

## PRIVATE DRAINAGE, UTILITY, AND MAINTENANCE EASEMENT AGREEMENT

Date: \_\_\_\_\_

Grantor: \_\_\_\_\_

Grantor's Mailing Address: \_\_\_\_\_

Grantee: \_\_\_\_\_

Grantee's Mailing Address: \_\_\_\_\_

Dominant Estate Property: Being a 0.44 acre tract of land, more or less, situated in Dallas County, Texas out of the J.A. Simmons, 640-acre survey, Patent Number 1232, Vol. 10, and also being a part of Lot 4 of 90 acres of said survey which was allotted and set apart to W.H. Simmons, one of the children and heirs at law of said J.A. Simmons, in the partition of said survey among the heirs of said J.A. Simmons in Suit No. 898 Katherine J. Freeman vs Alexander Simmons et al, in the District Court of Dallas County, Texas shown by judgment and decree of said court of record in Vol. "E" 73 and 327 of the Minutes of said court, more particularly described in the *General Warranty Deed with Vendor's Lien* conveyed to Grantee, recorded as Instrument No. 202000058823 in the Official Public Records of Dallas County, Texas.

Easement Property: Being 1,750 square feet out of Lot 4, J. A. Simmons Survey, Abstract No. 1296, City of Coppell, Dallas County, Texas, as depicted on Exhibit "A" attached hereto and made a part hereof.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, upgrade, and removal of storm drainage and utility facilities (collectively, the "Facilities").

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: None.

Exceptions to Warranty: None.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's heirs, successors, and assigns who at any time own any interest in the Dominant Estate Property (as applicable, the "Holder").

2. *Duration of Easement.* The duration of the Easement is perpetual.

3. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement.

4. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain the Facilities within the Easement Property that are reasonably suited for the Easement Purpose. However, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available

at law or in equity.

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

8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

10. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

11. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Indemnity.* Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party.

14. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

15. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return

receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

17. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

18. *Time.* Time is of the essence. Unless otherwise specified, all references to “days” mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

**GRANTOR**

\_\_\_\_\_  
By:\_\_\_\_\_

**GRANTEE**

\_\_\_\_\_  
By:\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS                   §  
                                          §  
COUNTY OF DALLAS           §

BEFORE ME, the undersigned Notary Public, personally appeared \_\_\_\_\_, **Grantor**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

ACKNOWLEDGMENT

STATE OF TEXAS                   §  
                                          §  
COUNTY OF DALLAS           §

BEFORE ME, the undersigned Notary Public, personally appeared \_\_\_\_\_, **Grantee**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT "A"

THE BASIS OF BEARING IS THE WEST LINE OF SOUTH COPPELL ROAD  
BEING NORTH AS SHOWN ON CONBOY ADDITION PLAT AS RECORDED  
IN VOLUME 2004237, PAGE 13, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS.

