

AFTER RECORDING RETURN TO:
JOSHUA D. BERNSTEIN, ESQ.
NORTON ROSE FULBRIGHT US LLP
98 SAN JACINTO BLVD., SUITE 1100
AUSTIN, TEXAS 78701

 **NORTON ROSE FULBRIGHT**

MONTECILLO

**NOTICE OF ANNEXATION AND
DEVELOPMENT AREA DECLARATION
[MONTECILLO COMMERCIAL]**

Declarant: EPT MESA DEVELOPMENT, LP, a Delaware limited partnership

Cross reference to that certain Montecillo Amended and Restated Master Covenant, Document No. 20160088513 in the Official Public Records of El Paso County, Texas, as amended.

NOTICE OF ANNEXATION AND DEVELOPMENT AREA DECLARATION
[MONTECILLO COMMERCIAL]

This Notice of Annexation and Development Area Declaration [Montecillo Commercial] (this "**Declaration**"), is made by **EPT MESA DEVELOPMENT, LP**, a Delaware limited partnership ("**Declarant**"), and is as follows:

RECITALS

A. EPT Montecillo I-10 Development, LLC, a Texas limited liability company ("**EPT Montecillo**") is the owner of certain real property located in El Paso County, Texas, as more particularly described on **Exhibit "A"** attached hereto (the "**Development Area**").

B. Declarant is the "**Declarant**" under that certain Montecillo Amended and Restated Master Covenant, recorded as Document No. 20160088513 in the Official Public Records of El Paso County, Texas, as amended (the "**Master Covenant**").

C. Declarant has agreed to impose upon the Development Area certain covenants, conditions and restrictions set forth hereinbelow for the benefit of: (i) that certain real property which is adjacent to the Development Area, located in El Paso County, Texas and as more particularly described on **Exhibit "B"** attached hereto (the "**Topgolf Property**"); and (ii) **30 WEST PERSHING, LLC**, a Missouri limited liability company (together with its successors and assigns, "**30 West**"), the owner of the Topgolf Property, and **TOPGOLF USA EL PASO, LLC**, a Delaware limited liability company (together with its successors and assigns, "**Topgolf**"), the owner of a leasehold interest in the Topgolf Property. Topgolf intends to develop a golf-themed entertainment facility, substantially similar to the existing Topgolf facility located in Houston, Texas, and utilizing Topgolf technology or similar technology, including a driving range and related teaching facilities, both indoor and outdoor restaurant / café / bar / grill facilities serving alcoholic beverages, and meeting and banquet facilities also serving alcoholic beverages (the "**Topgolf Facility**") on the Topgolf Property.

C. By Recording the Master Covenant, Declarant served notice that portions of the property described on Exhibit "A" to the Master Covenant may be made a part of the Development, upon the Recording of appropriate Notices of Annexation from time to time, and thereby become subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Covenant. This Declaration shall be considered a Notice of Annexation pursuant to the Master Covenant.

D. *Section 12.05* of the Master Covenant permits Declarant to file Development Area Declarations applicable to specific Development Areas, which subject such Development Areas to covenants, conditions, and restrictions in addition to those set forth in the Master Covenant. Declarant intends for this Declaration to serve as one of the Development Area Declarations permitted under the Master Covenant and for the Development Area described in Recital A above to constitute one of the Development Areas contemplated by the Master Covenant.

NOW, THEREFORE, it is hereby declared that: (i) all of the Development Area shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with the Development Area and shall be binding upon all parties having right, title, or interest in or to the Development Area or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; (ii) each contract or deed which may hereafter be executed with regard

to the Development Area, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; (iii) this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant; and (iv) to the extent of any conflict between the terms and provisions of this Declaration and the Master Covenant, the terms and provisions of this Declaration will control.

ARTICLE 1

NOTICE OF ANNEXATION

1.01 Applicability of Master Covenant. This Declaration is filed with respect to the Development Area, and pursuant to the Master Covenant, the Development Area is part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Covenant.

1.02 Votes. The number of votes allocated to the Development Area shall be based on use of the Development Area and in accordance with the allocations set forth in the Master Covenant, unless otherwise approved by Declarant.

1.03 Defined Terms. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Master Covenant.

1.04 Interpretation. Notwithstanding anything to the contrary in the Master Covenant (including *Section 2.02* thereof), to the extent any provision in this Declaration conflicts with the terms and provisions of the Master Covenant, then (i) this Declaration shall be deemed to be an amendment to the Master Covenant (as it applies to 30 West, the Topgolf Property, and the ability to use that certain parking lot that will be constructed by EPT Montecillo on land that is located adjacent to the Topgolf Property) pursuant to *Section 13.03* of the Master Covenant, and (ii) the terms and provisions of this Declaration shall govern in all events.

ARTICLE 2

USE AND CONSTRUCTION RESTRICTIONS

The Development Area shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following terms, provisions, limitations and restrictions:

2.01 Permitted Uses. The Development Area shall be used solely in a manner that conforms to all zoning requirements (if any) applicable to the Development Area, and shall be developed and maintained as a mixed-use development that may include, but shall not be limited to, the following: (i) shopping center(s); (ii) hotel(s); (iii) multifamily residences; (iv) single-family residences; (v) townhome residences; (vi) office(s); (vii) restaurants; and (viii) retail.

2.02 Prohibited Uses. Notwithstanding the foregoing or anything in the Master Covenant to the contrary, in no event shall any portion of the Development Area that is within five hundred feet (500') of the Topgolf Property be used as (i) an entertainment center of more than ten thousand (10,000) square feet such as, without limitation, a Dave and Buster's, Main Event, or bowling alley; (ii) a deep discount, bargain, fire sale or thrift store such as, without limitation, a Goodwill Industries or Salvation Army; (iii) a "dollar" store such as, without limitation, a Dollar General or Family Dollar; or (iv) a sexually-oriented business, adult book store, adult motion picture theater, nude live entertainment

club, or similar adult entertainment establishment, as such term is defined in Title 20 and other applicable sections of the El Paso Municipal Code.

2.03 Sitelines Restrictions. Notwithstanding anything in the Master Covenant to the contrary (including *Section 11.09* thereof), any and all pad sites within the Development Area which are adjacent to the Topgolf Property and within the "Sitelines" shown on **Exhibit "C"** attached hereto shall be restricted to a building elevation and fascia height that does not exceed thirty feet (30') tall. Additionally, all pylon signs associated with such pad sites shall not be permitted to exceed the maximum height as permitted by Applicable Law.

ARTICLE 3 **GENERAL PROVISIONS**

3.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Development Area, and will inure to the benefit of and be enforceable by the Association, 30 West, Topgolf, EPT Montecillo, and Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2067, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Declarant and 30 West. Notwithstanding any provision in this *Section 3.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

3.02 Amendment; Termination. This Declaration may only be amended or terminated by recording, in the Official Public Records of El Paso County, Texas, an instrument executed and acknowledged by Declarant and 30 West. *Section 2.02(i)* of this Declaration shall terminate automatically, unless otherwise extended by Declarant, when (i) the Topgolf Facility is no longer operating on the Topgolf Property for a continuous period of fifteen (15) months (provided, however, that for purposes of this Declaration, the Topgolf Facility shall not be deemed to have ceased operating on the Topgolf Property during any period in which the Topgolf Facility may be temporarily closed due to casualty, condemnation, repairs, renovations, modifications, force majeure, or similar events beyond the reasonable control of 30 West or Topgolf, provided that 30 West or Topgolf intends to reopen and operate the Topgolf Facility as soon as reasonably possible), and (ii) either of the following events occurs: (a) an "**Approved Entertainment Facility**" (as defined below) does not open for operation on the Topgolf Property within twelve (12) months after the date on which the Topgolf Facility ceases operating on the Topgolf Property as determined under clause (i) above, or (b) the Approved Entertainment Facility (which does open for operation on the Topgolf Property within such twelve-month period) ceases to operate on the Topgolf Property for a continuous period of fifteen (15) months (provided, however, that for purposes of this Declaration, such Approved Entertainment Facility shall not be deemed to have ceased operating on the Topgolf Property during any period in which such Approved Entertainment Facility may be temporarily closed due to casualty, condemnation, repairs, renovations, modifications, force majeure, or similar events beyond the reasonable control of 30 West, provided that 30 West intends to reopen and operate such Approved Entertainment Facility as soon as reasonably possible). For purposes of this Declaration, an Approved Entertainment Facility is a nationally recognized large-scale entertainment facility that, as determined by Declarant in its reasonable discretion: (i) provides at least the same level and quality of service as the Topgolf Facility; (ii) requires

approximately the same or more square footage of Improvements as the Topgolf Facility; (iii) utilizes approximately the same amount of parking as the Topgolf Facility; (iv) complies with design standards to be adopted by Declarant; and (v) is subject to exclusives that have been granted by Declarant within the Montecillo Development. **Notwithstanding the foregoing, in the event that Section 2.02(i) of this Declaration terminates automatically pursuant to this Section 3.02: (i) the Development Area shall remain a part of the Development and be fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Covenant; and (ii) the votes and Assessment Units allocated to the Development Area shall be based on use of the Development Area and in accordance with the allocations set forth in the Master Covenant, unless otherwise approved by Declarant.**

3.03 Notices. Any notice to any owner of the Development Area shall be in writing and may be delivered either personally or by mail at the intended recipient's last known mailing address, or as otherwise provided in the Master Covenant. Any notice permitted or required to be given by this Declaration must be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

3.04 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area; provided, however, that the provisions of this Declaration shall not be held to impose any restriction, condition or covenant whatsoever on any land other than the Development Area.

3.05 Governing Law. This Declaration and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Declaration is performable in El Paso County, Texas.

3.06 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements within the Development Area, so long as such construction is pursuant to proper prior approval of the Reviewer.

3.07 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

3.08 Assignment of Declarant's Rights. Unless 30 West consents in writing, Declarant shall not assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and shall not permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder. Notwithstanding the foregoing, Declarant shall be permitted to assign its privileges, exemptions, rights, and duties under this Declaration to an affiliate of Declarant or the Association without 30 West's consent so long as such affiliate or the Association, as applicable, agrees to be bound by and to comply with, and to assume any and all responsibilities and obligations of Declarant under, this Declaration.

3.09 Construction. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGES FOLLOW]

EXECUTED to be effective the 23 day of June, 2017.

DECLARANT:

EPT MESA DEVELOPMENT, LP, a Delaware limited partnership

By: EPT Mesa Development Management, LLC, a Delaware limited liability company, its General Partner

By: EPT Land Management, LLC, a Texas limited liability company, its Manager

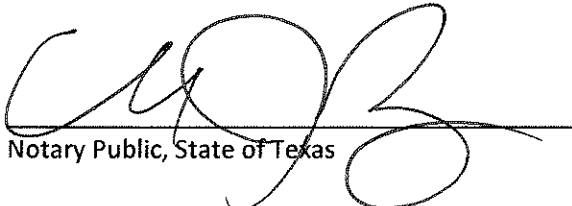
By: 
Richard Aguilar, Manager

THE STATE OF TEXAS §
 §
COUNTY OF El Paso §

This instrument was acknowledged before me on this 23rd day of June, 2017, by Richard Aguilar, the Manager of EPT Land Management, LLC, a Texas limited liability company, Manager of EPT Mesa Development Management, LLC, a Delaware limited liability company, the General Partner of EPT Mesa Development, LP, a Delaware limited partnership, on behalf of said limited liability companies and limited partnership.

(seal)

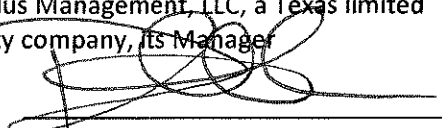



Notary Public, State of Texas

**ACCEPTED, ACKNOWLEDGED AND AGREED TO BY EPT
MONTECILLO:**

**EPT MONTECILLO I-10 DEVELOPMENT, LLC, a Texas limited
liability company**

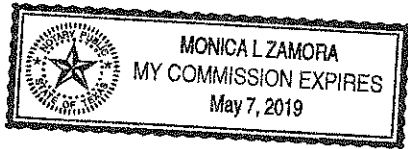
By: 123 Plus Management, LLC, a Texas limited
liability company, its Manager

By: 
Richard Aguilar, Manager

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 23rd day of June
2017, by Richard Aguilar, the Manager of 123 Plus Management, LLC, a Texas limited liability company,
Manager of EPT Montecillo I-10 Development, LLC, a Texas limited liability company, on behalf of said
limited liability companies.

(seal)



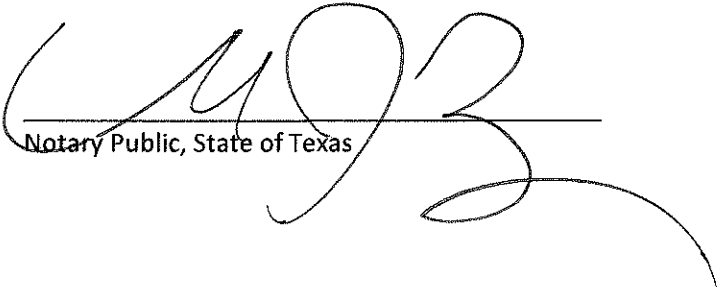

Notary Public, State of Texas

EXHIBIT "A"
DEVELOPMENT AREA

That certain 57.0834 acre parcel as described below, SAVE AND EXCEPT that certain 8.7816 acre parcel, the "Topgolf Property," as described on Exhibit "B".

A 57.0834 acre parcel situate within the City of El Paso, El Paso County, Texas as a portion of Tracts 3 and 3A, John Barker Survey No. 10, all of Tract 6 and a portion of Tract 7, I.F. Harrison Survey No. 54 and a portion of Lot 6, Block 2, Montecillo Unit Three, Replat "B", recorded in File No. 20120094929, Plat Records of El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a one inch pipe in concrete found for the northwest corner of Tract 3A, John Barker Survey No. 10 and the east boundary line of Tract 7, I.F. Harrison Survey No. 54, WHENCE, a 1/2 inch rebar with survey cap No. "TX 5152" found for the northeast corner of Lot 3, Block 2, Montecillo Unit Three, Replat "B", bears South 89°10'00" East, a distance of 2,563.27 feet; THENCE, following the boundary line common to said Tracts 3A and 7, South 00°50'38" East, a distance of 225.25 feet to the POINT OF BEGINNING of the parcel herein described;

THENCE, leaving the boundary line common to said Tracts 3A and 7, North 72°01'31" East, a distance of 8.09 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the most northerly corner of the parcel herein described;

THENCE, South 53°11'14" East, a distance of 199.39 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 01°36'01" West, a distance of 76.30 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 30°11'34" West, a distance of 315.71 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 53°40'20" East, a distance of 458.03 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 36°19'40" West, at a distance of 229.70 feet pass the boundary line common to said Tracts 3A and 3 and continuing on for a total distance of 491.00 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 53°40'20" East, a distance of 530.05 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 37°33'44" East, a distance of 15.39 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 52°26'16" West, a distance of 98.25 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South $37^{\circ}33'44''$ East, a distance of 132.76 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, following the arc of a curve to the left having a radius of 120.00 feet, a central angle of $44^{\circ}51'43''$, an arc length of 93.96 feet and whose long chord bears South $59^{\circ}59'35''$ East, a distance of 91.58 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, South $82^{\circ}25'27''$ East, a distance of 319.84 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set on the westerly boundary line of Lot 6, Block 2, Montecillo Unit Three, Replat "B" for an angle point of the parcel herein described;

THENCE, following the westerly boundary line of said Lot 6, North $00^{\circ}47'57''$ East, a distance of 24.17 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, leaving the westerly boundary line of said Lot 6, South $82^{\circ}25'27''$ East, a distance of 766.94 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, following the arc of a curve to the left having a radius of 20.00 feet, a central angle of $67^{\circ}52'41''$, an arc length of 23.69 feet and whose long chord bears North $63^{\circ}38'13''$ East, a distance of 22.33 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, North $29^{\circ}41'52''$ East, a distance of 34.43 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South $60^{\circ}18'08''$ East, a distance of 50.00 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the beginning of a non-tangent curve to the left;

THENCE, following the arc of said non-tangent curve to the left having a radius of 20.00 feet, a central angle of $112^{\circ}07'19''$, an arc length of 39.14 feet and whose long chord bears South $26^{\circ}21'47''$ East, a distance of 33.19 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, South $82^{\circ}25'27''$ East, a distance of 250.98 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South $57^{\circ}08'50''$ East, a distance of 51.52 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South $82^{\circ}25'27''$ East, a distance of 170.88 feet to a 1/2 inch rebar with survey cap No. "TX" found for the most southerly corner of the parcel herein described;

THENCE, South $07^{\circ}34'33''$ West, a distance of 52.00 feet to a 1/2 inch rebar with survey cap No. "TX 6223" found on the northerly boundary line of "Open Space", Lot 7, Block 2, Montecillo Unit Three Replat "B", same being a 75.00 feet El Paso Electric Company Easement as filed in Book 1344, Page 241, El Paso County Deed Records;

THENCE, following the northerly boundary line of said Lot 7, North 82°25'27" West, a distance of 1,319.49 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 88°41'02" West, at a distance of 3.20 feet pass a 1/2-inch rebar with survey cap No. "TX 5572" found on the boundary line common to said Lot 7 and Tract 3 and continuing along the boundary line common to said Tract 3 and Tract 8, John Barker Survey No. 10, same being a 75.00 feet El Paso Electric Company Right-of-Way, filed in Book 1357, Page 385, El Paso County Deed Records, for a total distance of 734.44 feet to a 1/2 inch rebar with survey cap No. "TX 5572" found on the northeasterly right-of-way line of Interstate Highway No. 10 (variable width), identical to the northwesterly corner of said El Paso Electric Company Right-of-Way, same being said Tract 8;

THENCE, following the northeasterly right-of-way line of said Interstate Highway No. 10, North 37°37'52" West, a distance of 84.61 feet (North 38°39'05" West, 87.29 feet~Deed) to a TXDOT Brass Cap right-of-way marker found for an angle point of the parcel herein described;

THENCE, continuing along the northeasterly right-of-way line of said Interstate Highway No. 10, North 53°31'31" West, at a distance of 199.52 feet pass the boundary line common to said Tracts 3 and 6 and continuing on for a total distance of 1,033.77 feet (North 53°37'06" West, 1,032.86 feet~Deed) to a TXDOT Brass Cap right-of-way marker found for an angle point of the parcel herein described;

THENCE, continuing along the northeasterly right-of-way line of said Interstate Highway No. 10, North 73°20'38" West, a distance of 596.04 feet (North 73°24'53" West, 595.93 feet~Deed) to a TXDOT Brass Cap right-of-way marker found for an angle point of the parcel herein described;

THENCE, continuing along the northeasterly right-of-way line of said Interstate Highway No. 10, North 89°51'09" West, a distance of 1,155.85 feet (North 89°52'24" West, 1,156.61 feet~Deed) to a 1/2-inch rebar found for the southwesterly corner of Rubin Heights Unit Two, Replat "A" as filed in Book 38, Page 6, El Paso County Plat Records;

THENCE, leaving the northeasterly right-of-way line of said Interstate Highway No. 10 and following the southeasterly boundary line of said Rubin Heights Unit Two, Replat "A", North 57°42'12" East, a distance of 364.33 feet (North 57°43'32" East, 364.33 feet~Deed) to a 1/2-inch rebar with survey cap No. "TX2998" found for an angle point of the parcel herein described;

THENCE, continuing along the southeasterly boundary line of said Rubin Heights Unit Two, Replat "A", South 21°58'17" East, a distance of 51.42 feet (South 22°02'40" East, 51.56 feet~Deed) to a 1/2-inch rebar with survey cap No. "TX2998" found for an angle point of the parcel herein described;

THENCE, continuing along the southeasterly boundary line of said Rubin Heights Unit Two, Replat "A", North 48°09'31" East, a distance of 949.15 feet (North 48°06'58" East, 949.11 Feet~Deed) to a 1/2-inch rebar with survey cap No. "TX6223" set for an angle point of the parcel herein described;

THENCE, continuing along the southeasterly boundary line of said Rubin Heights Unit Two, Replat "A", North 53°39'47" East, a distance of 265.78 feet (North 53°39'58" East, 265.72 feet~Deed) to a chiseled "X" in concrete found for the southeasterly corner of said Rubin Heights Unit Two, Replat "A", identical to the southwesterly corner of Rubin Heights Unit One as filed in Book 37, Page 8, Plat Records of El Paso County, Texas and the westerly right-of-way line of Suncrest Drive (60 feet wide);

THENCE, leaving the westerly right-of-way line of said Suncrest Drive and following the southerly boundary line of said Rubin Heights Unit One, North 69°34'53" East, a distance of 70.00 feet (North 69°34'53" East, 70.00 feet~Deed) to a chiseled "X" in concrete found on the easterly right-of-way line of said Suncrest Drive, identical to the southwesterly corner of Lot 1, Block 1, Rubin Heights Unit One;

THENCE, leaving the easterly right-of-way line of said Suncrest Drive and following the southerly boundary line of said Lot 1, Block 1, Rubin Heights Unit One, North 85°04'36" East, a distance of 453.51 feet to a 1/2-inch rebar with survey cap No. "TX6223" set for an angle point of the parcel herein described;

THENCE, leaving the southerly boundary line of said Lot 1, South 33°36'17" East, a distance of 317.85 feet to a 1/2-inch rebar with survey cap No. "TX6223" set for a point of curvature;

THENCE, following the arc of a curve to the left having a radius of 144.37 feet, a central angle of 12°47'37", an arc length of 32.24 feet and whose long chord bears South 40°00'05" East, a distance of 32.17 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, South 44°22'13" East, a distance of 69.70 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 70°11'32" East, a distance of 19.98 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 46°36'35" East, a distance of 48.79 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North 43°35'22" East, a distance of 346.67 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the beginning of a non-tangent curve to the right;

THENCE, following the arc of said non-tangent curve to the right having a radius of 270.00 feet, a central angle of 07°48'39", an arc length of 36.81 feet and whose long chord bears North 47°17'44" East, a distance of 36.78 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the end of said curve;

THENCE, North 72°01'31" East, a distance of 94.34 feet to the POINT OF BEGINNING;

Said parcel containing a gross area of 57.0834 acres (2,486,553.4 square feet), more or less, and being subject to all easements, restrictions and covenants of record.

EXHIBIT "B"
TOPGOLF PROPERTY

A 8.7816 acre parcel situate south of the City of El Paso, El Paso County, Texas as a portion of Tracts 6 and 7, I.F. Harrison Survey No. 54 and a portion of Tract 3A, John Barker Survey No. 10 and being more particularly described by metes and bounds as follows:

COMMENCING at a one inch pipe in concrete found for the northwest corner of Tract 3A, John Barker Survey No. 10 and the east boundary line of Tract 7, I.F. Harrison Survey No. 54, WHENCE, a 1/2 inch rebar with survey cap No. "TX 5152" found for the northeast corner of Lot 3, Block 2, Montecillo Unit Three, Replat "B", recorded in file No. 20120094929, plat records of El Paso County bears South 89°10'00" East, a distance of 2,563.27 feet; THENCE, following the boundary line common to said Tracts 3A and 7, South 00°50'38" West, a distance of 225.25 feet to the POINT OF BEGINNING of the parcel herein described;

THENCE, leaving the boundary line common to said Tracts 3A and 7, North 72°01'31" East, a distance of 8.09 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the most northerly corner of the parcel herein described;

THENCE, South 53°11'14" East, a distance of 199.39 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 01°36'01" West, a distance of 76.30 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 30°11'34" West, a distance of 321.36 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 27°02'31" West, at a distance of 23.81 feet pass the boundary line common to said Tracts 3A and 6 and continuing on for a total distance of 324.05 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North 63°06'23" West, a distance of 10.00 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 36°19'35" West, a distance of 56.91 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, South 53°28'37" East, a distance of 59.99 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described; WHENCE, a city monument found at the centerline intersection of Montecillo Boulevard (110 feet wide) and Castellano Drive (64 feet wide) bears, South 76°40'03" East, a distance of 2,898.50 feet;

THENCE, South 36°19'35" West, a distance of 207.82 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, following the arc of a curve to the right having a radius of 10.00 feet, a central angle of $90^{\circ}00'05''$, an arc length of 15.71 feet and whose long chord bears South $81^{\circ}19'38''$ West, a distance of 14.14 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, North $53^{\circ}40'20''$ West, a distance of 70.37 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of curvature;

THENCE, following the arc of a curve to the right having a radius of 40.00 feet, a central angle of $15^{\circ}00'00''$, an arc length of 10.47 feet and whose long chord bears North $46^{\circ}10'20''$ West, a distance of 10.44 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for a point of tangency;

THENCE, North $38^{\circ}40'20''$ West, a distance of 15.05 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North $36^{\circ}19'40''$ East, a distance of 30.74 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North $53^{\circ}40'20''$ West, a distance of 159.33 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the beginning of a non-tangent curve to the left;

THENCE, following the arc of said non-tangent curve to the left having a radius of 510.29 feet, a central angle of $20^{\circ}23'27''$, an arc length of 181.61 feet and whose long chord bears North $63^{\circ}52'49''$ West, a distance of 180.65 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the end of said curve;

THENCE, North $73^{\circ}22'05''$ West, a distance of 7.59 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the most westerly corner of the parcel herein described, WHENCE, a TXDOT Brass Cap found along the northeasterly right-of-way line of U.S. Interstate Highway No. 10 bears South $73^{\circ}48'43''$ West, a distance of 663.17 feet;

THENCE, North $16^{\circ}37'55''$ East, a distance of 163.58 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the beginning of a non-tangent curve to the right;

THENCE, following the arc said non-tangent curve to the right having a radius of 308.37 feet, a central angle of $24^{\circ}54'46''$, an arc length of 134.08 feet and whose long chord bears North $29^{\circ}56'58''$ East, a distance of 133.03 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the end of said curve;

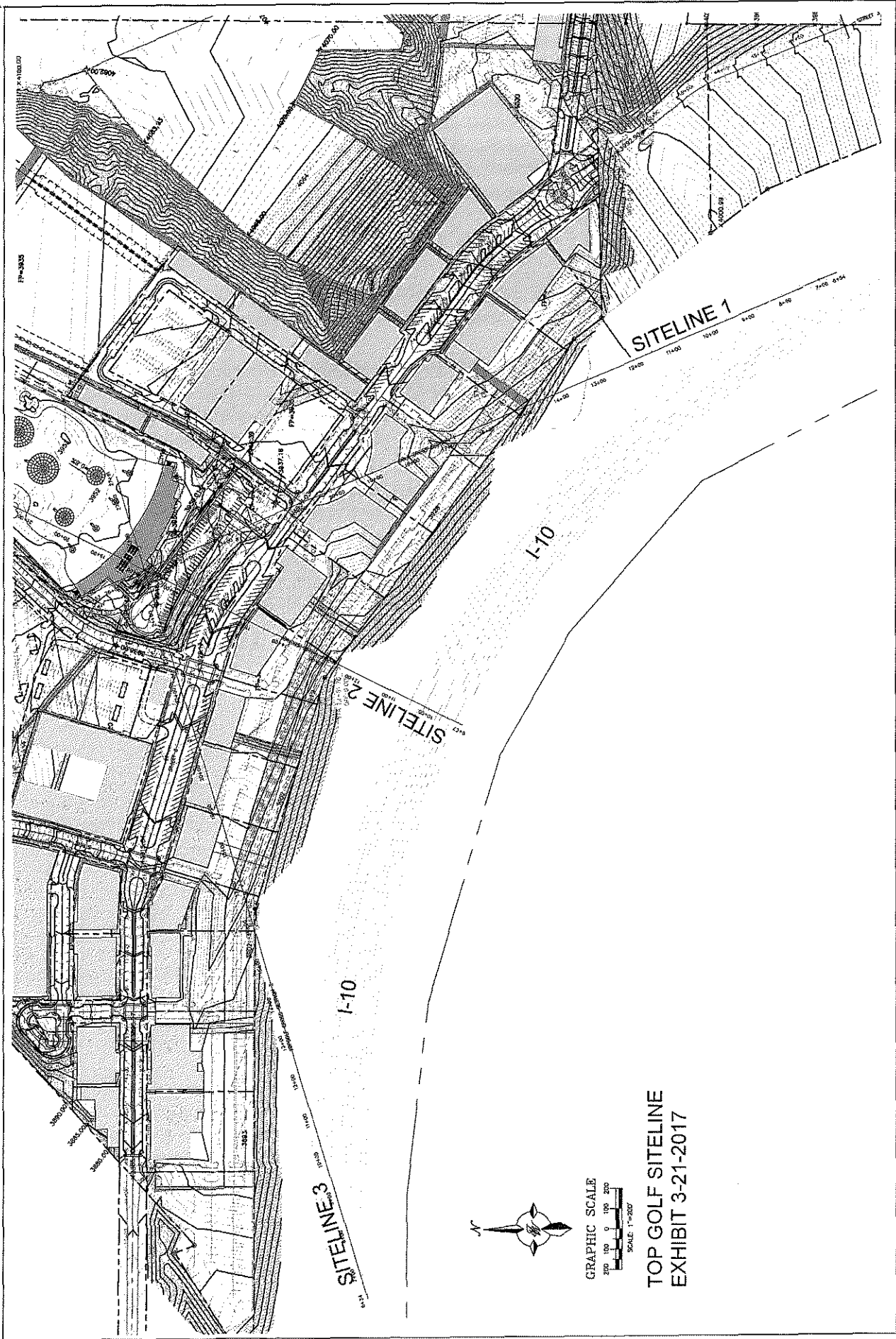
THENCE, North $43^{\circ}35'22''$ East, a distance of 578.00 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for the beginning of a non-tangent curve to the right;

THENCE, following the arc of said non-tangent curve to the right having a radius of 270.00 feet, a central angle of $07^{\circ}48'39''$, an arc length of 36.81 feet and whose long chord bears North $47^{\circ}17'44''$ East, a distance of 36.78 feet to a 1/2 inch rebar with survey cap No. "TX 6223" set for an angle point of the parcel herein described;

THENCE, North $72^{\circ}01'31''$ East, a distance of 94.34 feet to the POINT OF BEGINNING;

Said parcel containing 8.7816 acres (382,526.2 square feet), more or less, and being subject to all easements of record.

EXHIBIT "C"



SITELINE 1

I-10

SITELINE 2

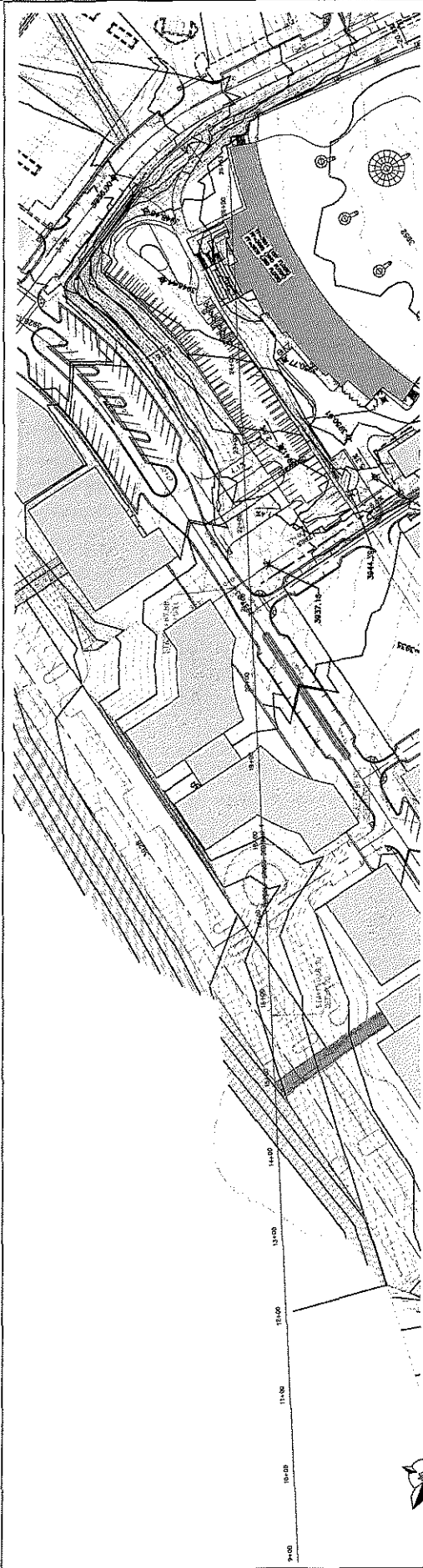
I-10

SITELINE 3



GRAPHIC SCALE
0 100 200
SCALE: 1"=200'

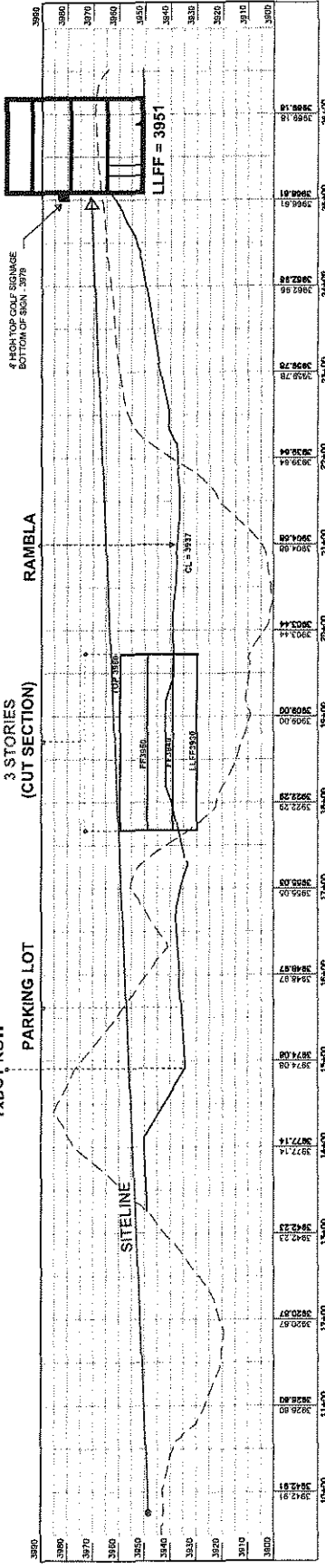
TOP GOLF SITELINE
EXHIBIT 3-21-2017



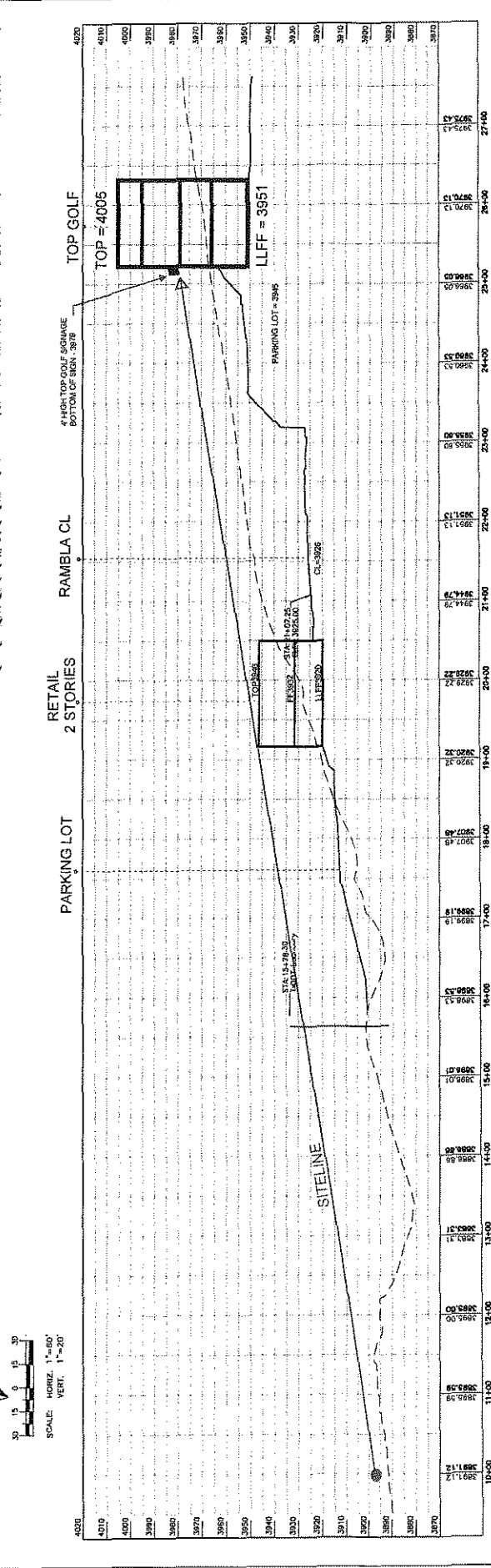
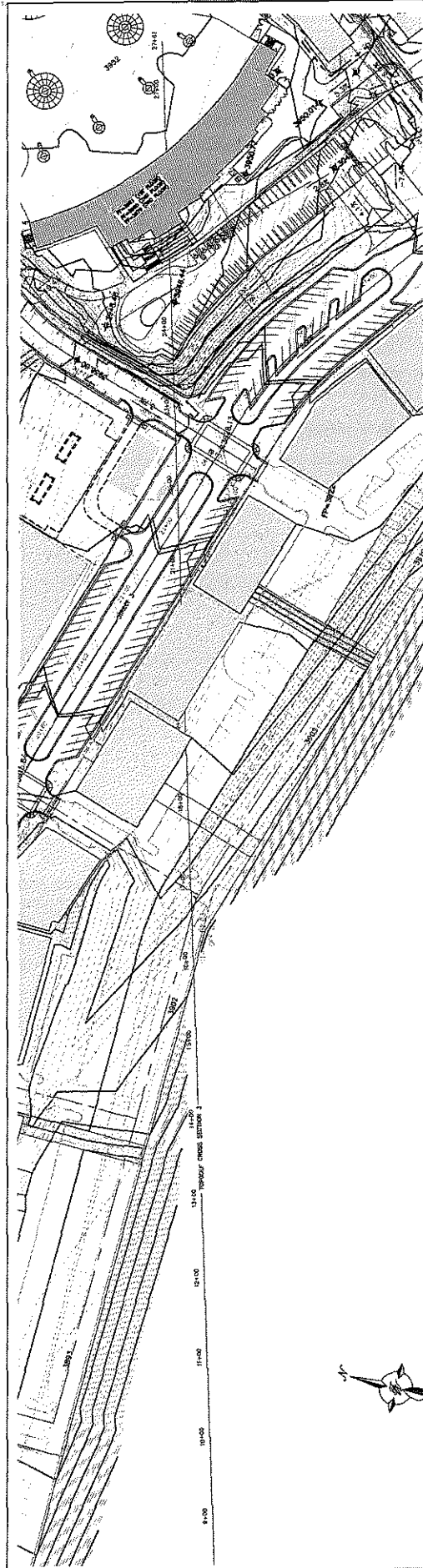
SCALE: HORIZ. 1"=50'
VERT. 1"=20'

TOP GOLF

TXDOT ROW
PARKING LOT
RETAIL
3 STORIES
(CUT SECTION)
RAMBLA



TOP GOLF CROSS SECTION 1



TOP GOLF CROSS SECTION 3

Station	Elevation
10+00	3891.12
11+00	3895.59
12+00	3895.00
13+00	3883.31
14+00	3896.89
15+00	3896.01
16+00	3898.51
17+00	3899.19
18+00	3897.49
19+00	3890.32
20+00	3892.22
21+00	3894.79
22+00	3891.13
23+00	3895.80
24+00	3898.93
25+00	3896.03
26+00	3896.86
27+00	3897.42

10/11/2002
 10/11/2002

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Doc# 20170046070
#Pages 20 #FPages 1
6/26/2017 1:08:57 P
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$102.00

2/1/14

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



EL PASO COUNTY, TEXAS

Delia Briones