cost and expense, shall have the right to enter upon the Easement in such a manner as may be reasonably necessary for the sole purpose as above written. This Easement shall expire upon the completion of Grantee's stated purpose, but, in no event, shall the Easement survive beyond September, 2020; provided, all Grantee's warranties, representations and indemnities shall survive the termination of the Easement and continue for the benefit and protection of Grantor for as long as possible under applicable law. In no event shall Grantee use this Easement in a manner which, in Grantor's sole discretion, interferes with Grantor's use of Tract 1 and Tract 2. Grantee also covenants and agrees that the Easement will not be used for the erection of any temporary structures. Grantor shall have the right, in Grantor's sole discretion, to relocate the Easement upon Grantor's property. Following termination of the Easement, Grantee shall provide Grantor written release and extinguishment, in recordable form, of all Grantee's rights in and to the Easement.

2. Grantee agrees to use due care in any use of the Easement, and in the construction, installation, repair, replacement and maintenance of Grantee's improvements, so as not to unreasonably disturb Grantor's use of Grantor's property. Grantee further agrees Grantee shall not interfere with Grantor's business operations while utilizing the Easement. Grantee covenants and agrees to properly maintain the Easement and keep same in good order, free and clear from rubbish. Grantee further covenants and agrees that all construction activities will be timed so as to not interfere with trucking schedules of Grantor, and that driveways damaged by Grantee's use of the Easement will be promptly replaced in accordance with Grantor's specifications at Grantee's sole cost and expense, and to Grantor's satisfaction. Notwithstanding the foregoing, routine maintenance, construction and use of the Easement shall be prohibited during the months of November and December and all work shall be completed by October 31st of the then-current year. Grantee covenants and agrees that Grantor's tract will not be used as a staging area and will not be used to store equipment, trucks, dirt, supplies, materials, rubble, spoil or any other materials of Grantee. Grantee shall not dig any open pits, trenches, borings or holes on or under the Easement. Grantee also covenants and agrees that no heavy trucks or equipment associated with the use of the Easement by Grantee shall utilize the entranceways, streets or roadways located on Grantor's property or the Easement without Grantor's prior written consent.
3. Following completion of work, if Grantee has removed or damaged any of Grantor's improvements, including but not limited to paving, sod, herbage, lighting standards, signage or landscaping within the Easement or otherwise on Grantor's property, Grantee shall at Grantee's sole cost and expense immediately restore the property injured by Grantee's activities to the same condition as existed previous to Grantee's entry upon the particular property.
4. Grantee, and Grantee's successors and assigns, shall indemnify, defend and hold harmless Grantor and Wal-Mart (as defined herein) from and against any and all losses, liabilities (including strict liability), claims, causes of action, damages, injuries, liens (including mechanic's liens and materialman's liens), expenses and costs, including without limitation reasonable attorney's fees of any settlement, judgment or claims of any and every kind whatsoever paid, incurred or suffered, in connection with any damage or liability to persons or property that might arise directly or indirectly during construction of Grantee's improvements, from use of Grantee's improvements by Grantee, its customers, suppliers, employees, and tenants or anyone else using the such improvements, or use of the Easement. Grantee further agrees that Grantee shall, at all times during the duration of this Agreement, maintain and pay for comprehensive general liability insurance affording protection to Grantor and Grantee, and naming Grantor, and Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart"), as an additional insureds on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$5,000,000.00 for each occurrence. Grantee further agrees, upon request, to deliver to Grantor a certificate or certificates from an insurance company or insurance companies

satisfactory to Grantor evidencing the existence of such insurance and naming Grantor and Wal-Mart as an additional insured.

5. Grantee, and Grantee's successors and assigns, shall indemnify, defend and hold harmless Grantor and Wal-Mart from and against any and all losses, liabilities (including strict liability), claims, causes of action, damages, injuries, expenses and costs, including without limitation reasonable attorney's fees of any settlement, judgment or claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Grantor and/or Wal-Mart, and their respective successors and assigns, by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of, the construction of Grantee's improvements, use of Grantee's improvements by Grantee, its customers, suppliers, employees, and tenants or anyone else using the such improvements, the use of the Easement, or any claims the escape, seepage, leakage, spillage, emission, discharge or release of any hazardous substance resulting from the operations of Grantee upon or under any tract of land owned by Grantor including without limitation, any losses, liabilities (including strict liability), damage, injuries, expenses and costs, including, without limitation, reasonable attorney's fees, of any settlement or judgment or claims asserted or arising under, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, any so called federal, state or local "Superfund" or "Superlien" statute, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any hazardous substance.
6. In exercising any rights and privileges under this Agreement, Grantee shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements"). In addition to any other provisions of any Storm Water Requirements:
 - A. Grantee shall, as required by any Storm Water Requirements, prepare a Storm Water Pollution Prevention Plan (the "Grantee SWPPP") for that part of the property owned by Grantor and shown on **Exhibit A** on which Grantee plans to conduct earth-disturbing activities. The Grantee SWPPP shall identify and describe the role of any other contractor, entity or individual contemporaneously undertaking earth-disturbing activities in complying with the Storm Water Requirements, and shall identify the manner in which Grantee and any such contractor, entity or individual shall coordinate to comply with the Storm Water Requirements and to avoid negatively impacting any erosion or sediment controls

during earth-disturbing activities. Grantee shall provide Grantor with a copy of the Grantee SWPPP prior to initiating any earth-disturbing activities.

B. Grantee shall, as required by any Storm Water Requirements, submit a "Notice of Intent" (as such term is commonly defined in the environmental compliance industry) or other permit application prior to initiating any ground-disturbing activities at the property owned by Grantor and shown on **Exhibit A** covering the number of acres which will be disturbed by Grantee. Grantee shall submit such Notice of Intent or other permit application regardless of whether Grantor or any agent or contractor of Grantor has also submitted any Notice of Intent or other permit application, unless any Storm Water Requirements expressly prohibit such submittal. Grantee shall provide Grantor with a copy of the Notice of Intent or other permit application prior to initiating any earth-disturbing activities.

C. If Grantee and Grantor, or any agent or contractor of Grantor, contemporaneously undertake any earth-disturbing activities, Grantee shall attend any weekly meetings held by Grantor, or any agent or contractor of Grantor, to review the requirements of any applicable permits, the Grantee SWPPP and other SWPPPs prepared for the property owned by Grantor and shown on **Exhibit A** to address any problems that have arisen in implementing the SWPPPs or maintaining Best Management Practices ("BMPs").

D. In the event Grantee, in exercising the rights and privileges of this Agreement requires the development and/or use of borrow, material, equipment or waste storage sites, Grantee agrees it shall, prior to the development and/or use of such sites, obtain any permits or approvals necessary for the legal use of such sites, and shall also comply with all laws, regulations and permit conditions applicable to such sites.

7. Grantee shall (i) comply in all respects with all immigration laws, statutes, rules, codes and regulations, (ii) properly maintain all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Grantee's employees, and (iii) respond in a timely fashion to any inspection requests related to such I-9 Forms. Grantee shall fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Grantee or any of its employees. Grantee shall, on a bi-annual basis during the term of this Agreement, conduct an audit of the I-9 Forms for its employees and shall promptly correct any defects or deficiencies which are identified as a result of such audit. Grantor may, in its sole discretion, terminate this Agreement immediately if, at any time during the term, (x) Grantee violates or is in breach of any provision of this paragraph or (y) the USCIS determines that Grantee has not complied with any of the immigration laws, statutes, rules, codes and regulations of the United States. Grantee shall require all

subcontractors performing any work on the Utility System to comply with the covenants set forth in this paragraph.

8. Grantee shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the construction, installation, repair, replacement and maintenance of Grantee's improvements. Grantee shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment and the employment of its workers.
9. If Grantee defaults in the performance of any provision contained in this Agreement, Grantor may terminate this Agreement following written notice and a fifteen-(15) day period during which Grantee shall have the opportunity to cure such default to Grantor's satisfaction. If Grantor terminates this Agreement under this provision, Grantee may exercise any and all remedies available at law or in equity.
10. Grantee acknowledges that it is Grantee's sole responsibility to obtain any governmental permits to perform any required maintenance checks, and to abide by any governmental regulations associated with the use, construction, patrolling, replacement and maintenance of Grantee's improvements, as applicable.
11. This Agreement may be executed in one or more counterparts (including by facsimile), all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first written above.

**WAL-MART REAL ESTATE
BUSINESS TRUST**

ATTEST:

By: 

By: 

Its: *Sr. Director Real Estate*

Its: Assistant Secretary

City of Saginaw, Texas
("Grantee")

ATTEST:

By: _____
Todd Flipppo, Mayor

Janice England, City Secretary

ACKNOWLEDGEMENT

STATE OF ARKANSAS

)

) §§

COUNTY OF BENTON

)

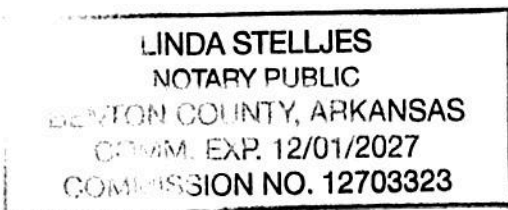
On this ¹⁹6th day of Dec., 2020, before me, the undersigned notary public in and for said County and State, personally appeared before me ^{TR. Rose}TR. Rose, to me personally known, who, being by me duly sworn, did say that ^{he}she is ^{SP. Dir}SP. Dir of WAL-MART, a Delaware statutory trust, and that the seal affixed to the foregoing instrument is the seal of said entity, and said ^{SR. Dir}SR. Dir acknowledged said instrument to be the free act and deed of said entity.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State the ^{6th} day of Dec., 2019.

Linda Stelljes
NOTARY PUBLIC

My Commission Expires:

12/01/2027



ACKNOWLEDGEMENT

STATE OF TEXAS

) §§

COUNTY OF TARRANT

On this ____ day of _____, 2020, before me, the undersigned notary public in and for said County and State, personally appeared before me Todd Flippo, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of Saginaw, and that said instrument was signed in behalf of said entity, and said Todd Flippo, Mayor of the City of Saginaw acknowledged said instrument to be the free act and deed of said entity.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State the ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT A
Easement

See attachments behind

EXHIBIT "A"

TRACT 1

BEING a tract of land situated in the Benjamin L. Thomas Survey, Abstract No. 1497, City of Saginaw, Tarrant County, Texas and being part of Lot 1AR, Block A of Wal-Mart Supercenter at Saginaw Addition Lot 1RA and Lot 1RB, Block A, an addition to the City of Saginaw, Texas according to the plat thereof recorded in Cabinet A, Page 12355, Plat Records of Tarrant County, Texas and being more particularly described as follows:

COMMENCING at a 1/2" iron rod found in the north right-of-way line of W. Bailey Boswell Road (a variable width right-of-way) at the southwest corner of said Lot 1AR, Block A;

THENCE along said right-of-way line, North 89°34'27" East, a distance of 244.02 feet to a point for the southwest corner of a public open space easement according to the plat recorded in Cabinet A, Page 8990, Plat Records of Tarrant County, Texas, also being the **POINT OF BEGINNING**;

THENCE departing said right-of-way line, and along said public open space easement, North 44°34'27" East, a distance of 35.36 feet to a point for corner;

THENCE departing said public open space easement, the following courses and distances:

North 00°25'33" West, a distance of 80.00 feet to a point for corner;

North 89°34'27" East, a distance of 52.00 feet to a point for corner;

South 00°25'33" East, a distance of 69.29 feet to a point for corner;

South 45°34'10" East, a distance of 34.54 feet to a point for corner in the north line of a proposed right-of-way dedication;

THENCE along said proposed right-of-way dedication, South 89°34'27" West, a distance of 10.83 feet to a point for corner in said public open space easement;

THENCE along said public open space easement and said proposed right-of-way dedication, South 45°25'33" East, a distance of 16.04 feet to a point for corner in said right-of-way line, from which a 1/2" iron rod found at the southeast corner of said Lot 1RA Block A, bears North 89°34'27" East, a distance of 1497.40 feet;

THENCE departing said public open space easement and said proposed right-of-way dedication, along said right-of-way line, South 89°34'27" West, a distance of 102.00 feet to the **POINT OF BEGINNING** and containing 6,290 square feet or 0.144 acres of land.

TEMPORARY CONSTRUCTION EASEMENT

TRACT 1 - 6,290 SQ.FT.

TRACT 2 - 3,004 SQ.FT.

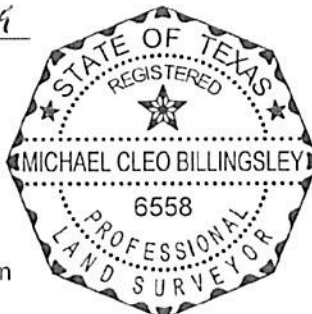
BENJAMIN THOMAS SURVEY

ABSTRACT NO. 1497

CITY OF SAGINAW

TARRANT COUNTY, TEXAS

M.C. Billingsley 10/23/19
MICHAEL C. BILLINGSLEY
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6558
801 CHERRY STREET, UNIT 11
SUITE 1300
FORT WORTH, TEXAS 76102
PH. 817-335-6511
michael.billingsley@kimley-horn.com



Kimley»Horn

13455 Noel Road, Two Galleria Office
Tower, Suite 700, Dallas, Texas 75240 FIRM # 10115500 Tel. No. (972) 770-1300
Fax No. (972) 239-3820

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	NBE	MCB	Oct. 2019	065427000	1 OF 4

TRACT 2

BEING a tract of land situated in the Benjamin L. Thomas Survey, Abstract No. 1497, City of Saginaw, Tarrant County, Texas and being part of Lot 1AR, Block A of Wal-Mart Supercenter at Saginaw Addition Lot 1RA and Lot 1RB, Block A, an addition to the City of Saginaw, Texas according to the plat thereof recorded in Cabinet A, Page 12355, Plat Records of Tarrant County, Texas and being more particularly described as follows:

COMMENCING at a 1/2" iron rod found in the north right-of-way line of W. Bailey Boswell Road (a variable width right-of-way) at the southwest corner of said Lot 1AR, Block A;

THENCE along said right-of-way line, North 89°34'27" East, a distance of 535.29 feet to a point for the southwest corner of a public open space easement according to the plat recorded in Cabinet A, Page 8990, Plat Records of Tarrant County, Texas, also being the **POINT OF BEGINNING**;

THENCE departing said right-of-way line, and along said public open space easement, North 44°34'27" East, a distance of 35.36 feet to a point for corner;

THENCE departing said public open space easement, the following courses and distances:

North 00°25'33" West, a distance of 14.00 feet to a point for corner;

North 89°34'27" East, a distance of 61.00 feet to a point for corner;

South 00°25'33" East, a distance of 14.00 feet to a point for corner in said public open space easement;

THENCE along said public open space easement, South 45°25'33" East, a distance of 26.16 feet to a point for corner in the north line of a proposed right-of-way dedication;

THENCE along said right-of-way dedication and said public open space easement, South 45°25'33" East, a distance of 9.19 feet to a point for corner; from which a 1/2" iron rod found at the southeast corner of said Lot 1RA Block A, bears North 89°34'27" East, a distance of 1197.13 feet;

THENCE departing said right-of-way dedication and said public open space easement, and along said right-of-way line, South 89°34'27" West, a distance of 111.00 feet to the **POINT OF BEGINNING** and containing 3,004 square feet or 0.0690 acres of land.

TEMPORARY CONSTRUCTION EASEMENT
TRACT 1 - 6,290 SQ.FT.
TRACT 2 - 3,004 SQ.FT.
BENJAMIN THOMAS SURVEY
ABSTRACT NO. 1497
CITY OF SAGINAW
TARRANT COUNTY, TEXAS

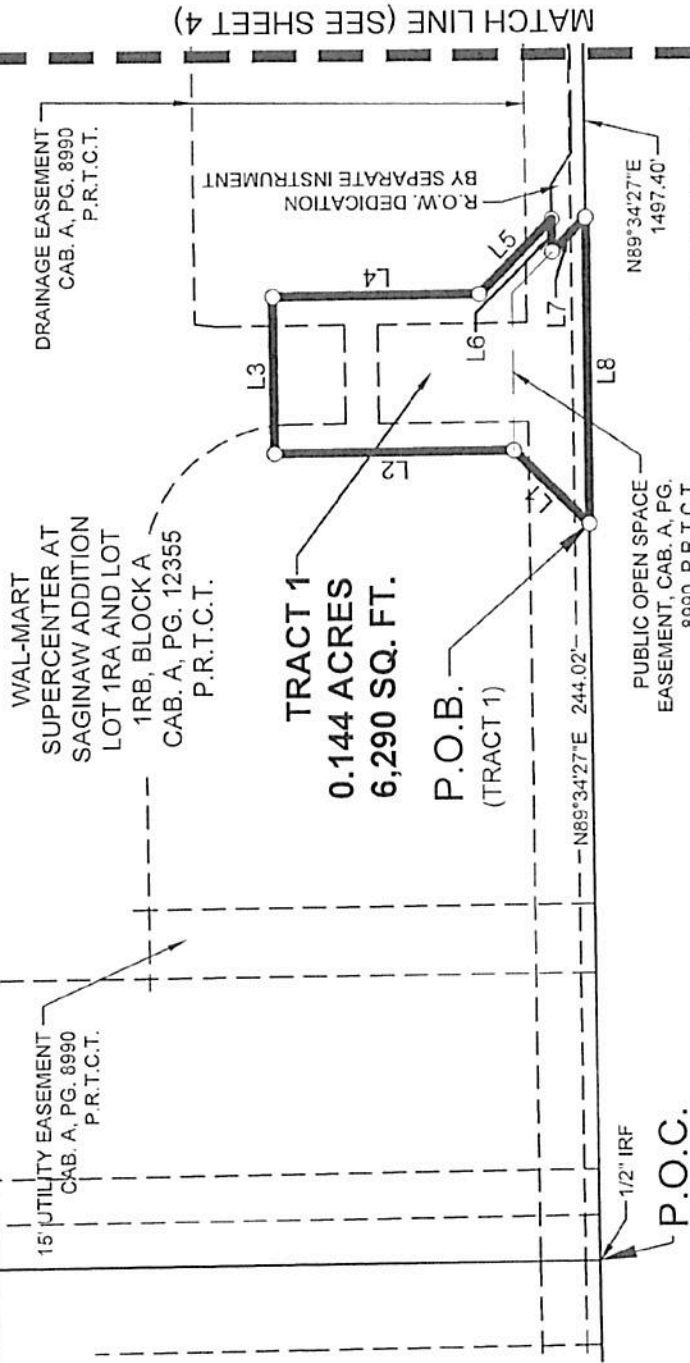
Kimley»Horn

13455 Noel Road, Two Galleria Office
Tower, Suite 700, Dallas, Texas 75240 FIRM # 10115500 Tel. No. (972) 770-1300
Fax No. (972) 239-3820

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	NBE	MCB	Oct. 2019	069427000	2 OF 4



GRAPHIC SCALE IN FEET



W. BAILEY BOSWELL ROAD

(VARIABLE WIDTH R.O.W.)
(FORMERLY COUNTY ROAD NO. 4040)

TEMPORARY CONSTRUCTION
EASEMENT

TRACT 1 - 6,290 SQ. FT.
TRACT 2 - 3,004 SQ. FT.
BENJAMIN THOMAS SURVEY
ABSTRACT NO. 1497
CITY OF SAGINAW
TARRANT COUNTY, TEXAS

LINE TABLE			LINE TABLE		
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	N44°34'27"E	35.36'	L9	N44°34'27"E	35.36'
L2	N00°25'33"W	80.00'	L10	N00°25'33"W	14.00'
L3	N89°34'27"E	52.00'	L11	N89°34'27"E	61.00'
L4	S00°25'33"E	69.29'	L12	S00°25'33"E	14.00'
L5	S45°34'10"E	34.54'	L13	S45°25'33"E	26.16'
L6	S89°34'27"W	10.83'	L14	S45°25'33"E	9.19'
L7	S45°25'33"E	16.04'	L15	S89°34'27"W	111.00'
L8	S89°34'27"W	102.00'			

LEGEND

AD = Aluminum disk found
IRF = Iron rod found
O.P.R.T.C.T. = Official Public Records, Tarrant Co. Texas
D.R.T.C.T. = Deed Records, Tarrant Co. Texas
P.R.T.C.T. = Plat Records, Tarrant Co. Texas
P.O.B. = Point of Beginning
P.O.C. = Point of Commencing

NOTES

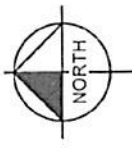
Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983(2011). The coordinates shown are local surface coordinates.

EHRLINGER, NICOLAS 10/23/2019 1:21 PM K:\DAL_SURVEY\059427000-BAILEY BOSWELL DESIGN SURVEY\DWG\059427000-BAILEY BOSWELL TCE 3.DWG

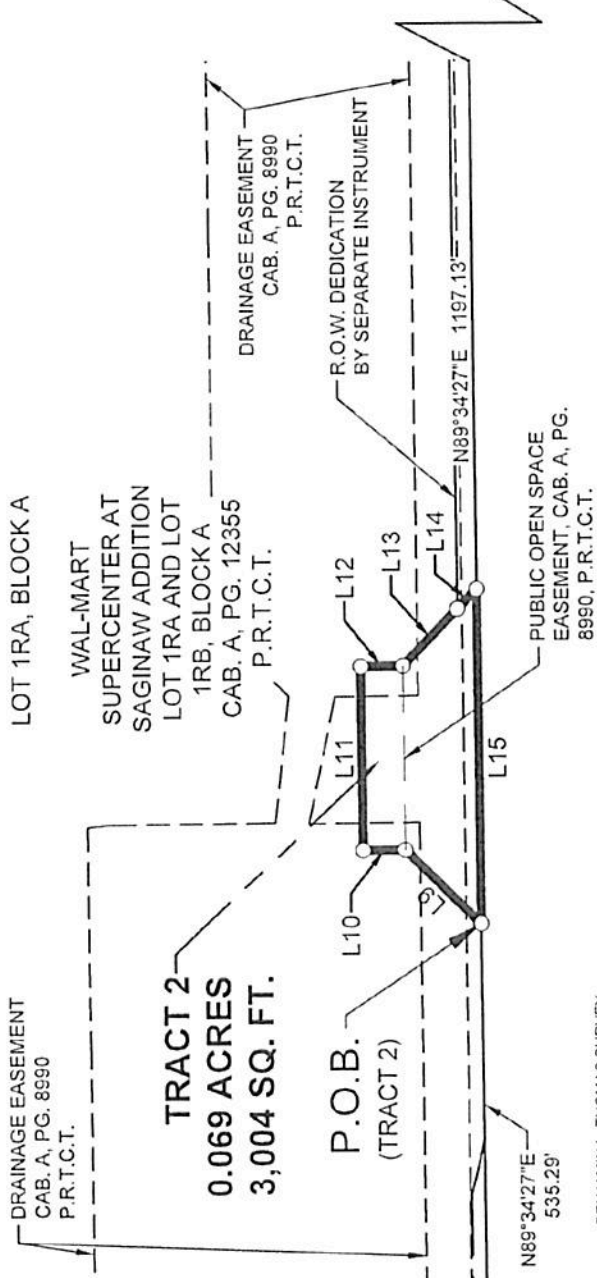
Kimley»Horn

13455 Noel Road, Two Gallions Office
Tower, Suite 700, Dallas, Texas 75240
Tel. No. (972) 770-1300
Fax No. (972) 235-0820
FIRM # 10115500

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	NBE	MCE	Oct. 2019	059427000	3 OF 4



N. SAGINAW
BOULEVARD
(BUSINESS 287, 120' R.O.W.)



W. BAILEY BOSWELL ROAD
(VARIABLE WIDTH R.O.W.)
(FORMERLY COUNTY ROAD NO. 4040)

TEMPORARY CONSTRUCTION EASEMENT
TRACT 1 - 6,290 SQ.FT.
TRACT 2 - 3,004 SQ.FT.
BENJAMIN THOMAS SURVEY
ABSTRACT NO. 1497
CITY OF SAGINAW
TARRANT COUNTY, TEXAS

- LEGEND
- AD = Aluminum disk found
 - IRF = Iron rod found
 - O.P.R.T.C.T. = Official Public Records, Tarrant Co. Texas
 - D.R.T.C.T. = Deed Records, Tarrant Co. Texas
 - P.R.T.C.T. = Plat Records, Tarrant Co. Texas
 - P.O.B. = Point of Beginning
 - P.O.C. = Point of Commencing

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983(2011). The coordinates shown are local surface coordinates.

Kimley»Horn

13455 Nord Road, Two Galleria Office
Tower, Suite 700, Dallas, Texas 75240
Tel. No. (972) 776-1300
Fax No. (972) 239-3820

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 50'	NBE	MCB	Oct. 2019	069427003	4 OF 4