



City of El Paso – City Plan Commission Staff Report

Case No: Sunland Commercial District Unit 3 Pond Dedication
Application Type: Pond Dedication Agreement
CPC Hearing Date: June 5, 2014
Staff Planner: Alfredo Austin, 915-212-1604, austinaj@elpasotexas.gov
Location: 1050 Sunland Park
Legal Description Acreage: 0.3651 acres
Rep District: 8
Existing Use: Vacant
Existing Zoning: C-4/sc (Commercial/special contract)
Proposed Zoning: C-4/sc (Commercial/special contract)
Property Owner: Sunland Square, Ltd
Applicant: Sunland Square, Ltd
Representative: Quantum Engineering

SURROUNDING ZONING AND LAND USE

North: C-4 (Commercial) / Vacant
South: C-4 (Commercial) / Vacant
East: C-4 (Commercial) / Pond
West: C-4 (Commercial) / Vacant

THE PLAN FOR EL PASO DESIGNATION: G4 Suburban (Walkable)

APPLICATION DESCRIPTION

The applicant is proposing to dedicate a portion of Lot 2, Block 3, Sunland Commercial District Unit 3 in order to increase the size of the adjacent drainage pond.

DEVELOPMENT COORDINATING COMMITTEE

The Development Coordinating Committee recommends **pending** of Sunland Park Commercial Unit 3 Pond Dedication subject to the following conditions and requirements:

Planning Division Recommendation:

Pending.

City Development Department - Land Development:

No comments received.

Parks and Recreation Department:

No comments received.

El Paso Water Utilities:

No comments received.

El Paso Fire Department:

No comments received.

911

No comments received.

El Paso Electric Company:

No comments received.

Additional Requirements and General Comments:

1. Submit to the City Development Department – Planning Division the following prior to recording of the subdivision.
 - a. Current certified tax certificate(s)
 - b. Current proof of ownership
 - c. Release of access document, if applicable
 - d. Set of restrictive covenants, if applicable
 - e. Deed for property to be dedicated as parkland.

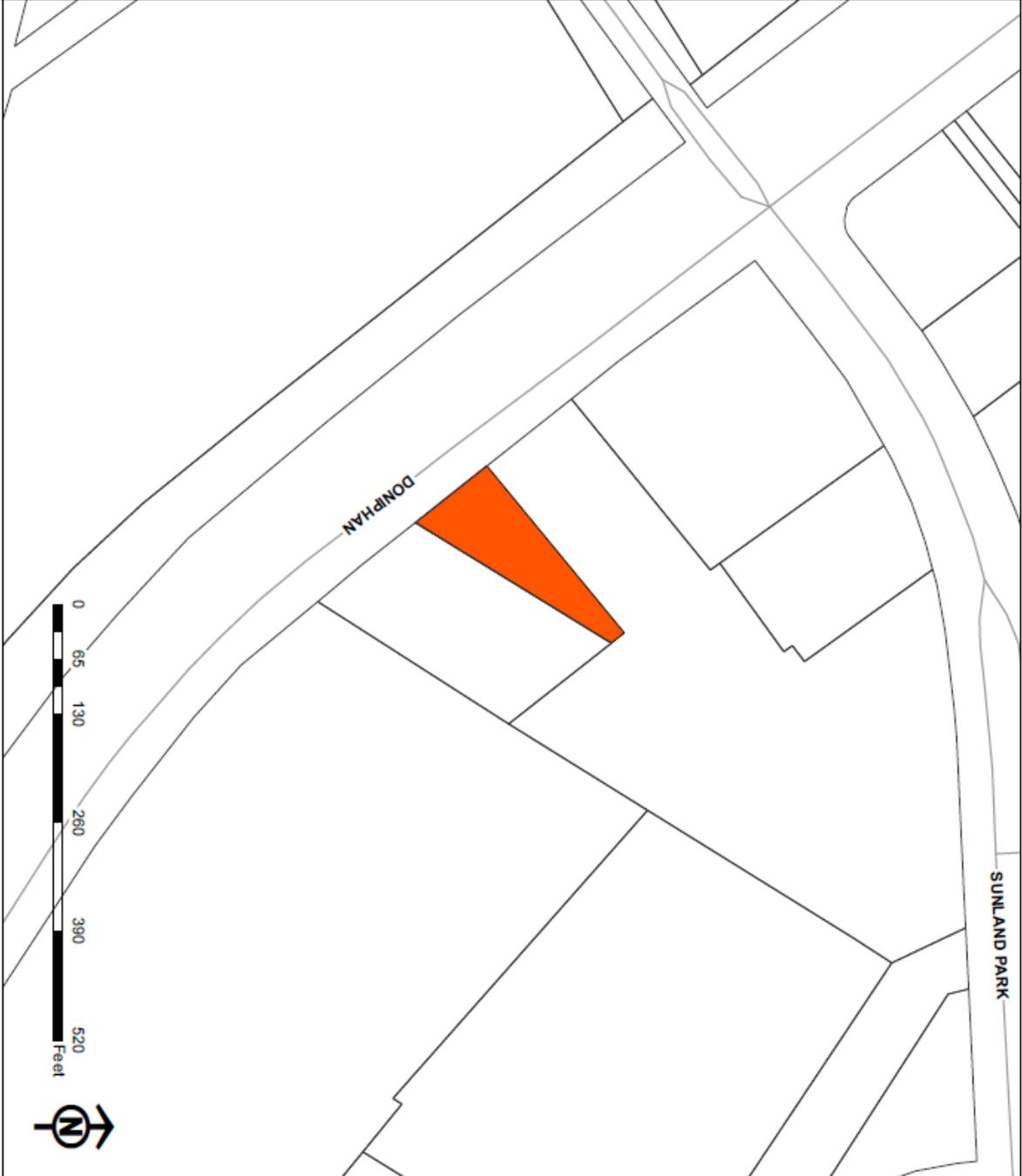
2. Every subdivision shall provide for postal delivery service. The subdivider shall coordinate the installation and construction with the United States Postal Service in determining the type of delivery service for the proposed subdivision. In all cases, the type and location of delivery service shall be subject to the approval of the United States Postal Service.

Attachments

1. Location map
2. Aerial map
3. Pond Dedication Agreement

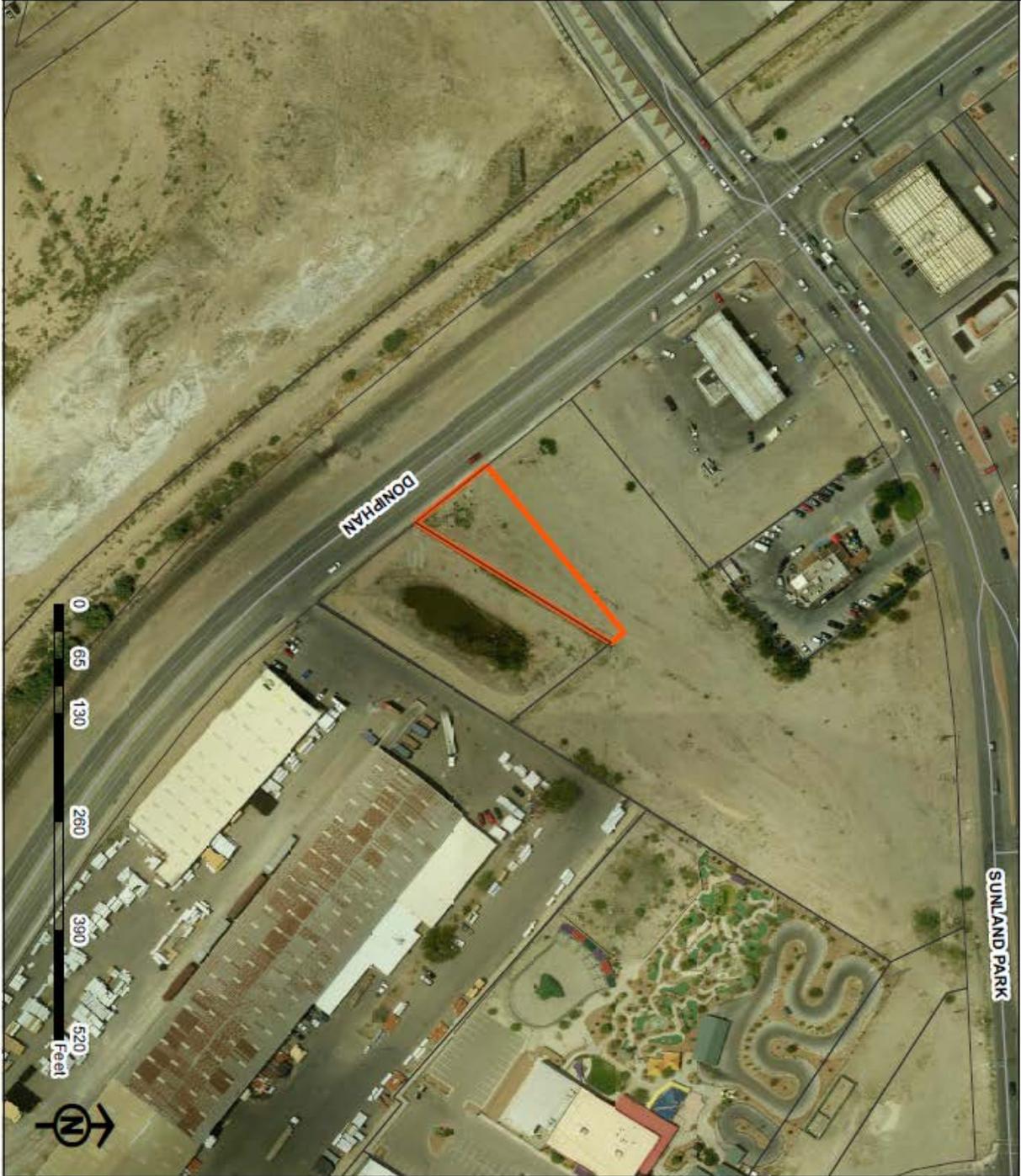
ATTACHMENT 1

**SUNLAND COMMERCIAL DISTRICT UNIT 3
POND DEDICATION**



ATTACHMENT 2

**SUNLAND COMMERCIAL DISTRICT UNIT 3
POND DEDICATION**



ATTACHMENT 3

STATE OF TEXAS)
) **POND DEDICATION AGREEMENT**
COUNTY OF EL PASO)

This Agreement is made this ____ day of _____, 2014, by and between SUNLAND SQUARE, LTD hereinafter referred to as the "Developer," and the CITY OF EL PASO, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the Developer is the owner of a parcel of land containing 0.3651 acre, more or less, being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds and survey attached hereto and made part hereof as Exhibit "A" (the "Pond Site"); and,

WHEREAS, the Developer wishes to dedicate the Pond Site to the City for use as a pond as required by City Code Section 19.19.010 et seq.; and,

WHEREAS, the City desires to accept the dedication provided that the Developer constructs improvements to the Pond Site as described on the Cost Estimate, attached as Exhibit "B" within two years from the date this agreement is approved by City Council; and,

WHEREAS, the El Paso City Plan Commission recommended approval of the dedication of the Pond Site; and,

WHEREAS, the El Paso City Council has approved this agreement (the "Agreement") and has authorized the City Manager to sign this Agreement;

NOW, THEREFORE, the parties hereby agree as follows:

1. **DESCRIPTION:** The Developer, being the owner of the Pond Site, hereby agrees to dedicate said Pond Site to the City for pond purposes.

2. **IMPROVEMENTS:** The Pond Site shall be improved by the Developer in accordance with the requirements of Title 19, the Design Standards for Construction, the Drainage Design Manual, and all other applicable provisions of the City Code as well as the additional provisions of this Agreement.

2.1 Developer is herein authorized to enter the Pond Site at any time for the purpose of completing the improvements, as set out in the Cost Estimate attached hereto as Exhibit "B" (the "Improvements"), which are incorporated herein for all purposes and which must be completed within two years of the approval of the development agreement by City Council. Each item in Exhibit "B" shall be provided by Developer to the Pond Site.

3. **CITY'S PARTICIPATION:** The City shall not have any costs, nor shall the Developer be entitled to any reimbursement of costs, associated with this Agreement.

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4. **TITLE, TAXES and CONVEYANCE:** The Developer agrees to pay the cost of providing a title search, recording costs for the deed on the Pond Site, and further agrees to pay all ad valorem taxes, standby fees and assessments by any taxing authority prorated through the date of acceptance of the deed conveying fee simple title by the City Council.

5. **INSURANCE & BOND:** Throughout the time that the Improvements are under construction (the "Construction Period"), Developer shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS (\$2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property damages from a single occurrence. The City shall be provided with a copy of the policy evidencing such coverage. Such policy shall name the City as additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for 30 days written notice to the City prior to cancellation or material alteration of the insurance coverage.

5.1 **Bond Required.** To ensure the completion of the project and pursuant to Texas Local Government Code Section 212.073, Developer must execute a performance bond for the construction of the Improvements. The bond shall be in the amount equal to 125% of the Cost Estimate (Exhibit B). The bond shall be provided to the Deputy Director of the City Development Department -Planning Division prior to City Council approval of the Agreement. The bond shall be in a form approved by the City. The bond must be executed by a corporate surety in accordance with Texas Government Code Section 2253. The bond shall identify the City as Owner and Obligee and shall bind both Developer's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bond shall expressly provide that Developer's contractor shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction.

6. **INDEMNIFICATION: DEVELOPER UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF DEVELOPER, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES THAT OCCUR DURING THE CONSTRUCTION OF THE IMPROVEMENTS UNDER THIS AGREEMENT.**

7. **TITLE 19 AND DESIGN STANDARDS FOR CONSTRUCTION AND DRAINAGE DESIGN MANUAL ORDINANCE:** All provisions of this Agreement are subject to Title 19, the Design Standards for Construction, and the Drainage Design Manual and all other applicable provisions of the Code, and nothing herein is intended to waive or modify any provision of the Code. It is understood, however, that this Agreement may contain provisions requiring the Developer to do more than the Code requires and the Developer is obligated to comply with such provisions.

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8. **SUCCESSORS AND ASSIGNS:** All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

9. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by a written agreement signed by both parties.

10. **SEVERABILITY:** Every provision of this Agreement is intended to be severable. If any term or provision contained herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

11. **LAW GOVERNING CONTRACT:** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

12. **BINDING AGREEMENT:** The individual signing this Agreement, on behalf of the Developer, acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind the Developer to the terms and conditions of this Agreement.

13. **REPRESENTATION OF COUNSEL:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

14. **NOTICE:** All notices and communications under this Agreement shall be hand-delivered or mailed, postage pre-paid with proof of delivery, to the representative parties at their respective addresses below, unless and until either party is otherwise notified in writing.

City of El Paso,
Attn: Planning Deputy Director
222 S. Campbell
El Paso, Texas 79901
Tel: (915) 212-0085

Sunland Square, LTD
P.O. Box 12730
El Paso, TX 79913
Tel: (915) 584-8242

15. **WAIVER:** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Kristen L. Hamilton
Assistant City Attorney

Carlos Gallinar, Deputy Director for
City Development - Planning

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2014, by JOYCE A. WILSON as City Manager of THE CITY OF EL PASO, a municipal corporation, on behalf of said corporation.

My Commission Expires: _____
Notary Public, State of Texas
Notary's Printed or Typed Name:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2014 by Will S. Harvey as Manager of Sunland Square, LTD, a Texas limited company, on behalf of said limited company.

SUNLAND SQUARE, LTD

By: _____
Will S. Harvey, Manager

ACKNOWLEDGEMENT ON FOLLOWING PAGE

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ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2014, by Will S. Harvey as Manager of Sunland Square, LTD, a Texas limited company, on behalf of said limited company.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

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EXHIBIT A

PROPERTY DESCRIPTION

**Ponding Area
Portion Lot 2, Block 3
Sunland Commercial District Unit 3**

Description of a parcel of land being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas, map of said Sunland Commercial District Unit 3 recorded in book 61, page 25, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in book 3111, page 837, El Paso County Clerks Records, and described as follows:

Commencing for reference at a rebar with cap found at the northwesterly corner of Lot 2, Block 3, Walker Subdivision (recorded in book 78, page 62, El Paso County Clerk's Plat Records), said rebar with cap also lying on the easterly boundary line of said Lot 2; Thence, with said easterly boundary line of Lot 2 and the westerly boundary line of said Walker Subdivision, South 29°11'42" West a distance of 553.01' to the northeasterly corner of Lot 3 (dedicated ponding area) of said Block 1; Thence, with the northerly lot line of said Lot 3, North 40°44'18" West a distance of 150.00' to a rebar with cap stamped "KECO" found at the northwest corner of said Lot 3, and being the "Point Of Beginning";

Thence, with said westerly boundary line of said Lot 3, South 29°11'42" West a distance of 276.01' to a rebar with cap stamped "KECO" found at the southwesterly corner of Lot 3 (dedicated ponding area) of said Block 1;

Thence, with the easterly ROW line of Doniphan Drive (variable width), North 40°44'16" West a distance of 108.70' to a point lying South 40°44'16" East a distance of 75.59' from an angle point of said ROW line;

Thence, leaving said ROW line, North 49°15'46" East a distance of 259.13' to a point;

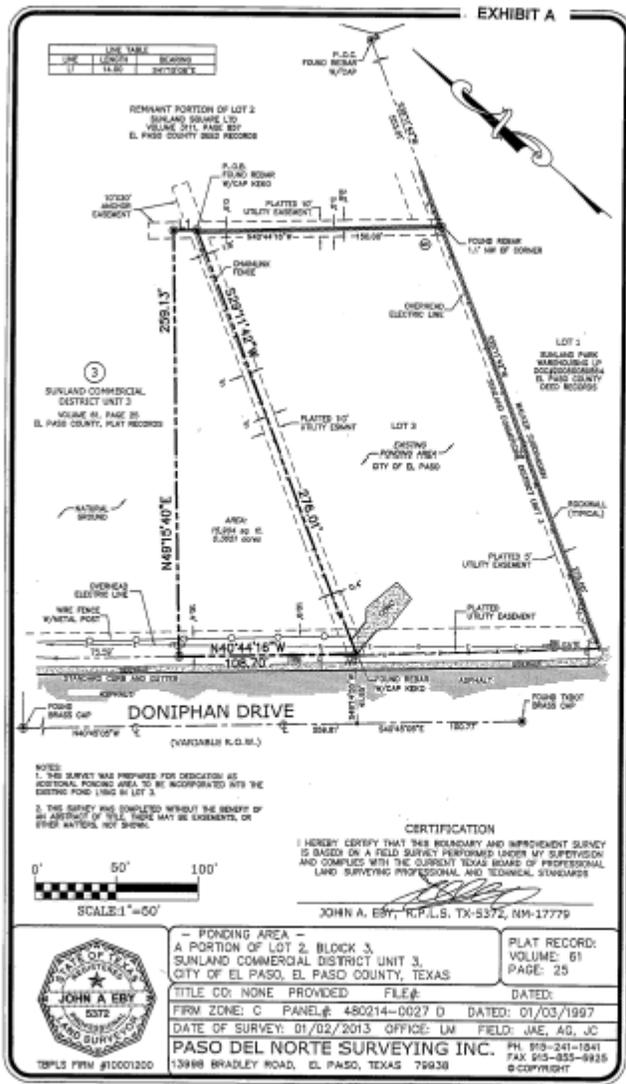
Thence, South 41°15'06" East a distance of 14.00' to the "Point Of Beginning" and containing 15,904 sq. ft. or 0.3651 acres.

Based on a field survey performed under my supervision and dated April 24, 2012.
THIS DESCRIPTION WAS PREPARED FOR DEDICATION AS ADDITIONAL PONDING AREA TO BE INCORPORATED INTO THE EXISTING POND LYING IN LOT 3.


John A Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.
13998 Bradley Road
El Paso, TX. 79938
915-241-1841





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EXHIBIT B



TO: The City of El Paso
FROM: Will S. Harvey
DATE: February 24, 2014
RE: Valley Crossing Retail Center VC SN13-00028 and 00029

To Whom it May Concern:

We received pricing from KERE Inc. to make improvements to the existing pond located adjacent to the above mentioned development. The prices from the contractor to improve the pond per the already approved plans are as follows:

\$58,500	Additional Dirtwork
20,025	Rockwalls
3,005	Chain Link
552	Depth Gauge
2,319	Additional Concrete
1,352	Dams
<u>\$85,671</u>	Total

Please feel free to contact me with any questions at 915.584.8242 or will@epriverbend.com.

Regards,

A handwritten signature in black ink, appearing to read 'W. Harvey', written over a horizontal line.

Will S. Harvey
EP Riverbend Development, LLC

4700 Doniphan, Suite A • P. O. Box 12730 • El Paso, Texas 79913 • (915) 584-8242 • FAX (915) 613-2648

Valley Crossing Pond Improvements

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