

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

**DEPARTMENT:** Planning and Economic Development Department, Planning Division

**AGENDA DATE:** Resolution, CCA 7/26/11

**CONTACT PERSON/PHONE:** Arturo Rubio, (915) 541-4633, [rubioax@elpasotexas.gov](mailto:rubioax@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** District 1

**SUBJECT:**

A Resolution that the City Manager be authorized to sign an amendment to the May 8, 2007, Development Agreement by and between the City of El Paso, the El Paso Water Utilities-Public Service Board and Rio Valley LLC to change the development to G-MU (General Mixed Use Development), to amend the term and to change the park provisions. Subject Property: North of Borderland Road and West of Westside Drive, Property Owner: Rio Valley LLC.

**BACKGROUND / DISCUSSION:**

On May 19, 2011, the CPC recommended denial of rezoning application PZRZ11-00012, contrary to the staff recommendation. Staff recommended approval of this request to allow a development that incorporates many smart growth principles. This development complies with the purpose of the G-MU District, and furthers the City Council direction to promote smart growth. The CPC also voted 4-2 to recommend denial of the amendment of the development agreement to change the development to G-MU (General Mixed Use Development), to amend the term of the development agreement and to change the park provisions in support of the rezoning PZRZ11-00012 denial.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) – Reviewed  
City Plan Commission (CPC) – Denial Recommendation 4-2

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:**

Mathew S. McElroy  
Deputy Director, Planning and Economic Development Department

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**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

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

RESOLUTION

That the City Manager be authorized to sign an amendment to the May 8, 2007, Development Agreement by and between the City of El Paso, the El Paso Water Utilities-Public Service Board and Rio Valley LLC to change the development to G-MU (General Mixed Use Development), to amend the term, and to change the park provisions.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mathew S. McElroy, Deputy Director  
Planning and Economic Development  
Department

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

DEVELOPMENT AGREEMENT  
FIRST AMENDMENT

THIS Amendment to the AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), acting through the City Council of the City, and the **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD** (hereinafter referred to as the "PSB"), and **RIO VALLEY LLC** (hereinafter referred to as "owner");

**WHEREAS**, the City, PSB and the Owner entered into a Development Agreement on May 8, 2007; and,

**WHEREAS**, the Owner wishes to amend the Agreement to change the type of development to General Mixed Use Development and to change the park provisions; and,

**WHEREAS**, the City agrees to such amendment provided that additional consideration is provided; and,

**WHEREAS**, the Owner agrees to provide additional consideration; and,

**WHEREAS**, Owner, accepts the terms and conditions cited in this Amendment to the Agreement due to the advantages and benefits resulting from the Agreement; and,

**WHEREAS**, the City Council, after due and careful consideration, concluded that the terms and conditions hereinafter set forth in this Amendment are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare and authorized the City Manager to execute this Amendment;

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

1. Section One shall be amended as follows, with all other provisions under the Section to remain the same:

"Subdivision Regulations" shall mean the regulations in Title 19 of the El Paso City Code in effect on the date this amendment is approved by the El Paso City Council.

2. Section Seven shall be amended in its entirety as follows:

**SEVEN:** The Property may be used and developed in a manner consistent with the Development Plan submitted and attached as Exhibit "B". It is understood that in order to develop the property in accordance with Exhibit B, it will be necessary for the Owner to rezone the Property. Concurrently with the consideration of this amendment to the Agreement, Owner will petition the City, at their expense, for rezoning of the Property as provided in the Code. If the General mixed use and C-1 rezoning classifications are denied for any reason or approved with restrictions, then the Development Plan may be amended to reflect what was approved by City Council without further need to amend this Agreement.

3. Section Eight shall be amended in its entirety as follows:

EIGHT. Owner shall not be required to dedicate parkland or pay park fees, other than what is required under the Subdivision Code, in effect at the time this amendment to the Agreement is approved by City Council.

4. Section Nine be deleted in its entirety.

5. Section Fifteen shall be amended in its entirety as follows:

FIFTEEN.

This Agreement shall have a term of seven (7) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code.

6. Section Sixteen shall be amended in its entirety as follows:

SIXTEEN. Owner shall dedicate eighteen (18) feet in width of property for use as public right-of-way for the widening of Borderland Road abutting the Property, and thirty-six (36) feet in width of property for use as public right-of-way for the widening of Westside Drive, at its sole cost and shall not request any reimbursement from the City for the dedication.

7. Section Seventeen shall be amended in its entirety as follows:

SEVENTEEN. Water and sanitary sewer mains located outside the boundaries of the Property but needed to extend water and sanitary sewer service to the Property (off-site water and sanitary sewer mains) will be constructed by the Owner at the Owner's cost. These off-site mains will be addressed in a separate agreement with the El Paso Water Utilities Department (Development Agreement-Water and Sewer Main Extensions).

8. Except as expressly herein amended all other provisions of the Development Agreement entered into on May 8, 2007 shall remain in full force and effect.

**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.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**SIGNATURES AND ACKNOWLEDGEMENT CONTINUE ON FOLLOWING PAGE**

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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

\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Deputy Director - Planning

**ACKNOWLEDGEMENT**

STATE OF TEXAS            )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

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

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_ day of \_\_\_\_\_, 2011.

**EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD**

\_\_\_\_\_  
Edmund G. Archuleta, P.E.  
President/CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert D. Andron  
General Counsel

**ACKNOWLEDGEMENT**

STATE OF TEXAS            )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by Edmund G. Archuleta, as President/CEO of the El Paso Water Utilities Public Service Board.

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

**ACKNOWLEDGE AND ACCEPTANCE ON FOLLOWING PAGE**

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

**OWNER: RIO VALLEY LLC**

\_\_\_\_\_

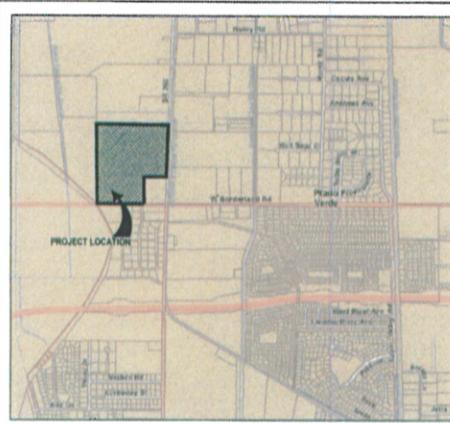
By: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2011,  
by \_\_\_\_\_, as \_\_\_\_\_ of Rio Valley LLC.

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



**LEGEND**

- SINGLE FAMILY
- SINGLE FAMILY (7,000 sq ft LOTS)
- ATTACHED HOUSING
- MAIN STREET COMMERCIAL
- OPEN SPACE
- PROPOSED ROADWAY
- C-1 ZONING
- R.O.W. TO BE DEDICATED
- LOT LINES
- PROPERTY BOUNDARY
- PHASE LINE

**DEVELOPER**  
 RIO VALLEY LLC  
 6300 ESCOBADO  
 EL PASO, TX 79912

**PREPARED BY**  
 SUMMIT ENGINEERING  
 P.O. BOX 375  
 FARMACIA, NM 88033

**PROJECT DENSITY**  
 CURRENT ZONING: R-2 RESIDENTIAL DISTRICT  
 C-1 COMMERCIAL DISTRICT  
 PROPOSED ZONING: C-140 GENERAL MIXED USE DISTRICT

**LEGAL DESCRIPTION**  
 The parcel of land herein described is part of Tract 5, Block 14, Upper Valley Surveys, City of El Paso, El Paso County, Texas, and is more particularly described by names and acreage as follows to wit:

COMMERCIAL is a tract 10-inch less with a 5/1 cap stamped "TX 2000" and point also being the southeast corner of Tract 5, Block 14, Upper Valley Surveys. Thence North 90° 00' 00" West, a distance of 312.40 feet to a point lying on the southern boundary line of Tract 5, Block 14, Upper Valley Surveys, said point also being the TRUE POINT OF BEGINNING of the description;

THENCE, North 90° 00' 00" West, along said right-of-way line of Boardman Road, a distance of 180.00 feet to a point lying on the common boundary line between Tracts 2 and 4 of Block 14, Upper Valley Surveys, said point being a fixed 5/8 inch nail;

THENCE, South 00° 00' 00" West, along said boundary line, a distance of 197.00 feet to a point lying on the common boundary line between Tracts 4 and 5, Block 14, Upper Valley Surveys, said point being a fixed 1/2 inch nail with a 5/1 plastic cap stamped "TX 2000";

THENCE, South 90° 00' 00" East, along said boundary line, a distance of 140.20 feet to a point lying on the westerly right-of-way line of Westside Drive (F.M. 305), said point being a distance of 12.00 feet from said 5/1 plastic cap stamped "TX 2000";

THENCE, South 01° 20' 00" West, along said right-of-way line, a distance of 1374.18 feet, to an angle point;

THENCE, South 00° 00' 00" West, along said right-of-way line, a distance of 205.71 feet, to an angle point;

THENCE, South 00° 00' 00" West, a distance of 544.00 feet, to a point on the westerly right-of-way line of Boardman Road and the TRUE POINT OF BEGINNING of the description.

Said parcel of land contains 58,626 square feet more or less.

**ANTICIPATED TRAFFIC GENERATION BASED ON I.T.E.**

B.T.E. CODE ZIB	D.U.	TRIPS/D.U.	TRIPS
SINGLE FAMILY	108	9.57	1781
B.T.E. CODE ZIB	D.U. <td>TRIPS/D.U. <td>TRIPS</td> </td>	TRIPS/D.U. <td>TRIPS</td>	TRIPS
APARTMENTS	102	8.03	1273
B.T.E. CODE RATE	ACHES	TRIPS/1,000 SF	TRIPS
COMMERCIAL	N/A	<0.80	1,405

**INTENDED LAND USE**

PHASE	ACRES (±)	SINGLE FAMILY (sq)	ATTACHED HOUSING (sq)	COMMERCIAL (sq)	PARK/OPEN SPACE (sq)	R.O.W. (sq)	ADDITIONAL R.O.W.* (sq)
1	25.313	14,055 (55.74%)	1,996 (7.92%)	-	2,194 (8.67%)	0.782 (3.07%)	0.156 (0.61%)
2	33.422	8,458 (25.30%)	7,282 (21.76%)	3,037 (8.99%)	4,127 (12.39%)	16,172 (48.09%)	1,346 (3.99%)
TOTAL (1+2)	58.635	22,513 (38.39%)	9,278 (15.82%)	3,037 (5.17%)	7,321 (12.49%)	16,954 (28.84%)	1,504 (2.56%)

\* ADDITIONAL R.O.W. TO BE DEDICATED WITH THIS DEVELOPMENT  
 1) PERCENTAGE OF TOTAL DEVELOPMENT  
 REFER TO MASTER ZONING PLAN REPORT FOR ALL PERMISSIBLE USES

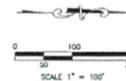
**PROPERTY DEVELOPMENT STANDARDS**

PROPOSED LAND USE	PROPOSED MINIMUM SETBACK					PROPOSED MINIMUM LOT & DWELLING SIZE				PROPOSED MAXIMUM BUILDING HEIGHT		LOT COVERAGE	
	FRONT (ft)	REAR (ft)	SIDE (ft)	INTERIOR (ft)	SIDE-STREET (ft)	LOT AREA (sq ft)	LOT WIDTH (ft)	LOT DEPTH (ft)	MIN. (ft)	MAX. (ft)	MINIMUM (%)	MAXIMUM (%)	
SINGLE FAMILY*	15	15	5	10	20	4,000	50	90	35	-	1,000 sq ft	2,500 sq ft	
ATTACHED HOUSING	15 ft	15	04	3	20	2,700	30	90	35	N/A	33.07%	54.10%	
MAIN STREET COMMERCIAL	0 ft	40	0	0	5	N/A	N/A	N/A	35	N/A	34.95%	44.25%	

\* ACCESSORY RESIDENTIAL BUILDINGS WILL BE PERMITTED ON SINGLE FAMILY, NEAR-LOADED LOTS ONLY  
 \* NEAR-LOADED SINGLE FAMILY LOTS SHALL HAVE A 3-FOOT FRONT SETBACK  
 \* ATTACHED HOUSING WITH PARK FRONTAGE SHALL HAVE A FOOT FRONT SETBACK (ALONG PARK SIDE)  
 \* MINIMUM FRONT SETBACK OF 5 FEET



**MASTER ZONING PLAN**  
 SCALE: 1" = 100'



**MAXIMUM PROPOSED DENSITY (NON-RESIDENTIAL LAND USE)**  
 COMMERCIAL: 0.42 sq. ft. ft.

**MAXIMUM PROPOSED NO. OF DWELLING UNITS (RESIDENTIAL LAND USE - COMBINED)**  
 RESIDENTIAL COMBINED: 376 dwelling units

**MAXIMUM PROPOSED TOTAL FLOOR AREA (NON-RESIDENTIAL LAND USE - COMBINED)**  
 COMMERCIAL: 35,060 sq. ft.

**MAXIMUM PROPOSED DENSITY (RESIDENTIAL LAND USE)**

	PHASE 1	PHASE 2	TOTAL PHASES (1+2)
SINGLE FAMILY:	4.8 du/acre (GROSS) 6.1 du/acre (NET)	7.7 du/acre (GROSS) 8.3 du/acre (NET)	3.1 du/acre (GROSS) 8.3 du/acre (NET)
ATTACHED HOUSING:	4.9 du/acre (GROSS) 20.9 du/acre (NET)	4.9 du/acre (GROSS) 20.9 du/acre (NET)	3.1 du/acre (GROSS) 20.7 du/acre (NET)
OVERALL RESIDENTIAL:	6.1 du/acre (GROSS) 9.6 du/acre (NET)	6.7 du/acre (GROSS) 14.2 du/acre (NET)	8.4 du/acre (GROSS) 11.9 du/acre (NET)

**DEVELOPMENT SCHEDULE**  
 THE PROJECT IS PROPOSED IN TWO PHASES AS INDICATED ON THE MASTER ZONING PLAN.  
 CONSTRUCTION OF PHASE 1 IS SCHEDULED TO START AUGUST 2015 AND ESTIMATED TO LAST 18 MONTHS ENDING MARCH 2017.  
 CONSTRUCTION OF PHASE 2 IS SCHEDULED TO START MARCH 2015 AND ESTIMATED TO LAST 6 MONTHS ENDING OCTOBER 2015.



**MEMORANDUM**

**DATE:** July 19, 2011

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

**FROM:** Arturo Rubio, Senior Planner

**SUBJECT: Resolution, Development Agreement Amendment**

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The City Plan Commission (CPC), on May 19, 2011 voted 4-2 to recommend **Denial** of the amendment to May 8, 2007, Development Agreement by and between the City of El Paso, The El Paso Water Utilities-Public Service Board and Rio Valley LLC.

The CPC found that the amendment does not protect the best interest, health, safety and welfare of the public in general; that the proposed amendment will have negative effects on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

**Attachment:** Original Development Agreement, Resolution



"Agreement" means this Development Agreement by and between the City, the PSB, and the Owner.

"Annexation Ordinance" has the meaning set forth in Paragraph Three.

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

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

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

"Code" shall mean the El Paso Municipal Code.

"Effective Date" means the date that this Agreement has been approved by the City Council and the Board of the PSB.

"Jamás" means El Paso Jamás, Ltd.

"Owner" means Rio Valley LLC.

"Owner Facilities" shall mean the gravity wastewater lines from the Far West Lift Station to the Property at or about the locations shown on Exhibit "D" to be constructed by the Owner under a developer participation contract to be executed by the between Owner and the PSB in accordance with Chapter 212 of the Texas Local Government Code.

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

"Property" shall mean a 62.626-acre tract of land described by metes and bounds in Exhibit "A".

"PSB Facilities" shall mean wastewater lift facilities and related lines described in Exhibit "C" to be constructed by Jamás at or about the locations shown on Exhibit "D" attached hereto under a developer participation contract to be executed by and between Jamás and the PSB in accordance with Chapter 212 of the Texas Local Government Code pursuant to which the PSB will reimburse Jamás for the construction costs of the wastewater lift station and force mains in accordance with the developer participation agreement.

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

CITY CLERK DEPT.

"PSB Regulations" shall mean the duly adopted rules and regulations of the PSB in effect on the Effective Date.

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

"Subdivision Plat" shall mean the subdivision plat submitted to and approved by the City Plan Commission of the City, Subdivision Case No. SUB06-00014 Rio Valley Addition (Combination), a copy of which is attached hereto as Exhibit B.

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

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

TWO: Within ninety (90) days following the recording of the Subdivision Plat, the City shall provide to the Property all of the municipal services provided inside municipal boundaries, regardless of whether the Property covered by the subdivision plat has been annexed as of such date. However, the scheduling of water and wastewater services to the Property shall be in accordance with the provisions of Section Eleven.

THREE: The Owner shall initiate and submit an annexation application no later than ninety (90) days after the recording of the Subdivision Plat requesting that the City annex all of the Property into the City's corporate limits.

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, and in accordance with applicable provisions of state law.

The City may annex all of the Property under this Agreement by enacting an ordinance annexing the Property ("Annexation Ordinance"). To the extent allowed by law, the enactment of an ordinance annexing the Property shall be the only procedure required of the City to annex the Property.

FOUR: City and Owner hereby agree that the development of the Property shall be in accordance with the City Regulations, including the PSB Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement. Pursuant to Subchapter G, Chapter 212, Local Government Code, the City and Owner agrees that, except as otherwise provided herein, the City Regulations shall be applicable to the Property on the Effective Date. The Vesting Statute shall apply to the Property on and after the Effective Date of this Agreement.

FIVE: Intentionally deleted.

07 MAY - 1 11:52  
CITY CLERK DEPT.

SIX: Intentionally deleted.

SEVEN: On and after the Effective Date, the Property may be used and developed in a manner consistent with the Subdivision Plat and all the uses and standards set forth in the R-2 Residential District ("R-2") zoning classification for the portion of the property designated as residential and C-1 Commercial for the portion of the property designated as commercial on Exhibit "B", in effect at the time of the Effective Date of this Agreement. Concurrently with the consideration of this Annexation, Owner will petition the City, at their expense, for rezoning of the Property as provided in the Code. If R-2 and C-1 zoning classifications are denied for any reason or approved with restrictions, such denial or restrictions shall not impair or restrict the Owner's right to develop and use the Property as set forth in the first sentence of this Paragraph Seven.

EIGHT: City acknowledges and agrees neither this development agreement nor the Subdivision Plat include any dedication of parkland nor shall the City require any dedication of parkland within the Property. Owner agrees to provide a letter of credit or bond, in a form acceptable to the city, within ten days of the Effective Date to the benefit of the City in the full amount of the park fees specified in this paragraph. If upon completion of the Jamas subdivision, or six months thereof, the park facilities have not been constructed in the Jamas subdivision, the City may use the letter of credit to complete construction of the park facilities. Within ninety (90) days from the Effective Date, Owner agrees to enter into a separate agreement with Jamas to provide for the improvement of public neighborhood parkland located within the property as shown on Exhibit "E" ("Jamas Property") wherein Owner agrees to pay to Jamas an equivalent amount of park fees in the amount of Three Hundred and No/100 Dollars (\$300.00) per residential lot, and Three Hundred and No/100 Dollars (\$300.00) per gross acre for the commercial lot to be used by Jamas primarily in the development of a two (2) acre, more or less, neighborhood park in the Jamas Property. If Owner is unable to timely enter into an agreement with Jamas, then Owner may use the letter of credit provided by the Owner to the City which City will make available to Jamas for development of the neighborhood park.

NINE: Owner agrees to impose restrictive covenants on the Property in order to avoid a homogenous look of housing through varied architectural features and site-specific designs. The restrictive covenants shall require differences in bulk and massing of buildings, different housing types, include single and two-story, providing varied types of garages such as front-load garage (one-car, two-car, three-car), side-load garage, detached garage, or carport, and requiring different alternating roof types such as gable, hip, gambrel, mansard or flat.

TEN: Except as expressly provided for herein, no fee, except the annexation application filing fee, shall be assessed to Owner for annexation by the City nor shall Owner be obligated to pay any annexation fees to PSB.

07 MAY - 1 AM 11:52  
CITY CLERK DEPT.

ELEVEN: Within ninety (90) days after the Effective Date, Owner agrees to enter into a Cost Sharing and Development Agreement with Jamas wherein Owner will share in the cost to complete the PSB Facilities under the developer participation contract between Jamas and the PSB.

Upon completion of the PSB Facilities by Jamas and the Owner Facilities by Owner, Owner acknowledges that only wastewater services for a maximum of two hundred thirty-seven (237) lots shall be made available to the Far West County area shown in Exhibit "D" and shall be distributed based on the developer participation contract executed between the Owner and Jamas. Following the completion by the PSB of the East Way II Lift station and associated Interceptor terminating on Strahan Road north of Borderland, projected in Summer 2007, Owner acknowledges that Jamas will be required to construct a 12-inch force main to the associated Interceptor in order to provide wastewater service to the balance of the Property.

Without limiting the foregoing, the provision of retail water and wastewater services shall not be delayed on the grounds that the Property has not been annexed in whole or in part. The rates for water and wastewater services shall be equal to the rates charged inside the incorporated boundaries of the City. The City's obligation to provide water and wastewater services to the Property shall survive the expiration of the term of this Agreement.

In addition, PSB and Owner shall enter into a water rights assignment agreement wherein PSB shall acquire from the Owner all surface water rights on property of two (2) acres or less in size for a term of seventy-five (75) years at a price of Four Thousand Five Hundred and No/100 Dollars (\$4,500.00) per acre.

TWELVE: Intentionally deleted.

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

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

(1)  
07 MAY -1 4M 11:52  
CITY CLERK DEPT.

City:  
City of El Paso

Attn: City Manager

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

Physical Address:  
Same as above

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

Mailing Address:  
1154 Hawkins Boulevard  
El Paso, Texas 79925

Physical Address:  
Same as above

(3) **Owner:**  
Rio Valley, LLC  
Attn: Jack Winton

Mailing Address:  
6300 Escondido  
El Paso, Texas 79912

Physical Address:  
Same as above

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

FIFTEEN: This Agreement shall have a term of five (5) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code.

07MAY-1 4M11:52  
CITY CLERK DEPT.

**SIXTEEN:** Owner shall dedicate eighteen (18) feet in width of property for use as public right-of-way for the widening of Borderland Road abutting the Property, and fourteen (14) feet in width of property for use as public right-of-way for the widening of Westside Drive as shown on the Subdivision Plat, at its sole cost and shall not request any reimbursement from the City for the dedication. Owner shall not be responsible for the construction of the improvements to the additional right-of-way dedicated, except as required to provide for paved entrances to the Property, and accommodate any drainage.

**SEVENTEEN:** The Owner agrees to construct at its expense the mains and pipes located inside the Property that are necessary to provide retail water and wastewater utility services to the Property. The mains and pipes shall be designed and constructed in accordance with PSB Regulations.

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

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

**Remedies:** This Agreement shall be enforceable in any court of competent jurisdiction by any of the Parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained.

In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty (30) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity. The City and the PSB hereby waive immunity to

CITY CLERK DEPT.

suit for specific performance of this agreement only, and do not waive immunity from damages of any kind with respect to any suit for specific performance of this agreement nor do the City and the PSB agree to attorney's fees, under any cause of action.

**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, 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 the Owner determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to deannex the Property, and if the Owner has made such determination, the Owner shall have the option to terminate this Agreement and to deannex the Property. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

**Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. By approving the execution of this Agreement, the City Council of the City, and the Public Service Board of the El Paso Water Utilities, delegate to the City Manager of the City, and to the General Manager of the El Paso Water Utilities, the authority, without any further action being required of the City Council or of the Public Service Board, to execute such amendments of or extensions to this Agreement as they may consider advisable, and consistent with the provisions of law.

**Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law

CITY CLERK DEPT.

rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the state or federal courts situated in that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

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

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

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

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

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

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

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

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

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

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

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

THE CITY OF EL PASO

Joyce A. Wilson  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

Lupe Cuellar  
Lupe Cuellar  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

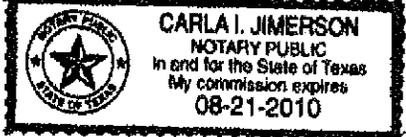
EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

Robert D. Andron  
Robert D. Andron  
General Counsel

Edmund G. Archuleta  
Edmund G. Archuleta, P.E.  
General Manager

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )



This instrument was acknowledged before me on the 5<sup>th</sup> day of May, 2007, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

Carla I. Jimerson  
Notary Public, State of Texas

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 25<sup>th</sup> day of May, 2007, by Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service Board.

Nancy E. Gutierrez  
Notary Public, State of Texas

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CLERK DEPT.



**ACCEPTANCE**

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

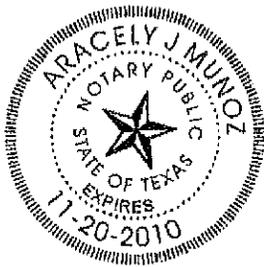
By: Rio Valley, LLC  
General Partner

By: *Jack Winton*  
President

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 27<sup>th</sup> day of April 2007, by, as general partner and on behalf of, a Texas limited partnership.



*Aracely J Munoz*  
Notary Public, State of Texas

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EXHIBIT "A"

PROPERTY DESCRIPTION

938  
6309  
0221

EXHIBIT "A"

PROPERTY DESCRIPTION

MOLT FARM

BEING the description of a tract of land now known as Tract 5 in Block 14 of the Upper Valley Surveys in El Paso County, Texas, according to the resurvey map of said Upper Valley made by the County Surveyor of El Paso County, Texas and accepted by the Commissioner's Court of El Paso County, Texas and being more particularly described by meter and bounds as follows:

BEGINNING at a point, said point is the intersection of the West R.O.W. line of Westside Road and the North R.O.W. line of Borderland Road, and is the true Point of Beginning of the tract being described;

THENCE North 01° 30' 25" East along the said West R.O.W. line of Westside Road a distance of 1918.36 feet to a point;

THENCE North 89° 58' 35" West a distance of 1449.20 feet to a point;

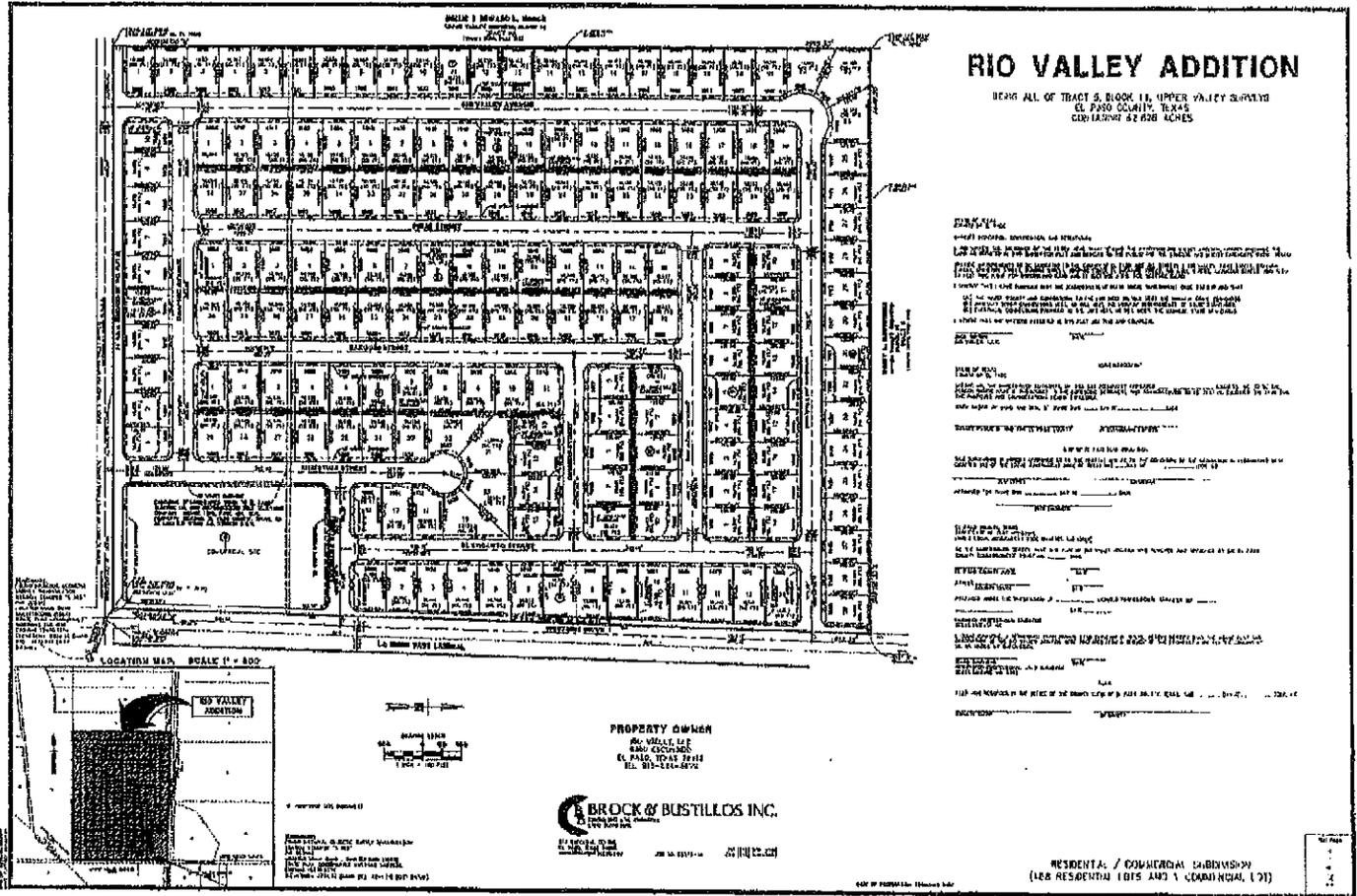
THENCE South 00° 06' 00" East a distance of 1910.30 feet to a point in the North R.O.W. line of Borderland Road, said point bears due East a distance of 144.5 feet from the point of intersection of the North R.O.W. line of Borderland Road with the boundary line between Texas and New Mexico;

THENCE due East along said North R.O.W. line of Borderland Road a distance of 1395.40 feet to the Point of Beginning of the tract herein described and containing 62.676 acres of land more or less.

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**EXHIBIT "B"**  
**SUBDIVISION PLAT**



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EXHIBIT "C"

DESCRIPTION OF PSB FACILITIES AND LINES

EXHIBIT "C"

12/21/02

Construction of the Far West LIR Station, firm pumping capacity 1.5 MGD, and associated 12-inch force main  
Construction of an interim 8-inch force main and improvement to the existing Laguna Meadows LIR Station.

Far West County LIR Station

Subdivision	Developer	Acres	LUE	Percent of Lots	Peak Flow (gpm)	Peak Flow (MGD)	Cost Sharing Breakdown	% of Participants	Refundable Amt. per Participant	Total cost per Participant	Cost per LUE
Hagan Property		60	182	12.71	118	0.17	\$208,792	43.24	\$ 369,013.80	\$ 607,808.84	\$2,957.32
Rio Valley Addition	(Whitton)	62,626	189	12.44	118	0.17	\$204,442	42.34	\$ 361,634.36	\$ 606,076.88	\$2,957.32
Los Nogales		47,825	62	3.44	32	0.06	\$59,648	11.71	\$ 97,232.90	\$ 169,780.75	\$2,957.32
River Park West Unit 7	(O'Leary)	3	12	0.76	7	0.01	\$13,080	2.70	\$ 22,438.38	\$ 35,497.69	\$2,957.32
SUBTOTAL		108.6	444	29.39	272	0.39	\$402,832	100.00	\$ 830,219.42	\$ 1,318,051.00	
Arcraft Estates	(Schwartz)	51,48	210	13.90	129	0.19	\$228,368				
Oakwood		62.0	42	2.78	29	0.04	\$46,673				
Paso Verde		98.0	117	7.74	72	0.10	\$127,283				
Canutilo Independent School District other properties		25 218.48	55 648	3.31 42.88	20 397	0.03 0.57	\$54,378 \$704,674				
TOTAL		656.40	1611	100.00	918	1.32	\$1,943,091				

Far West LIR Station and Associated Force Main (from LIR Station to Int. Borderland and Strahan)

Description	Unit	Quantity	Cost/Unit	Total
Installation of 1.5 MGD LIR Station (complete)	EA	1	\$375,000	\$1,100,000
Electrical	LB	1	\$60,000	\$27,401
12-inch Force Main	LF	4460	\$40	\$180,100
Trench Safety System	LF	4400	\$2.50	\$0
Pavement Cut & Restoration (2-inch HMAO)	BF	32800	\$14	\$0
2-Back Backfill	CY	815	\$40	\$0
Dewatering	LS	1	\$35,000	\$35,000
Sub-Total				\$1,942,801
Contingency	%	0		\$60,000
Payment and Performance Bond	%	0	\$30,650	\$30,650
Total Estimate of Probable Cost				\$1,843,051

Meter size	Demand (GPM)	Equivalent Meter size
5/8 x 3/4"	13	1
1"	32	2.47
1 1/2"	75	5
2"	120	8
3"	240	16
4"	375	23
6"	750	50
8"	1400	93.33
10"	2000	133.33

Force Main (Int. Strahan and Borderland to Proposed Strahan Interceptor)

Description	Unit	Quantity	Cost/Unit	Total
12-inch Force Main	LF	0	\$40	\$0
Trench Safety System	LF	0	\$2.50	\$0
Pavement Cut & Restoration (2-inch HMAO)	BF	0	\$14	\$0
2-Back Backfill	CY	0	\$40	\$0
Traffic Control	LS	0	\$15,000	\$0
Sub-Total				\$0
Contingency	%	0		\$0
Engineering	%	0		\$0
Total Estimate of Probable Cost				\$0

Alternative 1. Improvements to LIR Station #12 (Laguna Meadows)

Description	Unit	Quantity	Cost/Unit	Total
LIR Station Equipment Upgrade (600 gpm at 60' TDH)	LS	1	\$38,164.00	\$38,164
Miscellaneous	LS	1	\$5,000.00	\$5,000
Material/Over Labor	LS	1	\$5,000.00	\$5,000
Sub-Total				\$48,164
Contingency	%	15		\$7,225
Engineering	%	15		\$7,225
Total Estimate of Probable Cost				\$62,614

Total Cost of LIR Station

\$ 1,843,051

Participants in LIR Station

Cost (thru the RPWU)	\$ 56,000
El Paso Water Utilities	\$ 276,000
Borderland Development	\$ 1,319,051
	\$ 1,643,051

Amounts NOT Eligible to be Refunded

\$ 208,792	Hagan Property
\$ 204,442	Rio Valley Addition
\$ 59,648	Los Nogales
\$ 13,080	River Park West Unit 7
\$ 55,000	CISD
\$ 278,000	RPWU
\$ 812,832	

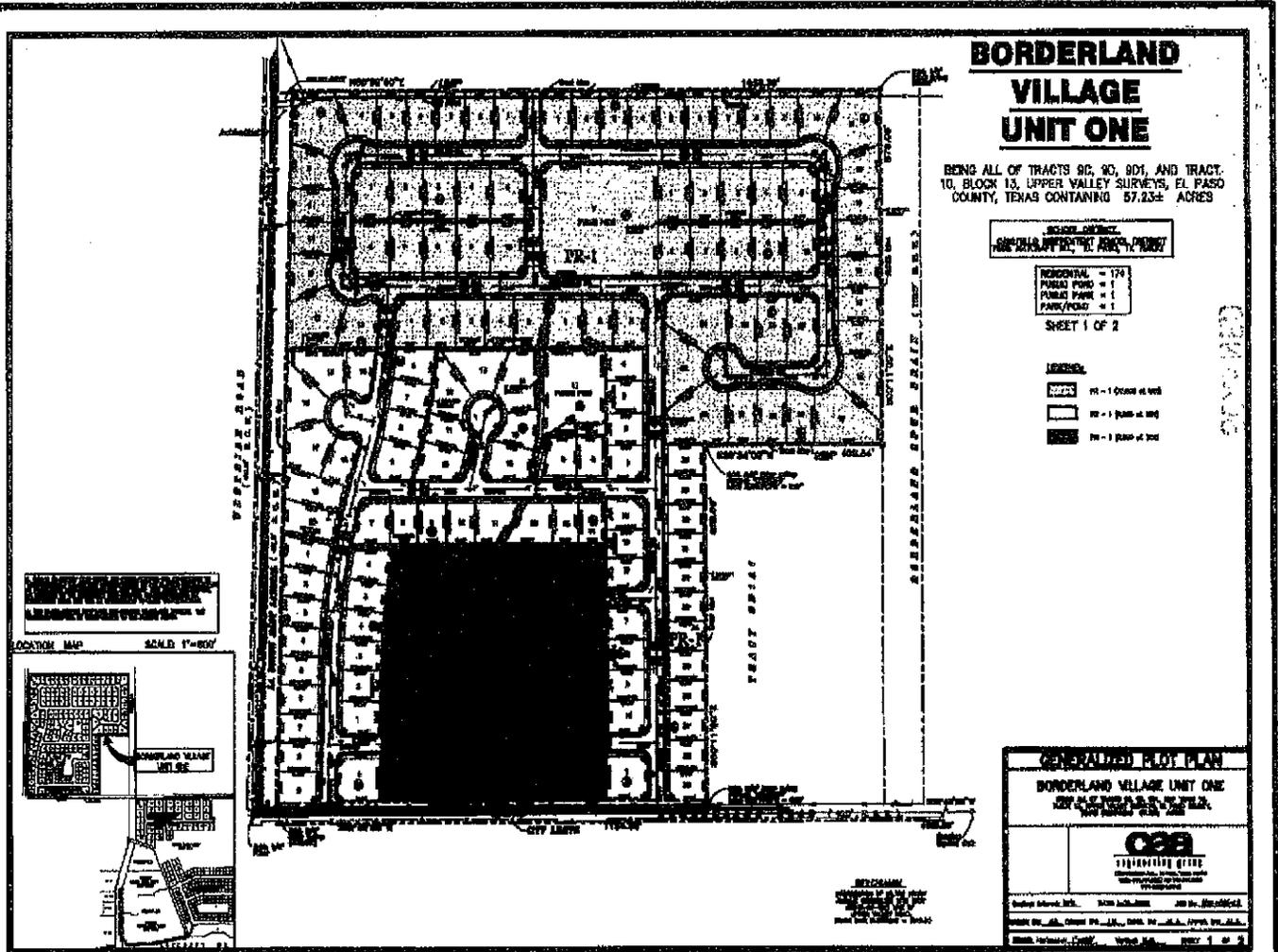
Amount Eligible to be Refunded	\$ 1,643,051	-	\$ 612,832		=	\$ 830,219
Refundable Number of Lots/LUE-Outside City	1511	-	50	444	=	1017
Refundable Amount per Lot/LUE	\$ 830,219	+	1017		=	\$ 816

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EXHIBIT "E"

JAMAS PROPERTY



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