

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

**DEPARTMENT:** City Development Department

**AGENDA DATE:** Consent agenda: 10/28/14

**CONTACT PERSON/PHONE:** Alfredo Austin, (915) 212-1604, [austinaj@elpasotexas.gov](mailto:austinaj@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** District 8

**SUBJECT:**

That the City Manager be authorized to sign a Pond Dedication Agreement between Sunland Square, LTD and the City of El Paso for the construction of certain improvements to 0.3651 acres, more or less, of real property described as *a parcel of land being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas*, (the "Pond Site") and more particularly described in the metes and bounds description attached to the Pond Dedication Agreement as Exhibit "A" and the related dedication deed conveying said property to the City upon completion of the improvements (District 8).

**BACKGROUND / DISCUSSION:**

See attached.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) recommends approval  
City Plan Commission (CPC) unanimously recommended approval on June 5, 2014

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

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

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

**DEPARTMENT HEAD:** Mathew S. McElroy  
Director - City Development Department

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**APPROVED FOR AGENDA:**

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

**RESOLUTION**

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

That the City Manager be authorized to sign a Pond Dedication Agreement between Sunland Square, LTD and the City of El Paso for the construction of certain improvements to 0.3651 acres, more or less, of real property described as *a parcel of land being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas*, (the "Pond Site") and more particularly described in the metes and bounds description attached to the Pond Dedication Agreement as Exhibit "A" and the related dedication deed conveying said property to the City upon completion of the improvements.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2014.

THE CITY OF EL PASO

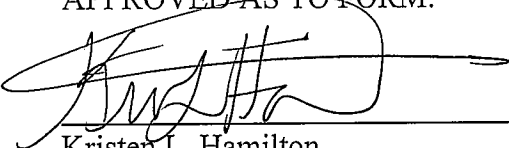
ATTEST:

\_\_\_\_\_  
Oscar Leeser, Mayor

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

~~APPROVED AS TO FORM:~~

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kristen L. Hamilton  
Assistant City Attorney

\_\_\_\_\_  
Carlos Gallinar, Deputy Director for  
City Development - Planning

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )       **POND DEDICATION AGREEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between **SUNLAND SQUARE, LTD** hereinafter referred to as the “Developer,” and the **CITY OF EL PASO**, hereinafter referred to as the “City.”

**WITNESSETH:**

**WHEREAS**, the Developer is the owner of a parcel of land containing 0.3651 acre, more or less, being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds and survey attached hereto and made part hereof as Exhibit “A” (the “Pond Site”); and,

**WHEREAS**, the Developer wishes to dedicate the Pond Site to the City for use as a pond to meet the requirements of City Code Section 19.19.010 et seq.; and,

**WHEREAS**, the City desires to accept the dedication provided that the Developer constructs improvements to the Pond Site as described on the Cost Estimate, attached as Exhibit “B” within two years from the date this agreement is approved by City Council; and,

**WHEREAS**, the El Paso City Plan Commission recommended approval of the dedication of the Pond Site; and,

**WHEREAS**, the El Paso City Council has approved this agreement (the “Agreement”) and has authorized the City Manager to sign this Agreement;

**NOW, THEREFORE**, the parties hereby agree as follows:

1.     **DESCRIPTION:** The Developer, being the owner of the Pond Site, hereby agrees to dedicate said Pond Site to the City for pond purposes.

2.     **IMPROVEMENTS:** The Pond Site shall be improved by the Developer in accordance with the requirements of Title 19, the Design Standards for Construction, the Drainage Design Manual, and all other applicable provisions of the City Code as well as the additional provisions of this Agreement.

2.1    Developer is herein authorized to enter the Pond Site at any time for the purpose of completing the improvements, as set out in the Cost Estimate attached hereto as Exhibit “B” (the “Improvements”), which are incorporated herein for all purposes and which must be completed within two years of the approval of the development agreement by City Council. Each item in Exhibit “B” shall be provided by Developer to the Pond Site.

3.     **CITY’S PARTICIPATION:** The City shall not have any costs, nor shall the Developer be entitled to any reimbursement of costs, associated with this Agreement.

4. **TITLE, TAXES and CONVEYANCE:** The Developer agrees to transfer the Pond Site to the City within 3 months of completion and acceptance by the City of the improvements and to pay the cost of providing a title search, recording costs for the deed for the Pond Site, all costs related to the transfer of the property upon completion of the improvements, and further agrees to pay all ad valorem taxes, standby fees and assessments by any taxing authority prorated through the date of acceptance of the deed conveying fee simple title by the City Council.

5. **INSURANCE & BOND:** Throughout the time that the Improvements are under construction (the "Construction Period"), Developer shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS (\$2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property damages from a single occurrence. The City shall be provided with a copy of the policy evidencing such coverage. Such policy shall name the City as additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for 30 days written notice to the City prior to cancellation or material alteration of the insurance coverage.

5.1 **Bond Required.** To ensure the completion of the project and pursuant to Texas Local Government Code Section 212.073, Developer must execute a performance bond for the construction of the Improvements. The bond shall be in the amount equal to 125% of the Cost Estimate (Exhibit B). The bond shall be provided to the Deputy Director of the City Development Department -Planning Division prior to City Council approval of the Agreement. The bond shall be in a form approved by the City. The bond must be executed by a corporate surety in accordance with Texas Government Code Section 2253. The bond shall identify the City as Owner and Obligee and shall bind both Developer's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bond shall expressly provide that Developer's contractor shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction.

6. **INDEMNIFICATION: DEVELOPER UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF DEVELOPER, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES THAT OCCUR DURING THE CONSTRUCTION OF THE IMPROVEMENTS UNDER THIS AGREEMENT.**

7. **TITLE 19 AND DESIGN STANDARDS FOR CONSTRUCTION AND DRAINAGE DESIGN MANUAL ORDINANCE:** All provisions of this Agreement are subject to Title 19, the Design Standards for Construction, and the Drainage Design Manual and all other applicable provisions of the Code, and nothing herein is intended to waive or modify any provision of the Code. It is understood, however, that this Agreement may contain provisions requiring the

Developer to do more than the Code requires and the Developer is obligated to comply with such provisions.

8. **SUCCESSORS AND ASSIGNS:** All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

9. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by a written agreement signed by both parties.

10. **SEVERABILITY:** Every provision of this Agreement is intended to be severable. If any term or provision contained herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

11. **LAW GOVERNING CONTRACT:** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

12. **BINDING AGREEMENT:** The individual signing this Agreement, on behalf of the Developer, acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind the Developer to the terms and conditions of this Agreement.

13. **REPRESENTATION OF COUNSEL:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

14. **NOTICE:** All notices and communications under this Agreement shall be hand-delivered or mailed, postage pre-paid with proof of delivery, to the representative parties at their respective addresses below, unless and until either party is otherwise notified in writing.

City of El Paso,  
Attn: Planning Deputy Director  
222 S. Campbell  
El Paso, Texas 79901  
Tel: (915) 212-0085

Sunland Square, LTD  
P.O. Box 12730  
El Paso, TX 79913  
Tel: (915) 584-8242

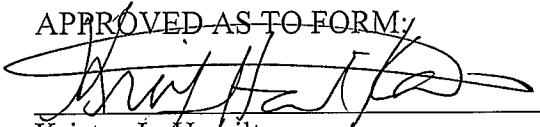
15. **WAIVER:** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**THE CITY OF EL PASO:**

\_\_\_\_\_  
Tomás González  
City Manager

~~APPROVED AS TO FORM:~~



Kristen L. Hamilton  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Carlos Gallinar, Deputy Director for  
City Development - Planning

**ACKNOWLEDGEMENT**

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by TOMÁS GONZÁLEZ as City Manager of THE CITY OF EL PASO, a municipal corporation, on behalf of said corporation.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
  
\_\_\_\_\_

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by Will S. Harvey as Manager of Sunland Square, LTD, a Texas limited company, on behalf of said limited company.

**SUNLAND SQUARE, LTD**

By: \_\_\_\_\_  
Will S. Harvey, Manager

*ACKNOWLEDGEMENT ON FOLLOWING PAGE*

**ACKNOWLEDGEMENT**

STATE OF TEXAS            )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Will S. Harvey as Manager of Sunland Square, LTD, a Texas limited company, on behalf of said limited company.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
  
\_\_\_\_\_

**EXHIBT A**

**PROPERTY DESCRIPTION**

**Ponding Area  
Portion Lot 2, Block 3  
Sunland Commercial District Unit 3**

Description of a parcel of land being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas, map of said Sunland Commercial District Unit 3 recorded in book 61, page 25, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in book 3111, page 857, El Paso County Clerks Records, and described as follows;

Commencing for reference at a rebar with cap found at the northwesterly corner of Lot 2, Block 1, Walker Subdivision (recorded in book 78, page 62, El Paso County Clerk's Plat Records), said rebar with cap also lying on the easterly boundary line of said Lot 2; Thence, with said easterly boundary line of Lot 2 and the westerly boundary line of said Walker Subdivision, South  $29^{\circ}11'42''$  West a distance of 553.01' to the northeasterly corner of Lot 3 (dedicated ponding area) of said Block 1; Thence, with the northerly lot line of said Lot 3, North  $40^{\circ}44'18''$  West a distance of 150.00' to a rebar with cap stamped "KECO" found at the northwest corner of said Lot 3, and being the "Point Of Beginning";

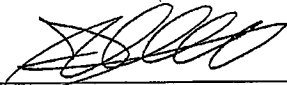
Thence, with said westerly boundary line of said Lot 3, South  $29^{\circ}11'42''$  West a distance of 276.01' to a rebar with cap stamped "KECO" found at the southwest corner of Lot 3 (dedicated ponding area) of said Block 1;

Thence, with the easterly ROW line of Doniphan Drive (variable width), North  $40^{\circ}44'16''$  West a distance of 108.70' to a point lying South  $40^{\circ}44'16''$  East a distance of 75.59' from an angle point of said ROW line;

Thence, leaving said ROW line, North  $49^{\circ}15'44''$  East a distance of 259.13' to a point;

Thence, South  $41^{\circ}15'06''$  East a distance of 14.00' to the "Point Of Beginning" and containing 15,904 sq. ft. or 0.3651 acres.

Based on a field survey performed under my supervision and dated April 24, 2012.  
THIS DESCRIPTION WAS PREPARED FOR DEDICATION AS ADDITIONAL PONDING AREA TO BE INCORPORATED INTO THE EXISTING POND LYING IN LOT 3.

  
John A Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.  
13998 Bradley Road  
El Paso, TX. 79938  
915-241-1841

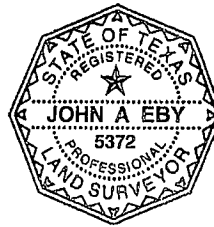
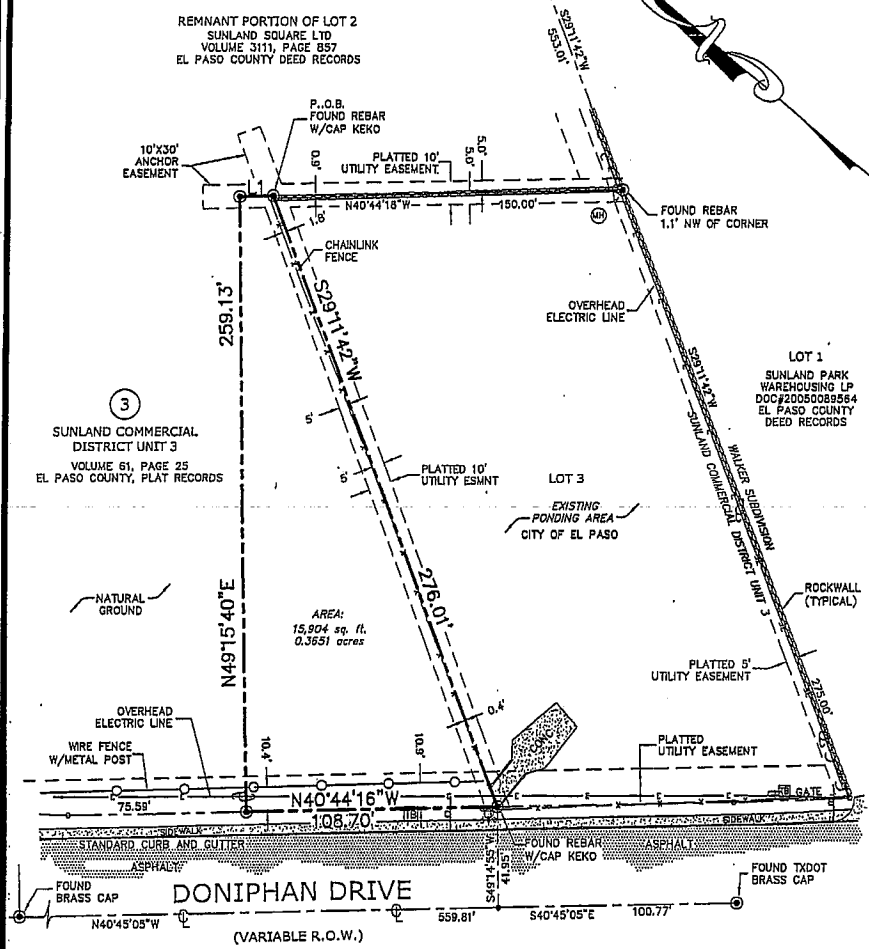


EXHIBIT A

LINE	LENGTH	BEARING
L1	14.00	S41°15'08"E

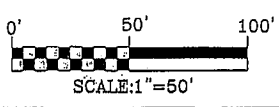


NOTES:  
1. THIS SURVEY WAS PREPARED FOR DEDICATION AS ADDITIONAL PONDING AREA TO BE INCORPORATED INTO THE EXISTING POND LYING IN LOT 3.  
2. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE. THERE MAY BE EASEMENTS, OR OTHER MATTERS, NOT SHOWN.

CERTIFICATION

I HEREBY CERTIFY THAT THIS BOUNDARY AND IMPROVEMENT SURVEY IS BASED ON A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND COMPLIES WITH THE CURRENT TEXAS BOARD OF PROFESSIONAL LAND SURVEYING PROFESSIONAL AND TECHNICAL STANDARDS

JOHN A. EBY, R.P.L.S. TX-5372, NM-1779



- PONDING AREA -  
A PORTION OF LOT 2, BLOCK 3,  
SUNLAND COMMERCIAL DISTRICT UNIT 3,  
CITY OF EL PASO, EL PASO COUNTY, TEXAS

PLAT RECORD:  
VOLUME: 61  
PAGE: 25

TITLE CO: NONE PROVIDED FILE#: DATED:  
FIRM ZONE: C PANEL#: 480214--0027 D DATED: 01/03/1997  
DATE OF SURVEY: 01/02/2013 OFFICE: LM FIELD: JAE, AG, JC  
PASO DEL NORTE SURVEYING INC. PH. 915-241-1841  
13998 BRADLEY ROAD, EL PASO, TEXAS 79938 FAX 915-855-6925  
© COPYRIGHT

TBPLS FIRM #10001200

EXHIBIT B



EP RIVERBEND  
DEVELOPMENT

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TO: The City of El Paso  
FROM: Will S. Harvey  
DATE: February 24, 2014  
RE: Valley Crossing Retail Center VC SN13-00028 and 00029

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To Whom it May Concern:

We received pricing from KERE Inc. to make improvements to the existing pond located adjacent to the above mentioned development. The prices from the contractor to improve the pond per the already approved plans are as follows:

\$58,500	Additional Dirtwork
20,025	Rockwalls
3,005	Chain Link
562	Depth Gauge
2,319	Additional Concrete
1,350	Demo
<u>\$85,671</u>	Total

Please feel free to contact me with any questions at 915.584.8242 or [will@epriverbend.com](mailto:will@epriverbend.com).

Regards,

A handwritten signature in black ink, appearing to read "L. Harvey" with a stylized flourish.

Will S. Harvey  
EP Riverbend Development, LLC

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4798 Doniphan, Suite A • P. O. Box 12730 • El Paso, Texas 79913 • (915) 584-8242 • FAX (915) 613-2548

Valley Crossing Pond Improvements



## City Development Department

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**Mayor**  
Oscar Leeser

**City Council**

*District 1*  
Ann Morgan Lilly

*District 2*  
Larry Romero

*District 3*  
Emma Acosta

*District 4*  
Carl L. Robinson

*District 5*  
Dr. Michiel R. Noe

*District 6*  
Claudia Ordaz

*District 7*  
Lily Limón

*District 8*  
Cortney C. Niland

**City Manager**  
Tommy Gonzalez

**TO:** The Honorable Mayor and City Council  
Tommy Gonzalez, City Manager

**FROM:** Alfredo Austin, Planner

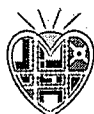
**DATE:** October 21, 2014

**SUBJECT:** Sunland Commercial District Unit 3 Pond Dedication

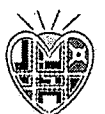
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The applicant is proposing to dedicate to the City of El Paso approximately 0.3651 acres of real property described as *a parcel of land being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas.*

The City Plan Commission unanimously recommended approval of the proposed pond dedication at their meeting on June 5, 2014. There was no public comment.



City Development Department  
801 Texas Avenue | El Paso, Texas 79901 | (915) 212-0083  
CityDevelopment@elpasotexas.gov



*Dedicated to Outstanding Customer Service for a Better Community*



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

(REVISED)

**Case No:** Sunland Commercial District Unit 3 Pond Dedication  
**Application Type:** Pond Dedication Agreement  
**CPC Hearing Date:** June 5, 2014  
**Staff Planner:** Alfredo Austin, 915-212-1604, [austinaj@elpasotexas.gov](mailto:austinaj@elpasotexas.gov)  
**Location:** 1050 Sunland Park  
**Legal Description Acreage:** 0.3651 acres  
**Rep District:** 8  
**Existing Use:** Vacant  
**Existing Zoning:** C-4/sc (Commercial/special contract)  
**Proposed Zoning:** C-4/sc (Commercial/special contract)  
**Property Owner:** Sunland Square, Ltd  
**Applicant:** Sunland Square, Ltd  
**Representative:** Quantum Engineering

**SURROUNDING ZONING AND LAND USE**

**North:** C-4 (Commercial) / Vacant  
**South:** C-4 (Commercial) / Vacant  
**East:** C-4 (Commercial) / Pond  
**West:** C-4 (Commercial) / Vacant

**THE PLAN FOR EL PASO DESIGNATION:** G4 Suburban (Walkable)

**APPLICATION DESCRIPTION**

The applicant is proposing to dedicate a portion of Lot 2, Block 3, Sunland Commercial District Unit 3 in order to increase the size of the adjacent drainage pond.

**DEVELOPMENT COORDINATING COMMITTEE**

The Development Coordinating Committee recommends **approval** of Sunland Park Commercial Unit 3 Pond Dedication subject to the following conditions and requirements:

**Planning Division Recommendation:**

**Approval.**

**City Development Department - Land Development:**

We have reviewed subject plats and recommend **Approval**. Developer/Engineer shall address the following comments.

1. Define how 10' ft. utility easement will be affected.
2. Show and label relocation of concrete flume.

**Parks and Recreation Department:**

No comments received.

**El Paso Water Utilities:**

We have reviewed the case distribution described above and provide the following comments:

**Doniphan Drive Pond Dedication**

1. Storm sewer cannot flow into Doniphan Drive since TXDOT (state) roads are not designed to carry outside storm sewer flow.
2. Existing concrete rundown flumes located along the south side of Sunland Park Drive used for conveying the stormwater through Lot 2, Block 3 according to Sunland Commercial District Unit 3.
3. If Lot 2, Block 3 is further subdivided, a private drainage easement must be provided to comply with approved drainage.

**El Paso Fire Department:**

No comments received.

**911**

No comments received.

**El Paso Electric Company:**

No comments received.

**Additional Requirements and General Comments:**

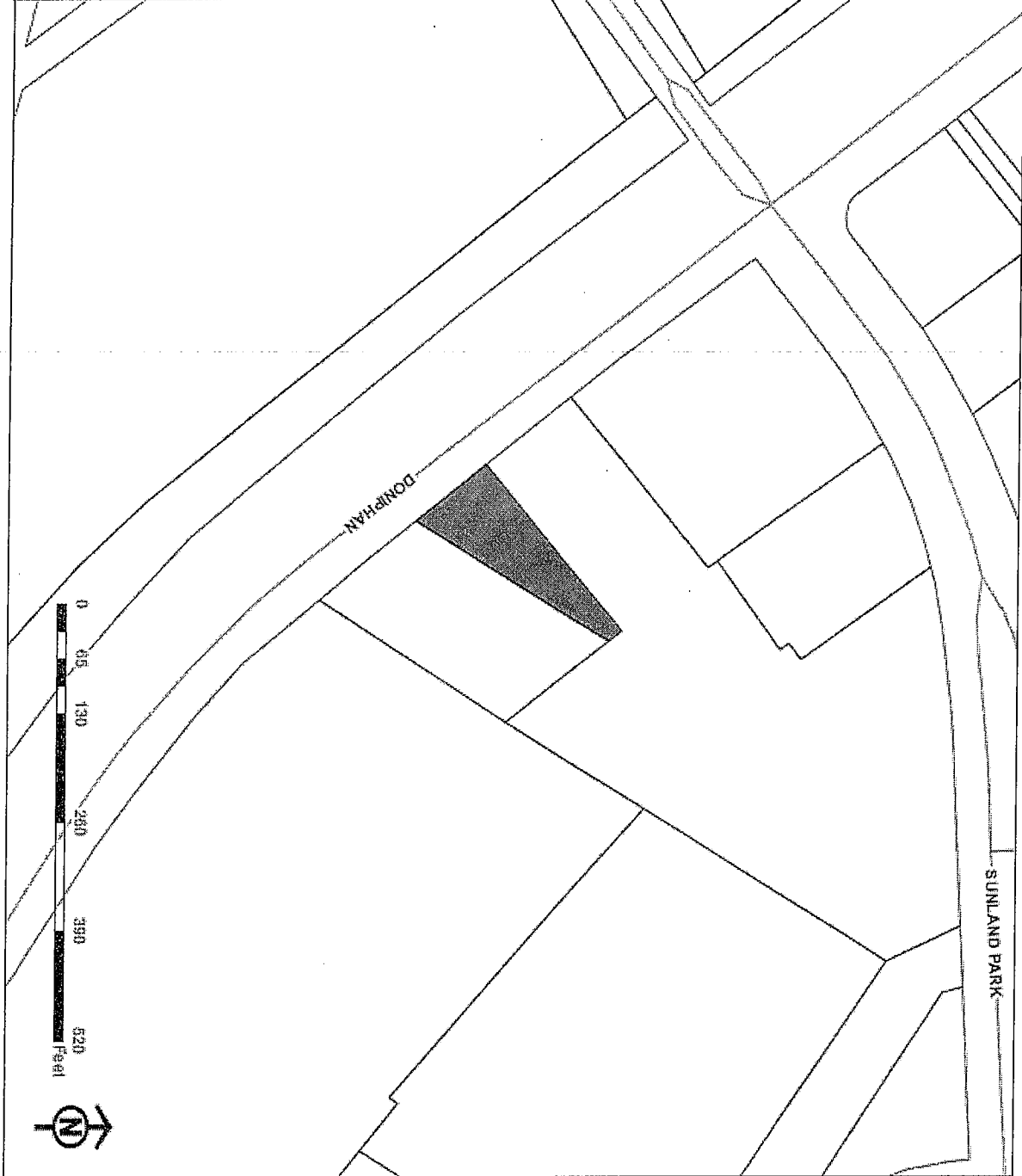
1. Submit to the City Development Department – Planning Division the following prior to recording of the subdivision.
  - a. Current certified tax certificate(s)
  - b. Current proof of ownership
  - c. Release of access document, if applicable
  - d. Set of restrictive covenants, if applicable
  - e. Deed for property to be dedicated as parkland.

**Attachments**

1. Location map
2. Aerial map
3. Pond Dedication Agreement

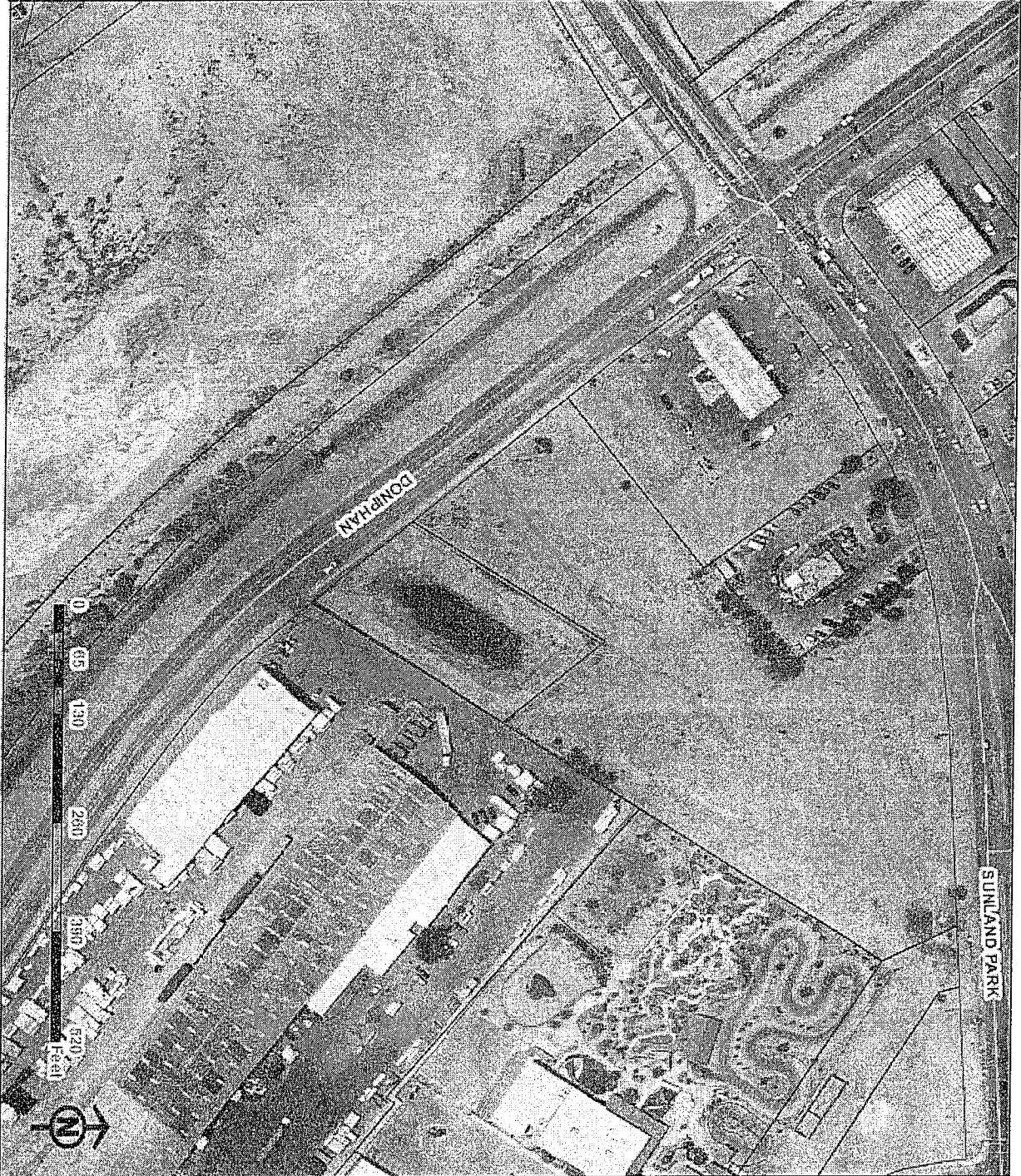
ATTACHMENT 1

**SUNLAND COMMERCIAL DISTRICT UNIT 3  
POND DEDICATION**



ATTACHMENT 2

# SUNLAND COMMERCIAL DISTRICT UNIT 3 POND DEDICATION



ATTACHMENT 3

STATE OF TEXAS            )  
                                  )       POND DEDICATION AGREEMENT  
COUNTY OF EL PASO    )

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between SUNLAND SQUARE, LTD hereinafter referred to as the "Developer," and the CITY OF EL PASO, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the Developer is the owner of a parcel of land containing 0.3651 acre, more or less, being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds and survey attached hereto and made part hereof as Exhibit "A" (the "Pond Site"); and,

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#263750/14-2007-9887 Valley Crossing Pond Agreement  
ELH

4. **TITLE, TAXES and CONVEYANCE:** The Developer agrees to pay the cost of providing a title search, recording costs for the deed on the Pond Site, and further agrees to pay all ad valorem taxes, standby fees and assessments by any taxing authority prorated through the date of acceptance of the deed conveying fee simple title by the City Council.

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5.1 **Bond Required.** To ensure the completion of the project and pursuant to Texas Local Government Code Section 212.073, Developer must execute a performance bond for the construction of the Improvements. The bond shall be in the amount equal to 125% of the Cost Estimate (Exhibit B). The bond shall be provided to the Deputy Director of the City Development Department -Planning Division prior to City Council approval of the Agreement. The bond shall be in a form approved by the City. The bond must be executed by a corporate surety in accordance with Texas Government Code Section 2253. The bond shall identify the City as Owner and Obligee and shall bind both Developer's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bond shall expressly provide that Developer's contractor shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction.

6. **INDEMNIFICATION; DEVELOPER UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF DEVELOPER, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES THAT OCCUR DURING THE CONSTRUCTION OF THE IMPROVEMENTS UNDER THIS AGREEMENT.**

7. **TITLE 19 AND DESIGN STANDARDS FOR CONSTRUCTION AND DRAINAGE DESIGN MANUAL ORDINANCE:** All provisions of this Agreement are subject to Title 19, the Design Standards for Construction, and the Drainage Design Manual and all other applicable provisions of the Code, and nothing herein is intended to waive or modify any provision of the Code. It is understood, however, that this Agreement may contain provisions requiring the Developer to do more than the Code requires and the Developer is obligated to comply with such provisions.

#26375014-1007-2558 Valley Crossing Pond Agreement  
KJH

8. **SUCCESSORS AND ASSIGNS:** All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

9. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by a written agreement signed by both parties.

10. **SEVERABILITY:** Every provision of this Agreement is intended to be severable. If any term or provision contained herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

11. **LAW GOVERNING CONTRACT:** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

12. **BINDING AGREEMENT:** The individual signing this Agreement, on behalf of the Developer, acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind the Developer to the terms and conditions of this Agreement.

13. **REPRESENTATION OF COUNSEL:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

14. **NOTICE:** All notices and communications under this Agreement shall be hand-delivered or mailed, postage pre-paid with proof of delivery, to the representative parties at their respective addresses below, unless and until either party is otherwise notified in writing.

City of El Paso,  
Attn: Planning Deputy Director  
222 S. Campbell  
El Paso, Texas 79901  
Tel: (915) 212-0085

Sunland Square, LTD  
P.O. Box 12730  
El Paso, TX 79913  
Tel: (915) 584-8242

15. **WAIVER:** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF EL PASO:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kristen L. Hamilton  
Assistant City Attorney

\_\_\_\_\_  
Carlos Gallinar, Deputy Director for  
City Development - Planning

ACKNOWLEDGEMENT

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by JOYCE A. WILSON as City Manager of THE CITY OF EL PASO, a municipal corporation, on behalf of said corporation.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by Will S. Harvey as Manager of Sunland Square, LTD, a Texas limited company, on behalf of said limited company.

SUNLAND SQUARE, LTD

By: \_\_\_\_\_  
Will S. Harvey, Manager

ACKNOWLEDGEMENT ON FOLLOWING PAGE

#263759/14-1007-938/ Valley Crossing Pond Agreement  
KIH

ACKNOWLEDGEMENT

STATE OF TEXAS     )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Will S. Harvey as Manager of Sunland Square, LID, a Texas limited company, on behalf of said limited company.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

#263750/14-1000-888/ Valley Crossing Pond Agreement  
ELH

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EXHIBIT A

PROPERTY DESCRIPTION

Flowing Area  
Parish Lot 2, Block 3  
Sunland Commercial District Unit 3

Description of a parcel of land being a portion of Lot 2, Block 3, Sunland Commercial District Unit 3, City of El Paso, El Paso County, Texas, resp of said Sunland Commercial District Unit 3 recorded in book 62, page 33, Plat Records, El Paso County, Texas and also being a portion of that parcel recorded in book 3131, page 257, El Paso County Civil Records, and described as follows:

Commencing at reference and refer with cap found at the northwest corner of Lot 2, Block 3, Walker Subdivision (recorded in book 76, page 82, El Paso County Civil Records), said refer with cap also lying on the easterly boundary line of said Lot 2; Thence, with said easterly boundary line of Lot 2 and the westerly boundary line of said Walker Subdivision, South 29° 11' 42" West a distance of 333.81' to the northwesterly corner of Lot 3 (indicated pending survey of said Block 3; Thence, with the northerly lot line of said Lot 3, North 40° 44' 18" West a distance of 158.97' to a refer with cap stamped "KBE0" found at the northwest corner of said Lot 3, and being the "Point Of Beginning";


Thence, with said westerly boundary line of said Lot 3, North 29° 11' 42" West a distance of 376.81' to a refer with cap stamped "KBE0" found at the northwest corner of Lot 3 (indicated pending survey) of said Block 3;

Thence, with the easterly ROW line of Doniphan Drive (variable width), North 40° 44' 18" West a distance of 108.79' to a point lying South 40° 44' 18" East a distance of 76.89' from an angle point of said ROW line;

Thence, having said ROW line, North 40° 44' 18" East a distance of 238.15' to a point;

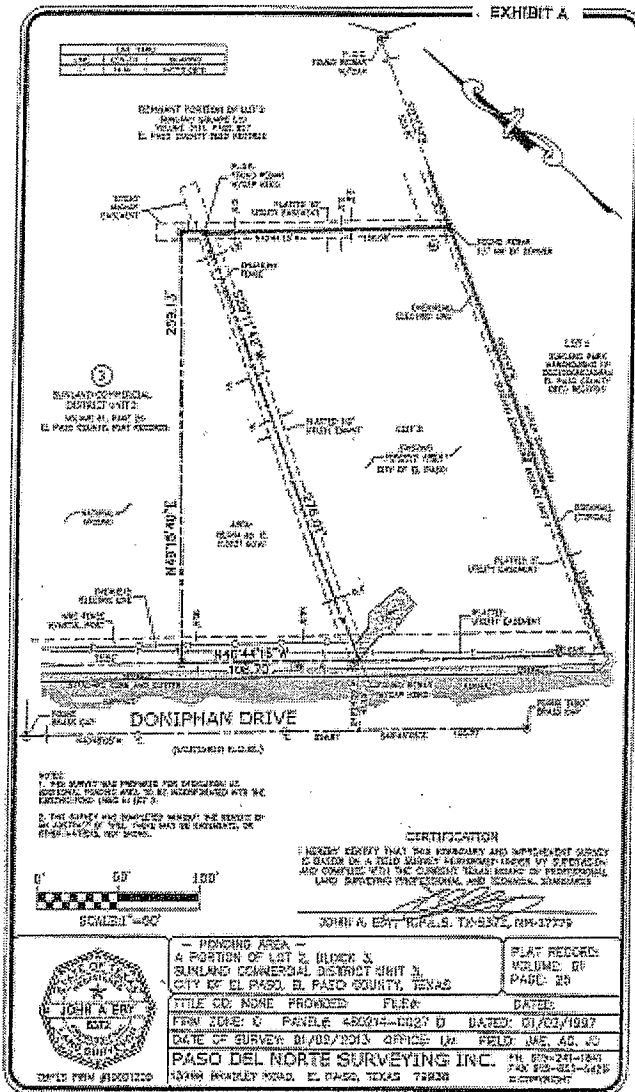
Thence, South 41° 13' 10" East a distance of 14.00' to the "Point Of Beginning" and enclosing 45,804 sq. ft. or 0.1033 acres.

Based on a L&D survey performed under my supervision and dated April 28, 2012.  
THIS INSTRUMENT WAS PREPARED FOR DEDICATION AS AN ADDITIONAL FLOWING AREA TO BE INCORPORATED INTO THE EXISTING FLOWING AREA IN LOT 2.

  
John A. Eby, Texas R.P.L.S. 5212 NM. PLS 17779



Paul Del Norte Surveying, Inc.  
15928 Bradley Road  
El Paso, TX. 79924  
915-541-1941



#263750/14-1007-8887 Valley Crossing Pond Agreement  
 KLS

EXHIBIT B



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TO: The City of El Paso  
FROM: Will S. Harvey  
DATE: February 24, 2014  
RE: Valley Crossing Retail Center VC SN(3-00028 and 00029)

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To Whom It May Concern:

We received pricing from KERE Inc. to make improvements to the existing pond located adjacent to the above mentioned development. The prices from the contractor to improve the pond per the already approved plans are as follows:

\$88,500	Additional Ditchwork
22,025	Rockwalls
3,005	Chain Link
552	Depth Gauge
2,315	Additional Concrete
1,550	Drains
<u>\$155,977</u>	Total

Please feel free to contact me with any questions at 915.554.8242 or [will@epriverbend.com](mailto:will@epriverbend.com).

Regards,

A handwritten signature in black ink, appearing to read "Will S. Harvey".

Will S. Harvey  
EP Riverbend Development, LLC

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4000 Dinsman, Suite A • P. O. Box 12730 • El Paso, Texas 79913 • (915) 764-0242 • FAX (915) 610-8246

Valley Crossing Pond Improvements

#263750/14-0007-088 Valley Crossing Pond Agreement  
ELH

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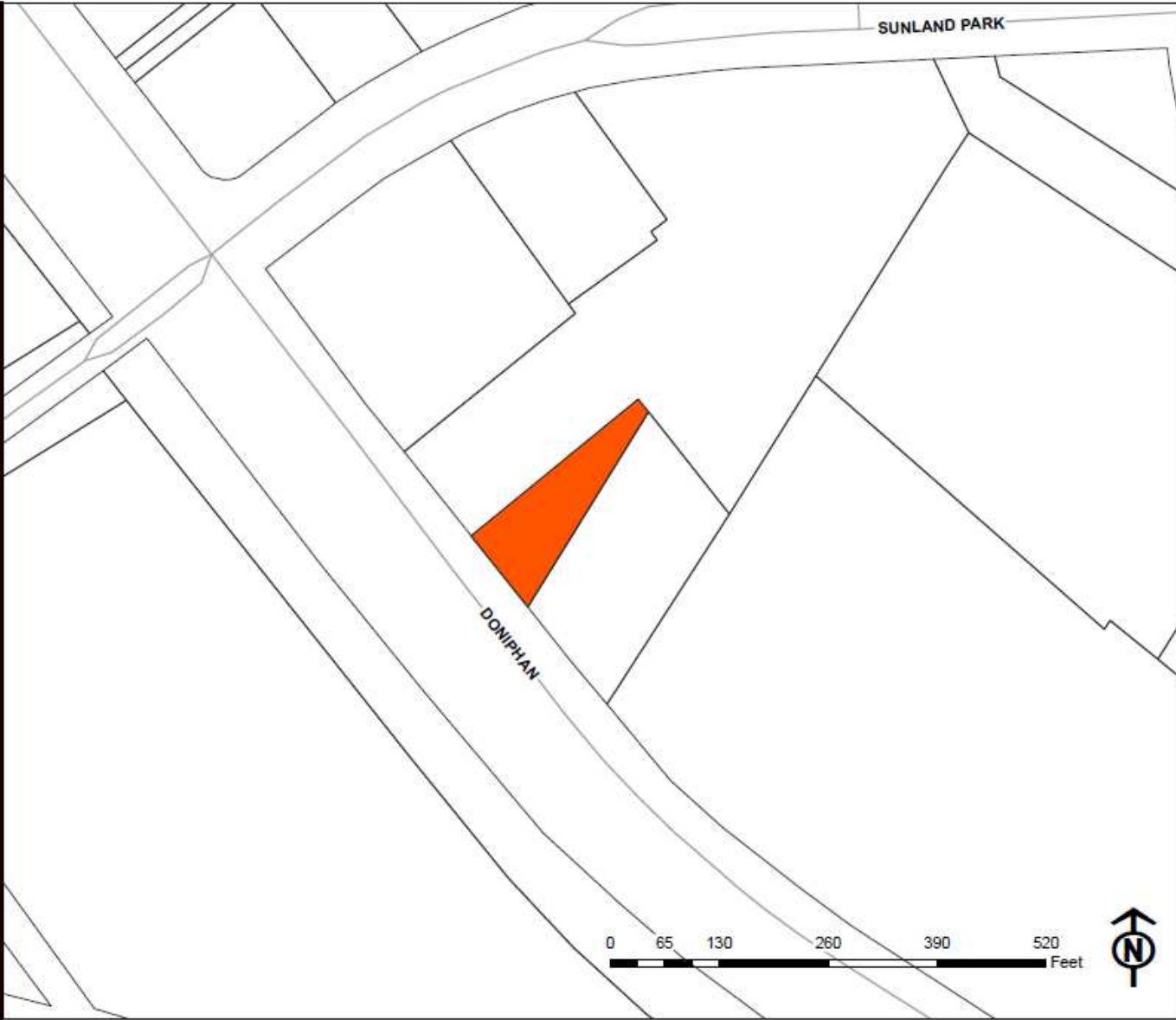


# Recommendation/Public Input

- **City Development recommendation:** Approval
- **CPC Vote:** Unanimous Approval

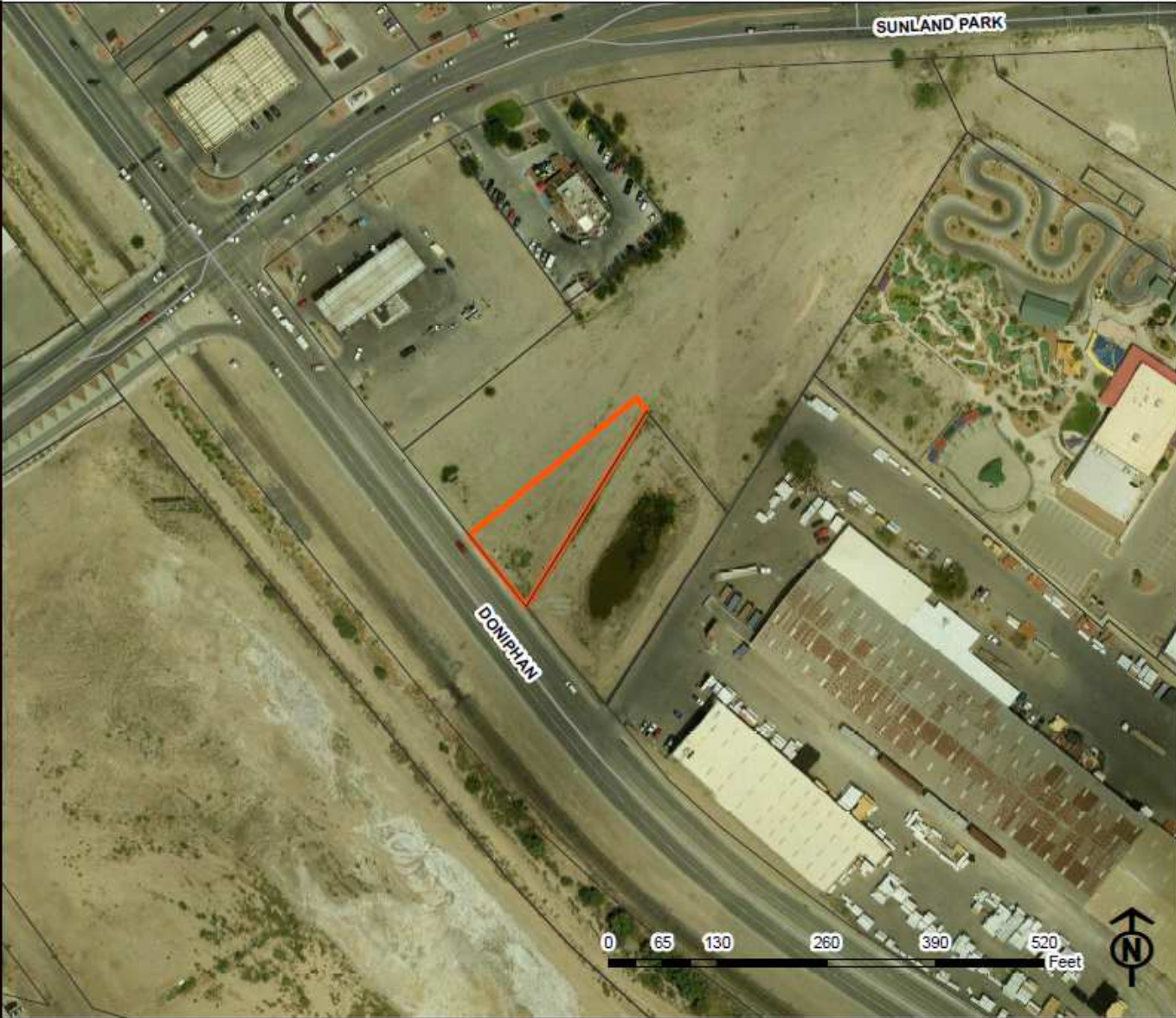


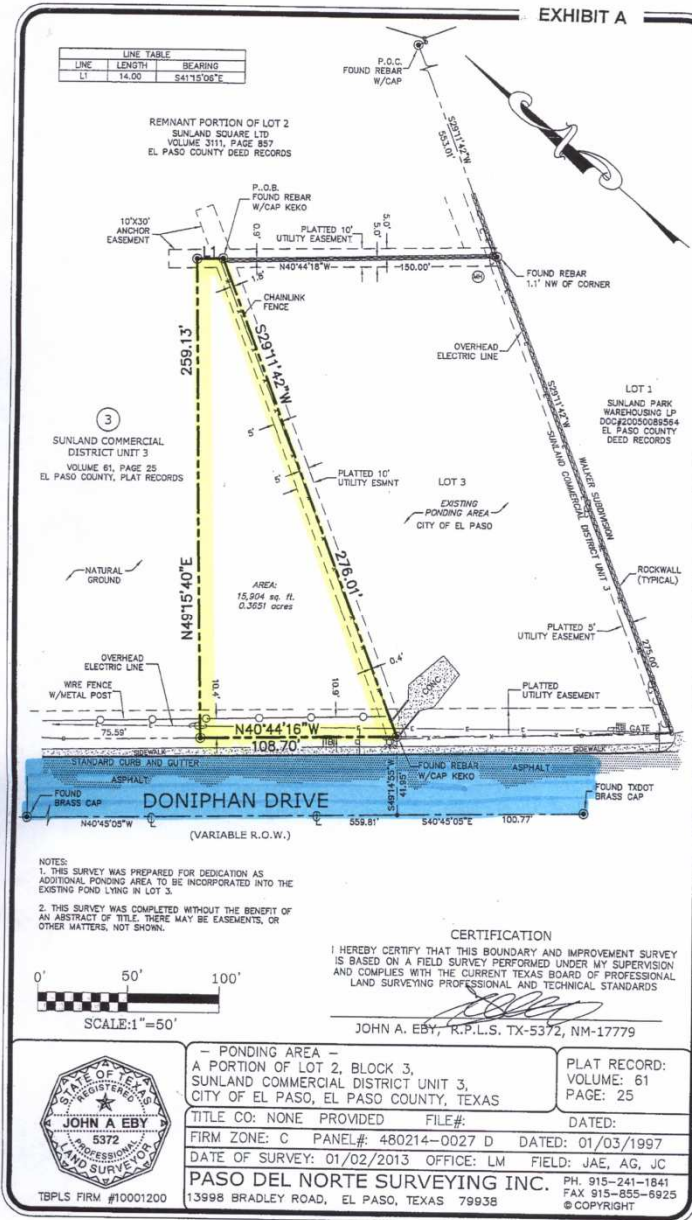
**SUNLAND COMMERCIAL DISTRICT UNIT 3  
POND DEDICATION**





**SUNLAND COMMERCIAL DISTRICT UNIT 3  
POND DEDICATION**







**SUNLAND COMMERCIAL DISTRICT UNIT 3  
POND DEDICATION**

