

**BOARD OF ADJUSTMENT AND
BUILDING BOARD OF APPEALS AGENDA
REGULAR MEETING | August 5, 2019 at 7:00 PM
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

I. CALL TO ORDER

NOTE: Pursuant to Texas Government Code §551.071, the Board reserves the right to adjourn into Executive Session at any time during the Work Session or the Regular Session to discuss posted Executive Session items or to seek legal advice from the City Attorney on any item posted on the agenda.

II. REGULAR SESSION

III. ROLL CALL

IV. SWEARING IN OF SPEAKERS

V. VISITOR AND CITIZEN FORUM

At this time, any person may address the board or governing body, provided that an official 'Speaker's Request Form' has been submitted to the secretary prior to the start of the meeting. All comments must be directed towards the body as a whole, rather than individuals members or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action can be taken nor discussion held regarding these items.

VI. REPORTS AND ANNOUNCEMENTS

VII. MINUTES APPROVAL

- A. Consider approval of minutes from the October 15, 2018 regular meeting

VIII. DECISION ITEMS

- A. Consider approval for recommendation for BOA Vice Chair
- B. CASE #BOA 19-01 to receive comments and consider action on a request by Josh Altom as required by the Unified Development Code, Section 10.15.A requiring an 8 foot setback from the year property line, to allow a 4 foot setback from rear property line at 1033 Estates Drive, more particularly described as Lot 9, Block 1, Brookstone Estates, City of Kennedale, Tarrant County, Texas.

IX. EXECUTIVE SESSION *The Planning & Zoning Commission reserves the right to convene in Executive Session(s) during this meeting pursuant to §551.071(2) when the Board of Adjustment/Building Board of Appeals seeks the advice of its attorney concerning any item on this agenda or a matter in which the duty of the attorney to the Planning & Zoning Commission under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Government Code.*

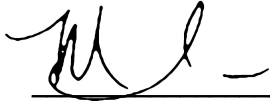
X. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

XI. ADJOURNMENT

parking spaces are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meeting. Please contact the City Secretary at 817-985-2104 or (TTY) 1-800-735-2989.

CERTIFICATION

I certify that a copy of the August 5, 2019, Board of Adjustment and Building Board of Appeals agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.

A handwritten signature in black ink, appearing to read 'MD', is positioned above a horizontal line.

MELISSA DAILEY, AICP
DIRECTOR OF PLANNING AND
ECONOMIC DEVELOPMENT



STAFF REPORT TO THE BOARD OF DIRECTORS

Date: August 5, 2019

Agenda Item No: MINUTES APPROVAL - A.

I. Subject:

Consider approval of minutes from the October 15, 2018 regular meeting

II. Originated by:

III. Summary:

IV. Recommendation:

V. Alternative Actions:

VI. Attachments:

1.	10.15.2018 BOA MINUTES.Final	10.15.2018 BOA MINUTES.Final.docx
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BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS
MINUTES
REGULAR MEETING
October 15, 2018
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

Acting Chairman Lana Sather called the meeting to order at 7:00 PM

ROLL CALL

PLACE	COMMISSIONER	PRESENT	ABSENT
1	Eric Elam	x	
2	Josh Altom	X	
3	Perry Clementi	X	
4	Martin Young		x
5	Lana Sather	x	
6	Jeff Nevarez, alternate	x	
7	Josh Virnoche, alternate		x
8	VACANT		
9	Azam Shaikh, alternate	x	

A quorum was present.

Staff present: Melissa Dailey, Director of Planning & Economic Development, and Melinda Middleton, Board Secretary.

II. REGULAR SESSION

III. CALL TO ORDER

Acting Chairman Lana Sather called the regular session to order at 7:00PM

IV. SWEARING IN OF SPEAKERS

Ms. Middleton swore in the speakers:

Tracey Holland

VII MINUTES APPROVAL

- A. Consider approval of minutes from the August 6, 2018 BOA meeting.

Azam Shaikh made the motion to approve the minutes from the August 6, 2018 BOA meeting. Josh Altom seconded the motion. The motion passed unanimously.

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Board of Adjustment not scheduled on the Agenda may speak to the Board, provided that an official 'Speaker's Request Form' has been completed and submitted to the Board Secretary prior to the start of the meeting. All comments must be directed towards the Chair, rather than individual board members or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action can be taken on these items.

No one signed up to speak from the public.

IX. REGULAR ITEMS

- A. **CASE # BOA 18-04** to receive comments and consider action on a request by Tracey Holland for a variance as required by the Unified Development Code Section 6.3, "Spatial Requirements," to allow 5 foot side setback at 119 Industrial Drive, Kennedale, Tarrant County, Texas, more particularly described as Woodlea Acres Addition, Block 1, Lot 28G.
1. Staff presentation: Melissa Dailey provided a summary of the application, including current zoning; land use, spatial requirements as required in the Unified Development Code, and photographs of the site. Ms. Dailey stated that side setbacks that are less than the 10 feet required are very common on this street, and that there would not be any adverse consequences of a 5 foot side setback. Ms. Dailey recommended approval.
 2. Applicant presentation: The applicant spoke about the need to expand so that an addition of a sewer line could be installed without the need for demolition of the existing slab. Mr. Altom asked whether the business used any chemicals that could be deemed harmful to the environment. The applicant stated that no harmful chemicals were used.
 3. Public hearing: No one from the public spoke.
 4. Board Discussion: The board discussed the fact that several other neighboring buildings had less than the required setbacks.
 5. Action by the Board of Adjustment:

A motion to approve a variance as required by the Unified Development Code Section 6.3, "Spatial

Requirements,” to allow 5 foot side setback at 119 Industrial Drive, Kennedale was made by Azam Shaikh with a second to the motion by Josh Altom. The motion was approved unanimously.

XI. ADJOURNMENT

The meeting adjourned at 7:15 P.M.

STAFF REPORT TO THE BOARD OF ADJUSTMENT

Date: August 5, 2019

Agenda Item No: REGULAR ITEMS (B)

I. SUBJECT

CASE # BOA 19-01 to receive comments and consider action on a request by Josh Altom as required by the Unified Development Code, Section 10.15.A requiring an 8 foot setback from the rear property line, to allow a 4 foot setback from rear property line at 1033 Estates Drive, more particularly described as Lot 9, Block 1, Brookstone Estates, City of Kennedale, Tarrant County, Texas.

II. SUMMARY

BACKGROUND AND OVERVIEW	
Request	Allow 4' rear setback instead of 8' required rear setback
Applicant	Josh Altom
Location	1033 Estates Drive
Current Zoning	Single-Family Residential District R-2
Current Land Use	Single family residential
Surrounding Uses	Single family residential, vacant land
Future Land Use Plan Designation	Neighborhood
Staff Recommendation	Approve

CURRENT STATUS OF PROPERTY

This property is a single family residence in the Brookstone neighborhood.

SURROUNDING PROPERTIES & NEIGHBORHOOD

The property is located in a primarily residential area in the Brookstone neighborhood. It is on the edge of the neighborhood with single family homes to the west, east and south, and vacant land to the north of the property.

REQUIREMENTS FOR A VARIANCE

The Board of Adjustment is permitted to grant variances to the development regulations of Article 3 such as the front yard, side yard, rear yard, lot width, lot depth, lot coverage, minimum setback, off-street parking, off-street loading, lot area, maximum height, or other building regulations, where the literal enforcement of the provisions of this article would result in an unnecessary hardship, or where such variance is necessary to permit the reasonable development of a specific parcel of land which differs from other parcels of land in the same district by being of such area, shape or slope that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same district.

In order to grant a variance, the variance applicant is required to demonstrate that the property itself is unusually different enough from other properties in the same zoning district that it cannot be developed in the same way as other parcels in the same district, which creates a hardship. A hardship cannot be of the applicant's own making, and it cannot be financial (e.g., the applicant can't meet the development regulations simply due to the applicant's financial situation).

The board should consider the following questions in determining whether a variance request meets this standard:

- (1) is the request owing to a special condition inherent in the property itself;
- (2) is the condition unique to the property for which a variance is requested;
- (3) is the condition self-created;
- (4) will a strict enforcement of the zoning ordinance create hardship above that suffered by the general public; and
- (5) will the hardship deprive the property owner of the right to use his property?

If you find the answers above demonstrate conditions favorable to granting a variance, the board should also consider these questions:

- (6) would granting the variance be contrary to the public interest; and
- (7) is the request within the spirit of the ordinance and further substantial justice?

ANALYSIS

(1) Is the request owing to a special condition inherent in the property itself?

Yes. The property has a 10' utility easement along the rear of the back yard, due to this property being on the northern edge of the neighborhood. It is standard procedure to require a 10' easement along the edge of a neighborhood in the event of utility needs for future neighborhoods. However, there is a large gas pipeline running directly behind this property, and utilities for any future development would not be run within that easement. Additionally, the City's Future Transportation Plan shows an alignment of Kennedale Sublett Road directly behind this property, which would also indicate no development being immediately adjacent to this property. This property also has a retaining wall in the middle of the back yard which is necessary for drainage, and limits the space for placement of a pool.

(2) Is the condition unique to the property for which a variance is created?

Yes. The unique condition is the location of the property along the edge of the neighborhood with a gas pipeline behind it, and the existence of a retaining wall in the middle of the back yard for drainage, limiting the potential location for a pool.

(3) Is the condition self-created?

No. The property was platted this way when the neighborhood was established, the gas pipeline already existed, and the retaining wall is necessary for drainage.

(4) Will a strict enforcement of the zoning ordinance create a hardship above that suffered by the general public?

Yes. A 8' setback would result in not allowing a pool to be installed on this property, which would not be the case for other properties.

(5) Will the hardship deprive the property owner of the right to use his property?

Yes. The owner would not be able to install a pool, something allowed and possible for other properties in the city.

(6) Would granting the variance be contrary to the public interest?

No. The public would not be impacted. There will not be houses built behind the property due to the gas pipeline, so the smaller 4' rear setback will not impact another property owner.

(7) Is the request within the spirit of the ordinance and further substantial justice?

Yes. The unusual circumstances with the easement and the retaining wall both being within this property's back yard prevent this property owner from building a pool, something many property owners choose and are able to do.

STAFF RECOMMENDATION

Will the literal enforcement of the provisions of this article result in an unnecessary hardship?

Yes. The property owner will not be able to improve the property by building a pool.

Based on the above analysis, staff recommends approval of the request.

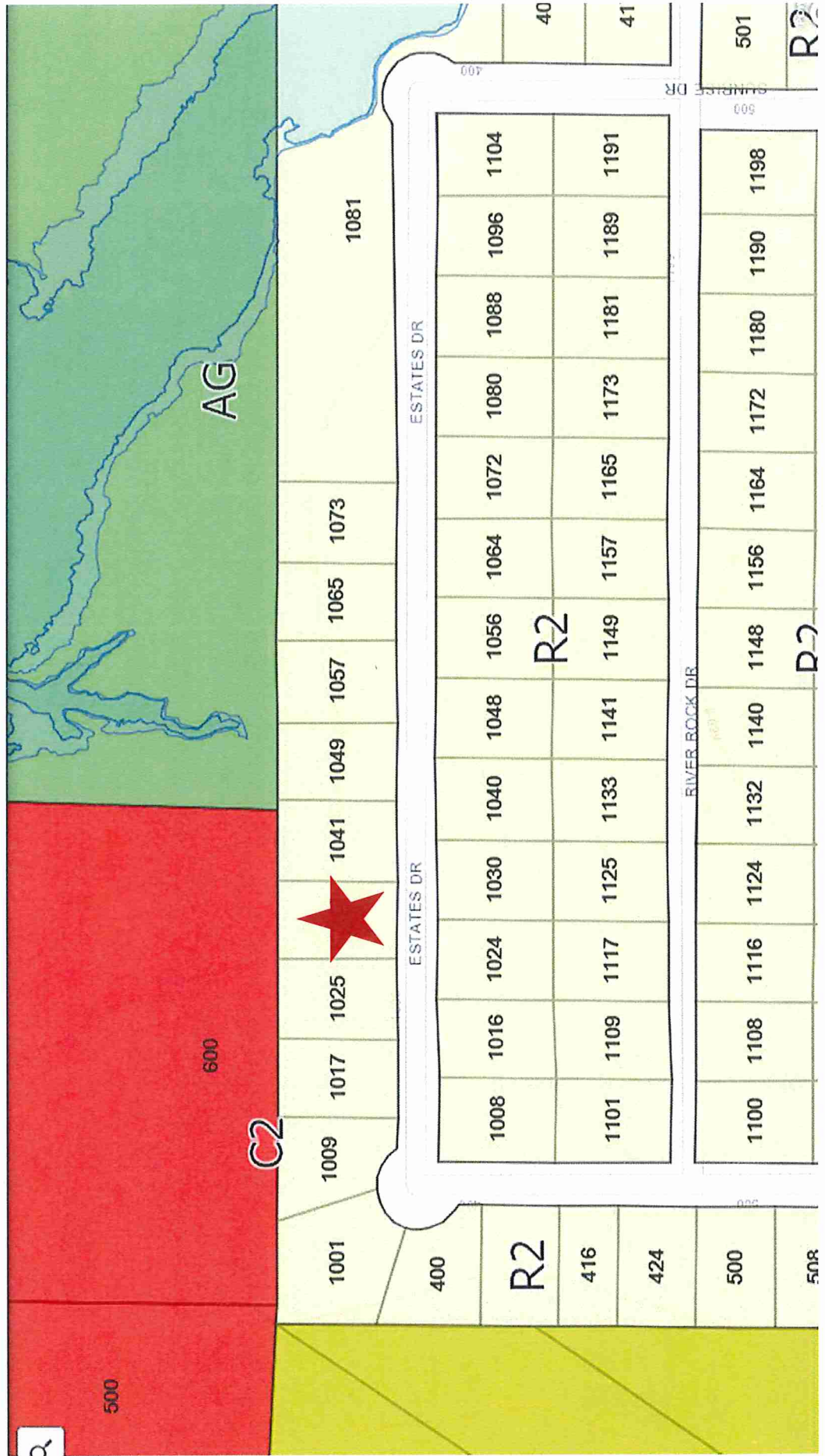
ACTION BY THE BOARD OF ADJUSTMENT

The board may grant or deny the request or postpone its vote until a later date. If you postpone your decision, you should state in your motion when the case will be heard by the board again. Sample motions are provided for your reference below. You are not required to use either of the motions provided, but your motion should state why you are granting or denying the request.

Approve: Based on the evidence and testimony provided, I find that the proposed request meets the standards for a variance and make a motion to approve the requested variance.

Deny: Based on the evidence and testimony provided, I find that the proposed use does not meet the standards for a variance and make a motion to deny the request.

1033 Estates Drive



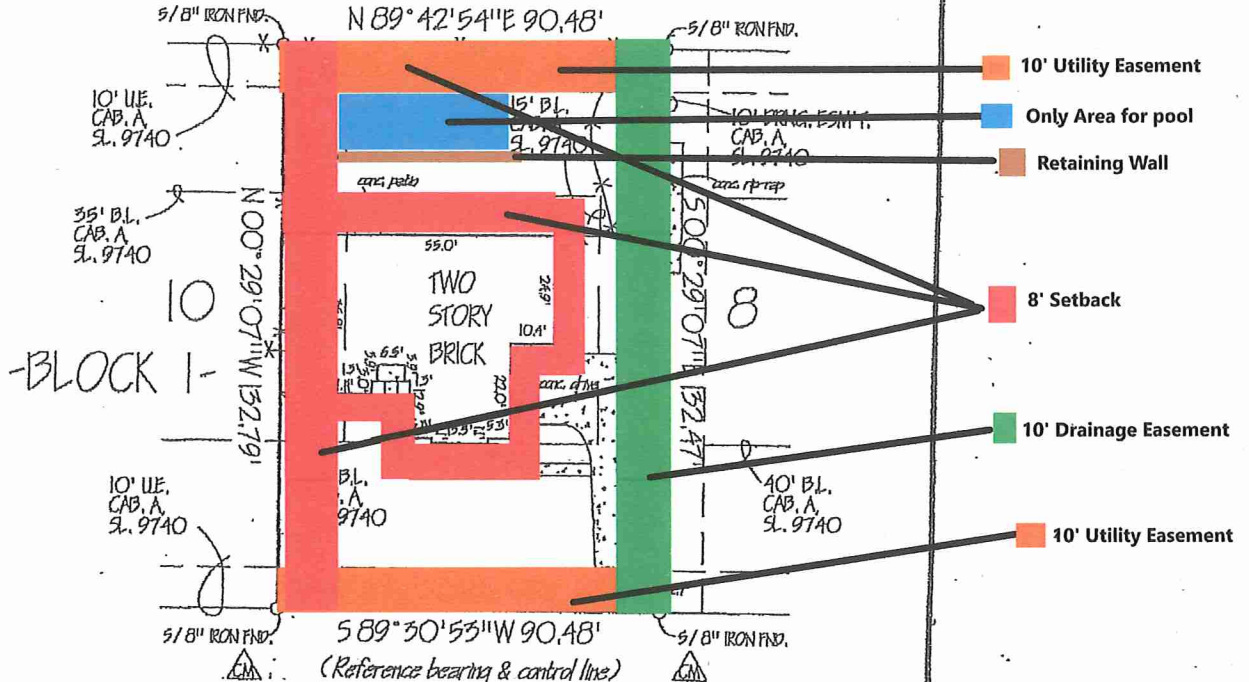
SURVEY PLAT

1033 Estates Drive
Lot 9, Block 1

BROOKSTONE ESTATES ADDITION

An Addition to the City of Kennedale, Tarrant County, Texas
According to the Amending Plat of said Addition
Recorded in Cabinet A, Slide 9740
Plat Records of Tarrant County, Texas

EMERALD HILLS MEMORIAL PARK
Vol. 9033, Pg. 1283
D.R.T.C.T.



Notes:
According to the U.S. Department of Housing
and Urban Development Federal Insurance
Administration Flood Insurance Rate Map
Community Panel Number 48499C0240K
Effective Date: 9-25-09
This property lies in Zone X and does not
lie within a 100 Year Flood Hazard Area.

Scale: 1" = 30'.

Reference bearing per Plat recorded
in Cabinet A, Slide 9740.

Δ = Control Monument

CD #: 11-0020062

The easements recorded in Vol. 1306, Pg. 377,
Vol. 3373, Pg. 332, Vol. 4442, Pg. 406 and
Vol. 4614, Pg. 890 do not affect this site.

This site subject to the Subsurface Easement
Agreements recorded in County Clerk's Inst. No.
D221137077, D221137078, D221142834,
D221142835, D221145558, D221146312.



Susan L. Stewart
RPL S. No. 5495
August 2, 2011

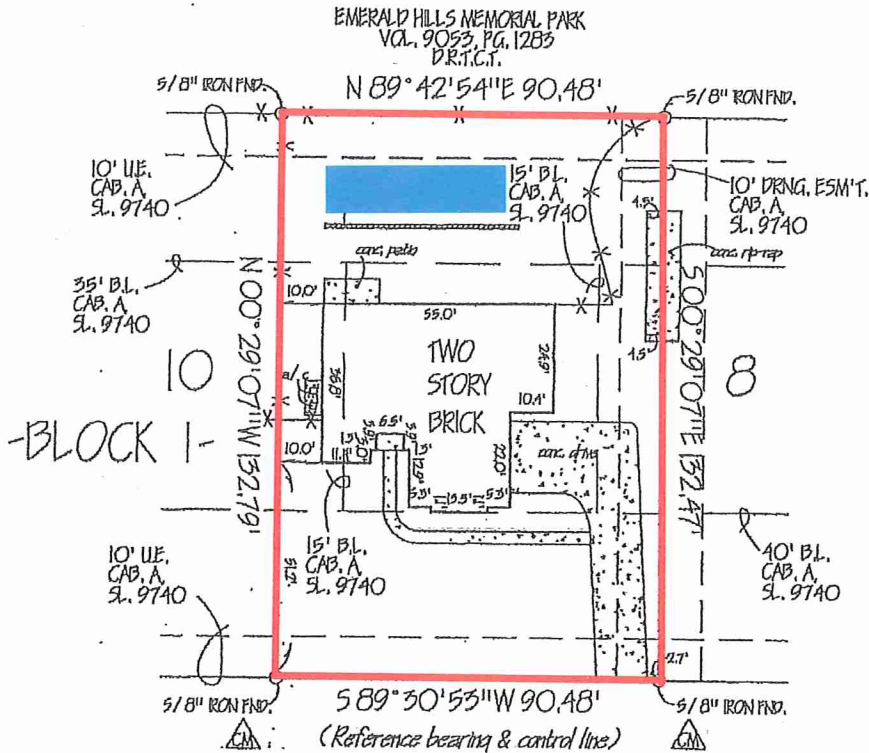
This plat hereon was prepared from an actual
on the ground survey of the legally described
property shown hereon, the lines and dimensions
of said property being as indicated by the plat,
the size, location and type of buildings and
improvements are as shown, all improvements being
within the boundaries of the property except as
shown, set back from the property lines the
distances indicated, and there are no encroachments,
protrusions, or apparent easements, except as shown.
This survey is being provided solely for the use of the
current parties and that no license has been created,
express or implied, to copy the survey except as is
necessary in conjunction with the original transaction,
which shall take place within 6 (six) months of the
original survey date.

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FULTON SURVEYING, INC.
115 ST. LOUIS AVENUE
FORT WORTH, TEXAS 76104
(817) 335-3625
FAX (817) 335-3629

#11218

[Signature] 6/3/19
[Signature] 6/3/19

SURVEY PLAT
 1033 Estates Drive
 Lot 9, Block 1
BROOKSTONE ESTATES ADDITION
 An Addition to the City of Kennedale, Tarrant County, Texas
 According to the Amending Plat of said Addition
 Recorded in Cabinet A, Slide 9740
 Plat Records of Tarrant County, Texas



Notes:
 According to the U.S. Department of Housing
 and Urban Development Federal Insurance
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 Community Panel Number: 48399C0340K
 Effective Date: 9-25-09
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 lie within a 100 Year Flood Hazard Area.

Scale: 1" = 30'

Reference bearing per Plat recorded
 in Cabinet A, Slide 9740.

Δ = Control Monument

CD #: 11-0020062

This easement recorded in Vol. 1306, Pg. 377,
 Vol. 3373, Pg. 582, Vol. 4442, Pg. 406 and
 Vol. 4614, Pg. 890 do not affect this site.

This site subject to the Subsurface Easement
 Agreements recorded in County Clerk's Book No.
 1221137077, 1221137078, 1221142834,
 1221142835, 1221145558, 1221146312.



Susan L. Stewart
 RPLS, No. 5495
 August 2, 2011

The plat herein was prepared from an actual
 on the ground survey of the legally described
 property shown hereon, the lines and dimensions
 of said property being as indicated by the plat,
 the size, location and type of buildings and
 improvements are as shown, all improvements being
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 distances indicated, and there are no encroachments,
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#11218

9/1

[Signature] 6/3/19
[Signature] 6/2/19