

ENCROACHMENT AGREEMENT

STATE OF TEXAS

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COUNTY OF WISE

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THIS AGREEMENT is made and entered into by and between the City of Bridgeport, Texas (hereinafter referred to as the "City") and Wise County, Texas (hereinafter referred to as "Grantee").

WITNESSETH:

1. For and in consideration of the faithful performance of the mutual covenants herein contained, City hereby grants to Grantee permission to encroach upon, use and occupy portions of the alley right-of-way located and depicted in Exhibit "A" attached hereto for the purpose of erecting a retaining wall, concrete drive and related improvements as depicted in Exhibit "A". Exhibit "A" is incorporated herein by reference, and is to be considered as a part of this instrument.

2. Grantee shall be responsible for all construction costs and expenses relating to the encroachment, and Grantee shall be responsible for all maintenance expense associated with said encroachment, specifically including but not limited to maintenance of the retaining wall and concrete drive improvements. All construction, maintenance and operation in connection with such encroachment, use, and occupancy shall be performed in strict compliance with the Ordinances and Codes of the City. All plans and specifications therefor shall be subject to the prior written approval of the City Administrator, or his duly authorized representative, but such approval shall not relieve Grantee of responsibility and liability for concept, design and computation in the preparation of such plans and specifications.

3. The parties agree that Grantee shall not be entitled to any further encroachments in, under, on or above the alley right-of-way, without prior written consent of the City.

4. Grantee, at no expense to City, shall make proper provision for the relocation and/or installation of any existing or future utilities affected by such encroachment, use and occupancy, including the securing of approval and consent from the utility companies and the appropriate agencies of the State and its political subdivisions.

5. The initial term of this agreement shall be twenty-five (25) years, commencing on the date this Agreement is executed and automatically renewing for successive twenty-five (25) year terms upon the expiration of the initial term, subject to termination as provided elsewhere herein. In addition, it is specifically understood and agreed that the rights, duties, obligations and liabilities set forth herein shall be personal to Grantee, and shall automatically terminate upon the sale, transfer, assignment or conveyance to any other person or entity, without prior written consent of the City.

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6. Upon the termination of this agreement for any reason whatsoever, Grantee shall, at the option of City and at no expense to City, remove all of the encroachments depicted in Exhibit "A" from the alley right-of-way.

7. Grantee covenants and agrees that it shall operate hereunder as an independent contractor as to all rights and privileges granted hereunder and not as an officer, agent, servant or employee of City; that Grantee shall have exclusive control of and the exclusive right to control the details of its operations, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees; that the doctrine of respondeat superior shall not apply as between City and Grantee, its officers, agents, servants, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Grantee.

8. **GRANTEE COVENANTS AND AGREES TO INDEMNIFY, AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OF CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF SAID ENCROACHMENT AND USES GRANTED HEREUNDER, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES OF CITY; AND GRANTEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR SUCH CLAIMS OR SUITS.**

9. Grantee agrees to record this Encroachment Agreement in its entirety in the deed records. After being so recorded, the original hereof shall be returned to the City Secretary.

10. Grantee covenants and agrees to maintain at its sole cost and expense the encroachments located in the alley right-of-way depicted in Exhibit "A" in a neat, safe and good condition at all times.

11. In addition to any other grounds for termination provided for herein, this Agreement may be terminated by the City should Grantee breach any terms or conditions set forth in this Agreement.

12. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

13. Nothing in this Agreement shall be construed as a waiver of either party's governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege, except to the extent expressly provided otherwise herein.

EXECUTED this 17 day of February, 2009.

GRANTOR:
CITY OF BRIDGEPORT, TEXAS

GRANTEE:
WISE COUNTY, TEXAS

By: *[Signature]*
Its: Mayor

By: *[Signature]*
Its: County Judge

ATTEST:

ATTEST:

[Signature]
City Secretary

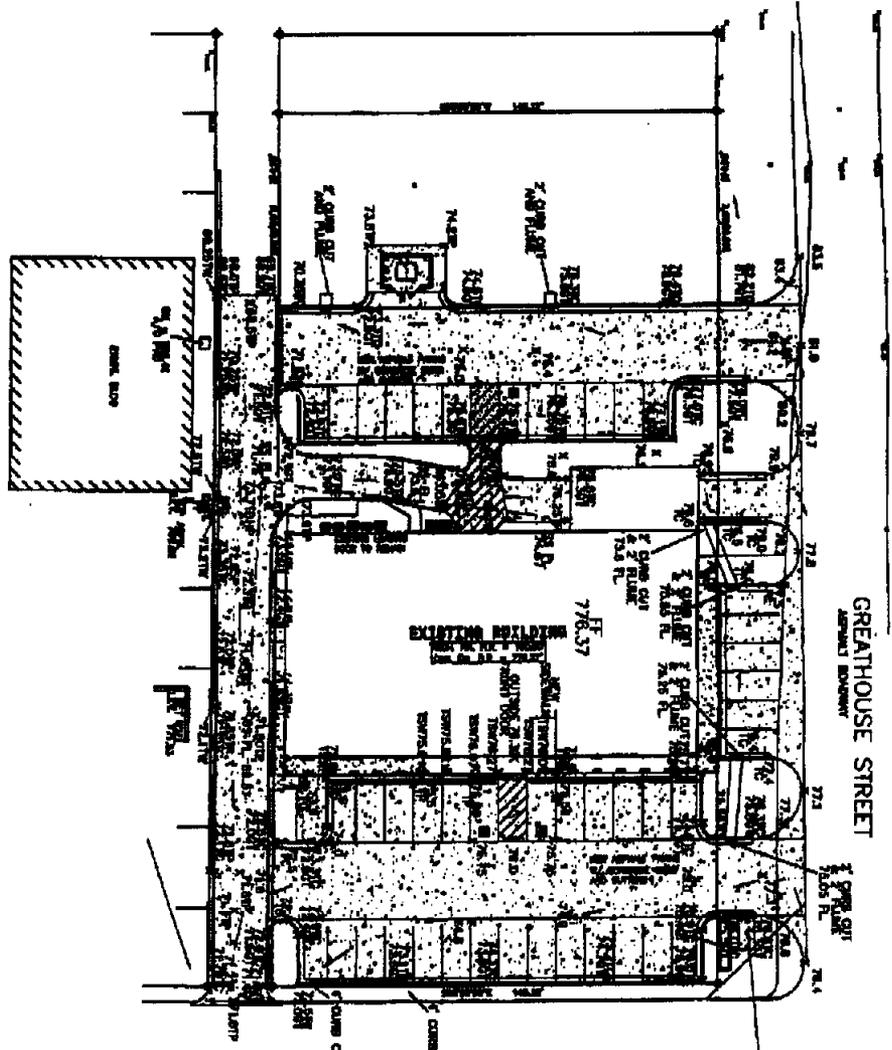
[Signature]



EXHIBIT "A"

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Handwritten mark



13 TH STREET