

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

DEPARTMENT: Development Services Department/Planning Division

AGENDA DATE: October 31, 2006

CONTACT PERSON/PHONE: Rudy Valdez (4635)

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign a Development Agreement by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD and JNC DEVELOPMENT, L.P., to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's East Extraterritorial Jurisdiction and containing 35.913 acres; in accordance with Subchapter G, Chapter 212 of the Texas Local Government Code, and subject to the affirmative approval and execution of same agreement by the El Paso Water Utilities-Public Service Board.

(East Extraterritorial Jurisdiction - Adjacent to District #5)
Development Services-Planning, Rudy Valdez, 541-4635]

BACKGROUND / DISCUSSION:

The development agreement is similar to others that were approved by City Council this year for properties that were subsequently annexed. The owner/developer proposes to develop the property with 195 single-family residential lots and have the property annexed in the near future. The development also proposes a linear park and jogging path containing four acres. The agreement outlines the terms under which the annexation of the property will occur.

PRIOR COUNCIL ACTION: No prior Council actions.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION:

City Plan Commission and Development Coordinating Committee both recommended approval of the agreement.

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

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

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

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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RESOLUTION

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

That the City Manager be authorized to sign a Development Agreement by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD and JNC DEVELOPMENT, L.P., to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's East Extraterritorial Jurisdiction and containing 35.913 acres, being Tract 3A and 2A, Section 4, Block 79, Township 3, Texas and Pacific Railroad Company Surveys, El Paso County, Texas; in accordance with Subchapter G, Chapter 212 of the Texas Local Government Code, and subject to the affirmative approval and execution of same agreement by the El Paso Water Utilities-Public Service Board.

ADOPTED this the _____ day of _____, 2006.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

HS Mefraes for

Sylvia Borunda Firth
Senior Assistant City Attorney

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

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DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2006 (the "Effective Date") by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), acting through the City Council of the City, and the **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD** (hereinafter referred to as the "PSB"), and **JNC DEVELOPMENT, L.P. and PUBLIC SERVICE BOARD OF THE CITY OF EL PASO** (hereinafter collectively referred to as the "Owner");

WHEREAS, JNC Development, L.P. is the owner of record of the real property described in Exhibit "A", which is attached hereto and made a part hereof (which real property is hereinafter referred to as the "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, the City through its El Paso Water Utilities Public Service Board is the owner of record of real property on which a sanitary lift station is currently operating, and which property is not within the corporate limits of the City but is contiguous to the corporate limits of the City; and

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

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

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

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

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

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

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

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

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

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

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

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

"Code" shall mean the El Paso Municipal Code.

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

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

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

"Major Thoroughfare Plan" or "MTP" shall mean the plan attached as Exhibit "C".

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

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

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

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"Owner" means collectively JNC Development, L.P. being the owner of the real property described by metes and bounds on Exhibit "A", and the Public Service Board of the City of El Paso being the owner of the real property described by metes and bounds on Exhibit "A-1".

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

"Property" shall mean the 35.913-acre tract of land described by metes and bounds in Exhibit "A" and the 1.0120-acre tract of land described by metes and bounds on Exhibit "A-1".

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

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

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

"Road Plan" shall mean the plan, included in the Development Plan that describes the roads within the Property to be constructed by the Owner and dedicated to the City.

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

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

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

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

boundaries. The scheduling of water and wastewater services to the Property shall be in accordance with the provisions of Section Eleven.

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

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

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

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

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

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

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SIX: Owner hereby agrees that prior to the issuance of any building permits or certificates of occupancy relating to the Property, Owner shall apply for and secure approval of a subdivision plat in accordance with the procedures of the Subdivision Regulations. Owner also agrees that the design of the proposed medians shall be addressed at the time of review and approval of the subdivision for the development.

SEVEN: Upon annexation of a portion of the Property, such portion shall be automatically classified as R-F (Ranch and Farm) for zoning purposes, but such classifications shall not affect (i) any structure on which construction commenced prior to the annexation or (ii) any development allowed under a subdivision plat, which was approved prior to annexation. The Owner may petition the City for rezoning of the Property (or portion thereof) as provided in the Code. In order to complete the development in accordance with the Development Plan, the Property will need to be rezoned R-3A and R-5 with a special permit to allow side yards of between 5 feet and 7 feet with a total of ten (10) feet between structures and 15 foot rear setbacks. The Special Permit will also allow lot widths of no less than 42 feet and lot sizes of no less than 4,100 square feet.

EIGHT: Owner agrees to provide for the dedication and improvement of public neighborhood parkland within the Property to the extent required by the City Regulations. The approximate size and location of the parcel(s) shall be as provided in the Development Plan.

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

<u>Meter Size</u>	<u>EAST ETJ Water (\$)</u>	<u>EAST ETJ Wastewater (\$)</u>
5/8" x 3/4"	583	338
1"	1,438	833
1 1/2"	2,915	1,689
2"	4,664	2,703
3"	9,328	5,405
4"	14,575	8,446
6"	29,149	16,892
8"	54,412	31,531
10"	77,731	45,045

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

The Annexation Fee shall be increased by three (3) percent on March 1, 2007 and each year thereafter, compounded annually. Payment of the Annexation Fee shall be due at the time of application for connection of an individual meter to the water system.

Notwithstanding the adoption of New City Regulations, the Annexation Fee set forth above shall not be increased in relation to the Property, nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

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

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

Without limiting the foregoing, the provision of retail water and wastewater services shall not be delayed on the grounds that the Property has not been annexed in whole or in part. The rates for water and wastewater services shall be equal to the rates charged inside the incorporated boundaries of the City. However, if the Owner for whatever reason fails to submit annexation applications in accordance with the provisions of this Agreement or is in default of any obligation under this Agreement, then the rates for water and wastewater services shall be in accordance with the PSB regulations for outside City rates, in addition to any fees required herein. If the Property is subsequently annexed, inside City rates for the incorporated boundaries in accordance with PSB regulations in effect at the time of annexation shall apply. The City's obligation to provide water and wastewater services to the Property shall survive the expiration of the term of the Agreement. The obligation for the Owner to pay Annexation Fees as each water meter application is made survives the expiration of the Term of this Agreement.

TEN: Owner shall dedicate, construct and maintain for a one-year period after acceptance by the City the improvements for the full width of the necessary right-of-way for extensions of any arterial streets as shown in the City's official Major Thoroughfare Plan ("MTP") as of the Effective Date. Except as hereinafter set forth, Owner shall not request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City. Owner shall not be obligated to dedicate, construct, and maintain the improvements to the right-of-way for arterial streets added to the City's MTP after the Effective Date or not shown in the attached Road Plan, unless

the MTP is amended at the request of the Owner(s) and results in the addition or upgrade of the status of the arterial street. If the City amends the MTP with respect to the Property, after the Effective Date, then the Owner may request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City.

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

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

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

(1) **City:**
City of El Paso
Attn: City Manager

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

Physical Address:
Same as above

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

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Mailing Address:
1154 Hawkins Boulevard
El Paso, Texas 79925

Physical Address:
Same as above

(3)

Owner:
JNC DEVELOPMENT, L.P.
Attn: Carlos D. Bombach

Mailing Address:
12300 Montwood
El Paso, Texas 79928

Physical Address:
Same as above

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

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

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

Doc. No.: 24421 v10 (10-25-06)
Doc. Name: Dev. Agree-JNC-Sun Ridge Unit 15
Doc. Author: SFIR

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

(b) For greater certainty, Exhibit "D" describes the PSB Facilities to be constructed by the PSB at the PSB's expense.

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

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

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

In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty (30) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure

the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, 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 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 disannex the Property, and if the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

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

Governing Law, Jurisdiction & Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is

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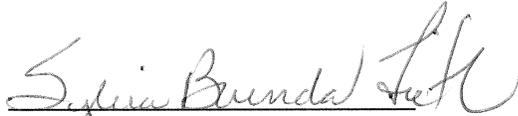
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Sylvia Borunda Firth
Senior Assistant City Attorney

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 _____ day of _____, 2006, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

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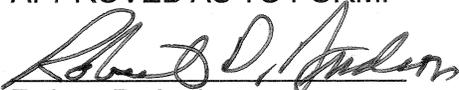


EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD



Edmund G. Archuleta, P.E.
General Manager

APPROVED AS TO FORM:



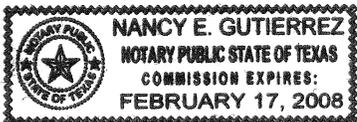
Robert D. Andron
General Counsel

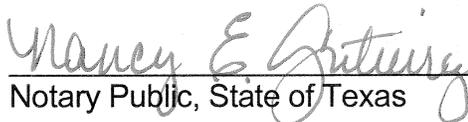
ACKNOWLEDGEMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the 25th day of October, 2006, by Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service Board.




Notary Public, State of Texas

(ACCEPTANCES BEGIN ON FOLLOWING PAGE)

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ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2006.

JNC DEVELOPMENT, L.P.

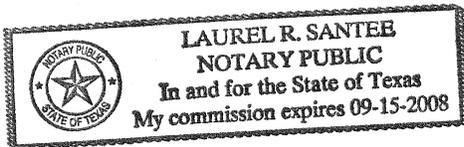
By:

By: _____
Name: C.D. Dombach
Title: PRESIDENT

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 26th day of OCT 2006, by C.D. Dombach, PRESIDENT, for JNC Development, L.P..



Notary Public, State of Texas

(ACCEPTANCES CONTINUE ON FOLLOWING PAGE)

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ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____
day of _____, 2006.

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

Edmund G. Archuleta, P.E.
General Manager

APPROVED AS TO FORM:

Robert D. Andron
General Counsel

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____ 2006, by
Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service
Board.

Notary Public, State of Texas

06 OCT 25 PM 11:42
CITY CLERK DEPT.

JOHN COOK
MAYOR

JOYCE WILSON
CITY MANAGER



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
J. ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, JR., DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

**DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION**

October 26, 2006

TO: The Honorable Mayor and City Council
Ms. Joyce A. Wilson

FROM: Rudy Valdez, Chief Urban Planner

SUBJECT: Development Agreement

The City Plan Commission (CPC), on October 5, 2006, voted to recommend **approval** of the Development Agreement for the proposed Sun Ridge Unit 15. The Development Coordinating Committee also recommended approval of the agreement.

The City Plan Commission's recommendation was to approve with the condition that any reference to zoning and special permit approvals that were part of the original agreement be removed and that those approvals go through the normal processes after the property is annexed.

There was no opposition to this application present at the meeting.

EXHIBIT "A"
LEGAL DESCRIPTION

CITY CLERK DEPT.
06 OCT 25 PM 11:43

Being Tract 2-A, 2A1 and Tract 3-A,
Section 4, Block 79, Township 3,
Texas and Pacific Railroad Company Surveys,
City of El Paso, El Paso County, Texas
October 30, 2006

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tract 2-A, 2A1 and Tract 3-A, Section 4, Block 79, Township 3, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a 2" iron pipe in concrete found for the common corner of Sections 4, 3, 45, and 46, whence a 2" iron pipe in concrete found for the common corner of Sections 3, 2, 46, and 47, bears North 89°59'06" East, 5,312.40 feet, said point also being the northeast corner of this parcel and the "TRUE POINT OF BEGINNING".

Thence with the east line of Section 4, South 00°33'24" East (South 00°33'12" East, Book 1026, Page 0570) a distance of 5,214.80 feet to a found 1" iron rod held for the common corner of Sections 4, 3, 9, and 10, also being the southeast corner of this parcel, whence a 1" iron rod in found for the common corner of Sections 3, 2, 10, and 11, bears North 89°58'43" East, 5,313.63 feet;

Thence leaving the east line of said section, South 89°59'48" West (Due West, Book 4758, Page 0827) a distance of 300.00 feet to a set ½" rebar with cap "5152" at the southwest corner of this parcel, whence a city monument found at a centerline inverse point of Kari Anne Drive within Montwood Heights Unit 6, referenced in Volume 74, Page 71, bears North 15°58'55" West, 600.26 feet;

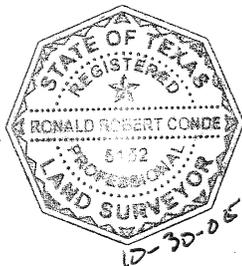
Thence North 00°33'24" West (North 00°33'12" West, Book 1026, Page 0570) a distance of 5214.80 feet to a set ½" rebar with cap "5152" at the northwest corner of this parcel, whence a city monument found at a centerline intersection of Setting Sun Drive and Sun Trail Drive, within said Sunridge Unit 13, bears South 46°54'59" West, 191.35 feet;;

Thence, North 89°59'48" East (Due East, Book 1026, Page 0570) a distance of 300.00 feet to "TRUE POINT OF BEGINNING" and containing in all 1,564,367 square feet or 35.913 acres of land more or less.

Bearing basis is true north for a Transverse Mercator Surface Projection as determined by GPS methods based at center of this site.

All referenced subdivisions are recorded in the Plat Records of the El Paso County, Texas unless otherwise specified.


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



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

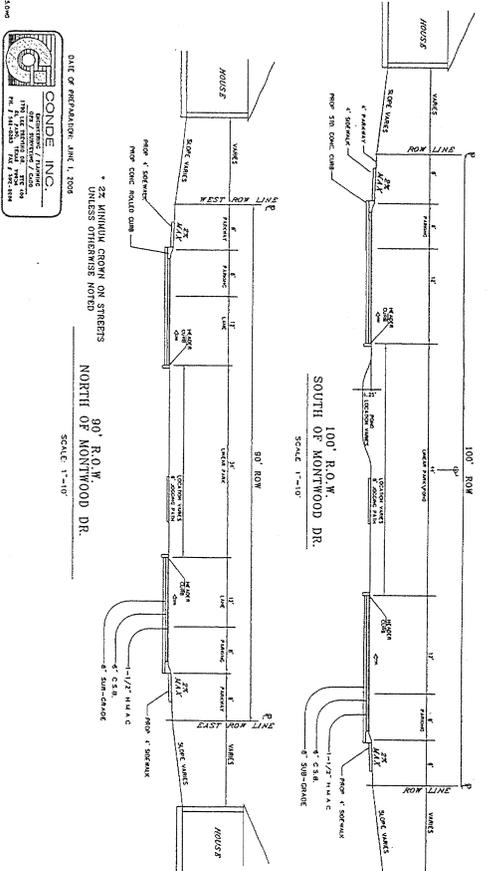
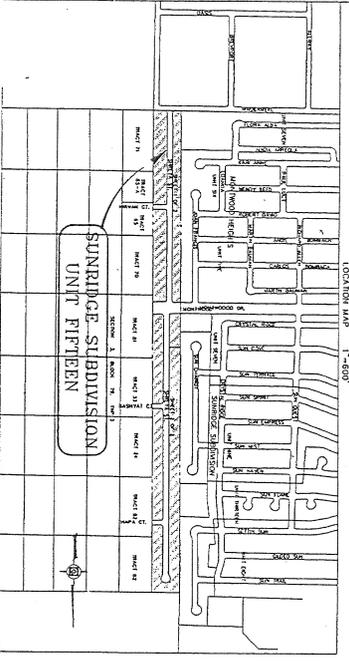
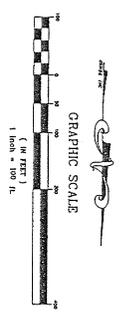
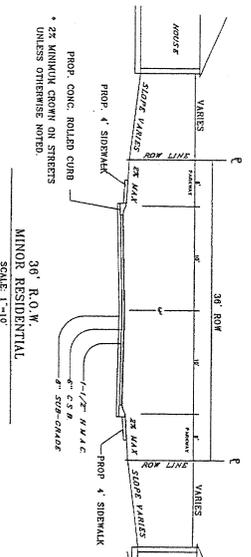
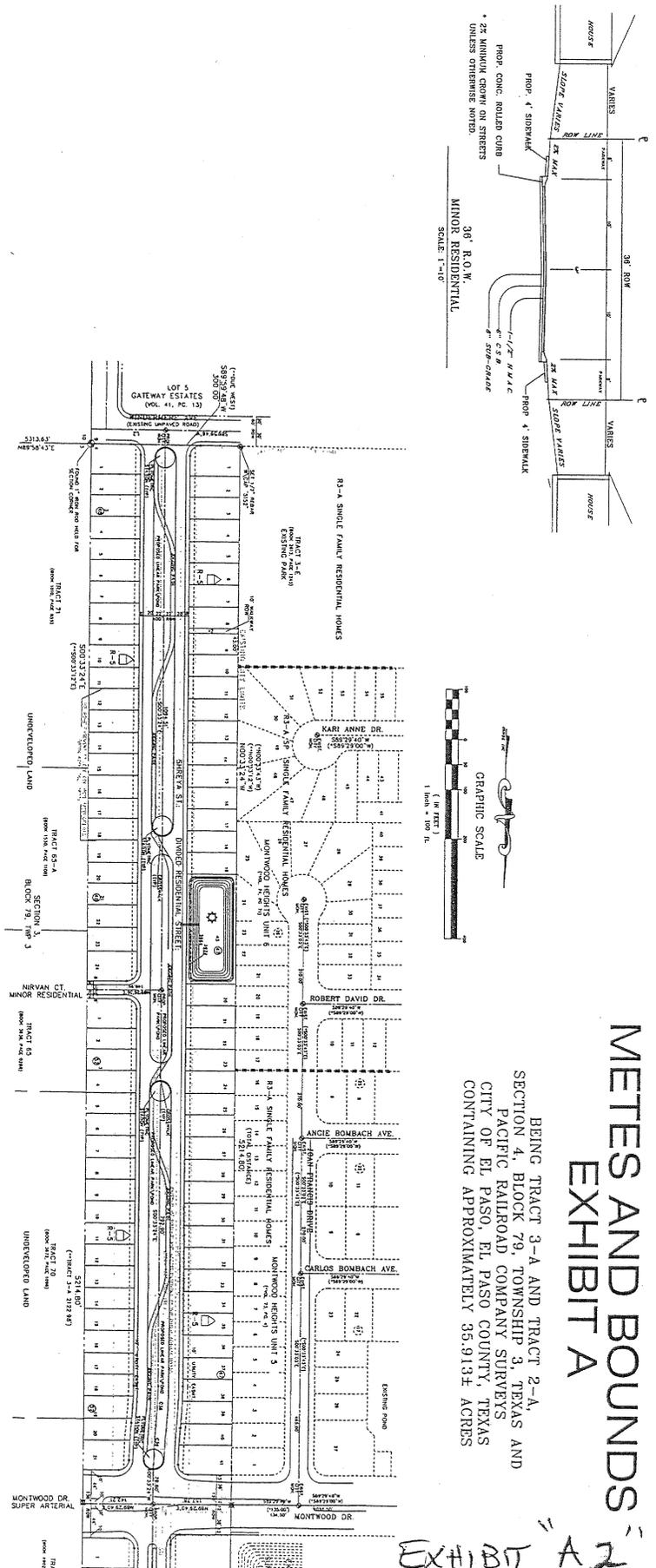
EXHIBIT "A 1"

CITY CLERK DEPT.
06 OCT 25 PM 11:43

METES AND BOUNDS EXHIBIT A

BEING TRACT 3-A AND TRACT 2-A,
SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
PACIFIC RAILROAD COMPANY SURVEYS
CITY OF EL PASO, EL PASO COUNTY, TEXAS
CONTAINING APPROXIMATELY 35.913± ACRES

EXHIBIT "A2"



DATE OF REVISION: JUNE 1, 2008

CONDE, INC.
1701 W. MONTWOOD DR. SUITE 100
EL PASO, TEXAS 79905

90' R.O.W. NORTH OF MONTWOOD DR.
SCALE 1"=10'

100' R.O.W. SOUTH OF MONTWOOD DR.
SCALE 1"=10'

SYMBOL	LAND USE	AREA (ACRES)
[Symbol]	RESIDENTIAL R-1-A	28.97
[Symbol]	RESIDENTIAL R-1-B	11.13
[Symbol]	ROAD	0.28
[Symbol]	UTILITY	1.61
[Symbol]	TOTAL AREA	32.99

88 RESIDENTIAL LOTS FOR THIS PORTION
193 RESIDENTIAL LOTS TOTAL

LEGEND

* 100' R.O.W. & 40' SIDEWALKS
UNLESS OTHERWISE NOTED

SUBJECT TO ZONING REQUIREMENTS

CITY CLERK DEPT.
06 OCT 25 PM 11:43

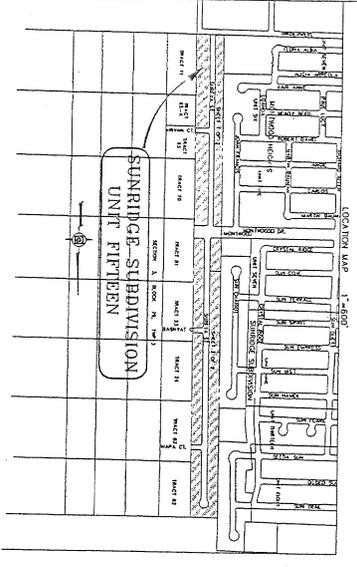
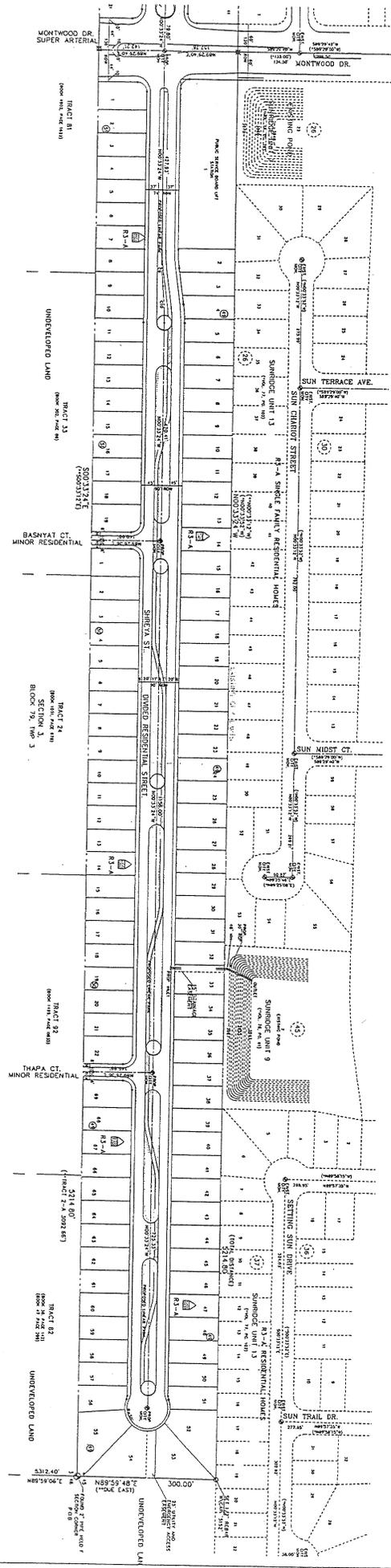
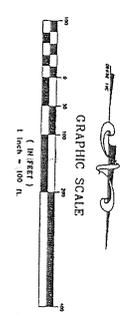
METES AND BOUNDS EXHIBIT A

BEING TRACT 3-A AND TRACT 2-A,
SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
PACIFIC RAILROAD COMPANY SURVEYS
CITY OF EL PASO, EL PASO COUNTY, TEXAS
CONTAINING APPROXIMATELY 35.913± ACRES

EXHIBIT "A"

* 25 MINIMUM CROWN ON STREETS
UNLESS OTHERWISE NOTED

74' R.O.W.
NORTH OF MONTWOOD DR.
SCALE 1"=10'



150 RESIDENTIAL LOTS FOR THIS PORTION
195 RESIDENTIAL LOTS TOTAL

LEGEND	
Symbol	AREA (ACRES)
△	RESIDENTIAL 63-4
□	RESIDENTIAL 63-3
○	POSS
⊕	WPT STATION
TOTAL AREA: 35.91	



* 25 MINIMUM CROWN ON STREETS
UNLESS OTHERWISE NOTED

SUBJECT TO FORDING REQUIREMENTS

EXHIBIT "B"
DEVELOPMENT PLAN

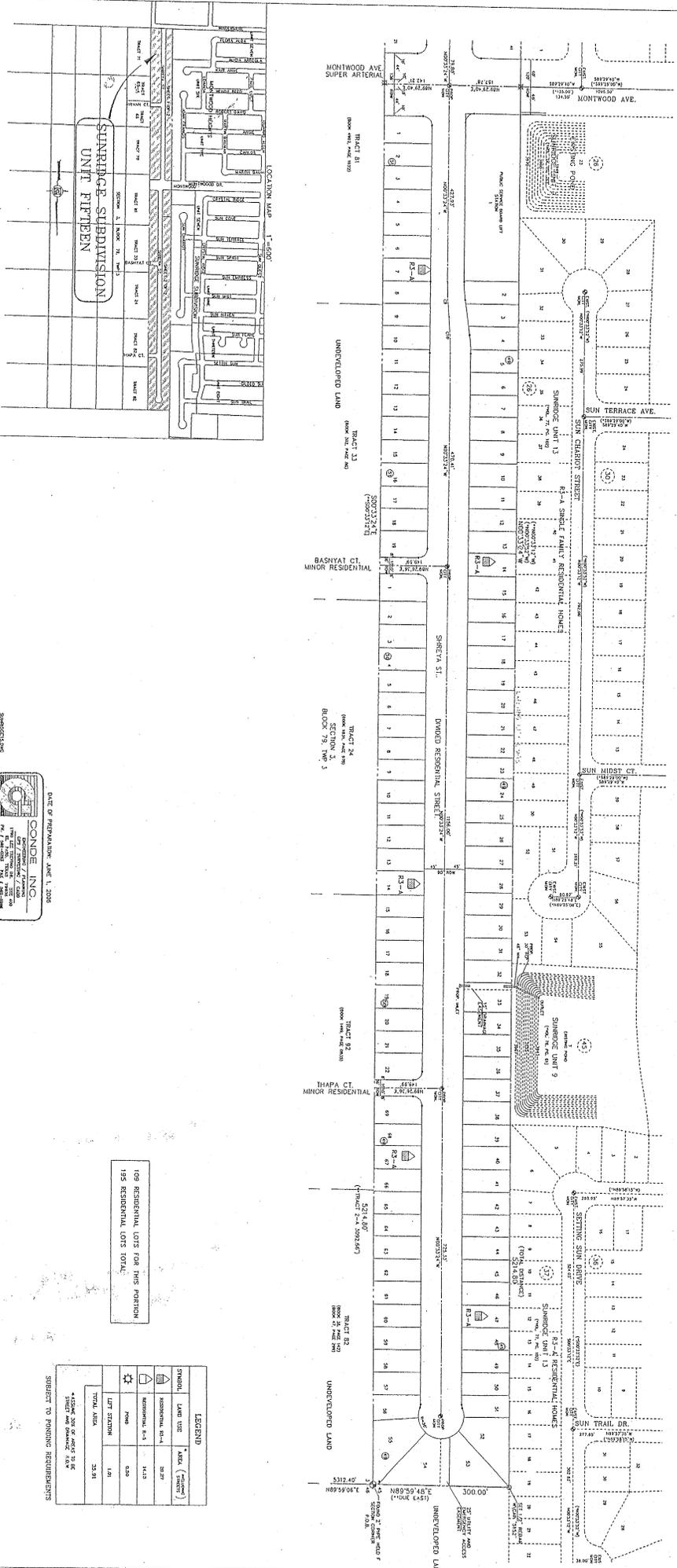
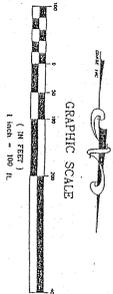
CITY CLERK DEPT.
06 OCT 25 PM 11:43

CITY CLERK DEPT.

06 OCT 25 PM 11:43

DEVELOPMENT PLAN EXHIBIT B

BEING TRACT 3-A AND TRACT 2-A,
SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
PACIFIC RAILROAD COMPANY SURVEYS
CITY OF EL PASO, EL PASO COUNTY, TEXAS
CONTAINING APPROXIMATELY 35.913± ACRES



108 RESIDENTIAL LOTS FOR THIS PORTION
195 RESIDENTIAL LOTS TOTAL

LEGEND

SYMBOL	LAND USE	AREA (ACRES)
[Symbol]	RESIDENTIAL R-1-A	32.87
[Symbol]	RESIDENTIAL R-1-B	4.13
[Symbol]	PAVED	0.24
[Symbol]	LEFT EXISTING	1.81
TOTAL AREA		39.05

NOTE: AREA OF WATER TO BE EXCLUDED FROM RESIDENTIAL LOTS.

SUBJECT TO PENDING REQUIREMENTS

DATE OF PREPARATION: AUGUST 1, 2008

SONDE INC.
SURVEYING & ENGINEERING
1100 W. 12TH STREET, SUITE 100
EL PASO, TEXAS 79902
TEL: 794-1100 FAX: 794-1101

PROJECT: 2008-001

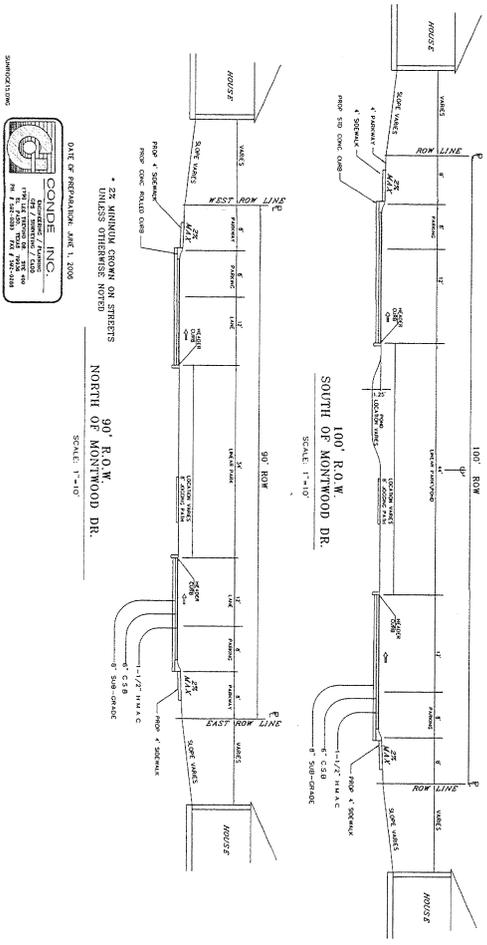
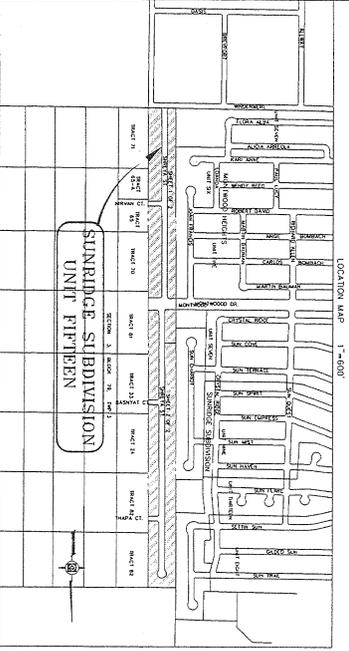
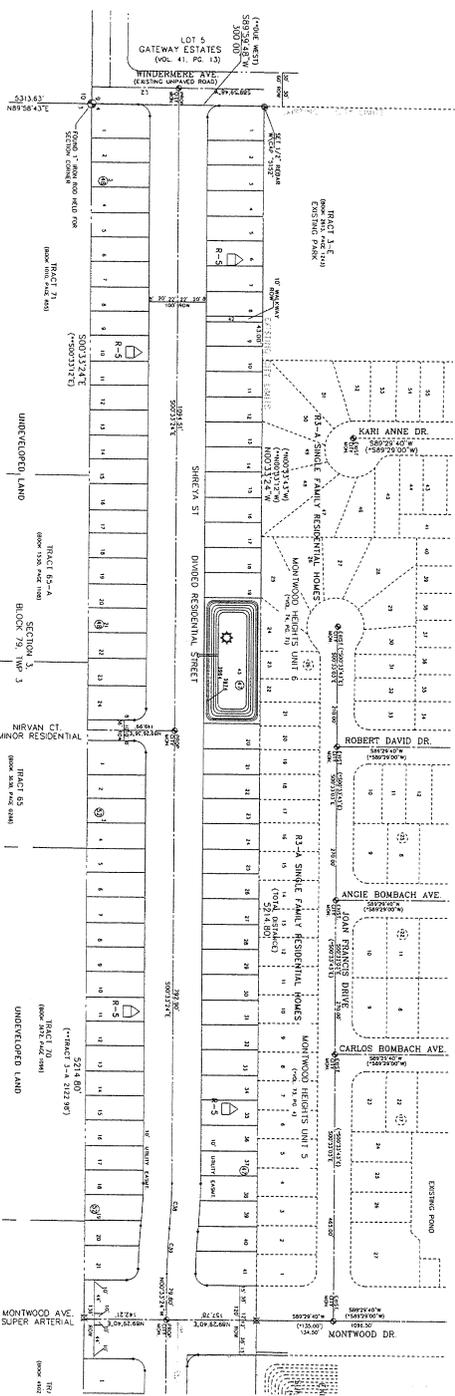
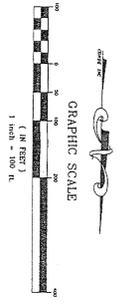
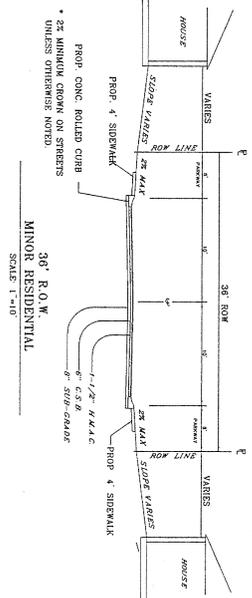
EXHIBIT "C"
MAJOR THOROUGHFARE PLAN

CITY CLERK DEPT.
06 OCT 25 PM 11:43

CITY CLERK DEPT.
06 OCT 25 PM 11:43

MAJOR THOROUGHFARE PLAN EXHIBIT C

BEING TRACT 3-A AND TRACT 2-A,
SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
PACIFIC RAILROAD COMPANY SURVEY,
CITY OF EL PASO, EL PASO COUNTY, TEXAS
CONTAINING APPROXIMATELY 35.9134 ACRES



86 RESIDENTIAL LOTS FOR THIS PORTION
195 RESIDENTIAL LOTS TOTAL

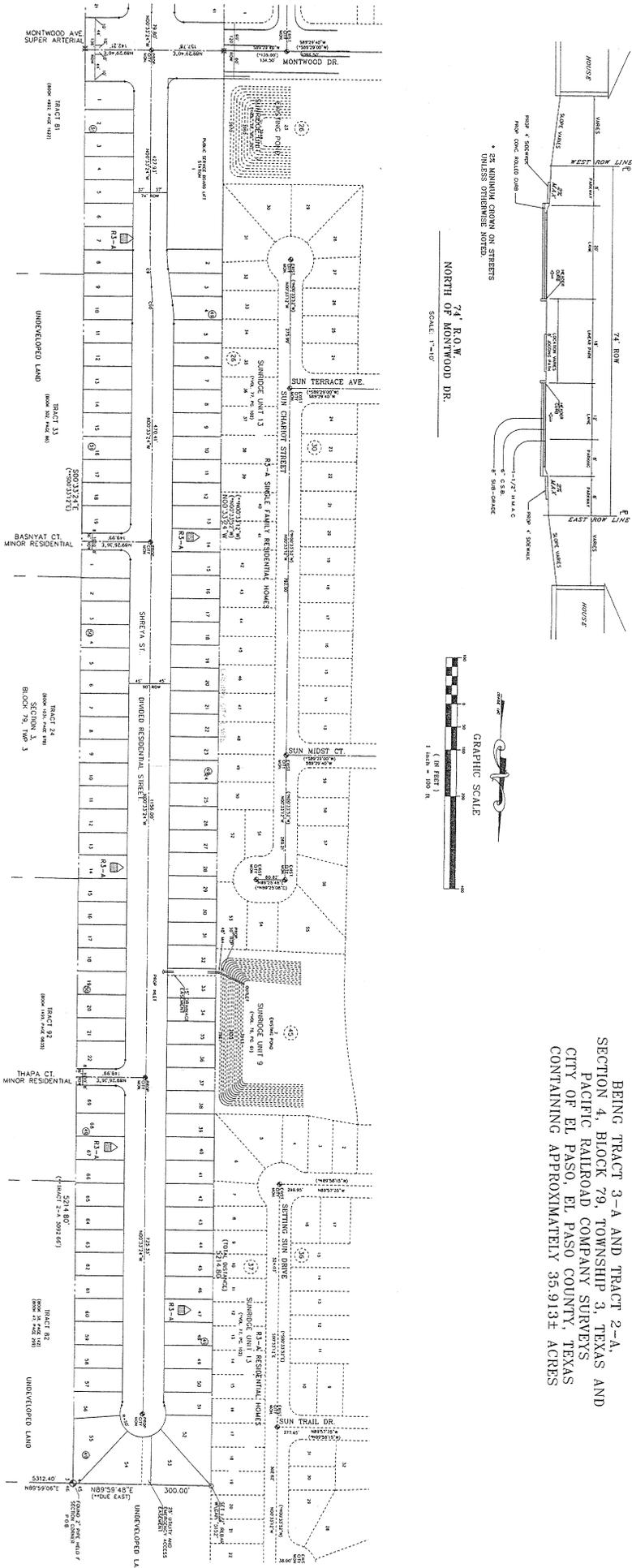
SYMBOL	LAND USE	AREA (ACRES)
[Symbol]	RESIDENTIAL R-1	28.21
[Symbol]	RESIDENTIAL R-2	14.12
[Symbol]	RESIDENTIAL R-3	0.58
[Symbol]	RESIDENTIAL R-4	1.00
TOTAL AREA		33.91

*SHOW '00' OF AREA TO BE
SUBJECT TO ZONING REQUIREMENTS

CITY CLERK DEPT.
06 OCT 25 PM 11:43

MAJOR THOROUGHFARE PLAN EXHIBIT C

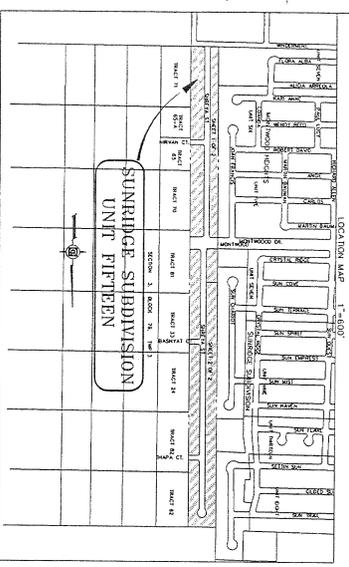
BEING TRACT 3-A AND TRACT 2-A,
SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
PACIFIC RAILROAD COMPANY SURVEYS
CITY OF EL PASO, EL PASO COUNTY, TEXAS
CONTAINING APPROXIMATELY 35.9134 ACRES



74' R.O.W.
NORTH OF MONTWOOD DR.
SCALE: 1"=10'



* 24" MINIMUM CROWN ON STREETS
UNLESS OTHERWISE NOTED.



DATE OF PREPARATION: JUNE 1, 2006

CONDE, INC.
ENGINEERING & SURVEYING
1700 W. 14TH STREET, SUITE 100
EL PASO, TEXAS 79906
TEL: 731-2222 FAX: 731-2222

109 RESIDENTIAL LOTS FOR THIS PORTION
195 RESIDENTIAL LOTS TOTAL

LEGEND	
SYMBOL	LAND USE
(Symbol)	RESIDENTIAL R3-A
(Symbol)	RESIDENTIAL R-2
(Symbol)	PAVED
(Symbol)	LEFT STATION
TOTAL AREA: 35.91	

* STAKE SET OF LOTS TO BE
STREET AND SHOWN AS IS

SUBJECT TO PENDING REQUIREMENTS

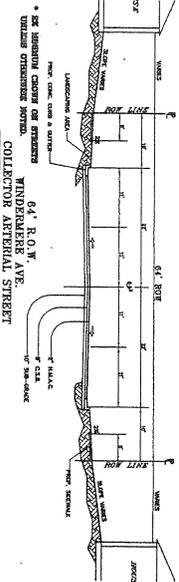
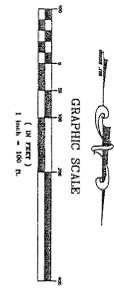
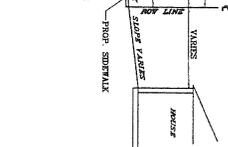
EXHIBIT "D"

PSB WATER FACILITIES PLAN

CITY CLERK DEPT.
06 OCT 25 PM 11:43

CITY CLERK DEPT.
 OCT 25 PM 11:44

52' R.O.W.
 RESIDENTIAL SUBCOLLECTOR STREET
 SCALE 1"=10'

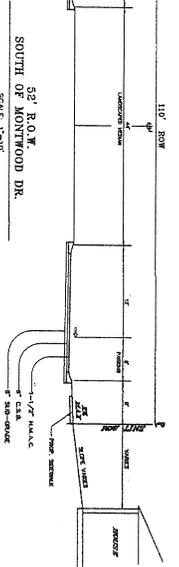
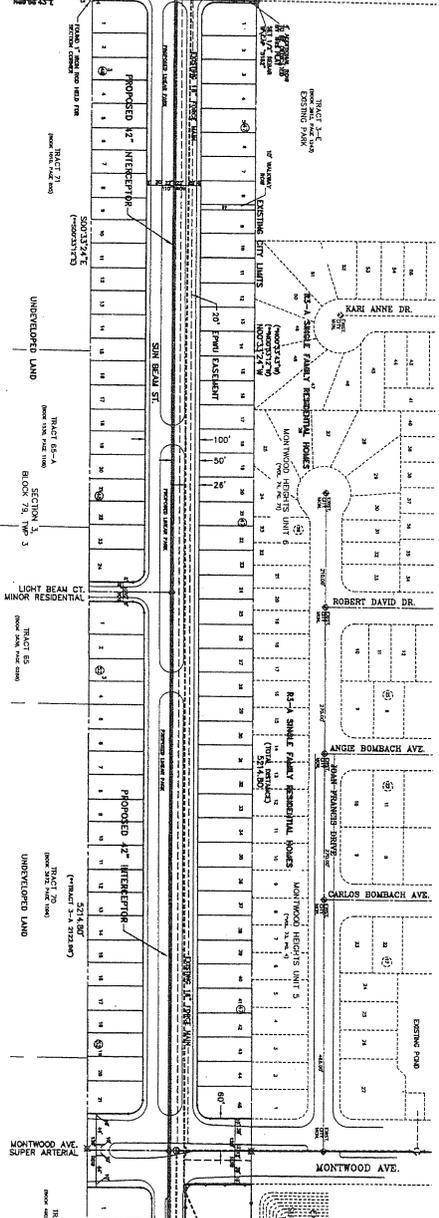


64' R.O.W.
 WINDERMERE AVE.
 COLLECTOR ARTERIAL STREET
 LOCATION MAP 1"=400'

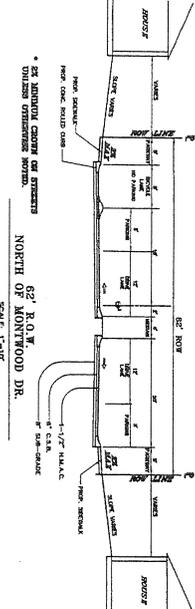
PSB WATER AND SANITARY SEWER FACILITIES PLAN

EXHIBIT D

BRING TRACT 3-A AND TRACT 2-A,
 SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
 PACIFIC RAILROAD COMPANY SURVEYS
 CITY OF EL PASO, EL PASO COUNTY, TEXAS
 CONTAINING APPROXIMATELY 35.9134 ACRES



52' R.O.W.
 SOUTH OF MONTWOOD DR.
 SCALE 1"=10'



62' R.O.W.
 NORTH OF MONTWOOD DR.
 SCALE 1"=10'

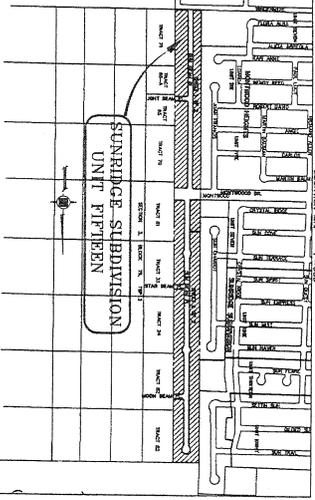
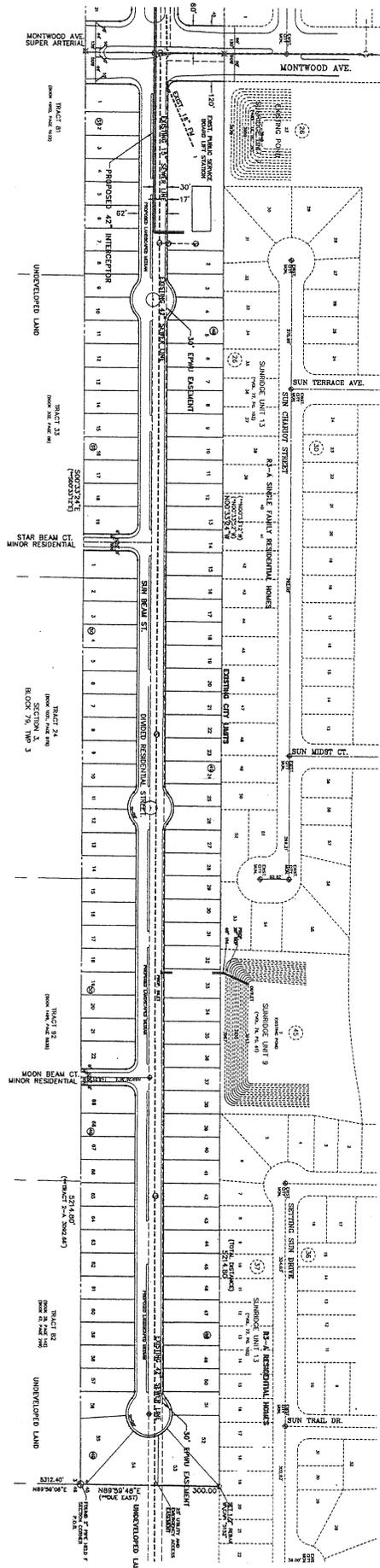
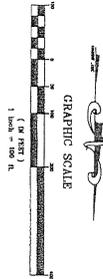
90 RESIDENTIAL LOTS FOR THE PORTION
 129 RESIDENTIAL LOTS TOTAL



CITY CLERK DEPT.
06 OCT 25 PM 11:44

PSB WATER AND SANITARY SEWER FACILITIES PLAN EXHIBIT D

BEING TRACT 3-A AND TRACT 2-A,
SECTION 4, BLOCK 79, TOWNSHIP 3, TEXAS AND
PACIFIC RAILROAD COMPANY STRVEYS
CITY OF EL PASO, EL PASO COUNTY, TEXAS
CONTAINING APPROXIMATELY 35.9134 ACRES



EL PASO WATER UTILITIES
PUBLIC SERVICES BOARD

108 RESIDENTIAL LOTS FOR THIS PORTION
159 RESIDENTIAL LOTS TOTAL