

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

**DEPARTMENT:** Development Services Department-Planning Division

**AGENDA DATE:** Introduction 08-11-09; Public Hearing 08-18-09

**CONTACT PERSON/PHONE:** Mirian Spencer, Planner, (915) 541-4192, spencermd2@elpasotexas.gov

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

An Ordinance granting a Special Privilege License to Plaza De Montana Partners, L.P. permitting the encroachment of three awnings and three signs over portions of public right-of-way located on a Portion of Lot 1, Block 38, Mills Addition, City of El Paso, El Paso County, Texas more commonly known as 116 South Stanton Street. Applicant: Plaza De Montana Partners, LP. SPL09-00017, **(District 8)**.

**BACKGROUND / DISCUSSION:**

See attached information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

On July 22, 2009 the Development Coordinating Committee recommended approval.

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

\*\*\*\*\*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

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

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO PLAZA DE MONTANA PARTNERS, L.P. PERMITTING THE ENCROACHMENT OF THREE AWNINGS AND THREE SIGNS OVER PORTIONS OF PUBLIC RIGHT-OF-WAY LOCATED ON A PORTION OF LOT 1, BLOCK 38 MILLS ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS MORE COMMONLY KNOWN AS 116 SOUTH STANTON STREET.**

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

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to Plaza de Montana Partners, L.P., Lessee, of the property located at 116 South Stanton Street:

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A";

2. The Special Privilege is to permit Plaza de Montana Partners, L.P., Lessee, of the property described as a Portion of Lot 1, Block 38, Mills Addition, City of El Paso, El Paso County, Texas, more commonly known as 116 South Stanton Street, City and County of El Paso, Texas, attached and incorporated as Exhibit "B" to encroach onto a portion of City right-of-way with three awnings and three signs, as more particularly shown in the attached and incorporated Exhibit "C";

3. As consideration for this Special Privilege, Plaza de Montana Partners, L.P. shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A", subject to the terms and conditions of this ordinance and Special Privilege; and

4. This Special Privilege shall last a term of five (5) years.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009

*(SIGNATURES ON FOLLOWING PAGE)*

**THE CITY OF EL PASO**

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John F. Cook  
Mayor

**ATTEST:**

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Richarda D. Momsen  
City Clerk

**APPROVED AS TO FORM:**

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Guadalupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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Mathew McElroy, Deputy Director-Planning  
Development Services Department

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**EXHIBIT "A"**  
**SPECIAL PRIVILEGE**

THIS SPECIAL PRIVILEGE, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF EL PASO**, hereinafter called "City", and the **Plaza de Montana Partners, L.P.**, Lessee, hereinafter called "Grantee", of property described as a portion of Lot 1, Block 38, Mills Addition, City of El Paso, El Paso County, Texas, more commonly known as 116 South Stanton Street, City and County of El Paso, Texas, as attached and incorporated as Exhibit "B".

**WITNESSETH:**

**WHEREAS**, Grantee is requesting the use of a portion of City right-of-way located at 116 South Stanton Street in the City of El Paso, El Paso County, Texas; and

**WHEREAS**, the Grantee has requested permission from the City to erect sign over portions of public right-of-way at 116 South Stanton Street; and

**WHEREAS**, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION**. The City hereby grants a Special Privilege to Grantee to encroach over portions of public right-of-way at 116 South Stanton Street in El Paso County, El Paso, Texas, as shown in Exhibit "C" which is attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "Premises".

2. **TERM.** The term of this Special Privilege shall be for five (5) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee for additional five (5) year options. If the Grantee wishes the City to renew this Special Privilege for an additional five (5) year term, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege.

The Special Privilege License shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantee as herein required. Should Grantee fail to submit such request for the renewal of this Special Privilege to the City as herein required, the Special Privilege shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege.

3. **CONSIDERATION.** As consideration for this Special Privilege, Grantee shall pay to the City, pursuant to the fee structures set forth in Ordinance 10363, as amended, Section 15.08.120.D., One Hundred Fifty and No/100 Dollars (\$150.00) per year, for a total sum of Seven Hundred Fifty and No/100 Dollars (\$750.00) which shall be due prior to execution of this Special Privilege by City Council. The advance payment shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the Development Services Department – Planning Division for remittance to the Office of the City Comptroller. If the Special Privilege is disapproved by the City

Council, a full refund of the advance payment shall be made by the Office of the City Comptroller within fifteen (15) days of the denial action.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Ordinance 10363, Section 15.08.120.D. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which may result from a recomputation or assessment of fees pursuant to enactment of future amendments to Ordinance 10363. This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with the awning, as well as all costs for the restoration of the Premises.

**4. USE OF PROPERTY.** This Special Privilege is granted solely for the encroachment onto public right-of-way with a 78' by 7.33' by 8' awning, a 39.7' by 7.33' by 8' awning, a 10.37' by 7.33' by 8' awning, two 42.92' by 4' wall signs and a 20.92' by 6' projection sign encroaching no more than eight feet (8') onto the Premises, hereinafter called "Structure". Grantee shall not commence construction under this Special Privilege until all applicable building permits have been issued by the Development Services Department – Building Permits and Inspections Division appropriate under the applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance of the Structure.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance, or repair of the Structure.

5. **IMPROPER USE.** This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the City Council.

6. **REPAIRS.** Grantee shall keep the property, Structure, and Premises in good condition and repair and in a clean, orderly, and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. **INDEMNITY- Licensee to indemnify, defend and hold the city harmless.** As a condition of this License, Licensee 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 involves**

**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.

**8. LIABILITY INSURANCE.** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a

minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants, and employees as additional insured to the full amount of the policy limits.

No special privilege license shall be granted by City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Development Services Department – Planning Division. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City Clerk, with ten (10) calendar days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

**9. CANCELLATION.** Should the City at any time or for any reason decide that the right-of-way onto which the Structure is encroaching is needed for public use, the City may upon thirty (30) calendar days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty (30) calendar days prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee shall cease to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fail to correct such defaults within fifteen (15) calendar days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, the encroaching Structure shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

**10. 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 property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. **ASSIGNMENT.** Grantee shall not assign this Special Privilege without the prior written consent of the City Manager.

12. **MISCELLANEOUS.**

a. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.

b. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the Structure, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structure without first having obtained any required building permits from the Building Services Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

c. **SUCCESSORS AND ASSIGNS:** All of the terms, provisions, covenants and conditions of this License inure solely to the benefit the Grantee and City and shall not be a benefit for the successors and assigns of Grantee. This License shall not be construed as a covenant running with the Licensed Area or the Premises or any other real property owned or leased by Licensee or any other entity. Any assignee or sublicensee of Licensee shall not be entitled to operate under the provisions of this License without the express consent of the El Paso City Manager

d. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso  
Attn: Joyce Wilson, City Manager  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to:

City of El Paso  
Attn: City Clerk  
#2 Civic Center Plaza, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-1196

and:

Plaza de Montana Partners, L.P.  
6500 Montana Avenue  
El Paso, Texas 79925

with copy to:

Anchor Sign, Inc.  
Attn: Joseph Funderbuck  
PO BOX 22737  
Charleston, South Carolina 29413

or to such other address as the parties may designate to each other in writing from time to time.

f. 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.

g. SEVERABILITY: Everyone provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.

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

**13. RESTRICTIONS AND RESERVATIONS.** This Special Privilege 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 Special Privilege, 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' use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

**14. EFFECTIVE DATE.** This Special Privilege shall not take effect unless Grantee files its written acceptance with the Development Services Department – Planning Division prior to its passage and approval by the City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

**THE CITY OF EL PASO**

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

**ATTEST:**

\_\_\_\_\_  
Richarda D. Momsen  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Guadalupe Cuellar  
Assistant. City Attorney

\_\_\_\_\_  
Mathew S. McElroy, Deputy Director - Planning  
Development Services Department

**ACCEPTANCE**

The attached instrument, with all conditions thereof, is hereby accepted this  
\_\_\_\_ day of \_\_\_\_\_, 2009.

**GRANTEE:**  
**Plaza de Montana Partners, L.P.**

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

\_\_\_\_\_  
(printed name/title)

*Acknowledgement on following page*

**ACKNOWLEDGEMENT**

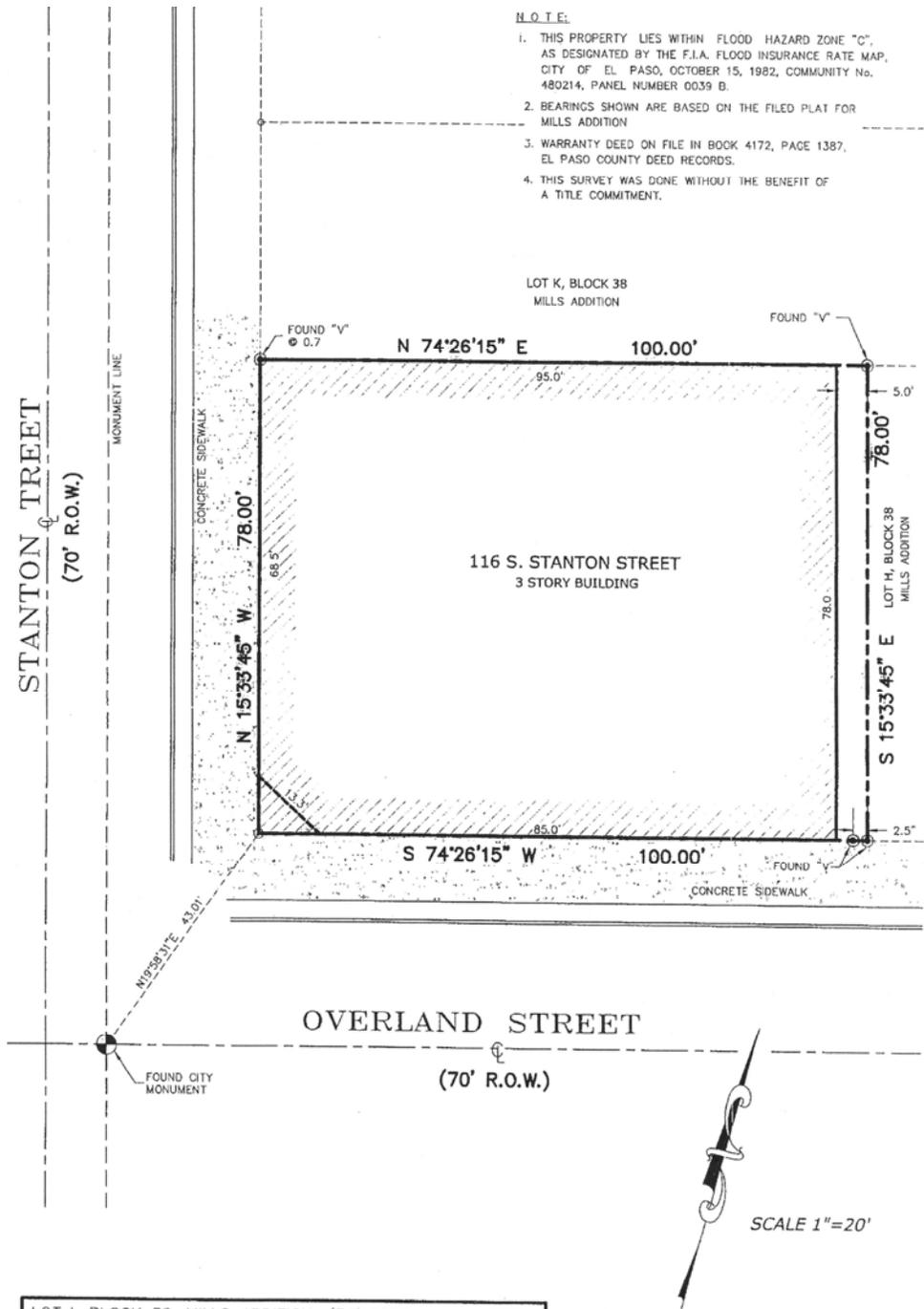
THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

This instrument is acknowledged before me on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2000, by \_\_\_\_\_, as  
\_\_\_\_\_,  
on behalf of **Plaza de Montana Partners, L.P.** as Grantee.

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

\_\_\_\_\_  
Notary's Printed or Typed Name:

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



- NOTE:**
1. THIS PROPERTY LIES WITHIN FLOOD HAZARD ZONE "C", AS DESIGNATED BY THE F.I.A. FLOOD INSURANCE RATE MAP, CITY OF EL PASO, OCTOBER 15, 1982, COMMUNITY No. 480214, PANEL NUMBER 0039 B.
  2. BEARINGS SHOWN ARE BASED ON THE FILED PLAT FOR MILLS ADDITION
  3. WARRANTY DEED ON FILE IN BOOK 4172, PAGE 1387, EL PASO COUNTY DEED RECORDS.
  4. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.

LOT I, BLOCK 38, MILLS ADDITION, (78' FEET ON STANTON ST. BY 100' ON OVERLAND ST. IN THE SW CORNER BLK. 38) CITY OF EL PASO, EL PASO COUNTY, TEXAS  
 AREA 0.179 ACRES ±

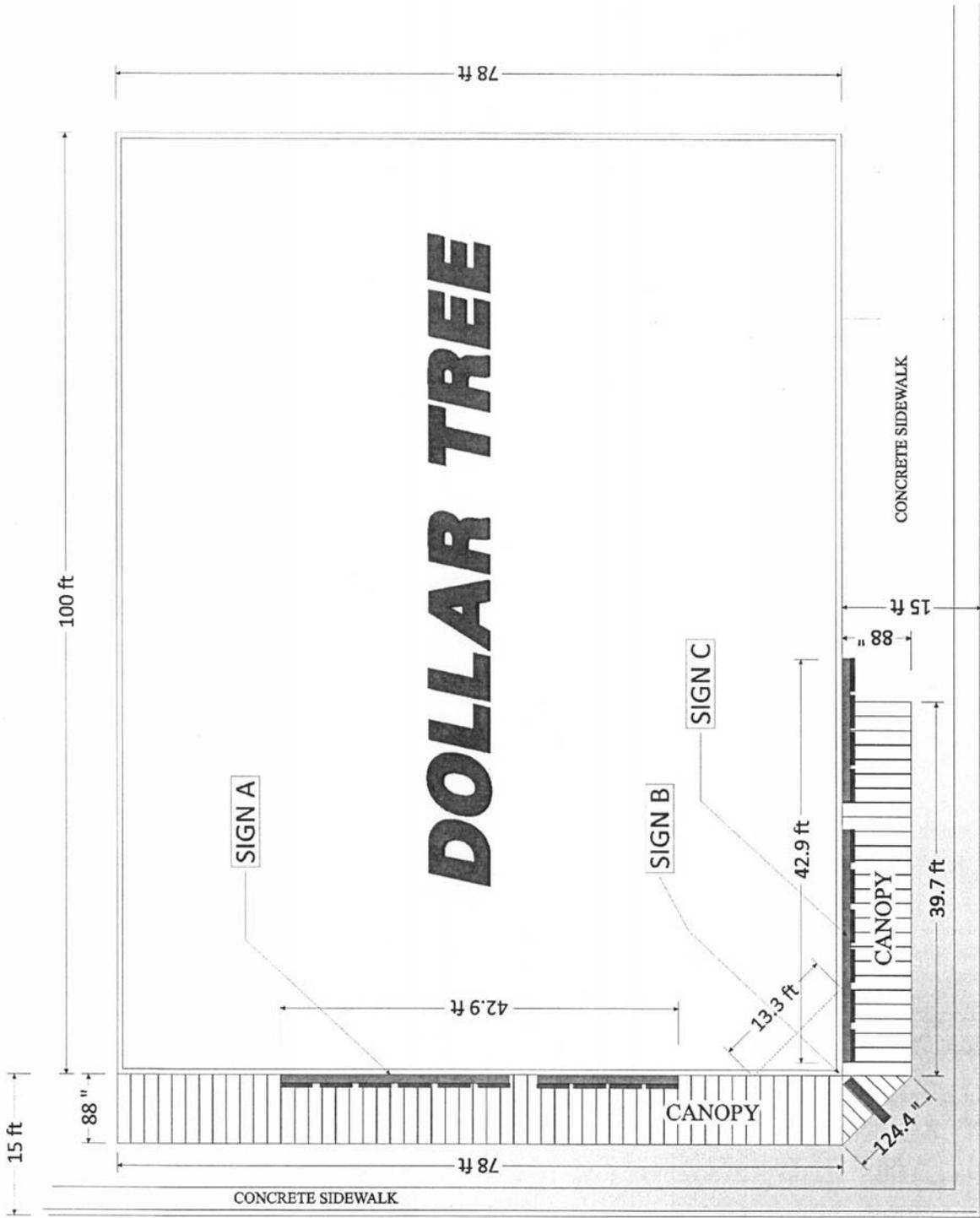
**REY ENGINEERING**  
 CONSULTING ENGINEERING - SURVEYING - LAND PLANNING  
 11348 BOB MITCHELL DR., EL PASO, TX. 79936  
 TEL. (915) 591-8424

SCALE: 1"=30' DATE: 01/17/06 FIELD: ER

SCALE 1"=20'

**CERTIFICATION**  
 I HEREBY CERTIFY THAT THE BOUNDARY SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THAT THERE ARE NO ENCUMBRANCES SHOWN HERE ON.  
 ENRIQUE A. REY  
 TX R.P.L.S. No. 35606  
 TX P.E. No. 35606

**EXHIBIT B**



OVERLAND

S. STANTON



EXHIBIT C  
PG. 1 of 2

**Sign A**

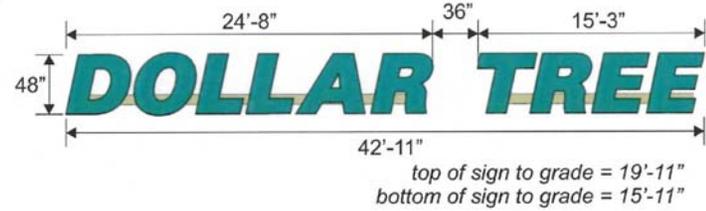
(1) set of 48" DOLLAR TREE internally illuminated channel letters mounted on a raceway painted to match the facade = 171.67 square feet

**Sign B - Reface**

(1) 125.5 square foot DOLLAR TREE projection sign with painted face and routed 1/4" PVC letters = 125.5 square feet

Total signage this elevation = 297.17 square feet

All signs are UL listed



Front (West) Elevation  
Scale 3/32" = 1'-0"

## MEMORANDUM

**DATE:** July 30, 2009

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Mirian Spencer, Planner

**SUBJECT: SPL09-00017**

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The Development Coordinating Committee (DCC) on July 22, 2009 recommended **APPROVAL** of the Special Privilege License to permit the encroachment of three awnings and three signs over portions of public rights-of-way at 116 South Stanton Street. The Special Privilege will permit the existing awnings and a projection sign, as well as permit the installation of two wall mounted signs.

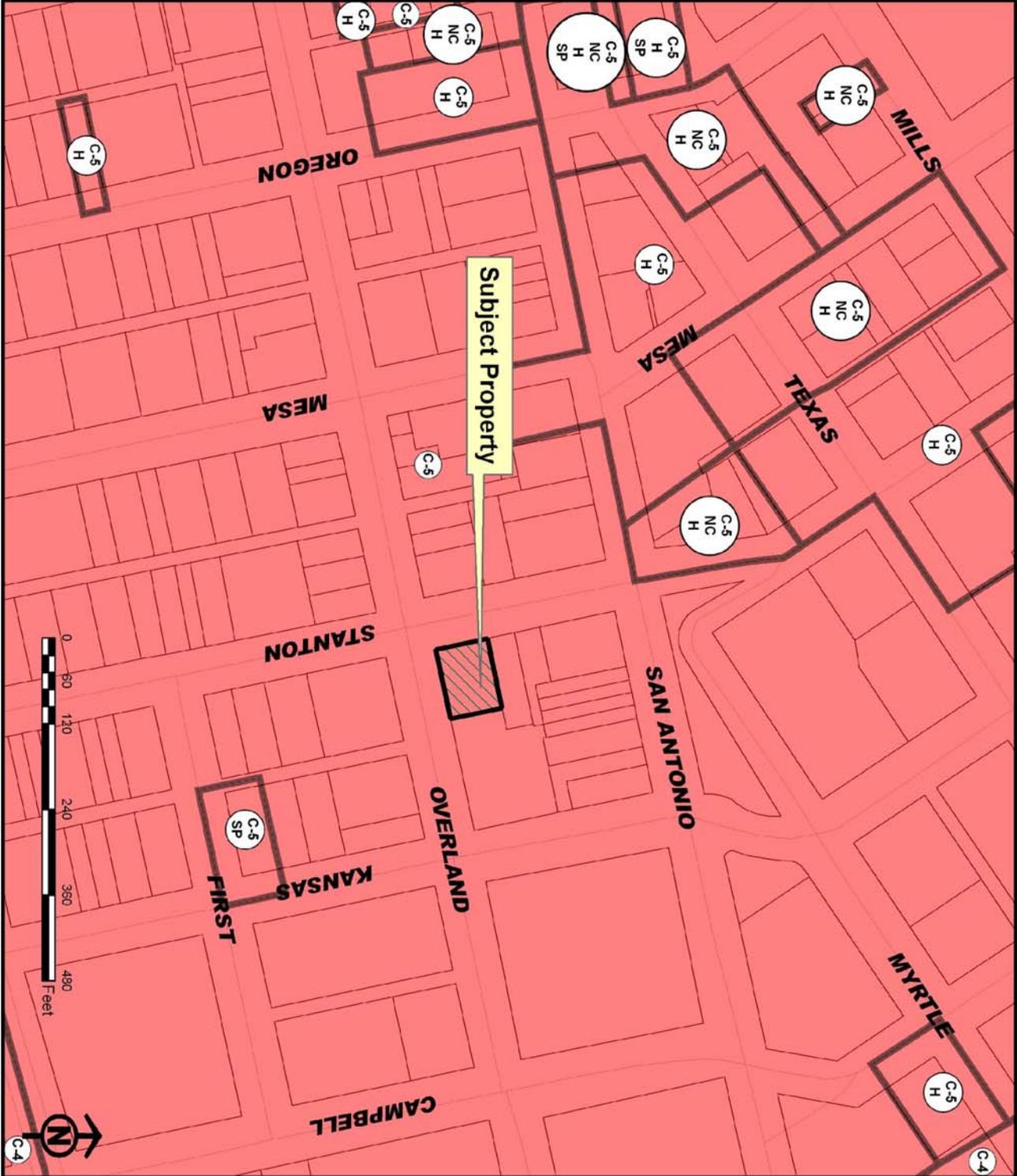
The DCC recommended approval subject to the following:

- EPWU requires vehicular access for routine inspections, maintenance, and repair of the existing twelve-inch diameter water main located within the Overland Street and Stanton Street rights-of-way.
- Grantee is responsible for restoration of the premises to its original state upon removal of any of the encroachments.
- Grantee is responsible for all maintenance and any damages due to a failure to maintain.
- A five (5) year term with the City having the option to renew for one (1) additional five (5) year term upon the request of the Grantee.
- Annual consideration of \$150.00 for a total of \$750.00 has been paid prior to execution by City Council.
- The City may, upon thirty (30) days written notice, cancel the Special Privilege at no cost to the City and may take possession of the public right-of-way.
- Grantee may cancel the Special Privilege, for any reason, upon thirty (30) days prior written notice to the city, and all rights of the Grantee shall be terminated.
- Grantee is responsible for providing liability insurance throughout the term of the license agreement.
- Grantee will indemnify, defend, and hold the city harmless against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, demands, causes of action, liability, and suits of any kind and nature, arising out of, resulting from, or related to the activities under the license.

**Attachment:** Zoning Map, Aerial Map, Location Site Plan, Renderings

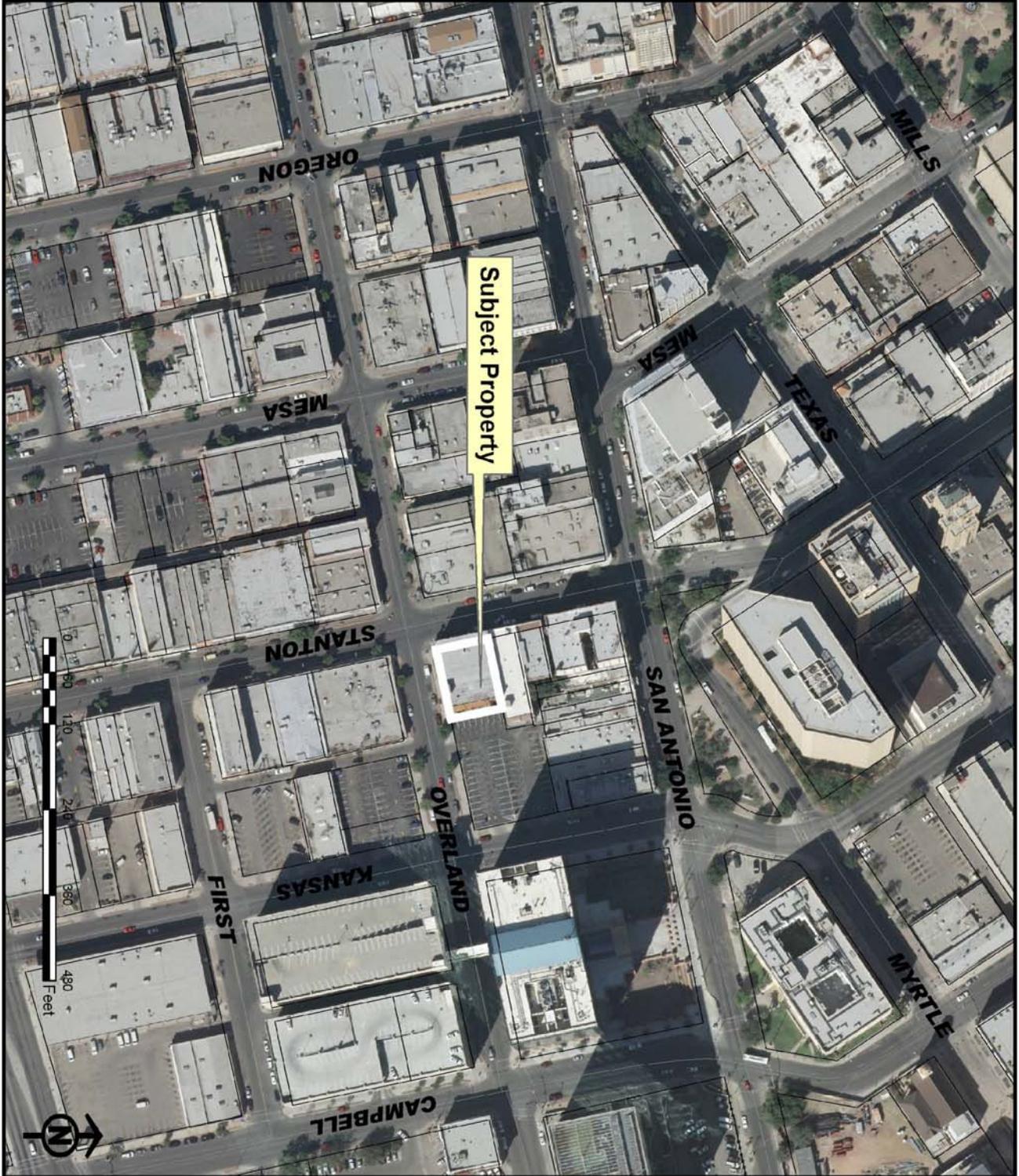
ZONING MAP

SPL09-00017

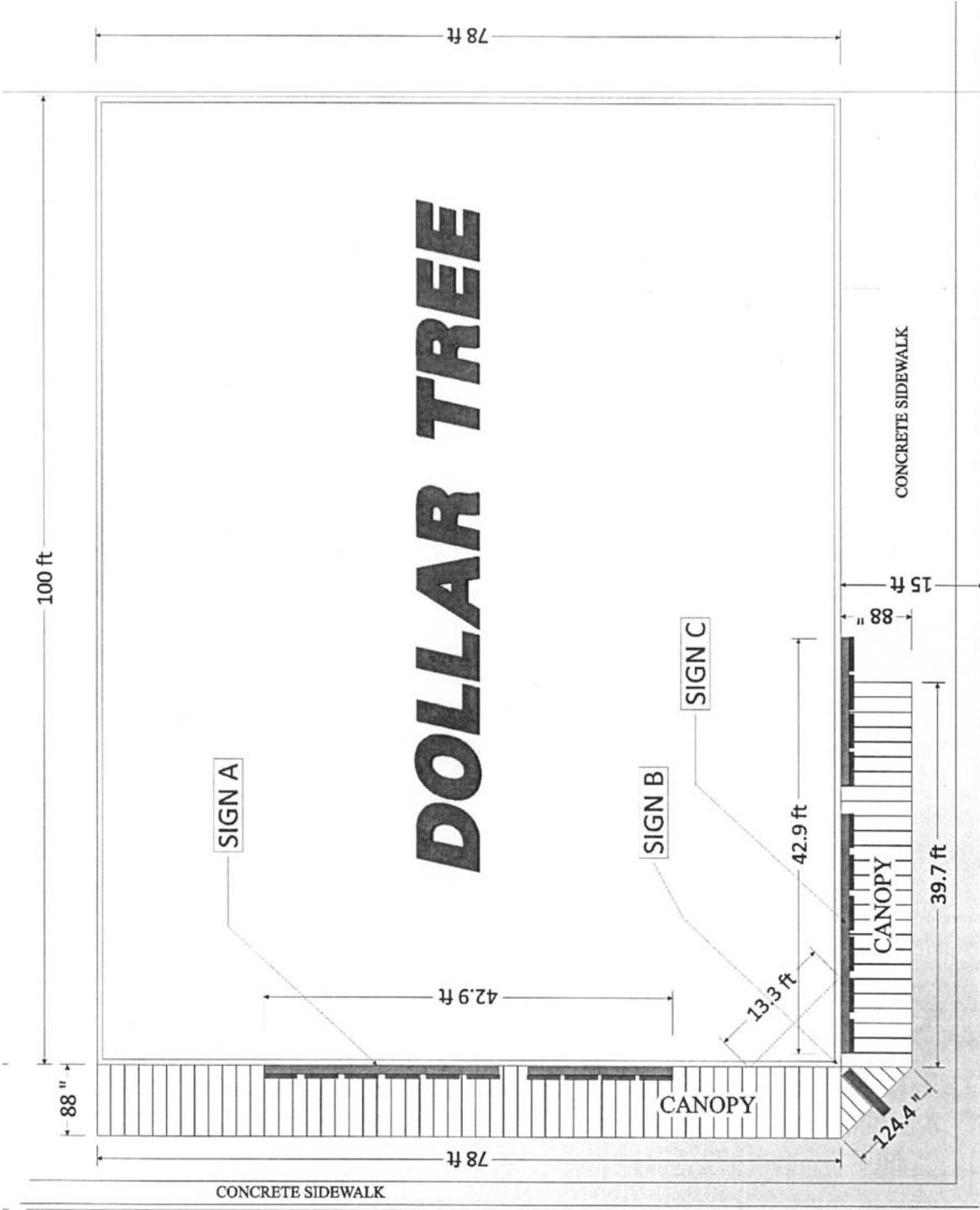


AERIAL MAP

SPL09-00017



**LOCATION SITE PLAN**



S. STANTON



OVERLAND

**Sign A**

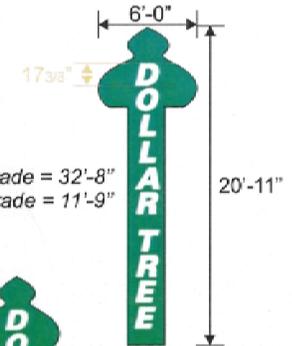
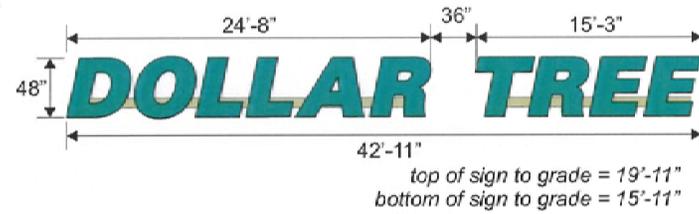
(1) set of 48" DOLLAR TREE internally illuminated channel letters mounted on a raceway painted to match the facade = 171.67 square feet

**Sign B - Reface**

(1) 125.5 square foot DOLLAR TREE projection sign with painted face and routed 1/4" PVC letters = 125.5 square feet

Total signage this elevation = 297.17 square feet

All signs are UL listed



**SIGN RENDERINGS**



Front (West) Elevation  
Scale 3/32" = 1'-0"



Dollar Tree # 4173  
116-20 S. Stanton  
El Paso, TX 79901-2403

Revised 05/26/09

Drawing by: Darin Houston  
Revised by: Hope Wright

