

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

**DEPARTMENT:** Development Services Department  
**AGENDA DATE:** Public Hearing: July 7, 2009  
**CONTACT PERSON/PHONE:** Mathew McElroy, 541-4193  
**DISTRICT(S) AFFECTED:** East ETJ (Adjacent to Districts 5 & 6)

**SUBJECT:**

Discussion and Action on status of the following annexation agreements and guidance from City Council on provisions and terms to be included in the following annexation agreements.  
River Oaks Properties, Ltd, for 7.161 acres at Southeast corner of Zaragoza Road and Gambusino Drive  
River Oaks Properties, Ltd., for 110.253 acres at Joe Battle Boulevard and Vista Del Sol Drive  
River Oaks Properties, Ltd., for 7.256 acres at Southeast corner of Joe Battle Boulevard and Wndermere Avenue  
River Oaks Properties, Ltd., for 8.070 acres at Southwest corner of Montana Avenue and Zaragoza Road  
River Oaks Properties, Ltd., for 10.701 of acres at Montana Avenue west of Zaragoza Road  
River Oaks Properties, Ltd., for 2.054 acres at Zaragoza Road and Edgemere Boulevard  
Genagra, LP, for 21.3709 acres at Zaragoza Road south of Pebble Hills Boulevard

**BACKGROUND / DISCUSSION:**

City Council, at a special council meeting on January 21, 2009, voted unanimously to consider only voluntary annexations, under guidance to staff that annexations be master planned and that all capital costs be recovered. There were eight annexations in process being evaluated by staff at the time, which were taken to the Planning and Development Legislative Review Committee on April 17, 2009 and referred to the full council. On April, 28, 2009 the council directed staff to proceed with the processing of the applications under the existing policy.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*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:** \_\_\_\_\_

*Dedicated to Outstanding Customer Service for a Better Community*

S E R V I C E   S O L U T I O N S   S U C C E S S

**DEVELOPMENT SERVICES DEPARTMENT**  
BUILDING PERMITS & INSPECTIONS DIVISION



**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Mathew McElroy, Deputy Director, DSD - Planning

**DATE:** June 29, 2009

**RE:** Annexation Agreements – AN08002, AN08003, AN08004,  
AN08005, AN08006, AN08008, AN08009

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River Oaks Properties, Ltd. and Genagra, LP are requesting that the City annex their property. At the April, 28, 2009 city council meeting, council directed staff to proceed with negotiations with River Oaks Properties, Ltd. and Genagra, LP on an annexation agreement which would specify the terms and conditions under which the property, if annexed, would be annexed. This is to provide an update on the status of negotiations and receive direction from council on whether to continue negotiations, modify provisions that are contested, or terminate the process.

Attachments: Location map

Mayor  
John F. Cook

City Council

*District 1*  
Ann Morgan Lilly

*District 2*  
Susie Byrd

*District 3*  
Emma Acosta

*District 4*  
Carl L. Robinson

*District 5*  
Rachel Quintana

*District 6*  
Eddie Holguin Jr.

*District 7*  
Steve Ortega

*District 8*  
Beto O'Rourke

City Manager  
Joyce A. Wilson

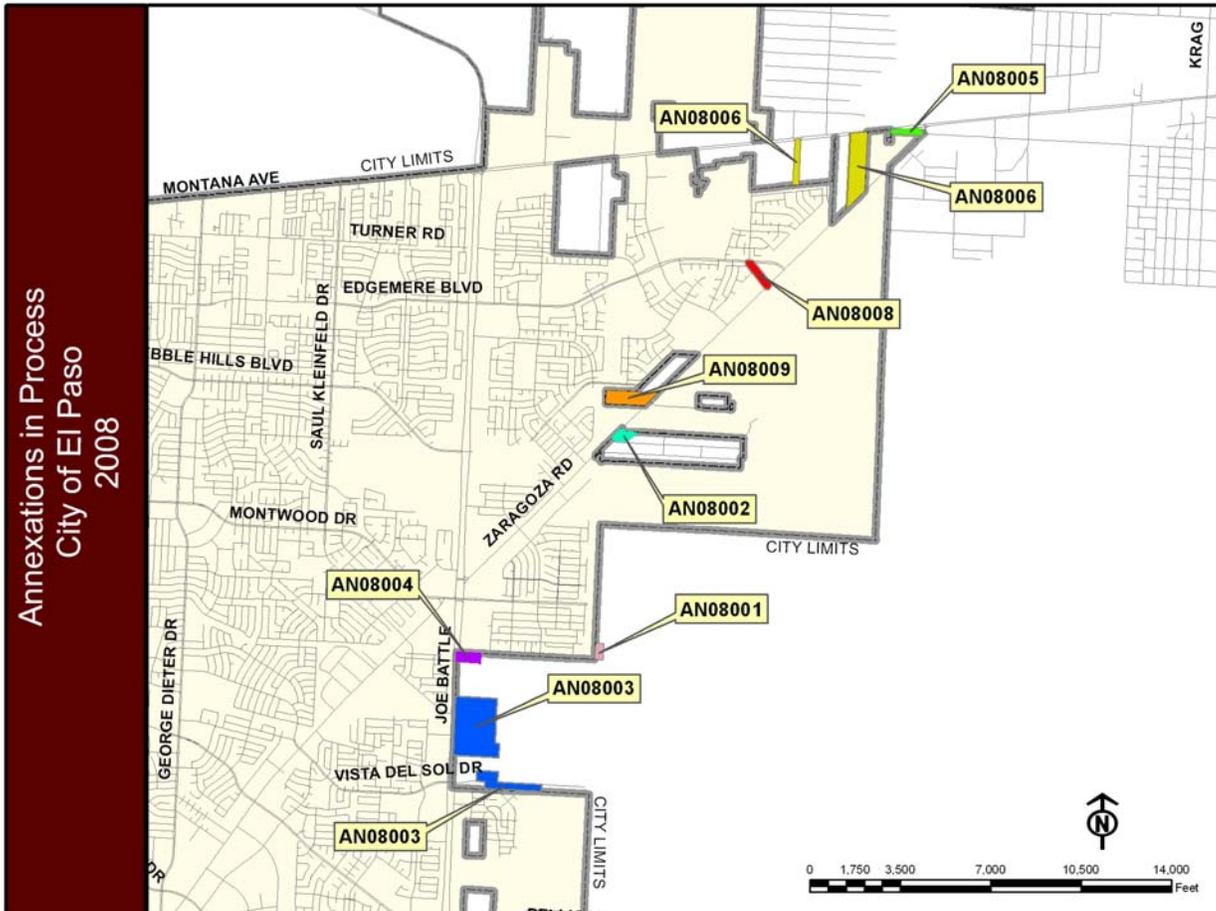
**Development Services Department**

Victor Q. Torres – Director

2 Civic Center Plaza – 5<sup>th</sup> Floor · El Paso, Texas 79901 · (915) 541-4622 · Fax (915) 541-4799



Annexations in Process  
City of El Paso  
2008



Mayor  
John F. Cook

City Council

*District 1*  
Ann Morgan Lilly

*District 2*  
Susie Byrd

*District 3*  
Emma Acosta

*District 4*  
Carl L. Robinson

*District 5*  
Rachel Quintana

*District 6*  
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**Development Services Department**

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THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**ANNEXATION AGREEMENT**  
**AN08002**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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"), and River Oaks Properties, Ltd (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 7.161 acres of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and

**WHEREAS**, it is understood by the Owner that of paramount consideration for the City in entering into this Agreement is that the municipal infrastructure costs and costs for providing municipal services to the annexed area should be paid for, to the greatest extent allowed by law, by the Owner and not by the existing city taxpayers; 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.

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

*One:* 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. It is understood by the Owner that there are significant costs to the City associated with the annexation of Property into the City and of paramount consideration for the City in entering into this Agreement is that the Owner participate in the municipal infrastructure costs and costs for providing municipal services as required in this Agreement.

*Two:* Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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 submitted. The Owner shall follow the processing procedures of Title 20 (Zoning) of the El Paso City Code, and approval or disapproval of the detailed site development plan shall be based on the provisions of Title 20 and the provisions contained in this Agreement.

2. No off-premise signs shall be permitted within any portion of the Property.

3. A twenty (20) foot wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet on center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front Property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear Property line will be in addition to the landscape requirements.

4. The Owner shall be required to dedicate, without compensation, an additional twenty four (24) feet of right-of-way along Gambusino road for the future widening of Gambusino Road and an additional fifty (50) foot ROW along Zaragoza to allow for future widening of Zaragoza. The dedication shall be shown on any plat submitted for approval. The condition for Gambusino road shall apply only if the road is not vacated.

5. If not vacated, the portions of Gambusino road and Azogue road abutting the Property shall be included in annexation, and their full widths improved to City standards for local streets regardless of whether the land is owned by the Owner or the County. The Owner shall not be entitled to reimbursement for such improvements to include, but not limited to any reimbursement for over width paving.

6. Street Improvements shall include traffic signalization and traffic calming devices. The City's Traffic Engineer shall be the person responsible for determining whether such improvements are necessary and his decision is final. The Owner shall not be entitled to reimbursement for such improvements and the improvements shall be shown on the final plat and on the subdivision improvement plans.

*Three:* Regardless of whether the Property falls within an exception or exemption under Title 19 (Subdivisions) of the El Paso City Code, Owner hereby agrees that within 180 days of the passage of the ordinance annexing Property, Owner shall submit a subdivision plat for approval. The Owner shall follow the processing procedures of Title 19 (Subdivisions) of the El Paso City Code and approval or disapproval of the Plat shall be based on the provisions of Title 19 and the provisions contained in this Agreement.

*Four:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<b><u>Meter Size</u></b>	<b><u>(in Dollars) Water</u></b>	<b><u>(in Dollars) Wastewater</u></b>
5/8" x 3/4"	637	369
1"	1,571	911
1 1/2"	3,185	1,846

2"	5,096	2,954
3"	10,193	5,906
4"	15,926	9,229
6"	31,852	18,459
8"	59,457	34,455
10"	84,939	49,222

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. 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 Development Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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, 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 inability 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 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 even 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 Wilson  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Patricia D. Aduato, Deputy City Manager  
Development & Infrastructure Services

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_  
2009, by Joyce Wilson, as City Manager of the City of El Paso, Texas

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:

**ACKNOWLEDGEMENT AND ACCEPTANCE ON FOLLOWING PAGE**

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**Owner(s):** River Oaks Properties, Ltd  
By: \_\_\_\_\_

Title: \_\_\_\_\_  
River Oaks Properties, Ltd

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )

)

COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, by \_\_\_\_\_, as \_\_\_\_\_ of River Oaks Properties, Ltd.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:



THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

ANNEXATION AGREEMENT  
AN08003

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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"), and River Oaks Properties, Ltd (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 110.253 acres of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate 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.

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

*One:* 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 Owners.

*Two:* Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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.
2. No off-premise signs shall be permitted within any portion of the property.

3. A twenty (20) foot wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet on center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear property line will be in addition to the landscape requirements
4. Vista del Sol abutting the property shall be included in the annexation, and the owner shall dedicate the full ROW needed for a major arterial, and shall improve the ROW width to the centerline in accordance with City standards for a major arterial.
5. The portions of Ashdowne Avenue, Amesbury Avenue, Schilling Avenue, Zollinger Avenue, Ashtabula Avenue, Chltenden Street, and Addison Street abutting the property shall be included in annexation, and their full sixty (60) foot widths improved to City standards. Improvements shall include those deemed necessary by the City Engineer, to include traffic signalization and traffic calming devices, shall be provided at the time of the final plat. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for overwidth paving from the City.
6. A proposed collector arterial is shown on the MTP running north-south, parallel to Joe Battle, thru Parcels 1 and 4-7, and is necessary to provide connectivity to adjacent properties. The owner shall dedicate the full ROW needed for this roadway classification, and shall improve the full ROW width for a collector arterial or the roadway necessitated by the proposed development, whichever is greater.
7. A copy of deed restrictions or other legal instrument, restricting the property to nonresidential uses shall be provided at the time of annexation. Owner shall be required to pay park fees in the amount of \$88,880 at the time of annexation. Should owner decide at a later date to remove the non-residential restriction, owner shall pay additional park fees in accordance with the Park Fee Ordinance in effect at the time the non-residential restriction is removed.

*Three:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
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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

March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. 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.

Six: 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 Development Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities 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 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 even 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 Wilson  
City Manager

SIGNATURES CONTINUE ON FOLLOWING PAGE

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

\_\_\_\_\_  
Patricia D. Aduato, Deputy City Manager  
Development & Infrastructure Services

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2009, by Joyce Wilson, as City Manager of the City of El Paso, Texas

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

**Owner(s):** River Oaks Properties, Ltd  
By: \_\_\_\_\_

Title: \_\_\_\_\_  
River Oaks Properties, Ltd

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_

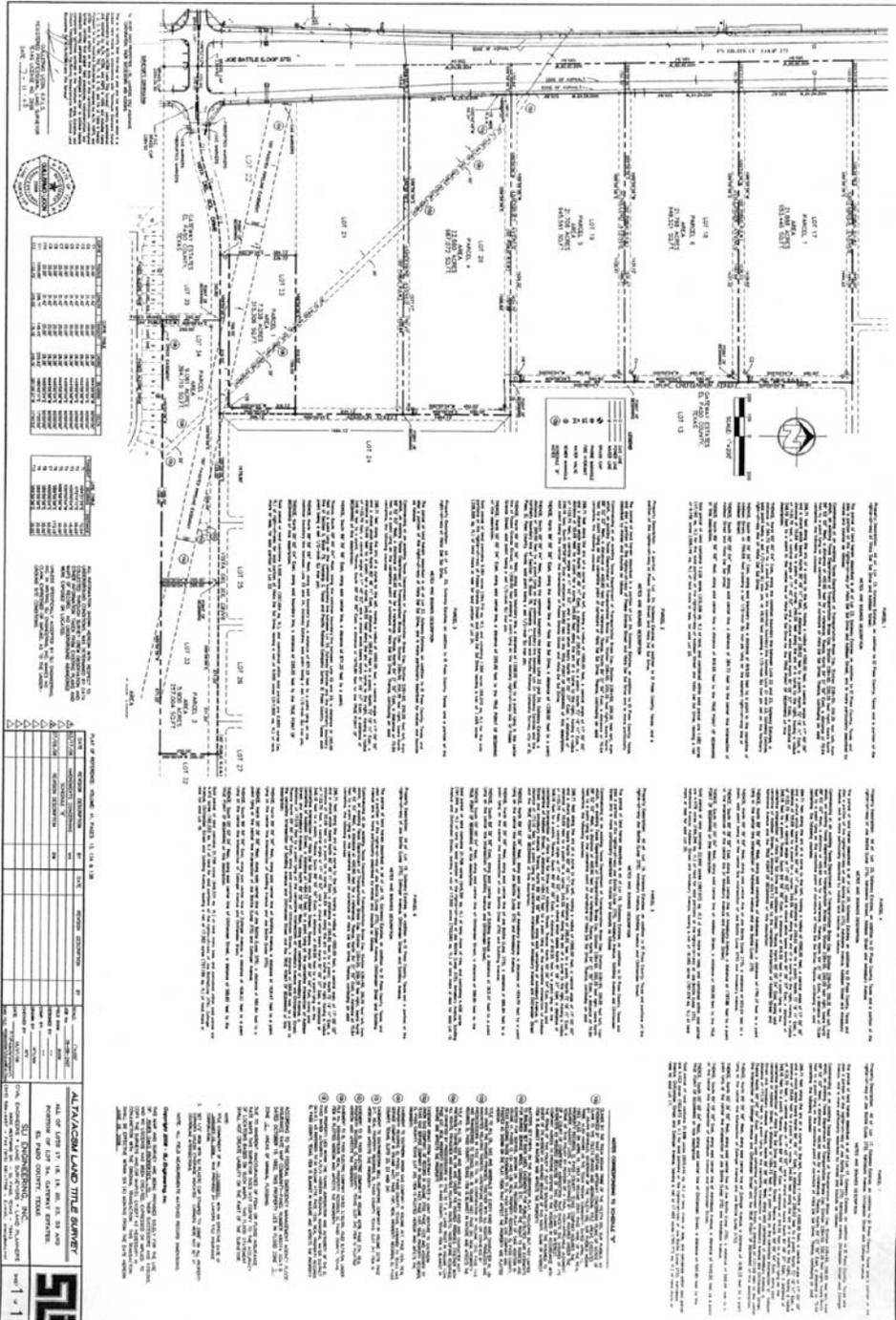
2009, by \_\_\_\_\_, as \_\_\_\_\_ of River Oaks Properties, Ltd.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:

# Exhibit A Survey Map



THE STATE OF TEXAS )  
COUNTY OF EL PASO )

ANNEXATION AGREEMENT  
AN08004

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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"), and River Oaks Properties, Ltd (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 7.256 acres of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate 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.

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

One: 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 Owners.

Two: Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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 or multi-family developments shall be reviewed and approved as per the El Paso City Code.
2. No off-premise signs shall be permitted within any portion of the property.
3. A twenty (20) foot-wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet-on-center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning

districts. Any portion of the landscape buffer from the back building wall to the front property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear property line will be in addition to the landscape requirements.

4. Windermere Avenue and Brandywine Road abutting this property shall be included in this annexation. Windermere Avenue and Brandywine Road are designated respectively as collector and minor arterials on the MTP. The applicant shall dedicate any additional ROW necessitated by the roadway classification, and shall, at a minimum, improve the full ROW width for a collector arterial or the roadway necessitated by the proposed development, whichever is greater, with pavement, curb, gutter and sidewalks. Improvements shall include those deemed necessary by the City Engineer, to include traffic signalization and traffic calming devices, shall be provided at the time of the final plat.
6. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for overwidth paving from the City.
7. A copy of deed restrictions or other legal instrument, restricting the property to nonresidential uses shall be provided at the time of annexation. Owner shall be required to pay park fees in the amount of \$5,000 at the time of annexation.

*Three:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
5/8" x 3/4"	637	369
1"	1,571	911
1 1/2"	3,185	1,846
2"	5,096	2,954
3"	10,193	5,906
4"	15,926	9,229
6"	31,852	18,459
8"	59,457	34,455
10"	84,939	49,222

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. 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.

*Four:* 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 Development Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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, 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 inability 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 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 even 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 Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

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

**ACKNOWLEDGEMENT AND ACCEPTANCE ON NEXT PAGE**

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2009, by  
Joyce Wilson, as City Manager of the City of El Paso, Texas

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

**Owner(s):** River Oaks Properties, Ltd  
By: \_\_\_\_\_

Title: \_\_\_\_\_  
River Oaks Properties, Ltd

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2009,  
by \_\_\_\_\_, as \_\_\_\_\_ of River Oaks Properties, Ltd.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

My Commission Expires:



THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**ANNEXATION AGREEMENT**  
**AN08005**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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"), and River Oaks Properties, Ltd (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 8.070 acres of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate 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.

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

*One:* 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 Owners.

*Two:* Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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.
2. No off-premise signs shall be permitted within any portion of the property.

3. A twenty (20) foot wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet on center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear property line will be in addition to the landscape requirements.

*Three:* Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

*Four:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<u>Meter Size</u>	<u>(in Dollars)</u> <u>Water</u>	<u>(in Dollars)</u> <u>Wastewater</u>
5/8" x 3/4"	811	143
1"	2,003	353
1 1/2"	4,055	715
2"	6,488	1,144
3"	12,976	2,288
4"	20,275	3,575
6"	40,550	7,150
8"	75,691	13,346
10"	108,131	19,066

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. 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 Development

Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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, 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 inability 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 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.

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**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.

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**Ambiguities:** In the even 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.

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**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 Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

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

**ACKNOWLEDGMENT AND ACCEPTANCE ON FOLLOWING PAGE**

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2009,  
by Joyce Wilson, as City Manager of the City of El Paso, Texas

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

**Owner(s):** River Oaks Properties, Ltd  
By: \_\_\_\_\_

Title: \_\_\_\_\_  
River Oaks Properties, Ltd

**ACKNOWLEDGEMENT**

STATE OF TEXAS    )

)  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2009,  
by \_\_\_\_\_, as \_\_\_\_\_ of River Oaks Properties, Ltd.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:



THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**ANNEXATION AGREEMENT**  
**AN08006**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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"), and River Oaks Properties, Ltd (hereinafter referred to as "Owner"); and

**WHEREAS**, Owner is the owner-of-record of 10.701 acres of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate 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.

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

*One:* 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 Owners.

*Two:* Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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.
2. No off-premise signs shall be permitted within any portion of the property.
3. A twenty (20) foot wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet on center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front property

line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear property line will be in addition to the landscape requirements.

4. Road improvements shall include those deemed necessary by the City Engineer, to include traffic signalization and traffic calming devices, shall be provided at the time of the final plat.

*Three:* Regardless of whether the Property falls within an exception or exemption under Title 19 (Subdivisions) of the El Paso City Code, Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall submit a subdivision plat for approval. The Owner shall follow the processing procedures of Title 19 (Subdivisions) of the El Paso City Code and approval or disapproval of the Plat shall be based on the provisions of Title 19 and the provisions contained in this Agreement.

*Four:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
5/8" x 3/4"	811	143
1"	2,003	353
1 1/2"	4,055	715
2"	6,488	1,144
3"	12,976	2,288
4"	20,275	3,575
6"	40,550	7,150
8"	75,691	13,346
10"	108,131	19,066

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. 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 Development Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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, 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 inability 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 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 even 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 Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

\_\_\_\_\_  
Patricia D. Aauto, Deputy City Manager  
Development & Infrastructure Services

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, by Joyce Wilson, as City Manager of the City of El Paso, Texas

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:

ACKNOWLEDGEMENT AND ACCEPTANCE CONTINUE ON FOLLOWING PAGE

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**Owner(s):** River Oaks Properties, Ltd

By: \_\_\_\_\_

Title: \_\_\_\_\_

River Oaks Properties, Ltd.

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )

)

COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, by \_\_\_\_\_, as \_\_\_\_\_ of River Oaks Properties, Ltd.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:





THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**ANNEXATION AGREEMENT**  
**AN08008**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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"), and River Oaks Properties, Ltd (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of the 2.054 acres real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate 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.

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

*One:* 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 Owners.

*Two:* Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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.
2. No off-premise signs shall be permitted within any portion of the property.
3. A twenty (20) foot-wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet-on-center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front property line shall be

counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear property line will be in addition to the landscape requirements.

*Three:* Regardless of whether the Property falls within an exception or exemption under Title 19 (Subdivisions) of the El Paso City Code, Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall submit a subdivision plat for approval. The Owner shall follow the processing procedures of Title 19 (Subdivisions) of the El Paso City Code and approval or disapproval of the Plat shall be based on the provisions of Title 19 and the provisions contained in this Agreement.

*Four:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
5/8" x 3/4"	811	143
1"	2,003	353
1 1/2"	4,055	715
2"	6,488	1,144
3"	12,976	2,288
4"	20,275	3,575
6"	40,550	7,150
8"	75,691	13,346
10"	108,131	19,066

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. 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 Development Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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 a 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, 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 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 even 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 Wilson  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Patricia D. Aduato, Deputy City Manager  
Development & Infrastructure Services

**ACKNOWLEDGEMENT AND ACCEPTANCE CONTINUE ON FOLLOWING PAGE**

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2009, by Joyce Wilson, as City Manager of the City of El Paso, Texas.

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

**Owner(s):** River Oaks Properties, Ltd  
By: \_\_\_\_\_

Title: \_\_\_\_\_  
River Oaks Properties, Ltd

**ACKNOWLEDGEMENT**

STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2009, by \_\_\_\_\_, as \_\_\_\_\_ of River Oaks Properties, Ltd.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:



THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

ANNEXATION AGREEMENT  
AN08009

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, 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”), and Genagra, LP (hereinafter referred to as “Owner”); and

**WHEREAS**, Owner is the owner of record of 21.3709 acres of real property described in Exhibit “A”, which is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as “Property”), and which real estate 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,

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

*One:* 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 Owners.

*Two:* Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, 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.
2. No off-premise signs shall be permitted within any portion of the property.
3. A twenty (20) foot wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet on center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer

located from the back building wall toward the rear property line will be in addition to the landscape requirements.

4. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for overwidth paving from the City.
5. Owner shall dedicate a portion of ROW for future Pebble Hills extension. No alternate road through the property connecting Pebble Hills to Zaragoza shall be allowed.

*Three:* Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

*Four:* In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee 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:

<u>Meter Size</u>	<u>(in Dollars)</u> <u>Water</u>	<u>(in Dollars)</u> <u>Wastewater</u>
5/8" x 3/4"	811	143
1"	2,003	353
1 1/2"	4,055	715
2"	6,488	1,144
3"	12,976	2,288
4"	20,275	3,575
6"	40,550	7,150
8"	75,691	13,346
10"	108,131	19,066

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for 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 Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property.

**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  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

(2) OWNER: Genagra, L.P.  
5009 Vista Del Monte  
El Paso, Texas 79922

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 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, 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 inability 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 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 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 even 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 Wilson, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

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

**ACKNOWLEDGEMENT AND ACCEPTANCE ON FOLLOWING PAGE**

**ACKNOWLEDGEMENT**

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2009, by Joyce Wilson, as City Manager of the City of El Paso, Texas.

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

**Owner(s): Genagra, LP**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2009, by \_\_\_\_\_, on behalf of **Genagra, LP**, Owner.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires

