

**CITY OF BEE CAVE AND TERRACES LICENSE AND
MAINTENANCE AGREEMENT BEE CAVE PARKWAY RIGHT OF
WAY
(Tree Well)**

This License and Improvement Agreement ("**Agreement**") is entered into by and between the City of Bee Cave, Texas, a Home Rule Municipality located in Travis County, ("**City**"), and Terrace Partners, LLC, a Delaware limited liability company ("**Developer**").

I. Recitals

1. Developer has been authorized pursuant to Ordinance No. 334 and Ordinance No. 375 to develop a Project (herein so called) known as the Terraces on property owned by Developer which adjoins City right of way known as Bee Cave Parkway ("Parkway").
2. To protect one or more trees associated with the Project, Developer has proposed to place Tree Wells (herein so called) around such trees and a portion of one of the Tree Wells will encroach (the "**Encroachment**") into the Parkway as depicted in Exhibit "A", attached hereto. The work to be performed for the Encroachment shall be referred to herein as the "**Encroachment Work**".
3. Parkway is a public street subject to the exclusive control of City, as provided by Sections 311.001 and 311.007, Texas Transportation Code, which authority includes the right to control, regulate, improve, close, vacate, remove encroachments or obstructions from, or to otherwise regulate the streets.
4. This Agreement provides for Developer's construction and Maintenance of the Encroachment Improvements as described in Exhibit "A", "B", and "D".
- ~~5.~~ 5. City has considered the requirements of Chapter 316, Texas Transportation Code, and does hereby make the findings required by Sections 316.003 and 316.007.

II. Grant of License and Agreement

For and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, City and Developer hereby agree as follows:

- ~~4.~~ 1. **License.** City hereby grants a License and allows Developer the right to occupy and construct the Encroachment and to maintain same, in accordance with Exhibit

“D, Maintenance Plan, attached hereto, upon completion of construction within the portion of the Parkway as depicted in Exhibit "A", attached hereto (the “Licensed Premises”).

- ~~2.~~ **2. Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for so long as the Encroachment remains in the Parkway; provided that this Agreement is not sooner terminated as provided in Paragraph 8 hereafter. Developer shall commence construction of the Encroachment Work within two (2) years of the Effective Date of this Agreement. Construction of the Encroachment Work, once commenced shall be completed within 180 days from the commencement date, subject to force majeure.
- ~~3.~~ **3. Compensation.** Consideration for this Agreement shall be Developer’s right to occupy the Licensed Premises. No annual fee is required. As further consideration, Developer agrees to hold City harmless and indemnify City as described in Paragraph 7.
- ~~4.~~ **4. Limits on License.** This Agreement is subordinate to use of the Licensed Premises by City as described herein, utilities or property rights affecting the Licensed Premises prior to the Effective Date of this Agreement and the Parkway for vehicular, utility and emergency vehicles. Upon completion of construction of the Encroachment Work and acceptance by the City, the Developer’s license shall be limited to the right of Developer to enter the portion of the Licensed Premises depicted in Exhibit “B”, attached hereto, for purposes of maintenance and repair of the applicable Encroachment.
- ~~5.~~ **5. Entry by City.** In case of emergency, City may enter the Licensed Premises without giving notice and without incurring any obligation to Developer, in order to take whatever action is necessary by virtue of the emergency. In addition, City shall be authorized to enter the Licensed Premises for the purpose of (a) observing or inspecting the Encroachment Work; (b) exercising City’s rights or duties with respect to the Licensed Premises; (c) protecting persons or property; (d) for the public health or safety; or (e) protecting the integrity of the Encroachment Work.
- ~~6.~~ **6. Conditions and Responsibilities:**
 - a. Developer shall design and construct the Encroachment as described in Exhibit "A". Design and construction plans shall be approved by the City and the Encroachment and associated work shall be constructed in accordance with the City’s Code of Ordinance (as amended by Ordinance 334 or any further amendments thereto) and the approved design and construction plans, which plans are incorporated herein by reference for all purposes. Developer shall be responsible for 100% of the ~~Costs~~costs of design, construction and maintenance of the Encroachment, as described in Exhibit “D”, attached hereto, and further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs, including labor and materials, acquisition costs of materials, equipment, fixtures, construction management costs, utility costs, utility relocation costs and any costs or expenses necessary to the design, construction and maintenance of the Encroachment.

- b. Developer shall bear all costs of installing, maintaining, and repairing any public or private improvements which may be damaged or removed by the construction or maintenance of the Encroachment, and shall be responsible for overseeing the construction process and obtaining and supervising all contractors used to install the same or to construct any related improvements, whether such improvements or features are temporary or permanent. Developer shall obtain liability and other insurance in accordance with the requirements set out in Exhibit "C", attached hereto, and shall include the City as an additional insured. Developer will require all contractors and consultants performing work within the Licensed Premises to obtain insurance of the type and in the amounts as determined by City, and Developer shall require all such policies obtained by any contractor or consultant to name City as an additional insured in an amount as determined by City.
- c. Developer shall comply with all applicable federal, state, and local laws, including all City ordinances, codes, and regulations (as amended by Ordinance No. 334 or any further amendments thereto), in the design and construction of the Encroachment and failure to obtain any necessary approval of City prior to construction or failure to comply with all applicable federal, state and local law including all City ordinances, codes, and regulations (as amended by Ordinance No. 334 or any further amendments thereto), shall constitute a material breach of this Agreement. In addition, Developer shall obtain all permits, approvals and inspections required by City's Code of Ordinances, Ordinance No. 334 (or any further amendments thereto) and any other permits or approvals issued by the City, as applicable to the Encroachments or activities and matters licensed by this Agreement. Nothing in this Agreement is intended to amend, waive or diminish the requirements of such ordinances or approvals.
- d. Developer shall not amend or revise the design or construction of the Encroachments without the prior written approval of the City. Developer will notify and obtain prior written approval from the City prior to commencing any work to be performed related to the Encroachments or within the Licensed Premises that has not already been approved in writing by the City and shall notify the City of the intended date of commencement and completion of such work. Such work will not, under any circumstances, relieve Developer of its responsibilities and obligations under this Agreement. All work performed by Developer or its agent, contractors or consultants shall be done in a good and workmanlike manner satisfactory to City. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work described in this Agreement. Developer shall provide City with fiscal security guaranteeing construction of the Encroachment in accordance with City ordinances and this Agreement. All fixtures and improvements constructed within the Licensed Premises shall become the property of City upon completion of same.
- e. Upon completion of construction of the Encroachments, the Licensed Premises shall be returned to a neat, clean and orderly condition and in as good a condition as the Licensed Premises were in prior to commencement of this Agreement. Any landscaping and/or vegetation that was removed in conjunction with the construction of the Encroachments or use of the Licensed Premises shall be restored and/or planted pursuant to the Site Plan issued by the City on June

¹²July 10, 2018. All trash and debris shall be removed from the Licensed Premises and properly disposed. Upon completion of the Encroachments the City will conduct a final inspection and if the Encroachments have been completed as required by the terms and conditions of this Agreement and all associated plans and approvals of the City, the City will accept the Encroachments. If upon inspection, the City finds that the Encroachments or portions thereof have not been completed as required, the Developer shall be instructed to remedy and correct any deficiencies and given a reasonable amount of time to remedy such matters. Upon completion, Developer shall provide City proof, including an affidavit in support of payments made, demonstrating that all costs and expenses incurred in conjunction with design and construction of the Encroachment have been satisfied and that all amounts owed to any consultant, contractor, service provider or vendor that participated in design or construction of the Encroachment Work have been paid prior to City's release of any payment bond, performance bond or release of fiscal security. Failure or refusal of the Developer to correct any deficiencies shall be addressed in accordance with Paragraph 8. Developer shall not perform or fail to perform any act associated with this Agreement which would cause a lien to be placed on City property or the Licensed Premises. If a lien is placed on City Property or the Licensed Premises, Developer shall take immediate steps to have the lien released. Failure of the Developer to successfully remove the lien shall be grounds for the City to withhold release of any fiscal security, to release performance or payment bonds or to otherwise issue any additional permits associated with development of the Project. The requirements of this Agreement related to Payment Bonds, Performance Bonds, Maintenance Bonds, fiscal security, failure to have liens released or to assignment of warranties shall survive termination of this Agreement.

7. **DEVELOPER HEREBY AGREES TO INDEMNIFY, SAVE, AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY CALLED "INDEMNITEES") AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, CLAIMS, CAUSES OF ACTION, EXPENSES OR DEMANDS (COLLECTIVELY "COSTS") OF ANY NATURE WHATSOEVER, SAVE AND EXCEPT IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY INDEMNITEES, ON ACCOUNT OF PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, WORKERS' COMPENSATION AND DEATH CLAIMS), OR PROPERTY LOSS OR DAMAGE OF ANY KIND WHATSOEVER, WHICH ARISES, OR IS CLAIMED TO ARISE, OUT OF OR IS, OR IS CLAIMED TO BE, IN ANY MANNER CONNECTED WITH, PLACEMENT, CONSTRUCTION, INSTALLATION, MAINTENANCE, OR REPAIR, OF THE ENCROACHMENTS OR PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL, AT ITS OWN EXPENSE, INVESTIGATE ALL THOSE CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON USING COUNSEL SATISFACTORY TO CITY'S ATTORNEY, AND PAY ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF THE AFORESAID CLAIMS, DEMANDS OR CAUSES OF ACTION.** This indemnification provision does not apply to any costs for which City has been compensated by insurance. This provision shall survive termination of this Agreement.

8. **Termination.** If Developer fails to construct, remedy or correct any material deficiency in the work contemplated by this Agreement, abandons the work contemplated by this Agreement, fails to obtain and continue in force throughout the term of this Agreement all insurance, bonds, and warranty requirements, fails to comply with terms and conditions of this Agreement, changes the design or construction requirements without approval of the City, fails to pay when due all costs and expenses associated with design, construction and maintenance of the Encroachments or fails to successfully complete the Encroachments within the time required by this Agreement, or fails to maintain the Encroachment Improvements as provided in Exhibit "D, attached hereto, City shall provide written notice to Developer specifying the construction needed, maintenance or repair work needed or the deficiency or default of a term or condition of this Agreement. If the City Manager receives no substantive response within ten (10) business days following such written notification to Developer (the "**First Notification**"), then City may at Developer's cost (i) remove, repair, replace, correct, maintain or otherwise remedy the default or failure associated with the Encroachment or the failure or default by Developer with regard to one or more terms or conditions of the Agreement, or (ii) send a Second Notification (defined below). If (a) Developer has failed to respond to City's First Notification within the 10 business days, and (b) City has not already undertaken the requested construction, maintenance or repair work, or remedied the Developer's default, or if the default by the Developer to a term or condition of the Agreement cannot be remedied by the City, or City declines to do so, then City will send a second written notification to Developer (the "**Second Notification**"). The Second Notification must include the following language in bold, all-caps font: "**SECOND NOTIFICATION OF REQUESTED CONSTRUCTION OR REPAIRS**" or "**SECOND NOTIFICATION OF DEVELOPER'S DEFAULT**". If Developer fails to provide a substantive response within 5 business days after receipt of the Second Notification, City may (i) at Developer's cost remove, repair, replace, correct, maintain or otherwise remedy the default or failure associated with the Encroachment or the failure or default by Developer with regard to one or more terms or conditions of the Agreement, (ii) and/or terminate this Agreement, (iii) and/or seek performance of Developer's obligations under any performance or payments bonds or fiscal security, (iv) and/or terminate this License Agreement. Developer shall pay City's actual expenses incurred in connection therewith within thirty (30) days after being billed therefore.

Upon termination of this Agreement by either party, Developer shall remove all property not owned by City from the Licensed Premises.

Developer shall not terminate this Agreement without the express approval of the City. However, Developer may assign the obligations of this Agreement in accordance with section 13. Notwithstanding any language in this Agreement to the contrary, City reserves the right to terminate this Agreement, or temporarily suspend the license granted pursuant to this Agreement if in the sole opinion of City, City determines that there exists a public necessity to terminate or suspend the license granted pursuant to this Agreement.

Prior to suspending the license granted pursuant to this Agreement, City shall give the Developer at least five (5) business days' written notice.

9. Maintenance. Developer expressly agrees to maintain the Licensed Premises and the Encroachments at Developer's sole cost and expense in accordance with the requirements set forth in Exhibit "D", attached hereto, for the duration of the Term. Maintenance also includes, but is not limited to, keeping the area free of debris and litter, promptly repairing or replacing any portion of the Encroachment or associated structure that are damaged, destroyed or in need of repair or replacement. Licensee shall routinely perform maintenance at its sole expense and within thirty (30) days following receipt of a written request by the City to do so. The Maintenance obligation includes the duty of Licensee to pay when due all utility or other costs incurred in conjunction with the maintenance of the Encroachments

10. Findings. Pursuant to Ch. 316, Texas Transportation Code, City finds that the rights granted to Developer under this Agreement, including the placement of the Encroachment, will not create a hazardous condition or obstruction of public travel on the streets; and that the design and location of the Encroachment includes all reasonable planning to minimize potential injury or interference to the public in the use of the municipal street or Licensed Premises. Any encroachment within the right of way and effect on vehicular or pedestrian traffic, as contained in this Agreement, is found by City to be allowed pursuant to Sec. 316.007(b), Transportation Code.

11. Venue. Venue for any lawsuit concerning this Agreement shall be in the State District courts of Travis County, Texas.

12. Waiver of Default. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

13. Assignment. Developer shall be authorized to assign or transfer its interest in this Agreement without the prior written consent of City if such assignment is to the Project's property owner's association or property management company. Developer shall provide City with a copy of any such proposed assignment or transfer of any of Developer's rights in this license Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer. Such assignment shall include the property owners association's express assumption of all obligations and responsibilities described herein and no assignment shall relieve Developer of responsibility pursuant this Agreement unless the property owners association has expressly assumed all such obligations and responsibilities.

14. Notice. Notice required or permitted to be given in connection with this License Agreement must be in writing. Notice may be given by hand delivery or certified mail, postage prepaid, to the recipient at the address for notice set forth below or at the last address for notice that the sender has for the recipient at the time notice is given. If properly addressed and sent certified mail or hand-delivered as provided herein, such notice will be deemed received on the day hand delivered, as evidenced by a written acknowledgment of receipt by the recipient, or on the third day after deposit in the U.S. mail, if sent certified mail, postage prepaid. Notice given in any other manner will be deemed delivered if and when actually received by the party specified below.

CITY: City of Bee Cave
Attn.: City Manager

4000 Galleria Parkway,
City Hall
Bee Cave, TX 78738
(512) 767.6614

DEVELOPER: Terrace Partners, LLC
Attn: Chris Milam
13200 Bee Cave Parkway
Bee Cave, Texas 78738
(512) 923-9796

COPY TO: Metcalfe Wolff Stuart & Williams, LLP
Attn: Talley Williams
221 W. 6th Street, Suite 1300
Austin, Texas 78701
(512) 404-220

In the event the address or contact for a party changes, it shall be the responsibility of that party to notify the other party of the new address or contact within five (5) business days of that change.

15.14. Default. In addition to the right of termination described in paragraph 8 above, if Developer fails to comply with the terms of this Agreement, then the City Manager shall give Developer written notice as set out in Paragraph 14, Notice. Developer will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required under the terms of this Agreement, or such greater period as may be required to remedy the failure, so long as Developer diligently pursues such remedy until completion, and if Developer does not satisfactorily remedy the same within the period reasonably necessary to remedy such failure, City may remedy the default or contract to remedy the default at Developer's expense. In addition, City may seek specific performance of this Agreement or seek performance pursuant to a bond or fiscal security. City shall have all other remedies available in law or equity. Nothing in this Paragraph 15 shall diminish or negate the notice and cure obligations contained in Paragraph 8 above.

16.15. Interpretation. This Agreement shall, regardless of who drafted the document, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

17.16. Application of Law. This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

18.17. City's Right to Use the Property. Nothing in this Agreement shall prevent City or the public from using the Licensed Premises for any municipal purposes that are not contrary to the terms and conditions of this Agreement.

18. Fiscal Security Required. Developer shall provide City Fiscal Security to guarantee construction of the Encroachment Improvements which Fiscal Security shall be in the form and in the manner provided by the City's Code of Ordinances.

19. Deed Recording. This Agreement shall be recorded in the Official Public Records of Travis County, Texas.

20. Successors and Assigns. The terms and provisions of this Agreement and the obligations set forth herein, including without limitation, those set out in Paragraph 9, shall be binding on and enforceable against the Grantor and its successors and assigns.

[signatures on following page]

Executed to be effective, the _____ day of _____, 2018 (The “Effective

Date”).

CITY OF BEE CAVE:

Mayor Monty Parker

Attest:

Kaylynn Holloway, City Secretary

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2018 by _____, _____, of _____, a _____, on behalf of City of Bee Cave.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires:_____

DEVELOPER:

TERRACE PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

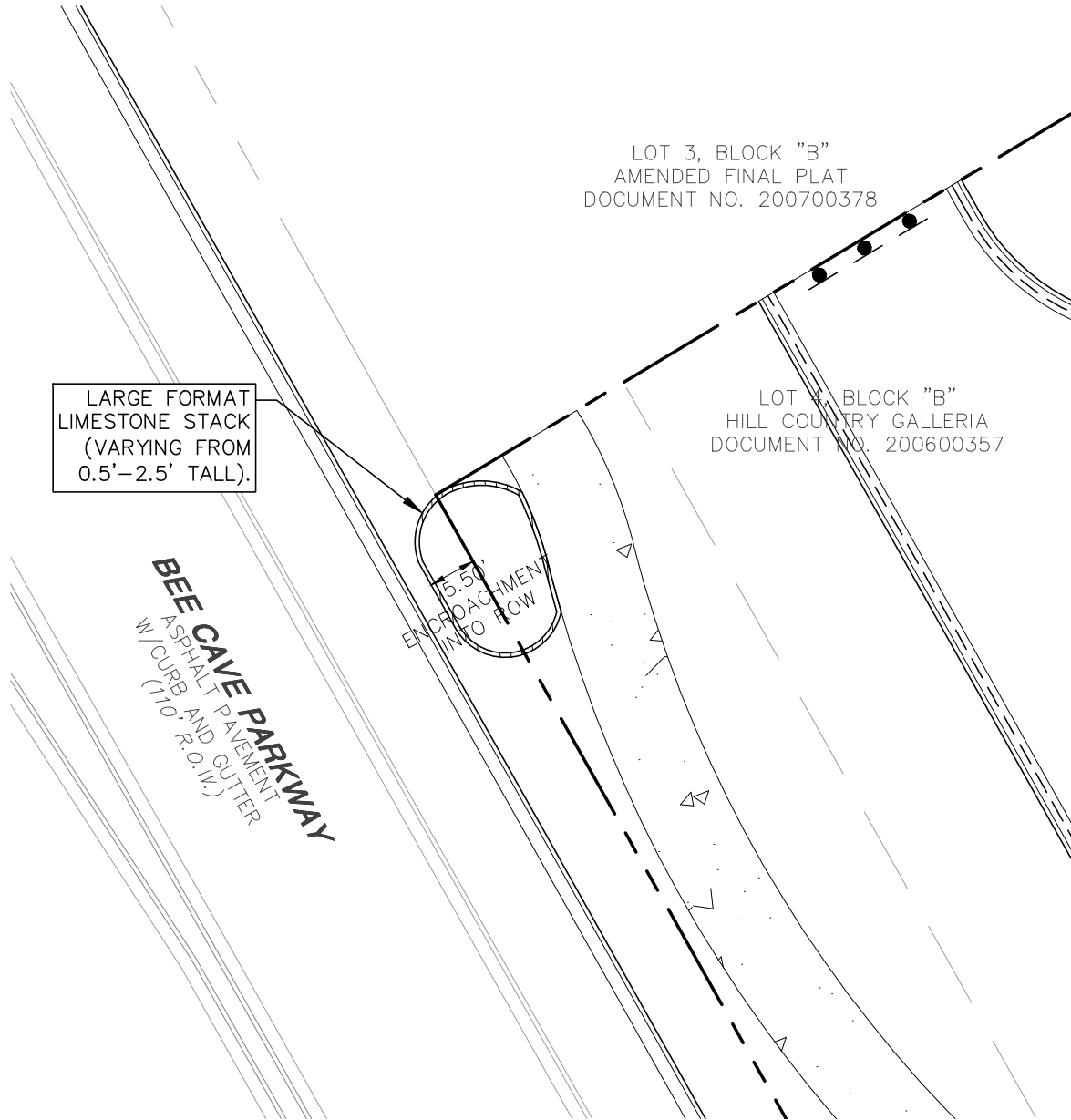
This instrument was acknowledged before me on the ____ day of _____, 2018, by
_____, _____ of Terrace Partners, LLC, Delaware limited liability company on
behalf of said company.

NOTARY PUBLIC, State of Texas

EXHIBIT A



EXHIBIT A



Stantec

Stantec Consulting Services Inc.
1905 Aldrich Street Suite 300
Austin TX 78723-3544
Tel: (512) 328-0011
www.stantec.com

TBPE # F-6324
TBPLS # 10194230

Client/Project

TERRACE PARTNERS LLC

SCALE: 1:20

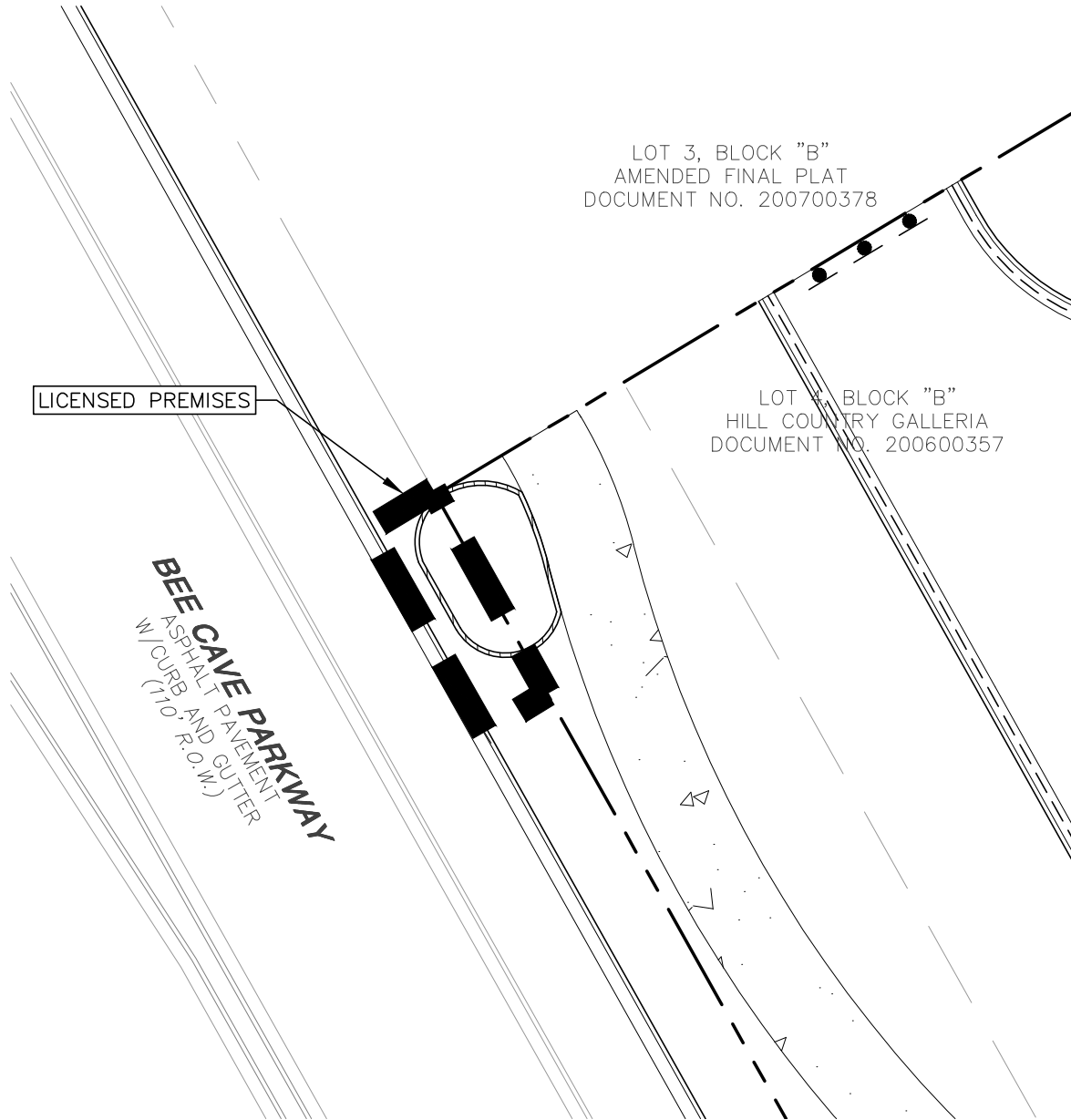
RIGHT-OF-WAY
ENCROACHMENT

Project No.

222010167

EXHIBIT B

EXHIBIT B



Stantec

Stantec Consulting Services Inc.
1905 Aldrich Street Suite 300
Austin TX 78723-3544
Tel: (512) 328-0011
www.stantec.com

TBPE # F-6324
TBPLS # 10194230

Client/Project

TERRACE PARTNERS LLC

SCALE: 1:20

LICENSED PREMISES IN
ROW

Project No.

222010167

EXHIBIT C

EXHIBIT D