

**CITY OF EL PASO, TEXAS**  
**DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Engineering

**AGENDA DATE:** December 16, 2008

**CONTACT PERSON/PHONE:** R. Alan Shubert, City Engineer (X4423)

**DISTRICT(S) AFFECTED:** 6

**SUBJECT:**

THAT the City Manager be authorized to sign a Developer's Participation Agreement between the CITY OF EL PASO and VG PARTNERSHIP to allow the City to participate in the cost of the construction of drainage public improvements at 1350 George Dieter, El Paso, Texas 79936, in an amount not to exceed one hundred and ninety thousand and nine hundred and seventy five dollars 00/100 (\$190,975.00) in accordance with Local Government Code Section 212.071 and that the City Manager be authorized to accept a drainage dedication deed from VG PARTNERSHIP.

**BACKGROUND / DISCUSSION:**

Serious drainage and flooding problems exist on the George Dieter Drive and Rojas Drive intersection. The City of El Paso and VG Partnership have agreed to place an underground storm sewer on a proposed public easement on the northern and eastern sides of the VG Partnership property (a portion of Lot 2, Block 23, Vista Granada Unit Three). The underground storm sewer will address serious drainage and flooding problems. This agreement allows the City to pay an amount not to exceed \$190,975.00 toward the cost of public improvements.

**PRIOR COUNCIL ACTION:**

None

**AMOUNT AND SOURCE OF FUNDING:**

Project No. PCP09DR 001

Fund No.: 27263

Account No.: 508027

Funding source is Fiscal Year 2006 Certificate of Obligations-Drainage

**BOARD / COMMISSION ACTION:**

N/A

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

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

**DEPARTMENT HEAD:**  \_\_\_\_\_  
(Example: If RCA is initiated by Engineering, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

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

## 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 VG PARTNERSHIP to allow the City to participate in the cost of the construction of drainage public improvements at 1350 George Dieter, El Paso, Texas 79936, in an amount not to exceed one hundred and ninety thousand and nine hundred and seventy five dollars 00/100 (\$190,975.00) in accordance with Local Government Code Section 212.071 and that the City Manager be authorized to accept a drainage dedication deed from VG PARTNERSHIP.

ADOPTED this the \_\_\_\_\_ day of December, 2008.

THE CITY OF EL PASO

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

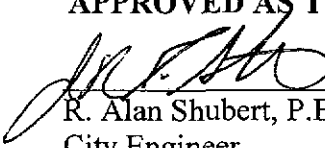
ATTEST:

\_\_\_\_\_  
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

THE STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

DEVELOPER PARTICIPATION  
AGREEMENT

This Developer Participation Agreement ("*Agreement*") is executed as of this \_\_\_\_\_ day of December, 2008, by and between the **CITY OF EL PASO**, hereinafter referred to as the "*City*", and **VG PARTNERSHIP**, a Texas general partnership, hereinafter referred to as the "*Developer*".

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WITNESSETH

**WHEREAS**, the Developer, is constructing improvements on a commercial site (the "*Developer Site*") and some of the improvements include drainage improvements which will be dedicated by Developer to the City and become part of the City's public infrastructure; and,

**WHEREAS**, such public improvements will be made at property located at 1350 George Dieter, El Paso, Texas 79936 and more particular described as a portion of Lot 2, Block 23, Vista Granada Unit Three, City of El Paso, El Paso County, Texas, hereinafter referred to as "*Property*", more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "*Site Plan*"); and,

**WHEREAS**, the City wishes to have the developer construct drainage improvements above what is required to accommodate the drainage on the Developer's Site so that the City can address drainage issues in the area; and,

**WHEREAS**, the Developer has agreed to construct such drainage improvements necessary to address the drainage issues affecting property located outside of the Developer's Site; and,

**WHEREAS**, the City has agreed to reimburse the Developer for certain costs associated with specified improvements made to the City's public infrastructure; and,

**WHEREAS**, Texas Local Government Code §212.071 authorizes a municipality with 5,000 or more inhabitants to enter into a contract with a developer to construct public improvements, not including a building, without a competitive bidding procedure; and,

**WHEREAS**, Texas Local Government Code §212.072 allows the municipality to participate in the construction cost, in an amount not to exceed thirty (30%) percent of the total contract price of improvements required to be made by the developer, and to participate at a level of 100% for any over sizing of improvements required by the Municipality; and,

**WHEREAS**, the Developer and the City agree that the Developer shall construct the improvements and the City will reimburse the Developer for certain costs associated with the construction of public infrastructure improvements; and,

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

**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. Scope of Project**

1. The "Project" is defined as completion of public improvements (the "*Drainage Improvements*") as specified and shown on the design concept (the "*Design Concept*"), 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 Drainage Improvements, which construction drawings shall be consistent with and a logical extension of the Design Concept. Following completion of the construction drawings, the term "Design Concept" as used herein shall include the final construction drawings.

#### **a. Responsibility of the parties:**

(1) Developer shall construct all Drainage 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 Drainage Improvements, except as provided herein.

(2) Upon satisfactory completion of the Drainage Improvements, Developer shall submit to the City an invoice detailing the cost of construction of the Drainage Improvements.

(3) Within thirty days (30) of receipt of such invoice, City shall inspect the Drainage Improvements and, if the Drainage Improvements conform to the Design Concept, promptly accept the Drainage Improvements for maintenance. The reimbursement of the costs shall be made when the Drainage Improvements are accepted for maintenance by the City.

(4) In constructing the Drainage 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. A schedule shall be submitted to the City Engineer as to when work will be completed under this Agreement upon execution of this Agreement.

(5) Developer agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to complete the construction of the Drainage Improvements. All books and records related to the construction of the Drainage Improvements shall be available for inspection by the City upon reasonable notice. 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 Design Concept and shall provide adequate supervision to assure competent performance of the work.

(6) Developer agrees to provide to the City a perpetual drainage easement for the drainage improvements. The drainage easement is attached as Exhibit "C".

(7) 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 Design Concept and are subject to quality control testing by the City at the Developer's sole cost and expense.

2. Developer acknowledges that all site preparation must be completed in accordance with Design Concept approved by the City prior to the issuance of a building permit for the Project. The City will use its best efforts to cause the Project 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 Drainage Improvements shall be completed by the Developer within 210 days following the Effective Date, unless otherwise extended by written amendment and approval by the City, subject to delays by reason of Force Majeure. It is hereby understood and mutually agreed by the Developer and the City that the date of beginning and the time for 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. 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 Drainage Improvements shall be pursued regularly, diligently, and uninterrupted at such a rate of progress as shall ensure 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 completion of the Project is a reasonable time for completion.

5. **If the Developer shall neglect, fail or refuse to complete the construction of the Drainage 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 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 complete the Project, and such failure continues for a period of 60 days after written notice is sent by the City, the City reserves the right to complete the construction and assess the costs of completion 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 Design Concept, and as otherwise provided in this Agreement. 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. No mechanics liens shall ever be threatened or filed against the property identified as 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.

## **II. 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 Drainage Improvements is completed and the City Engineer has inspected the Drainage Improvements to assure the City that the Drainage Improvements specifications (as set forth in the Design Concept) have been met. If the City Engineer determines that the City's specifications (as set forth in the Design Concept) 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 Drainage Improvements have been accepted for maintenance by the City, and,

c. The City has paid to the Developer the City's share of the development costs the City is obligated to pay under the terms of this Agreement, and,

d. The Developer provides a warranty on its work in accordance with the requirements of the City Code.

## **III. Project Funding**

1. The City agrees to participate up to one hundred percent (100%) for those costs of the oversizing of the Drainage Improvements and up to thirty percent (30%) of the contract price for all other Drainage Improvements. The City's contribution for such costs shall not exceed \$190,975.00. Any additional costs associated with the Drainage Improvements shall require approval of the City prior to the construction of such improvements. The total amount of the construction contract is \$552,281.28. The City Manager shall have the authority to approve additional costs not to exceed \$10,000.00, provided that the increased costs do not exceed the percentage allowed under Texas Local Government Code §212.072. A breakdown of the costs associated with the construction is attached hereto as "Exhibit D."

2. Within thirty (30) days of presentation to the City of documentation to verify the costs of the Drainage Improvements, along with a written statement from Developer certifying that the Drainage Improvements have been constructed according to the Design Concept, and the City's inspection and approval of the constructed Drainage Improvements, the City will reimburse Developer the City's portion of the costs as specified herein.

3. The parties agree that provided that the terms of this Agreement are complied with by the Developer, that the City shall reimburse the Developer an amount not to exceed \$190,975.00 upon acceptance by the City of the Drainage Improvements for maintenance as specified in Article I hereof.

#### IV. Termination

In the event that any of the provisions of this Agreement are breached by the Developer or the City, the non-defaulting party may serve written notice containing the reasons for such intention to terminate the Contract, and unless within thirty (30) consecutive calendar days after the serving of such notice upon the defaulting party, such violation or delay shall cease and satisfactory arrangement of correction is made, the Agreement shall, upon the expiration of said thirty (30) consecutive calendar days, cease and terminate. Termination of this Agreement by Developer does not relieve the City of its reimbursement obligations hereunder.

#### 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 equipment or facilities 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 obtain liability insurance for this project, designating the City of El Paso as an additional insured party. Such insurance policy shall be issued by an insurance company duly authorized to do business in the State of Texas and shall be subject to approval of the City after review by the City Attorney as to form and the City Engineer as to sufficiency, pursuant to the El Paso Municipal Code, Section 13.16.010. The maximum amount recoverable under such policy shall not be less than **TWO HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$250,000.00)** for death or injury to any person in any one accident, **FIVE HUNDRED THOUSAND DOLLARS AND 00/100 (\$500,000.00)** for death or injury to two or more persons in any one accident, and **ONE HUNDRED THOUSAND DOLLARS AND 00/100 (\$100,000.00)** for property damage.

#### VIII. Bond Required

The Developer agrees to execute a performance bond for one hundred percent (100%) 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.

#### **IX. Increased Costs**

This Agreement is a lump sum contract and it is anticipated that additional costs could arise from change, site conditions or latent defects; however, Developer agrees that the City shall not be responsible for additional costs unless Developer receives approval from the City prior to incurring such costs. The City Manager shall have the authority to approve such costs, provided that any increase to the costs do not exceed \$10,000.000 and do not exceed the percentage allowed under Texas Local Government Code §212.072

#### **X. 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.**

#### **XI. Non-Assignability**

The parties hereto agree that the rights of the Developer and the City under this Agreement are not assignable. This Agreement will survive the sale, rental, gift or devise of any property adjacent to the Project.

#### **XII. 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: VG Partnership  
Attn: James Gore  
5835 Onix Drive, Ste. #300  
El Paso, Texas 79903

copy to: ScottHulse, P.C.  
Attn: W. David Bernard  
1100 Chase Tower  
201 E. Main Drive  
El Paso, Texas 79901

### **XIII. 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.

### **XIV. 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.

### **XV. 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.

### **XVI. Future Maintenance Work**

The City shall be responsible for any maintenance or repairs of the Drainage Improvements. The City's obligations for such work shall begin 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.

### **XVII. 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 Agreement shall not be amended or modified except by written instrument signed by both parties.

### **XVIII. Authority to Contract**

All persons that are signatories to this Agreement represent that they have authority to enter into this Agreement and bind their respective organizations thereto.

#### **CITY OF EL PASO:**

\_\_\_\_\_  
Joyce Wilson, City Manager

**DEVELOPER: VG PARTNERSHIP,**  
a Texas general partnership

By: Verlander Family Limited  
Partnership, managing general  
partner

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
R. Alan Shubert, P.E.  
City Engineer

#### **List of Schedules and Exhibits:**

|             |                             |
|-------------|-----------------------------|
| Exhibit "A" | Site Plan                   |
| Exhibit "B" | Design Plans                |
| Exhibit "C" | Drainage Easement           |
| Exhibit "D" | Construction Cost Breakdown |

**ACKNOWLEDGMENTS ON FOLLOWING PAGE**

**ACKNOWLEDGMENTS**

**THE STATE OF TEXAS    )**

**)**

**COUNTY OF EL PASO    )**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
by Joyce Wilson, as the City Manager of the City of El Paso.

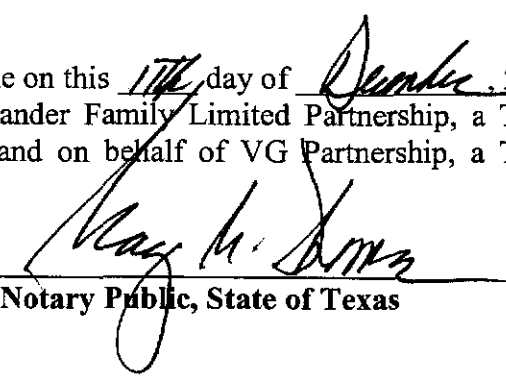
\_\_\_\_\_  
**Notary Public, State of Texas**

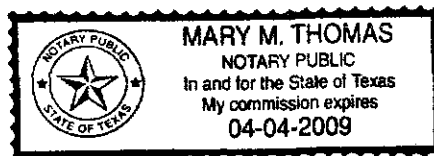
**THE STATE OF TEXAS    )**

**)**

**COUNTY OF EL PASO    )**

This instrument was acknowledged before me on this 17th day of December, 2008,  
by John M. Verlander, as general partner of Verlander Family Limited Partnership, a Texas  
limited partnership, as managing general partner and on behalf of VG Partnership, a Texas  
general partnership

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



**EXHIBIT A  
SITE PLAN**



**EXHIBIT B**  
**DESIGN PLANS**



**EXHIBIT C**  
**DRAINAGE EASEMENT**



STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

**DEDICATION DEED**

KNOW ALL MEN BY THESE PRESENTS: That **VG PARTNERSHIP**, a Texas general partnership, Grantor, in order to provide drainage for Grantor's property and surrounding properties, does hereby give and dedicate to the City of El Paso, Grantee, subject to the reservations hereinafter made, a twenty (20) foot wide drainage right-of-way along the northerly boundary and the easterly boundary of the following described land owned by Grantor and located in the City of El Paso, El Paso County, Texas:

*A portion of Lot 2, Block 23, Vista Granada Unit Three, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof.*

TO HAVE AND TO HOLD the above conveyed property for the purposes aforesaid unto the City of El Paso, its successors and assigns, forever. This dedication also includes a right of reasonable access through Grantor's remaining property for the purpose of maintaining and/or repairing improvements in the drainage right of way, such access to be accomplished in a manner so as to minimize interference with Grantor's use of its remaining property.

Except, however, that Grantor reserves herein, and it is expressly agreed that Grantor shall have, for Grantor and its successors and assigns, the right to use so much of the drainage right of way dedicated herein, including, without limitation, the surface thereof, as does not unreasonably interfere with Grantee's construction, maintenance and use of the drainage right of way and improvement located thereon.

And the Grantor hereby binds itself and its successors and assigns to warrant and forever defend all and singular the rights herein granted, unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to all easements, conditions, restrictions, and other matters of record in the Real Property Records of El Paso County, Texas.

WITNESS the following signatures and seal this 11<sup>th</sup> day of December, 2008.

**DEVELOPER: VG PARTNERSHIP,**  
a Texas general partnership

By: Verlander Family Limited  
Partnership, managing general  
partner

By:

Title:

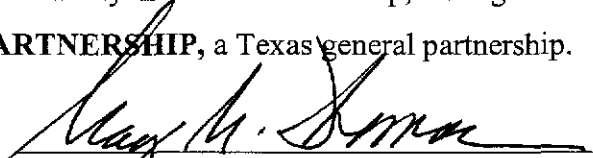
By: \_\_\_\_\_  
Title: General Partner

**ACKNOWLEDGMENT**

**STATE OF TEXAS       §**  
**§**  
**COUNTY OF EL PASO   §**

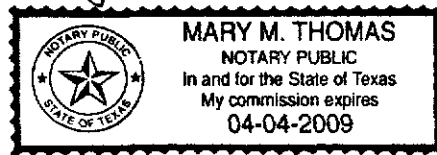
This instrument was acknowledged before me on the 11<sup>th</sup> day of December 2008, by John M. Verlander, general partner of Verlander Family Limited Partnership, acting in its capacity as general partner and on behalf of **VG PARTNERSHIP**, a Texas general partnership.

My Commission Expires: 4/4/2009

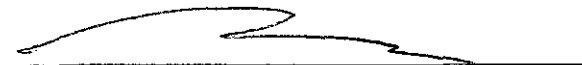
  
Notary Public, State of Texas  
Notary's Printed Name:

**GRANTEE**  
**CITY OF EL PASO**


By: \_\_\_\_\_  
Joyce Wilson, City Manager



**APPROVED AS TO FORM:**

  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
Eduardo Garcia, Subdivision Coordinator  
Development Services – Planning Division

**STATE OF TEXAS       )**  
**)**  
**COUNTY OF EL PASO   )**

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by Joyce Wilson, City Manager of the City of El Paso, a municipality, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**AFTER RECORDING, RETURN TO:**

City of El Paso  
Engineering Department  
Attn: City Engineer  
2 Civic Center Plaza, 4<sup>th</sup> floor  
El Paso, Texas 79901

### Legal Description:

BEING A PORTION OF LOT 2, BLOCK 23, VISTA GRANADA UNIT THREE, IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A CITY MONUMENT LOCATED AT THE CENTERLINE INTERSECTION OF ROJAS DRIVE AND GEORGE DIETER DRIVE; THENCE, ALONG THE CENTERLINE OF GEORGE DIETER DRIVE NORTH  $00^{\circ} 33' 12''$  WEST A DISTANCE OF 67.02 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE WITH SAID CENTERLINE, 249.82 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, WHOSE RADIUS IS 1320.00 FEET WHOSE INTERIOR ANGLE IS  $10^{\circ} 50' 37''$ , AND A CHORD BEARING NORTH  $04^{\circ} 52' 07''$  EAST A DISTANCE OF 249.45 FEET; THENCE SOUTH  $79^{\circ} 42' 35''$  EAST A DISTANCE OF 10.00 FEET TO A POINT LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF GEORGE DIETER DRIVE; THENCE SOUTH  $79^{\circ} 42' 35''$  EAST A DISTANCE OF 152.25 FEET TO A POINT, SAID POINT BEING "THE TRUE POINT OF BEGINNING" OF THIS DESCRIPTION.

THENCE, SOUTH  $79^{\circ} 42' 35''$  EAST, A DISTANCE OF 278.89 FEET TO A POINT FOR A CORNER;

THENCE, SOUTH  $32^{\circ} 21' 04''$  WEST A DISTANCE OF 224.12 FEET TO A POINT FOR A CORNER LYING ON THE NORTHERLY RIGHT-OF-WAY OF ROJAS DRIVE;

THENCE, ALONG THE SAID NORTHERLY RIGHT-OF-WAY LINE OF ROJAS DRIVE 180.46 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WHOSE RADIUS IS 1960.00 FEET, WHOSE INTERIOR ANGLE IS  $05^{\circ} 16' 31''$ , AND A CHORD BEARING NORTH  $83^{\circ} 59' 40''$  WEST, A DISTANCE OF 180.40 FEET TO A POINT FOR A CORNER;

THENCE, NORTH  $06^{\circ} 27' 26''$  EAST A DISTANCE OF 221.68 FEET TO THE "TRUE POINT OF BEGINNING" OF THIS DESCRIPTION.

SAID PARCEL OF LAND CONTAINING 1.1182 ACRES (48,710.03 SQ. FT.) OF LAND MORE OR LESS.

## EXHIBIT "A"

POOR QUALITY ORIGINAL  
BEST AVAILABLE IMAGE

**EXHIBIT D**  
**CONSTRUCTION COST BREAKDOWN**

| <u>Total Cost</u> | <u>Applebee's Cost</u> | <u>City of El Paso Cost</u>  |
|-------------------|------------------------|--|
| \$365,931.28      | \$331,331.28           | \$34,600.00 (100% o for construction of drainage beyond Developer's requirement)   |
| \$126,400.00      |                        | \$126,400.00 (100% of cost for increasing the drainage pipe from 18" to 42")   |
| \$59,950.00       | \$29,975.00            | \$29,975.00 (50% of cost for temporary drainage pond necessary to handle upstream drainage while construction of new drainage structures.) |
| \$552,281.28      | \$361,306.00           | \$190,975.00   |

# **AWARD OF DEVELOPER'S PARTICIPATION AGREEMENT- VG Partnership**

**Agenda Date: December 16 ,2008**

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## **Project Information**

- ❑ **Developer's Participation Agreement, District No. 6**
- ❑ **Scope: VG Partnership shall construct drainage public improvements on a proposed public drainage easement at a portion of Lot 2, Block 23, Vista Granada Unit Three. The proposed drainage improvements consist of an underground storm sewer system with manholes. The drainage improvements will address serious drainage and flooding problems at George Dieter Drive and Rojas Drive.**
- ❑ **Contract time shall start when contract is executed and a revised building permit is obtained.**

# **AWARD OF DEVELOPER'S PARTICIPATION AGREEMENT- VG Partnership**

**Agenda Date: December 16 ,2008**

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## **Project Information**

- ❑ Construction Budget is \$190,975.00**
- ❑ The contract shall expire when all services listed on the contract are completed. Expected project completion is August, 2009.**
- ❑ The project will be funded with approved 2006 Certificates of Obligations-Drainage**

# **AWARD OF DEVELOPER'S PARTICIPATION AGREEMENT- VG Partnership Agenda Date: December 16 ,2008**

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