



City of El Paso – City Plan Commission Staff Report

Case No SUAX13-00002
Application Type Annexation (Agreement Only)
CPC Hearing Date October 23, 2014
Staff Planner Nelson Ortiz, 212-1606, ortiznx@elpasotexas.gov

Location West of Zaragoza at Pebble Hills
Legal Description Being Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railroad Company Surveys, El Paso County, Texas

Acreage 5.4325 acres
Rep District Adjacent to Representative District 5
Existing Use Vacant
Existing Zoning ETJ
Proposed Zoning C-3 (Commercial)

Property Owner Tomly Corporation
Applicant Tomly Corporation
Representative Conde, Inc.

Distance to Park: Adjacent to Tierra Del Este #27 Park
Distance to School: Roberto Ituarte Elementary and Raphael Hernando Middle (.75mi.)

SURROUNDING ZONING AND LAND USE

North: N/A / East ETJ / Vacant
South: C-3/c / Vacant
East: C-4/c / Vacant
West: R-5 / Park / Residential Development

PLAN EL PASO DESIGNATION: G4 Suburban (Walkable)

NEIGHBORHOOD ASSOCIATIONS: Las Tierras Neighborhood Association

General Information:

The applicant is requesting to annex land located within the City of El Paso's Extra Territorial Jurisdiction (ETJ). In addition to the 5.0078 acres owned by the applicant, a .4247-acre portion of county ROW is also proposed for annexation. The annexation is being requested to accommodate roadway improvements for the future extension of Pebble Hills Boulevard. The extension as well as the remnant portions on either side are proposed for rezoning to C-3 (Commercial) at the time of annexation and will be subdivided soon after.

Staff Recommendation:

The Development Coordinating Committee (DCC) recommends **approval** of this Annexation Agreement.

(Annexation Agreement – See Attachment 5)

The recommendation is based on the following:

Plan El Paso G-4 Suburban: Applies to modern single-use residential subdivisions and office parks, large schools and parks and suburban shopping centers. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.

Additionally, the subject property abuts the city limits and the annexation will close a portion of an existing gap within the city limits.

Findings:

The Commission must determine the following:

1. Will the annexation protect the best interest, health, safety and welfare of the public in general?
2. What is the relation of the proposed change to the city's Comprehensive Plan?
3. What effect will the annexation have upon the natural environment social and economic conditions and property values in the vicinity and in the City as a whole?

City Development Department - Planning Division:

Approval, no objection. The annexation and future extension of Pebble Hills will complete a major arterial on the city's Major Thoroughfare Plan.

El Paso Police Department:

No objection.

City Development – Land Development:

We have reviewed above application and have no comments.

Sun Metro:

Sun Metro recommends the applicant coordinate with staff in identifying a potential location for the placement and construction of a future bus stop.

Fire Department:

No comments received.

Parks:

No comments received.

El Paso Water Utilities – Stormwater:

We have reviewed the annexation described above and provide the following comments:

Pebble Hills Extension- Annexation

1. EPWU Stormwater Utility has no objection to the proposed Pebble Hills Extension- Annexation.

El Paso Water Utilities – Water and Sanitary Sewer Service:

The EPWU agrees with the language but asks that a signature block be included for the EPWU.

County of El Paso:

The County has no comments or objections with the proposed annexations related to the extension of Pebble Hills west of Zaragoza.

TxDOT:

No comments received.

Attachments:

Attachment 1: Location Map

Attachment 2: Aerial Map

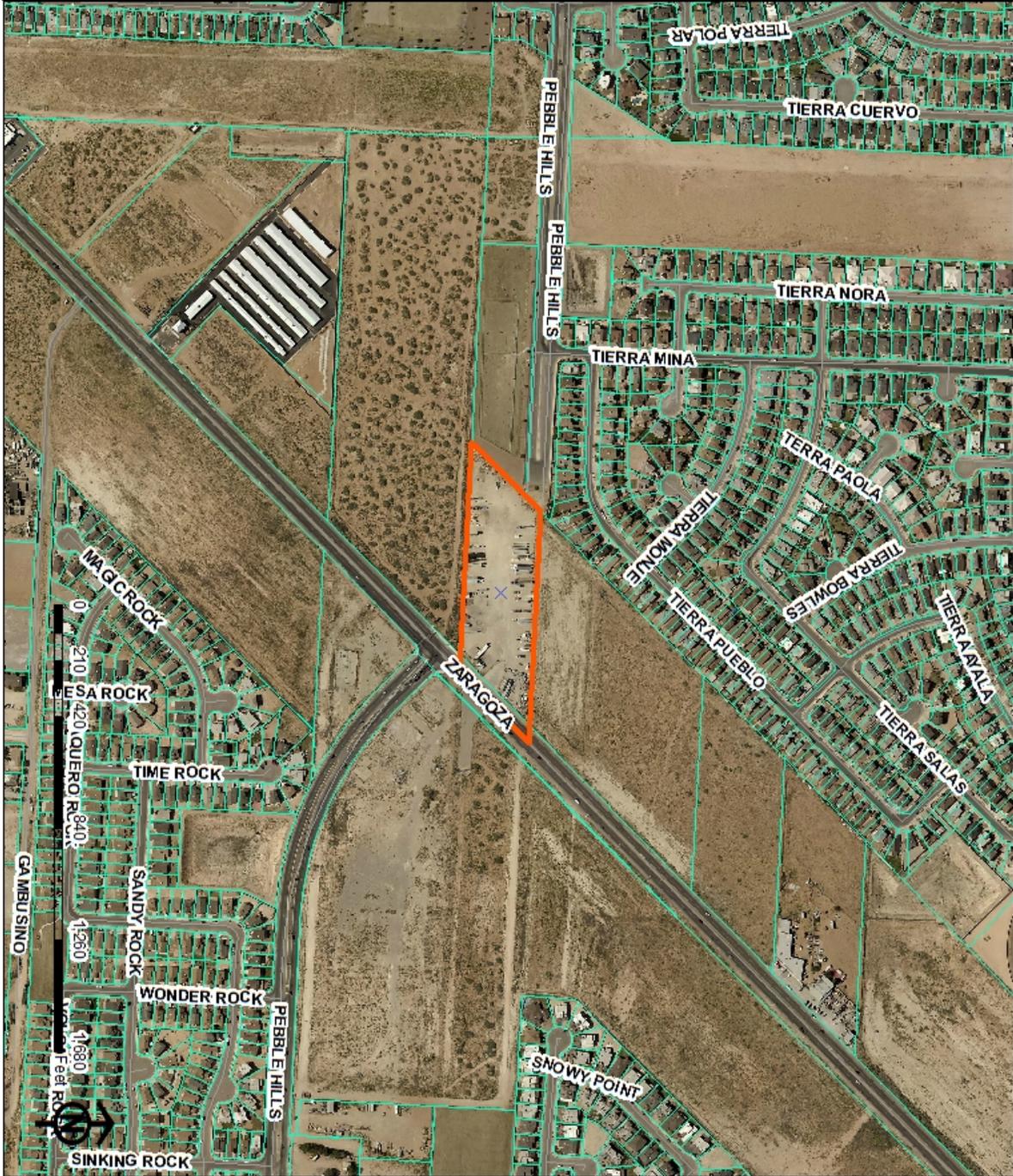
Attachment 3: Zoning

Attachment 4: Pebble Hills Extension Proposed Cross-Sections

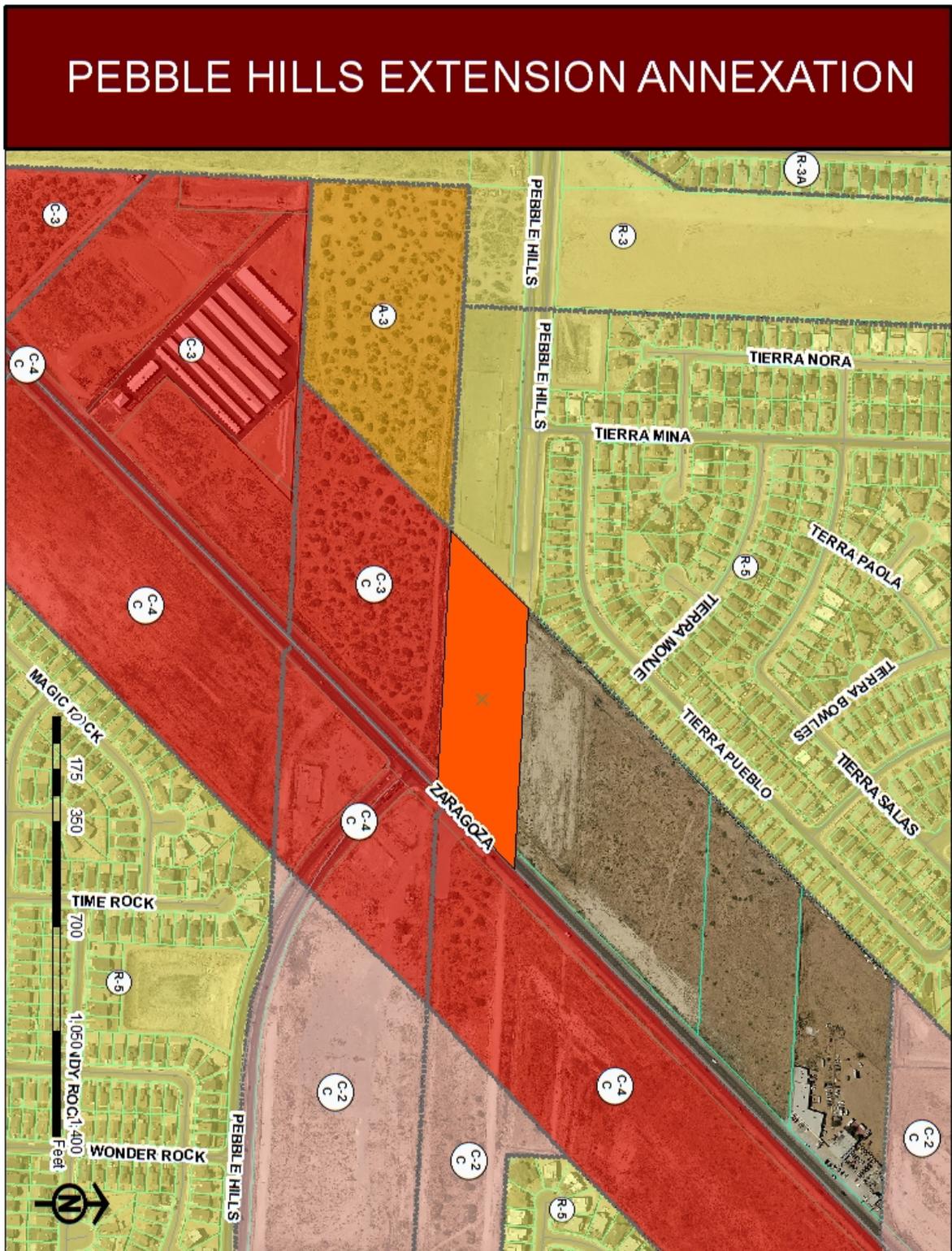
Attachment 5: Annexation Agreement

Attachment 2: Aerial Map

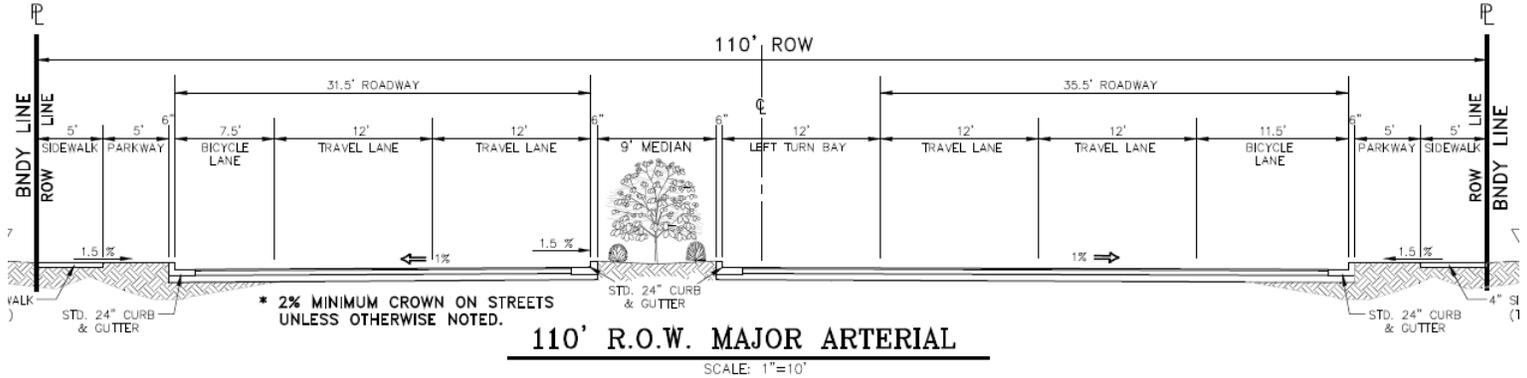
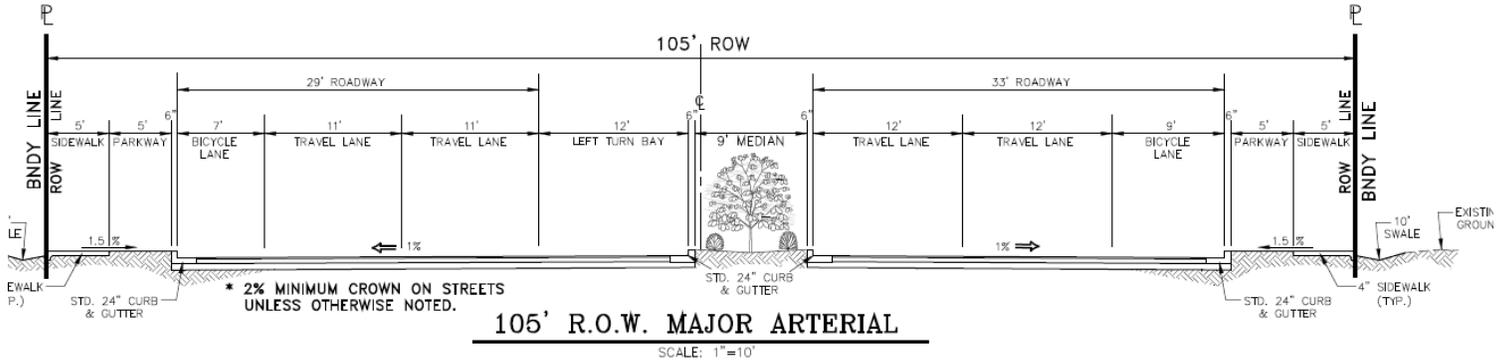
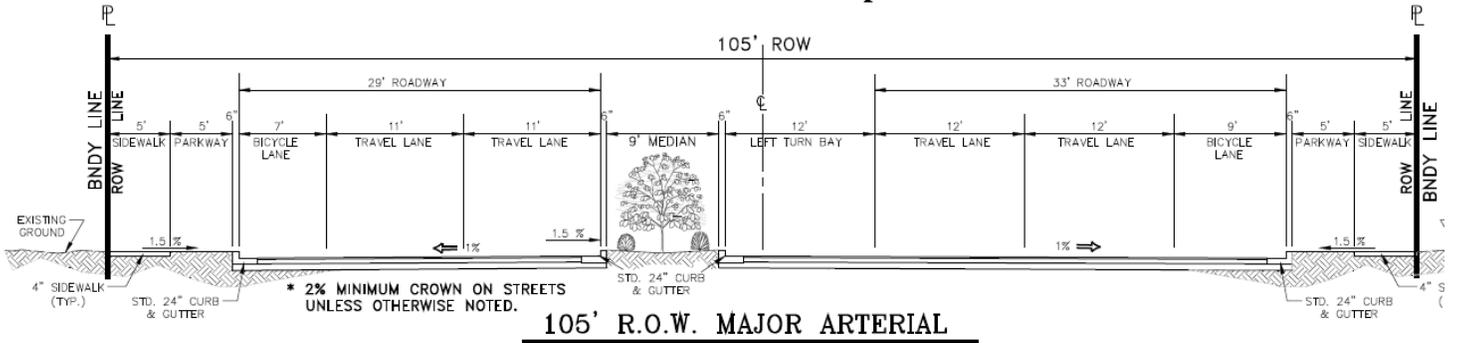
PEBBLE HILLS EXTENSION ANNEXATION



Attachment 3: Zoning



Attachment 4: Pebble Hills Extension Proposed Cross-Sections



the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. Prior to the issuance of any building permits, a detailed site development plan for any commercial developments shall be reviewed and approved as per the El Paso City Code in effect on the date of this Agreement.
2. No off premise signs shall exist on the Property at the time of annexation.
3. Project trees required as part of Title 18 landscaping requirements shall be placed as a visual screen within a 10 foot landscape buffer along any areas abutting residential uses and parks. The buffer and landscape material shall be credited towards the landscape requirement in Title 18.
4. Owner understands that a Traffic Impact Analysis (TIA) may be required by Title 19 at the time of platting. Owner agrees to be responsible for contributing to the cost of traffic mitigation ("Improvements") if the TIA indicates are necessary, attributable and proportional (the Owner's proportionate share) to the development of the Property.

Three: Upon annexation, the City shall acquire a portion of the property for the future Pebble Hills extension, as shown in Exhibit C. Within 90 days of passage of the ordinance annexing Property, Owner and City shall jointly apply to subdivide the property in accordance with the procedures of Title 19 (Subdivisions) of the Code in effect at the time this Annexation Agreement is approved by City Council. The City shall dedicate as ROW the property it acquires from Owner for the Pebble Hills extension. City shall be solely responsible for the design and construction of the future Pebble Hills extension. Owner shall be permitted future access to Pebble Hills through this property.

Four: EPWU, at their cost, has agreed to extend a 24-inch diameter water main from the western limits of the owner's property to connect to an existing water main located at the Pebble Hills/Zaragoza intersection, east of Zaragoza Road.

Included is a 16-inch diameter water main stub-out to the north parallel to Zaragoza within a 20 feet wide easement, this will provide a water connection for a future water main extension for future developments. The easement shall extend along the entire frontage of the property parallel to Zaragoza Road, adjacent to the Holly easement. The EPWU will also construct or pay to construct an 8-inch diameter water main stub-out to the south parallel to Zaragoza Road to provide a water connection for a future water main extension for future developments to the south. Also included are two 6-inch service stub-outs to address water service connections for the proposed Lots 1 and 2 of the proposed plat.

EPWU, at their cost, will extend an 8-inch diameter sanitary sewer main from the western limits of the owner's property to approximately 300 feet east. Wastewater service to Lots 1 and 2 of the proposed plat will be available from two 6-inch diameter service stub-outs, and will also provide an 8-inch diameter stub-out to the north at the western limits of the project to provide a connection for a future sanitary sewer main extension for future development.

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Both water and sanitary sewer main extensions will be the future developer's responsibility and will require coordination with EPWU.

Owner understands and agrees that Owner will be responsible for paying any other fees required by the Public Service Board's Rules and Regulations as well as payment of water and wastewater annexation fees to the El Paso Water Utilities-Public Service Board for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system as follows and associated wastewater service connection:

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
Less than 1"	939.00	166.00
1"	2,349.00	416.00
1 1/2"	4,697.00	832.00
2"	7,515.00	1,331.00
3"	15,029.00	2,662.00
4"	23,483.00	4,160.00
6"	46,966.00	8,319.00
8"	87,357.00	15,474.00
10"	124,929.00	22,129.00

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No.1, Sec.7(J)

The water and wastewater annexation fee shall be increased by three (3) percent on December 1, 2014 and each year thereafter, compounded annually.

Payment of the water and wastewater annexation fee shall be due at the time of application for service. New/additional water and/or wastewater connections shall pay the appropriate annexation fees. Existing water and wastewater connections are not subject to these fees. The annexation fee set forth herein shall not be increased in relation to the Property nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

Five: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing Property to the City. The aerial and other evidence shall be submitted to the Zoning Administrator in the City Development Department of the City for validation of such non-conforming lot, use, or structure within the Property.

Owner acknowledges that pursuant to City Regulations, upon the annexation of the Property, the Property shall be classified to R-F (Ranch-Farm) for zoning purposes. Owner has submitted an

application for rezoning of the property from the default R-F (Ranch-Farm) to a C-3 commercial zoning classification suitable for future development.

City agrees to process the zoning application in conjunction with the annexation hearing process. The public hearings by the City Plan Commission and the City Council on the annexation and the rezoning for the Property shall be held at the same hearings.

The City reserves the right to place the following conditions on the property which are necessitated by and attributable to the increase in use generated by the change in zoning in order to protect the health, safety, and welfare of the abutting property owners and the residents of the City.

1. Prior to the issuance of any building permits, a detailed site development plan for any commercial developments shall be reviewed and approved as per the El Paso City Code in effect on the date of this Agreement.
2. No off premise signs shall exist on the Property at the time of annexation.
3. Project trees required as part of Title 18 landscaping requirements shall be placed as a visual screen within a 10 foot landscape buffer along any areas abutting residential uses and parks. The buffer and landscape material shall be credited towards the landscape requirement in Title 18.

Six: The City hereby agrees to pay all annexation recording fees.

Notice: Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

- (1) CITY: City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, Texas 79901

Copy to: City Clerk
Same Address as above

- (2) OWNER: Tomly Corporation
306 E. Paisano
El Paso, TX 79901

Copy to: Conrad Conde

Conde, Inc.
6080 Surety Dr., Ste. 100
El Paso, TX 79905

Copy to: Jorge Molinar
jorgelopez@lopezsaroldi.com
915-838-3900

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Successors and Assigns: This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land-use regulations that may apply to a specific lot.

Remedies: This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty- (30-) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event that any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes,

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hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inabilities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised here from, and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Owner to be material to the overall purpose and operation of this Agreement. If the City or Owner determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to disannex the Property. If the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

Entire Agreement: This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

Governing Law, Jurisdiction & Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

No Third-Party Beneficiary: This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

Waiver: Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Reservation of Rights: to the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Further Documents: Each Party agrees that at any time after execution of this Agreement, it will upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effect the terms of this Agreement.

Incorporation of Exhibits and Other Documents by Reference: All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Effect of State and Federal Laws: Notwithstanding any other provisions of this Agreement, each Party in carrying out the terms of this Agreement shall comply with all applicable State and Federal laws.

Headings: The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

Ambiguities: In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

Counterparts: It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

Authority for Execution: Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Karla M. Nieman
Assistant City Attorney

Mathew S. McElroy, Director
City Development Department

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____ 2014, by Tomás González, as City Manager of the City of El Paso, Texas

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KMN

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2014.

Owner(s): Tomly Corporation
By: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____ 2014, by _____, as _____ of County of El Paso.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

Exhibit A Metes and Bounds Description

Prepared For: The City of El Paso
December 9, 2013
(Pebble Hills Extension)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas and a portion of Zaragoza Road (U.S. 659) being more particularly described by metes and bounds as follows:

Commencing for reference at an existing brass disk city monument at the centerline intersection of Pebble Hills Blvd. and Tierra Mina Dr. from which an existing brass disk city monument at the centerline intersection of Tierra Mina Dr. and Tierra Galvez Ct. bears North 00°32'46" West a distance of 501.26 feet; Thence along the centerline of Pebble Hills Blvd., South 89°56'52" East a distance of 489.43 feet to a point of curve; Thence leaving said centerline, North 84°34'40" East a distance of 104.75 feet a found ½" rebar with cap marked TX 5152 on the common line of tract 1C and 1D, Section 39, Block 79, Township 2, Texas and Pacific Railway company Surveys For The "TRUE POINT OF BEGINNING";

Thence along said common line, North 89°57'01" East a distance of 869.39 feet to a point on the centerline of Zaragoza road;

Thence along said centerline, South 42°34'01" West a distance of 370.00 feet to a point on the common line of Tract 1C, Section 39, Block 79, Township 2, and Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said common line, South 89°57'17" West a distance of 868.96 feet to a set ½" rebar with cap marked TX 5152 on the easterly line of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El Paso County, Texas;

Thence along said line, North 42°31'33" East a distance of 369.66 feet to the "TRUE POINT OF BEGINNING" and containing 5.4325 acres of land more or less.

Note: Bearings based on centerline monuments on Pebble Hills Blvd. and Tierra Mina Dr. per Plat of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El County, Texas


Ron R. Conde R.P.L.S. No. 5152
Job no: 613-61



Exhibit B Survey Map

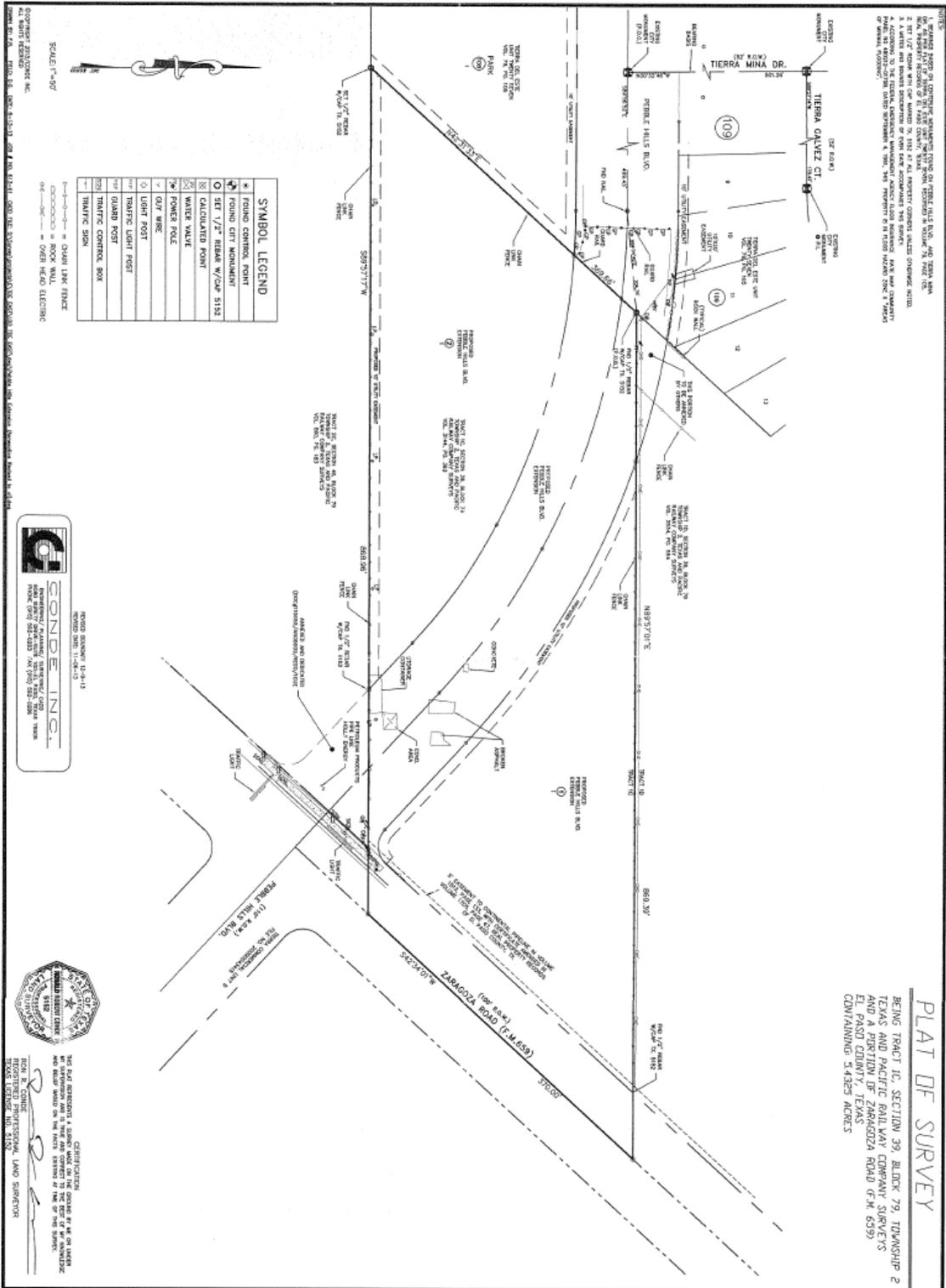


Exhibit C Annexation Plan

