

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Development Services Department/Planning Division

AGENDA DATE: January 30, 2007

CONTACT PERSON/PHONE: Kelly Carpenter (4193)

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign a Development Agreement by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD and EL PASO OUTLET CENTER, LLC to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's West Extraterritorial Jurisdiction and containing 80.65 acres; in accordance with Subchapter G, Chapter 212 of the Texas Local Government Code, and subject to the affirmative approval and execution of same agreement by the El Paso Water Utilities-Public Service Board.

(West Extraterritorial Jurisdiction - Adjacent to District #1)

Development Services Department-Planning Division, Kelly Carpenter, 541-4193]

BACKGROUND / DISCUSSION:

The proposed development agreement is for a property located in northwest El Paso, north of Talbot Road and west of Desert South Boulevard. The owners are proposing construction of an outlet mall on the property. Portion of the property is inside the city limits while the remainder is outside the city limits. There was a tax abatement agreement entered into by the City and the owner recently concerning the mall property. The agreement outlines the terms under which the annexation of the property will occur.

PRIOR COUNCIL ACTION: Tax Abatement Agreement.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION:

The City Plan Commission (CPC) and Development Coordinating Committee both recommended approval of the agreement. The CPC recommended that after annexation that the most easterly property (site of the proposed mall) be considered for C-4 (Commercial) zoning. That the most westerly portion of the property identified as future development in the development plan continue as R-F (Ranch Farm) zoning after annexation until such time as the owner is ready to develop at which time the owner will be required to submit for rezoning and also be required to submit for approval of a detailed site development plan.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, El Paso Outlet Center, LLC are the owners of record (collectively, the "Owners") of the real property (collectively, the "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, the City desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

WHEREAS, Owners, after full consideration, accept the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

WHEREAS, the City, after due and careful consideration, has concluded that the annexation of the Property on the terms and conditions hereinafter set forth is in the best interest of the City to protect and provide for the public health, safety, morals and general welfare; and,

WHEREAS, the PSB, after due and careful consideration, has concluded that the annexation of and supply of water and wastewater to the Property on the terms and conditions hereinafter set forth is in the best interest of the PSB; and the PSB's role is further set forth in this Agreement, and includes the provision, regulation, and connection of the water and wastewater system and rates inside and outside of the City, to protect and provide for the public health, safety, morals and general welfare; and,

WHEREAS, the parties desire to utilize the provisions of Subchapter G, Chapter 212, Local Government Code to agree on such matters as the method and timing of annexation, the regulations that are to be applicable to the Property before and after annexation, the provision of services to the Property, and related matters,

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Development Agreement by and between the City, PSB, and El Paso Outlet Center, LLC to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's West Extraterritorial Jurisdiction and containing 80.65 acres; in accordance with Subchapter G, Chapter 212 of the Texas Local Government Code, and subject to the affirmative approval and execution of same agreement by the El Paso Water Utilities-Public Service Board.

SIGNATURES ON FOLLOWING PAGE

PASSED AND APPROVED this 30 day of January 2007.

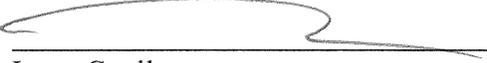
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

07 JAN 25 AM 11:52
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THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2007 (the "Effective Date") by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), acting through the City Council of the City, and the **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD** (hereinafter referred to as the "PSB"), and **EL PASO OUTLET CENTER, LLC (hereinafter referred to as "owner")**;

WHEREAS, El Paso Outlet Center, LLC is the owner of record of the real property described in Exhibit "A", which is attached hereto and made a part hereof (which real property is hereinafter referred to as the "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

WHEREAS, Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

WHEREAS, the City, after due and careful consideration, has concluded that the annexation of the Property on the terms and conditions hereinafter set forth is in the best interest of the City to protect and provide for the public health, safety, morals and general welfare; and,

WHEREAS, the PSB, after due and careful consideration, has concluded that the annexation of and supply of water and wastewater to the Property on the terms and conditions hereinafter set forth is in the best interest of the PSB; and the PSB's role is further set forth in this Agreement, and includes the provision, regulation, and connection of the water and wastewater system and rates inside and outside of the City, to protect and provide for the public health, safety, morals and general welfare; and,

WHEREAS, the parties desire to utilize the provisions of Subchapter G, Chapter 212, Local Government Code to agree on such matters as the method and timing of annexation, the regulations that are to be applicable to the Property before and after annexation, the provision of services to the Property, and related matters.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ONE: Unless the context requires otherwise, the following terms and phrases used in this Agreement shall have the meanings set out below:

07 JAN 25 AM 11:52
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"Agreement" means this Development Agreement by and between the City, the PSB, and the Owner.

"Annexation Fee" means the annexation fee described in Section Nine of this Agreement previously adopted by the Board of the PSB.

"City" means the City of El Paso, Texas, a home rule municipality situated in El Paso County, Texas.

"City Council" means the City Council of the City or any successor governing body.

"City Regulations" shall mean all duly enacted ordinances, rules, and regulations of the City, including the Code, the Subdivision Regulations, and the PSB Regulations.

"Code" shall mean the El Paso Municipal Code.

"Development Plan" shall mean the plan for development of the Property attached to this Agreement as Exhibit "B".

"District" shall have the meaning set forth in Section Sixteen.

"Effective Date" means the date set forth in the first paragraph of this Agreement.

"New Regulations" shall mean City Regulations, or amendments to City Regulations, enacted after the Effective Date.

"Nominate" shall refer to the action of the Owner in submitting to the City a nomination.

"Nomination" means a written notice and application requesting annexation of the portion of the Property described in the notice.

"Owner" means El Paso Outlet Center, LLC being the owner of the real property described by metes and bounds on Exhibit "A".

"Party" or "Parties" means a party or the parties to this Agreement, being the City, the PSB, and the Owner.

"Property" shall mean the 80.65-acre tract of land described by metes and bounds in Exhibit "A".

"PSB Facilities" shall mean water and wastewater facilities to be constructed by and at the expense of the PSB, or constructed by the Owner under developer participation contracts executed in accordance with Chapter 212 of the Texas Local Government Code pursuant to which the PSB would reimburse the Owner for the costs in accordance with PSB Regulations in effect as of the Effective Date of this Agreement.

CITY CLERK DEPT.

"PSB" or "Public Service Board" shall mean the El Paso Water Utilities Public Service Board, the trustee and governing board of the El Paso Water Utilities.

"PSB Regulations" shall mean the duly adopted rules and regulations of the PSB.

"Subdivision Coordinator" shall mean the subdivision coordinator referenced in the Subdivision Regulations.

"Subdivision Regulations" shall mean the regulations in Title 19 of the El Paso Municipal Code.

"Vesting Statute" shall mean Chapter 245, Texas Local Government Code.

TWO: The Property shall be developed in an orderly manner from adjacent existing development. In accordance with Texas Local Government Code Section 212.172(g), the Parties agree this Agreement constitutes a permit under Chapter 245 of the Texas Local Government Code. Owner expressly waives any and all vested rights accrued under this Agreement and agrees to the provisions related to vested rights as provided herein. Owner shall not file an application for the City's approval a subdivision plat for any portion of the Property for thirty (30) days after the Effective Date. Within ninety (90) days following the recording of the subdivision plat for the Property but not later than March 31, 2007, the City shall provide to the Property all of the municipal services provided inside municipal boundaries. The scheduling of water and wastewater services to the Property shall be in accordance with the provisions of Section Nine.

THREE: The City agrees to annex the Property in accordance with the terms and conditions of this Agreement, provided that the terms and conditions of this Agreement are met by the Owner. The Owner shall submit and initiate an application for annexation by filing a Nomination with the City no later than thirty (30) days after the Effective Date of this Agreement.

Within one hundred twenty (120) days, the City shall annex the Property through passage of an annexation ordinance in accordance with applicable state law provisions regarding public notice and hearings. To the extent allowed by law, the enactment of an ordinance annexing the Property shall be the only procedure required of the City to annex the Property.

FOUR: Owner hereby agrees that the development of the Property shall be in accordance with the City Regulations, including the PSB Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement. Pursuant to Subchapter G, Chapter 212, Local Government Code, the City and Owner agree that, except as otherwise provided herein, the City Regulations shall be applicable to the Property on the Effective Date. Notwithstanding the Vesting Statute, the City may apply New City Regulations to any portion of the Property that is not the subject of a subdivision plat filed for approval with the City, provided the New City Regulations are otherwise valid and are applied equally to other similarly situated areas of the City. However, the Vesting Statute shall apply to a portion

CITY CLERK DEPT.

of the Property on and after the date a subdivision plat application is filed for approval with the City relating to such portion of the Property.

FIVE: The City's review and approval of any submissions by Owner will not be unreasonably withheld or delayed. The City will review any plans, plat or other filing by Owner in accordance with the City Regulations, state law and this Agreement. If any submittal is not approved, the City will provide written comments to Owner specifying in detail all of the changes that will be required for the approval of the submitted application.

The City acknowledges that timely City reviews are necessary for the effective implementation of Owners' development program. Therefore, the City agrees that it will comply with all statutes and City Regulations establishing time periods for development reviews.

The Development Plan attached hereto has been prepared in accordance with the requirements of the current Subdivision Regulations. In the event that the Subdivision Regulations or zoning code are hereafter amended, Owner shall revise the Development Plan to conform to the revised Subdivision Regulations and zoning code with respect to those portions of the Property for which an application for a subdivision plat has not been filed.

SIX: Owner hereby agrees that construction of structures on the property be in accordance with building permits already issued for the property. Owner shall apply for and secure approval of a subdivision plat in accordance with the procedures of the Subdivision Regulations.

SEVEN: On and after the Effective Date, the Property may be developed in a manner consistent with the commercial zoning classifications as shown in the Development Plan. Upon the annexation of a portion of the Property, such portion shall be automatically classified as R-F (Ranch Farm) for zoning purposes, but such classifications shall not affect (i) any structure on which construction commenced prior to the annexation or (ii) any development allowed under a subdivision plat, which was approved prior to annexation. In addition, Owner may petition the City, at any time, and at Owner's expense, for rezoning of the Property (or portion thereof) as provided in the Code. In order to complete the development in accordance with the Development Plan, portion of the Property described in the attached Exhibit "C" will need to be re-zoned to C-4 (Commercial) and R-F (Ranch Farm) for the parcel identified in the attached Exhibit "D". The owner will be required to submit a detailed site development plan for review and approval per the requirements of the Code, prior to the issuance of building permits for that portion of the property identified in Exhibit "D".

EIGHT: Owner agrees to provide for the payment of park fees for subdivisions processed for the property to the extent required by the City Regulations

TEN: In addition to any other fees required by PSB Regulations, Owner agrees to pay an Annexation Fee to the El Paso Water Utilities for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system (regardless of the

CITY CLERK DEPT.

timing of the annexation of the Property by phases) as follows:

<u>Meter Size</u>	<u>WEST ETJ Water (\$)</u>	<u>WEST ETJ Wastewater (\$)</u>
5/8" x 3/4"	1,102	0
1"	2,718	0
1 1/2"	5,510	0
2"	8,816	0
3"		0
	17,632	
4"	27,550	0
6"	55,100	0
8"		0
	102,853	
10"		0
	146,933	

CITY CLERK DEPT.
 07 JAN 25 AM 11:53

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

The Annexation Fee shall be increased by three (3) percent on December 1, 2007 and each year thereafter, compounded annually. Payment of the Annexation Fee shall be due at the time of application for connection of an individual meter to the water system. Notwithstanding the adoption of New City Regulations, the Annexation Fee set forth above 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.

The PSB agrees to impose on new Westside developments that are annexed into the City after the Effective Date, or that are located in the Westside PSB Planned Service Area and to which City water or wastewater services are connected after the Effective Date, Annexation Fees that are equal to or greater than the fees imposed on Owner under this Agreement. Notwithstanding the foregoing, the PSB shall not be required to impose an Annexation Fee to any Westside development to the extent it is connected to and serviced by another entity, which is governed by a separate agreement and subsequently annexed by the City.

Immediately after the Effective Date, the PSB shall commence the engineering and construction activities necessary to provide retail water and wastewater services to the Owner's Property in order to ensure that the development of the Property in accordance with the Phasing Plan is not delayed. Within ninety (90) days following the Effective Date, water and wastewater services shall be made available to the Property. The water and wastewater facilities to be constructed by the Owner, and the PSB Facilities, to be constructed by the PSB, are addressed in Section Fourteen.

Without limiting the foregoing, the provision of retail water and wastewater services shall not be delayed on the grounds that the Property has not been annexed in

whole or in part. The rates for water and wastewater services shall be equal to the rates charged inside the incorporated boundaries of the City. However, if the Owner for whatever reason fails to submit annexation applications in accordance with the provisions of this Agreement or is in default of any obligation under this Agreement, then the rates for water and wastewater services shall be in accordance with the PSB regulations for outside City rates, in addition to any fees required herein. If the Property is subsequently annexed, inside City rates for the incorporated boundaries in accordance with PSB regulations in effect at the time of annexation shall apply. The City's obligation to provide water and wastewater services to the Property shall survive the expiration of the term of the Agreement. The obligation for the Owner to pay Annexation Fees as each water meter application is made survives the expiration of the Term of this Agreement.

ELEVEN: 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. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property, shall be provided by the Owner within thirty (30) days after the date the City adopts an annexation ordinance annexing a portion of the Property. The aerial and other evidence shall be submitted to the Zoning Administrator in the Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property.

TWELVE: Owner shall ensure that facilities and services of sufficient capacity, whether public or private, shall be provided as attributable to any development within the Property.

THIRTEEN: Any formal notices or other communications 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. Notice shall be effective only if and when received by the Party to be notified. For the purposes 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

Mailing Address:
2 Civic Center Plaza
El Paso, Texas 79901

Physical Address:
Same as above

CITY CLERK DEPT.
07 JAN 25 AM 11:53

CITY CLERK DEPT.
07 JAN 25 AM 11:53

- (2) **El Paso Water Utilities Public Service Board:**
El Paso Water Utilities Department
Attn: General Manager

Mailing Address:
1154 Hawkins Boulevard
El Paso, Texas 79925

Physical Address:
Same as above

- (3) **Owner:**
El Paso Outlet Center, LLC
Care of: Horizon Group Properties, Inc.
Attention: Thomas Rumptz

Mailing Address:
5000 Hakes Drive
Muskegon, Mi 49441

Physical Property Address:
Sun Valley Factory Shoppes
7051 S. Desert Boulevard
El Paso, TX 79932

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 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

FOURTEEN: This Agreement shall have a term of fifteen (15) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code; provided, however, nothing contained in this section shall affect the Owner's obligation to submit nominations for annexation of all phases of the Property on or before the fourth (4th) anniversary of the Effective Date.

FIFTEEN: (a) Except for the PSB Facilities, the Owner agrees to construct at its expense the mains and pipes located inside the Property that are necessary to provide retail water and wastewater utility services to the Property. The mains and pipes shall be designed and constructed in accordance with PSB Regulations. To the extent such facilities are oversized for the purpose of serving developments outside the Property, the cost of the oversized portion of the facilities shall be borne by the PSB. Notwithstanding the foregoing, the Owner shall not be obligated to construct or otherwise bear the costs of

PSB Facilities, including water supply, water treatment facilities, wells, water storage tanks, desalinization facilities, or wastewater treatment facilities, in excess of the Annexation Fee provided for herein.

SIXTEEN: To the extent (if any) that this Agreement would obligate the City to make a payment or make an expenditure, the obligation shall be payable solely from revenues received by the City from current revenues, including revenues from the sale of water and wastewater utility services, it being the intention of the Parties that no obligation of the City in this Agreement shall be payable in whole or in part from property taxes, or from proceeds of obligations payable in whole or in part from property taxes, or otherwise constitute a debt of the City within the meaning of Article XI, Section 5 or Section 7 of the Texas Constitution.

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 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,

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terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, 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 herefrom 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 the 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, and 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. By approving the execution of this Agreement, the City Council of the City, and the Public Utilities Board of the El Paso Water Utilities, delegate to the City Manager of the City, and to the General Manager of the El Paso Water Utilities, the authority, without any further action being required of the City Council or of the Public Utilities Board, to execute such amendments of or extensions to this Agreement as they may consider advisable, and consistent with the provisions of law.

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 state or federal courts situated in 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 other 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 effectuate 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 shall, in carrying out the terms of this Agreement, 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

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

ACCEPTANCE AND ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE

07 JAN 25 AM 11:53
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ACKNOWLEDGEMENT

CITY CLERK DEPT.

STATE OF TEXAS)
)
COUNTY OF EL PASO)

07 JAN 25 AM 11:54

This instrument was acknowledged before me on the _____ day of _____, 2007, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2007.

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

Edmund G. Archuleta, P.E.
General Manager

APPROVED AS TO FORM:

Robert D. Andron
General Counsel

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service Board.

Notary Public, State of Texas

ACCEPTANCE AND ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE

CITY CLERK DEPT.

07 JAN 25 AM 11:54

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this 24th day of January, 2007.

**EL PASO OUTLET CENTER, LLC
A DELAWARE LIMITED LIABILITY
CORP.**

By: El Paso Outlet Center Manager,
Inc., A Delaware Corporation
Its: Managing Member

By: Terri Springstead
Printed Name: Terri Springstead
Title: Assistant Secretary

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

This instrument was acknowledged before me on the 24th day of January 2007, by Terri Springstead as Assistant Secretary of El Paso Outlet Center Manager, Inc., a Delaware Corporation.

Jennifer A. Chartrand
Notary Public, State of Michigan

JENNIFER A. CHARTRAND
NOTARY PUBLIC, STATE OF MI
COUNTY OF MUSKEGON
COMMISSION EXPIRES Sep 18, 2010
SHEETS IN COUNTY OF

EXHIBITS "A" and "A-1"

LEGAL DESCRIPTION

CITY CLERK DEPT.

07 JAN 25 AM 11:54

Being a portion of Tract 8,
Nellie D. Mundy Survey No. 239,
El Paso County, Texas
Prepared for: Horizon Group
January 16, 2007

CITY CLERK DEPT.
07 JAN 25 AM 11:54

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 8, Nellie D. Mundy Survey No. 239, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe for the northeast corner of Nellie D. Mundy Survey No. 239 from this point a found 1" pipe for the southeast corner of Nellie D. Mundy Survey No. 239 bears South 00° 01' 02" East a distance of 4100.30 feet; Thence from said northeast corner South 89° 58' 00" West a distance of 4127.91 feet to a point on the line between Nellie D. Mundy Surveys No 238 and 239; Thence South 00° 00' 45" West a distance of 30.00 feet to a point on the northerly line of Tract 8, Nellie D. Mundy Survey No. 239 for THE "TRUE POINT OF BEGINNING";

Thence along the El Paso city limits line, South 00° 00' 45" West a distance of 1883.32 feet to a point;

Thence leaving said line South 59° 58' 22" West (S60° 04' 30" W vol. 75, pg. 71) a distance of 206.88 feet to a set ½" rebar with cap marked TX 5152 on the northerly line of lot 2, block 1, Covenant Corner Commerce Park as recorded in volume 75, Page 71, Plat records of El Paso County, Texas;

Thence continuing along said the following three courses

South 45° 04' 37" West (S 45° 10' 45" W vol. 75, pg. 71) a distance of 167.38 feet to a set ½" rebar with cap marked TX 5152;

South 89° 55' 37" West (N 89° 58' 15" W vol. 75, pg. 71) a distance of 141.85 feet to a set ½" rebar with cap marked TX 5152;

North 45° 04' 37" East (N 45° 10' 45" E vol. 75, pg. 71) a distance of 172.99 feet to a set ½" rebar with cap marked TX 5152;

Thence along the northerly line of lots 1 and 2, block 1, Covenant Corner Commerce Park, South 89° 55' 37" West (N 89° 58' 15" W vol. 75, pg 71) a distance of 1065.89 feet to a set ½" rebar with cap marked TX 5152 on the westerly line of said lot 1, block 1, Covenant Corner Commerce Park;

Thence continuing along said line South 00° 04' 23" East (S 00° 01' 45" W vol. 71, pg 75) a distance of 120.43 feet to a set ½" rebar with cap marked TX 5152;

Thence leaving said line South 89°58'00" West a distance of 70.60 feet to a set ½" rebar with cap marked TX 5152 on the westerly line of tract 8, Nellie D. Mundy Survey No. 239 as described in volume 1442, page 419, real property records of El Paso County, Texas;

Thence along said line the following four courses

North 00°02'00" West a distance of 739.58 feet to a set ½" rebar with cap marked TX 5152;

North 50°19'00" West a distance of 153.00 feet to a set ½" rebar with cap marked TX 5152;

1197.89 feet along the arc of a curve to the right which has a radius of 1332.70 feet a central angle of 51°30'00" a chord which bears North 24°34'00" West a distance of 1157.97 feet to a set ½" rebar with cap marked TX 5152;

North 04°07'00" East a distance of 213.84 feet to a set ½" rebar with cap marked TX 5152 on the northerly line of tract 8, Nellie D. Mundy Survey No. 239 from which a found 5/8" rebar bears North 79°03'58" West a distance of 1.77 feet and a 2" pipe for the common corner of tracts 1 and 2, Nellie D. Mundy Survey No. 239 as described in volume 4368, page 1946, bears South 75°25'07" West a distance of 832.40 feet;

Thence along the northerly line of said tract 8, North 89°58'00" East a distance of 2037.99 feet to the "TRUE POINT OF BEGINNING" and containing 80.65 acres of land more or less.

NOTE: Bearings basis is per deed in volume 1442, page 419, Real property records of El Paso County Texas

CITY CLERK DEPT.
07 JAN 25 AM 11:54



R R C
Ron R. Conde
R.P.L.S. No. 5152
Job# 107-22 R.C.

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

EXHIBIT 'A'

EXHIBIT "B"
DEVELOPMENT PLAN

CITY CLERK DEPT.
07 JAN 25 AM 11:54

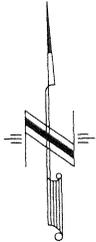
CITY CLERK DEPT.
07 JAN 25 AM 11:54

DEVELOPMENT PLAN

BEING A PORTION OF TRACT 8, NELLIE D. MUNDY SURVEY NO. 239
AND A ACCESS AND UTILITY EASEMENT OUT OF BLOCK 1,
COVENANT CORNER COMMERCE PARK, EL PASO COUNTY, TEXAS.
CONTAINING: 101.464 ACRES

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	500.50	88.17	44.20	88.05	S15°27'56" W	10°05'35"
C2	499.50	178.71	90.32	177.76	N10°19'44" E	20°28'59"

LINE TABLE	
LINE	BEARING
L1	S89°25'37" E
L2	S17°58'22" W



GRAPHIC SCALE

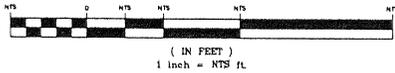
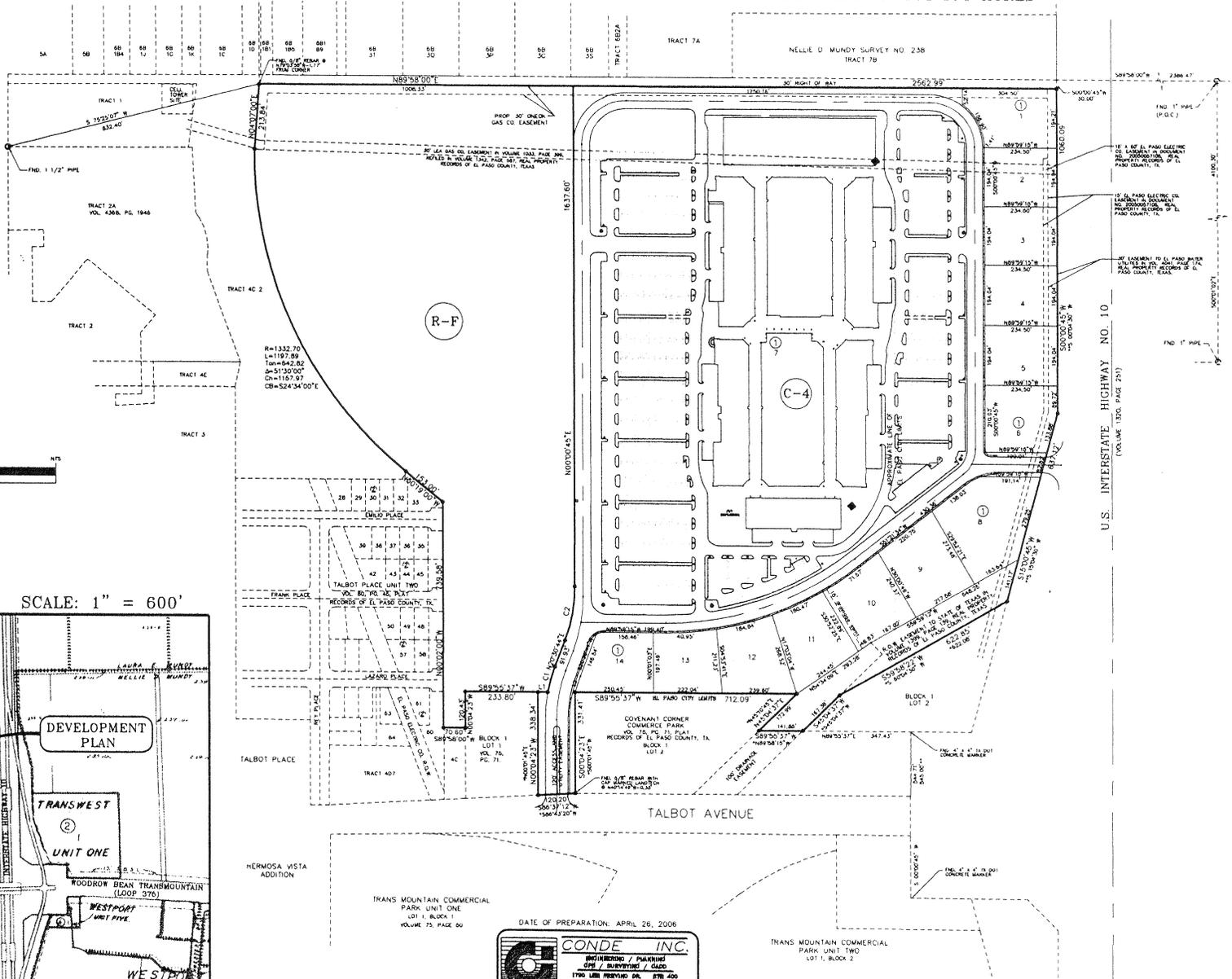
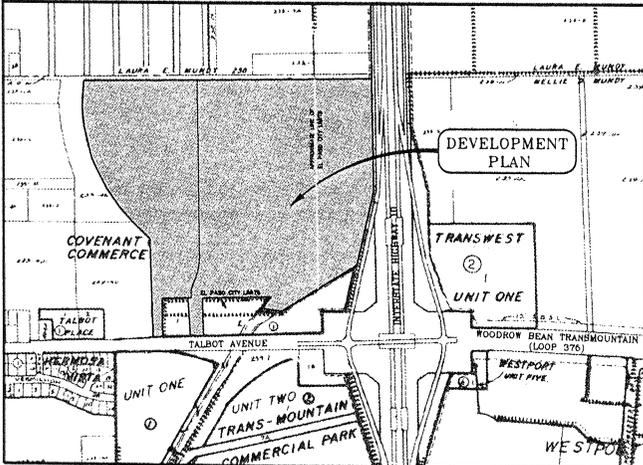


EXHIBIT 'C'

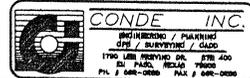
LOCATION MAP

SCALE: 1" = 600'



TRANS MOUNTAIN COMMERCIAL
PARK UNIT ONE
LOT 1, BLOCK 1
VOLUME 75, PAGE 80

DATE OF PREPARATION: APRIL 26, 2006



TRANS MOUNTAIN COMMERCIAL
PARK UNIT TWO
LOT 1, BLOCK 2

EXHIBIT "C"
LEGAL DESCRIPTION
PROPERTY TO BE REZONED C-4 (COMMERCIAL)

CITY CLERK DEPT.
07 JAN 25 AM 11:54

Being a portion of Tract 8,
Nellie D. Mundy Survey No. 239,
El Paso County, Texas
Prepared for: Horizon Group
January 22, 2007
(Parcel 2)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 8, Nellie D. Mundy Survey No. 239, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe for the northeast corner of Nellie D. Mundy Survey No. 239 from this point a found 1" pipe for the southeast corner of Nellie D. Mundy Survey No. 239 bears South 00° 01'02" East a distance of 4100.30 feet; Thence from said northeast corner South 89°58'00" West a distance of 5157.57 feet to a point on the line between Nellie D. Mundy Surveys No 238 and 239; Thence South 00°00'45" West a distance of 30.00 feet to a point on the northerly line of Tract 8, Nellie D. Mundy Survey No. 239 for THE "TRUE POINT OF BEGINNING";

Thence South 00°00'45" West a distance of 1637.60 feet to a point;

Thence 178.71 feet along the arc of a curve to the left which has a radius of 499.50 a interior angle of 20°29'59" a chord which bears South 10°15'44" West a distance of 177.76 feet to a point;

Thence South 20°30'44" West a distance of 91.93 feet to a point;

Thence 88.17 feet along the arc of a curve to the right which has a radius of 500.50 a interior angle of 10°05'35" a chord which bears South 15°27'56" West a distance of 88.05 feet to a point;

Thence South 89°55'37" West a distance of 265.91 feet to a point;

Thence South 00°04'23" East a distance of 120.43 feet to a point;

Thence South 89°58'00" West a distance of 70.60 feet to a point

Thence North 00°02'00" West a distance of 739.58 feet to a point;

Thence North 50°19'00" West a distance of 153.00 feet to a point;

Thence 1197.89 feet along the arc of a curve to the right which has a radius of 1332.70 a interior angle of 51°30'00" a chord which bears North 24°34'00" West a distance of 1157.97 feet to a point;

Thence North 04°07'00" East a distance of 213.84 feet to a point on the northerly line of tract 8, Nellie D. Mundy Survey No. 239;

Thence along the northerly line of said tract 8, North 89°58'00" East a distance of 1008.33 feet to the "TRUE POINT OF BEGINNING" and containing 33.29 acres of land more or less.

NOTE: Bearings basis is per deed in volume 1442, page 419, Real property records of El Paso County Texas

R R C
Ron R. Conde
R.P.L.S. No. 5152
Job# 107-22 R.C.



EXHIBIT 'C'

CITY CLERK DEPT.
07 JAN 25 AM 11:54

EXHIBIT "D"
LEGAL DESCRIPTION
PROPERTY TO BE REZONED R-F (RANCH-FARM)

CITY CLERK DEPT.
07 JAN 25 AM 11:54

Being a portion of Tract 8,
Nellie D. Mundy Survey No. 239,
El Paso County, Texas
Prepared for: Horizon Group
January 22, 2007
(Parcel 1)

CITY CLERK DEPT.
07 JAN 25 AM 11:54

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 8, Nellie D. Mundy Survey No. 239, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe for the northeast corner of Nellie D. Mundy Survey No. 239 from this point a found 1" pipe for the southeast corner of Nellie D. Mundy Survey No. 239 bears South 00° 01'02" East a distance of 4100.30 feet; Thence from said northeast corner South 89°58'00" West a distance of 4127.91 feet to a point on the line between Nellie D. Mundy Surveys No 238 and 239; Thence South 00°00'45" West a distance of 30.00 feet to a point on the northerly line of Tract 8, Nellie D. Mundy Survey No. 239 for THE "TRUE POINT OF BEGINNING";

Thence along the El Paso city limits line, South 00°00'45" West a distance of 1883.32 feet to a point;

Thence leaving said line South 59°58'22" West (S60°04'30" W vol. 75, pg. 71) a distance of 206.88 feet to a set ½" rebar with cap marked TX 5152 on the northerly line of lot 2, block 1, Covenant Corner Commerce Park as recorded in volume 75, Page 71, Plat records of El Paso County, Texas;

Thence continuing along said the following three courses

South 45°04'37" West (S 45°10'45" W vol. 75, pg. 71) a distance of 167.38 feet to a set ½" rebar with cap marked TX 5152;

South 89°55'37" West (N 89°58'15" W vol. 75, pg. 71) a distance of 141.85 feet to a set ½" rebar with cap marked TX 5152;

North 45°04'37" East (N 45°10'45" E vol. 75, pg. 71) a distance of 172.99 feet to a set ½" rebar with cap marked TX 5152;

Thence along the northerly line of lot 2, block 1, Covenant Corner Commerce Park, South 89°55'37" West (N 89°58'15" W vol. 75, pg 71) a distance of 712.09 feet to a point;

Thence leaving said line South 00°04'23" East (S 00°01'45" W vol. 71, pg 75) a distance of 331.41 feet to a point on the northerly right of way line of Talbot Road;

Thence along said right of way line South 86°37'12" West (S 86°43'20" W vol. 71, pg 75) a distance of 120.20 feet to a point;

Thence leaving said right of way line North 00°04'23" West (S 00°01'45" W vol. 71, pg 75) a distance of 338.34 feet to a point;

Thence North 89°55'37" East a distance of 32.11 feet to a point;

Thence 88.17 feet along the arc of a curve to the right which has a radius of 500.50 a interior angle of 10°05'35" a chord which bears North 15°27'56" East a distance of 88.05 feet to a point;

Thence North 20°30'44" East a distance of 91.93 feet to a point;

Thence 178.71 feet along the arc of a curve to the left which has a radius of 499.50 a interior angle of 20°29'59" a chord which bears North 10°15'44" East a distance of 177.76 feet to a point;

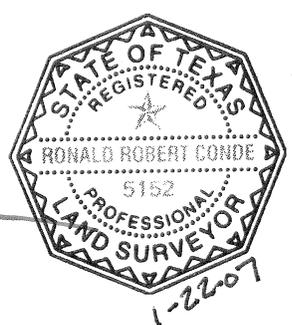
Thence North 00°00'45" East a distance of 1637.60 feet to a point on the northerly line of tract 8, Nellie D. Mundy Survey No. 239;

Thence along the northerly line of said tract 8, North 89°58'00" East a distance of 1029.66 feet to the "TRUE POINT OF BEGINNING" and containing 18.886 acres of land more or less.

NOTE: Bearings basis is per deed in volume 1442, page 419, Real property records of El Paso County Texas

CITY CLERK DEPT.
07 JAN 25 AM 11:54

RR
Ron R. Conde
R.P.L.S. No. 5152
Job# 107-22 R.C.



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EXHIBIT D1