CHAPTER 381
ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN
COMAL COUNTY, TEXAS
AND
INVESTOR GROSENBACHER PARTNERSHIP
AND
NB RETAIL, LTD.

This Chapter 381 Economic Development Agreement (this "*Agreement*") is entered into between **Investor Grosenbacher Partnership**, a Texas general partnership, its successors and assigns, and **NB Retail Ltd.**, a Texas limited partnership, its successors and assigns (collectively, the "*Owner*"), and **Comal County, Texas**, a political subdivision of the State of Texas (the "*County*").

RECITALS

WHEREAS, the Comal County Commissioners Court has authorized certain economic development grants to the Owner in recognition of the positive economic benefits that will accrue to the County through the Owner's efforts to develop approximately 160.56 acres of land, as depicted on the attached **Exhibit "A"** and depicted on the attached **Exhibit "A-1"** (the "*Property*");

WHEREAS, the County desires to offer incentives to the Owner over a period of time which will enable the Owner to develop the Property as a commercial and mixed-use project, commonly known as WestPointe Village (the "*Project*"); and

WHEREAS, the County recognizes the benefits its citizens will receive through this Agreement by requiring Owner to complete construction of Oak Run Parkway Extension before the commencement of construction by TxDOT of improvements to State Highway 46 between Loop 337 and Oak Run Parkway; and

WHEREAS, the development of the Project will add significant new revenues to the County's tax base and will create jobs, which will help stimulate the overall local economy.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Owner agree as follows:

1.
Authority

The County's execution of this Agreement is authorized by Chapter 381, *Texas Local Government Code* thereby constituting a valid and binding obligation of the County subject to the condition precedent that the Owner completes development of the Improvements by the *Ad*

Valorem Tax Effective Date, as defined below. The Owner's execution and performance of this Agreement constitutes a valid and binding obligation of the Owner if the Owner proceeds with the development of the Project. The County acknowledges that the Owner is acting in reliance upon the County's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to construct the Improvements and develop the Property; and the Owner acknowledges that the County is acting in reliance upon the Owner's full and complete performance of its obligations under this Agreement, according to its terms, in making its decision to commit to the reimbursements described herein.

2.
Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 **"*Ad Valorem* Tax Base Line"** means the final approved taxable value of the unimproved Property by the Comal Appraisal District for the year 2008 (as established January 1, 2008) from which all increases in *ad valorem* taxable value shall be measured.

2.2 **"*Ad Valorem* Tax Effective Date"** means January 1, 2010.

2.3 **"*Ad Valorem* Tax Revenues"** means the amount of real and personal property taxes actually received by the County from the levy of such taxes on the Property, including any improvements and personal property located on the Property, but only to the extent that the total of such *Ad Valorem* Tax Revenues for any given year during the Term hereof exceed the *Ad Valorem* Tax Base Line. It is the intent of the parties that the *ad valorem* tax portion of the incentive payments made hereunder should be based on the incremental increases in tax value of the Property as it is developed after the base line year.

2.4 **"Chapter 381 Payment(s)"** means the amount(s) paid by the County to the Owner under this Agreement from any source.

2.5 **"Commencement of Construction of the New H-E-B"** means any construction work on the vertical elements of the New H-E-B, or any site preparation work, including the commencement of clearing or grading, on the specific site to be occupied by the New H-E-B.

2.6 **"County Default Interest Payments"** means the payment(s) of interest on the cumulative amount of any unpaid Chapter 381 payment(s) due to the Owner under this Agreement, in the event that an Act of Default by the County occurs, under Section 6.3. The County Default Interest Payment will be calculated at a rate of ten percent (10%) per annum accruing from the date such payment became due hereunder until repaid in full.

2.7 **"Effective Date"** means the date this Agreement has been signed by both the County and the Owner.

2.8 **"Excessive Rain Event"** means one or more occurrences of rainfall or snowfall that cause the Owner's contractor to cease construction of the Improvements for one or more working days, as certified in writing by Owner's contractor.

2.9 **"Force Majeure"** means any delay incurred by either party because of matters beyond such party's reasonable control, such as: labor disputes; acts of God; judicial orders; war; riot; Excessive Rain Event; and civil commotion, fire, or other casualty; and unforeseen subsurface conditions that require delay pursuant to regulation or court order.

2.10 **"Improvements"** means collectively the design and construction of (a) the extension of Oak Run Parkway and related infrastructure from its current end point to Loop 337 (the "*Oak Run Parkway Extension*"), (b) the connection from the Oak Run Parkway Extension to State Highway 46 (the "*Independence Drive Extension*"), and (c) the improvements to Loop 337 and/or State Highway 46, as required by the Texas Department of Transportation ("TxDOT"), including, but not limited to, the installation of traffic signals, signs, and required traffic control devices (the "*Intersection Improvements*"), as each is more particularly described on **Exhibit "C"** and shown on **Exhibit "D"** attached hereto and made a part hereof.

2.11 "**Local Construction and Trade Contractors**" means those persons or companies whose primary place of business is New Braunfels or Comal County and which provide services in the development or construction of commercial real estate projects, including but not limited to, those persons and/or companies qualified and experienced in providing construction, specialty trade construction, material supply, equipment rental, refuse removal, and/or landscaping services.

2.12 **"Maximum Reimbursement Amount"** means the lesser of either (a) One Million Five Hundred Seventy-Two Thousand Two Hundred Fifty-Seven and No/100 Dollars ($1,572,257.00), *plus* any County Default Interest Payments, or (b) the actual documented costs of design and construction of the Improvements, *plus* any County Default Interest Payments.

2.13 **"Reimbursement Fund"** means a separate fund created and maintained by County, including subaccounts if necessary, or a subaccount of any existing fund or account in the County treasury, into which seventy percent (70%) of the *Ad Valorem* Tax Revenues, *plus* any County Default Interest Payments, shall be deposited as and when such taxes are received by the County, either directly, or from the Comal County Tax Office or the Texas Comptroller of Public Accounts, as applicable, during the Term.

2.13 **"TxDOT Widening of State Highway 46"** means the construction work authorized by the Texas Department of Transportation ("TxDOT") and required to permanently widen that certain portion of State Highway 46, situated between Loop 337 and Oak Run Parkway. TxDOT Widening of State Highway 46 explicitly shall not mean any other construction work by TxDOT, agents of TxDOT, or other person(s) related to site work, excavation, removal, relocation, movement, and/or installation of any trees, obstacles, structures, fences or utilities from the existing or future right-of-way for State Highway 46, including but not limited to water, wastewater, storm water, electric, gas, telecommunication, fiber optic, or cable television services.

3.
Purpose; Term

3.1 The parties to this Agreement intend that if the Owner commences development of the Project, the County shall grant to the Owner the portion of *Ad Valorem* Tax Revenues described herein until such time as the Owner has received the Maximum Reimbursement Amount or this Agreement has terminated by its own terms, whichever is sooner, as described below.

3.2 This Agreement will become enforceable upon the Effective Date and will terminate on the first to occur of: (a) the twenty-fifth (25th) anniversary of the *Ad Valorem* Tax Effective Date or (b) receipt by the Owner of the Maximum Reimbursement Amount (the "Term"); provided, however, that in recognition of the fact that Chapter 381 Payments are, by necessity, calculated and paid after the relevant taxes have been levied by and paid to the County and, therefore, will always be paid in arrears, the Term of this Agreement will be deemed extended until any Chapter 381 Payments relating to *Ad Valorem* Tax Revenues attributable to the specified Term of the Agreement have been paid by the County to the Owner.

4.
Owner's Performance Criteria

4.1 The Owner may elect whether to develop the Project in its sole discretion, and the Owner is under no obligation to construct the Project. However, unless the Owner constructs the Improvements, the County shall be under no obligation to make Chapter 381 Payments to the Owner pursuant to this Agreement.

4.2 Notwithstanding the foregoing, but subject to Section 12.7, the Owner shall commence construction of the Oak Run Parkway Extension within forty-five (45) days following the execution of this Agreement, subject to Force Majeure. For purposes hereof, the Owner shall be deemed to have commenced construction when the Owner performs any site preparation work for the Project, including the clearing or grading of the Project site.

4.3 The Independence Drive Extension. The Owner shall use commercially reasonable efforts to complete construction of the Independence Drive Extension by the 155th day following commencement of construction thereof, subject to a day-for-day extension for each day of delay caused by Force Majeure. The Independence Drive Extension shall be considered complete if said roadway has been approved by the City as safe, for use by the public and constructed in accordance with the approved plans, subject only to the completion of elements of construction, such as landscaping and street lighting, which do not materially interfere with the use of such roadway. Notwithstanding anything to the contrary contained herein, in no event shall the completion of construction be interpreted to require the installation of utility work of any kind or the installation or operation of traffic signals.

4.4 The Oak Run Parkway Extension. The Owner shall use commercially reasonable efforts to complete construction of the Oak Run Parkway Extension by the earlier of either: (a) the 155th day following commencement of construction of the Oak Run Parkway, or (b) the date on which TxDOT, and/or its agents, commences construction of the TxDOT Widening of State Highway 46 in a manner that materially and adversely impacts the flow of traffic on State Highway 46 by the detour or the closure of one or more lanes of traffic but in no event prior to April 15, 2009, in any event subject to a day-for-day extension for each day of delay caused by Force Majeure. The Oak Run Parkway Extension shall be considered complete if said roadway has been approved by the City as safe, for use by the public and constructed in accordance with the approved plans, subject only to the completion of elements of construction, such as landscaping and street lighting, which do not materially interfere with the use of such roadway. Notwithstanding anything to the contrary contained herein, in no event shall the completion of construction be interpreted to require the installation of utility work of any kind or the installation or operation of traffic signals. With respect to Owner's Performance Criteria in this Section:

4.4.1 The County acknowledges that TxDOT intends to widen that certain portion of State Highway 46 situated between Loop 337 and Oak Run Parkway. The County further acknowledges that in connection with the TxDOT Widening of State Highway 46, TxDOT will be required to engage in the following activities prior to commencing such work: (a) acquire all necessary rights-of-way to widen State Highway 46 per specification; (b) require the permanent removal, modification, or relocation of any item, structure, or other obstacle that would interfere with construction or use of State Highway 46 ("Site Preparation"); (c) require the permanent removal or relocation of any utility line(s) or related equipment by the respective owners of said utilities to meet the requirements of TxDOT ("Utility Relocation"); and (d) enter into a contract with a general contractor to construct TxDOT Widening of State Highway 46 ("TxDOT Roadway Contractor") on or about April 15, 2009.

4.4.2 The County acknowledges that Site Preparation, Utility Relocation, and work by TxDOT Roadway Contractor in constructing the TxDOT Widening of State Highway 46 could occur simultaneously, or on or about the same dates, within that certain portion of State Highway 46 situated between Loop 337 and Oak Run

Parkway, but that the performance of Site Preparation and Utility Relocation shall not be deemed hereunder to have triggered commencement of the TxDOT Widening of State Highway 46.

4.4.3 The County agrees that, at anytime prior to the completion of Oak Run Parkway and Independence Drive but at no time prior to April 15, 2009, if it is suspected or believed to be determined by the County that the TxDOT Roadway Contractor has commenced construction of the TxDOT Widening of State Highway 46 prior to satisfaction of the Owners Performance Criteria in Section 4.4, the County Engineer will immediately and simultaneously confer with the Owner, the City, and the appropriate representative of TxDOT to confirm or otherwise determine whether commencement of the TxDOT Widening of State Highway 46 has occurred. Notwithstanding anything to the contrary herein, until this official determination has been made by the County Engineer in consultation with TxDOT, the County expressly agrees that it shall presume hereunder that the TxDOT Widening of State Highway 46 has not commenced.

4.4 Subject to all of the terms hereof, the Owner agrees that the Project shall be a mixed-use or commercial development concept and will include an H-E-B grocery store anchored retail center.

4.5 Owner shall complete the construction of Independence Drive Extension and Intersection Improvements as detailed in **Exhibit "D"** prior to the opening the new H-E-B grocery store proposed within this Project. Said Improvements constructed by the Owner pursuant to this Agreement shall comply with all applicable regulations, requirements, and standards.

5.
Retail Component; Proposed Anchor Tenant

5.1 The Owner understands that the County is concerned with attracting new commercial businesses for the benefit of its citizens, and that the County's willingness to enter into this Agreement and to provide economic development assistance to the Owner for construction of the Improvements shown on **Exhibit "C"**, is based upon the Owner making acceptable efforts to bring new commercial development to the Comal County market. In consideration of these factors, the Owner must cause the commencement of construction of an H-E-B grocery store on the Property (the "New H-E-B") on or before December 31, 2009, subject to (a) Force Majeure and (b) the commencement of construction by TxDOT or its agent of improvements to State Highway 46 between Loop 337 and Oak Run Parkway. In the event that the Owner does not cause the commencement of construction of the New H-E-B by December 31, 2009, for reasons other than Force Majeure, the Owner shall be deemed to be in default hereunder.

5.2 The Owner further understands that the County is concerned with employment opportunities for its citizens, and that the County's willingness to enter into this Agreement is based upon the commitment of NB Retail, Ltd. to pursue and utilize, in its sole but reasonable discretion, Local Construction and Trade Contractors, when commercially reasonable, in the construction of those components of the grocery store anchored retail center at the Property that will be built by NB Retail, Ltd. NB Retail, Ltd. agrees to cause the general contractor(s) that it considers and/or selects to undertake those portions of the site development work and/or construction of the grocery store anchored retail center, to be constructed by NB Retail, Ltd., to: (a) advertise subcontracting opportunities in publications, on certain Internet websites, and through local chambers of commerce or trade associations so that such subcontracting opportunities would be seen by Local Construction and Trade Contractors; (b) advertise and hold pre-bid meeting(s) in New Braunfels, Comal County, or Bexar County for interested parties that may facilitate the submission of subcontractor bids by Local Construction and Trade Contractors; and (c) take commercially reasonable steps to encourage the submission of bids by those Local Construction and Trade Contractors who are also small, minority and/or woman-owned businesses. Notwithstanding any provision in this Agreement to the contrary, the County explicitly acknowledges that this provision applies only to NB Retail, Ltd., and not to its successors, assigns, or lessees which may acquire or lease portions of the retail center and undertake separate and independent construction projects.

6.
County's Performance Criteria

6.1 **County's Obligation**. During the Term, and only to the extent that the Owner (or its tenants) has paid taxes, incurred infrastructure costs for the Improvements eligible for reimbursement as described in Exhibit B, and the County has received *Ad Valorem* Tax Revenues from the Project, the County is obligated to pay to the Owner an amount not to exceed the Maximum Reimbursement Amount from the Reimbursement Fund.

6.2 **WestPointe Village Infrastructure Reimbursement Fund**. The County will provide for the payment of an amount not to exceed the Maximum Reimbursement Amount to be made pursuant to this Agreement by establishing the Reimbursement Fund. The Reimbursement Fund shall be maintained as a separate fund, shall not be part of the County's general revenue, and shall be used only for payments to the Owner as provided herein during the Term of this Agreement. During the Term of this Agreement, and based on the County's binding obligations hereunder, the County shall appropriate the funds from the Reimbursement Fund and authorize payments to the Owner hereunder as necessary, including during the County's ordinary budget and appropriations approval process. Money in the Reimbursement Fund may be invested and reinvested by the County only in investments which would be eligible for investment pursuant to the provisions of the Public Funds Investment Act (Chapter 2256, Texas Government Code), provided, all positive investment returns will accrue to the benefit of the Reimbursement Fund. The County may maintain or abolish the Reimbursement Fund, in its sole discretion, after the Term of this Agreement has ended and all Chapter 381 Payments due and payable hereunder have been paid by the County.

6.3 *Ad Valorem* Tax Increase Refund.

During the Term, the County shall pay to the Owner seventy percent (70%) of the *Ad Valorem* Tax Revenues one (1) time per year until, together with all other Chapter 381 Payments and County Default Interest Payments hereunder, the Maximum Reimbursement Amount is paid to the Owner in full by the County from the Reimbursement Fund, in accordance with the following schedule:

Schedule A: 70% *Ad Valorem* Tax Increase Refund		
Year(s) of Term	**County's Performance Requirements**	**County's Time of Performance**
1-25	The County shall refund to the Owner seventy percent (70%) of the *Ad Valorem* Tax Revenues	On or before July 1 of each year

Failure by County to timely and fully comply and to continuously comply with any performance requirement in this Section and time of performance throughout the Term of this Agreement shall be an Act of Default. In the event that an Act of Default by the County under this Section occurs, the County agrees to pay County Default Interest Payments to the Owner, in addition to the Chapter 381 Payments it is required to pay to the Owner.

7.
Owner's Representations

7.1 Both NB Retail, Ltd. And Investor Grosenbacher Partnership each, solely and respect to itself, make the following covenants and warranties to County, and individually agree to timely and fully perform the following obligations and duties.

7.1.1 The Owner is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

7.1.2 The execution of this Agreement has been duly authorized by the Owner, and the parties signing this Agreement are empowered to execute such Agreement and bind the partnerships, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of the Owner's partnership agreements, such authority to be evidenced by partnership resolutions.

7.1.3 No litigation or governmental proceeding is pending or, to the knowledge of the Owner or the Owner's officers, threatened against or affecting the Owner that may result in any material adverse change in the Owner's business, properties or operation. No consent, approval or authorization of or registration or declaration with any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.

7.1.4 There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and the Owner has not been informed of any potential involuntary bankruptcy proceedings.

7.1.5 To its current, actual knowledge, the Owner has acquired and maintained, or will acquire and maintain, all necessary rights, licenses, permits and authority to carry on its business in Comal County, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

7.1.6 The Owner shall timely and fully comply with all of the terms and conditions of this Agreement, subject to Force Majeure.

8.
Suspensions/Termination

8.1 The County, under the following circumstances, and at its sole discretion, may suspend its obligations under this Agreement or terminate this Agreement and all future payment obligations shall automatically cease upon any one of the following events.

8.1.1 The appointment of a receiver of the Owner, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

8.1.2 The adjudication of the Owner as a bankrupt.

8.1.3 The filing by the Owner of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

9.
Reporting and Monitoring

9.1 The Owner shall collect and maintain all relevant records of the Owners, successors, assigns, and tenants related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement. The Owner, during normal business hours shall allow the County reasonable access to review these records, but the confidentiality of such records and information shall be maintained by the County unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

10.
Default

10.1 Should the Owner fail to comply with its obligations under this Agreement (subject in all cases to Force Majeure), following thirty (30) days' written notice thereof delivered by the County, such failure shall be an Act of Default by the Owner, and the County may cease making any further Chapter 381 Payments until such Act of Default is cured. The Owner shall not be required to refund to the County any Chapter 381 Payments or any other money grants and consideration previously paid to it by the County prior to such cessation of payments. The County acknowledges that Investor Grosenbacher shall initially be responsible for overseeing construction of the Improvements contemplated in Section 4, hereof. The County acknowledges that NB Retail, Ltd. has the right to take over such work in certain circumstances, and agrees that NB Retail, Ltd. shall have the right to cure any default under Section 4 committed by Investor Grosenbacher, hereunder.

10.2 The County shall have no right to terminate this Agreement or cease to make payments hereunder if the Owner's Performance Criteria under Section 4 is achieved. Notwithstanding anything to the contrary in the foregoing, the parties to this Agreement understand and agree that the obligations of the Owner under Section 4 above are particularly time-sensitive to the County and, therefore, in the event that the Owner defaults in its obligation to commence construction of the Oak Run Parkway Extension within the time frame set forth in Section 4.2, the County shall have the right to terminate this Agreement without allowing the Owner the right to cure such default pursuant to the terms of this Section 10.1.

10.3 Not withstanding anything herein to the contrary, the Owner shall be liable to the County only for direct and actual damages occasioned by an Act of Default and not for any alleged consequential, punitive, exemplary, or special damages.

10.4 Any waiver granted by the County to the Owner of an Act of Default shall not be deemed to be or constitute a waiver of any other existing or future Act of Default by the Owner or of a subsequent Act of Default of the same act or event by the Owner.

11.
County's Liability Limitations

11.1 Should the County fail to timely comply with its obligations under this Agreement, following thirty (30) days' written notice thereof delivered by the Owner, such failure shall be an Act of Default by the County.

11.2 The Owner specifically agrees that the County shall only be liable to the Owner for the amount of the Chapter 381 Payments it is required to pay to the Owner *plus* any County Default Interest Payments due under Section 6.3, and shall not be liable to the Owner for any other actual or consequential damages, direct or indirect, or any other interest for any Act of Default by the County under the terms of this Agreement.

11.3 It is further specifically agreed that the County shall only be required to pay the Chapter 381 Payments solely out of the *Ad Valorem* Tax Revenues.

12.
Miscellaneous Provisions

12.1 Changes in Law. If, during the Term of this Agreement, State law applicable to *ad valorem* taxes changes and, as a result, the Chapter 381 Payments differ from the amount which would have been paid to the Owner under the laws in effect as of the Effective Date, then the County, in its sole discretion, may adjust the Chapter 381 Payments utilizing whatever discretionary taxes and revenues are legally available to the County to be allocated to the Chapter 381 Payments, with the intent being that the payments hereunder are at least as much as they would have been had the law not changed. The foregoing does not require the County to use funds from sources which are not within the County's discretion to allocate to the Project in order to achieve the same economic benefits to both parties, which would have resulted if the law had not changed.

12.2 Mutual Assistance. The County and the Owner each agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same economic condition contemplated by this Agreement, regardless of any changes in public policy, the law or taxes or assessments attributable to the Property.

12.4 Representations and Warranties. The County represents and warrants to the Owner that this Agreement is within its authority pursuant to Chapter 381 of the *Texas Local Government Code*, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction.

12.5 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

12.6 Termination. Notwithstanding any other term or provision hereof, if the Owner elects within forty-five (45) days following the date hereof not to proceed with the development of the Project as contemplated by this Agreement, the Owner will notify the County in writing, whereupon, as the parties sole and exclusive remedy, this Agreement and the obligations of both parties hereunder will be deemed terminated and of no further force or effect as of the date of such notice.

12.7 Notice. Any notice, payment, or other communication (*"Notice"*) given under this Agreement must be in writing, and may be given: (a) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (b) by personal delivery of the Notice to the party, or an agent of the party; or (c) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (a) or (b). Notice deposited in the mail in the manner specified will be effective two (2) days after deposit. Notice given in any other manner will be effective only if and when

received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Owner: Investor Grosenbacher Partnership
Attn: Mr. J.L. Guerra, Jr.
11202 Disco Drive
San Antonio, Texas 78216
Fax: (210) 499-4217

With a copy to: Drenner & Golden Stuart Wolff, LLP
Attn: Stephen O. Drenner
301 Congress Ave., Suite 1200
Austin, Texas 78701
Fax: (512) 404-2244

Owner: NB Retail, Ltd.
Attn: H. Wade McGinnis
Vice President, Barshop and Oles Company
900 Isom Road, Suite 300
San Antonio, Texas 78216
Fax: (210) 344-0140

With a copy to: Drenner & Golden Stuart Wolff, LLP
Attn: Stephen O. Drenner
301 Congress Ave., Suite 1200
Austin, Texas 78701
Fax: (512) 404-2244

County: Comal County
Attn: Danny Scheel, County Judge
199 Main Plaza
New Braunfels, TX 78130
Fax: (830) 608-2026

With a copy to: Comal County District Attorney's Office
Attn: Jennifer Tharp, Chief Civil Prosecutor
150 N. Seguin Street, Suite 307
New Braunfels, TX 78130
Fax: (830) 620-3844

Any party may designate a different address at any time by giving Notice to the other parties.

12.8 Successors and Assigns. This Agreement shall bind and benefit the respective parties and their legal successors, and shall be assignable by the Owner to any successor owner of a portion of the Property, solely by executed assignment agreement, delivered to the County. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of the County.

12.9 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against any party based on draftsmanship.

12.10 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither the County, nor its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

12.11 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and exclusive venue will lie in Comal County, Texas.

12.12 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

12.13 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

12.14 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

12.15 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

12.16 City Participation. The County hereby acknowledges that the City of New Braunfels is participating, pursuant to a separate agreement between the Owner and the City of New Braunfels, in the cost of a portion of the Improvements.

12.17 Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes.

Exhibit "A": Property Depiction
Exhibit "A-1": Property Depiction
Exhibit "B": Improvements Description/Cost Summary
Exhibit "C": Improvements Depiction

[SIGNATURE PAGE(S) FOLLOW]

EXECUTED to be effective as of the 18th day of December, 2008.

OWNER:

INVESTOR GROSENBACHER PARTNERSHIP,
a Texas general partnership

By: ECC 12:13, LLC,
a Texas limited liability company,
its Managing General Partner

By: _____
Name: J. L. Guerra, Jr.
Title: Sole Manager

Date: 12/18/08

OWNER:

NB RETAIL, LTD.,
A Texas limited partnership

By: B&O Development G.P., LLC,
a Texas limited liability company,
its General Partner

By: B&O Management Company, LLC,
A Delaware limited liability company,
its sole member

By: _____
Name: C. Patrick Oles, Jr.
Title: President

Date: 12/17/08

COUNTY:

Comal County, Texas,

By: _____
Name: Danny Scheel
Title: County Judge

Date: 12-18-08

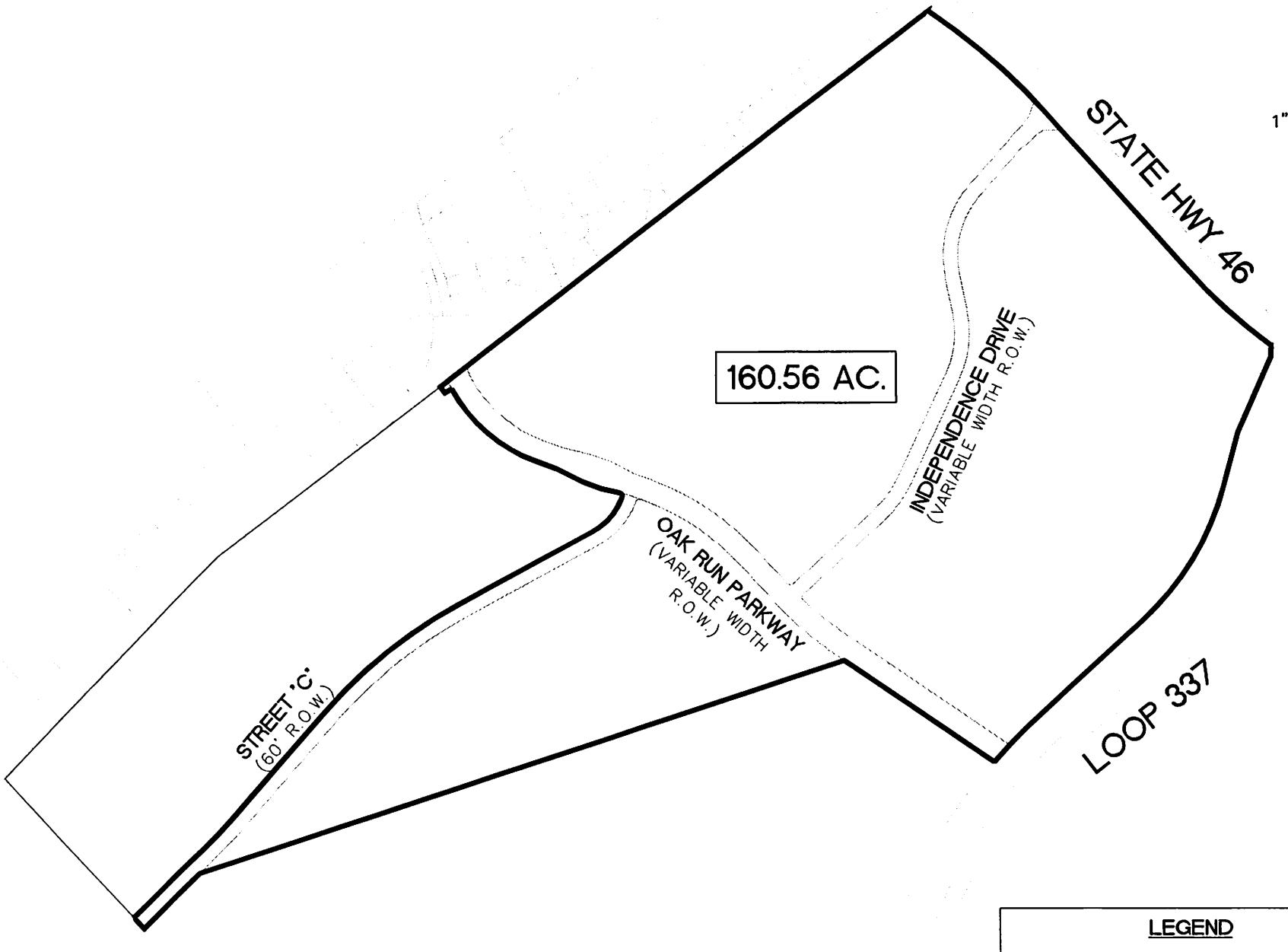
Approved As To Form and Content:

_____
Jennifer Tharp
Comal County District Attorney's Office
Chief Civil Prosecutor

Exhibit "A"

Property Depiction

[*SEE ATTACHED*]



WestPointe

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

Exhibit "A-1"

Property Depiction

[*SEE ATTACHED*]

TBG PARTNERS

INTEGRATED REALTY GROUP



Westpointe

Master Plan

DECEMBER 10, 2008

TBG PARTNERS

Exhibit "B"

Summary of Project Infrastructure Costs

I. PUBLIC STREETS AND TRAFFIC IMPROVEMENTS	Actual Bid Amount
Oak Run Parkway Extension	
Engineering Fees (street/water design, WPAP, Master Plan, Proj. Mgmt, etc.)	$266,167
Roads (Clearing, Grading, Paving, Curbs, Sidewalks, Street Signs)	$1,496,990
Water Quality (specific to street construction)	$231,563
Drainage (specific to street construction)	$395,640
Detention (specific to street construction)	$101,996
Fees, Reports, and Testing	$31,000
Sub-Total Oak Run Parkway Extension	**$2,523,356**
Independence Drive Extension	
Engineering Fees (street/water design, WPAP, Master Plan, Proj. Mgmt, etc.)	$304,833
Roads (Clearing, Grading, Paving, Curbs, Sidewalks, Street Signs)	$667,152
Water Quality (specific to street construction)	$210,000
Drainage (specific to street construction)	$531,643
Detention (specific to street construction)	$0
Fees, Reports, and Testing	$27,000
Sub-Total Independence Drive Extension	**$1,740,628**
Traffic Improvements	
Engineering Fees	$84,500
Loop 337/Oak Run Improvements	$465,645
Independence Drive @ Hwy. 46 – Signal	$166,950
Oak Run Parkway @ Loop 337 – Signal	$166,914
Sub-Total Traffic Improvements	**$884,009**
TOTAL NEW PUBLIC STREETS AND TRAFFIC IMPROVEMENTS	**$5,147,993**

Exhibit "C"

Improvements Depiction

[*SEE ATTACHED*]

12/3/2008

WestPointe 380 Agreement Improvement Summaries

Loop 337 Improvements:

Loop 337 Improvements include the additions of 1 - 12 ft protected left turn lane in the northbound direction at the intersection of Loop 337 and proposed Oak Run Parkway, 1 - 12 ft southbound right turn lane, and a traffic signal at the intersection of Loop 337 and proposed Oak Run Parkway. All of these improvements will be made within the existing Right-of-Way of Loop 337.

Oak Run Parkway: Approximately 3,003 lf

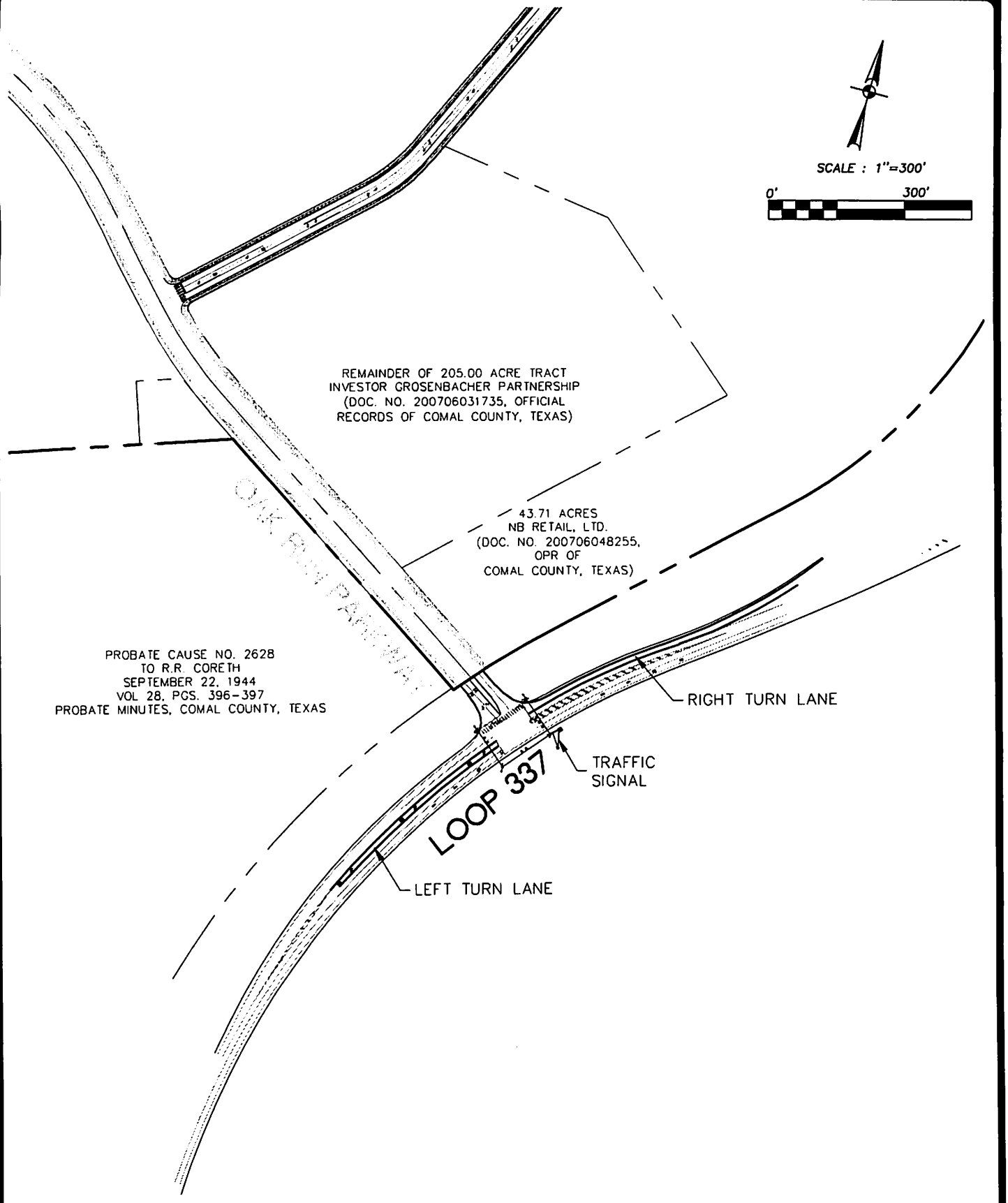
Oak Run Parkway is a proposed variable width Right-of-Way Major Arterial roadway with 4 lanes, a landscaped median, with a joint use pathway and sidewalk. The typical cross section of Oak Run Parkway is a 90 ft Right-of-Way with 2 - 12 ft lanes in each direction separated by a 12 ft landscape median. Within the parkways, there is a 4 ft sidewalk and a 10 ft joint use pathway. Oak Run Parkway will connect Loop 337 to the existing Oak Run Parkway within the Hunters Creek Subdivision.

Independence Drive: Approximately 2,325 lf

Independence Drive is a proposed variable width Right-of-Way with 3 lanes. The typical cross section of Independence Drive is a 60 ft Right-of-Way with a 13 ft travel lane in each direction with a 14 ft center turn lane. The parkways on the left and right have a 4 ft grass section behind the curb followed by a 6 ft sidewalk.

Independence Drive/State Highway 46 Intersection:

Improvements at the intersection of proposed Independence Drive and State Highway 46 include the connection of Independence Drive to State Highway 46. Independence Drive will tie into Highway 46 with a 33 ft wide road consisting of 3 lanes allowing all turn movements onto State Highway 46 and Independence Drive. Intersection improvements will also consist of the addition of a traffic signal.

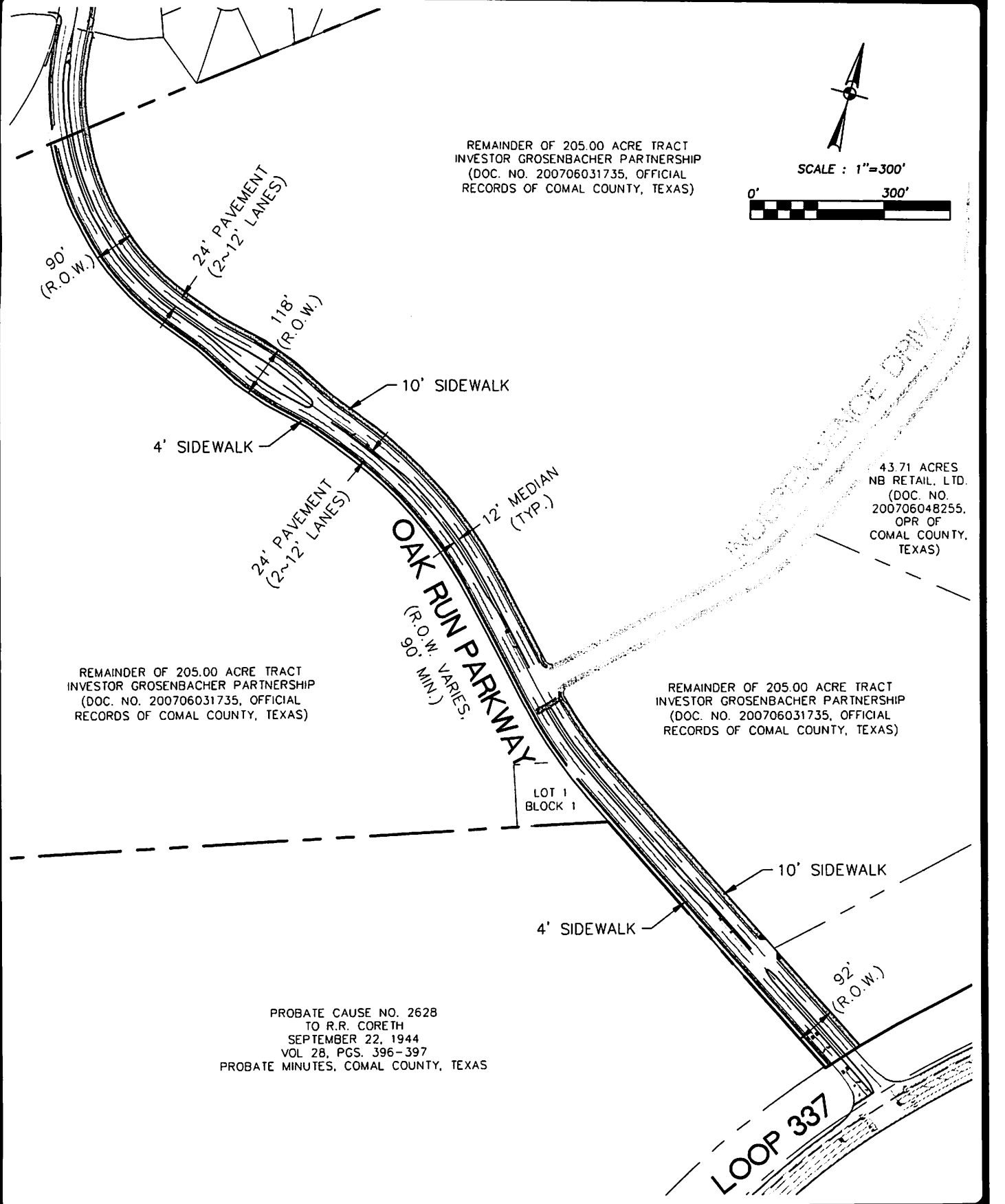


JOB NO. 6858-01
DATE DECEMBER 2008
DESIGNER BK
CHECKED TB DRAWN RA
SHEET 4 OF 4

WestPointe
NEW BRAUNFELS, TEXAS
LOOP 337 IMPROVEMENTS

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANTS ORIGINAL SIGNATURE AND SEAL

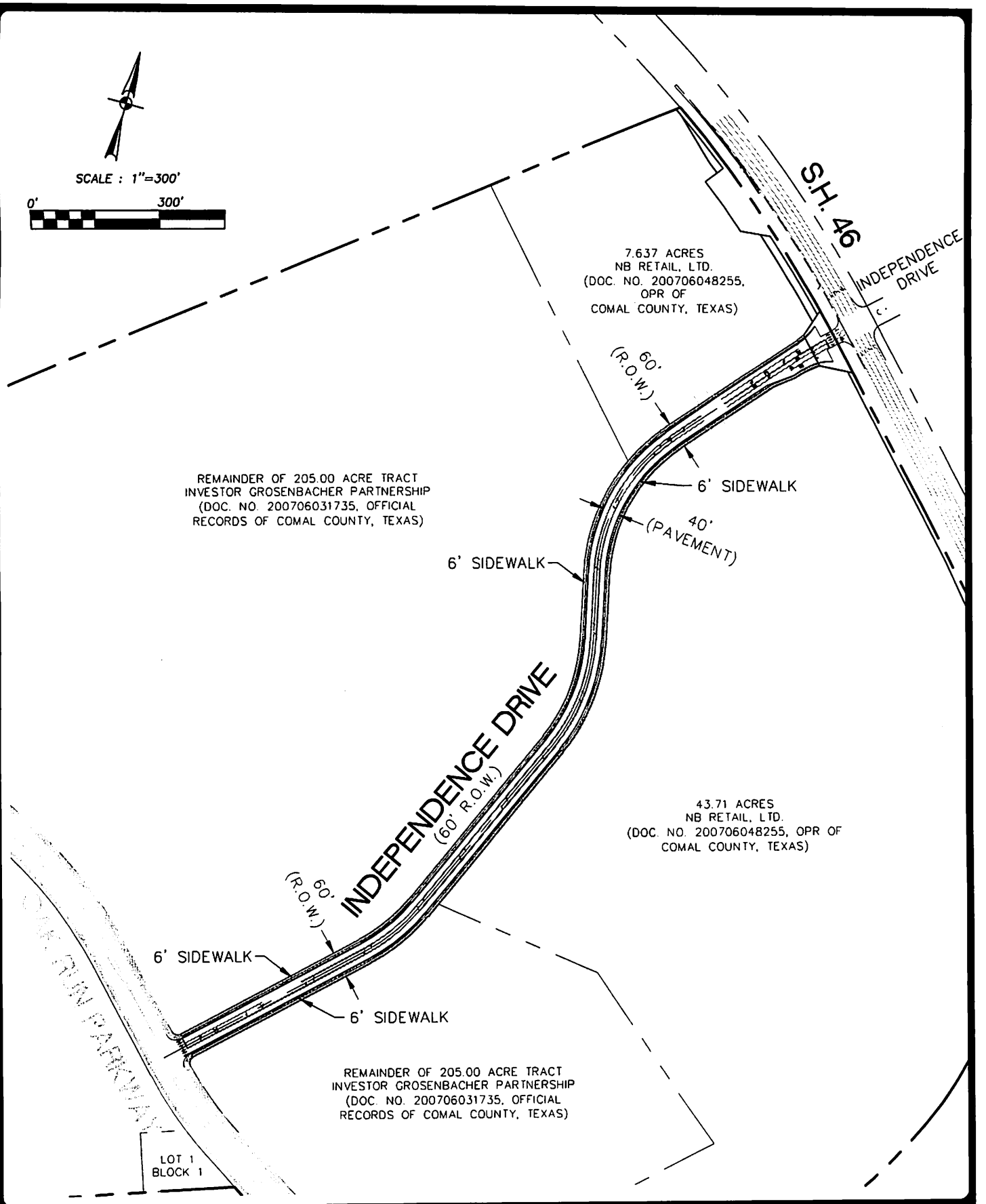


JOB NO. 6858-01
DATE DECEMBER 2008
DESIGNER BK
CHECKED TB DRAWN RA
SHEET 1 OF 4

WestPointe
NEW BRAUNFELS, TEXAS
OAK RUN PARKWAY

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

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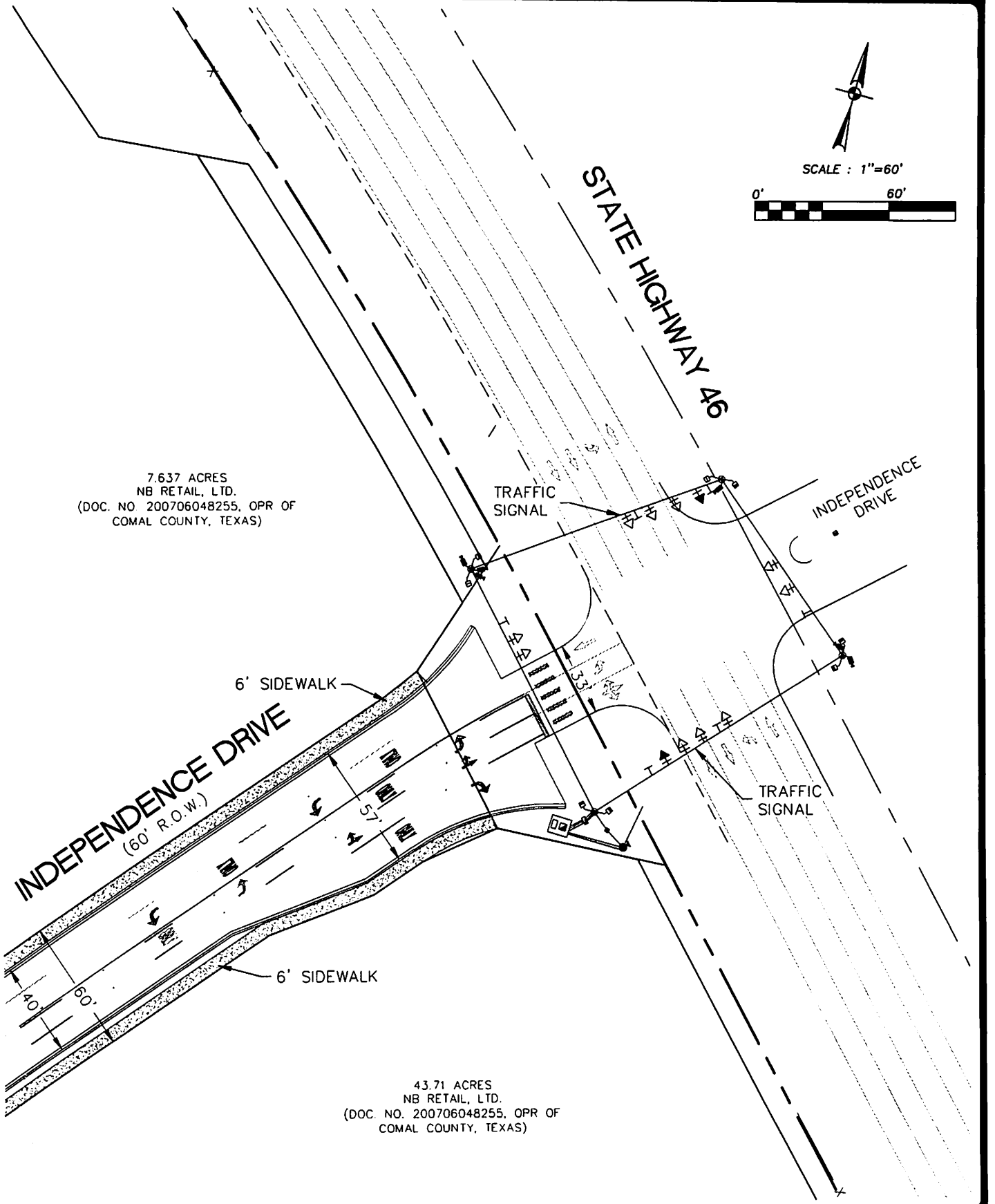


JOB NO. 6858-01
DATE DECEMBER 2008
DESIGNER BK
CHECKED TB DRAWN RA
SHEET 2 OF 4

WestPointe
NEW BRAUNFELS, TEXAS
INDEPENDENCE DRIVE

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210 375 9000 FAX: 210 375 9010

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JOB NO. 6858-01
DATE DECEMBER 2008
DESIGNER BK
CHECKED TB DRAWN RA
SHEET 3 OF 4

WestPointe
NEW BRAUNFELS, TEXAS
S.H.46/INDEPENDENCE INTERSECTION

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

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PLACEMENT OF CONCERN ON COMMISSIONERS COURT AGENDA

IN ORDER TO ENSURE THAT AN ITEM IS LISTED ON THE AGENDA AS REQUIRED BY THE OPEN MEETINGS ACT, THE FOLLOWING PROCEDURES SHALL BE FOLLOWED:

The person (petitioner) requesting placement of his/her concern on the agenda will complete this form and present it to the Commissioner having primary interest or whose Precinct may be involved/affected no later than (12 noon Friday) prior to the date of the Commissioners Court meeting when the item is to be considered. Items not acted upon/disapproved by a Commissioner may be submitted to the County Judge for further consideration. All related information that is used by Commissioners' Court shall be attached to form at the time of initial submission. Unsigned and/or undated requests cannot be considered.

Crystal Gottfried for Jennifer Tharp	To: (Commissioner/County Judge)

PETITIONER WOULD LIKE THE FOLLOWING ITEM LISTED ON THE (CHECK APPROPRIATE BOX)

WORKSHOP AGENDA (When consensus or direction is needed; and/or information is to be presented) Note wording for agenda:

ACTION AGENDA (When formal approval/authorization is needed.) Note wording for agenda:

(19) Consider, approve and authorize County Judge to sign the Chapter 381 Economic Development Agreement by and between Comal County, Texas and Investor Grosenbacher Partnership and NB Retail, Ltd. Relative to the Westpointe Village project.

~~Pass to 12/18/08~~

Approved. 3/1 VM

Date Action Needed: **12-11-08**

NOTE: **Contract, lease, and/or policy has been reviewed by the County Attorney and comments dated _____ are attached.**
Affected Department Heads were notified on _____.

IF REQUESTED ACTION INVOLVES ANY NEED FOR IMMEDIATE OR FUTURE FUNDING, COMPLETE THE FOLLOWING:

☐ **Funds are already budgeted, but a line item transfer is necessary. A budget amendment request has been signed by the County Auditor and is attached. Note amount and specify department and line item.**

_____

_____

☐ **Funds are not budgeted. A budget amendment request has been signed by the County Auditor and is attached. Specify amount and any authority (order, policy, and statute) that may apply regarding your request.**

_____

_____

Signature of Petitioner: Crystal Gottfried for Jennifer Tharp	Date: 12-5-08
Signature of County Judge/Commissioner:	Date: 12/5/08

Color Originals

COMMISSIONERS' COURT
ROUTING SLIP

DATE: 12-8-08

SUBJECT: Westpointe Plan Chapter 281 Con Agreement

FROM: Jennifer Clary

SCHEEL

DAWSON

MILLIKIN

PARKER

KENNADY

THARP

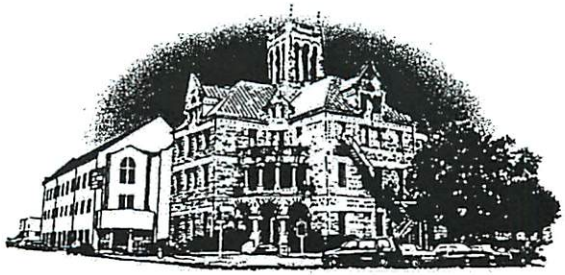
ATTACHMENT

12-11-08 Agenda

Return to Jimmie

FILE: Original Before Court

Westpointe



Comal County

OFFICE OF COMAL COUNTY ENGINEER

September 17, 2009

TO: Ms. Crystal Gottfried, Comal County Commissioners Court

FROM: Betty Lien, Comal County Subdivision Coordinator

RE: Chapter 381, Economic Development Agreement

The attached original agreement, CHAPTER 381, ECONOMIC DEVELOPMENT AGREEMENT BETWEEN COMAL COUNTY, TEXAS AND INVESTOR GROSENBACHER PARTNERSHIP AND NB RETAIL, LTD. was received at the main Comal County Engineer's Office on December 18, 2008. It appears as though it's probably an original agreement you should have.

195 David Jonas Drive • New Braunfels, Texas 78132-3760 • (830) 608-2090 FAX (830) 608-2009 • www.cceo.org

ESTOPPEL CERTIFICATE FOR
CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT

The **COMAL COUNTY, TEXAS** ("**County**") hereby certifies, as of this 9th day of July, 2009, to Investor Grossenbacher Partnership ("**IGP**"), a Texas general partnership, NB Retail, Ltd. ("**NBR**", and collectively with IGP, the "**Owners**"), JP Morgan Chase, N.A. ("**Chase**"), and International Bank of Commerce ("**IBC**" and collectively with Chase, the "**Lenders**") as follows:

1. Capitalized terms used herein, but not otherwise defined herein shall have the meaning ascribed to such term in that certain Chapter 381 Economic Development Agreement, dated December 18, 2008 ("**381 Agreement**") by and between County and Owners. The County and the Owners entered into the 381 Agreement. The 381 Agreement is in full force and effect, and constitutes a legal and binding obligation of County and Owners. There have not been any amendments, modifications or supplements thereto, whether oral or written.

2. Owners have fully and timely complied with and completed the following obligations under Article 4 of the 381 Agreement: commencement and completion of construction of the Oak Run Parkway Extension and the Independence Drive Extension within the time frames required by the 381 Agreement.

3. Neither Owners nor County are in default under any of the terms or conditions of the 381 Agreement and County knows of no circumstances which, with the passage of time or otherwise, would constitute a default by Owners or County under the 381 Agreement.

4. This certificate has been given to Owners and Lenders with the understanding that Owners and Lenders and their respective principals, partners, assigns, prospective tenants, prospective purchasers, consultants and lenders, will rely hereon. The individual executing this instrument hereby personally certifies that he or she is duly authorized to sign, acknowledge and deliver this Estoppel Certificate.

[*Remainder of this page intentionally left blank. Signature page follows.*]

Original sent to
Joey Guerra Jr.
Integrated Realty Group
11202 Disco
SA TX 78216

COUNTY:

Comal County, Texas,

By: Danny Scheel
Name: Danny Scheel
Title: Comal County Judge
Date: July 9, 2009

APPROVED AS TO FORM:

By: Tiffany C. Graff
Name: Tiffany C. Graff
Title: Assistant Criminal District Attorney

STATE OF TEXAS §
§
COUNTY OF COMAL §

This instrument was sworn and acknowledged before me on the 9th day of July, 2009, by Danny Scheel, Judge of Comal County, Texas, on behalf of Comal County, Texas.

CRYSTAL L. GOTTFRIED
Notary Public State of Texas
My Comm. Exp. 11-15-2011

Crystal L. Gottfried
Notary Public, in and for The State of Texas

My Commission Expires: 11-15-2011

PLACEMENT OF CONCERN ON COMMISSIONERS COURT AGENDA

IN ORDER TO ENSURE THAT AN ITEM IS LISTED ON THE AGENDA AS REQUIRED BY THE OPEN MEETINGS ACT, THE FOLLOWING PROCEDURES SHALL BE FOLLOWED:

The person (petitioner) requesting placement of his/her concern on the agenda will complete this form and present it to the Commissioner having primary interest or whose Precinct may be involved/affected no later than noon (12:00 p.m.) of the fourth working day (usually Friday) prior to the date of the Commissioners= Court meeting when the item is to be considered. Items not acted upon/disapproved by a Commissioner may be submitted to the County Judge for further consideration.
All related information which is used by Commissioners' Court shall be attached to form at the time of initial submission.
Unsigned and/or undated requests cannot be considered.

From: (Petitioner) Crystal Gottfried for	To: (Commissioner/County Judge)
Jennifer Tharp	Danny Scheel

PETITIONER WOULD LIKE THE FOLLOWING ITEM LISTED ON THE (CHECK APPROPRIATE BOX)

☐ **WORKSHOP AGENDA** (When consensus or direction is needed; and/or information to be presented.) Note wording for agenda:

☒ **ACTION AGENDA** (When formal approval/authorization is needed.) Note wording for agenda:

4

Consider and approve Estoppel Certificate for Chapter 381 Economic Development Agreement by and between Comal County, Texas and Investor Grossbacher Partnership detailing the completion of Oak Run Parkway and Independence Drive, and authorize the County Judge to sign.

Approved 5/0

Date action is needed: July 9, 2009

NOTE: Contract, lease, and/or policy has been reviewed by the County Attorney and comments dated _____ are attached. Affected Department Heads were notified on _____.

IF REQUESTED ACTION INVOLVES ANY NEED FOR IMMEDIATE OR FUTURE FUNDING, COMPLETE THE FOLLOWING:

Funds are already budgeted, but a line item transfer is necessary. A budget amendment request has been signed by the County Auditor and is attached. Note amount and specify department and line item.

_____

_____

Funds are not budgeted. A budget amendment request has been signed by the County Auditor and is attached. Specify amount and any authority (order, policy, statute) that may apply regarding your request.

_____

_____

Signature of Petitioner: Crystal Gottfried for Jennifer Tharp	Date: 7-2-09
Signature of County Judge/Commissioner:	Date: 7/2/09

RODMAN LLC

June 26, 2009

Investor Grosenbacher Partnership
Attn: Mr. J.L. Guerra, Jr.
11202 Disco Drive
San Antonio, Texas 78216

NB Retail, Ltd.
Attn: H. Wade McGinnis
Barshop & Oles Company
900 Isom Rd., Suite 300
San Antonio, Texas 78216

Re: Completion of Independence Drive

Dear Mr. Guerra and Mr. McGinnis,

Rodman, LLC began construction on Independence Drive on January 5, 2009 and completed construction of the city accepted portion of the street one hundred thirty-five (135) days later on May 20, 2009. We define the city accepted portion as any area on the project not encumbered by TxDot ROW. We make this distinction because there is still work to be completed in the TxDot ROW. To date we have not been in able to install the traffic signals in the TxDot ROW. This work has been impeded by the contract TxDot has with Hunter Construction to widen the existing SH 46. There have been multiple coordination issues with their scope of work that has temporarily denied us the ability to install the poles. We believe we have the coordination issue resolved and plan on having the poles installed beginning the middle of the week of July 1 and anticipate having them activated by the middle of July. We do however want to reiterate that this is completely contingent upon TxDot and their contractor's schedule.

If you should have any questions or concerns, please feel free to contact me at the office or via mobile.

Sincerely,

Jason Nikkels
Vice President of Operations
Rodman L.L.C.

18585 SIGMA RD, #101 • SAN ANTONIO, TX 78258 • OFFICE: 210.494.4696 • FAX: 210.494.4395