



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	1/25/10
Department:	Public Works & Engineering
Department Head	Alan L. Upchurch
Agenda Coordinator (include phone #): Irene Pegues (7198)	
Project No. 5537-3	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Easement for Encroachments by and between Legacy North PT MFA II, L.P., and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

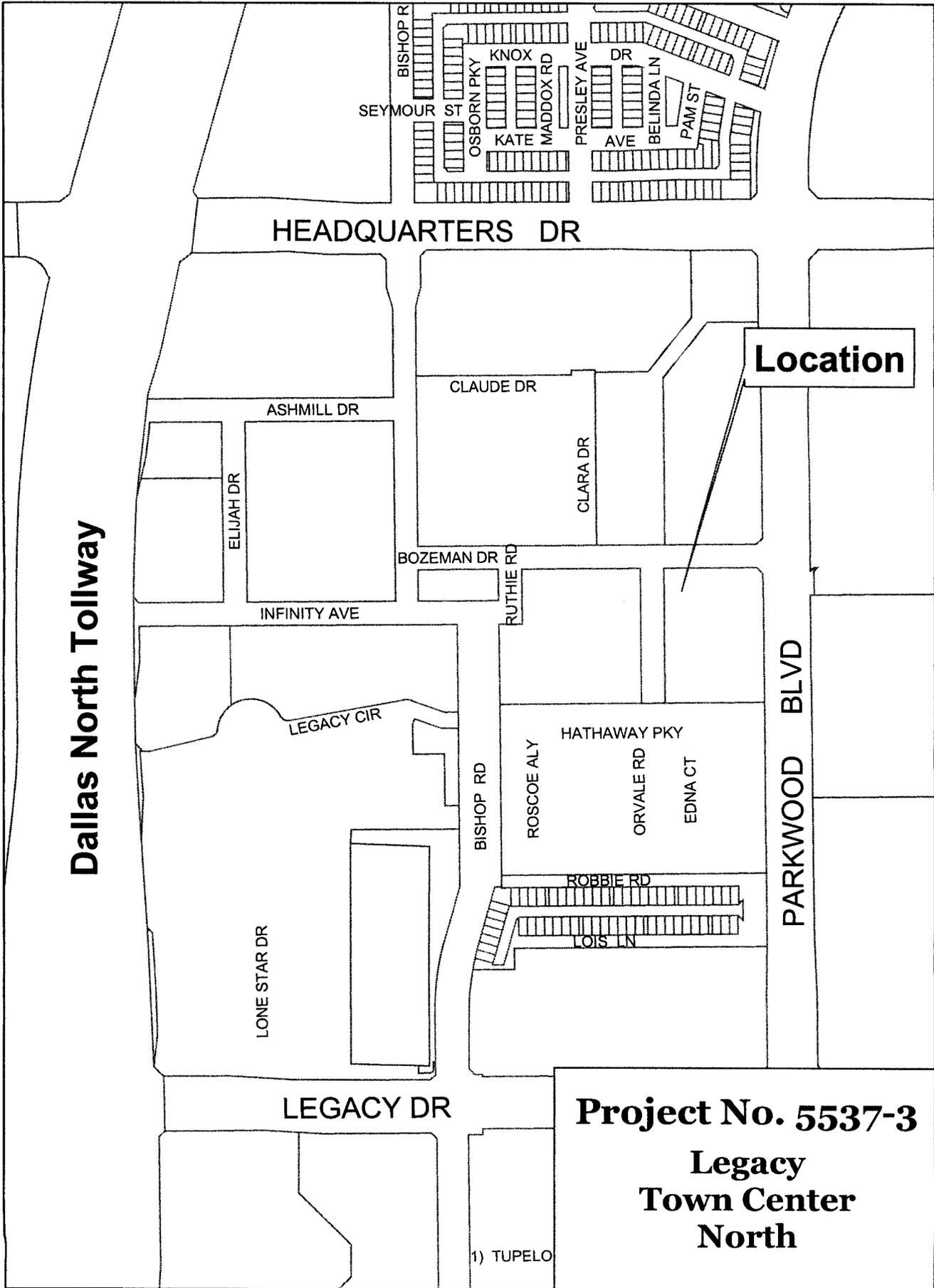
COMMENTS: This item has no fiscal impact.

SUMMARY OF ITEM

The construction of the apartments in Legacy Town Center North, bounded by Hathaway Parkway, Orvale Road, Bozeman Drive and Parkwood Boulevard, resulted in six encroachments into the public rights of way. The encroachments are typically seven inches or less. Staff has reviewed the encroachments and determined that they will not impact the public use of the rights of way. The developer has requested that the City grant them an easement for the encroachments. Staff has reviewed the easement and recommends that Council approve the attached resolution which authorizes the City Manager to execute the easement.

List of Supporting Documents: Location Map	Other Departments, Boards, Commissions or Agencies N/A
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Dallas North Tollway



Location

Project No. 5537-3

**Legacy
Town Center
North**

1) TUPELO

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Easement for Encroachments by and between Legacy North PT MFA II, L.P. and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Easement for Encroachments between Legacy North PT MF II, L.P., and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

EASEMENT FOR ENCROACHMENTS

THIS EASEMENT FOR ENCROACHMENTS ("Agreement") is entered into this _____ day of January, 2010, by and between the **CITY OF PLANO, TEXAS** (the "City") and **LEGACY NORTH PT MFA II, L.P.**, a Delaware limited partnership (the "Property Owner"), and is as follows:

WHEREAS, Property Owner is the owner of the real property (the "Property") described on Exhibit "A" attached hereto and incorporated herein by reference.

WHEREAS, certain improvements constructed on the Property encroach into public rights of way which are adjacent to the Property, which Encroachments (herein so called) are more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

WHEREAS, the governing body of the City has expressed their consent and approval for the Encroachments, and has agreed to grant an easement for the Encroachments, under the terms and conditions set forth below, which terms and conditions the Property Owner hereby agrees to accept.

NOW, THEREFORE, in consideration of the promises and covenants of the Property Owner as set forth below, the City hereby consents and agrees to allow the Encroachments and hereby grants to Property Owner an easement to permit continuation of the Encroachments, subject to the following requirements and conditions which shall be binding upon the Property Owner, and which shall run with the Property such that it will also be binding upon any future owners of the Property, to wit:

1. This consent for such encroachment and easement is strictly limited to the existing Encroachments, and does not extend to any other future structures or encroachments, and does not confer permission to enlarge or expand the Encroachments in the future. The granting of this consent and easement is given on a one-time-only basis and shall not constitute any precedent or entitlement to make any other future encroachments of a like kind or to any greater or lesser extent or degree.

2. The City shall not be liable to the Property Owner or its successors in interest for any damage to or destruction of such structures, or to any contents thereof, or to any restriction in the usefulness of such structure, by virtue of any lawful activities of the City within or as to such easement. The Property Owner and its successors in interest assume any and all risks associated therewith.

3. In the event of the removal or destruction (whether partial or complete) of Encroachments by any cause whatsoever, this Agreement shall not confer any right or privilege to the Property Owner or to its successors in interest to construct or reconstruct this or another structure in the same or another encroaching location. Any such construction or reconstruction shall require the separate permission and agreement of the governing body of the City, which such permission and agreement may be denied or withheld for any reason whatsoever.

4. The covenants, conditions and agreements contained in this Agreement shall run with the land and be binding upon and benefit the Property Owner and all future owners of the Property.

5. This Agreement shall expire and be null and void if not recorded in the Land Records of Collin County, Texas within thirty (30) days of its full execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above shown.

CITY:

CITY OF PLANO, TEXAS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of January, 2010, by _____ of CITY OF PLANO, TEXAS, a _____, on behalf of said _____.

My Commission Expires:

Notary Public, State of Texas
Printed Name: _____

PROPERTY OWNER:

LEGACY NORTH PT MFA II, L.P.,
a Delaware limited partnership

By: Columbus LN II GP, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of January, 2010, by _____, _____ of Columbus LN II GP, LLC, a Texas limited liability company, on behalf of said limited liability company acting in its capacity as the general partner of Legacy North PT MFA II, L.P., a Delaware limited partnership.

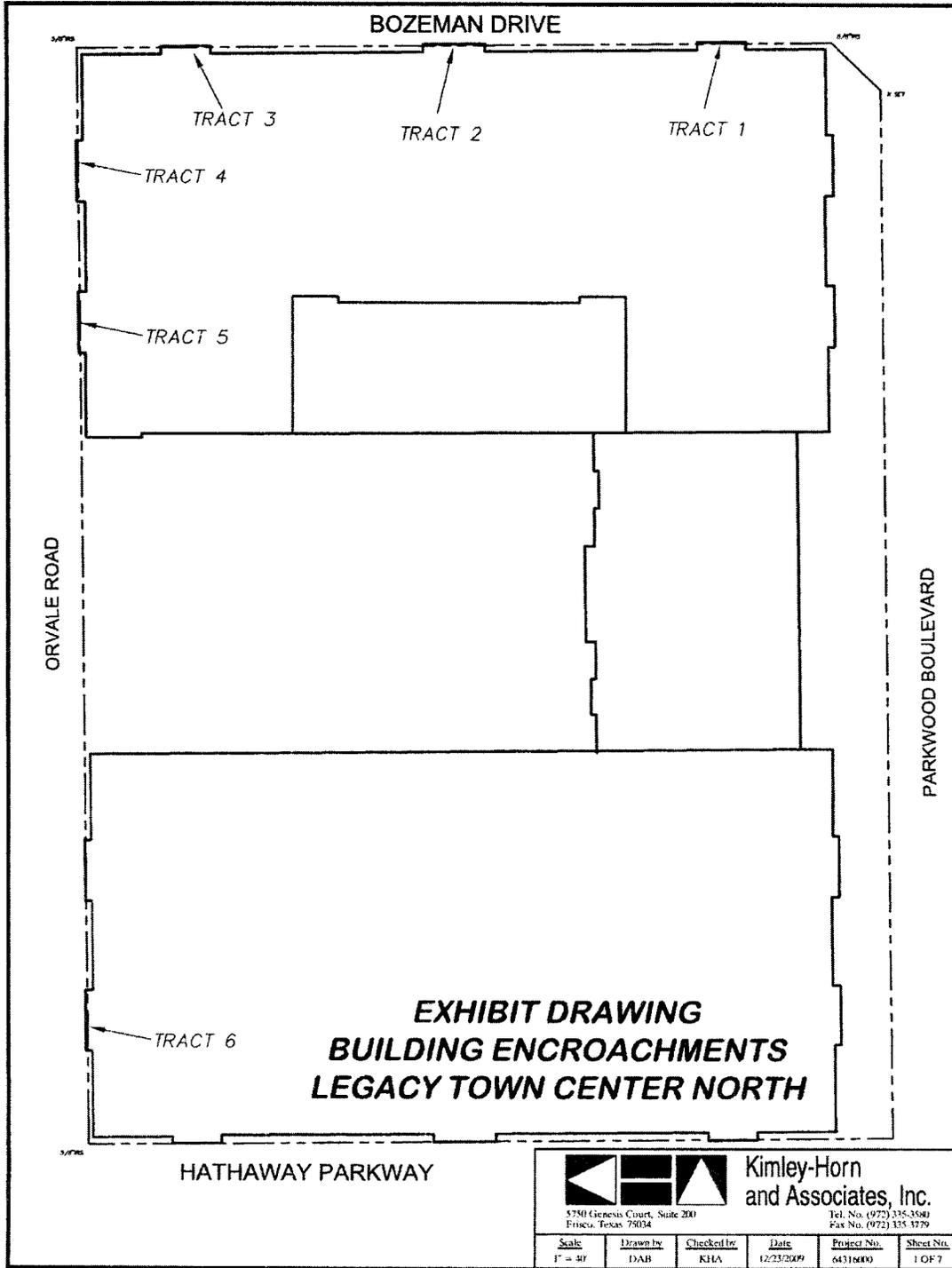
My Commission Expires:

Notary Public, State of Texas
Printed Name: _____

EXHIBIT "A"

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas.

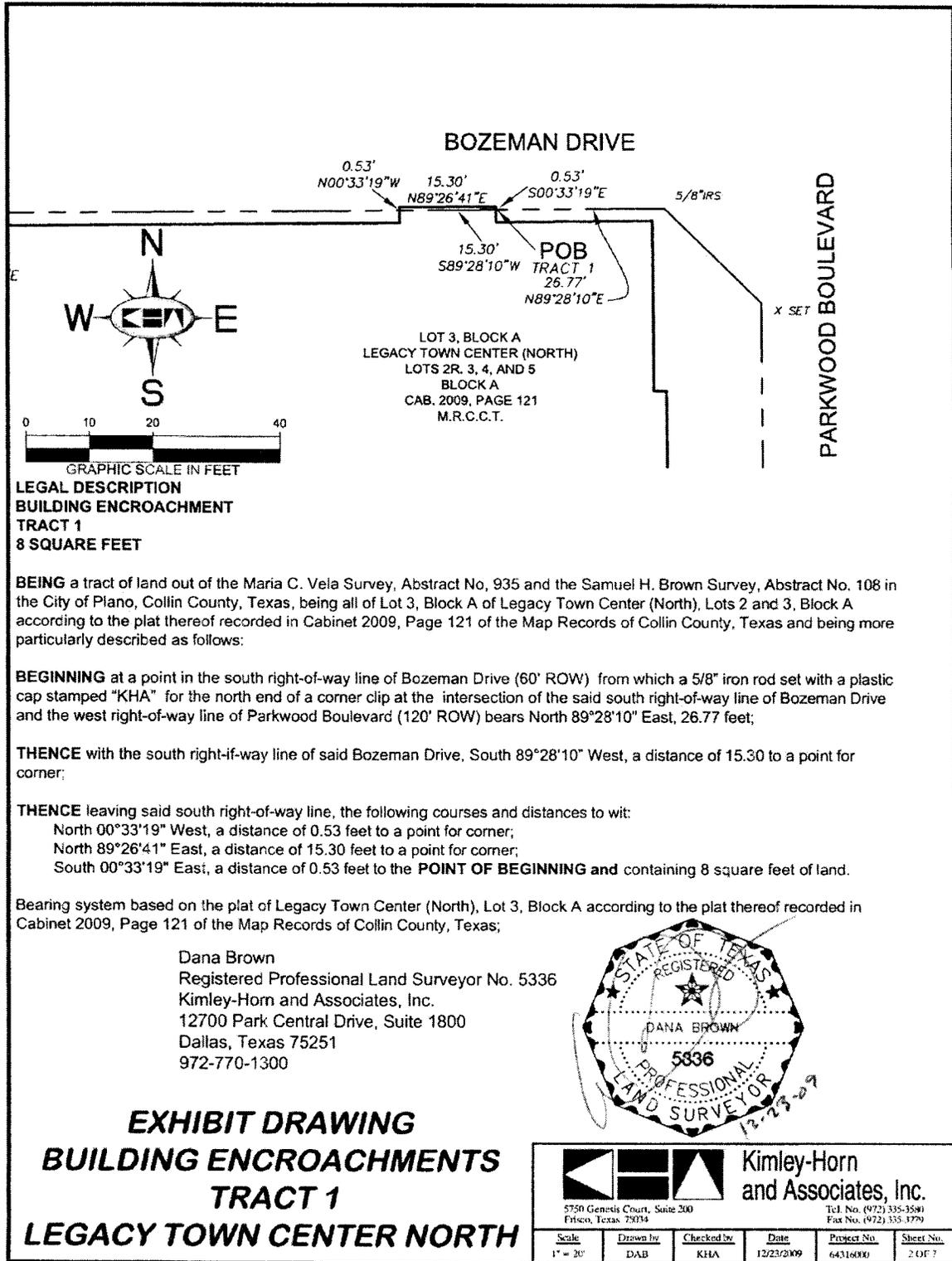
EXHIBIT "B"
ENCROACHMENT
SURVEYS



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc.	
<small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 335-3580 Fax No. (972) 335-3729</small>	
Scale	Drawn by	Checked by	Date
1" = 40'	DAB	KHA	12/23/2009
			Project No.
			64316000
			Sheet No.
			1 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: K:\DAL_SURVEY\64316000\PHASE II ASBUILT_LDD PHASE II DWG\BLDG ENCROACHMENT EXHIBIT DWG.LAST
SAVED 12/23/2009 8:28 AM



LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 1
8 SQUARE FEET

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of Bozeman Drive (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the north end of a corner clip at the intersection of the said south right-of-way line of Bozeman Drive and the west right-of-way line of Parkwood Boulevard (120' ROW) bears North 89°28'10" East, 26.77 feet;

THENCE with the south right-of-way line of said Bozeman Drive, South 89°28'10" West, a distance of 15.30 to a point for corner;

THENCE leaving said south right-of-way line, the following courses and distances to wit:
 North 00°33'19" West, a distance of 0.53 feet to a point for corner;
 North 89°26'41" East, a distance of 15.30 feet to a point for corner;
 South 00°33'19" East, a distance of 0.53 feet to the **POINT OF BEGINNING** and containing 8 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

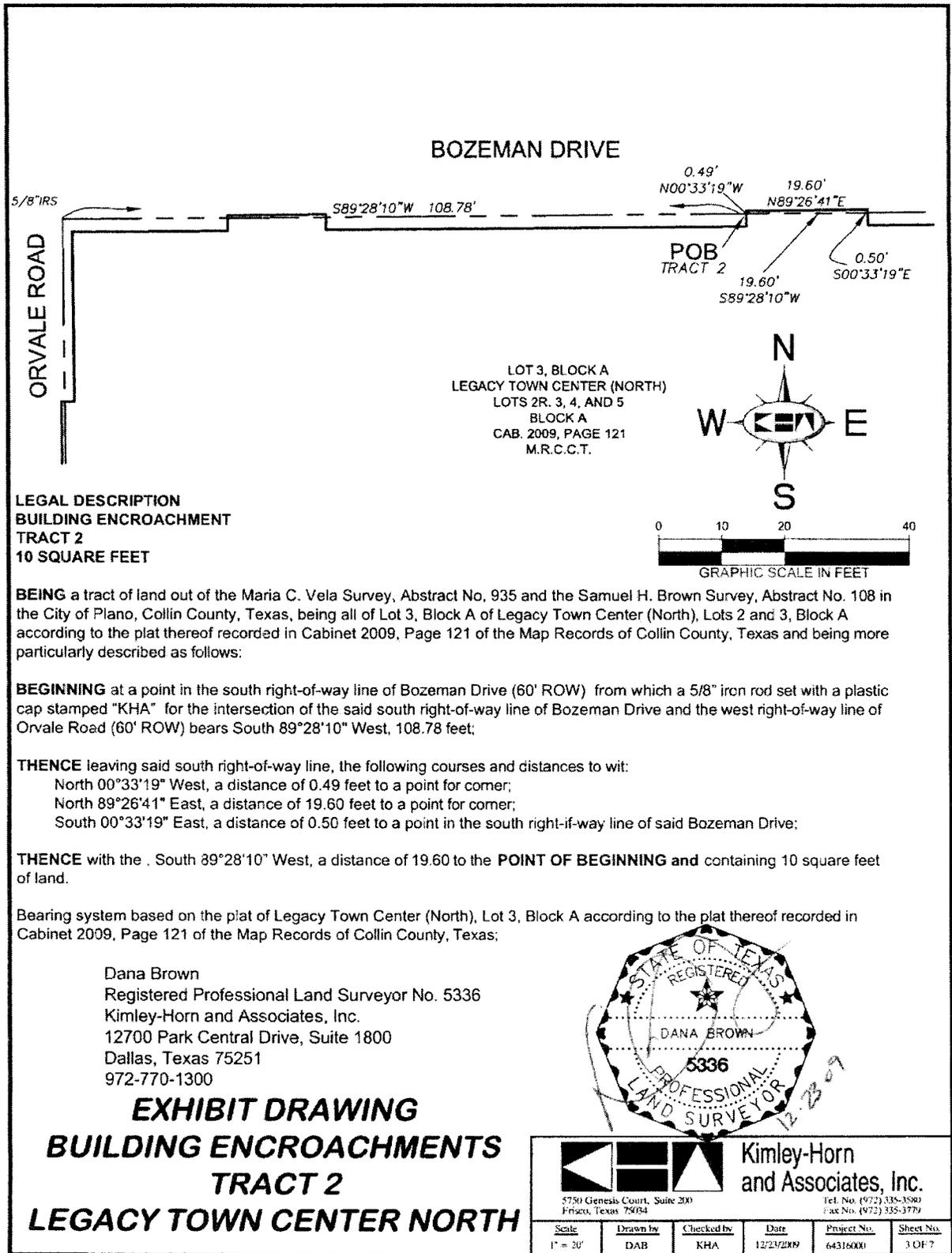
Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 1
LEGACY TOWN CENTER NORTH

		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Plano, Texas 75034</small>		<small>Tel. No. (972) 335-3590 Fax No. (972) 335-3779</small>	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 20'	DAB	KHA	12/23/2009	64316000	2 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: K:\DAL_SURVEY\64316000\PHASE II ASBUILT\1_LDD PHASE II\DWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 2
10 SQUARE FEET

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of Bozeman Drive (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the said south right-of-way line of Bozeman Drive and the west right-of-way line of Orvale Road (60' ROW) bears South 89°28'10" West, 108.78 feet;

THENCE leaving said south right-of-way line, the following courses and distances to wit:

- North 00°33'19" West, a distance of 0.49 feet to a point for corner;
- North 89°26'41" East, a distance of 19.60 feet to a point for corner;
- South 00°33'19" East, a distance of 0.50 feet to a point in the south right-of-way line of said Bozeman Drive;

THENCE with the . South 89°28'10" West, a distance of 19.60 to the **POINT OF BEGINNING** and containing 10 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
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 Dallas, Texas 75251
 972-770-1300

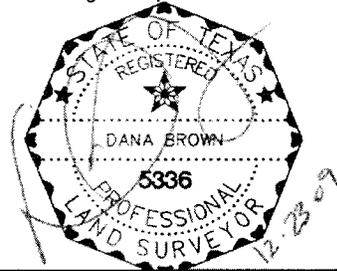
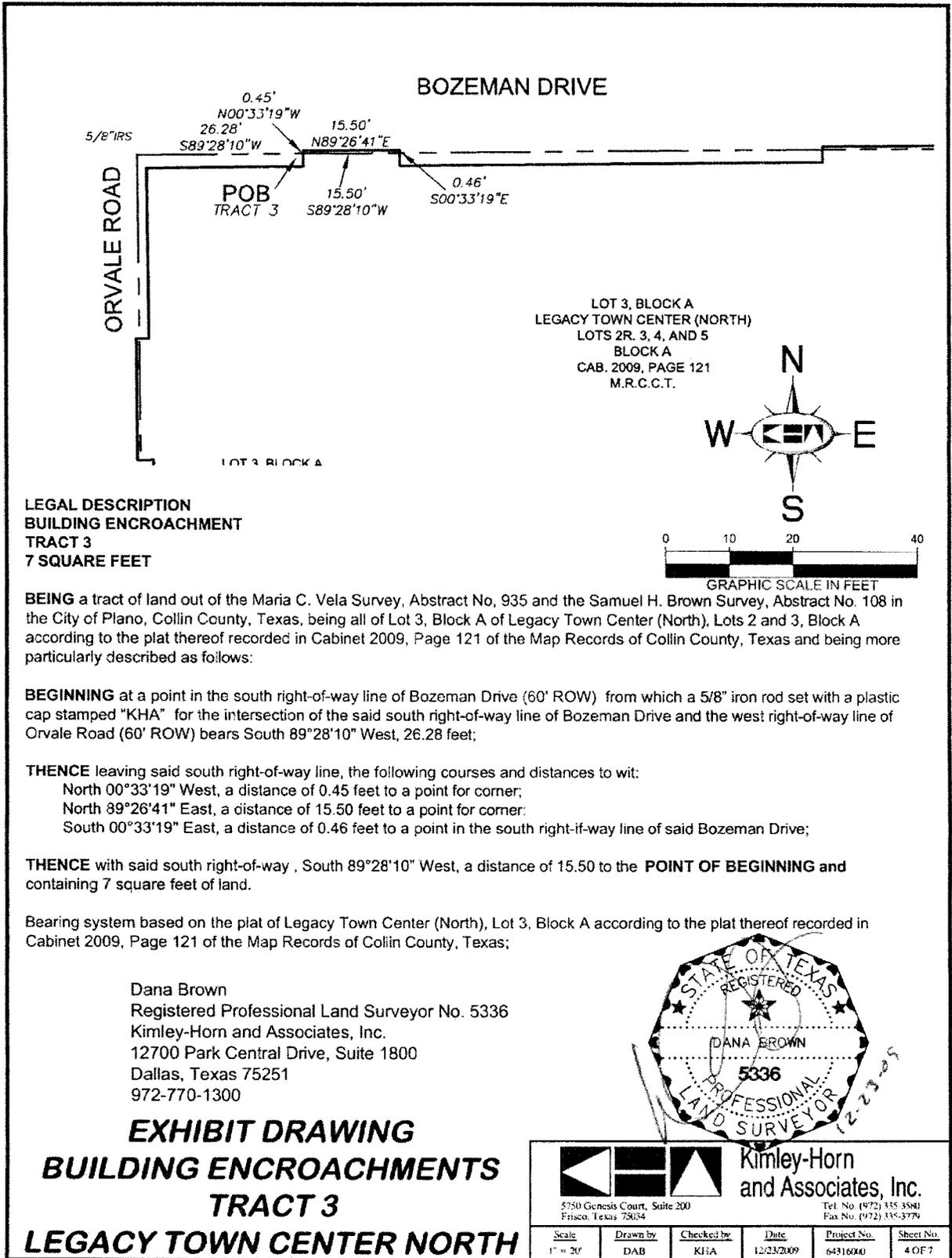


EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 2
LEGACY TOWN CENTER NORTH

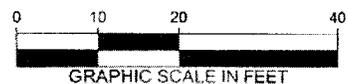
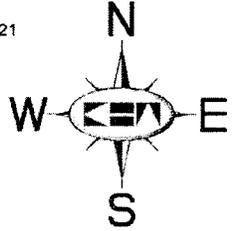
		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Frisco, Texas 75034 Tel. No. (972) 335-3580 Fax No. (972) 335-3779</small>			
<small>Scale</small> 1" = 20'	<small>Drawn by</small> DAB	<small>Checked by</small> KHA	<small>Date</small> 12/23/2009	<small>Project No.</small> 64316000	<small>Sheet No.</small> 3 OF 7

PLotted BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: K3DAL_SURVEY:64316000PHASE II ASBUILT_LDD PHASE II DWG:BLDG ENCROACHMENT EXHIBIT.DWG LAST
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**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 3
7 SQUARE FEET**

LOT 3, BLOCK A
LEGACY TOWN CENTER (NORTH)
LOTS 2R, 3, 4, AND 5
BLOCK A
CAB. 2009, PAGE 121
M.R.C.C.T.



BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of Bozeman Drive (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the said south right-of-way line of Bozeman Drive and the west right-of-way line of Orvale Road (60' ROW) bears South 89°28'10" West, 26.28 feet;

THENCE leaving said south right-of-way line, the following courses and distances to wit:
 North 00°33'19" West, a distance of 0.45 feet to a point for corner;
 North 89°26'41" East, a distance of 15.50 feet to a point for corner;
 South 00°33'19" East, a distance of 0.46 feet to a point in the south right-of-way line of said Bozeman Drive;

THENCE with said south right-of-way, South 89°28'10" West, a distance of 15.50 to the **POINT OF BEGINNING** and containing 7 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

Dana Brown
Registered Professional Land Surveyor No. 5336
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
972-770-1300

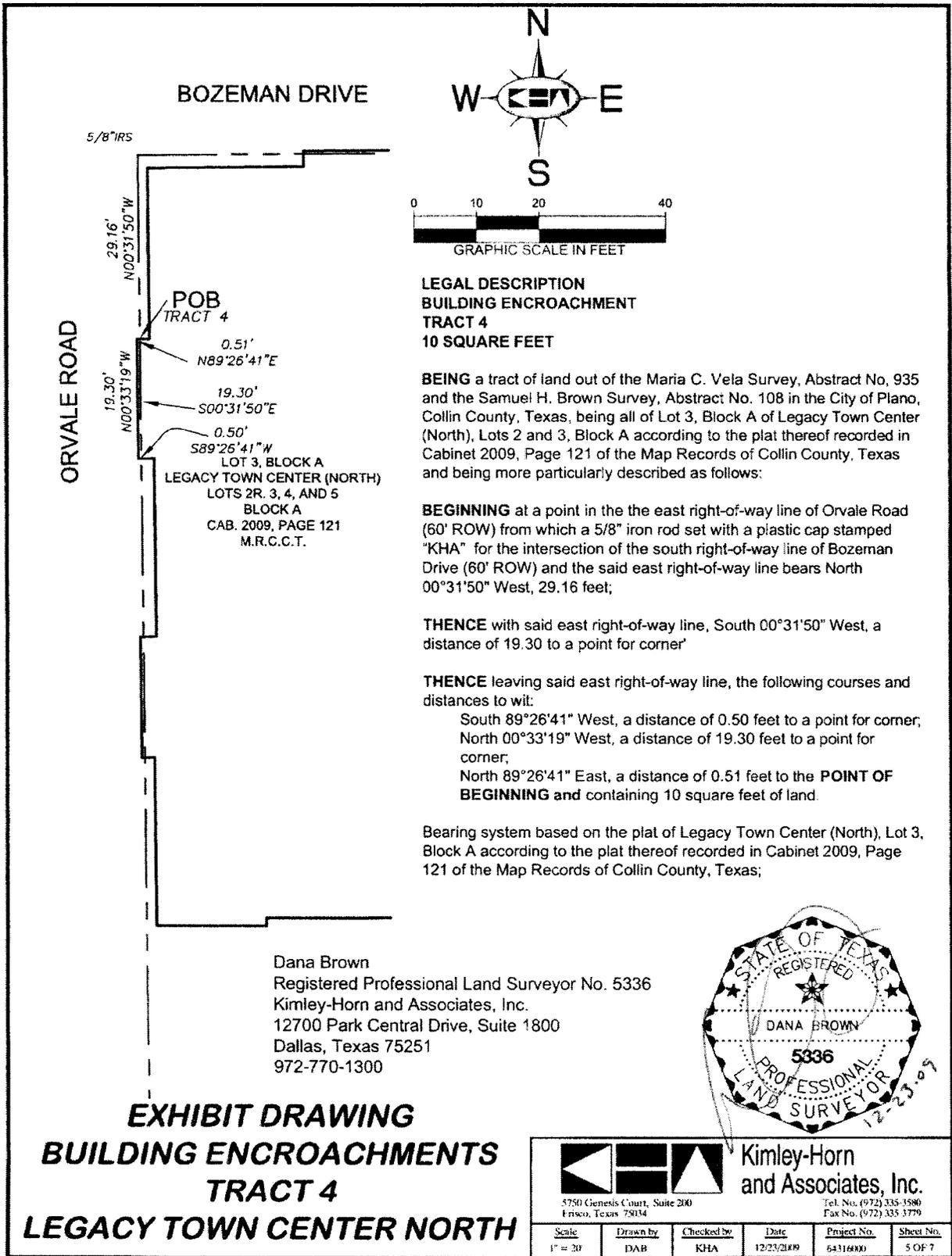


**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 3**

LEGACY TOWN CENTER NORTH

								Kimley-Horn and Associates, Inc.	
<small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Scale 1" = 20'</small>		<small>Drawn by DAB</small>		<small>Checked by KHA</small>		<small>Date 12/23/2009</small>	
<small>Project No. 64316000</small>		<small>Sheet No. 4 OF 7</small>		<small>Tel No (972) 335-3581</small>		<small>Fax No (972) 335-3779</small>			

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME KADAL_SURVEY\64316000\PHASE II ASBUILT_LDD PHASE II\DWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST
 SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 4
10 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the the east right-of-way line of Orvale Road (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the south right-of-way line of Bozeman Drive (60' ROW) and the said east right-of-way line bears North 00°31'50" West, 29.16 feet;

THENCE with said east right-of-way line, South 00°31'50" West, a distance of 19.30 to a point for corner'

THENCE leaving said east right-of-way line, the following courses and distances to wit:

- South 89°26'41" West, a distance of 0.50 feet to a point for corner;
- North 00°33'19" West, a distance of 19.30 feet to a point for corner;
- North 89°26'41" East, a distance of 0.51 feet to the **POINT OF BEGINNING** and containing 10 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

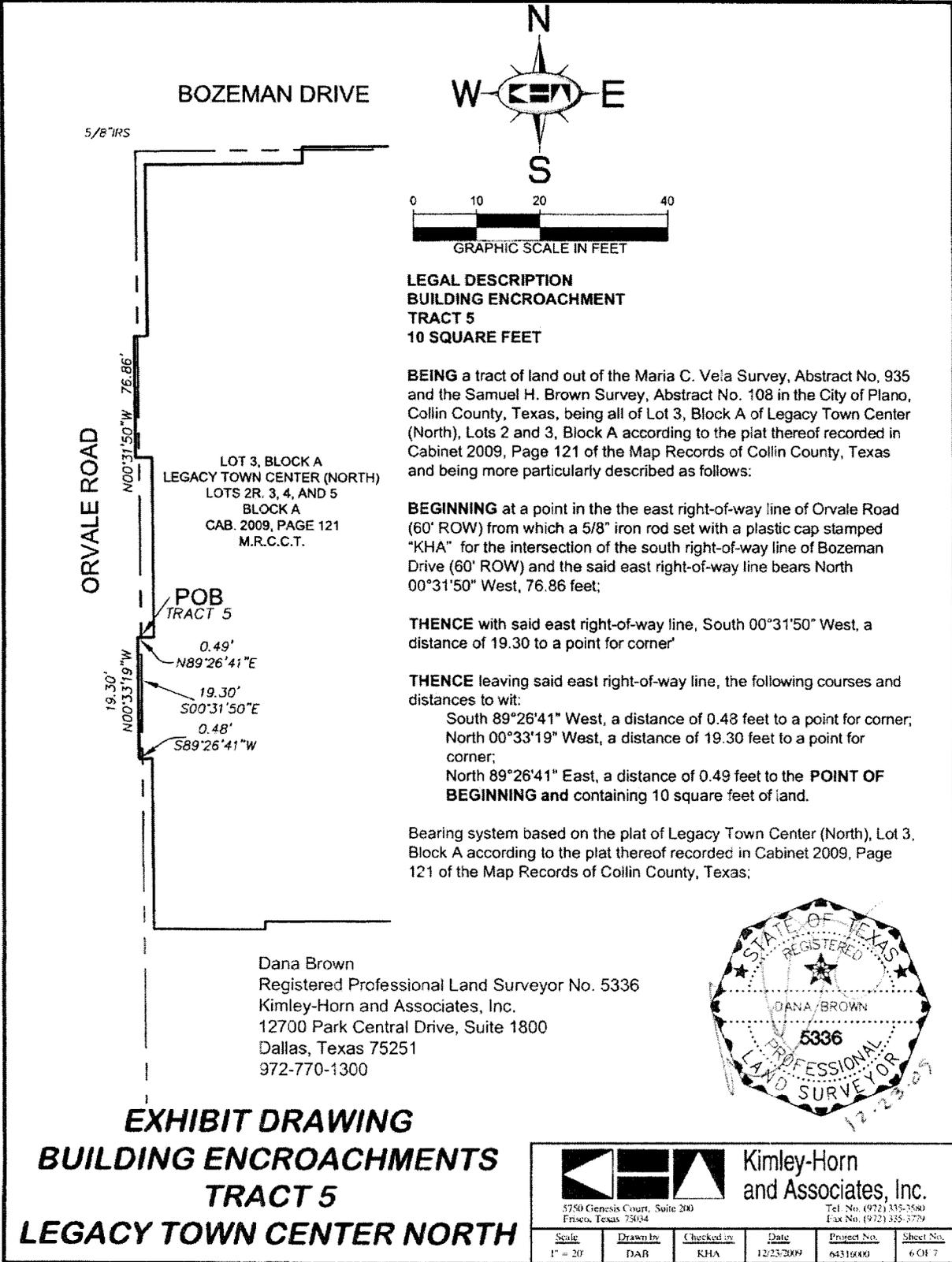
Dana Brown
Registered Professional Land Surveyor No. 5336
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 4
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 335-1580 Fax No. (972) 335-3779</small>	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 30'	DAB	KHA	12/23/2009	64316000	5 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: KADAL_SURVEY\64316000\PHASE II AS BUILT\T_1.LDD PHASE II DWG: BLDG ENCROACHMENT EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 5
10 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the the east right-of-way line of Orvale Road (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the south right-of-way line of Bozeman Drive (60' ROW) and the said east right-of-way line bears North 00°31'50" West, 76.86 feet;

THENCE with said east right-of-way line, South 00°31'50" West, a distance of 19.30 to a point for corner'

THENCE leaving said east right-of-way line, the following courses and distances to wit:
 South 89°26'41" West, a distance of 0.48 feet to a point for corner;
 North 00°33'19" West, a distance of 19.30 feet to a point for corner;
 North 89°26'41" East, a distance of 0.49 feet to the **POINT OF BEGINNING** and containing 10 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

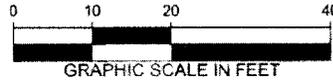
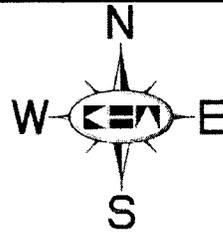
Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 5
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 355-3580 Fax No. (972) 355-3779</small>	
Scale: 1" = 20'	Drawn by: DAB	Checked by: KHA	Date: 12/23/2009	Project No.: 64319400	Sheet No.: 6 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME K:\DAL_SURVEY\64316000\PHASE II ASBUILT_LDD PHASE I\DWG\BLDG ENCROACHMENT\EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 6
11 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

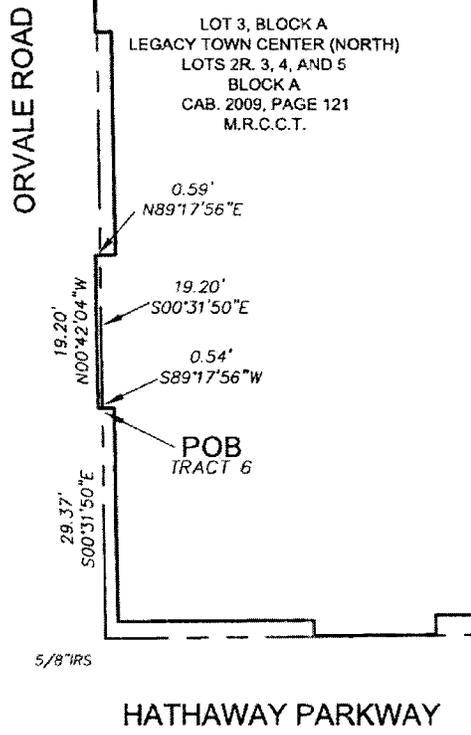
BEGINNING at a point in the the east right-of-way line of Orvale Road (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the north right-of-way line of Hathaway Parkway (60' ROW) and the said east right-of-way line bears South 00°31'50" East, 29.37 feet;

THENCE leaving said east right-of-way line, the following courses and distances to wit:
 South 89°17'56" West, a distance of 0.54 feet to a point for corner;
 North 00°42'04" West, a distance of 19.20 feet to a point for corner;
 North 89°17'56" East, a distance of 0.59 feet to a point in the east right-of-way line of said Orvale Road;

THENCE with said east right-of-way line, South 00°31'50" West, a distance of 19.20 to the **POINT OF BEGINNING** and containing 11 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 6
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc.			
<small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 335 3580 Fax No. (972) 335 3779</small>			
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 20'	DAB	KHA	12/23/2009	64310001	7 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME K:\DAL_SURVEY\64310000\PHASE II AS\RESULT_LDD PHASE II\DWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM