

STATE OF TEXAS

COUNTY OF EL PASO

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DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement is entered into this 10th day of October, 2012 ("Effective Date"), by and between EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, the Trustee of El Paso's water and wastewater system (the "EPWU") and GELTMORE ALDEA LLC., hereafter referred to as "DEVELOPER", and complies with the requirements of a developer participation contract allowed under the provisions of the Texas Local Government Code Section 212.071.

WHEREAS, Developer is currently under contract to purchase and develop approximately 196 acres of land located in the vicinity of I-10, Mesa Street and Executive Center Boulevard, which is more fully described in Exhibit "A" attached hereto (the "Property");

WHEREAS, Developer has proposed the construction of an urban mixed use Smart Code development on the Property as shown on the attached regulating plan attached hereto as Exhibit "B" (the "Project");

WHEREAS, the City of El Paso entered into a 380 Agreement with Developer for the Project on May 17, 2011, whereby the City agreed to rebate certain ad valorem taxes in the event the Project meets certain requirements;

WHEREAS, the County of El Paso entered into a 381 Agreement with Developer for the Project on September 19, 2011, whereby the County agreed to rebate certain ad valorem taxes in the event the Project meets certain requirements;

WHEREAS, the Developer has submitted a smart code rezoning application to the City of El Paso and will upon approval of such rezoning, submit a subdivision application for approval by the El Paso Plan Commission;

WHEREAS, EPWU's Storm Water Master Plan (the "Plan") prepared by URS Corporation ("URS") identifies projects WC2 and WC3 within or affecting drainage along Flow Path 20 affecting the Aldea Property.

WHEREAS, WC2 and WC3 are estimated by URS to cost \$7,989,000.00 not including land acquisition costs. The Plan also identified project WC8 for improvements to the Paragon Channel in an estimated amount of \$687,000.

WHEREAS, after detailed engineering of the URS Plan for these structures, EPWU consultants demonstrated constructability issues with these projects and it was determined the only way to deal with the flows was to construct a channel and a detention basin within the Property and two detention basins outside of the Property, one upstream and one downstream. These structures, for the purposes of this agreement are known as FP20 Channel, FP20 Basin, both of which are on the Property, and Paragon Basin (downstream of the Property on EPWU property).

WHEREAS, the EPWU desires to have the Developer construct certain storm water improvement projects on the Property as provided in Exhibit B-1 ("Storm Water Improvements") as part of the Project and the Texas Local Government Code Section 212.07(b) allows participation by the municipality at a level not to exceed thirty (30%) percent of the total cost of the Project for any public improvements related to the Project, including but not limited to increased capacity of improvements to

anticipate other future development in the area, without complying with the competitive bidding procedure of Chapter 252;

WHEREAS, the Developer will be constructing subdivision improvements on the Property in an amount equal to approximately Fifty Million Dollars and No/100ths (\$50,000,000.00) ("**Subdivision Improvements**");

WHEREAS, the Storm Water Improvements do not exceed thirty (30%) percent of the Subdivision Improvements; and,

WHEREAS, the EPWU has determined that Developer's construction of the Storm Water Improvements will be an economic benefit to local taxpayers, therefore, this Agreement is in the best interests of the ratepayers of EPWU.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth, the Parties hereby do mutually agree as follows:

1. PARTIES' OBLIGATIONS

Developer shall construct Storm Water Improvements pursuant to the terms and conditions specified herein. Except as provided herein, Developer further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs arising from the construction of the Storm Water Improvements in the Subdivision.

The Parties agree to work on an expedited basis on obtaining a mutually agreeable Engineering Plan ("Plan") setting forth the design of the Storm Water Improvements. EPWU shall pay for its respective engineering fees related to the review and approval of the Plan. In the event that the PSB does not complete the review of the Plan within thirty (30) days after submission, the Plan shall be deemed approved and Developer is authorized to proceed with the construction.

The Parties will mutually agree on a timeline for construction of the Storm Water Improvements and acceptance of them by EPWU.

Upon satisfactory completion of the Storm Water Improvements, the Developer shall submit to EPWU an invoice detailing the cost of construction of the Storm Water Improvements.

Within thirty days (30) of receipt of such invoice, EPWU shall inspect the Storm Water Improvements and, provided the improvements are in compliance with the agreed Plan, shall agree to be responsible for the maintenance of the Storm Water Improvements. The reimbursement of the cost attributable to the Storm Water Improvements shall be made when improvements are completed (subject only to punch list items) by the Developer and approved by the EPWU. Notwithstanding anything to the contrary contained herein, the EPWU will approve the Storm Water Improvements and agree to be responsible for maintenance of the Storm Water Improvements upon their completion regardless of whether the remainder of the Subdivision Improvements have been completed (subject to punch list items). EPWU agrees not to unreasonably withhold its approval of the Storm Water Improvements.

The Parties agree that, provided that the terms of this Agreement are complied with by the Developer, the EPWU shall reimburse the Developer Ten Million Three Hundred Seventy Nine Thousand Seven Hundred Ninety Three Dollars (\$10,379,793.00) dollars upon acceptance (subject to punch list items) by the EPWU of the Storm Water Improvements as provided in Exhibit B-1 ("**EPWU Contribution**"). EPWU Contribution shall be paid to Developer as set forth in B-1, attached hereto.

The Developer shall comply with all applicable federal, state and local law. Failure to do so in any manner shall constitute a material breach of this Agreement. In addition, Developer shall obtain all permits and inspections required by the City of El Paso and be responsible for any costs associated with obtaining such permits and inspections.

Developer agrees to furnish EPWU with a copy of each written agreement entered into with a contractor or consultant retained to complete the construction of the Storm Water Improvements upon written request by EPWU. All of the books and records related to the construction of the Storm Water Improvements shall be available for inspection by EPWU upon request during construction and for two (2) years after completion of the Storm Water Improvements. Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer shall be done in a good and workmanlike manner satisfactory to EPWU. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work.

The Parties agree that the EPWU Contribution may be adjusted if: 1) additional soil investigations which are performed after the Effective Date of this Agreement, identify soil conditions or other matters that were not anticipated by Developer or identified in preliminary soil testing; 2) TCEQ requires structures other than a low hazard detention facility to be constructed on the Property; or 3) Corps of Engineers does not permit the use of closed conduits crossing Mesa Street and continuing to Flow Path 20 Dam and from Flow Path 20 Dam to Interstate 10 as part of the 404 Permit for the Project. In the event any of these items shall occur, the Parties agree to adjust EPWU Contribution based on the cost estimates provided by Developer. EPWU's President is hereby authorized to execute any amendments to this Agreement as a result of one or more of these conditions.

All Plans and permits will be approved by EPWU concurrently with the subdivision improvement plan review for Aldea by the City of El Paso, or sooner as appropriate. EPWU agrees to review and approve such plans on an expedited basis so as to not delay the Project.

Developer agrees to accept from EPWU a minimum of 42,000 cubic yards of surplus fill material removed from the Grand Teton Basin by EPWU provided that EPWU excavates and transports the material to Developer's Property at scheduled times while Developer is grading the Property. Parties agree that any value accruing to Developer for its subsequent use of such surplus fill is to be considered as offset by the value of the Storm Water Property easement conveyed to EPWU by Developer as provided below.

2. TERM

This Agreement shall automatically terminate after the completion of all of the following: (1) the construction of the Storm Water Improvements; (2) EPWU has paid the EPWU's Contribution to the Developer; and (2) EPWU has accepted the Storm Water Improvements. At termination, the Developer shall assign any and all warranties on the Storm Water Improvement work to EPWU.

3. BOND REQUIRED

The Developer or Developer's contractor must execute a performance bond for one hundred (100%) percent of the construction of the Storm Water Improvements to secure fulfillment of all the Developer's obligations under this Agreement. The bonds must be in a form reasonably approved by the EPWU. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code, Vernon's Annotated Civil Statutes. The bond shall identify the EPWU as an additional named

Oblige, and the EPWU shall be notified of termination of such bond if prior to the end of the term of this Agreement.

5. DEDICATION OF STORM WATER IMPROVEMENTS

Developer agrees upon (1) completion of the Storm Water Improvements; (2) EPWU acceptance of the temporary easement for the Storm Water Improvements ; (3) receipt of the April 2014 EPWU Contribution payment by Developer; and (4) approval by the City of El Paso of the Project plans, to dedicate, at no cost to the EPWU with the reservation of certain rights provided herein, a temporary easement for a portion of the Property tentatively described in Exhibit "C" attached hereto ("the **Storm Water Property**"). The exact portion of the property may differ in size and configuration from the description contained in Exhibit "C," and will be identified and mutually agreed upon by the respective authorized representatives of the Parties prior to final dedication. The Storm Water Property shall be conveyed via a temporary easement in a form substantially similar to the easement in Exhibit "D" attached hereto. Upon receipt of the final payment of the EPWU Contribution by the Developer in April, 2016, the Developer shall convey a permanent easement or fee interest in the Storm Water Property in a form that is acceptable to the Developer ("Conveyance Document"); provided however, that Developer shall retain easements rights on the Storm Water Property for its benefit and the benefit of the public to be used as public open space, recreational space and hike and bike trails, use for utilities including but not limited to telephone, electric, gas and cable, as designed and determined to be in the best interest of the development by EPWU and Developer. Additionally, Developer shall retain the right to use such Storm Water Property for roads, access, signage, landscaping and parking. Developer shall be permitted to make any improvements to the Storm Water Property that it deems desirable provided that such improvements do not interfere with the operation of the Storm Water Improvements. EPWU shall be responsible for all costs associated with the temporary and permanent dedication of the Storm Water Property to include but not be limited to, costs associated with a metes and bounds description for the Storm Water Property, all taxes and title company fees. It is the intent of the Parties that the dedication of the Storm Water Property shall be completed at no cost to the Developer. Developer shall provide EPWU with a copy of the as-built schematics within ninety (90) days from completion.

6. DEVELOPER'S USE OF STORM WATER IMPROVEMENTS.

As consideration for Developer's obligations and dedication of the Storm Water Property, the EPWU agrees that the design and construction of the Storm Water Improvements will accommodate all storm water generated from the Property as well as Developer's abutting Property identified in Exhibit "D" attached hereto ("the **Developer's Storm Water**"). EPWU will execute any necessary documentation, easements and approvals evidencing Developer's right to discharge Developer's Storm Water into the Storm Water Improvements, including, but not limited to, an agreement that EPWU will be responsible for handling low flow and water quality requirements. EPWU's acceptance of Developer's discharge rights shall constitute additional consideration for Developer's agreement to construct and dedicate the improvements.

7. MAINTENANCE OF STORM WATER IMPROVEMENTS.

As part of the Project, the Developer shall improve the surface of the Storm Water Improvements, provided that such improvements do not interfere with their Storm Water function, with landscaping, hike and bike trails, parking areas, and other amenities described in this Agreement as determined by Developer to be in the Project's best interest. (collectively "Developer's Improvements"). Upon approval of the Storm Water Improvements, EPWU shall be responsible for maintenance of all Storm Water Improvements in accordance with all applicable local, state and federal regulations. EPWU shall have no responsibility for maintenance of Developer's Improvements.

8. CONDITIONS PRECEDENT

(1) As conditions precedent to Developer's obligations under this Agreement, including without limitation its Developer's obligation to construct the Storm Water Improvements, dedicate the Storm Water Property and construct the Project as set forth herein, Developer shall first have:

(i) completed the transfer of fee title to the Property;

(ii) obtained from the City and other governmental entities, all permits, approvals and entitlements necessary to develop the Property and complete the Storm Water Improvements;

(iii) obtained an agreement between EPWU and Developer on the design of the Storm Water Improvements. Both Parties agree that the design of the project will limit the amount of real estate to be dedicated by Developer to least amount possible, not to exceed 20 total acres from the area shown in Exhibit "F" to this Agreement. Both Parties agree that the exact amount of acreage, as well as any retained public or private easements, are to be determined by mutual agreement of the authorized representatives of each party and both Parties further agree that the aesthetics of the EPWU Project are a critical component of the improvements to be made and will be of foremost consideration in the Design Work.

(iv) obtained from the Texas Department of Transportation (TxDOT) a written agreement, in a form acceptable to Developer in its sole discretion, of the extension of Mesa Park to I-10 interstate and the construction of frontage roads along the Property within the I-10 right of way.

(v) received EPWU's approval of the Developer's water and sewer distribution system for the Project.

(vi) received easements or agreements from El Paso Electric Company and Southwestern Bell permitting the use of their right of way and easements for construction of the Storm Water Improvements.

(2) The Parties agree and acknowledge that Developer's obligation to perform under this Agreement is expressly contingent upon the satisfaction of the Conditions Precedent set forth in paragraph 8(1) hereinabove.

(3) Developer shall not be obligated to perform under this Agreement and may terminate this Agreement upon written notice if any of the conditions precedent identified in (1) above are not completed to the sole satisfaction of the Developer.

9. NO THIRD PARTY RIGHTS OR OBLIGATIONS

No person or entity not a party to this Agreement shall have any third party beneficiary or any other rights against the Parties to this Agreement.

This Agreement is not intended to alter or reallocate any defense or immunity presently authorized to either party by law.

The EPWU shall not be subject to any obligations or liabilities of the Developer incurred in the performance of this Agreement.

10. COOPERATION

It is the intent of the Parties to work cooperatively to complete the Storm Water Improvements and the obligations as described herein. Therefore, the Parties agree to cooperate with each other in executing any ancillary agreements or revisions to this Agreement which may be necessary from time to time to carry out the contemplated intent.

11. NOTICES

All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective Parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

If to Developer:	Geltmore Aldea LLC Paul Silverman Geltmore, Inc. 6211 San Mateo Blvd.NE, Suite 130 Albuquerque, NM 87109-3534
Copy to:	Yolanda Giner Gordon, Davis, Johnson & Shane, P.C. 4695 North Mesa El Paso, Texas 79912 Fax: (915) 545-4433
If to EPWU:	El Paso Water Utilities-Public Service Board Edmund G. Archuleta President/Chief Executive Officer 1154 Hawkins Blvd. El Paso, Texas 79961-0001

12. CUMULATIVE RIGHTS

All remedies, either under this Agreement or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination.

13. GOVERNING LAW

All questions concerning the validity, operation, and interpretation of this Agreement and the performance of the obligations imposed upon the Parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

14. INTERPRETATION

This Agreement shall be deemed to have been jointly prepared by all Parties hereto, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Agreement or any portion hereof.

15. ASSIGNMENT

The Developer shall have the right to assign its rights and obligations in this Agreement. In the event that the Developer does assign its rights under this Agreement, the assignee shall execute an assignment agreeing that it will be responsible for all of the obligations of Developer, a copy of which shall be sent to the EPWU.

16. RELATIONSHIP

It is expressly understood and agreed by and between the Parties that Developer is not an officer, agent or employee of the EPWU and is not subject to the direct or continuous supervision and control of the EPWU. EPWU and Developer hereby acknowledge and agree that the EPWU has not formed, and is not forming with Developer or any other party, a partnership, joint venture, or any other similar entity by entering into this Agreement; and this Agreement is not intended to any shall not be construed, to create any such entity or relationship.

17. ATTORNEY'S FEES

If any party brings legal proceedings against another party to enforce or interpret this Agreement or any rights created herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs. The phrase "prevailing party" shall include a party who brings or defends an action, and obtains substantially the relief sought by it, and a party who dismisses an action in exchange for payment of the sums allegedly due, performance or covenants allegedly breached or consideration substantially equal to the relief sought in the action.

18. ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. This Agreement may not be modified except by an instrument in writing signed by both Parties.

19. AUTHORIZED SIGNATURE

The person executing this Agreement on behalf of the Developer warrants to the EPWU that the Developer has full right and authority to enter into this Agreement and that every person signing on behalf of Developer is authorized to do so.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTED in El Paso, El Paso County, Texas on the date first mentioned above.

GELTMORE ALDEA LLC

By:

Paul Silverman

Its:

President

State of New Mexico)

County Bernalillo)

SWORN TO AND SUBSCRIBED BEFORE ME on this 15th day of Nov, 2012, by Paul Silverman, President of Geltmore Aldea LLC.



OFFICIAL SFAL
TRACY D RIFFE
Notary Public
State of New Mexico

My Commission Expires 3-9-13

(Additional Signature Contained on Following Page)

NOTARY PUBLIC IN AND FOR STATE OF

Tracy New Mexico

EL PASO WATER UTILITIES -
PUBLIC SERVICE BOARD

By:

Edmund G. Archuleta

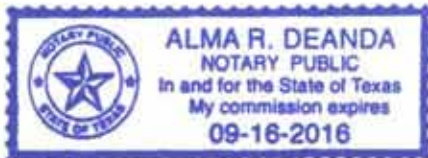
Its:

President/Chief Executive Officer

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this the 8th day of November, 2012, by Edmund G. Archuleta, President/Chief Executive Officer on behalf of El Paso Water Utilities-Public Service Board.



Alma R. De Anda

NOTARY PUBLIC IN AND FOR STATE OF
TEXAS



PROPERTY DESCRIPTION

BEING ALL OF TRACTS 20A AND 20C, JOHN BARKER SURVEY NO. 10 IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT 1 PIPE IN CONCRETE FOUND AT THE NORTHEAST CORNER OF JOHN BARKER SURVEY NO. 10 THENCE, WITH THE EAST LINE OF SAID SURVEY SOUTH OF $00^{\circ}46'34''$ WEST A DISTANCE OF 2511.01 FEET TO A $5/5''$ REBAR WITH CAP FOUND AND BEING THE POINT OF BEGINNING;

THENCE, WHEN SAID EAST LINE SOUTH $00^{\circ}46'34''$ WEST A DISTANCE OF 2044.41 FEET TO A $5/8''$ REBAR WITH CAP SET;

THENCE, SOUTH $54^{\circ}19'20''$ WEST A DISTANCE OF 103.06 FEET TO A $5/8''$ REBAR WITH CAP FOUND;

THENCE, SOUTH $42^{\circ}54'13''$ WEST A DISTANCE OF 238.51 FEET TO A $5/8''$ REBAR WITH CAP FOUND;

THENCE, SOUTH $20^{\circ}13'45''$ WEST A DISTANCE OF 106.51 FEET TO A $5/8''$ REBAR WITH CAP FOUND;

THENCE, SOUTH $00^{\circ}32'12''$ WEST A DISTANCE OF 314.14 FEET TO A $5/8''$ REBAR WITH CAP FOUND;

THENCE, SOUTH $39^{\circ}55'47''$ EAST A DISTANCE OF 172.07 FEET TO A CONCRETE NAIL IN WALL FOUND;

THENCE, SOUTH $89^{\circ}35'15''$ EAST A DISTANCE OF 201.17 FEET TO A "X" IN CONCRETE FOUND;

THENCE, SOUTH $00^{\circ}46'34''$ WEST A DISTANCE OF 435.018 FEET TO A PK NAIL AND SHINER SET;

THENCE, NORTH $89^{\circ}09'53''$ WEST A DISTANCE OF 45091 FEET TO A $5/8''$ REBAR WITH A CAP SET;

THENCE, SOUTH $00^{\circ}51'12''$ WEST A DISTANCE OF 4.08 FEET TO A $5/8''$ REBAR WITH CAP SET;

THENCE, NORTH $88^{\circ}09'53''$ WEST A DISTANCE OF 1313.67 FEET TO A POINT;

THENCE SOUTH $00^{\circ}51'12''$ WEST A DISTANCE OF 433.04 FEET TO A $5/8''$ REBAR WITH A CAP FOUND;

EXHIBIT "A-1"

THENCE SOUTH 39°01'12" WEST A DISTANCE OF 7.74 FEET TO A 5/8" REBAR WOTJ CAP FOUND;

THENCE SOUTH 00°41'42" WEST A DISTANCE OF 205.72 FEET TO A 5/8" REBAR WITH CAP FOUND ON THE NORTH RIGHT-OF-WAY OF EXECUTIVE CENTER BOULEVARD AND THE P.C. OF A CURVE TO THE LEFT;

THENCE, 204.81 FOOT WITH THE ARC OF SAID CURVE AND SAID RIGHT-OF-WAY, HAVING A RADIUS OF 1501.76 FEET, A CENTRAL ANGLE OF 07°48'50" AND A CHORD BEARING SOUTH 49°43'45" WEST A DISTANCE OF 204.65 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, WITH SAID RIGHT-OF-WAY SOUTH 45°49'20" WEST A DISTANCE OF 143.41 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, LEAVING SAID RIGHT-OF-WAY NORTH 44°03'09" WEST A DISTANCE OF 7.48 FEET TO A TXDOT R.O.W BRASS CAP FOUND;

THENCE, NORTH 68°23'11" WEST A DISTANCE OF 129.15 FEET TO A TXDOT R.O.W. BRASS CAP FOUND ON THE EAST RIGHT-OF-WAY OFF INTERSTATE HIGHWAY NO.10;

THENCE, WITH SAID RIGHT-OF-WAY NORTH 00°31'57" EAST A DISTANCE OF 105.58 FEET TO A TXDOT R.O.W. MONUMENT WITHOUT A BRASS CAP FOUND;

THENCE, WITH SAID RIGHT-OF WAY NORTH 00°46'52" EAST A DISTANCE OF 1110.09 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

THENCE, WITH SAID RIGHT-OF-WAY NORTH 00°49'37" EAST A DISTANCE OF 942.76 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

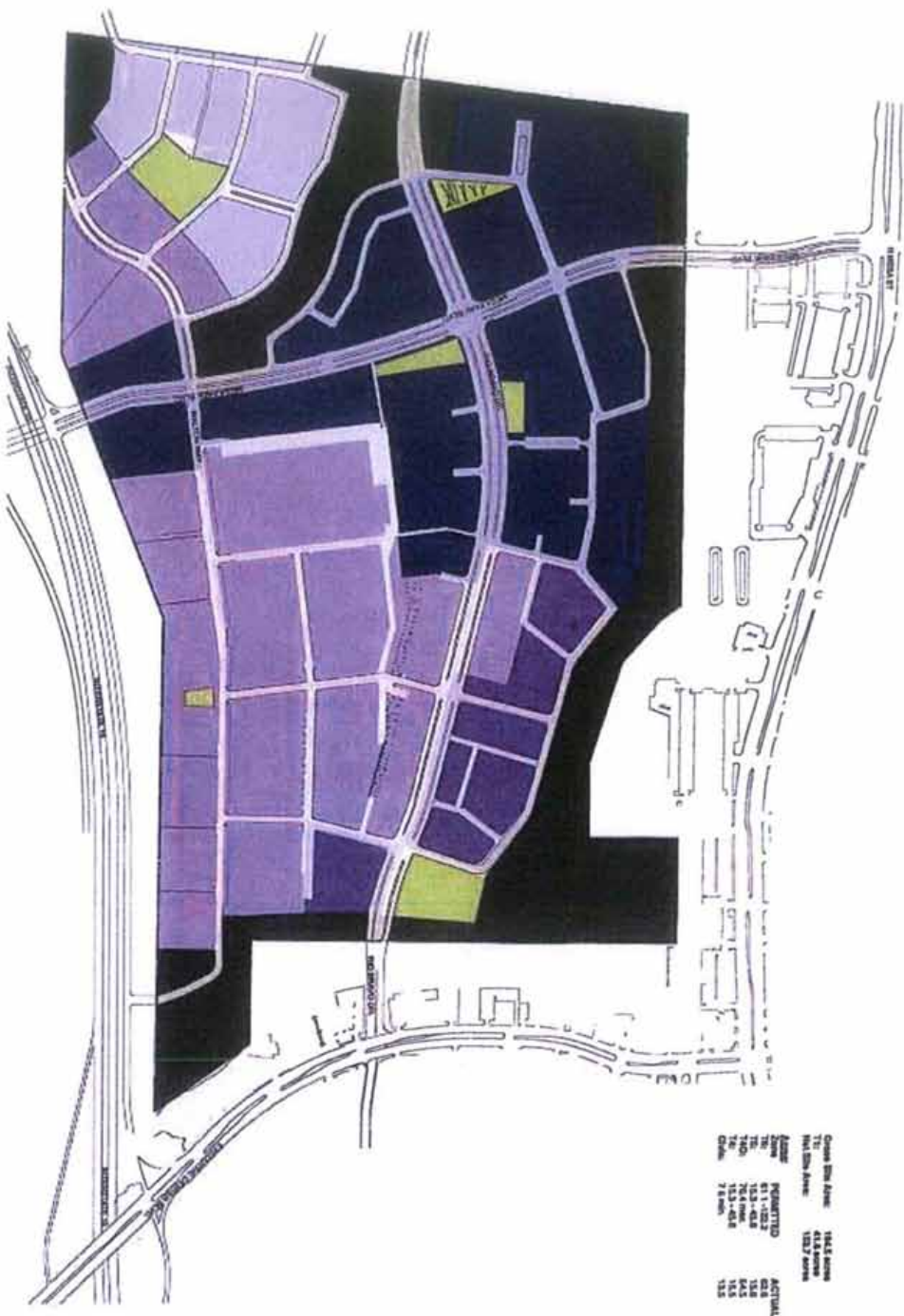
THENCE, WITH SAID RIGHT-OF-WAY NORTH 21°15'05" WEST A DISTANCE OF 941.69 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

THENCE, WITH SAID RIGHT-OF-WAY NORTH 21°19'16" WEST A DISTANCE OF 236.75 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

THENCE, LEAVING SAID RIGHT-OF-WAY NORTH 00°47'22" EAST A DISTANCE OF 236.59 FEET TO A CHISELED "X" ON CONCRETE MONUMENT SET;

THENCE, SOUTH 82°25'29" EAST A DISTANCE OF 2616.36 FEET TO THE POINT OF BEGINNING CONTAINING 196.270 ACRES OR 8,549,568 SQUARE FEET.

Regulating Plan
Scale 1"=200'



ALL-STATE LEGAL®

EXHIBIT

B





STORM WATER IMPROVEMENTS

Pursuant to the Development Agreement, Developer shall be responsible for the design and construction of certain storm water improvements and the EPWU shall participate in the costs not to exceed \$10,359,793.00.

- Developer shall design and construct the two structures within Aldea property at their cost. Aldea shall construct stormwater improvements for the EPWU at a cost of \$7,788,398.92 as set forth in items 3-6 in the attached Aldea –Stormwater Drainage System cost summary.
- Developer will design and construct the adjacent Paragon Channel Basin at a cost of \$2,571,394.08 as set forth in items 7 and 8, in the attached Aldea – Stormwater Drainage System cost summary. EPWU will be responsible for providing necessary access and approvals to Developer for construction of such improvements.
- For all improvements constructed by Developer, EPWU shall pay Aldea as follows: \$4,000,000.00 in April, 2014, and \$3,179,896.50 in April 2015 and \$3,179,896.50 in April 2016 for a total payment of \$10,359,793.00.
- EPWU may prepay all or some of this amount and the amount of payment shall be reduced as follows: Developer agrees that overhead costs shall be prorated from the date of the first payment to the date of the last payment, and that, in the event of prepayment as provided herein, the amount of payment shall be reduced by the prorated overhead amount.





GRANT OF EASEMENT

THIS GRANT OF EASEMENT (the "Easement") is made as of the ____ day of _____ (the "Effective Date"), by Geltmore Aldea LLC ("Grantor"), in favor of EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, the Trustee of El Paso's water and wastewater system (the "Grantee"), collectively the Grantor and Grantee are referred to as the "Parties".

WHEREAS, Grantee is charged with providing storm drainage services for all real property in accordance with rules and requirements adopted by Grantee;

WHEREAS, Grantee adopted a Storm Water Master Plan that recommended certain storm water improvements on property owned by Grantor and described on Exhibit "A" ("Grantor's Property") attached hereto and incorporated herein;

WHEREAS, Grantee requested use the Grantor's Property for the conveyance and retention of storm water;

WHEREAS, the Parties entered into a Developer Participation Agreement ("Agreement") for the construction of Storm Water Improvements described therein on Grantor's Property;

WHEREAS, pursuant to the Agreement, Grantor agreed to grant Grantee an easement on a portion of Grantor's Property described in Exhibit "A" ("Real Estate"), attached hereto and incorporated herein, for the use and maintenance of the Storm Water Improvements;

NOW, THEREFORE, the Parties agree as follows:

1. Easement.

In consideration of the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee an easement to enter upon and use the Real Estate for the sole purpose of storm water conveyance and retention, and maintenance of the Storm Water Improvements.

2. Term.

This Easement is intended to be a perpetual easement provided that Grantee delivers the final payment on or before April 30, 2016, as provided for in the Agreement ("Final Payment"), to Grantor at the address provided for in the Agreement by the date specified therein. This Easement will automatically expire on May 1, 2016 upon failure of Grantee to deliver the Final Payment as set forth herein.

3. Effect of Termination.

In the event of an automatic expiration of the Easement as provided above, Grantee shall have no further right to access or use Grantor's Property, the Storm Water Improvements or to convey or permit to be conveyed any storm water onto the Real Estate.

4. Successors and Assigns and Survival.

Notwithstanding anything to the contrary herein, all provisions of this Easement shall run with the land.

5. Taxes.

Grantor shall be responsible for the payment of all ad valorem taxes assessed against the Real Estate. Grantee shall be responsible for payment of taxes on the Easement. In the event that the taxes on the Real Estate and the Easement and materials and equipment are taxed on a single statement, the Grantee shall reimburse Grantor for the taxes reasonably allocable to the Easement.

6. Assignment.

Grantee shall not have the right to assign or transfer in whole or in part, any of Grantee's rights and obligations hereunder and to the Easement. Nothing contained herein shall grant or be construed to grant to Grantee the right to use the Easement for any purpose other than for the purposes set forth herein.

7. Jurisdiction.

This Easement shall be governed exclusively by the provisions hereof and by the laws of the state in which the Real Estate is located, as the same may from time to time exist without regard to conflicts of laws provisions.

8. Invalidity.

If any term or provision of this Easement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement shall be valid and enforceable to the fullest extent permitted by law.

9. Attorney's Fees.

If any legal action or proceeding arising out of or relating to this Grant of Easement is brought by either party hereto, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, their reasonable attorney's fees, costs and other expenses incurred in the action or proceeding by the prevailing party.

10. Entire Agreement.

This Grant of Easement constitutes the entire agreement between Grantor and Grantee relating to the Easement described herein, and any prior agreement, promises, negotiations, or representations not expressly set forth in this Easement are of no force and effect. Any amendment to this Grant of Easement shall be of no force and effect unless it is in writing and signed by the Grantor and Grantee.

10. "AS IS".

GRANTEE HEREBY WARRANTS AND REPRESENTS THAT GRANTEE IS FAMILIAR WITH THE PHYSICAL CONDITION OF THE EASEMENT AND ITS RESPECTIVE STATE OF REPAIR, HAS HAD OR WILL HAVE SUFFICIENT OPPORTUNITY TO COMPLETE ALL

INSPECTIONS WITH RESPECT TO THE SAME AND HAS ENTERED INTO THIS EASEMENT BASED UPON GRANTEE'S OWN INVESTIGATIONS AND DETERMINATIONS THAT THE ACCEPTANCE OF THE TERMS OF THIS EASEMENT ARE IN GRANTEE'S BEST INTEREST, AND THAT NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE PHYSICAL CONDITION OF ANY OF THE EASEMENT HAS BEEN MADE BY OR ON BEHALF OF GRANTOR, ITS ATTORNEYS, RELATIVES, AGENTS, EMPLOYEES, CONTRACTORS OR REPRESENTATIVES. ACCORDINGLY, GRANTEE WARRANTS, REPRESENTS AND ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES WHETHER EXPRESSED OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE QUALITY OR CONDITION OF ANY EASEMENT RIGHT OR GRANTOR'S REAL ESTATE, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY; (B) THE INCOME TO BE DERIVED; (C) THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON; OR (D) THE COMPLIANCE OF OR BY ANY EASEMENT RIGHT OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY. GRANTEE'S EXECUTION OF THIS AGREEMENT SHALL BE DEEMED ACCEPTANCE OF THE PHYSICAL CONDITION OF THE REAL ESTATE AND THE ENVIRONMENTAL CONDITION WITH RESPECT THERETO.

12. Hazardous Materials.

Grantee agrees to comply at all times and at its sole cost with all valid applicable federal, state and local laws, rules, regulations and safety standards in connection with Grantee's activities hereunder, including without limitation all fire hazard and safety laws and Hazardous Materials Laws applicable in connection with the construction, installation, service, operations, maintenance, repair and service of the Easement, and Grantee's lines, equipment and appurtenances with respect thereto. For purposes of this Agreement, the terms "Hazardous Materials Laws" shall mean any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, *et seq.* the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 741 *et seq.*, the Clean Water Act, 33 U.S.C. § 7401, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, decrees now or hereafter promulgated thereunder.

13. Liens and Encumbrances.

Grantee shall, at all times, keep the Easement and the Real Estate free and clear of mechanic's or materialman's liens arising in connection with Grantee's operations or activities hereunder, and Grantee shall defend, indemnify and hold Grantor and its successors, employees and agents harmless from and against all claims or liens of workers or materialman arising through Grantee.

14. Waiver.

GRANTEE HEREBY EXPRESSLY ASSUMES ALL RISKS OF AND SHALL INDEMNIFY TO THE EXTENT PERMITTED BY LAW AND SAVE GRANTOR HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS OR SUITS OF WHATSOEVER KIND OR

NATURE (INCLUDING ALL ATTORNEYS' FEES, COSTS AND EXPENSES INCIDENT THERETO) FOR OR ON ACCOUNT OF ANY LOSS, DAMAGE, OR INJURY TO ANY PERSONS OR TO GRANTOR'S REAL ESTATE ARISING OUT OF GRANTEE'S NEGLIGENCE OR MISCONDUCT IN THE EXERCISE OF THE RIGHTS GRANTED HEREIN OR ACTIVITIES OR OPERATIONS HEREUNDER INCLUDING THOSE ALLEGEDLY OR ACTUALLY ATTRIBUTABLE TO GRANTORS' ORDINARY NEGLIGENCE, BUT EXCLUDING CLAIMS, DEMANDS, ACTIONS OR SUITS FOR OR ON ACCOUNT OF ANY LOSS, DAMAGE OR INJURY CAUSED BY GRANTORS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, INCLUDING, WITHOUT LIMITATION, INJURY OR DAMAGE WHICH IS ATTRIBUTABLE TO THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES, BUT IN SUCH EVENT GRANTEE SHALL NOT BE RESPONSIBLE FOR THAT PORTION OF ANY LOSS WHICH IS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY (BUT NOT INCLUDING INJURY OR DAMAGE WHICH IS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES).

16. No Partnership.

The parties hereto expressly acknowledge and agree that Grantor and Grantee have not formed, and are not hereby forming, with Grantee and/or any other party, a partnership, joint venture or any other similar entity, and this Agreement is not intended, and shall not be construed, to create any such entity or relationship.

18. Notices.

Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when addressed to the intended recipient at the address provided below, on the date that is: (i) three (3) Business Days after being deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested; (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier, postage fully prepaid; or (iii) sent by fax transmission upon transmission and confirmation of receipt; provided any notice sent by fax transmission will be followed by delivery using method (i) or (ii) deposited on the following Business Day. Any address for notice may be changed by giving notice thereof as provided in this Section. The addresses and fax numbers for notice purposes are as follows:

If to Grantor:

Paul Silverman
Geltmore, Inc.
6211 San Mateo Blvd.NE, Suite 130
Albuquerque, NM 87109-3534

Copy to:

Yolanda Giner
Gordon, Davis, Johnson & Shane, P.C.
4695 North Mesa
El Paso, Texas 79912
Fax: (915) 545-4433

If to Grantee:

El Paso Water Utilities-Public Service Board
Edmund G. Archuleta
President/Chief Executive Officer
1154 Hawkins Blvd.
El Paso, Texas 79961-0001

19. Counterparts.

This Easement may be executed in multiple counterparts that will collectively be deemed an original. Facsimile signatures will carry the same force and effect as original signatures.

In Witness Whereof, this Grant of Temporary Easement has been executed as of the Effective Date.

[SIGNATURES ON THE FOLLOWING SEPARATE PAGE]

GELTMORE ALDEA LLC

By: *Paul Silverman*
Paul Silverman
Its: President

EL PASO WATER UTILITIES -
PUBLIC SERVICE BOARD

By: *Edmund G. Archuleta*
Edmund G. Archuleta
Its: President/Chief Executive Officer

State of New Mexico)
County Bernalillo)

SWORN TO AND SUBSCRIBED BEFORE ME on this 15th day of Nov, 2012, by Paul Silverman, President of Geltmore Aldea LLC.

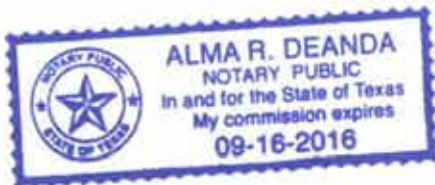


OFFICIAL SEAL
TRACY D RIFFE
Notary Public
State of New Mexico
My Commission Expires 3-9-13

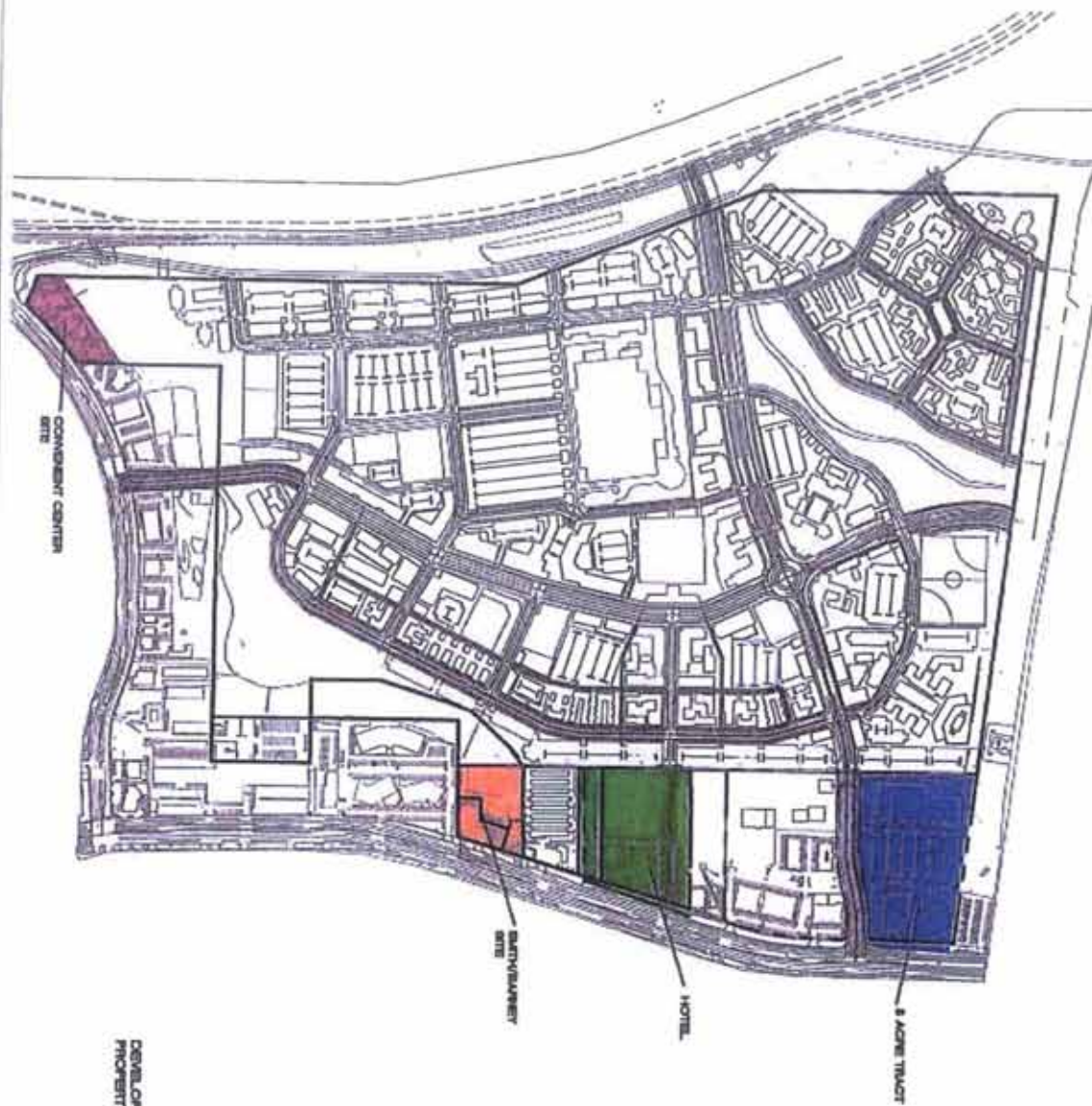
Tracy D Riffe
NOTARY PUBLIC IN AND FOR STATE OF
New Mexico

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the 8th day of November, 2012, by Edmund G. Archuleta, President/Chief Executive Officer on behalf of El Paso Water Utilities-Public Service Board.



Alma R. DeAnda
NOTARY PUBLIC IN AND FOR STATE OF
TEXAS



DEVELOPERS ABUTTING
PROPERTY



EXHIBIT B-1

STORM WATER IMPROVEMENTS

Pursuant to the Development Agreement, Developer shall be responsible for the design and construction of certain storm water improvements and the EPWU shall participate in the costs not to exceed \$10,359,793.00.

- Developer shall design and construct the two structures within Aldea property at their cost. Aldea shall construct stormwater improvements for the EPWU at a cost of \$7,788,398.92 as set forth in items 3-6 in the attached Aldea –Stormwater Drainage System cost summary.
- Developer will design and construct the adjacent Paragon Channel Basin at a cost of \$2,571,394.08 as set forth in items 7 and 8, in the attached Aldea – Stormwater Drainage System cost summary. EPWU will be responsible for providing necessary access and approvals to Developer for construction of such improvements.
- For all improvements constructed by Developer, EPWU shall pay Aldea as follows: \$4,000,000.00 in April, 2014, and \$3,179,896.50 in April 2015 and \$3,179,896.50 in April 2016 for a total payment of \$10,359,793.00.
- EPWU may prepay all or some of this amount and the amount of payment shall be reduced as follows: Developer agrees that overhead costs shall be prorated from the date of the first payment to the date of the last payment, and that, in the event of prepayment as provided herein, the amount of payment shall be reduced by the prorated overhead amount.