

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

**DEPARTMENT:** Development Services Department, Planning Division

**AGENDA DATE:** Introduction: September 1, 2009  
Public Hearing: September 22, 2009

**CONTACT PERSON/PHONE:** Christina Ainsworth, 541-4930

**DISTRICT(S) AFFECTED:** 6

**SUBJECT:**

An Ordinance annexing Tract 71, Section 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, El Paso County, Texas. Subject Property: East of Shreya Street and Northeast of Windermere Avenue. Applicants: Walnut Creek, LLC. AN08001 (East ETJ, Adjacent to District 6).

**BACKGROUND / DISCUSSION:**

**PRIOR COUNCIL ACTION:**

July 7, 2009 – Approved annexation agreement for the subject property.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) – Approval Recommendation  
City Plan Commission (CPC) – Approval Recommendation (4-0)

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

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

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

**DEPARTMENT HEAD:** \_\_\_\_\_

Victor Q. Torres  
Director, Development Services

**APPROVED FOR AGENDA:**

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

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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ANNEXING TRACT 71, SECTION 3, BLOCK 79, TOWNSHIP 3, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO COUNTY, TEXAS**

**WHEREAS**, Walnut Creek, LLC., owners of approximately 4.969 acres, lying in the City of El Paso’s East Extraterritorial Jurisdiction; the property more fully described in the attached metes and bounds description, identified as Exhibit “A” and made a part hereof by reference, request that this area be annexed into the El Paso’s City Limits; and,

**WHEREAS**, the attached Service Plan, described as Exhibit “B”, identifies the municipal services to be extended to this annexed area and adopted as part of this ordinance;

**WHEREAS**, the City of El Paso and the Owners have entered into an Annexation Agreement on July 7, 2009, attached as Exhibit “C”, which governs the development of the property after the annexation.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the boundaries of the *CITY OF EL PASO* are hereby extended so as to annex Tract 71, Section 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, El Paso County, Texas, more particularly described in Exhibit “A.”

Further, that the City adopts the Service Plan described as Exhibit “B”; and that the annexation is subject to all terms and conditions of the Annexation Agreement, entered into on July 7, 2009.

**PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

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 McElroy, Deputy Director  
Development Services Department

Being Tract 71, Section 3, Block 79, Tsp. 3,  
Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
April 15, 2008  
(Parcel 1, R-5)

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tract 71, A/K/A the west 1/2, of the southwest 1/4, of the southwest 1/4, of the southwest 1/4, of Section 3, Block 79, Tsp. 3, Texas and Pacific Railway Company Surveys, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

**“TRUE POINT OF BEGINNING”** being a found 1” iron rod held for the southwest corner of Section 4; Whence a found 1” iron rod held for the southeast corner of Section 4 bears North 89°58’43” East a distance of 5313.63 feet

Thence, **North 00°33’24” West** a distance of **651.85** feet to a point;

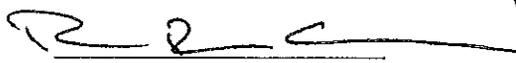
Thence, **North 89°58’46” East** a distance of **332.09** feet to a point;

Thence, **South 00°33’27” East** a distance of **651.85** feet to a point;

Thence, **South 89°58’43” West** a distance of 332.10 feet to **“TRUE POINT OF BEGINNING”** and containing in all 216,467 square feet or **4.969** acres of land more or less.

Zoning Plat dated March 25, 2008 accompanies this metes and bounds description.

Not a ground survey.

  
Ron R. Conde  
R.P.L.S. No. 5152



job #308-21

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

**EXHIBIT “A”**

# CITY OF EL PASO ANNEXATION SERVICE PLAN

## INTRODUCTION

This Service Plan (Plan) is made by the City of El Paso, Texas (City) pursuant to Chapter 43 of the Texas Local Government Code. This Plan is made specifically for a 4.969-acre property located in the City's East Extraterritorial Jurisdiction (ETJ). The area includes Tract 71, Section 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit, "A" which is attached to the annexation ordinance of which this Plan is a part.

## EFFECTIVE TERM

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

## INTENT

It is the intent of the City of El Paso that services under this Plan shall provide full municipal services in accordance with State law and the Annexation Agreement entered into by the property owners and the City, such agreement being identified as Exhibit "C" and is attached to the annexation ordinance.

The City reserves the right guaranteed to it by Section 43.056(h) Texas Local Government Code, to amend this Plan if the City Council determines that changed conditions or subsequent occurrence or any other legally sufficient circumstances exist under the Local Government Code, or other Texas laws to make this Plan unworkable or obsolete or unlawful.

## SERVICE COMPONENTS

This Plan includes three service components: (1) Immediate Services Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities; governmental entities and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

### 1. Immediate Services Program

The following services will be provided in the annexation area immediately upon the effective date of the annexation, unless otherwise noted.

- a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:
  - normal patrols and responses;
  - handling of complaints and incident reports;
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.

- b. Fire Protection. The El Paso Fire Department will provide emergency and fire prevention services in the annexation area, on the effective date of annexation. These services include:
- fire suppression and rescue;
  - emergency medical services;
  - hazardous materials mitigation and regulation;
  - emergency prevention and public education efforts;
  - construction plan review;
  - inspections.
- c. Solid Waste Collection. The El Paso Solid Waste Management Department will provide solid waste collection services in the annexation area on the effective date of annexation. Services currently provided in the City for single-family residences include:
- garbage collection - once a week in accordance with established policies of the City;
  - dead animal collection - dead animals are removed from roadways upon request.
- Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.
- e. Maintenance of Roads and Streets, Including Street Lighting. The City's Public Works Department will maintain public streets over which the City has jurisdiction. These services include:
- emergency pavement repair;
  - ice and snow monitoring of major thoroughfares
  - repair maintenance of public streets on as-needed basis and in accordance with established policies of the City.
- f. Maintenance of Parks, Playgrounds, and Swimming Pools. No public recreation facilities will be located within the annexation area however, the nearest public neighborhood park is located within 300 feet of the annexed area and the nearest public community park and recreation center are located within 500 feet.

## 2. Additional Services

Certain services, in addition to the above services, will be provided within the annexation area. They are as follows:

- a. Drainage Services. The City's Street Department will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:
- maintenance of existing public ponding areas and retention dams;

- storm sewer maintenance;
  - watershed development review and inspection;
  - emergency spills and pollution complaints response;
  - flood plain office (information relating to flood plains).
- b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.
  - c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.
  - d. City-County Health Department. All of the City-County Health services codes and regulations will be extended to the annexed area on the effective date of annexation
  - e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation. All land annexed shall be classified in the R-F zoning district pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council. Such hearing shall be held within sixty days after the effective date of annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing.
  - f. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

### **3. Capital Improvements Program**

The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary. Any such construction or acquisition shall begin within two years of the effective date of the annexation and shall be substantially completed within 4 1/2 years after that date. Construction of any capital improvement within the annexation area will be done accordance with the established policies of the City.

- a. Police Protection. No capital improvements are necessary to serve the annexed area.
- b. Fire Protection. No capital improvements are necessary to serve the annexed area.
- c. Solid Waste Collection. No capital improvements are necessary to serve the annexed area.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area. Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in accordance with the adopted Rules and Regulations of the El Paso Water Utilities.

- e. Roads and Streets. No road or street related capital improvements are necessary at this time. In general, the City will acquire control and jurisdiction of all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.
- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary to serve the annexed area.
- g. Drainage Facilities. No capital improvements are necessary to serve the annexed area
- h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area upon request in accordance with established street lighting policies of the City.
- i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City.

## **AMENDMENT: GOVERNING LAW**

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules regulations of governmental bodies and officers having jurisdiction.

## **FORCE MAJEURE**

In case of an emergency, such as force majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the annexation area of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure.

**RESOLUTION**

**WHEREAS**, Walnut Creek, LLC is the property owner of 4.96 of real property described in Exhibit "A" that is attached and incorporated for all purposes and which property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and

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

**WHEREAS**, the City has determined that if the Property is annexed, such annexation should be subject to certain terms and conditions which will require the Property Owner to assist in bearing the costs for municipal infrastructure costs and costs for providing municipal services to the annexed area; and,

**WHEREAS**, Property 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 should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

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

That the City Manager be authorized to sign an Annexation Agreement between the City and Walnut Creek, LLC., for 4.96 acres of real property located East of Shreya Street and Northeast of Windermere Avenue which will specify the terms and conditions of which the property will be annexed should the City annex the property.

ADOPTED this 14<sup>th</sup> day of July, 2009.



ATTEST:

Richarda Duffy Momsen  
Richarda Duffy Momsen, City Clerk

**THE CITY OF EL PASO**

John F. Cook  
John F. Cook, Mayor

**APPROVED AS TO FORM:**

Lupe Cuellar  
Lupe Cuellar,  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

Mathew S. McElroy  
Mathew S. McElroy, Deputy Director  
Deputy Director – Planning  
Development Services Department

14B  
151/10

CITY CLERK DEPT.

THE STATE OF TEXAS )

09 JUL -1 AM 10:17

ANNEXATION AGREEMENT

AN08001

COUNTY OF EL PASO )

**THIS AGREEMENT** made and entered into this 7<sup>th</sup> day of July 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 Walnut Creek, LLC, (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner of record of 4.969 acres of real property described in Exhibit "A", which is attached and incorporated into this Agreement for all purposes (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**, 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, 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 should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and such terms and conditions are 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: Should the City annex the Property such annexation shall be 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. This Agreement shall be an exhibit to the ordinance which annexes the property and shall be incorporated for all purposes.

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 in Section Three and 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

CITY CLERK DEPT.

THE STATE OF TEXAS )  
COUNTY OF EL PASO )

09 JUL -1 AM 10:17

ANNEXATION AGREEMENT  
AN08001

**THIS AGREEMENT** made and entered into this 7<sup>th</sup> day of July 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 Walnut Creek, LLC, (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner of record of 4.969 acres of real property described in Exhibit "A", which is attached and incorporated into this Agreement for all purposes (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**, 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, 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 should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and such terms and conditions are 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:* Should the City annex the Property such annexation shall be 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. This Agreement shall be an exhibit to the ordinance which annexes the property and shall be incorporated for all purposes.

*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 in Section Three and 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. No off-premise signs shall be permitted within any portion of the Property.
2. 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.
3. Park credit may be applied as allowed under the Code.

Three: Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply submit a subdivision plat for approval 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"	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. 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 any other new or existing 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: Walnut Creek, LLC.  
C/O: Carlos Bombach  
12300 Montwood Drive  
El Paso, Texas 79925

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 to completion as specified herein 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

SIGNATURES, ACKNOWLEDGEMENT AND ACCEPTANCE ON FOLLOWING PAGE

CITY CLERK DEPT.  
09 JUL - 1 AM 10:17



APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

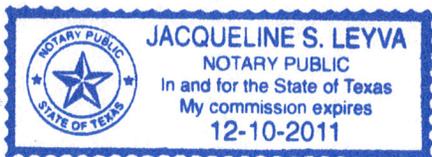
Lupe Cuellar  
Assistant City Attorney

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

**ACKNOWLEDGEMENT**

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 8<sup>th</sup> day of July, 2009, by Joyce Wilson, as City Manager of the City of El Paso, Texas.



Jacqueline S. Leyva  
Notary Public, State of Texas

Jacqueline S. Leyva  
Notary's Printed or Typed Name  
12/10/2011  
My Commission Expires

**ACCEPTANCE**

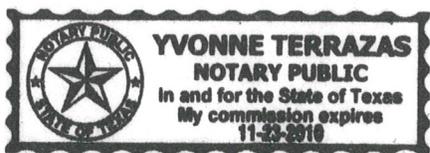
The above Agreement, with all conditions thereof, is hereby accepted this 29 day of JUNE, 2009.

Owner(s):  
By: [Signature]  
Title: PRESIDENT  
JNC Development, LP

**ACKNOWLEDGEMENT**

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 29<sup>th</sup> day of June, 2009, by Charlie Bombach, on behalf of **JNC Development, LP**, Owner.



[Signature]  
Notary Public, State of Texas

YVONNE TERRAZAS  
Notary's Printed or Typed Name  
11-23-2010  
My Commission Expires



EXHIBIT A

CITY CLERK DEP  
09 JUL - 1 AM 11:3

DEMASS

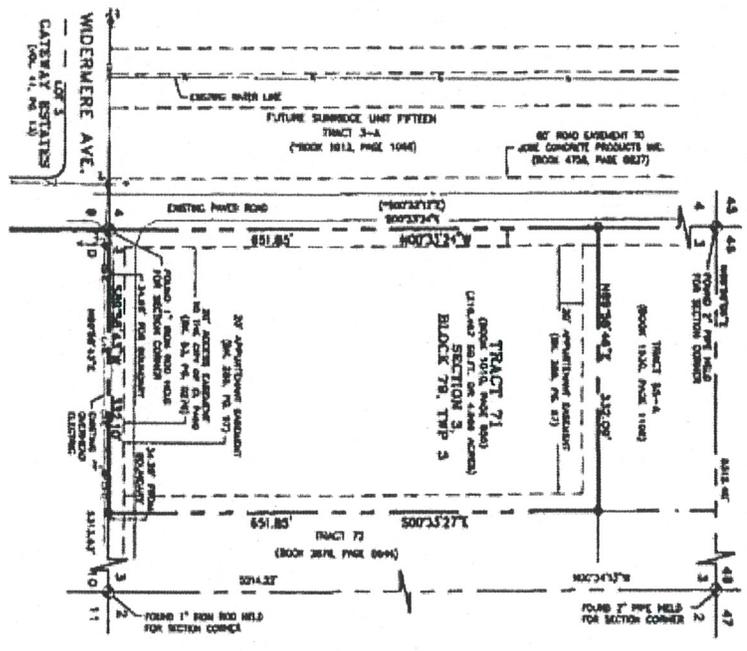
EXHIBIT A

PLAT OF SURVEY

TRACT 71, BEING THE WEST 1/2, OF THE SOUTHWEST 1/4, OF THE SOUTHWEST 1/4, OF SECTION 3, BLOCK 79, T8N-3, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS EL PASO COUNTY, TEXAS CONTAINING 4.969 ACRES



- NOTES
1. RECORD MAPS & PLAT BOOKS FOR A TRACTING VENDOR'S SURVEY PRODUCTION AS DETERMINED BY THE SURVEYOR SHALL BE AT A SET 1/2 INCH FROM THE CENTERLINE OF THE ROAD.
  2. ACCORDING TO THE FEDERAL SURVEYOR'S MANAGEMENT ACT, A SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF HIS SURVEY AND SHALL BE PENALIZED FOR NEGLIGENCE OR MISFEASANCE.
  3. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF HIS SURVEY AND SHALL NOT BE EXTENDED TO THE ACCURACY OF THE ORIGINAL RECORDS OR TO THE ACCURACY OF THE RECORDS OF OTHER SURVEYORS.
  4. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF HIS SURVEY AND SHALL NOT BE EXTENDED TO THE ACCURACY OF THE ORIGINAL RECORDS OR TO THE ACCURACY OF THE RECORDS OF OTHER SURVEYORS.
  5. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF HIS SURVEY AND SHALL NOT BE EXTENDED TO THE ACCURACY OF THE ORIGINAL RECORDS OR TO THE ACCURACY OF THE RECORDS OF OTHER SURVEYORS.



SYMBOL LEGEND

○	ROUND SECTION CORNER
○	SET 1/2" BENCH W/CP 1192
○	POKER PALE
○	50' WIDE

POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM



THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF HIS SURVEY AND SHALL NOT BE EXTENDED TO THE ACCURACY OF THE ORIGINAL RECORDS OR TO THE ACCURACY OF THE RECORDS OF OTHER SURVEYORS.

Doc# 20090047686  
#Pages 9 #NFPages 1  
7/10/2009 11:10:25 AM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$48.00

SCANNED

10

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



EL PASO COUNTY, TEXAS

*Delia Briones*

RECEIVED  
CITY CLERK'S OFFICE  
EL PASO COUNTY, TEXAS  
JUL 10 2009

Please return to Drawer 151  
CITY CLERK'S OFFICE  
2 Civic Center Plaza  
El Paso, TX 79901-1196

**DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION**



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

**FROM:** Christina Ainsworth, Lead Planner

**DATE:** August 19, 2009

**RE:** Annexation - AN08001

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

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The City Plan Commission (CPC), on July 30, 2009, voted **4-0** to recommend **APPROVAL** of annexing the subject property.

The CPC found that this annexation is in conformance with The Plan for El Paso and the proposed use is in conformance with the Year 2025 Projected General Land Use Map. The CPC also determined that this annexation protects the best interest, health, safety and welfare of the public in general; that the proposed use is compatible with adjacent land uses; and the annexation will have no effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

There is a related rezoning request (ZON08-00036) to rezone the subject property from R-F (Ranch and Farm) to R-5 (Residential) if the annexation is approved. There is also a special permit request (ZON08-00060) for the subject property to allow for variable setbacks and lot widths of no less than 42' (4,100 sq. ft.) minimum.

There was no opposition to this request.

**Attachment:** Staff Report



## *City of El Paso – City Plan Commission Staff Report*

**Case No:** AN08001  
**Application Type** Annexation  
**CPC Hearing Date** July 30, 2009  
**Staff Planner** Christina Ainsworth, 915-541-4930, [ainsworthmc@elpasotexas.gov](mailto:ainsworthmc@elpasotexas.gov)

**Location** East of Shreya Street and Northeast of Windermere Avenue  
**Legal Description** Tract 71, Section 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, El Paso County, Texas

**Acreage** 4.969  
**Rep District** East ETJ (Adjacent to District 6)  
**Existing Use** Vacant  
**Existing Zoning** N/A  
**Proposed Zoning** R-F (Ranch and Farm)

**Property Owner** Walnut Creek, LLC.  
**Applicant** Walnut Creek, LLC.  
**Representative** Conde, Inc.

### **SURROUNDING ZONING AND LAND USE**

**North:** ETJ; Vacant  
**South:** ETJ; Quarry  
**East:** ETJ; Vacant  
**West:** R-5/sp (Residential/special permit); Single-family residential dwellings

**THE PLAN FOR EL PASO DESIGNATION:** Residential

**NEIGHBORHOOD ASSOCIATIONS:** Las Tierra Neighborhood Association; East Side Civic Association

### **APPLICATION DESCRIPTION**

The applicant is requesting annexation of 4.969 acres of property located east of Shreya Street and northeast of Windermere. The subject property is vacant. If the property is annexed, it will be zoned R-F (Ranch-Farm).

This annexation was reviewed and approved by the CPC on July 31, 2008. The case did not proceed to City Council within the required timeframe, therefore new public hearings are being held in accordance with the Texas Local Government Code.

The City Council approved the annexation agreement for the subject property at the July 7, 2009 hearing.

### **NEIGHBORHOOD INPUT**

Notice of this proposed annexation was published in the El Paso Times in accordance with the Texas Local Government Code. Planning did not receive any calls or letters in support or opposition.

**The Plan for El Paso –City-wide Land Use Goals:**

All applications for annexation shall demonstrate compliance with the following criteria:

- a. Goal: evaluate annexations requests to determine feasibility and impact on existing City services and fiscal resources
- b. The Year 2025 Projected General Land Use Map for the East ETJ designates portions of this property for Residential land use.
- c. Goal: develop a balanced and complete community which contains a mix of land uses and densities, housing types and styles, economic development, job opportunities, educational opportunities, and outlets for social and cultural expression.
- d. Goal: provide and enforce standards for providing decent, safe and sanitary housing for all El Pasoans in accordance with federal, state and local regulations.
- e. Goal: protect residential areas from incompatible land uses and encroachment which may have a negative impact on the residential living environment.
- f. Goal: assure that development in the ETJ will occur with adequate infrastructure and utility services as provided for in the City’s subdivision ordinance.
- g. Goal: promote orderly and controlled growth through the development and adoption of a phased annexation plan for land within the City’s ETJ.

The application for annexation does comply with the City-wide Land Use Goals. The annexation does not adversely affect the City’s existing services and fiscal resources as stated in the annexation service plan. The proposed residential land use is compatible to the surrounding developments and does comply with the 2025 General Land Use designation of residential development. Since the annexation request is for a small portion of land, phased annexation would not apply.

**DEVELOPMENT COORDINATING COMMITTEE**

The Development Coordinating Committee provides the following comments:  
Recommends **approval** of the annexation request.

**Development Services Department - Building Permits and Inspections Division:**

No objection to the proposed rezoning request. Development meets proposed R-5 (Residential) District's lot size standards except for lots 38 & 39. Average lot width for this district is forty five feet for single family dwelling units.

**Development Services Department - Planning Division:**

*Current Planning:*

The Service Plan and shall be approved with the ordinance approving the annexation in accordance with Texas Local Government Code 43.056. Planning recommends **approval**.

In addition, recommendation for approval of annexation was based on the overall long-term benefits to the City versus the short-term impacts. Annexation of the subject property would accomplish the following:

- Ensure proper land use relationships with high standards of construction through zoning and building codes;
- Protect the City’s growth ability in the East ETJ;
- Implement the long range goals of the City’s Comprehensive Plan

**Engineering Department - Traffic Division:**

No objections to proposed zoning change.

**Fire Department:**

No comments received.

**Parks:**

No comments received

**El Paso Water Utilities:**

EPWU does not object to this request.

**TxDOT:**

No comments received.

**County of El Paso:**

No comments received.

**Attachments**

1. Zoning Map
2. Aerial Map
3. Conceptual Site Development Plan
4. Application

Attachment 1: Zoning Map

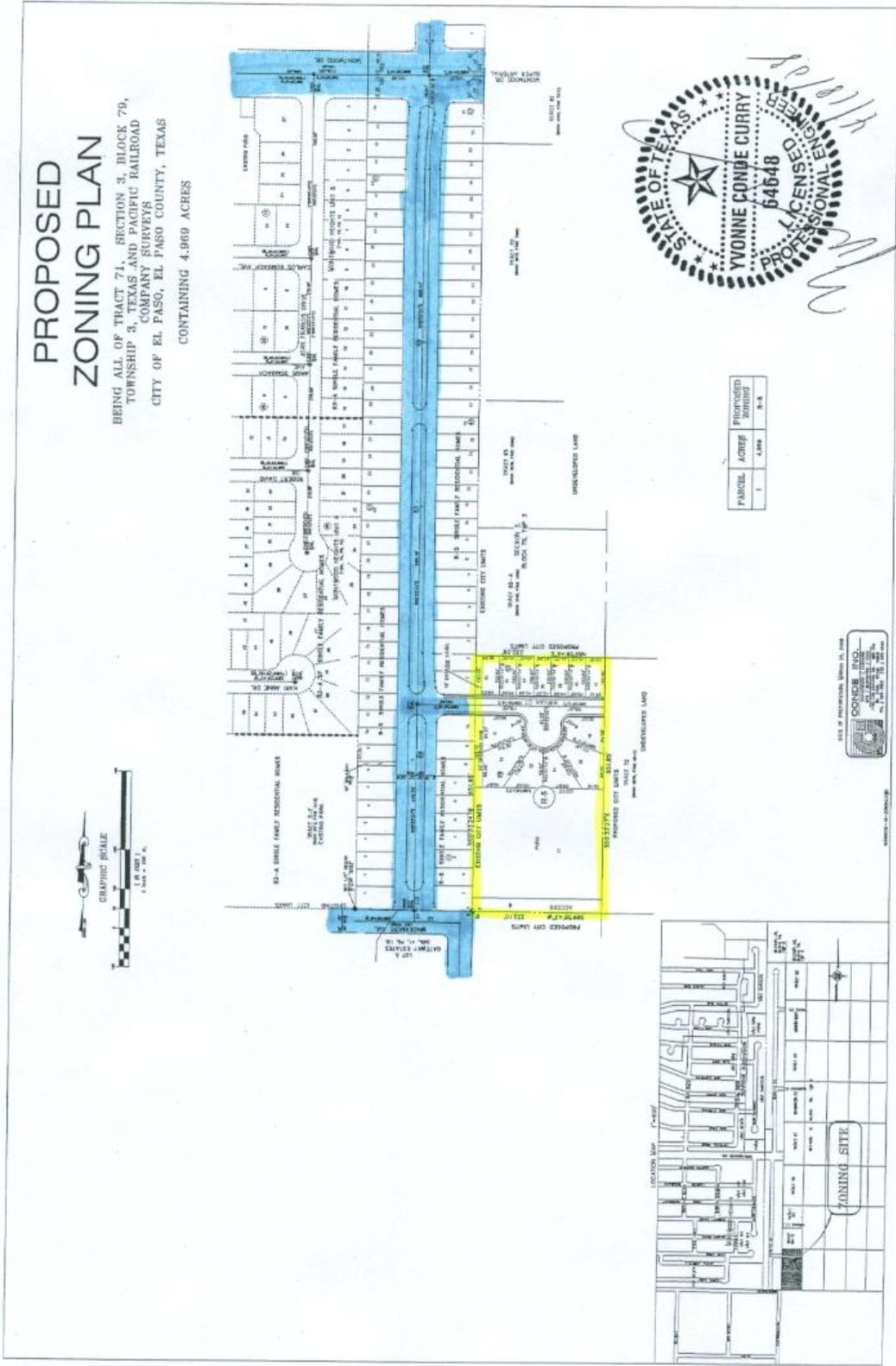


Attachment 2: Aerial Map

AN08001



# Attachment 3: Conceptual Site Development Plan



**Attachment 4: Application**

SUB08-00081  
AN08001

DEPARTMENT OF PLANNING, RESEARCH AND DEVELOPMENT  
2 CIVIC CENTER PLAZA, 8<sup>TH</sup> FLOOR, CITY HALL BUILDING  
EL PASO, TEXAS 79999

**APPLICATION FOR ANNEXATION**

1. Address and/or Location of Property: Nirvan Ct.
2. Legal Description of Property: Being all of Tract 71, Section 3, Block 79, Township 3, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas
3. Area of Property: 4.97 ac.  
(square footage and/or acreage)
4. Name of Property Owner: JNC Development, LP  
Address: 12300 Montwood El Paso Texas 79928  
(Street) (City) (State) (Zip)  
Telephone: 915-855-1005
- IF MULTIPLE OWNERSHIP, IDENTIFY ALL PROPERTY OWNERS IN SPACE PROVIDED ON ITEM 9 ON THE BACK OF THIS FORM.
5. Name of Representative: Conde, Inc. - Conrad Conde  
Address: 1790 Lee Trevino, Ste. 400 El Paso Texas 79936  
(Street) (City) (State) (Zip)  
Telephone: 915-592-0283
6. Existing Improvements on Property: 1/2 Acre Drainage Easement & Existing Pond
7. Proposed Improvements on Property: Residential Development
8. Reasons for Request to Annex: To continue development under City of El Paso jurisdiction as per the approved Development Agreement

JNC Development, LP  
Carlos Bombach

  
Signature of Owner of Record of the above Described property; (if more than one Property owner all owners must sign in Item 9 on the back of this form).

FEE\$ 550.00  
Cashier's Validated Stamp

**FEE\$ ARE NOT REFUNDABLE**

Signature of Representative

