

**RECIPROCAL EASEMENT AND DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR COMMERCIAL DEVELOPMENT**

**DEFINED TERMS**

**EFFECTIVE DATE:** The Date on which this instrument is filed for record in the Real Property Records of the County in which the real property is located.

**DEVELOPER:** Dieter MOB Land Partners, LLC  
320 Texas Ave. Second Floor,  
El Paso, Texas 79901

**DECLARANT:** Dieter MOB Land Partners, LLC  
320 Texas Ave. Second Floor,  
El Paso, Texas 79901

**PROPERTY:** The Property consists of four (4) parcels of land (jointly "*Parcels*" and individually "*Parcel*") more particularly described on Exhibit "A-1," "A-2," "A-3," and "A-4" herein attached and incorporated by reference for all purposes.

**Commercial Development:** As shown on Survey dated November 13, 2018 by John A. Eby of Paso Del Norte Surveying Inc. herein attached as Exhibit "B" and incorporated by reference for all purposes ("*Site Plan*").

**OTHER DEFINED TERMS:**

"*Building Area*" means the limited areas of the Commercial Development within which buildings (which for purposes of this REA will include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions) may be constructed, placed or located.

"*Common Area*" means all areas within the exterior boundaries of the Commercial Development, exclusive of Building Area.

"*Common Utility Lines*" mean those facilities and systems which are installed to provide the applicable service to the Parcels.

"*Easement Purpose*" means for each of the separate Parcel to be capable of separate ownership while allowing all of the Parcels to operate collectively as one Office Center.

**“Grantee”** means and Owner of a Parcel for whose benefit all or part of an easement is conveyed by this instrument, including its successors, heirs and assigns.

**“Occupant”** means any Person from time to time entitled to the use and occupancy of any portion of a building in the Commercial Development under an ownership right or any lease, sublease, license, concession, or other similar agreement.

**“Owner”** means an Owner of a Parcel and its respective successors and assigns who become owners of any portion of the Commercial Development.

**“Parking Areas”** mean those Common Areas used for the parking of motor vehicles, including incidental roadways, walkways, and landscaping contained within these Parking Areas. However, truck ramps, and loading and delivery areas located in Common Areas and immediately adjacent to buildings in Building Areas are not included in Parking Areas.

**“Person”** means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

**“Permittee”** means all occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Commercial Development. Among others, Persons engaging in the following activities on the Common Area or Building Area will not be considered to be Permittees: (i) persons who are demonstrators exhibiting any placard, sign, or notice; (ii) persons distributing any circular, handbill, placard, or booklet; (iii) persons soliciting memberships or contributions; (iv) persons parading, picketing, or demonstrating; and (v) persons failing to follow rules or regulations relating to use of the Commercial Development.

**“Perpetual Access Easement”** means (1) the curb cut driveway(s) into the Commercial Development from any public road which will be approximately 60 feet wide; and (2) driveway through the Commercial Development which: (a) will be 60 feet wide; (b) will contain two (2) lanes, one in each direction; (c) serves as the major artery for vehicular traffic through the Commercial Development as depicted and described in the Site Plan.

**“Separate Utility Lines”** mean those facilities and systems which are installed to provide the applicable service to a Parcel. For the purpose of this REA, the portion of a Utility Line extending between a Common Utility Line and a building will be considered a Separate Utility Line.

**“Utility Lines”** mean those facilities and systems for the transmission of utility services, including drainage of water.

**“Utility Systems”** shall mean systems for any one or more general utilities, whether maintained privately or by the applicable utility company, including without limitation, water, sewer, electricity, gas, storm water, telephone, computer, cable television, traffic signal or control devices, together with all necessary underground pipes, conduits, fittings, appurtenances and related facilities.

The words and phrases have the meanings attributed to them in the Defined Terms, and where words or phrases are otherwise stated to reasonably indicate an intention to serve as a defined term.

### RECITALS

1. **WHEREAS**, Developer is the owner of the Commercial Development which Developer has subdivided into the four Parcels and may sell to any Person with business activity not prohibited by this Declaration.

2. **WHEREAS**, Developer intends that a Person who acquires title to a Parcel will be subject to the terms of this instrument, and a Person who acquires and interest in a Parcel consents to said terms;

3. **WHEREAS**, The Parcels have been improved and may be subject to future additional improvements;

4. **WHEREAS**, Declarant contemplates a conveyance of the Parcels to a separate Persons, with prospect that each of the Parcels might eventually be owned by different owners;

5. **WHEREAS**, Declarant desires and intends for all the Parcels to be operated as a unified commercial office center (the **“Commercial Development”**), as shown by the Site Plan, despite separate ownership.

6. **WHEREAS**, by this Declaration, Declarant seeks to establish a common, general plan for the joint protection, development, operation, maintenance, and improvement of the Parcels in the Commercial Development as an integrated commercial office center.

7. **WHEREAS**, to attain the stated purpose, each Parcel is subject to certain protective provisions, covenants, conditions, and restrictions, as described in this instrument, for the mutual benefit of each Parcel; furthermore, Declarant grants certain reciprocal easements in, to, over, under, and across the Common Areas located on each of the Parcels.

## GRANT OF EASEMENTS

Declarant does by this instrument grant the Easements, subject to the Exceptions to Declaration and the Terms and Conditions of Easements, in, to, over, and across the Property for the Easement Purpose and for the benefit of each Parcel, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easements, rights, and appurtenances to the owners of such Parcels, their heirs, successors, and assigns forever. Declarant binds Declarant and Declarant's heirs, successors, and assigns to warrant and forever defend the title to the Easements, their related rights and appurtenances in each Owner of the Parcels, and their respective heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easements, rights, or appurtenances, or any part thereof, except as to the Exceptions to Declaration.

### ARTICLE 1. TERMS AND CONDITIONS OF EASEMENTS

1. The following terms and conditions apply to the Easements granted by this instrument:

**1.01. Access Reciprocal Easements.**

A. Declarant hereby grants and conveys to itself and each Owner of a Parcel for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the ingress, egress, passage and parking of vehicles over and across the parking and driveway areas of the Commercial Development, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Commercial Development, as the same may from time to time be constructed and maintained for such use. Each Owner may reserve the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its portion of the Common Area.

B. In addition to the general easement specified in paragraph A above, the Declarant hereby grants, to itself and to each Owner of a Parcel, for the Owners' use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across the Commercial Development which is designated on the Site Plan as a "*Access Easement*" herein attached and incorporated by reference for all purposes. This easement is appurtenant to and for the benefit of each Owner. During the term of the REA, the Perpetual Access Easement will be maintained in accordance with the provisions governing the Common Area of each Parcel. Notwithstanding anything herein to the contrary, the Perpetual

Access Easement will not be relocated without the approval of all the Owners during the term of the REA.

C. That portion of each Owners' Parcel which is covered by the Perpetual Access Easement will be maintained in a safe, clean and good state of repair condition by its respective Owner, at its sole cost and expense. In the event such Owner fails to perform the required maintenance, the Grantee(s), after at least thirty (30) days advance notice to the Defaulting Owner, will have the right, but not the obligation, to cause such maintenance to be performed, and the Defaulting Owner must, upon demand, immediately pay to the other Owner curing such default all costs and expenses incurred with respect to such curative action; the curing Owner will have the right to file a lien against the Defaulting Owner's Parcel in order to secure payment of the amount expended.

#### **1.02. Utility Reciprocal Easements.**

A. Developer hereby grants and conveys to itself and to each Owner a non-exclusive perpetual easements in, to, over, under, along and across those portions of the Common Area (exclusive of any portion located within a Building Area) located on the Commercial Development necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the Owners' Parcel, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. All Utility Lines will be underground except: (1) ground mounted electrical transformers; (2) as may be necessary during periods of construction, reconstruction, repair, or temporary service; (3) as may be required by governmental agencies having jurisdiction; (4) as may be required by the provider of such service; (5) fire hydrants; and (6) gas risers, manifolds, vents, switch gears, meters and similar equipment and appurtenances if located to the rear of buildings and any building located on any Parcel.

B. Prior to exercising the right granted herein, the Owner will first provide the Developer, its successors or assigns (or the current Owner of each pertinent Parcel) with a written statement describing the need for such easement, will identify the proposed location of the Utility Line, and will furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required under this instrument. Any Owner installing Separate Utility Lines hereunder must pay all costs and expenses with respect thereto and will cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. If the Owners elect to install Common Utility Lines, unless a provision is made to the contrary, all repair, maintenance, replacement and other work thereon will be performed by the Owner on whose Parcel such facility is located, and the

cost will be assumed and paid by the Owner upon whose Parcel it is located, both during and after the REA term.

C. The Utility Easement area will be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to an Owner. Upon request, the Developer or the Owner whose Common Area is burdened thereby, must provide copy of an as-built survey showing the location of such Utility Line. The Developer or the Owner whose Common Area is burdened, will have the right at any time to relocate a Utility Line (but not the Access Easement) upon thirty (30) days' prior written notice, provided that such relocation ("**Relocation Owner**"): (1) will not interfere with or diminish the utility service to the Grantee during the Grantee's business hours; (2) will not reduce or unreasonably impair the usefulness or function of such Utility Line; (3) will be performed without cost or expense to Grantee; (4) will be completed using materials and design standards which equal or exceed those originally used; (5) will provide to Grantee "as-built" survey at the Relocation Owner's sole cost expense to be delivered as soon as possible without request and (6) will have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction.

D. Declarant hereby grants and conveys to itself and each future Owner the perpetual right and easement to discharge surface storm drainage and/or runoff from the adjacent Parcel over, upon and across the Common Area of the grantor's Parcel.

**1.03. Nature of Easements.** The Parcels benefitted by each easement constitute the dominant estate, and the Parcels burdened by each easement constitute the servient estate. These grants of easement benefit each Owner, each Owner's successors, assigns, Occupants, and Permittees. No easement may be transferred, assigned, or encumbered except as appurtenant to the benefitted Parcels.

**1.04. Repair and Maintenance of Utility Systems.** The dominant estate of a Utility Systems easement is responsible for all maintenance and repairs of the Utility Systems located within the easement. All maintenance and repairs must be performed so as to: (a) Minimize interference of traffic and obstruction of business on the servient Parcel; (b) Make adequate provision for the safety and convenience of all persons using the surface of such areas; (c) Replace and restore the areas and facilities to the condition in which they were prior to the performance of such work; (d) Hold all other parties harmless against claims including costs and attorney's fees arising from the performance of such work or use of such easements; and (e) Notify in writing the Owner on whose land such work is to be performed not less than thirty (30) days prior to commencement of such work; provided, however, that in the event of an emergency, this provision is deemed waived and an Owner may perform necessary work after

oral approval by the other Owner's managing employee on the premises. Such approval must be confirmed by written communication as soon as possible.

**1.05. Duration of Easements.** The duration of the easement is perpetual.

**1.06. Limitations & Exceptions to Grants of Easements.** The grants of easements by the Declarant are subject to the following exceptions to conveyance and warranty: the terms of this instrument and all presently valid, effective and recorded mineral estate reservations and conveyances (including leases of the mineral estate) by or from grantor or grantor's predecessors in title; all presently valid and effective easements, rights-of-way and prescriptive rights, ordinances, agreements whether of record or not; taxes for the current year, the payment of which the Grantee assumes; subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which the Grantee assumes, and any conditions that would be revealed by a physical inspection and survey of the property; furthermore, the special warranty of such grant is limited to when the claim is made by, through, or under the grantor, but not otherwise.

## **ARTICLE 2. OPERATIONS AND USE**

**2.01. Name of Center.** The name of the Commercial Development is **Dieter Medical Office Plaza**.

**2.02. Permitted Uses.** The Commercial Development will be used for commercial purposes of the type normally found in an Office Commercial Development..

**2.03. Prohibited Nuisances.** No Owner may conduct or permit any activity or use on its Parcel that: (a) Constitutes a private or public nuisance; (b) Emits any noise or sound that is objectionable due to intermittence, loudness, frequency, beat, or pitch; (c) Emits any obnoxious odor; (d) Involves the use of any noxious, toxic, hazardous, or corrosive chemical, fuel, gas, or other substance; (e) Produces dust or dirt; (f) Involves a risk of fire, explosion, or other dangerous hazard; (g) Involves the burning or incineration of garbage or refuse; or (h) Violates a law, ordinance, or regulation of any governmental agency. Provided however, that this section shall not be interpreted prevent the use of a Parcel for the operation a gas station in the Commercial Development when compliant with all applicable laws and ordinances.

**2.04. Prohibited Operations and Uses.** No use shall be permitted in the Commercial Development which is inconsistent with the operation of a first-quality Office Commercial Development. Without limiting the generality of the foregoing, the following uses shall not be permitted: (1) Any use which emits an obnoxious odor, noise, or sound which can be heard or

smelled outside of any building in the Commercial Development; (2) Any operation primarily used as a warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (3) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance); (4) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or containers located near the rear of any building); (5) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (6) Any gymnasium or health spa; (7) Any bowling alley, pool hall or skating rink; (8) Any sexually oriented business; (8) Any animal raising facilities; (9) Any establishment whose primary business is the sale, rental or display of explicit sexual materials or illegal drug-related paraphernalia; (11) Any tattoo parlors or piercing studios; (12) Any internet cafes or (10) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds fifty percent (50%) of the gross revenues of such business.

A. No Owner shall use, or permit the use of Hazardous Materials on, about, under or in its Parcel, or the Commercial Development, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Owner shall indemnify, protect, defend and hold harmless the other Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Owner, whether or not in the ordinary course of business. The term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time. Provided however, that this section shall not be interpreted prevent the use of a Parcel for the operation a gas station in the Commercial Development when compliant with all applicable laws and ordinances.

B. No merchandise, equipment or services, including but not limited to vending machines, promotional devises and similar items, shall be displayed, offered for sale or lease.

**2.05. Signs.** No rooftop sign may be erected on any building constructed on the Parcels. No freestanding identification sign may be erected on the Common Areas. No sign may be located on the Common Areas on the Parcels except signs advertising businesses conducted thereon. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs will be of a monument type, not to exceed three



feet, three inches (3 '3"). No signs may obstruct the ingress and egress shown into the Commercial Development as driveways are built from time to time.

**2.06. Sound and Light Projections.** No Occupant may operate or maintain any system or electronic device (such as loudspeakers or search lights) that projects sound or direct light beyond the confines of the Occupant's retail establishment.

**ARTICLE 3.  
CONSTRUCTION, MAINTENANCE AND RECONSTRUCTION**

**3.01. General Requirements.**

(A) Each Owner agrees that all construction activities performed by it within the Commercial Development will be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof.

(B) Each Owner further agrees that its construction activities will not: (1) cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel; (2) unreasonably interfere with construction work being performed on any other part of the Commercial Development; (3) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Commercial Development by any other Owner or its Permittees; or (4) cause any building located on another Parcel that is then in compliance to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

**3.02. Indemnity.** Except to the extent released hereby, each Owner agrees to defend, indemnify and hold harmless each other Owner from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner, provided however, that the foregoing will not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Owner, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them unless covered by the release set forth herein.

**3.03. Staging and Storage Areas.** In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Owner reserves the right to create a temporary staging and/or storage area in the Common Area or in the Building Area on its Parcel at such location as will not unreasonably interfere with access between such Parcel and the other areas of the

Commercial Development. If a business is operating on an adjoining Parcel then the staging area for construction occurring on a Parcel must be located at least 100 feet from the property line of the Parcel upon which the business is being operated, unless such staging area is located within a: (1) Building Area; and (2) located behind the Building Area; provided, however, the Access Easement shown on the Site Plan is not unreasonably disrupted, and if substantial work is to be performed, the constructing Owner will, at the request of any adjoining Owner, fence off the staging and storage area. All storage of materials and the parking of construction vehicles, including vehicles of workers, will occur only on the constructing Owner's Parcel, and all laborers, suppliers, contractors and others connected with such construction activities will use only the access points located upon the constructing Owner's Parcel. Upon completion of such work, the constructing Owner will restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

**3.04. Temporary Access for Workers.** Developer hereby grants for itself and each Owner and conveys to each other Owner and to its respective contractors, materialmen and laborers a temporary license for access and passage over and across the Common Area of the grantor's Parcel as will be reasonably necessary for the Grantee to construct and/or maintain improvements upon the Grantee's Parcel; provided, however, that such license will be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license will not unreasonably interfere with the use and operation of the Common Area by others, nor cause damage to such Common Area. Prior to exercising the rights granted herein, the Grantee will first provide the grantor with a written statement describing the need for such license and will furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required hereby. Any Owner availing itself of the temporary license will promptly pay all costs and expenses associated with such work, will diligently complete such work as quickly as possible, and will promptly repair and/or clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Owner will have the right to prohibit the contractors, laborers, suppliers and/or others working for another Owner from using the Common Area on its Parcel.

#### **ARTICLE 4. MAINTENANCE & REPAIR**

##### **4.01. Utility Lines.**

(A) Each Owner must maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines utilized by it regardless of where located. Any maintenance and repair of nondedicated utilities located on another Owner's

Parcel will be performed: after two (2) weeks' notice to the grantor (except in an emergency the work may be initiated with reasonable notice); after normal business hours whenever possible; and in such a manner as to cause as little disturbance in the use of the grantor's Parcel as is practicable under the circumstances. Any Owner performing or causing to be performed maintenance or repair work agrees: to promptly pay all costs and expenses associated therewith; to diligently complete such work as quickly as possible; and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(B) Common Utility Lines will be maintained and replaced pursuant hereto.

#### **4.02. Common Area.**

(A) Each Owner must maintain, or cause to be maintained, the Common Area on its Parcel in a safe, attractive and good state of repair condition. The unimproved Common Area must be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area will be comparable to the standard of maintenance followed in other first-class office developments similarly situated and of comparable size in El Paso County, Texas; notwithstanding the foregoing, however, the Common Area will be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this REA. All Common Area improvements will be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Commercial Development as a whole. The maintenance and repair obligation will include but not be limited to the following:

(1) **Drive and Parking Areas.** Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing. For the purpose of this section, an overlay of the drives and parking areas will be considered a maintenance item.

(2) **Debris and Refuse.** Periodic removal of all papers, debris, filth, refuse, ice and snow (2" on surface), including vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping will be at appropriate intervals during such times as will not interfere with the conduct of business or use of the Common Area by persons intending to conduct business with Occupants of the Commercial Development.

(3) **Non-Occupant Signs and Markers.** Maintaining, cleaning and replacing any appropriate directional stop or handicapped parking signs. Re-stripe parking lot and

drives at least annually and keep clearly marked fire lanes, loading zones, no parking areas and customer cross-walks.

(4) **Lighting.** Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

(5) **Landscaping.** Maintaining and replacing of all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free. Maintain and replace landscape planters, including those adjacent to exterior walls of buildings. Modify irrigation system to satisfy governmental water allocation or emergency requirements.

(6) **Obstructions.** Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this REA.

(7) **Sidewalks.** Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to buildings located within the Commercial Development. Sidewalks will be steam or comparably cleaned at least annually and will be swept at appropriate intervals during such time as will not interfere with the conduct of business or use of the Common Area.

Notwithstanding anything to the contrary, each Owner will maintain and repair, at its sole cost, in a clean, slightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area.

(B) In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this REA, the Owner upon whose Parcel such Common Area is located will repair or restore such Common Area at its sole cost and expense with all due diligence; provided that no Owner will be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for elections relating to deductibles or self-insurance for which the Owner will be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, an Owner may require another Owner to do such restoration work if the requiring Owner has agreed in writing to pay the costs in excess of such sum. Except to the extent limited hereby, in the event such damage or destruction of Common Area is caused in whole or in part by another Owner or third Person, the Owner obligated to make such repair or restoration reserves and retains the right to proceed against such other Owner or third Person for indemnity, contribution or damages.

**ARTICLE 5.**  
**INDEMNIFICATION & INSURANCE**

**5.01. Indemnification.** EACH OWNER AGREES TO INDEMNIFY, DEFEND, AND HOLD THE OTHER OWNERS AND THEIR LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF SUCH OWNER'S PROPERTY. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF SUCH OWNER'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE CONVEYANCE OF THE PROPERTY, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE INDEMNIFIED OTHER OWNER BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED OTHER OWNER AND LIENHOLDER AND THEIR RESPECTIVE AGENTS.

**5.02. Release of Claims and Subrogation.** EACH PROPERTY OWNER RELEASES EACH OTHER AND LIENHOLDER IF ANY, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THEIR PROPERTY OR COMMERCIAL DEVELOPMENT, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE COMMERCIAL DEVELOPMENT, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. EACH PROPERTY OWNER WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS

BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.

**ARTICLE 6.  
TRANSFER RESTRICTIONS**

**6.01. Limits on Transfer.** No Owner may transfer or assign any right, power, or obligation under this Declaration without also transferring its own Parcel or its interest in that Parcel. The transfer must comply with this Declaration.

**6.02. Subdivision.** Developer may subdivide or otherwise split or divide the Parcels at any time.

**6.03. Release on Transfer.** If an Owner conveys, assigns, or transfers its entire interest in its Parcel, that Owner is released from obligations under this Declaration subsequent to the date of transfer except for its obligation under Paragraph 5.01 above.

**ARTICLE 7.  
DEFAULT, TERMINATION, AND REMEDIES**

**7.01. Legal and Equitable Remedies.** If an Owner or Occupant of that Owner's Parcel actually breaches or threatens to breach a provision of this Declaration, any other Owner has the right to pursue any available legal or equitable remedy, such as damages, injunctions, and restraining orders, in addition to those remedies specified here, except for those remedies that are expressly prohibited. All remedies are cumulative; the pursuit of any available remedy does not constitute a waiver or election of remedies with respect to all other available remedies. An Owner is responsible for any default by an Occupant of that Owner's Parcel.

**7.02. Notice Before Default.** Unless provided otherwise in this Declaration, an Owner is not deemed to be in default under this Declaration until that Owner has been notified in writing by any other Owner that describes the act or omission and either: (a) The Owner fails to cure the default within thirty (30) days after the date of the notice of default ("**Cure Period**"); or (b) If the default is not capable of cure within the Cure Period, the Owner fails to commence cure within the Cure Period and to diligently pursue it to completion within a reasonable time.

**7.03. Termination Not Permitted for Breach.** A breach of this does not entitle an Owner or Person to cancel, rescind, or terminate this Declaration in whole or part.

**7.04. Right of Nondefaulting Owner to Cure.** An Owner has the right, but not the obligation, to cure a default of any other Owner on behalf of and at the sole expense of the defaulting Owner. This right of cure may not be exercised until: (a) Written notice as provided hereby has been given; or (b) The Cure Period set forth herein has elapsed and the defaulting Owner remains in default.

**7.05. Reimbursement Rights.** If an Owner cures a default of another Owner hereunder, then the defaulting Owner must pay to the curing Owner: (a) All costs and expenses reasonably incurred in effecting the cure, plus interest at the then-maximum legal rate; and (b) All court costs and reasonable attorney's fees incurred by the curing Owner.

**7.06. Lien Rights.** All amounts owed by a defaulting Owner to a curing Owner under this Declaration constitute a lien on the Parcel of the defaulting Owner under this Declaration, or on the interest of the defaulting Person in the Owner. This lien is effective on the date the curing Owner records a claim of lien in the applicable official real property records. The claim of lien must set forth, at a minimum: (a) A legal description of the Parcel of the defaulting Owner; (b) A reference to this Declaration; (c) A statement that the lien is authorized by this Declaration; (d) The amount of the lien; and (e) A description of the default and the curative action taken by the lienholder-Owner.

**7.07. Force Majeure.** Unless otherwise provided in this Declaration, an Owner may be excused from a delay in performance under this Declaration that is caused by the act of a public enemy, war, war defense condition, act of God, the elements, strike, walkout, or other causes beyond the Owner's reasonable control. However, each Owner must use reasonable diligence to avoid any such delay and to resume its performance as promptly as possible after the delay.

**7.08. Termination.** All provisions of this Declaration terminate 40 years after the date this Declaration is recorded; except for certain easements described in Article 2, which terminates as provided in that Article.

**7.09. Attorney Fees.** In any action between Parties concerning this Declaration or for enforcement of rights and duties of an Owner, the prevailing Owner in the action is entitled to reasonable attorney fees.

**[ SIGNATURES ON FOLLOWING PAGE ]**  
**[ REST OF PAGE INTENTIONALLY LEFT BLANK ]**

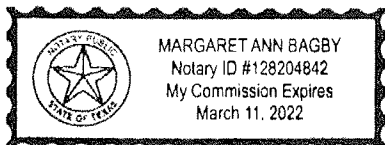
DIETER MOB LAND PARTNERS, LLC, a Texas limited liability company,

By: George M Dipp, Manager

STATE OF TEXAS )

COUNTY OF EL PASO )

This instrument was acknowledged before me on July 15, 2020, by George Dipp, on behalf of DIETER MOB LAND PARTNERS, LLC, a Texas limited liability company.



[Signature]  
Notary Public, State of Texas  
My commission expires: 3/11/22



## **RULES & REGULATIONS FOR COMMERCIAL DEVELOPMENT**

1. Advertising Radius. No form of advertising medium may be utilized which can be heard or experienced outside of the Building Area, including, without limitation, flashing lights, searchlights, loudspeakers, phonographs or radios.

2. Dwelling. No portion of the Center may be used for any residential or lodging purposes.

3. Employee Parking. Owners, Tenants and other Occupants shall park their motor vehicles only within their respective Parcel, unless specifically authorized by the Owner of the other Parcel being used for said purpose. This rule may be enforced by towing unauthorized motor vehicles.

4. Industrial and Manufacturing Uses. No portion of the Commercial Development may be used for any industrial or manufacturing purpose. Warehousing uses are not permitted except for goods or merchandise stored as inventory for sale on the Premises of the Commercial Development where stored.

5. Parking Areas. Parking in the Parking Areas of the Commercial Development is limited to Permittees using the Commercial Development and is permitted only for the period during which the person is patronizing, conducting business related to, or otherwise using the Commercial Development. All motor vehicles must be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, parking may be limited by length in specified areas.

6. Plumbing. Plumbing facilities may not be used for any purpose other than that for which they are constructed.

7. Removal of Trash. Each Owner, Tenant or Occupant must regularly remove all trash, refuse, and waste materials from its Premises. Burning of trash, refuse, or waste materials is strictly prohibited. Until removed, each Owner, Tenant or Occupant must store these materials as follows: (a) In adequate containers located out of sight of the general public and customers of the Commercial Development; (b) So that these materials do not constitute a health or fire hazard of nuisance to any other Owner, Tenant or Occupant.

# EXHIBIT A-1

## PROPERTY DESCRIPTION

Parcel 1 – 1.3508 Acres

Description of a parcel of land being a portion of Lot 28, Block 22A, Vista Granada Unit Two, Replat B, City of El Paso, El Paso County, Texas, map of said Vista Granada Unit Two, Replat B recorded in book 80, page 69, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in Clerk's File #20090006740 and #20090006741, El Paso County Clerks Records, and described as follows:

Beginning at a 5/8" rebar found at the southwesterly corner of that parcel recorded in Clerk's File #20160019642, said rebar lying on the common lot line of said Lot 28 and Lot 17, Block 22, Vista Granada Unit Two (recorded in book 56, pages 13 and 13A, Plat Records, El Paso County, Texas), said rebar also being the southeasterly corner of this parcel, and being the "Point Of Beginning";

Thence, with said common lot line, North 90°00'00" West a distance of 256.09' to a nail found on a rock wall at the southwest corner of this parcel and lying on the common boundary line of said Vista Granada Unit Two, Replat B and Vista Granada Unit Two, Replat A (recorded in book 59, pages 12 and 12A, Plat Records, El Paso County, Texas);

Thence, with said common boundary line, North 15°10'56" East a distance of 114.11' to an angle point;

Thence, continuing with said common boundary line, North 06°52'00" East a distance of 107.68' to the northwest corner of this parcel;

Thence, leaving said common boundary line, North 89°51'31" East a distance of 170.19' to an angle point;

Thence, South 56°19'24" East a distance of 71.47' to point at the western edge of a 60' wide access easement recorded in Clerk's File #20150054315;

Thence, South 84°49'46" East a distance of 180.22' to an angle point;

Thence, South 67°52'38" East a distance of 84.98' to a point on the west ROW line of George Dieter Drive;


Thence, with said west ROW line of said George Dieter Drive, along the arc of a curve to the right a distance of 30.01', having a central angle of 01°21'52", a radius of 1260.00' and a chord that bears South 23°14'36" West a distance of 30.01' to a found "X" and the northeasterly corner of said parcel recorded in Clerk's File #20160019642;

Thence, leaving said ROW line and along the boundary between the parcels recorded in Clerk's File #20090006740 and #20160019642 North 67°52'38" West a distance of 79.92' to an angle point;

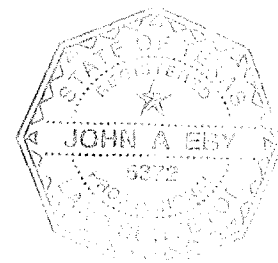
Thence, continuing along the boundary between the parcels recorded in Clerk's File #20090006740 and #20160019642 North 84°49'46" West a distance of 175.80' to the northwesterly corner of said parcel recorded in Clerk's File #20160019642;

Thence, continuing with the westerly boundary line of said parcel recorded in Clerk's File #20160019642 South 05°15'03" West 148.57' to the "Point Of Beginning" and containing 58,841 sq. ft. or 1.3508 acres.

Based on a field survey performed under my supervision and dated 11/13/2018 and revised 02/08/2019

  
John A. Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.  
13998 Bradley Road  
El Paso, TX. 79938  
915-241-1841  
TBPLS FIRM #10001200



PROPERTY DESCRIPTION

**EXHIBIT A-2**

Parcel 2 – 1.3258 Acres

Description of a parcel of land being a portion of Lot 28, Block 22A, Vista Granada Unit Two, Replat B, City of El Paso, El Paso County, Texas, map of said Vista Granada Unit Two, Replat B recorded in book 80, page 69, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in Clerk's File #20090006740 and #20090006741, El Paso County Clerks Records, and described as follows;

Commencing at a 5/8" rebar found at the southwesterly corner of that parcel recorded in Clerk's File #20160019642, said rebar lying on the common lot line of said Lot 28 and Lot 17, Block 22, Vista Granada Unit Two (recorded in book 56, pages 13 and 13A, Plat Records, El Paso County, Texas);

Thence, with said common lot line, North 90°00'00" West a distance of 256.09' to a nail found on a rock wall at the southwest corner of this parcel and lying on the common boundary line of said Vista Granada Unit Two, Replat B and Vista Granada Unit Two, Replat A (recorded in book 59, pages 12 and 12A, Plat Records, El Paso County, Texas);

Thence, with said common boundary line, North 15°10'56" East a distance of 114.11' to an angle point;

Thence, continuing with said common boundary line, North 06°52'00" East a distance of 107.68' to the northwest corner of this parcel, and being the "Point Of Beginning";

Thence, continuing with said common boundary line, North 06°52'00" East a distance of 58.13' to an angle point;

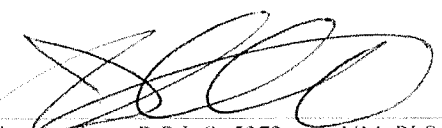
Thence, North 00°00'00" East a distance of 295.05' to a found nail at the northwest corner of Lot 28, said point being the southwest corner of Lot 25, Block 22A, Vista Granada Unit Two, Replat "B" (recorded in book 80, pages 69, Plat Records, El Paso County, Texas);

Thence, with said common boundary line, North 90°00'00" East a distance of 163.24' to an angle point;

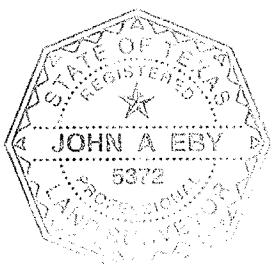
Thence, leaving said boundary line South 00°00'00" West a distance of 352.34' to an angle point;

Thence, South 89°51'31" West 170.19' to the "Point Of Beginning" and containing 57,751 sq. ft. or 1.3258 acres.

Based on a field survey performed under my supervision and dated 11/13/2018 and revised 02/08/2019

  
John A. Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.  
13998 Bradley Road  
El Paso, TX. 79938  
915-241-1841  
TBPLS FIRM #10001200



**EXHIBIT A-3**

**PROPERTY DESCRIPTION**

**Parcel 3 – 1.3621 Acres**

Description of a parcel of land being a portion of Lot 28, Block 22A, Vista Granada Unit Two, Replat B, City of El Paso, El Paso County, Texas, map of said Vista Granada Unit Two, Replat B recorded in book 80, page 69, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in Clerk's File #20090006740 and #20090006741, El Paso County Clerks Records, and described as follows:

Commencing at an "X" found on the west ROW of George Dieter Drive, also being the northeasterly corner of that parcel recorded in Clerk's File #20160019642;

Thence, with said west ROW line of said George Dieter Drive, along the arc of a curve to the left a distance of 30.01', having a central angle of 01°21'52", a radius of 1260.00' and a chord that bears North 23°14'36" East a distance of 30.01';

Thence, North 67°52'38" West a distance of 84.98' to an angle point;

Thence, North 84°49'46" West a distance of 115.99' to the southeast corner of this parcel, and being the "Point Of Beginning";

Thence, North 84°49'46" West a distance of 64.23' to an angle point;

Thence, North 56°19'24" West a distance of 71.47' to an angle point;

Thence, North 00°00'00" East a distance of 352.34' to a point on the north boundary line of Lot 28, said point also being on the south boundary line of Lot 25, Block 22A, Vista Granada Unit Two, Replat "B" (recorded in book 80, pages 69, Plat Records, El Paso County, Texas);

Thence, with said common boundary line, South 90°00'00" East a distance of 265.55' to an angle point;

Thence, leaving said boundary line South 00°00'00" West a distance of 72.00' to an angle point;

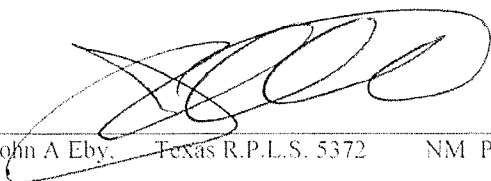
Thence, North 90°00'00" West a distance of 126.84' to an angle point;

Thence, South 00°00'00" West a distance of 114.06' to an angle point;

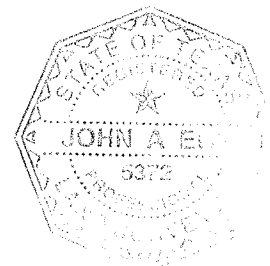
Thence, North 90°00'00" West a distance of 15.60' to an angle point;

Thence, South 00°05'32" East 211.71' to the "Point Of Beginning" and containing 59,331 sq. ft. or 1.3621 acres.

Based on a field survey performed under my supervision and dated 11/13/2018 and revised 02/08/2019

  
\_\_\_\_\_  
John A Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.  
13998 Bradley Road  
El Paso, TX. 79938  
915-241-1841  
TBPLS FIRM #10001200



PROPERTY DESCRIPTION

EXHIBIT A-4

Parcel 4 – 1.2549 Acres

Description of a parcel of land being a portion of Lot 28, Block 22A, Vista Granada Unit Two, Replat B, City of El Paso, El Paso County, Texas, map of said Vista Granada Unit Two, Replat B recorded in book 80, page 69, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in Clerk's File #20090006740 and #20090006741, El Paso County Clerks Records, and described as follows:

Commencing at an "X" found on the west ROW of George Dieter Drive, also being the northeasterly corner of that parcel recorded in Clerk's File #20160019642;

Thence, with said west ROW line of said George Dieter Drive, along the arc of a curve to the left a distance of 30.01', having a central angle of 01°21'52", a radius of 1260.00' and a chord that bears North 23°14'36" East a distance of 30.01' to the southeast corner of this parcel, and being the "Point Of Beginning";

Thence, North 67°52'38" West a distance of 84.98' to an angle point;

Thence, North 84°49'46" West a distance of 115.99';

Thence, North 00°05'32" West a distance of 211.71' to an angle point;

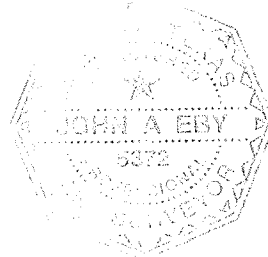
Thence, South 90°00'00" East a distance of 269.98' to a point on the west ROW line of said George Dieter Drive;

Thence, with said west ROW line of said George Dieter Drive, along the arc of a curve to the right a distance of 265.60', having a central angle of 12°04'39", a radius of 1260.00' and a chord that bears South 16°31'20" West a distance of 265.11' to the "Point Of Beginning" and containing 54,662 sq. ft. or 1.2549 acres.

Based on a field survey performed under my supervision and dated 11/13/2018 and revised 02/08/2019

John A. Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.  
13998 Bradley Road  
El Paso, TX. 79938  
915-241-1841  
TBPLS FIRM #10001200



# EXHIBIT B

## BOUNDARY AND IMPROVEMENT SURVEY

PORTION OF LOT 28, BLOCK 21A,  
VISTA GRANADA UNIT TWO, REPORT B,  
CITY OF EL PASO, EL PASO, COUNTY, TEXAS

IMPROVEMENTS/LEGEND	
---	EXISTING IMPROVEMENTS
---	NEW IMPROVEMENTS
---	PROPOSED IMPROVEMENTS
---	...

PROPERTY DATA	
...	...
...	...
...	...

ADDITIONAL DATA	
...	...
...	...

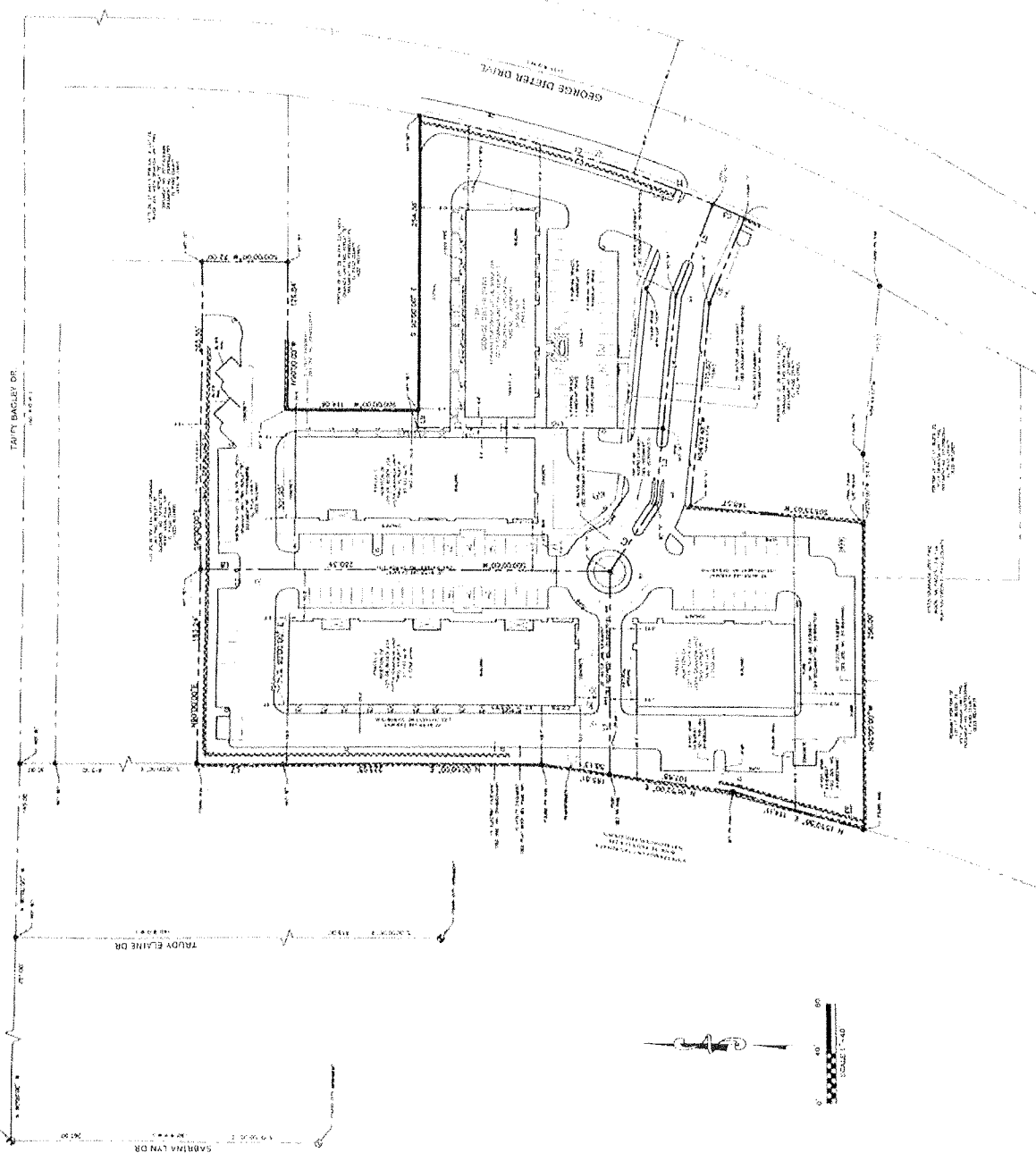
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PROJECT INFORMATION	
DATE OF SURVEY	...
PROJECT NO.	...
CLIENT	...
SURVEYOR	...
...	...



Doc # 20200054850  
#Pages 22 #NFPages 1  
07/17/2020 11:05 AM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$110.00

eRecorded

I hereby certify that this instrument was filed on the date and time stamped  
heron by me and was duly recorded by document number in the Official  
Public Records of real Property in El Paso County.



*Delia Briones*

EL PASO COUNTY, TEXAS