

**REAL ESTATE SALES CONTRACT –  
ACCESS EASEMENT & DRAINAGE EASEMENT**

This Real Estate Sales Contract (the “Contract”) is for the purchase and sale of an access easement and drainage easement between the parties as identified below and is effective on the date (“Effective Date”) of the last of the signatures by Pellicano 121 Development, LLC, a Texas limited liability company (“Pellicano”) and The County of El Paso, Texas, a political subdivision of the State of Texas (“El Paso County”) as parties to this Contract.

**Pellicano 121 Development, LLC (“PELLICANO”)**

Mr. Chris Malooly  
3737 Gateway Blvd. West  
El Paso, Texas 79903  
Phone: 915-727-3944

**El Paso County:**

THE COUNTY OF EL PASO, TEXAS (A/K/A “El Paso County”)  
500 E. San Antonio  
El Paso, Texas 79901  
Phone: 915-546-2000

**Access and Drainage Easement to be Sold by PELLICANO to El Paso County:**

A portion of the Northeast ¼ of Section 18, Block 79, Township 3, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, El Paso County Texas, according to the resurvey of said TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS made by El Paso County, Texas for tax purposes, and being more particularly described by metes and bounds in Exhibit “1” attached to this Agreement and consisting of approximately 1.2854 acres (55,992.00 square feet) (the “Access and Drainage Easement”).

**Purchase Price:** Ninety Thousand and No/100ths Dollars (\$90,000.00).

**Title Company:** LONE STAR TITLE COMPANY  
Attn: Lori Phillips  
6701 N. Mesa St.  
El Paso, Texas 79912  
Phone: 915.545.2222  
Fax: 915.545.1104  
Email: LPhillips@lonestartitle.com

**Earnest Money to be Paid by El Paso County:** Ten Thousand and No/100ths Dollars (\$10,000.00) shall be applied to the Purchase Price at closing. El Paso County and PELLICANO agree that a portion of the Earnest Money in the amount of One Hundred and No/100ths Dollars

(\$100.00) represents the amount the parties have bargained for and agreed to as consideration for PELLICANO's grant to El Paso County of El Paso County's exclusive right to purchase the Access and Drainage Easement pursuant to the terms of this Contract and for PELLICANO's execution of this Contract (the "Independent Consideration"). This Independent Consideration is in addition to and independent of any other consideration or payment provided in this Contract, is non-refundable under any circumstances, and shall be retained by PELLICANO notwithstanding any of the provisions of this Contract. The Independent Consideration shall be credited against the Purchase Price if, as, and when the Closing occurs.

**County for Performance:** This Contract shall be performed in El Paso County, Texas.

**A. Deadlines and Other Dates**

All deadlines in this Contract expire at 5:00 P.M., local time where the Access and Drainage Easement is located, on the day indicated. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal or El Paso County government as a holiday. Time is of the essence of this Contract.

- 1. Earnest Money Deadline:** Earnest Money must be tendered with the executed Contract by El Paso County.
- 2. Delivery of Title Commitment:** twenty one (21) days after the Effective Date.
- 3. Delivery of Survey:** twenty one (21) days after the Effective Date.
- 4. Delivery of legible copies of instruments referenced in the Title Commitment and Survey:** twenty one (21) days after the Effective Date.
- 5. Delivery of Title Objections:** ten (10) business days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
- 6. Delivery of Records specified in Exhibit B:** ten (10) business days after the Effective Date.
- 7. End of Inspection Period:** On or before thirty (30) days after the Effective Date.
- 8. Closing Date:** On or before sixty (60) days after the Effective Date
- 9. Closing Time:** On or before 5:00 p.m. on the Closing Date.

**B. Closing Documents**

- 1.** At closing, PELLICANO will deliver the following items:
  - (i) Access and Drainage Easement in the form attached as Exhibit C (the "Access and Drainage Easement");
  - (ii) Evidence of authority to close this transaction; and
  - (iii) Lien release, if any, as required by this Contract.
- 2.** At closing, El Paso County will deliver the following items:

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- (i) El Paso County's counterpart signature to the Access and Drainage Easement; and
- (ii) Purchase Price in cash or cash equivalent to be paid to PELLICANO or by wire transfer of immediately available funds

The documents listed in this section B are collectively known as the "Closing Documents."

### **C. Exhibits**

The following exhibits are attached, and are incorporated by reference to form a part of this Contract:

**Exhibit A** – Representations;

**Exhibit B** – Records

**Exhibit C** – Form of Access and Drainage Easement

### **D. Purchase and Sale of Access and Drainage Easement**

Upon the terms and conditions set forth in this Agreement, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Seller agrees to sell and convey the Access and Drainage Easement to Buyer, and Buyer agrees to buy the Access and Drainage Easement from Seller.

### **E. Interest on Earnest Money**

El Paso County may (but is not required to) direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

### **F. Title and Survey**

**1. Title Commitment; Title Policy.** "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by each entity accepting Access and Drainage Easement in the transaction.

**2. Survey.** "Survey," if required, means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category 1A. In fulfillment of this requirement, the Parties have agreed to accept the survey and metes and bounds performed by Jesse Fuentes, RPLS, on behalf of Frank X Spencer & Associates, Inc. February 18, 2021 attached

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as Exhibit "1". If the Survey is not acceptable to the Title Company, Buyer may obtain a new Survey at its own cost and expense.

**3. *Delivery of Title Commitment.*** El Paso County will request that the Title Company deliver a Title Commitment to El Paso County by the deadline stated in section A.2. El Paso County must cause the Surveys to be completed by the deadline stated in section A.3.

**4. *Title Objections.*** El Paso County has until the deadline stated in section A.6. ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify PELLICANO of any objections to any of them ("Title Objections"). El Paso County will be deemed to have approved all matters reflected by the Survey and Title Commitment to which it has made no Title Objection by the Title Objection Deadline. The matters that El Paso County either approves or is deemed to have approved are "Permitted Exceptions." If El Paso County notifies PELLICANO of any Title Objections, PELLICANO has five (5) days from receipt of the El Paso County's notice to notify El Paso County whether PELLICANO agrees to cure the Title Objections before closing ("Cure Notice"). If PELLICANO does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, El Paso County may, within five (5) days after the deadline for the giving of PELLICANO Cure Notice, notify PELLICANO that either this Contract is terminated, or that El Paso County will proceed to close, subject to PELLICANO's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under PELLICANO after the Effective Date, and cure only the Title Objections that PELLICANO has agreed to cure in the Cure Notice. At or before closing, PELLICANO must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under PELLICANO after the Effective Date of this Contract, and cure the Title Objections that PELLICANO has agreed to cure.

## **G. *Inspection Period***

**1. *Review of Records.*** PELLICANO will deliver to El Paso County paper or electronic copies of its records specified in Exhibit B, or otherwise make those records available for El Paso County's review, by the deadline stated in section A.7, but only to the extent such items are in the possession of PELLICANO.

**2. *Entry onto the Access and Drainage Easement.*** El Paso County may enter onto the Access and Drainage Easement prior to closing for purposes of conducting a boundary or environmental survey, or otherwise to inspect the Access and Drainage Easement, subject to the following:

**a.** It may not unreasonably interfere with existing operations or occupants of the Access and Drainage Easement, if any;

**c.** El Paso County must notify PELLICANO in advance of its plans to conduct tests so that PELLICANO may be present during the tests;

d. If the Access and Drainage Easement is altered because of inspections, the inspecting entity must return the Access and Drainage Easement to its pre-inspection condition promptly after the alteration occurs;

e. El Paso County must abide by any other reasonable entry rules imposed by PELLICANO.

f. **TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, EL PASO COUNTY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS PELLICANO FROM ANY AND ALL DAMAGES, LOSSES, CLAIMS, CAUSES OF ACTION, COSTS AND/OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) INCURRED BY OR ASSERTED AGAINST PELLICANO AND ARISING OUT OF: (a) PERSONAL INJURIES, WRONGFUL DEATH OR PHYSICAL DAMAGE TO ACCESS AND DRAINAGE EASEMENT CAUSED BY EL PASO COUNTY WHILE EXERCISING EL PASO COUNTY'S RIGHTS GRANTED IN THIS SECTION; (b) ANY AND ALL MECHANIC'S LIENS FOR WORK PERFORMED BY OR ON BEHALF OF EL PASO COUNTY; AND/OR (c) ANY INVESTIGATIONS BY EL PASO COUNTY OR ACTIVITIES UNDERTAKEN BY OR ON BEHALF OF EL PASO COUNTY WITH RESPECT TO THE ACCESS AND DRAINAGE EASEMENT. THIS PARAGRAPH SHALL SURVIVE THE CLOSING OR EARLY TERMINATION OF THIS CONTRACT.**

3. **Termination Notice.** In the event that El Paso County, in its sole and absolute discretion, determines that the Access and Drainage Easement is not suitable for its needs, El Paso County may terminate this Contract by delivering a Termination Notice to PELLICANO on or before the last day of the Inspection Period in which case the Earnest Money, less the Independent Consideration, will be refunded to El Paso County without offset. If El Paso County fails to deliver the Termination Notice to PELLICANO before the end of the Inspection Period, El Paso County is deemed to have approved the Access and Drainage Easement and waived its right to terminate this Contract under this Article G and the Earnest Money will be deemed earned and nonrefundable, except if the transaction called for by this Contract does not close due solely to a PELLICANO default.

## **H. Representations; Disclaimers**

1. **Representations.** The parties' representations stated in **Exhibit A** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

2. **Disclaimers By PELLICANO.** Except as expressly set forth in this Contract, it is understood and agreed that PELLICANO has not at any time made and are not now making, and they specifically disclaim, any warranties or representations of any kind or character, express or implied, with respect to the Access and Drainage Easement, including, but not limited to, warranties or representations as to (i) matters of title as to matters arising prior to title being vested in PELLICANO, (ii) environmental matters relating to the Access and Drainage Easement or any

portion of the Access and Drainage Easement, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Access and Drainage Easement, (iii) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (iv) whether, and to the extent to which the Access and Drainage Easement or any portion is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (v) drainage, (vi) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (vii) the presence of endangered species or any environmentally sensitive or protected areas, (viii) zoning or building entitlements to which the Access and Drainage Easement or any portion may be subject, (ix) the availability of any utilities to the Access and Drainage Easement or any portion including, without limitation, water, sewage, gas and electric, (x) usages of adjoining property, (xi) access to the Access and Drainage Easement or any portion, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Access and Drainage Easement or any portion of the Access and Drainage Easement, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Access and Drainage Easement or any part of the Access and Drainage Easement, (xiii) the condition or use of the Access and Drainage Easement or compliance of the Access and Drainage Easement with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (xiv) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (xv) the merchantability of the Access and Drainage Easement or fitness of the Access and Drainage Easement for any particular purpose, (xvi) the truth, accuracy or completeness of any documents delivered to County of El Paso by PELLICANO, (xvii) tax consequences, or (xviii) any other matter or thing with respect to the Access and Drainage Easement.

**3. As Is, Where Is. THE ACCESS AND DRAINAGE EASEMENT IS SOLD AND CONVEYED TO AND ACCEPTED BY EL PASO COUNTY IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND EL PASO COUNTY EXPRESSLY ACKNOWLEDGES THAT THE PURCHASE**

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**PRICE REFLECTS SUCH CONDITION. THE PURCHASE PRICE AND THE TERMS AND CONDITIONS SET FORTH IN THIS CONTRACT ARE THE RESULT OF ARM'S-LENGTH BARGAINING BETWEEN PERSONS OR ENTITIES FAMILIAR WITH TRANSACTIONS OF THIS KIND, AND THE PURCHASE PRICE, TERMS AND CONDITIONS REFLECT THE FACT THAT EL PASO COUNTY IS NOT RELYING UPON, ANY INFORMATION OR DOCUMENTS PROVIDED BY PELLICANO OR BROKERS OR STATEMENTS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE BY OR ENFORCEABLE DIRECTLY AGAINST PELLICANO OR BROKERS. THE SALE OF THE ACCESS AND DRAINAGE EASEMENT IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION OF (OR LACK THEREOF) OR WITH RESPECT TO: (I) THE CONDITION OF THE ACCESS AND DRAINAGE EASEMENT OR ANY ASPECT OF THE ACCESS AND DRAINAGE EASEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (II) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE ACCESS AND DRAINAGE EASEMENT OR WHICH AFFECT THE ACCESS AND DRAINAGE EASEMENT; (III) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE ACCESS AND DRAINAGE EASEMENT; (IV) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE ACCESS AND DRAINAGE EASEMENT; (V) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE OF, PRESENTLY OR LATER AFFECTING IN ANY MANNER ANY OF THE ACCESS AND DRAINAGE EASEMENT; AND (IV) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY PELLICANO. EL PASO COUNTY HAS MADE ITS OWN PHYSICAL INSPECTION OF THE ACCESS AND DRAINAGE EASEMENT AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE ACCESS AND DRAINAGE EASEMENT FOR EL PASO COUNTY'S INTENDED USE. PELLICANO MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS. AFTER CLOSING, AS BETWEEN EL PASO COUNTY AND PELLICANO, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF EL PASO COUNTY, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, EL PASO COUNTY INDEMNIFIES, HOLDS HARMLESS, AND RELEASES PELLICANO FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE ACCESS AND DRAINAGE EASEMENT, INCLUDING LIABILITY UNDER THE COMPREHENSIVE**

ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, EL PASO COUNTY INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SEELER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE ACCESS AND DRAINAGE EASEMENT ARISING AS THE RESULT OF PELLICANO'S OWN NEGLIGENCE OR THE NEGLIGENCE OF PELLICANO'S REPRESENTATIVES. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, EL PASO COUNTY INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SEELER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE ACCESS AND DRAINAGE EASEMENT ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON PELLICANO IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE ACCESS AND DRAINAGE EASEMENT. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, EL PASO COUNTY FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF PELLICANO AND IN THE NAME OF PELLICANO, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE ACCESS AND DRAINAGE EASEMENT.

4. ***Disclaimer Acknowledgement.*** El Paso County acknowledges and agrees that the disclaimers and other agreements set forth in this Contract are an integral part of this Contract and that PELLICANO would not have agreed to sell the Access and Drainage Easement to El Paso County for the Purchase Price without the disclaimers and other agreements set forth above.

5. ***Survival.*** The terms and conditions of this Article H shall expressly survive the Closing, not merge with the provisions of any closing documents, including, but not limited to the Deed.

#### **I. Condition of the Access and Drainage Easement until Closing; Cooperation;**

1. ***Maintenance and Operation.*** Until closing, PELLICANO will, as to its Access and Drainage Easement: (a) maintain the Access and Drainage Easement as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Access and Drainage Easement in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Access and Drainage Easement.

2. ***Casualty Damage.*** PELLICANO will notify El Paso County promptly after discovery of any casualty damage to the Access and Drainage Easement. PELLICANO will have no obligation to repair or replace the Access and Drainage Easement if it is damaged by casualty before closing. El Paso County may terminate this Contract if the casualty damage that occurs before closing would materially affect El Paso County's intended use of the Access and Drainage Easement, by



giving notice to PELLICANO within fifteen (15) days after receipt of PELLICANO's notice of the casualty (or before closing if PELLICANO's notice of the casualty is received less than fifteen (15) days before closing). If El Paso County does not terminate this Contract, PELLICANO will (a) convey the Access and Drainage Easement to El Paso County in its damaged condition, (b) assign to El Paso County all of PELLICANO's rights under any property insurance policies covering the Access and Drainage Easement, and (c) pay to El Paso County the amount of the deductibles and coinsurance provisions under any insurance policies covering the Access and Drainage Easement, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by PELLICANO to repair the Access and Drainage Easement.

**3. *Condemnation.*** PELLICANO will notify El Paso County promptly after PELLICANO receives notice that any part of the Access and Drainage Easement has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. El Paso County may terminate this Contract if the condemnation would materially affect El Paso County's intended use of the Access and Drainage Easement by giving notice to PELLICANO within fifteen (15) days after receipt of PELLICANO's notice to El Paso County (or before closing if PELLICANO's notice is received less than fifteen (15) days before closing). If El Paso County does not terminate this Contract, (a) El Paso County and PELLICANO will each have the right to appear and defend their respective interests in the Access and Drainage Easement in the condemnation proceedings, (b) any award in condemnation will be assigned to El Paso County, and (c) if the taking occurs before closing, the description of the Access and Drainage Easement will be revised to delete the portion taken.

**4. *Claims; Hearings.*** PELLICANO will notify El Paso County promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Access and Drainage Easement.

**5. *Cooperation.*** Provided it is at no cost or expense to PELLICANO, PELLICANO will cooperate with El Paso County (a) before and after closing, to transfer the applications, permits, and licenses held by PELLICANO and used in the operation of the Access and Drainage Easement and to obtain any consents necessary for El Paso County to operate the Access and Drainage Easement after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Access and Drainage Easement prepared by, for, or at the request of El Paso County.

## **J. Termination**

**1. *Disposition of Earnest Money after Termination.*** El Paso County and PELLICANO agree that if this Contract is terminated by either party prior to closing, PELLICANO shall not be entitled to the Earnest Money except as specifically set forth in this Contract. PELLICANO hereby authorizes the Title Company to deliver the Earnest Money to El Paso County upon receipt by Title Company of written notice from El Paso County that the contract is terminated.

**2. *Duties after Termination.*** If this Contract is terminated, El Paso County will promptly return to PELLICANO all documents relating to the Access and Drainage Easement that PELLICANO has delivered to El Paso County. After return of the documents and copies, neither

party will have further duties or obligations to the other under this Contract, except for those obligations that cannot be or were not performed before termination of this Contract.

## **K. Closing**

**1. Closing.** This transaction will close at Title Company's offices at the Closing Date and Closing Time. Notwithstanding the foregoing, PELLICANO and El Paso County agree that the Closing can be accomplished by the parties' delivery of closing documents to the Title Company via mail or other delivery method acceptable to the Title Company and that neither party is required to be physically present at the Title Company for the Closing to occur. At closing, the following will occur:

- a. Closing Documents.** The parties will execute and deliver the Closing Documents.
- b. Payment of Consideration.** El Paso County will deliver the Purchase Price and other amounts that El Paso County is obligated to pay under this Contract to Title Company in funds acceptable to Title Company. The Earnest Money will be paid to Grantor.
- c. Disbursement of Funds; Recording; Copies.** Title Company will be instructed to disburse funds in accordance with this Contract, record the Deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. Possession.** PELLICANO will deliver possession of the Access and Drainage Easement to El Paso County, subject to the Permitted Exceptions existing at closing.

## **2. Transaction Costs**

**a. El Paso County's Costs.** El Paso County will pay one-half of the escrow fee charged by the Title Company; all cost and expenses related to the survey required for the Access and Drainage Easement; any all costs and expenses related to any endorsements or exceptions requested by El Paso County; and El Paso County's expenses and attorneys' fees.

**b. PELLICANO's Costs.** PELLICANO will pay for any plat required; the basic charge for the Title Policy on the Access and Drainage Easement; one-half of the escrow fee charged by the Title Company on the Access and Drainage Easement; the costs to prepare the deed for the Access and Drainage Easement; the costs to obtain, deliver and record releases of all liens to be released on the Access and Drainage Easement; any and all of PELLICANO's broker's fees and commissions; the costs to record all documents to cure Title Objections agreed to be cured by PELLICANO; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession on the Access and Drainage Easement; the costs to obtain certificates or reports of ad valorem taxes, the costs to delivery copies of the instruments described in section A.5., on the Access and Drainage Easement; and PELLICANO's expenses and attorneys' fees.

**c. Ad Valorem Taxes.** Except for subsequent assessments for prior years due to changes in use or ownership discussed below, ad valorem taxes on the Access and Drainage

Easement for all periods before the period in which the closing occurs must be paid by PELLICANO at or before closing. Ad valorem taxes for the Access and Drainage Easement for the calendar year of closing will be pro rated between PELLICANO and El Paso County as of the Closing Date. PELLICANO's portion of the prorated taxes will be paid to El Paso County at Closing as a credit to the Purchase Price. If the assessment for the calendar year of the Closing is not known at the Closing Date, the proration will be based on the tax rates for the previous tax year based on the appraised value. All taxes including any penalties, interest, and attorney's fees due as of Closing will be paid at Closing.

**d. Brokers' Commissions.** El Paso County and PELLICANO represent and warrant to each other that, other than Broker, they have not engaged the services of any real estate broker or real estate agent in connection with this transaction. To the extent permitted by the Constitution and laws of the State of Texas, each party agrees to indemnify and hold the other harmless from any and all claims for brokerage fees or commissions made or asserted against the other by parties other than Broker. The party whose actions or alleged actions form the basis of any such claims for commissions shall indemnify the other. The indemnity obligations under this Section shall survive the closing or termination of this Agreement.

**3. Issuance of Title Policy.** PELLICANO will cause Title Company to issue the Title Policy to El Paso County as soon as practicable after closing.

## **L. Default and Remedies**

**1. El Paso County Default.** If El Paso County fails to comply with this Contract after five (5) days' written notice from PELLICANO notifying El Paso County of such failure, PELLICANO may (i) terminate this Contract and receive the Earnest Money as liquidated damages, thereby releasing both parties from this Contract. The Earnest Money is liquidated damages and recourse to the Earnest Money is, except for El Paso County's indemnity obligations under this Contract, PELLICANO's sole and exclusive remedy for El Paso County's failure to perform its obligation to purchase the Access and Drainage Easement or breach of a representation or warranty. PELLICANO expressly waives the remedies of specific performance and additional damages for such default by El Paso County. **PELLICANO AND EL PASO COUNTY ACKNOWLEDGE THAT PELLICANO'S DAMAGES WOULD BE DIFFICULT TO DETERMINE, AND THAT THE EARNEST MONEY IS A REASONABLE ESTIMATE OF PELLICANO'S DAMAGES RESULTING FROM A DEFAULT BY EL PASO COUNTY IN ITS OBLIGATION TO PURCHASE THE ACCESS AND DRAINAGE EASEMENT OR OTHER OBLIGATIONS UNDER THE CONTRACT. PELLICANO AND EL PASO COUNTY FURTHER AGREE THAT THIS PARAGRAPH IS INTENDED TO AND DOES LIQUIDATE THE AMOUNT OF DAMAGES DUE PELLICANO, AND SHALL BE PELLICANO'S EXCLUSIVE REMEDY AGAINST EL PASO COUNTY, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY EL PASO COUNTY OF ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT, OTHER THAN WITH RESPECT TO EL PASO COUNTY'S INDEMNITY OBLIGATIONS UNDER THIS CONTRACT.**

**2. PELLICANO Default.** If PELLICANO fails to comply with this Contract after five (5) days' written notice from El Paso County notifying PELLICANO of such failure, El Paso County may (i) terminate this Contract and receive the Earnest Money as liquidated damages, thereby releasing both parties from this Contract. The Earnest Money is liquidated damages and recourse to the Earnest Money is El Paso County's sole and exclusive remedy for PELLICANO's failure to perform its obligation to purchase the Access and Drainage Easement or breach of a representation or warranty. El Paso County expressly waives the remedies of specific performance and additional damages for such default by PELLICANO. **PELLICANO AND EL PASO COUNTY ACKNOWLEDGE THAT EL PASO COUNTY'S DAMAGES WOULD BE DIFFICULT TO DETERMINE, AND THAT THE EARNEST MONEY IS A REASONABLE ESTIMATE OF EL PASO COUNTY'S DAMAGES RESULTING FROM A DEFAULT BY PELLICANO IN ITS OBLIGATION TO SELL THE ACCESS AND DRAINAGE EASEMENT OR OTHER OBLIGATIONS UNDER THE CONTRACT. PELLICANO AND EL PASO COUNTY FURTHER AGREE THAT THIS PARAGRAPH IS INTENDED TO AND DOES LIQUIDATE THE AMOUNT OF DAMAGES DUE EL PASO COUNTY, AND SHALL BE EL PASO COUNTY'S EXCLUSIVE REMEDY AGAINST PELLICANO, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY PELLICANO OF ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, IN THE EVENT PELLICANO AND EL PASO COUNTY DO NOT REACH AGREEMENT OR ARE UNABLE TO FULFILL THE OBLIGATIONS UNDER THIS CONTRACT, EL PASO COUNTY DOES NOT WAIVE ANY RIGHTS IT MAY HAVE TO EXERCISE THE RIGHT OF EMINENT DOMAIN TO ACQUIRE THE ACCESS AND DRAINAGE EASEMENT THE SUBJECT OF THIS CONTRACT.**

#### **M. Miscellaneous Provisions**

**1. Notices.** Any notice required by or permitted under this Contract must be in writing. Any notice required by this Contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Contract. Notice may also be given by regular mail, personal delivery, courier delivery, electronic mail (email) transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Contract. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given, if the attorneys have been identified by the parties.

**2. Entire Contract.** This Contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Access and Drainage Easement. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Access and Drainage Easement by PELLICANO to El Paso County not incorporated in writing in this Contract.

3. ***Amendment.*** This Contract may be amended only by an instrument in writing signed by the parties.
4. ***Prohibition of Assignment.*** El Paso County may not assign this Contract or any of El Paso County's rights under it without PELLICANO's prior written consent, and any attempted assignment is void. This Contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.
5. ***Survival.*** The obligations of this Contract that cannot be performed before termination of this Contract or before closing will survive termination of this Contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Contract, the Closing Documents will control.
6. ***Choice of Law; Venue.*** This Contract will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in El Paso County, Texas.
7. ***Waiver of Default.*** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.
8. ***No Third-Party Beneficiaries.*** There are no third-party beneficiaries of this Contract.
9. ***Severability.*** The provisions of this Contract are severable. If a court of competent jurisdiction finds that any provision of this Contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.
10. ***Ambiguities Not to Be Construed against Party Who Drafted Contract.*** The rule of construction that ambiguities in a document will be construed against the party who drafted it will **not** be applied in interpreting this Contract.
11. ***No Special Relationship.*** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.
12. ***Counterparts.*** If this Contract is executed in multiple counterparts, all counterparts taken together will constitute this Contract.
13. ***Sovereign Immunity*** El Paso County does not waive sovereign immunity or any other immunity or right it may have under the Texas Constitution, statutory or common law, including the right to acquire the Access and Drainage Easement through the exercise of eminent domain. El Paso County has not set up or established any special tax or interest and sinking fund for any obligation established under this Contract.
14. ***1033 Exchange.*** PELLICANO may consummate the sale of the Access and Drainage Easement as part of a so-called like kind or deferred exchange pursuant to Section 1033 of the

Internal Revenue Code of 1986, as amended (the “Exchange”). Without limitation on the foregoing, PELLICANO may, at its option, assign this Contract and any Earnest Money deposited under this Contract to one or more independent third party facilitators or intermediaries who will facilitate the Exchange. El Paso County and PELLICANO agree to cooperate with the other in the perfection of such an Exchange and to execute any and all documents reasonably necessary to accomplish the same; provided, neither party shall be required to take title to any replacement property or expend funds in relation to its cooperation, nor will the time periods provided be extended.

**15. ROFR.** PELLICANO hereby discloses to El Paso County, Texas that the Access Easement and Drainage Easement is subject to that certain Grant of Right of First Refusal (the “ROFR”) granted to Hunt Communities Holding, LLC, a Texas limited liability company (“Hunt”) which was filed and recorded on December 20, 2012, as Document No. 20120093385, Official Public Records of El Paso, Texas, which is applicable to the Access Easement and Drainage Easement and PELLICANO’s adjacent property. PELLICANO’S obligations under this Agreement are expressly contingent on PELLICANO obtaining a Partial Waiver and Release of Right of First Refusal (the “Release”) from Hunt prior to the Closing. In the event PELLICANO does not obtain the Release, PELLICANO may terminate this Agreement and El Paso County shall be returned the earnest money, less the Independent Consideration.

**[SIGNATURE PAGE FOLLOWS]**

This Contract is entered into by and between the undersigned parties, and shall be effective on the date of the last of the signatures below. ("Effective Date").

PELLICANO 121 DEVELOPMENT, LLC,  
a Texas limited liability company

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

Name: Ronald Christopher Malooly, Sr.

Title: Authorized Signatory

Date: \_\_\_\_\_

THE COUNTY OF EL PASO, TEXAS,  
a political subdivision of the State of Texas

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

Name: Ricardo A. Samaniego

Title: El Paso County Judge

Date: \_\_\_\_\_

Title Company acknowledges receipt of Earnest Money as set forth in this Contract and a copy of this Contract executed by both PELLICANO and El Paso County.

LONE STAR TITLE COMPANY

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

Name:\_\_\_\_\_

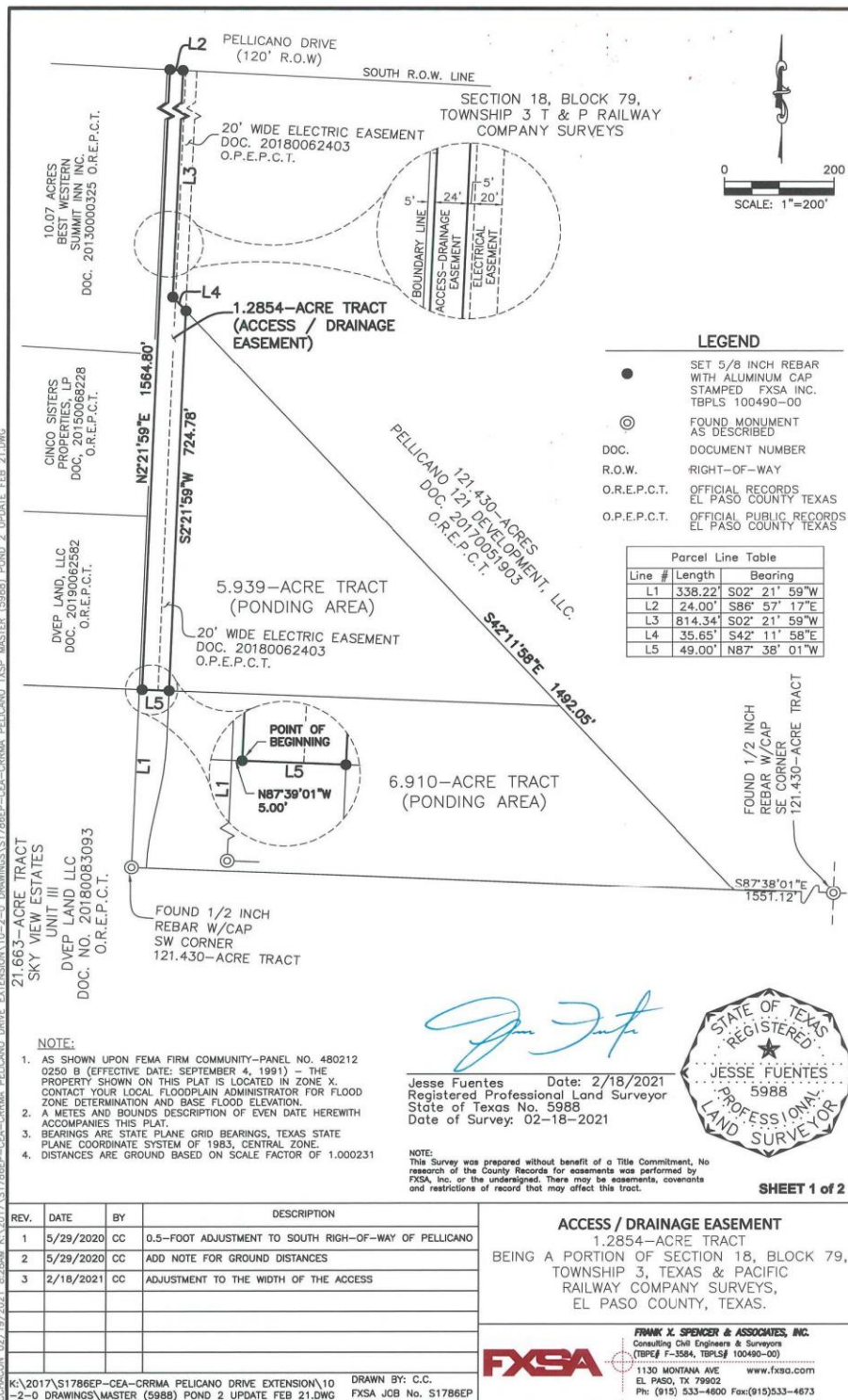
Title:\_\_\_\_\_

Date:\_\_\_\_\_



Exhibit “1”

Survey/Metes and Bounds Description



{11041.58/JRHO/06829011.1}

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**1.2854-ACRE TRACT  
(ACCESS/DRAINAGE EASEMENT)  
METES & BOUNDS DESCRIPTION**

Field notes of a 1.2854-acre tract of land, being part of a 121.430-acre tract of land conveyed to Pellicano 121 Development LLC by Special Warranty Deed with Vendor's Lien recorded in Document No. 20170051903 of the Official Records of El Paso County, Texas; and being a portion of Section 18, Block 79, Township 3 of the Texas and Pacific Railway Company Surveys; said 1.2854-acre tract of land is more particularly described by metes and bounds as follows;

Beginning at a 5/8-inch diameter rebar with aluminum cap stamped "FXSA INC. TBPLS 100490-00" (herein referred to as "with cap") set for the southwest corner of this tract; whence a 1/2-inch diameter rebar with cap found at the southwest corner of said 121.430-acre tract bears N 87° 38' 01" W a distance of 5.00 and South 02° 21' 59" West, a distance of 338.22 feet;

Thence, North 02° 21' 59" East, a distance of 1564.80 feet to a 5/8-inch diameter rebar with cap set on the south right-of-way line of Pellicano Drive for the northwest corner of this tract;

Thence, following the south right-of-way line of Pellicano Drive, South 86° 57' 17" East, a distance of 24.00 feet to a 5/8-inch diameter rebar with cap set for the northeast corner of this tract;

Thence, leaving the south right-of-way of Pellicano Drive and following a line being parallel and 5.00 feet west of the west boundary of the 20 feet wide easement described in Document No. 20180062403 of the Official Public Records of El Paso County, Texas, South 02° 21' 59" West, a distance of 814.34 feet to a 5/8-inch diameter rebar with cap set for an interior corner of this tract;

Thence, South 42° 11' 58" East, a distance of 35.65 feet to a 5/8-inch diameter rebar with cap set on the east line of said 20 feet wide easement and at the north corner of a 5.939-acre ponding area for an angle corner of this tract; whence a 1/2-inch diameter rebar with cap found at the southeast corner of said 121.430-acre tract bears South 42° 11' 58" East, a distance of 1492.05 feet and South 87° 38' 01" East, a distance of 1551.12 feet;

Thence, following the west line of said 5.939-acre ponding area and the east boundary of said 20 feet wide easement, South 02° 21' 59" West, a distance of 724.78 feet to a 5/8-inch diameter rebar with cap set at the southwest corner of said 5.939-acre ponding area, the northwest corner of a 6.910-acre ponding area, the southeast corner of said 20 feet wide easement and the southeast corner of this tract;

Thence, following the south line of said 20 feet wide easement, North 87° 38' 01" West, a distance of 49.00 feet to the point of beginning, containing 1.2854 acres of land, more or less, subject to all easements of record.



Jesse Fuentes Date: 2/18/2021  
Registered Professional Land Surveyor  
State of Texas No. 5988  
Date of Survey: 02-18-2021



NOTE:  
This Survey was prepared without benefit of a Title Commitment. No research of the County Records for easements was performed by FXSA, Inc. or the undersigned. There may be easements, covenants and restrictions of record that may affect this tract.

SHEET 2 of 2

REV.	DATE	BY	DESCRIPTION
1	5/29/2020	CC	0.5-FOOT ADJUSTMENT TO SOUTH RIGHT-OF-WAY OF PELLICANO
2	5/29/2020	CC	ADD NOTE FOR GROUND DISTANCES
3	2/18/2021	CC	ADJUSTMENT TO THE WIDTH OF THE ACCESS

K:\2017\1786EP-CEA-CRRMA PELLICANO DRIVE EXTENSION\10-2-0 DRAWINGS\MASTER (5988) POND 2 UPDATE FEB 21.DWG  
DRAWN BY: C.C.  
FXSA JOB No. S1786EP

**ACCESS / DRAINAGE EASEMENT**  
1.2854-ACRE TRACT  
BEING A PORTION OF SECTION 18, BLOCK 79,  
TOWNSHIP 3, TEXAS & PACIFIC  
RAILWAY COMPANY SURVEYS,  
EL PASO COUNTY, TEXAS.

**FXSA**  
FRANK X. SPENCER & ASSOCIATES, INC.  
Consulting Civil Engineers & Surveyors  
(TBP# F-3584, TBPLS# 100490-00)  
1130 MONTANA AVE. www.fxsa.com  
EL PASO, TX 79902  
Ph: (915) 533-4600 Fax: (915) 533-4673

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**Exhibit A to Real Estate Sales Contract  
Representations; Environmental Matters**

**A. Representations.** PELLICANO represents to El Paso County that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

**1. Litigation.** There is no litigation pending or threatened against PELLICANO that might affect the Access and Drainage Easement or PELLICANO's ability to perform its obligations under this Contract.

**3. Violation of Laws.** PELLICANO has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Access and Drainage Easement or its use of the Access and Drainage Easement.

**4. Licenses, Permits, and Approvals.** PELLICANO has not received notice that any license, permit, or approval necessary to operate the Access and Drainage Easement in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

**5. Condemnation; Zoning; Land Use.** PELLICANO has not received notice of any condemnation, zoning, or land-use proceedings affecting the Access and Drainage Easement.

**6. No Other Obligation to Sell the Access and Drainage Easement or Restriction against Selling the Access and Drainage Easement.** Except for the ROFR, PELLICANO has not obligated itself to sell the Property to any party other than to the other party to this Contract. After PELLICANO has received the waiver of the ROFR, PELLICANO's performance of this Contract will not cause a breach of any other agreement or obligation to which PELLICANO is a party or to which it is bound.

**7. No Liens.** On the Closing Date, the Access and Drainage Easement will be free and clear of any valid mechanic's and material man's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Access and Drainage Easement that might give rise to mechanic's, material man's, or other liens against the Access and Drainage Easement other than work or materials to which the other party to this Contract has given its consent.

**8. Parties in Possession.** There are no parties in possession of any portion of the Access and Drainage Easement as lessee, tenants, at sufferance, or otherwise.

**9. Consultation with Attorney.** EACH PARTY TO THIS CONTRACT REPRESENTS TO THE OTHER THAT IT IS AWARE THAT THIS CONTRACT HAS IMPORTANT LEGAL CONSEQUENCES, AND THAT EACH PARTY IS ENTITLED TO CONSULT AN ATTORNEY OF ITS CHOOSING PRIOR TO EXECUTING THIS CONTRACT. EACH

PARTY REPRESENTS THAT TO THE EXTENT IT HAS ELECTED NOT TO CONSULT AN ATTORNEY, IT HAS DONE SO OF ITS OWN FREE WILL AND ACT.

**Exhibit B to Real Estate Sales Contract**

**Records**

To the extent that PELLICANO has possession of the following items pertaining to the Access and Drainage Easement, it will deliver or make the items or electronic copies of them available to El Paso County by the deadline stated in section A.7.:

**Land**

soil reports

environmental reports

prior surveys

**Exhibit C to Real Estate Sales Contract  
FORM OF ACCESS & DRAINAGE EASEMENT  
PELLICANO TO COUNTY OF EL PASO**

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