

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:**      **Engineering and Construction Management**

**AGENDA DATE:**     **2/15/2011**

**CONTACT PERSON NAME AND PHONE NUMBER:** **R. Alan Shubert, P.E., City Engineer, 541-4423**

**DISTRICT(S) AFFECTED:**   **District 4**

**SUBJECT:**

THAT the City Manager be authorized to sign a Developer's Participation Agreement between the CITY OF EL PASO and NORTHEAST 58 THB/IT, LLC, for the construction of a roadway bridge over the Northgate Outlet Channel and right-of-way improvements on Stahala Drive, in accordance with Local Government Code Section 212.071. There is no cost to the City.

**BACKGROUND / DISCUSSION:**

In order to develop the property for residential use, and to deal with the resulting increased intensity of use, they must provide two points of access to the development. To accomplish this, the developer is proposing to construct, at no cost to the City, a roadway bridge over the Northgate Outlet Channel and make right-of-way improvements on Stahala Drive. Texas Local Government Code authorizes a municipality to enter into a contract with a developer to construct public improvements without a competitive bidding procedure provided that the city's participation in the costs do not exceed 30% of the total cost of construction.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

None

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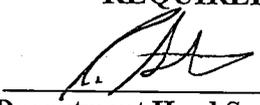
**BOARD / COMMISSION ACTION:**

On January 27, 2011, the City Plan Commission recommended approval of re-zoning provided that the developer provides two points of access to the property.

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

  
\_\_\_\_\_  
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

THAT the City Manager be authorized to sign a Developer's Participation Agreement between the **CITY OF EL PASO** and **NORTHEAST 58 THB/IT, LLC** for the construction of a roadway bridge over the Northgate Outlet Channel and right-of-way improvements on Stahala Drive, in accordance with Local Government Code Section 212.071. There is no cost to the City.

**ADOPTED this the \_\_\_\_ day of March 2011.**

THE CITY OF EL PASO

\_\_\_\_\_  
John Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
R. Alan Shubert, P.E., C.B.O.  
City Engineer



**WHEREAS**, the City has determined that Developer's construction of the Bridge Improvements and Stahala Improvements will be an economic benefit to local taxpayers, therefore, this Agreement is in the best interests of the citizens of the City;

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants and agreements of the parties hereto, the City and Developer agree as follows:

### **I. Filing**

This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of **Northeast 58 THB/IT, LLC**. Upon any sale or other transfer of ownership rights in the Property, **Northeast 58 THB/IT, LLC** shall notify the **CITY** in writing of such sale or transfer within thirty (30) business days of such sale or transfer.

### **II. Scope of Project**

1. The "Project" is defined as completion of public improvements defined as construction of a roadway bridge over the Northgate Outlet Channel, to include 5 foot sidewalks and driveway approaches (access drives) on both sides of bridge, hereinafter referred to as "Bridge Improvements"; and construction of right-of-way improvements including roadway, curb, gutter and sidewalk on Stahala Drive further described as follows: for the portion of the existing roadway, from Diana Drive to the existing terminus, should one utility service be installed on this portion of roadway, one-half of the street right-of-way will be reconstructed, should two or more utility services be installed on this portion of roadway, the entire roadway right-of-way width will be reconstructed; for the new portion of roadway from its current terminus to the property line of Lot 2, Block 6, Castner Range Unit One, full width right-of-way improvements consisting of roadway, curb, gutter and sidewalks on both sides, will be constructed. Additionally, traffic calming elements, to be approved by the City Engineer, will be included in all roadway improvements which will be hereinafter referred to as "Stahala Improvements". All Bridge Improvements and Stahala Improvements, as specified and shown on the conceptual plans (the "*Conceptual Plans*"), will be attached hereto as Exhibit "B" and incorporated herein for all purposes. Promptly following execution of this Agreement, Developer shall cause to be prepared by a qualified engineer, construction drawings for the bridge and Stahala Improvements, which construction drawings shall be consistent with and a logical extension of the Conceptual Plans. Following completion of the construction drawings, the term "Conceptual Plans" as used herein shall include the final construction drawings. Construction and design plans shall be processed in accordance with the subdivision process established under 19.08 of the City of El Paso City Code.

a. Responsibility of the parties:

(1) Developer shall construct all Bridge and Stahala Improvements required under this Agreement pursuant to the terms and conditions specified herein. Developer further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs, arising from the construction of required Bridge and Stahala Improvements, except as provided herein.

(2) In constructing the Bridge and Stahala Improvements, Developer shall comply with all applicable federal, state and local law including all City ordinances, codes and

regulations. Failure to do so in any manner shall constitute a material breach of this Agreement. In addition, Developer shall obtain all permits and inspections required by the City and be responsible for any costs associated with obtaining such permits and inspections.

(3) Grantee shall not commence construction of the Bridge without receiving the written approval by the El Paso Water Utilities and the City Engineering and Construction Management Department of the design, materials and construction plans which approval shall not be unreasonably withheld or delayed.

(4) Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work described in the Conceptual Plans and shall provide adequate supervision to assure competent performance of the work.

(5) The Developer agrees that all construction and materials shall be subject to inspection and approval by the City. All Project materials must conform to the Conceptual Plans and are subject to quality control testing by the City at the Developer's sole cost and expense.

2. Developer acknowledges and agrees that a performance bond in the amount of 125% of the value of the proposed improvements must be provided within sixty days from the date this Agreement is approved by City Council. In addition, construction of the Bridge Improvements must be completed prior to the issuance of any building permits for Lot 2, Block 6, Castner Range Unit One. Furthermore, the Developer acknowledges and agrees that no certificates of occupancy for any buildings on Lot 2, Block 6, Castner Range Unit One shall be issued until Stahala Improvements have been inspected and approved by the City and the Stahala Improvements have been accepted for operation and maintenance by the City. The City will use its best efforts to cause the Bridge and Stahala Improvements to be approved by the City as soon as reasonably possible. **The City shall not be liable for any damages which may occur if the Project is abandoned for any reason because of the conduct of third parties or any other factors other than the breach by the City of its covenants made in this Agreement, and the Developer hereby releases the City from any such liability.**

3. All Bridge and Stahala Improvements shall be substantially completed by the Developer within 36 months following the Effective Date of this Agreement, unless otherwise extended by written amendment and approval by the City, subject to delays by reason of Force Majeure. Substantial completion for the Bridge Improvements is defined as when the Bridge Improvements are completed in accordance with the design and construction plans submitted and approved by the City, so that the City may occupy or utilize the Bridge for the use for which it is intended as expressed in this Agreement. Substantial completion for the Stahala Improvements is defined as when the Stahala Improvements have been accepted for maintenance by the City. It is hereby understood and mutually agreed by the Developer and the City that the date of beginning and the time for substantial completion of the Project are **ESSENTIAL CONDITIONS** in the Agreement. **It is further mutually understood and agreed that the construction on the Project shall begin promptly following the plan approval and communicated notice of that approval to Developer.** The City Manager is authorized to approve any amendments required under this paragraph, provided that such amendments do not require the city to participate in the costs of construction of the Bridge and Stahala Improvements. The term "Force Majeure" means an event that causes delay by reason of an act of God, fire, windstorm, flood, explosion, collapse of structure or other casualty, epidemic, infectious disease, riot, war, terrorism, military power, labor disputes, failure of utility service,

court order, inability to obtain materials, adverse weather that is unusual and unanticipated for the period of time, or an act of like nature that is beyond the reasonable control of such party.

4. Developer agrees that construction of the Bridge and Stahala Improvements shall be pursued regularly, diligently, and uninterrupted at such a rate of progress as shall ensure substantial completion of the Project within the time specified. It is expressly understood and agreed, by the Developer and the City, that the time for the substantial completion of the Project is a reasonable time for substantial completion.

5. **If the Developer shall neglect, fail or refuse to substantially complete the construction of the Bridge and Stahala Improvements within the time herein specified, subject to delays by reason of Force Majeure, or any proper extension granted by the City, or to maintain the Project until inspected and accepted for maintenance by the City as specified in Article I hereof, and such neglect, failure or refusal to substantially complete or maintain the Project results in any safety issue to persons or property as reasonably identified by the City Engineer or his designee, the Developer agrees that the City may issue a stop work order for any work in progress under any issued building permit for the Project, and the Developer waives any and all causes of action it may have against the City arising from the City's stop work order. Additionally, the Developer will defend, indemnify and hold the City harmless from any and all causes of action any third party may have against the City arising from the City's stop work order.**

6. In the event that Developer fails to substantially complete the Project, and such failure continues for a period of 30 days after written notice is sent by the City, the City reserves the right to complete the construction, secure completion through the performance bond, and assess the costs of completion not covered under the performance bond to the Developer for payment.

7. Developer agrees to warrant to the City that all work in connection with the Project shall be performed in a good and workmanlike manner, strictly in accordance with the Conceptual Plans, and as otherwise provided in this Agreement. The Developer shall warrant the Bridge and Stahala Improvements for a period of one year for defective material, construction or workmanship following acceptance by the city of all Bridge and Stahala Improvements and shall provide a maintenance bond in the amount of fifty percent of the costs of the improvements for such period. This warranty shall remain in full force and effect for a period of one (1) year from and after the date of the City's final acceptance of the Project. It is understood and agreed that, notwithstanding the acceptance of the Project by the City, the Developer remains fully responsible for the repair and maintenance of the Project as such relates to the Developer's warranty of the Project, as set forth above, for a period of one (1) year from the date of the City's acceptance of the Project.

### **III. Project Funding**

Developer agrees that all the improvements under this Agreement are necessary and attributable to their proposed development and based on their request to change the zoning of the development to increase the intensity of use. Developer understands and agrees that Developer will be responsible for all costs associated with the Project and this Agreement and shall not request reimbursement from the City, nor shall the Developer be eligible for reimbursement from the City for any Improvements under this Agreement.

The estimated cost for the project is as shown in Exhibit D attached and incorporated herein for all purposes such amount being \$374,810.00.

#### **IV. Term Of The Agreement**

1. This Agreement becomes effective and binding and enforceable against the parties upon the approval by the City Council of El Paso ("*Effective Date*").
2. This Agreement shall terminate upon completion of the following:
  - a. The construction of the Bridge and Stahala Improvements are completed and the City Engineer has inspected the Bridge and Stahala Improvements to assure the City that the Bridge and Stahala Improvements specifications (as set forth in the Conceptual Plans) have been met. If the City Engineer determines that the City's specifications (as set forth in the Conceptual Plans) have not been met, Developer shall be responsible for any necessary corrections and alterations and all costs associated to construct any such necessary corrections and alterations. The City shall not be responsible nor participate in any costs associated with the work associated with such corrections and alterations, and,
  - b. The Stahala Improvements have been accepted for maintenance by the City, and,
  - c. The Developer provides the required maintenance bond under the one year warranty provisions specified above.
3. The Developer's right to construct, operate, maintain and utilize the Bridge Improvements for pedestrian, vehicular and utilities access is secured through a special privilege which is attached hereto and incorporated for all purposes as **Exhibit 'C'**.

#### **V. Ownership and Right of Access**

Developer hereby acknowledges the rights of the City, its agents, contractors and subcontractors to enter upon and construct and install any equipment that may be required, pursuant to this Agreement to complete the Project. This right of access shall include the right to use or modify any Developer construction materials as deemed necessary by the City. Additionally, in the event that additional authorization is required, Developer agrees to promptly execute the required documents at the request of the City.

#### **VI. Relationship of the Parties**

Developer acknowledges that it is not an agent, servant, or employee of the City and is therefore responsible for its own actions performed by itself, its agents or employees during the term of this Agreement.

#### **VII. Insurance**

Developer agrees to procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Developer and the Developer's employees performing work covered by this Agreement, and the City from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this

contract, whether such operations be by the Developer or by anyone directly or indirectly employed by the Developer. The minimum limits of liability and coverages shall be as follows:

- a) **COMMERCIAL GENERAL LIABILITY**
  - Personal Injury or Death**
    - \$500,000.00 for one person or occurrence
    - \$1,000,000.00 for two or more persons or occurrences
  - Property Damage**
    - \$500,000.00 per occurrence
  - General Aggregate**
    - \$1,000,000.00
- b) **AUTOMOBILE LIABILITY**
  - Combined Single Limit**
    - \$1,000,000.00 per accident

The insurance policies shall include an endorsement that the City is named as an additional insured to the full amount of the policy limits and that the City shall be notified at least thirty days in advance in the event the policy or policies are canceled and ten days in advance for non-payment of policy premiums. The endorsement shall contain substantially the following statement: "The insurance included within this policy shall not be cancelled or materially altered except after thirty (30) consecutive calendar days [ten (10) consecutive calendar days for non-payment of policy premiums] written notice by certified mail of intent to cancel or materially alter said insurance has been provided to the City of El Paso [additional insured]." Such insurance policy shall be issued by an insurance company duly authorized to do business in the State of Texas. The Developer shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

All certificates shall be provided to the City prior to the issuance of any permits, to include building or grading permits, for Lot 2, Block 6, Castner Range Unit One. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

"The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after thirty (30) consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the City of El Paso.

### **VIII. Bond Required**

The Developer agrees to execute a performance bond for one hundred twenty-five percent (125%) of the Project costs to secure fulfillment of all the Developer's obligations under this Agreement. The bond will be in a form approved by the City. The bond must be executed by a corporate surety in accordance with Texas Government Code, Chapter 2253. The bond shall identify the City as Owner and Obligee and shall bind both the Developer and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bonds

shall expressly provide that the Developer shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction. The Bond shall be provided to the City Engineer within sixty days from the date this Agreement is approved by City Council.

#### **IX. Indemnification**

**Developer or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THE CONSTRUCTION, OWNERSHIP AND OPERATION OF THE PROJECT OTHER THAN THE ACTIONS OF THE CITY AND/OR ACTIVITIES OF THE CITY PURSUANT TO ARTICLE V HEREOF. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Developer every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Developer will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Developer may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Developer will pay all judgments in actions defended by Developer pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Developer, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Developer's property from any cause except arising out of its breach of the terms of this Agreement.**

#### **X. Assignability**

The parties hereto agree that the rights of the Developer and the City under this Agreement are assignable.

#### **XI. Notice**

All notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses or such other addresses as the parties may designate to each other in writing from time to time:

CITY:                   The City of El Paso  
                          Attn: City Manager  
                          2 Civic Center Plaza, 10<sup>th</sup> Floor  
                          El Paso, Texas 79901-1196

copy to:               City Engineer  
                          2 Civic Center Plaza, 4<sup>th</sup> Floor  
                          El Paso, Texas 79901-1196

DEVELOPER: Northeast 58 THB/IT, LLC  
Attn: Chris Charron  
730 McKelligon Drive  
El Paso, Texas 79902

copy to: Gray – Jansing & Associates, Inc.  
Attn: Linda C. Troncoso, P.E.  
801 N. El Paso Street, Suite 150  
El Paso, Texas 79902

Rodolfo Mata, P.C.  
Attn: Rodolfo Mata  
1112 Montana Ave.  
El Paso, Texas 79902

#### **XI. Law Governing Agreement**

The laws of the State of Texas shall govern the validity, performance, interpretation and enforcement of this Agreement. Venue shall be in the courts of El Paso, County, Texas.

#### **XII. Interpretation**

The City and Developer agree that this Agreement has been freely negotiated by both parties and that in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

#### **XIII. Severability**

If any provision of this Agreement is prohibited by law or otherwise determined to be illegal, invalid or unenforceable in a court of competent jurisdiction, such provision shall not affect the validity of the remaining provisions of this Agreement; instead, the Agreement shall be construed as if it did not contain the illegal, invalid or unenforceable provision(s) and the rights and obligations of the parties shall be construed and enforced accordingly.

#### **XIV. Future Maintenance Work**

The City shall be responsible for any maintenance or repairs of the Stahala Improvements upon completion of the Project as defined by the Agreement and, with respect to any maintenance or repairs covered by Developer's warranty, upon expiration of Developer's warranty. The Developer shall be responsible for any maintenance or repairs of the Bridge Improvements in accordance with the terms of the special privilege attached.

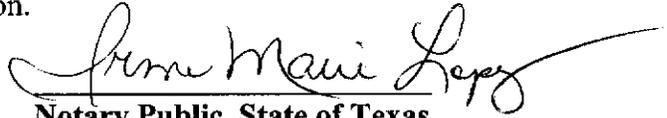
#### **XV. Entire Agreement**

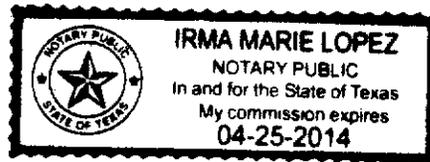
This Agreement constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This



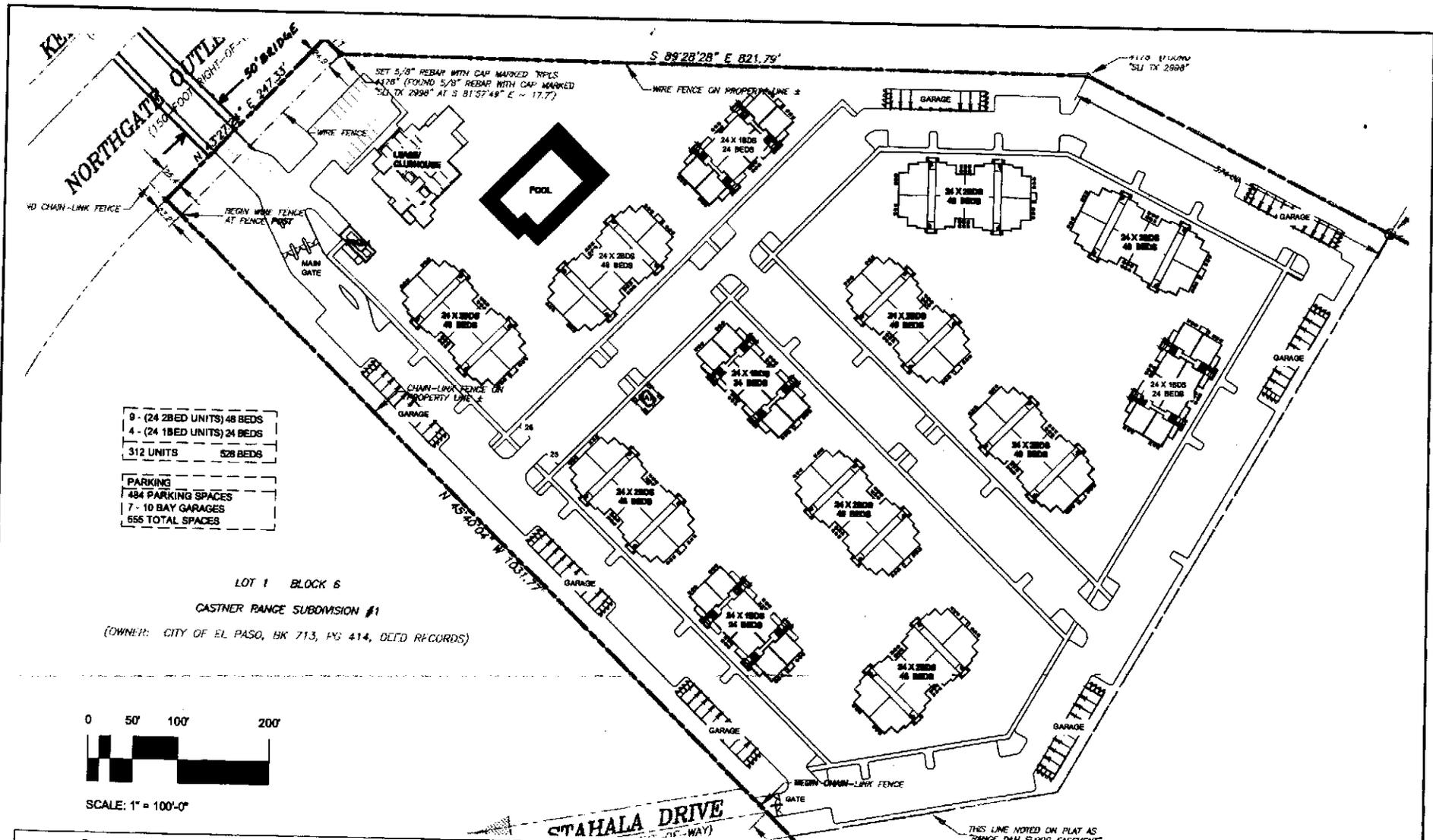
THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 23<sup>rd</sup> day of February, 2011,  
by Christopher Charron, as Member and on behalf of Northeast 58  
THB/IT, LLC, a Texas limited liability corporation.

  
Notary Public, State of Texas

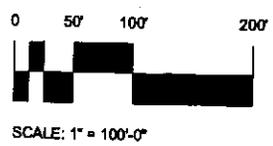


**EXHIBIT A  
SITE PLAN  
(see attached)**



9 - (24 BED UNITS) 48 BEDS	
4 - (24 18 BED UNITS) 24 BEDS	
<b>312 UNITS</b>	<b>528 BEDS</b>
<b>PARKING</b>	
484 PARKING SPACES	
7 - 10 BAY GARAGES	
<b>555 TOTAL SPACES</b>	

LOT 1 BLOCK 6  
 CASTNER RANGE SUBDIVISION #1  
 (OWNER: CITY OF EL PASO, BK 713, PG 414, DEED RECORDS)

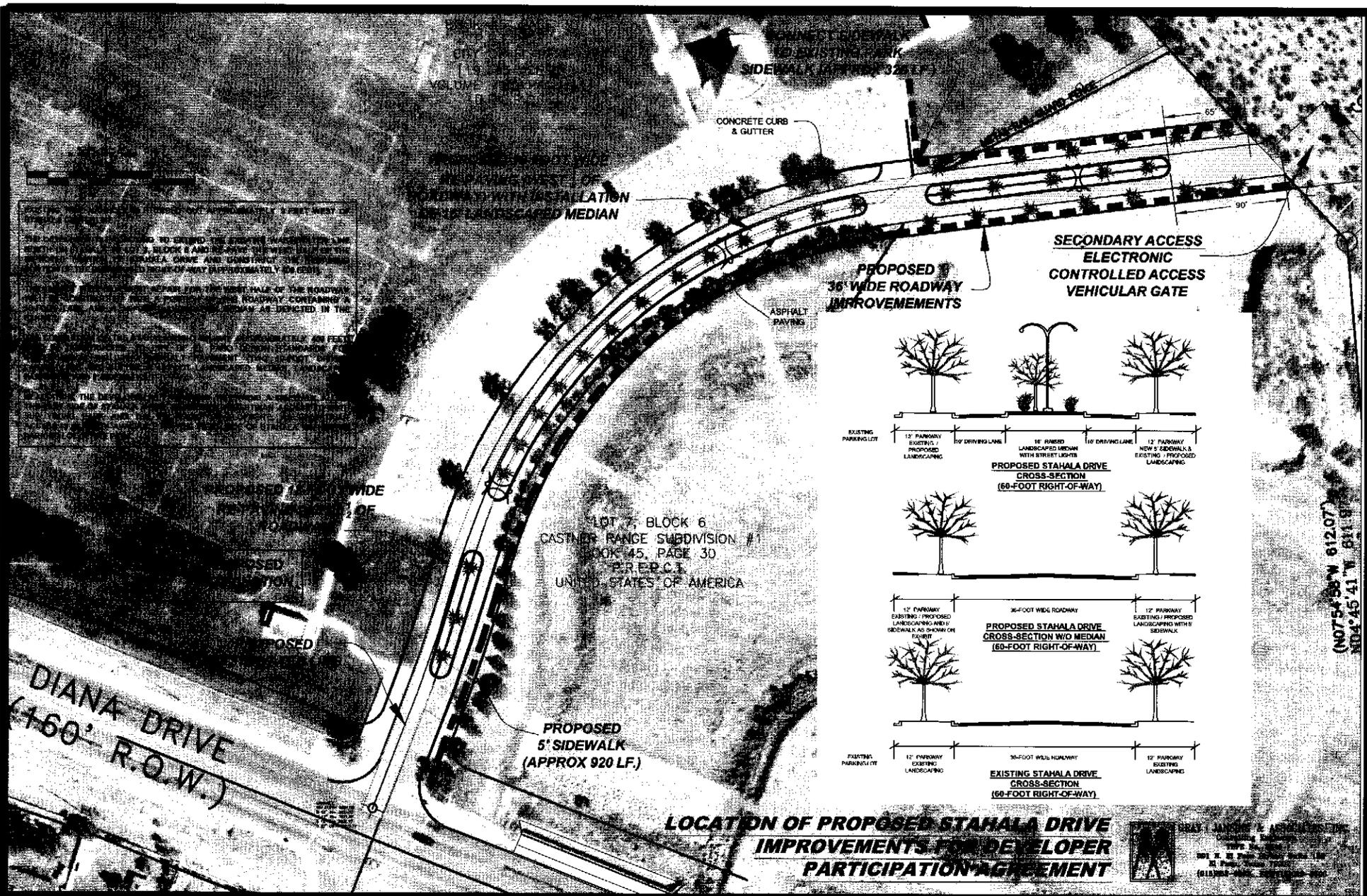


**DEVELOPER:**  
 PLACE PROPERTIES  
 3445 PEACHTREE ROAD  
 SUITE 1400  
 ATLANTA, GEORGIA 30326

**INDEPENDENCE PLACE**  
 AT FT. BLISS - DIANA ST.  
 EL PASO, TEXAS  
 SEPTEMBER 27, 2010

**ARCHITECT:**  
 NILES BOLTON ASSOCIATES  
 3060 PEACHTREE ROAD  
 SUITE 600  
 ATLANTA, GEORGIA 30305

**EXHIBIT B**  
**CONCEPTUAL PLANS**  
**(see attached)**

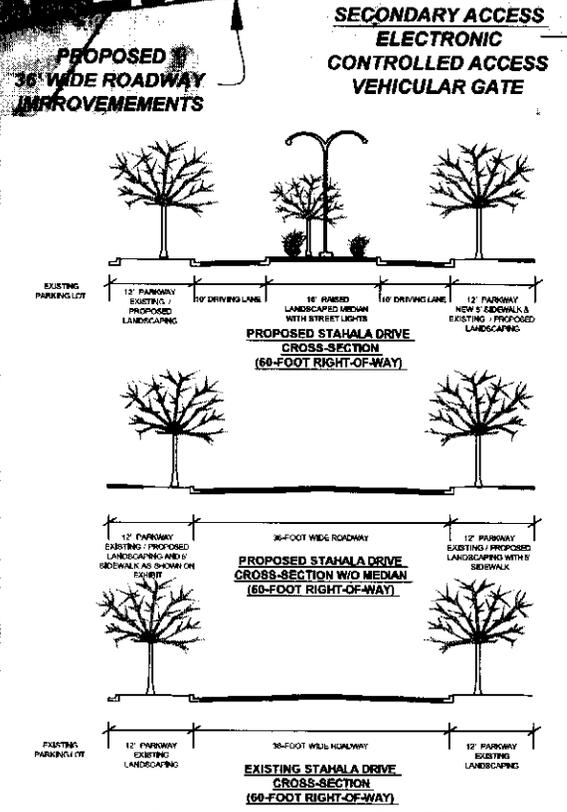


THESE PROVISIONS SHALL BE APPLICABLE TO THE ENTIRE STREET FRONT OF THE PROPERTY...

THE DESIGNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES...

THE DESIGNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES...

LOT 7, BLOCK 6  
 CASTER RANGE SUBDIVISION #1  
 BOOK 45, PAGE 30  
 P.E.R.C.I.  
 UNITED STATES OF AMERICA



**LOCATION OF PROPOSED STAHALA DRIVE IMPROVEMENTS FOR DEVELOPER PARTICIPATION AGREEMENT**

SEAL & SIGNATURE OF ARCHITECT

DATE

NO. OF SETS PREPARED

BY

(N0754'58"W 612.07')  
 (N04'45'41"W 841.97')

**EXHIBIT C**  
**SPECIAL PRIVILEGE**  
**(see attached)**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO NORTHEAST 58 TBH/IT LLC FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND REPAIR OF A BRIDGE CROSSING AND ACCESS DRIVEWAY OVER PORTIONS OF CITY RIGHT-OF-WAY AT KENWORTHY DRIVE AND ACROSS A PORTION OF THE NORTHGATE OUTLET CHANNEL FOR A TERM OF FIFTY YEARS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**SECTION 1. DESCRIPTION**

The City of El Paso (hereinafter called "City") hereby grants a Special Privilege (hereinafter called "License") to Northeast 58 TBH/IT, LLC (hereinafter referred to as the "Grantee") for the construction, installation, maintenance, and repair of a bridge crossing and access driveway over portions of City right-of-way along a portion of the Northgate Outlet Channel as shown in Exhibit "A" which is attached hereto and incorporated herein as though set forth in full for all purposes (hereinafter referred to as "Bridge"). Use of the City right-of-way shall be limited to the purpose of allowing the installation, maintenance and repair of the bridge crossing and access driveway. The Bridge shall include that portion of the City right-of-way connecting the Bridge to Kenworthy Drive, all as shown on Exhibit "B".

**SECTION 2. LICENSE AREA**

**License Area:** The aerial and surface rights granted herein along portions of right-of-way along Kenworthy Drive and across portions of the Northgate Outlet Channel to install the Bridge are more particularly shown in Exhibit "B" which is attached hereto and incorporated herein as though set forth in full for all purposes (hereinafter referred to as "License Area").

**Area Served by Licensed Area:** The license area provides access from City right-of-way to Grantee's property, which is a portion of Lot 2, Block 6, Castner Range Subdivision # 1 (Book 45, Page 30, Plat Records, El Paso County, Texas) El Paso, El Paso County Texas, containing 58.115 acres and is more particularly described in Exhibit D, which is attached hereto and incorporated herein as though set forth in full.

**SECTION 3. PURPOSE**

The only City right-of-way Grantee shall use pursuant to this License shall be the License Area shown for the construction of the Bridge described in Exhibit "B" attached hereto. Any use of the License Area other than in connection with the construction, use, maintenance, reconstruction, or modification of the Bridge is not authorized by this License. Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, his assigns or

successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

This License shall not permit or be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way. Except as provided herein, Grantee shall not construct any additional improvements, or make any additions or alterations on, above, or below the City right-of-way, without prior written consent of the El Paso City Council.

#### **SECTION 4. REGULATION OF CONSTRUCTION**

The work done by Grantee in placing, constructing, replacing, repairing, reconstructing, or maintaining the Bridge shall be subject to and governed by all laws, rules and regulation of the City and State of Texas, Federal Communications Commission, and the U.S. Government that are applicable to the construction of the Bridge. Work done in connection with the construction, repair and maintenance of such facilities is subject to the continuing police power of the City.

All construction shall comply with the provisions of the Developer Participation Agreement, attached hereto and incorporated herein as Exhibit "C", between the Grantee and the City and shall conform to the specifications of the El Paso Water Utilities. Grantee shall not commence construction of the Bridge without receiving the written approval by the El Paso Water Utilities and the City Engineering and Construction Management Department of the design, materials and construction plans.

In the event Grantee desires to reconstruct, repair, maintain, or replace the Bridge built hereunder, Grantee shall obtain all applicable permits required by the City. Where proposed, any excavation, trenching, and other construction in the City right-of-way shall be so carried out as to interfere as little as practical with the surface use of the City right-of-way in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the police and regulatory powers necessary to provide for public convenience.

After construction of the Bridge, Grantee shall restore the City right-of-way to substantially the same condition as before such construction to the reasonable satisfaction of the City, in accordance with applicable City specifications.

Grantee covenants and agrees that Grantee shall, at its own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee, its employees, contractors, agents or assigns, damage so that such repair of the water lines, storm and sanitary sewer lines and water meters shall comply with the approval of the City.

The City shall have the power at any time to order and require Grantee to remove and abate any portion of the Bridge that is dangerous to life or property. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate same, at the expense of Grantee. In the event City removes or abates the Bridge as provided

herein, Grantee shall not be compensated for the loss of the Bridge, or revenues associated with the Bridge or improvements to Grantee's property to which the Bridge provides access, nor shall the City be liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the Bridge.

**SECTION 5. TERM**

This Special Privilege shall be for a term of Fifty (50) years from the effective date hereof, unless terminated earlier as provided herein. At the end of this term, the City shall have the unilateral option of renewing this Special Privilege upon the request of the Grantee and approval of the El Paso City Council. If Grantee wishes the City to renew this License, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this License. Should Grantee fail to submit such request for the renewal of this License to the City as herein required, the License shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require the terms, conditions, and provisions of this License be modified as a condition for renewing the grant of the encroachment within the License Area as permitted by this License.

**SECTION 6. WORK DONE BY OTHERS**

Throughout the term of this License, the City expressly reserves the right to install, repair, or reconstruct the License Area used or occupied by Grantee, expressly including but not limited to, drainage facilities and structures.

The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables and conduit, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under the City right-of-way occupied by Grantee, and to change any curb or sidewalk or the street grade of any street. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee for any damages arising out of the performance of any work by the City, its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to the Bridge. If the City requires Grantee to, alter, change, adapt, or relocate the Bridge, due to imminent public safety concerns, because of changes in the grade of the City right-of-way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for

the City's consideration. If the City requires Grantee to remove, alter, change, adapt or relocate its Bridge or any portion thereof to enable any other entity or person, except the City or any other governmental entity, to use, or to use with greater convenience, the City right-of-way, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of the Bridge; provided, however, the City shall not be responsible nor liable for such reimbursement.

**SECTION 7. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS**

The City reserves the right to use the surface, subsurface or airspace within the License Area for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said City right-of-way occupied by Grantee provided such use does not interfere with Grantee's use of the License Area. Whenever by reason of said work in connection with said purposes it shall be deemed necessary by the City to alter, change, adapt, conform or relocate portions of the Bridge, such alteration or change or relocation shall be made by Grantee when ordered in writing by the Traffic Engineer or El Paso Water Utilities without any claim for reimbursement or damages against the City.

**SECTION 8. CONSIDERATION**

As consideration for this special privilege, Grantee shall pay to the City the sum of ONE THOUSAND and NO/100 DOLLARS (\$1,000.00) per year. The annual consideration is calculated pursuant to Section 15.08.120.F.3 of the El Paso City Code.

ADVANCE PAYMENT REQUIRED: Grantee shall pay forth to the City the sum of TWENTY-FIVE THOUSAND, FIVE HUNDRED ONE AND 66/100 DOLLARS (\$25,501.66) prior to obtaining a building permit for the Bridge. Said \$25,501.66 reflects the net present value of the annual fees required by this license. In the event of cancellation of this License by the City, the Grantee shall not be entitled to a refund of the annual consideration paid to the City.

The consideration shall be due as specified in the preceding paragraph. The advance payment shall be in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the Department of Transportation for remittance to the Financial Services Department. If the Special Privilege is disapproved by the City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action.

The fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes, and assessments for public improvements except as hereinafter provided as may be enacted during the term of this License or any renewal. The fee

established in this section shall not be affected by any relocation of Grantee's Bridge required by the City pursuant to this License.

The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans, and other approvals as necessary to conform to all other applicable City Special Privileges and Regulations.

#### **SECTION 9. INSURANCE**

Prior to commencement of any future construction, repairs, or maintenance operations during the term of this License, Grantee shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the term of this License. The City shall be named as an additional insured on all of the Grantee's insurance policies that are required by this License. Failure to maintain insurance shall be a material breach of this license and a basis for termination of this License by the City.

Grantee shall provide public liability insurance for personal injuries and death growing out of any one (1) accident or other cause in a minimum amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) for injury or death for one person, and One Million and No/100 Dollars (\$1,000,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) for property damage growing out of any one (1) accident or other cause, a general aggregate liability insurance in a minimum sum of One Million and NO/100 Dollars (\$1,000,000.00), and automobile liability insurance in a minimum sum of One Million and No/100 Dollars (\$1,000,000.00) combined single limit. These amounts are not a limitation upon Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. Such policy or endorsement to the policy shall provide that the City shall be named as an additional insured and that the insurance cannot be canceled, modified or the amount of coverage changed without thirty (30) days prior written notice to the Financial Services Department, or ten (10) days prior written notice to the Financial Services Department for cancellation based on non-payment of insurance premiums. Grantee shall file a copy of the policy, endorsements and/or certificate of insurance with Financial Services and the Department of Transportation. If the policy is not kept in full force and effect throughout the term of this License, the License shall automatically become void.

#### **SECTION 10. INDEMNITY**

**As a condition of this License, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all costs, claims, liens, damages, losses, expenses (including but not limited to attorneys' fees and costs), fees, fines, penalties, proceedings, demands, causes of action, liability and**

**suits of any kind and nature, including but not limited to, personal injury or death or property damage, arising out of, resulting from or related to the GRANTEE'S activities under this License, including any act or omission by the GRANTEE, its agents, employees or subcontractors, all, without, however, waiving governmental immunity available to the City, hereafter, the "damages". This indemnification shall apply even where such damages described above involve the negligence or allegations of negligence on the part of the City, its officers, agents or employees.**

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the GRANTEE every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. GRANTEE shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the GRANTEE may deem expedient, and defend or cause to be defended on behalf of the City all suits for damages, even if groundless, false or fraudulent brought because of such damages. GRANTEE shall pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section, along with all attorneys' fees and costs incurred by the City, including interest accruing to the date of payment by GRANTEE and premiums on any appeal bonds.

The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. In addition, the GRANTEE shall promptly advise the City in writing of any claim or demand against the City or the GRANTEE known to the GRANTEE related to or arising out of the GRANTEE'S activities under this License. **The City will not be responsible for any loss of or damage to the GRANTEE'S property from any cause.**

#### **SECTION 11. RIGHTS IN THE EVENT OF ABANDONMENT**

As an express condition of this License, and not as a mere covenant, in the event Grantee abandons the Bridge or a portion thereof or ceases to use the Bridge for the purposes enumerated herein for any period of six (6) months or longer, other than the time elapsing between the effective date of this license and the completion of construction of the Bridge, this License shall automatically terminate, free and clear of any right, title, or interest in Grantee without the necessity of any notice to Grantee or any re-entry by the City.

#### **SECTION 12. CANCELLATION**

Grantee shall have the option to terminate this License at any time upon giving the City written notice thirty (30) days in advance of such termination. In addition, the City shall have the option to cancel and terminate this License for failure of Grantee to comply with any material provision or requirement contained in this agreement after thirty (30) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within thirty (30) days, if Grantee shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

This License shall also immediately terminate if Grantee is found to be in default of the terms of the Developer Participation Agreement, or if Grantee fails to complete the Bridge.

Upon termination of this License, prior to the expiration of the original term for any reason, Grantee shall remove its Bridge located in the Licensed Area at no cost to the City. When said Bridge is removed from the License Area, Grantee shall restore the portions of the License Area, damaged, or removed during the term of this License, if any, at Grantee's own cost and expense, as determined by the City Engineer and the El Paso Water Utilities, in accordance with City specifications. Any such restoration shall be subject to the reasonable approval of the City and El Paso Water Utilities. If the Grantee fails to restore the pavement as required by the City, the City may at its option restore the License Area and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

### **SECTION 13. RECORDS**

The El Paso City Council, El Paso Water Utilities, the City Engineer and the Traffic Engineer shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of its rights under this License, including the construction, replacement, reconstruction, maintenance, and repair of the Bridge within the City right-of-way. Obtaining all applicable City permits shall be deemed sufficient to keep such parties informed. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the Bridge within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

### **SECTION 14. NOTICE**

Any notice or communication required in the administration of this License shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY:                      City of El Paso  
                                  Attn: City Manager  
                                  #2 Civic Center Plaza 10<sup>th</sup> Floor  
                                  El Paso, Texas 79901

with copy to: City of El Paso  
ATTN: Department of Transportation  
7968 San Paulo Drive  
El Paso, Texas 79915

with copy to: City of El Paso  
ATTN: Financial Services – Capital Assets Division  
#2 Civic Center Plaza 7<sup>th</sup> Floor  
El Paso, Texas 79901

with copy to: El Paso Water Utilities Public Service Board  
Attn: Nick Costanzo, Vice President  
P.O. Box 51  
El Paso, Texas 79901-0511

GRANTEE: Northeast 58 TBH/IT LLC  
ATTN: Chris Charron  
730 McKelligon Dr  
El Paso, Texas 79902

or to such other addresses as Grantee may designate from time to time by written notice as required in this paragraph.

**SECTION 15. ASSIGNMENT**

The rights granted by this License inure to the benefit of the Grantee, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assignable without the express advanced written consent of the El Paso City Manager.

**SECTION 16. LEASING OR DEDICATION OF FACILITIES**

Grantee, without the advanced written consent of the El Paso City Manager or designee, shall not lease, sub-lease or otherwise convey any interest in the License Area, to any person or entity except as provided in Section 15 of this License.

**SECTION 17. ADMINISTRATION OF LICENSE**

The Traffic Engineer or designee is the principal City official responsible for the administration of this License. Grantee recognizes that questions regarding the interpretation or application of this License shall be referred to the Traffic Engineer.

**SECTION 18. NO PROPERTY RIGHTS**

Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, his assigns or successors in interest, none of who shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

**SECTION 19. LIENS AND ENCUMBRANCES**

Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the License Area that arises or is alleged to have

arisen from Grantee's use of the License Area.

**SECTION 20. RIGHT OF ENTRY AND INSPECTION**

The City's authorized representative shall have the right to enter upon the licensed area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

**SECTION 21. LAWS AND ORDINANCES**

Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction, repair, renovation, alteration or use of the License Area.

**SECTION 22. ENTIRE AGREEMENT**

This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

**SECTION 23. SEVERABILITY**

Every provision of this license is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this license.

**SECTION 24. LAWS GOVERNING/VENUE**

The laws of the State of Texas shall govern the validity, performances, and enforcement of this license and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

**SECTION 25. RESTRICTIONS AND RESERVATIONS**

This License is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this License, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the License Area, Grantee shall have the right to terminate this License upon giving the City prior written notice of its intent to do so.

**SECTION 27: FILING OF RECORD:** This special privilege license shall be filed of record in the office of the El Paso County Clerk.

**SECTION 26. EFFECTIVE DATE**

The effective date of this License shall be the date last entered below. This License shall not take effect unless Grantee files its written acceptance with the City prior to the enactment of this License by the El Paso City Council.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS**

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**ACKNOWLEDGMENT**

THE STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO        )

This instrument is acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by John F. Cook, as Mayor of the City of El Paso on behalf of the City of El Paso, as Grantor.

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

Notary's Printed or Typed Name:

\_\_\_\_\_  
My Commission Expires:

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mark Shoesmith  
Assistant City Attorney

\_\_\_\_\_  
Daryl W. Cole, Director  
El Paso Department of Transportation

**ACCEPTANCE**

The above instrument, with all conditions thereof, is hereby accepted this \_\_\_ day of \_\_\_\_\_, 2011.

**GRANTEE:**  
**Northeast 58, TBH/IT, LLC**

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

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

THE STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO        )

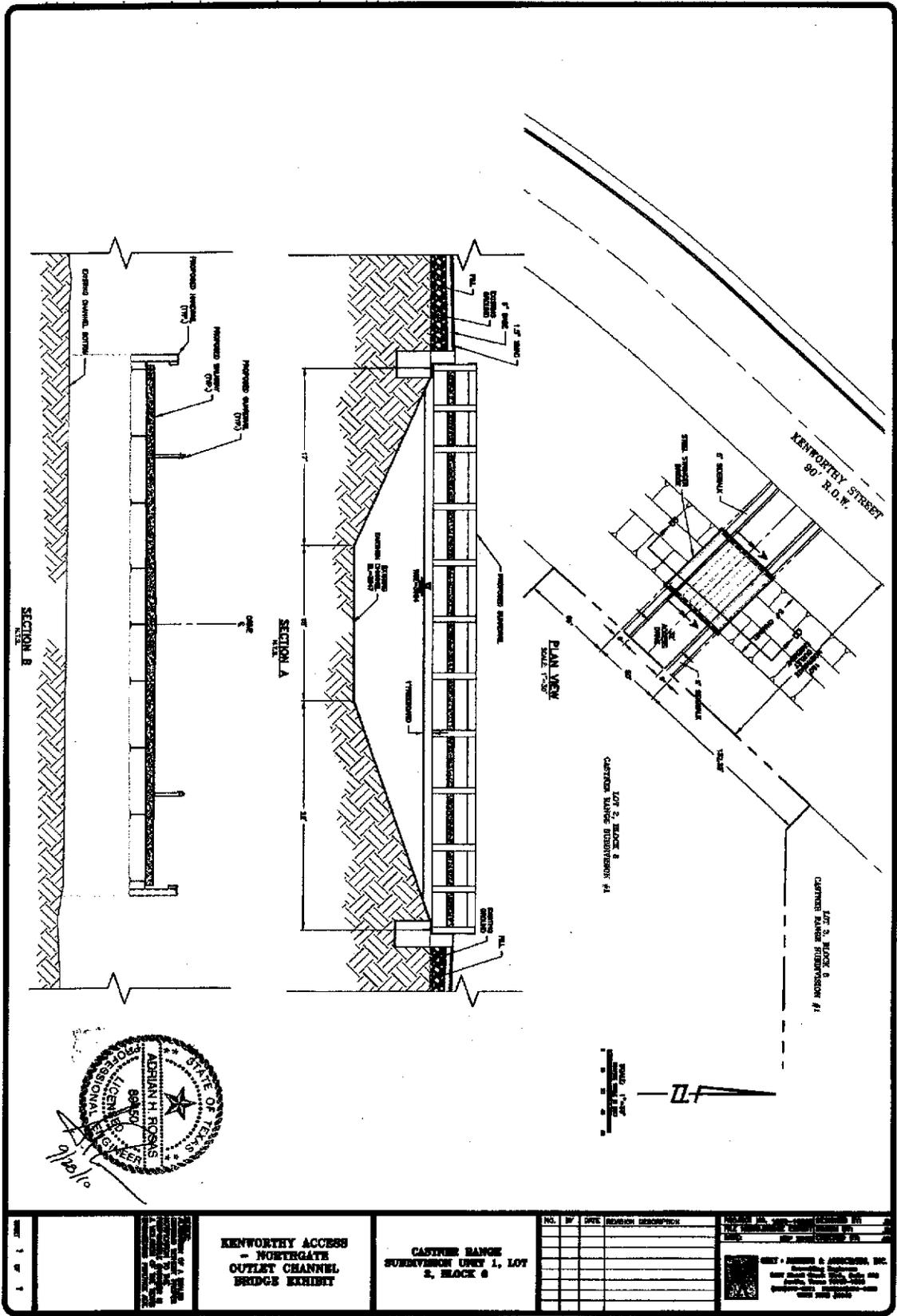
This instrument is acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
by \_\_\_\_\_ on behalf of Northeast 58 TBH/IT, LLC, as Grantee.

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

Notary's Printed or Typed Name:

\_\_\_\_\_  
My Commission Expires:

\_\_\_\_\_



NO. 1 OF 1	KENWORTHY ACCESS - NORTHGATE OUTLET CHANNEL BRIDGE EXHIBIT	CASINO RANGE SUBDIVISION LOTS 1, LOT 2, BLOCK 2	NO.	BY	DATE	REVISION DESCRIPTION

EXH  
IBIT A

Property description: A 0.172-acre portion of Lot 1, Block 6, Castner Range Subdivision #1, El Paso, El Paso County, Texas

#### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 0.172-acre portion of Lot 1, Block 6, Castner Range Subdivision #1 (Book 45, Page 30, Plat Records, El Paso County, Texas), El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a 1" iron pipe in concrete at the intersection of the common boundary between Lots 2, 3 and 7, Block 6, Castner Range Subdivision #1, from which a brass cap in concrete at the common corner of Sections 37 and 38, Block 81, Township 1 and Sections 1 and 2, Block 81, Township 2, Texas & Pacific Railway Company Surveys bears South 78°46'20" East, a distance of 2229.65 feet (record - 2229.52 feet); Thence, North 63°28'26" West, along the common boundary between Lots 2 and 3, Block 6, Castner Range Subdivision #1, a distance of 374.00 feet; Thence, North 89°28'28" West, continuing along said boundary, a distance of 821.79 feet; Thence, North 46°32'36" West, continuing along said boundary, a distance of 24.61 feet to the common boundary between Lots 1 and 2, Block 6, Castner Range Subdivision #1, said boundary also being the southerly right-of-way of the Northgate Outlet Channel (150-foot width); Thence, South 43°27'24" West, along said boundary, a distance of 132.33 feet to the POINT OF BEGINNING of this description;

THENCE, South 43°27'24" West, continuing along said boundary, a distance of 50.00 feet;

THENCE, North 46°32'36" West, a distance of 150.00 feet to the common boundary between Lot 1, Block 6, Castner Range Subdivision #1 and Kenworthy Street (90-foot right-of-way), said boundary also being the northerly right-of-way of the Northgate Outlet Channel;

THENCE, North 43°27'24" East, along said boundary, a distance of 50.00 feet;

THENCE, South 46°32'36" East, a distance of 150.00 feet to the POINT OF BEGINNING of this description.

Said parcel of land contains 0.172 acres (7,500 square feet) of land more or less.

NOTE: THIS DESCRIPTION IS BASED ON RECORD INFORMATION AND IS NOT INTENDED TO REPRESENT AN ON-THE-GROUND SURVEY. A PLAT OF EVEN DATE HERewith ACCOMPANIES THIS DESCRIPTION.

ROBERT SEIPEL ASSOCIATES, INC.  
Professional Land Surveyors



Robert R. Seipel, R.P.L.S.  
President  
Texas License No. 4178

Job Number 07-0035B  
June 7, 2010

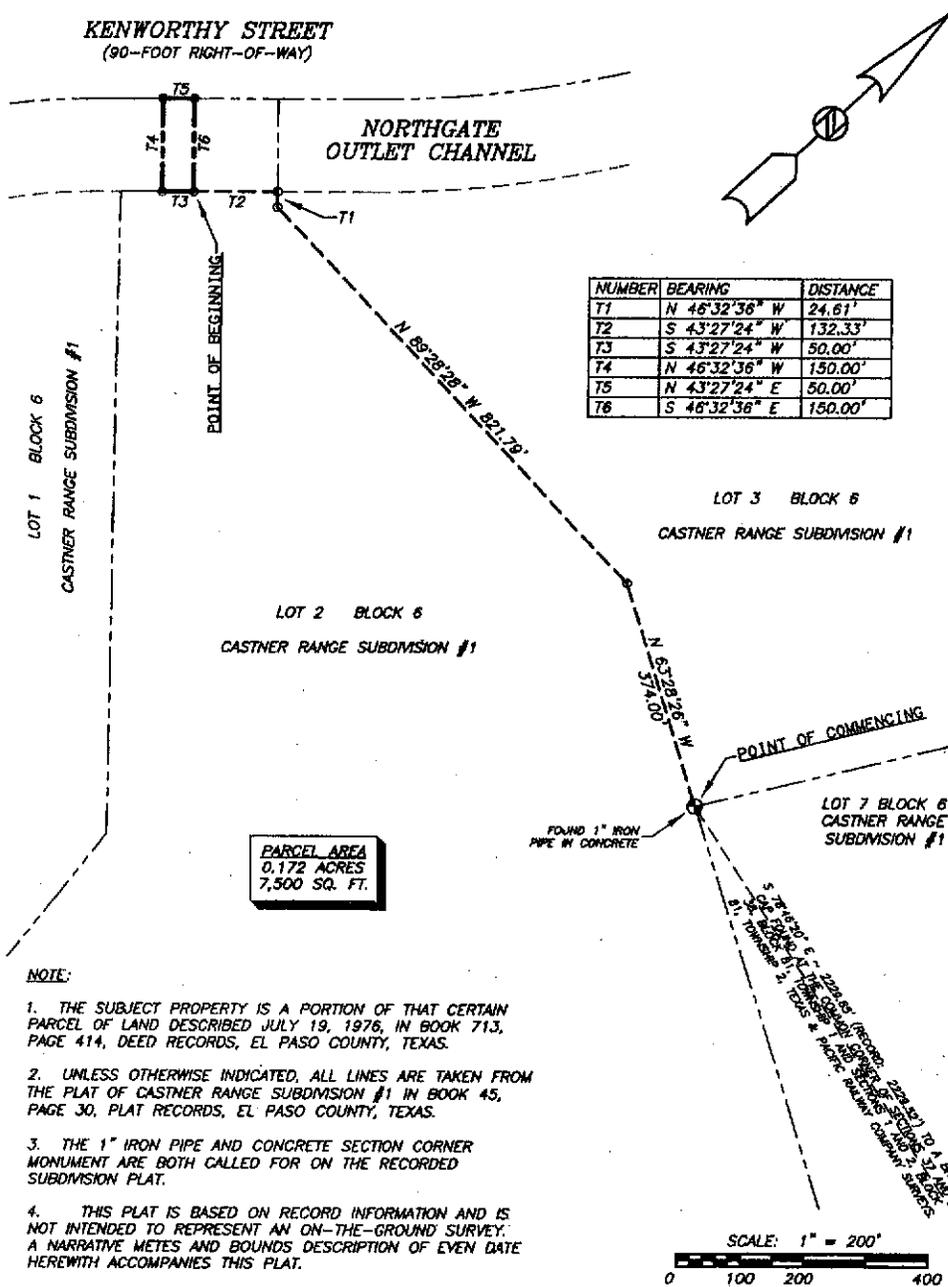
07-0035B.doc

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**EXHIBIT B**  
**PG 1 of 2**

KENWORTHY STREET  
(90-FOOT RIGHT-OF-WAY)

NORTHGATE  
OUTLET CHANNEL



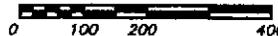
NUMBER	BEARING	DISTANCE
T1	N 46°32'36" W	24.61'
T2	S 43°27'24" W	132.33'
T3	S 43°27'24" W	50.00'
T4	N 46°32'36" W	150.00'
T5	N 43°27'24" E	50.00'
T6	S 46°32'36" E	150.00'

PARCEL AREA  
0.172 ACRES  
7,500 SQ. FT.

**NOTE:**

1. THE SUBJECT PROPERTY IS A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED JULY 19, 1976, IN BOOK 713, PAGE 414, DEED RECORDS, EL PASO COUNTY, TEXAS.
2. UNLESS OTHERWISE INDICATED, ALL LINES ARE TAKEN FROM THE PLAT OF CASTNER RANGE SUBDIVISION #1 IN BOOK 45, PAGE 30, PLAT RECORDS, EL PASO COUNTY, TEXAS.
3. THE 1" IRON PIPE AND CONCRETE SECTION CORNER MONUMENT ARE BOTH CALLED FOR ON THE RECORDED SUBDIVISION PLAT.
4. THIS PLAT IS BASED ON RECORD INFORMATION AND IS NOT INTENDED TO REPRESENT AN ON-THE-GROUND SURVEY. A NARRATIVE METES AND BOUNDS DESCRIPTION OF EVEN DATE HERewith ACCOMPANIES THIS PLAT.

SCALE: 1" = 200'



**ROBERT SEIPEL ASSOCIATES, INC.**  
**PROFESSIONAL LAND SURVEYORS**

1845 NORTHWESTERN DR. SUITE C EL PASO, TX 79912 915-877-1928

**EXHIBIT**

A 0.172-ACRE PORTION OF LOT 1, BLOCK 6,  
CASTNER RANGE SUBDIVISION #1, EL PASO,  
EL PASO COUNTY, TEXAS.

DATE: 06-07-10  
SCALE: 1" = 200'  
DRAWN BY: RRS  
CHK'D BY: RRS  
FB: ~  
FILE #: 07-0035B

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ALL RIGHTS RESERVED

**EXHIBIT B**  
**PG 2 of 2**

**EXHIBIT "C"**  
**(See Attached)**

EXHIBIT "D"

The parcel of land herein described is Lot 2, Block 6, Castner Range Subdivision #1 (Book 45, Page 30, Plat Records, El Paso County, Texas), El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a brass cap in concrete at the common corner of Sections 37 and 38, Block 81, Township 1 and Sections 1 and 2, Block 81, Township 2, Texas & Pacific Railway Company Surveys, from which a 1" iron pipe in concrete at the intersection of the common boundary between Lots 2, 3 and 7, Block 6, Castner Range Subdivision #1 bears North 78°46'20" West, a distance of 2229.65 feet (record - 2229.52 feet); Thence, South 88°47'55" West, along the common boundary between Sections 2 and 37, a distance of 1264.41 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the common boundary between Lots 2 and 7, Block 6, Castner Range Subdivision #1 for the POINT OF BEGINNING of this description:

THENCE, South 63°28'26" East, along said boundary, a distance of 289.51 feet to an existing fence post;

THENCE, South 00°06'12" East, continuing along said boundary, a distance of 761.78 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, South 87°17'48" West, continuing along said boundary, a distance of 1300.57 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, North 76°28'00" West, continuing along said boundary, a distance of 417.78 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, North 07°54'58" West, continuing along said boundary, a distance of 612.07 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, North 45°40'04" West, along the southerly boundary of Lot 2, at 94.50 feet passing the centerline of Stahala Drive (60-foot right-of-way), a total distance of 1031.77 feet to a 5/8" rebar with cap marked "RPLS 4178" set at the intersection of the common boundary between Lots 1 and 2, Block 6 and the easterly right-of-way of the Northgate Outlet Channel (150-foot right-of-way);

THENCE, North 43°27'24" East, along said easterly right-of-way, a distance of 247.33 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the common boundary between Lots 2 and 3, Block 6;

THENCE, South 46°32'36" East, along said boundary, a distance of 24.61 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, South 89°28'28" East, continuing along said boundary, a distance of 821.79 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, South 63°28'26" East, continuing along said boundary, at 374.00 feet passing a 1" iron pipe in concrete at the intersection of the common boundary between Lots 2, 3 and 7, Block 6, a total distance of 1405.43 feet to the POINT OF BEGINNING of this description.

Said parcel of land contains 58.115 acres (2,531,475 square feet) of land more or less.

**EXHIBIT D**  
**COST ESTIMATES**  
**(see attached)**

# OPINION OF PROBABLE CONSTRUCTION QUANTITIES AND COSTS

PROJECT: LOT 2, BLOCK 6, CASTNER RANGE UNIT ONE

JOB NO: 1587-10229-63

BASED ON: PRELIMINARY STREET PLANS - NOT APPROVED  
PRELIMINARY CULVERT CROSSING LAYOUT

DATE: 1/18/2011  
PREPARED BY: MH

PREPARED  
BY: GRAY ♦ JANSING & ASSOCIATES, INC.

CHECKED BY: LT  
DATE: 1/25/2011

**ESTIMATE OF QUANTITIES:**

**STREET IMPROVEMENTS - REPAVING 1/2 OF STAHALLA WITH LANDSCAPED MEDIANS**

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
1	10" SUBGRADE PREPARATION	1,930	SY	\$2.80	\$5,404.00
2	FILL MATERIAL PLACEMENT	3,600	CY	\$3.50	\$12,600.00
3	6" BASE MATERIAL	1,730	SY	\$6.00	\$10,380.00
4	1.5" H.M.A.C.	1,730	SY	\$9.00	\$15,570.00
5	6" CURB AND GUTTER (INCLUDING MEDIANS)	1,800	LF	\$8.75	\$15,750.00
6	5' SIDEWALK	1,252	LF	\$22.00	\$27,544.00
7	PARKWAY LANDSCAPING	4,088	SF	\$2.00	\$8,176.00
8	LANDSCAPING WITHIN MEDIAN	8,736	SF	\$2.00	\$17,472.00
SUBTOTAL - STREETS					\$112,896.00

**NORTHGATE OUTLET CHANNEL CROSSING IMPROVEMENTS**

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
1	CONTECH BRIDGE STRUCTURE	1	LS	\$140,914.00	\$140,914.00
2	INSTALLATION AND CONCRETE PAVING	1	LS	\$121,000.00	\$121,000.00
SUBTOTAL - CULVERT CROSSING					\$261,914.00

**TOTALS**

ITEM	DESCRIPTION	TOTAL COST
1	STREET IMPROVEMENTS	\$112,896.00
2	CULVERT CROSSING IMPROVEMENTS	\$261,914.00
TOTAL CONSTRUCTION COST		\$374,810.00