City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 2 **Ordinance/Resolution#** 2585 **Council District:** 1

For Meeting of August 23, 2010
(Adoption Date)

TITLE: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-2 (COMMERCIAL MEDIUM INTENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR THREE (3) DISTINCT PROPERTIES LOCATED AT 304, 308, AND 320 WYATT DRIVE AND 1160 EL PASEO DRIVE. THE PROPERTIES HAVE A COMBINED AREA OF 9.660 +/- ACRES ALL BEING UTILIZED AS A SHOPPING CENTER. THE ZONE CHANGE REQUEST WILL BRING THE PROPERTIES INTO ZONING COMPLIANCE, BASED ON EACH PROPERTY EXCEEDING THE ONE (1) ACRE MAXIMUM FOR COMMERCIAL PROPERTIES WITHIN THE C-2 (COMMERCIAL MEDIUM INTENSITY) ZONING DISTRICT. SUBMITTED BY BRG ENGINEERING FOR EL PASEO LAS CRUCES PROS RE, LLC (Z2766).

PURPOSE(S) OF ACTION: Change the zoning from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three (3) distinct properties having a combined area of 9.660 +/- acres.

Name of Drafter: Adam Ochoa		Department: Community Development		Phone: 528-3204	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Development Director		528-3066	Budget		541-2107
Other			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The applicant, El Paseo Las Cruces Pros Re, LLC, is requesting a zone change from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three (3) distinct properties having a combined area of 9.660 +/- acres located at 312, 308, 320 Wyatt Drive and 1160 El Paseo Drive. One of the properties has frontage along Wyatt Drive and El Paseo Road respectively therefore the need for a fourth address. The properties are currently utilized as a shopping center having a combined gross floor area of 107,675 square feet. The zone change will bring the properties into zoning compliance, based on the overall size of each property exceeding the one (1) acre maximum size allowance for commercial properties within the C-2 (Commercial Medium Intensity) zoning district.

The property located at 304, 308 and 312 Wyatt Drive has direct access from El Paseo Road, Wyatt Drive and Arizona Drive. The property located at 320 Wyatt Drive has direct access only from Wyatt and El Paseo Road. The Metropolitan Planning Organization (MPO) has classified El Paseo Road as a Principal Arterial roadway and Wyatt Drive as a Minor Arterial roadway. Arizona Drive is a dedicated local City roadway. During staff review of said zone

change, it was discovered that the property located at 1160 El Paseo Road is physically land locked from El Paseo Road, Wyatt Drive and/or S. Mesquite Street. Staff recommended that the applicant, or property owner, create a shared access agreement in order to provide legal access the parcel of land identified as 1160 El Paseo Road.

The 2001 Zoning Code, as amended, requires shopping centers that exceed 15,000 square feet to have one (1) parking stall per 250-350 square feet of gross floor area. The shopping center has 107,675 square feet of gross floor area; therefore, requiring a range of 307 to 431 parking stalls. Existing asphalt improvement to the shopping center consists of 264,600 square feet or approximately 6 acres of improved parking area. Currently the shopping center meets the parking requirements.

Based on a site visit to the properties minimal landscaping currently exists. The shopping center has approximately 4-5 trees planted along Wyatt Drive with no other visible landscaping present. In the event the existing buildings require structural modification, the City of Las Cruces Design Standards Article IV Section 32-266 (2) requires an existing building with a project value of $25,000.00 or over to landscape a minimum of fifteen (15) percent of the site's parking area (entire tracts except building pad and fenced-in storage area).

Bicycle lanes are not present in the immediate area. The closest bus stop in current operation is located on Arizona Street situated to the rear of 312 Wyatt Drive. There is no trail system present in the general area.

On October 28, 2008, the Planning and Zoning Commission (P&Z) recommended conditional approval for the zone change by a vote of 6-0-0 (one Commissioner absent). The condition attached to this zone change requires the property owner to file a shared access agreement with the Dona Ana County Clerk's Office prior to final consideration by the Las Cruces City Council. Public comment during P&Z was minimal with one individual questioning the need for bicycle parking at the shopping center. Based on a discussion with the applicant's agent the properties were purchased by a grocery store chain and a renovation of the shopping center is planned. By the issuance of a building permit the properties will be required to comply with landscaping, lighting and bicycle parking requirements as established within the 2001 Zoning Code, as amended.

On January 26, 2009, the zone change request was scheduled for final consideration by City Council. At that time the condition placed upon the requested zone change requiring the filing of a shared access agreement prior to final consideration by City Council was not met by the applicant. During the meeting the applicant requested that the case be postponed indefinitely to allow the applicant time to secure the shared access agreement for the subject property. City Council voted to postpone the case indefinitely by a vote of 7-0.

On July 1, 2010, the applicant contacted staff and provided a copy of the shared access agreement for the subject property located at 1160 El Paseo (Attachment "C"). As such, the condition stipulated by the Planning and Zoning Commission has been met.

SUPPORT INFORMATION:

1. Ordinance
2. Exhibit "A" - Proposed Zoning Map
3. Exhibit "B"- Findings and Comprehensive Plan Analysis
4. Attachment "A"- Staff Report to the Planning and Zoning Commission for Case Z2766
5. Attachment "B"- Minutes from the October 28, 2008 Planning and Zoning Commission
6. Attachment "C"- Shared Access Agreement
7. Attachment "D"- Vicinity Map

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____
	No	☐	There is no new revenue generated by this action.

FUND SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will affirm the Planning and Zoning Commission recommendation for approval. The subject properties located at 304, 308 and 320 Wyatt Drive and 1160 El Paseo Drive will be rezoned from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three (3) distinct properties having a combined area of 9.660 +/- acres. The zone change will bring the properties into zoning compliance, based on each property exceeding the one (1) acre maximum allowance for commercial properties within the C-2 (Commercial Medium Intensity) zoning district.

2. Vote "No"; this will reverse the recommendation made by the Planning and Zoning Commission. The current zoning designation of C-2 (Single-Family Medium Intensity) will remain on the subject properties located at 304, 308 and 320 Wyatt Drive and 1160 El Paseo Road. The properties will be allowed to continue operation as a shopping center having a non-conforming land use status.

3. Vote to "Amend" and vote "Yes"; this could allow the Council to approve and modify the Ordinance by adding conditions as deemed appropriate.

4. Vote to "Table"; this could allow the Council to table/postpone the Ordinance and direct staff accordingly.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Ordinance No. 1481

COUNCIL BILL NO. 11-005
ORDINANCE NO. 2585

AN ORDINANCE APPROVING A ZONE CHANGE FROM C-2 (COMMERCIAL MEDIUM INTENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR THREE (3) DISTINCT PROPERTIES LOCATED AT 304, 308, AND 320 WYATT DRIVE AND 1160 EL PASEO DRIVE. THE PROPERTIES HAVE A COMBINED AREA OF 9.660 +/- ACRES ALL BEING UTILIZED AS A SHOPPING CENTER. THE ZONE CHANGE REQUEST WILL BRING THE PROPERTIES INTO ZONING COMPLIANCE, BASED ON EACH PROPERTY EXCEEDING THE ONE (1) ACRE MAXIMUM FOR COMMERCIAL PROPERTIES WITHIN THE C-2 (COMMERCIAL MEDIUM INTENSITY) ZONING DISTRICT. SUBMITTED BY BRG ENGINEERING FOR EL PASEO LAS CRUCES PROS RE, LLC (Z2766).

The City Council is informed that:

WHEREAS, El Paseo Las Cruces Pros Re, LLC, the property owner, has submitted a request for a zone change from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three distinct properties with a combined area of 9.660 +/- acres located at 304,308, 320 Wyatt Drive and 1160 El Paseo Road; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on October 28, 2008, recommended that said zone change request be conditionally approved by a vote of 6-0-0 (one Commissioners absent); and

WHEREAS, the condition stipulated by the Planning & Zoning Commission stated that a shared access agreement must be filled with the Dona Ana County Clerk prior to final consideration of the zone change by the Las Cruces City Council; and

WHEREAS, the property owner has satisfied the stated condition.

NOW THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the land more particularly described in Exhibit "B," attached hereto and made part of this Ordinance, is hereby zoned C-3 (Commercial High Intensity) for the properties located at 304, 308, 320 Wyatt Drive and 1160 El Paseo Road.

(II)

THAT the zoning is based on the findings contained in Exhibit "B" (Findings and Comprehensive Plan Analysis), attached hereto and made part of this Ordinance.

(III)

THAT the zoning of said properties be shown accordingly on the City Zoning Atlas.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this_____ day of _____ 2010.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima ____
Councillor Silva ____
Councillor Connor ____
Councillor Pedroza ____
Councillor Small ____
Councillor Sorg ____
Councillor Thomas ____

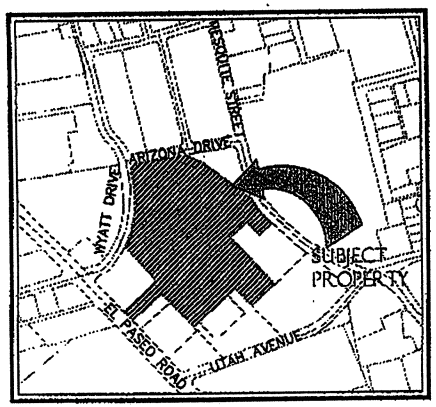
Moved by: _____

Seconded by: _____

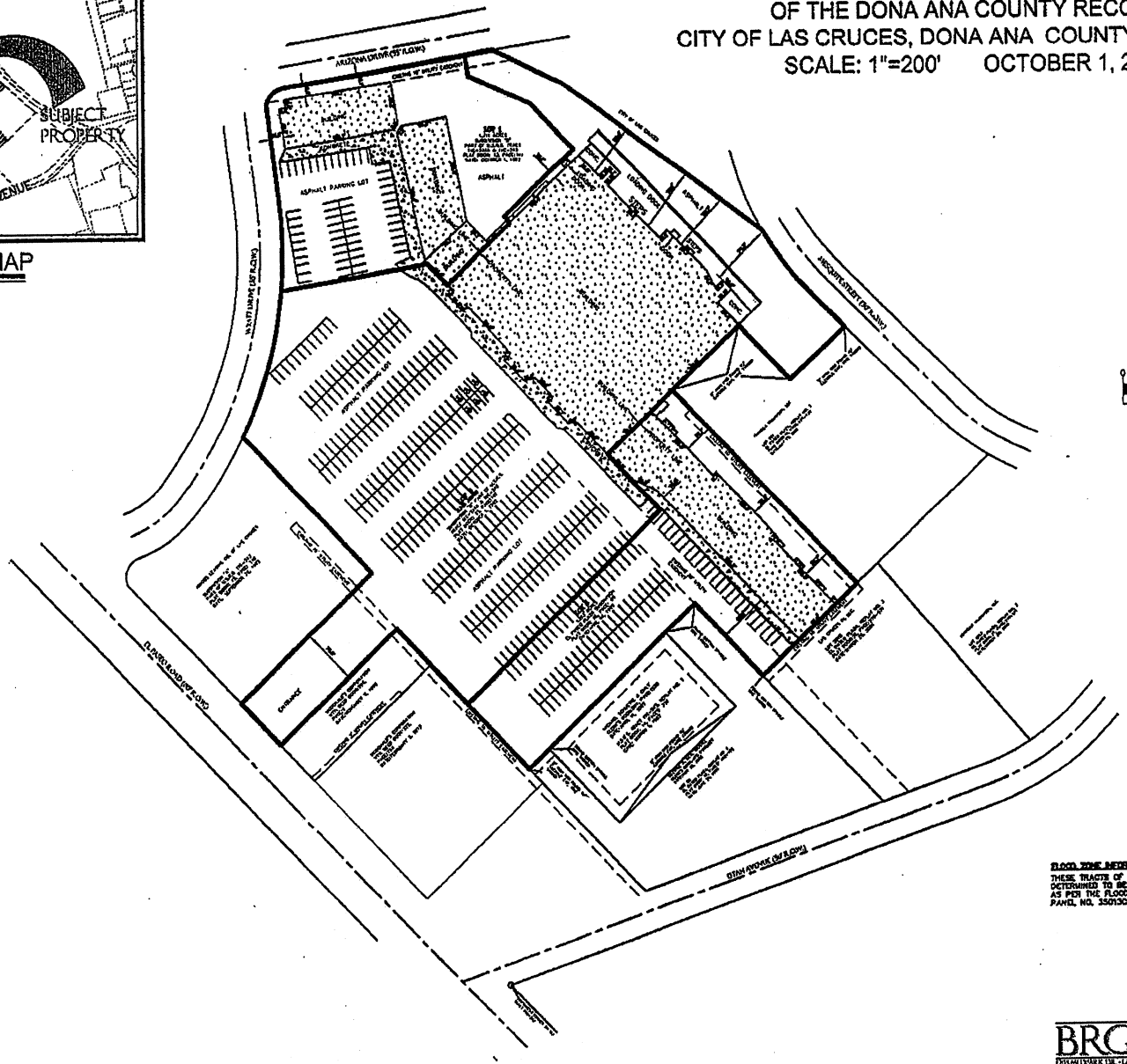
APPROVED AS TO FORM:

_____
City Attorney

PLAT SHOWING THE LOCATION OF IMPROVEMENTS ON LOTS 1 AND 2,SUBDIVISION "B", PART OF U.S.R.S. TRACT 11C-2A1A & 11C-2A2, PLAT FILED OCTOBER 1, 1982 IN PLAT RECORD 13, PAGE 11, AND LOT 1, EL PASEO PLAZA, PLAT FILED APRIL 14, 1989 IN PLAT RECORDS 16, PAGE 65 OF THE DONA ANA COUNTY RECORDS
CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO
SCALE: 1"=200' OCTOBER 1, 2008



VICINITY MAP
NOT TO SCALE



0 200 300 400
1"=200'

LEGEND

= BUILDINGS

= CONCRETE

FLOOD ZONE INFORMATION
THESE TRACTS OF LAND LIE WITHIN FLOOD ZONE "X", AN AREA DETERMINED TO BE OUTSIDE THE 500 YEAR FLOOD PLAIN AS PER THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 3501300831 E, REVISED SEP. 27, 1991.

BRG BLACKHAM, ROMAN, GREINER AND ASSOCIATES, INC.
ENGINEERING · PLANNING · SURVEYING
1205 MILLYARK DR. · LAS CRUCES, NM 88005 · (505)525-2278 · (505)523-9518 (FAX)
PROJECT #08-96

Exhibit "A"

EXHIBIT "B"
FINDINGS AND COMPREHENSIVE PLAN ANALYSIS

1. The subject three (3) properties have a combined area of 9.660 +/- acres and are zoned C-2 (Commercial Medium Intensity).

2. The properties are currently utilized as a shopping center having a combined gross floor area of 107,675 square feet.

3. All the buildings located within the shopping center are in compliance with minimum setback standards for C-2 (Commercial Medium Intensity) or C-3 (Commercial High Intensity) zoning designation.

4. The property located at 1160 El Paseo Road is physically land locked from any dedicated City roadway.

5. Adjacent land use and zoning include:

	Zoning	Land Use
North	R-3/PUD	Vacant/Apartments
South	C-2	Good Year Tire Center/ Restaurant
East	C-2	Burger King/ vacant Mc Donald's
West	C-3	Movie Theater

6. The request is consistent with the following sections of the City of Las Cruces Comprehensive Plan:

Land Use Element, Goal 1 (Land Uses)

Policy 5.3

High intensity commercial use shall be defined as those commercial uses which generate retail, service, and wholesale activities within a specific sector within the City. High intensity commercial use and centers shall generally serve a population of 15,000 to 85,000 people and shall be established according to the following criteria:

a. Generally 5,000 but not to exceed 75,000 gross square feet shall be permitted for a high intensity commercial use, with generally 200,000 square feet permitted for a high intensity commercial center. A high intensity commercial center becomes a regional commercial use when the center contains one anchor store greater than 75,000 gross square feet.

b. High intensity commercial uses and centers shall be located at the intersection of minor arterial streets, or any intersection with a major arterial street. Mid-block locations shall be considered on a case-by-case basis: criteria shall include street capacity, distance from an

intersection where appropriate, accessibility and shared vehicular access with other uses where appropriate, and consideration of the level of traffic and environmental impacts.

c. The City shall pursue multi-modal access standards (auto, bicycle, and pedestrian transit) for high intensity commercial use and centers.

d. High intensity commercial development shall address the following urban design criteria: compatibility to adjacent development in terms of architectural design, height/density, and the provision of landscaping for site screening, parking, and loading areas. Architectural and landscaping standards for high intensity commercial use shall be established in the Comprehensive Plan Urban Design Element.

e. Adequate space for functional circulation shall be provided for parking and loading areas.

f. The City shall encourage the development of high intensity commercial centers to allow for maximum shopping convenience with minimal traffic and encroachment-related conflicts to adjacent uses.

g. High intensity commercial use and centers should not locate adjacent to rural or low density residential uses.

h. Low and medium intensity commercial use are permitted in high intensity commercial.

Attachment "A"

City of Las Cruces®

TO: Planning and Zoning Commission

PREPARED BY: James A. White, AICP, Planner

DATE: October 28, 2008

SUBJECT: 304, 308, 320 Wyatt Drive and 1160 El Paseo Road (Zone Change)

RECOMMENDATION: Approval – with a condition for case Z2766

Case Z2766: A request for a zone change from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three (3) distinct properties located at 304, 308, 320 Wyatt Drive and 1160 El Paseo Drive. The properties have a combined area of 9.660 +/- acres all being utilized as a shopping center. The zone change will bring the property into zoning compliance, based on the overall size of the property exceeding the one (1) acre maximum size for commercial properties within the C-2 (Commercial Medium Intensity) zoning district. Submitted by BRG Engineering for El Paseo Las Cruces Pros Re, LLC.

BACKGROUND

The applicant, El Paseo Las Cruces Pros Re, LLC, is requesting a zone change from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three (3) distinct lots with a combined area of 9.660 +/- acres located at 304, 308, 320 Wyatt Drive and 1160 El Paseo Drive. The properties are currently utilized as a shopping center having a combined gross floor area of 107,675 square feet. The zone change will bring the property into zoning compliance, based on the overall size of the property exceeding the one (1) acre maximum size for commercial properties within the C-2 (Commercial Medium Intensity) zoning district.

The case was postponed from last month's Planning and Zoning Commission (P&Z) meeting based on the possibility that the buildings within the shopping center may have been straddling various lots lines (Lots 1 and 2, Subdivision "B", part of U.S.R.S Tract 11C-2A1A & 11C-2A), creating various building setback related issues. The applicant provided staff with an improvement survey showing all existing buildings have a zero (0) foot side yard setback and therefore, are in compliance with the minimum side yard setback requirements for commercial properties zoned either C-2 (Commercial Medium intensity) or C-3 (Commercial High Intensity).

The property located at 304, 308 and 312 Wyatt Drive has direct access from El Paseo Road, Wyatt Drive and Arizona Drive. The property located at 320 Wyatt Drive has direct access only from Wyatt and El Paseo Road. The Metropolitan Planning Organization (MPO) has classified El Paseo Road as a Principal Arterial roadway and Wyatt Drive as a Minor Arterial roadway. Arizona Drive is a dedicated local City roadway. During staff review of said zone change, it was discovered that the property located at 1160 El Paseo Road is physically land locked from El Paseo Road, Wyatt Drive and/or Mesquite Street. The applicant is in the process of creating a shared access agreement in order to provide legal access to 1160 El Paseo Road.

The 2001 Zoning Code, as amended requires shopping centers that exceed 15,000 square feet will be required to have one (1) parking stall per 250-350 square feet of gross floor area. The shopping center has 107,675 square feet of gross floor area therefore requiring a range of 307 to 431 parking stalls. Existing asphalt improvement to the shopping center consists of 264,600 square feet or approximately 6 acres of improved parking area. Therefore, a conclusion can be inferred that the shopping center has adequate on site-parking.

Based on a site visit to the properties minimal landscaping currently exists. The shopping center has approximately 4-5 trees planted along Wyatt Drive with no other visible landscaping present. In the event the existing buildings are modified the proceeding statement will apply to the property. The City of Las Cruces Design Standards Article IV Section 32-266 (2) requires structural modification to an existing building with a value of $25,000.00 or over will require landscaping to a minimum of fifteen (15) percent of the site's parking area (includes entire tracts except building pad and fenced-in storage area).

In the immediate area bicycle lanes are not present. The closest bus stop in current operation is located on Arizona Street situated to the rear of 312 Wyatt Drive. There is no trail system present in the general area.

FINDINGS

1. The subject three (3) properties have a combined area of 9.660 +/- acres and are zoned C-2 (Commercial Medium Intensity).

2. The properties are currently utilized as a shopping center having a combined gross floor area of 107,675 square feet.

3. All the buildings located within the shopping center are in compliance with minimum setback standards for C-2 (Commercial Medium Intensity) or C-3 (Commercial High Intensity) zoning designation.
4. The property located at 1160 El Paseo Road is physically land locked from any dedicated City roadway.

5. Adjacent land use and zoning include:

	Zoning	Land Use
North	R-3/PUD	Vacant/Apartments
South	C-2	Good Year Tire Center/ Restaurant
East	C-2	Burger King/ vacant Mc Donald's
West	C-3	Movie Theater

6. The request is consistent with the following sections of the City of Las Cruces Comprehensive Plan:

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a. Generally 5,000 but not to exceed 75,000 gross square feet shall be permitted for a high intensity commercial use, with generally 200,000 square feet permitted for a high intensity commercial center. A high intensity commercial center becomes a regional commercial use when the center contains one anchor store greater than 75,000 gross square feet.

b. High intensity commercial uses and centers shall be located at the intersection of minor arterial streets, or any intersection with a major arterial street. Mid-block locations shall be considered on a case-by-case basis: criteria shall include street capacity, distance from an intersection where appropriate, accessibility and shared vehicular access with other uses where appropriate, and consideration of the level of traffic and environmental impacts.

c. The City shall pursue multi-modal access standards (auto, bicycle, and pedestrian transit) for high intensity commercial use and centers.

d. High intensity commercial development shall address the following urban design criteria: compatibility to adjacent development in terms of architectural design, height/density, and the provision of landscaping for site screening, parking, and loading areas. Architectural and landscaping standards for high intensity commercial use shall be established in the Comprehensive Plan Urban Design Element.

e. Adequate space for functional circulation shall be provided for parking and loading areas.

f. The City shall encourage the development of high intensity commercial centers to allow for maximum shopping convenience with minimal traffic and encroachment-related conflicts to adjacent uses.

g. High intensity commercial use and centers should not locate adjacent to rural or low density residential uses.

h. Low and medium intensity commercial use are permitted in high intensity commercial.

RECOMMENDATION

Staff has reviewed this zone change and recommends conditional approval, based on the preceding findings.

1. The shared access agreement for the property located at 1160 El Paseo Road will be filed with the County Clerk prior to final consideration of this zoning change by City Council.

The recommendation of the Planning and Zoning Commission will be forwarded to City Council for final consideration.

OPTIONS

1. Approve the request as recommended by staff for case Z2766.
2. Approve the request with additional conditions.
3. Deny the request.

ATTACHMENTS

1. Development Statement
2. Zone Change Request Plan
3. Improvement Survey
4. Vicinity Map

DEVELOPMENT STATEMENT **for Zoning Applications**
(Use for Zone Changes, SUP's and PUD's)
Please type or print legibly

Please note: The following information is provided by the applicant for information purposes only. The applicant is not bound to the details contained in the development statement, nor is the City responsible for requiring the applicant to abide by the statement. The Planning and Zoning Commission or City Council may condition approval of the proposal at a public hearing where the public will be provided an opportunity to comment.

Applicant Information

Name of Applicant: EL PASEO LAS CRUCES PROS RE, LLC

Contact Person: GARY M. GITLIN

Contact Phone Number: (602) 254-7201 x. 274

Contact e-mail Address: GaryG@legalprosranch.com

Web site address (if applicable): _____

Proposal Information

Location of Subject Property: 1160-D4 EL PASEO, 312 WYATT, 320 E. WYATT, LAS CRUCES

(In addition to description, attach map. Map must be at least 8 ½" x 11" in size and clearly show the relation of the subject property to the surrounding area)

Current Zoning of Property: C-2

Proposed Zoning: C-3

Acreage of Subject Property: 9.66AC (COMBINED ACREAGE)

Detailed description of intended use of property. (Use separate sheet if necessary):

RETAIL/OFFICE SPACE

Proposed square footage and height of structures to be built (if applicable):

ALL STRUCTURES ARE EXISTING

Anticipated hours of operation (if proposal involves non-residential uses):

Anticipated traffic generation _____ trips per day (if known).

_____

Anticipated development schedule: Work will commence on or about _____

and will take approximately _____ to complete.

How will stormwater runoff be addressed (on-lot ponding, detention facility, etc.)?

N/A_____

Will any special landscaping, architectural or site design features be implemented in the proposal (for example, rock walls, landscaped medians or entryways, or architectural themes)? If so, please describe and attach rendering if available:

NONE_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Attachments

Please attach the following: (* *indicates optional item*)

Location map

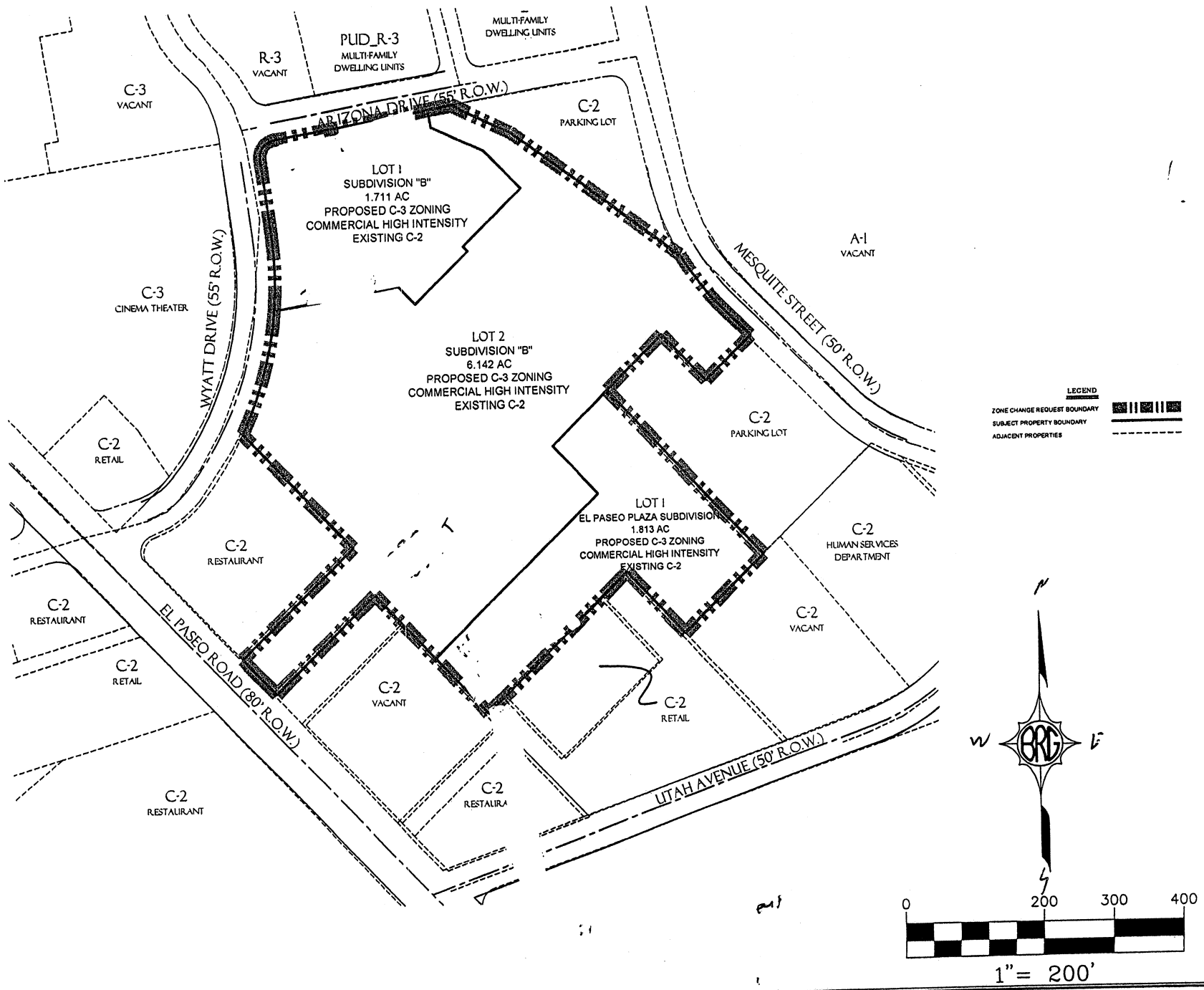
Detailed site plan

Proposed building elevations*

Renderings or architectural or site design features*

Other pertinent information*

ZONE CHANGE REQUEST PLAN - PROPOSED ZONING



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REFERENCES

REVISIONS

DATE

ENGINEER'S STAMP

BRG BLACKHAM, ROMAN, GREINER AND ASSOCIATES, INC.
ENGINEERING - PLANNING - SURVEYING
1203 MELPARK DR. - LAS CRUCES, NM 88005 - (505)525-2278 - (505)523-9518 (FAX)

DRAWN BY: BA

ENGINEER: CM

JULY 2005

PROJECT TITLE

EL PASEO LAS CRUCES PROS RE, LLC
ZONE CHANGE REQUEST

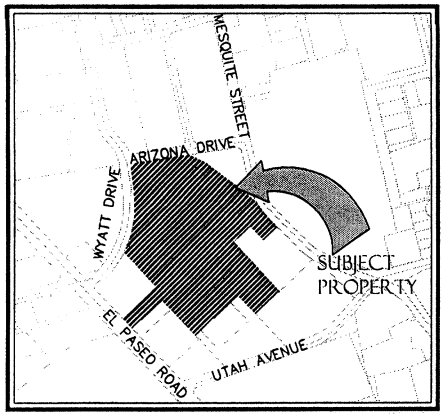
SHEET NO.
2
2 OF 2

C:\DWG\08-96\08-96 ZONE MAP.dwg L[illegible]UT: 8.5 X 11 PROPOSED ZONING
STA:C REV: 07.24.2008

PLAT SHOWING THE LOCATION OF IMPROVEMENTS ON LOTS 1 AND 2,SUBDIVISION "B", PART OF U.S.R.S. TRACT 11C-2A1A & 11C-2A2, PLAT FILED OCTOBER 1, 1982 IN PLAT RECORD 13, PAGE 11, AND LOT 1, EL PASEO PLAZA, PLAT FILED APRIL 14, 1989 IN PLAT RECORDS 16, PAGE 65 OF THE DONA ANA COUNTY RECORDS

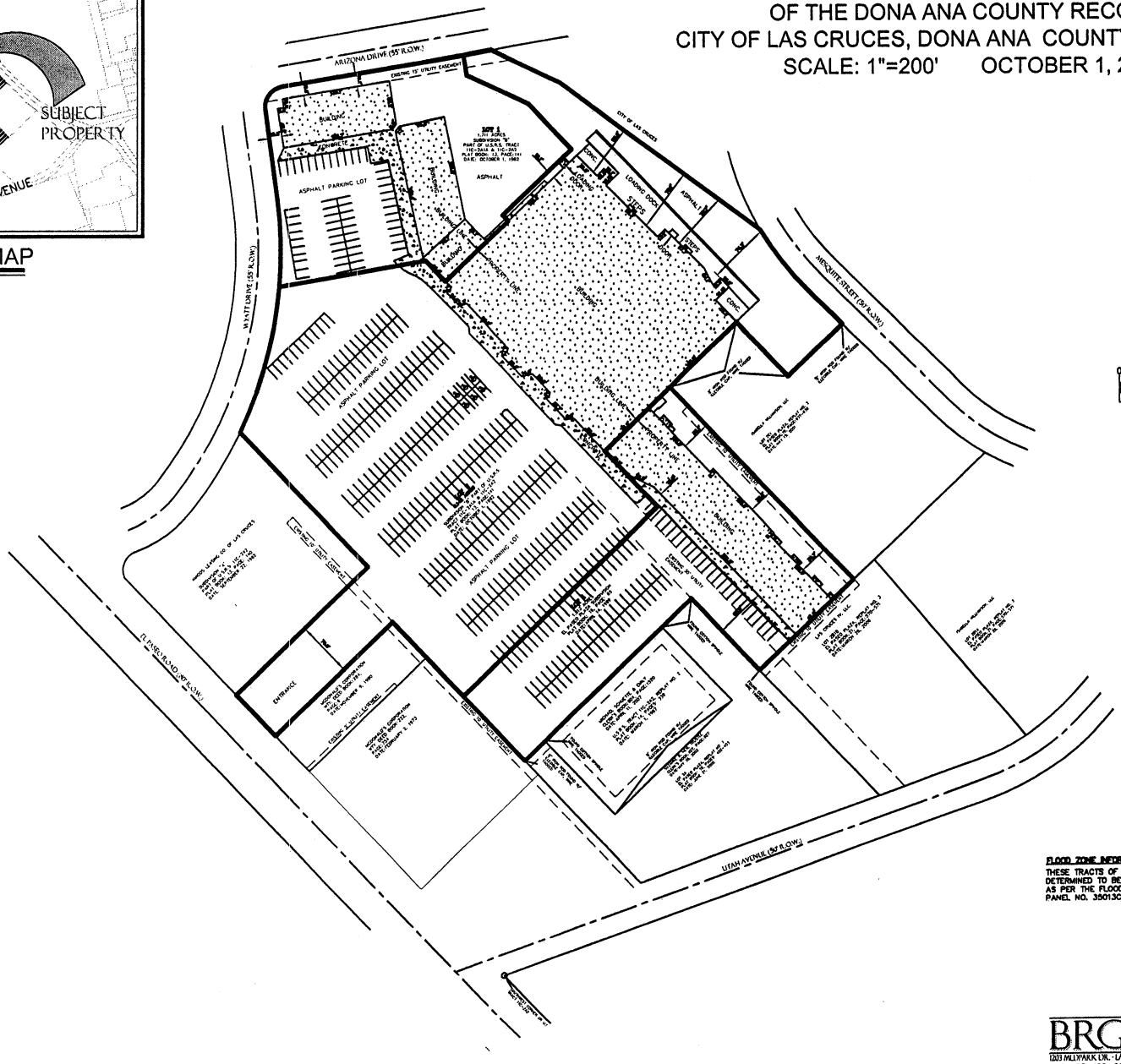
CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO

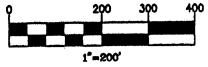
SCALE: 1"=200' OCTOBER 1, 2008



VICINITY MAP

NOT TO SCALE





LEGEND

= BUILDINGS

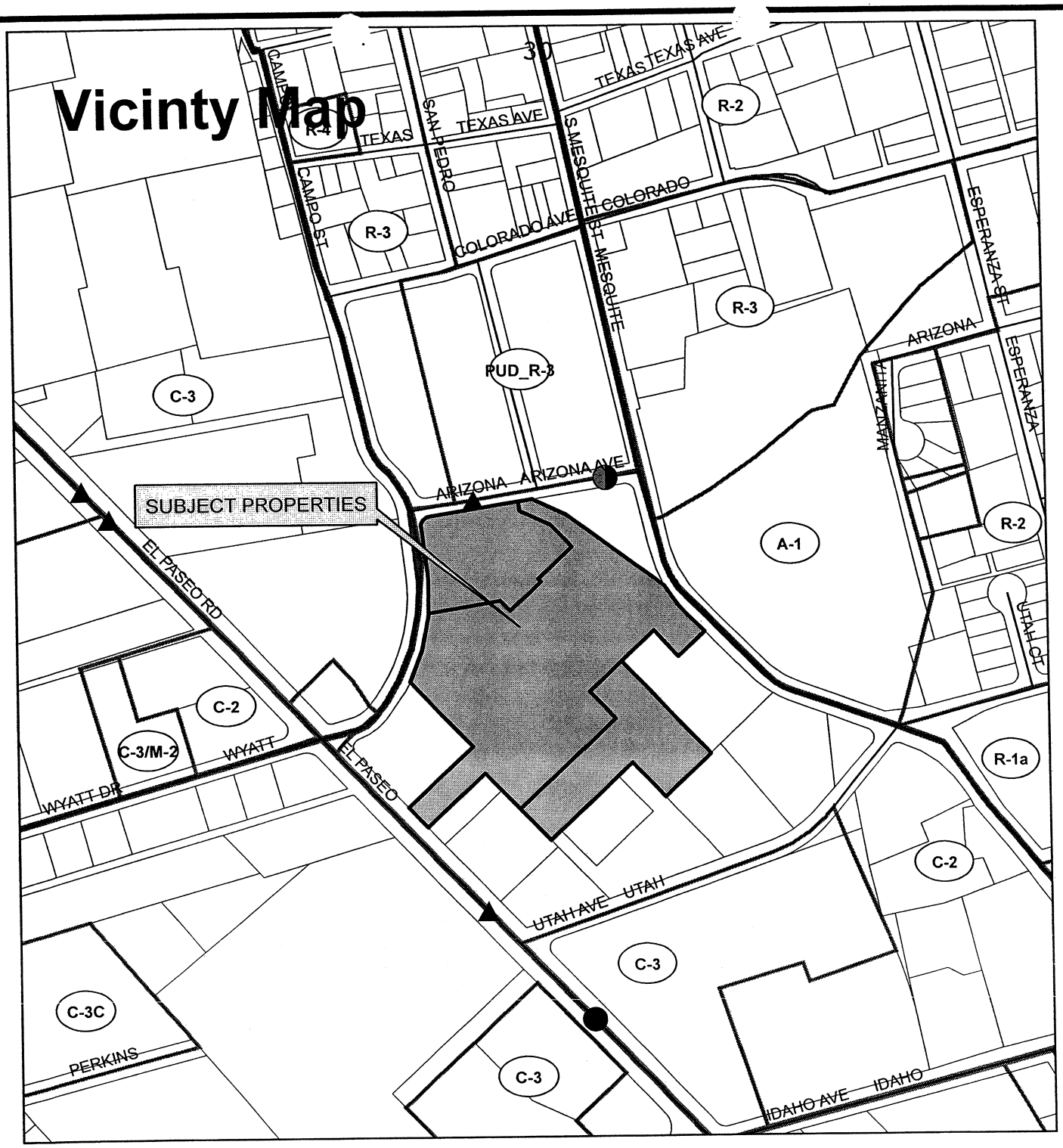
= CONCRETE

FLOOD ZONE INFORMATION

THESE TRACTS OF LAND LIE WITHIN FLOOD ZONE "X", AN AREA DETERMINED TO BE OUTSIDE THE 500 YEAR FLOOD PLAIN AS PER THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 350130C0831 E, REVISED SEP. 27, 1991.

BRG BLACKHAM, ROMAN, GREINER AND ASSOCIATES, INC.
ENGINEERING · PLANNING · SURVEYING
1203 MILLYPARK DR. · LAS CRUCES, NM 88005 · (505)525-1278 · (505)523-9518 (FAX)
PROJECT #08-96

Vicinty Map



MAP CREATED FOR: JWHITE (Z2766)

ADDRESS: 1160 El Paseo, 312 & 320 Wyatt

OWNERS: El Paseo Las Cruces PROS RE

DATE: 10/20/2008 10:09:23 AM

ZONING: C-2 to C-3

0 120 240 480 720 960 Feet

Community Development Department
575 S Alameda Blvd.
Las Cruces, NM 88001
(505) 528-3222

This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.

Attachment "B"

MEETING OF THE PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
October 28, 2008 at 6:00 p.m.

BOARD MEMBERS PRESENT:
Charles Scholz, Chairman
Shawn Evans, Vice Chair
Charles Beard, Member
Ray Shipley, Member
Godfrey Crane, Member
Clayton Iserman, Member

BOARD MEMBERS ABSENT:
Donald Bustos, Secretary

STAFF PRESENT:
Cheryl Rodriguez, Development Services Administrator
Gary Hembree, Senior Planner
Tom Schuster, Senior Planner
James White, Planner
Susan Lowell, Planner
Carol McCall, Planner
Jennifer Robertson, Planner
Adam Ochoa, Associate Planner
Jared Abrams, CLC Legal
Lt. Robert Gonzales, Fire Department
Lora Dunlap, Recording Secretary

I. CALL TO ORDER 6:00 p.m.

Scholz: This is the Planning and Zoning Commission meeting for Tuesday, October 28th. I'm Charlie Scholz. I'm the Chair of the Commission. I want to introduce the members of the Commission to you before we begin our agenda. On my far right is Commissioner Shipley. He is the Mayor's representative on the Commission. Next to him is Commissioner Crane. He represents Council District 4; next to him is Commissioner Iserman. He represents Council District 1. Then Commissioner Evans, Council District 5, right next to me is Commissioner Beard, Council District 3, excuse me Council District 2 and I represent Council District 6.

II. APPROVAL OF MINUTES – September 23, 2008

Scholz: Okay, the first item on the agenda is the approval of the minutes of September 23, 2008. Are there any additions or corrections to the

4. **Case S-08-083**: A request for final plat approval for right-of-way dedication known as Kennedy Road, Replat No. 2. The final plat proposes to dedicate 40 feet of right-of-way to the City of Las Cruces. The subject property consists of 2.39 ± acres of which 0.23 ± acres is the right of way dedication. The subject property is located west of Elks Drive and north of Hatfield Road at 1092 Kennedy Road. Submitted by Center Line Services, LLC for Centro Familiar Manantial De Vida.

Scholz: And number four is Case S-08-083, request for final plat approval for right-of-way dedication known as Kennedy Road, replat No. 2. Anyone need to speak to that on the Commission? No? The public? Alright, I'll entertain a motion then to accept...

(Inaudible)

Scholz: You want to speak to that? Okay, I'll put that as the third item on new business. Thank you very much. That leaves Case Z2772. I'd entertain a motion to accept that as part of the consent agenda.

Shipley: Move to approve the consent item number three, Case Z2772.

Scholz: Is there a second?

Crane: Second.

Scholz: Okay, it's been moved and seconded. All in favor say aye.

ALL COMMISSION MEMBERS - AYE.

Scholz: Those opposed same sign. And abstentions. Okay, that passes.

VI. OLD BUSINESS

Start ☆

1. **Case Z2766**: A request for a zone change from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three (3) distinct properties located at 304, 308, 320 Wyatt Drive and 1160 El Paseo Drive. The properties have a combined area of 9.660 +/- acres all being utilized as a shopping center. The zone change will bring the property into zoning compliance, based on the overall size of the property exceeding the one (1) acre maximum size for commercial properties within the C-2 (Commercial Medium Intensity) zoning district. Submitted by BRG Engineering for El Paseo Las Cruces Pros Re, LLC.

Scholz: Okay, under old business we've dropped the first one Case PA-08-03 so we are up to the second one. This is Case Z2766. Here's how the

procedure works in case you're not familiar with it. The City makes its presentation then the applicant makes his or her presentation then we open it to public discussion then we close it to public discussion and the Commissioners discuss and vote on it. Okay, who's up, Mr. White.

White: For the record, James White, Community Development Department. The first case this evening is Case Z2766. It is a request for a zone change from C-2 (Commercial Medium Intensity) to C-3 (Commercial High Intensity) for three distinct properties located at 304, 308, 320 Wyatt Drive and 1160 El Paseo Drive. What we are looking for property is probably a shopping center there at the corner of El Paseo and Wyatt Drive and based upon the three lots have a combined acreage of 9.6 acres combined we look at the Zoning Code there; the maximum threshold for properties zoned C-2 is 43,560 square feet. C-3 does not have the maximum threshold so based upon that the three distinct properties are seeking a zone change to C-3 respectively. Here's a zoning map showing the general vicinity and general area. Currently there's a shopping center that goes across these entire three tracts of land. What's interesting to note about this tract three here which is located here on El Paseo, it's actually land locked. If we looked at the vicinity map here, there's a tract of land to the rear of the property and a tract of land in front. So in theory, this property is currently land locked. There's currently a driveway system that accesses the property in this general location here or you get ingress and egress off of Wyatt Drive, as well. The applicant is currently working on pursuing a shared access agreement to have legal access to this tract of land located here. And recently, what we have been doing this general area you've seen a lot of zoning conversions up this portion of El Paseo Drive regarding the acreage requirements from the C-2, C-3 zoning districts. As stipulated earlier current use is a shopping center. The zone change is from C-2 to C-3. The zone change request will bring the properties into compliance with the 2001 Zoning Code as amended. The property at 1160 El Paseo Road is currently land locked. Here are some site photos of the property in question showing the parking areas here, showing in the background here a portion of a shopping center. The reason it was postponed from last month is that there was trepidation and questions regarding the actual buildings and how they actually located on the property. So the applicant's agents submitted to Staff an improvement survey of the property. The biggest issue was since you have three distinct lot lines that ran across this property, about right in here and right in here, Staff want be make certain there wasn't any setback related issues regarding the actual structures. Based upon the improvements survey, which you actually have a zero foot side yard setback between the buildings, so regarding the setback related issue all three of the buildings are in compliance with the required setback for the C-2 or C-3 zoning district. Again, you show the area of parking located in here, it has a relatively large parking area. It also shows the ingress and egress point

from El Paseo via this area here. This is the MPO Thoroughfare Plan pretty much noting the actual roadway configurations in the general area. Of course what you going to be seeing later this night and also with this case is that blue actually identifies a Principle Arterial roadway. Of course, this section of El Paseo is fully built out. On the western boarder you have Wyatt, which also becomes Campo located here, which is actually classified as a Minor Arterial. What you notice these little circles in here, which actually identifies is the closest location to bus stops or bus shelters. Where you see this green slash black, it means there's actually a physical shelter there located and, of course, you can look at the surrounding zoning pattern of the area. Staff recommendation is for conditional approval for this case. The condition Staff recommends is regarding the Shared Access Agreement for the property located 1160 El Paseo Road which will be filed with the County Clerk prior to final consideration of the zone change by City Council. In a nutshell what actually occurs we don't want the zone change to go forward without have the adequate shared access agreement because in theory, you don't want to re-zone property that has access related issues. That will end Staff presentation. I will be glad to stand for any questions this Board may have this evening.

Scholz: Okay, questions for Mr. White? Yes, Commissioner Shipley.

Shipley: Yes, just two. On that map right there, that's good if you will pull that back up. Where does Campo change? Is it at Arizona where it stops and becomes Wyatt or does it stop at the intersection?

White: This is actually a better map to show. It actually, it picks up at Arizona. This area right here, these addresses, this tract of land is actually addressed off of Wyatt Drive. I think it's 320. So, if you notice here Campo Street picks up here at the intersection of Arizona.

Shipley: It stops at Arizona?

White: Correct.

Shipley: Okay. The other thing, isn't there also a bus shelter or a bus stop right on the corner on Wyatt that's not depicted on the chart?

White: The reason for it is that used to be the, I guess you would call it, the transit location located here on Wyatt Drive but it's not in operation anymore. The bus shelter that was located here has actually been relocated to the Amador site right now. It used to be a transfer point for the Transit Department.

Shipley: Thank you.

Scholz: Any other questions for Mr. White? Okay, is the applicant here? Something you would like to add to the presentation? Well, why don't you say that to the, you know, introduce yourself and say that to the mike anyway.

McMillan: For the record, my name is Chris McMillan. I'm with BRG Engineering. We are representing our client on this. I don't have anything to add to Mr. White's presentation other than that we are working with him and with the clients to secure the access agreement for the rear of the building. The three lots are owned by the same person so if we need to, we have access through the adjacent lot which does have access to El Paseo but we are working with the owner of this lot just the east of us to provide access to the rear of the building to the loading docks and trash areas, things like that.

Scholz: Right. Yeah and I think the idea is to have access to it so in case the property is sold it's a separate property.

McMillan: Yes.

Scholz: Then it's not liable. Okay, anyone from the public who would like to speak to this? Yes, sir, please identify yourself.

Pearson: George Pearson. I have a question. I believe parking is part of the zoning requirements, I was wondering if the bicycle parking that's part of the Las Cruces Code is going to be implemented for this facility.

Scholz: That's something we would have to ask the Staff. Staff? And Mr. White steps up.

White: Chair Scholz, to answer that question, Staff did a full evaluation of the parking, the vehicular parking, also the bicycle parking and some of the general discussion was to decrease some of the existing vehicular parking and make into bicycle parking. So, that discussion has been rendered and, I believe, in talking to the applicant that will be taken care of.

Scholz: Okay, thank you. Anyone else from the public want to speak to this? Okay, I'm going to close it for public discussion. Gentlemen, what are your comments? Questions? Okay, I'll entertain a motion approve this with the condition and the condition is on page 5 where it says recommendation one.

Shipley: So I move to approve Case Z2766 with a recommendation that the Shared Access Agreement for the property located at 1160 El Paseo Road will be

Shipley: So I move to approve Case Z2766 with a recommendation that the Shared Access Agreement for the property located at 1160 El Paseo Road will be filed with the County Clerk prior to final consideration of this zoning change by the City Council.

Scholz: Okay, is there a second to that motion?

Iserman: Second.

Scholz: It's been moved and seconded. I'll call the role. Commissioner Shipley.

Shipley: Aye, findings, site visit.

Scholz: Commissioner Crane.

Crane: Aye, findings, Staff recommendation and site visit.

Scholz: Commissioner Iserman.

Iserman: Aye, findings (*inaudible*).

Scholz: Okay, thank you. Be sure to speak into the mike otherwise it won't be picked up. Commissioner Evans.

Evans: Aye, findings and discussion.

Scholz: Commissioner Beard.

Beard: Aye, findings and discussions.

Scholz: And the Chair votes aye for findings, discussion and site visit. Well, that's passed 6-0.

End

2. **ZCA-08-03:** A request to amend Chapter 38, 43 (C) of the Municipal Code, correcting previous zoning map errors within and around the CBD (Central Business District). The zoning map amendment will provide correction for Areas "A", "B" and "C" respectively. The zoning map amendments are as follows:

Area "A"- The properties located at 887, 867, 717, 709 and 705 N. Main Street existing parcel boundaries will coincide with the Central Business District (CBD) zoning boundaries.

Area "B"- The properties located at 339, 337, 331 N. Alameda and 331 W. Las Cruces, 334 W. Griggs will be removed from within the Central Business District (CBD) zoning district.

Attachment "C"

Recording Requested By and
When Recorded Mail To:
Gary M. Gitlin, Esq.
C/o Pro's Ranch Markets
1602 E. Roosevelt Street
Phoenix, Arizona 85006

Recorded 07/07/2010 DAC

SHARED RECIPROCAL ACCESS AGREEMENT

This Shared Reciprocal Access Agreement ("Agreement") is made on this 1st day of July 2010, by and between El Paseo Las Cruces Pros RE, LLC (the "Dominant Owner") of that certain parcel described in Exhibit "A" attached hereto and incorporated herein by reference (the "CAA Parcel"); and El Paseo Las Cruces Pros RE LLC (the "Servient Owner") of that certain parcel described in Exhibit "B" attached hereto and incorporated herein by reference (the "Wing Parcels").

1. **RECITALS.**

1.1 Whereas, the Dominant and Servient Owners are desirous of creating a shared reciprocal access and easement that goes over and across the CAA Parcel (the Dominant Estate) and over and across the Wing Parcels (the Servient Estate) for the mutual and reciprocal benefit of both Parcels.

1.2 The Dominant and Servient Estates were acquired, each as separate parcels, as part of a multi parcel retail shopping center. One Parcel within the Servient Estate is land locked and needs access over and across the Dominant Estate to the public streets.

NOW THEREFORE for valuable consideration and the payment Ten ($10.00) Dollars, the receipt, adequacy and sufficiency of which is hereby acknowledged, and pursuant to the covenants and such matters set forth in this Agreement, the Dominant and Servient Owners agree in accordance with the terms hereof.

2. **TERMS OF SHARED RECIPROCAL ACCESS.**

2.1 Granting of Access.

(a) Servient Owner of the Wing Parcels grants unto the Dominant Owner of the CAA Parcel such rights, privileges, access (ingress and egress) and easement of use and enjoyment from the Servient Estate for the full purposes of ingress and egress to and from the

public streets and for use in the shopping center parking lot for the benefit of the Dominant Parcel.

(b) Dominant Owner of the Wing Parcels grants unto the Servient Owner of the CAA Parcel such rights, privileges, access (ingress and egress) and easement of use and enjoyment from the Dominant Estate for the full purposes of ingress and egress to and from the public streets and for use in the shopping center parking lot for the benefit of the Servient Parcel.

2.2 **Obligations of Maintenance and Repair.**

The Dominant and Servient Owners agree and covenant to maintain in good, safe, and orderly condition and repair their respective Estate and Parcels, including, without limitation, the obtaining and maintaining of liability and casualty insurance coverages on such terms and in accordance with the obligations and covenants as imposed by the current and prospective Lenders having a recorded security interest (Deed of Trust) in the Dominant and Servient Estates, and to otherwise maintain in good working order all of the systems and facilities relating to the respective parking fields and areas, landscaping, irrigation, lighting, and other related matters within each respective Estate for the reciprocal and mutual benefits of the Estates, individually and collectively.

2.3 **Non-Exclusivity.**

The rights, privileges, access and easements as herein granted shall be non exclusive to the respective Estates, and shall be for the mutual and reciprocal benefit of the Owners of the Parcels herein and such tenants, employees, invitees, licensees, vendors, suppliers, and customers as authorized from time to time, but shall not benefit the general public, any governmental body or agency including, without limitation, the City of Las Cruces, or such other real property owners beyond those specific fee title owners identified and described in this Agreement.

2.4 **No Unreasonable Burden.**

The reciprocal and mutual access rights as granted herein are intended to provide and all for pedestrian and vehicular ingress, egress, traffic, and access way among, between, across, and over the respective Parcels. The rights, privileges and benefits pursuant to the terms of this Agreement are intended to benefit the reciprocity of all Parcels and the shopping center as a collective, however subject to the reasonable exercise of such benefits, neither Estate is intended to unreasonably burden or overburden the respective Estate's of such Parcels, nor are

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there to constructed, implemented, or erected any improvements, impediments, barriers, or other limitations so as to result in an unreasonable impairment or interference with the rights, privileges, and interest as granted pursuant to this Agreement. Nothing contained in this paragraph or otherwise in this Agreement is intended to limit, impair, delay, or restrict the intended rehabilitation and renovation of the shopping center and their respective Parcels and improvements thereof.

2.5 **Continuity.**

The rights, privileges, benefits and interest as granted herein shall be for a period of Ninety-Nine (99) years and after the expiration of such Ninety-Nine (99) years from the date hereof, shall automatically be renewed for successive Fifty (50) year periods, unless terminated earlier per mutual agreement of the Parties.

2.6 **Subrogation Waivers:**

Except arising out of the willful or intentional acts of misconduct by such Parcel Owner or such other representative party to which such intentional or willful liability would be vicariously or legally imputed to such Parcel Owner, without affecting any other rights or remedies, Dominant and Servient Owners ("**Waiving Party**") each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract, in tort or otherwise) against the other, for loss of or damage to the Waiving Party's property arising out of or incident to the perils for property damage only (but not liability insurance) required to be insured against under Section 2.2. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Dominant and Servient Owners, as the case may be, so long as the insurance is not invalidated thereby.

2.7 **Additional Provisions.**

2.7.1 Modification.

This Agreement can only be changed, amended or modified by another instrument or agreement in writing signed by all Parties. This is the sole method or means by which such amendment or modification can be effected to be legally enforceable.

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2.7.2 This Agreement represents and contains, when fully executed, the entire understanding by and between the Parties hereto. Any and all prior representations and modifications, whether written or oral, express or implied, concerning any of the material terms hereof, not otherwise set forth in this document, are of no legal force or effect.

2.7.3 This Agreement is intended to be binding upon and shall inure to the benefit of each Parcel Owner's heirs, personal representatives, assigns, and successors in interest.

2.7.4 The Parcel Owners hereto agree to timely execute and deliver any and all such other documents, instruments and/or agreements now or hereafter reasonably necessary, required, or appropriate to effect, facilitate, or fulfill the purpose and intent of this Agreement.

2.7.5 This Agreement may be executed in counterpart each of which shall be deemed an original and all of which, when executed, and when read together shall constitute one and the same document. Facsimile transmitted signatures shall have the same legal effect as original wet signatures.

IN WITNESS WHEREOF, the undersigned set their hand this 1st day of July, 2010.

Dominant Owner (the CAA Parcel)

EL PASEO LAS CRUCES PROS RE, LLC,
A New Mexico limited liability company

By: _____
Michael A. Provenzano, Jr.
Its: Manager / President

Servient Owner (the Wing Parcels)

EL PASEO LAS CRUCES PROS RE, LLC,
A New Mexico limited liability company

By: _____
Michael A. Provenzano, Jr.
Its: Manager / President

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ACKNOWLEDGMENT

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me on July 1, 2010 by Michael A. Provenzano, Jr., the Manager/President of El Paseo Las Cruces Pros RE, LLC, a New Mexico limited liability company, on behalf of the limited liability company.

Mark A Lewis

Notary Public
My Commission Expires:

OFFICIAL SEAL
MARK A. LEWIS
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires June 28, 2014

ACKNOWLEDGMENT

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me on July 1, 2010 by Michael A. Provenzano, Jr., the Manager/President of El Paseo Las Cruces Pros RE, LLC, a New Mexico limited liability company, on behalf of the limited liability company.

Mark A Lewis

Notary Public
My Commission Expires:

OFFICIAL SEAL
MARK A. LEWIS
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires June 28, 2014

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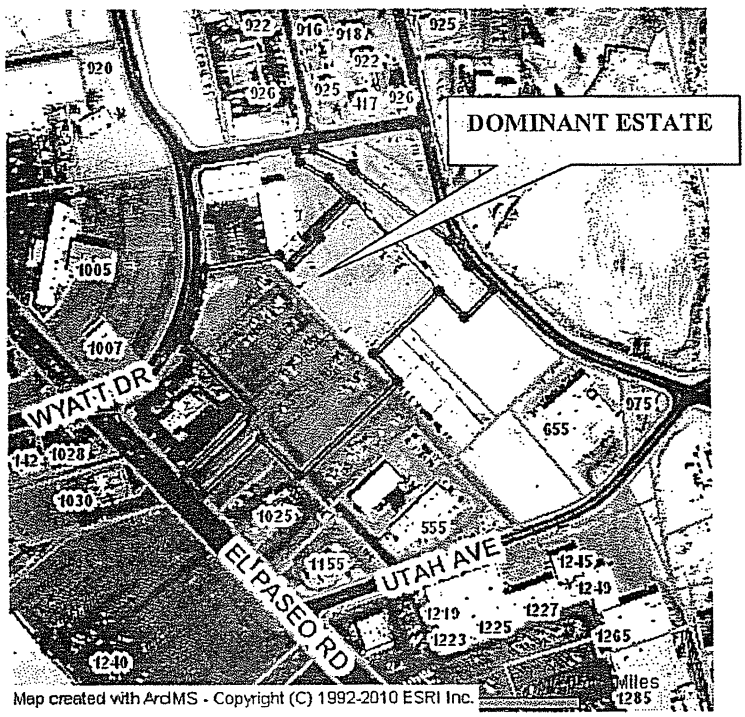
RECIPROCAL ACCESS EASEMENT
DOMINANT ESTATE PARCEL "A"
El Paseo Plaza – Case Z 2766 1160 El Paseo Rd Las Cruces NM



SERVIENT ESTATE PARCEL "B"

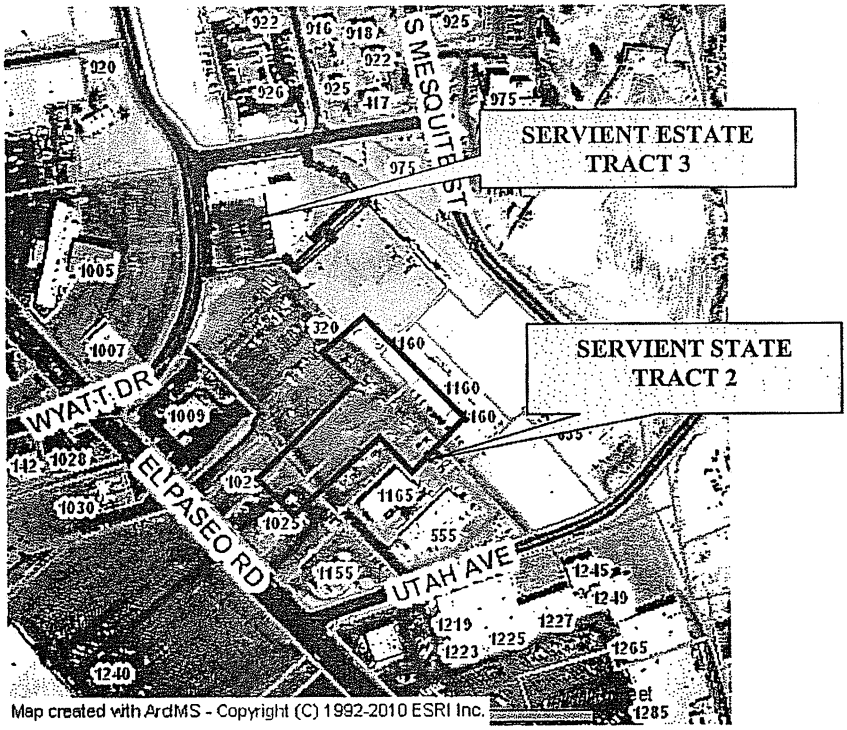


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EXHIBIT "A"
DOMINANT ESTATE
TRACT 1 (CAA GROCERY PARCEL)

Lot 2, SUBDIVISION "B" OF PART OF U.S.R.S. TRACT 11C-2A1A & 11C-2A2, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on October 1, 1982, in Book 13 Page(s) 141 of Plat Records.

A tract of land situate within the Corporate limits of the City of Las Cruces, Dona Ana County, New Mexico, lying generally East of El Paseo Road, being a portion of U.S.R.S. Tract 11C-2A1A and 11C-2A2, and being more particularly described as follows, to wit:

Beginning at a point on the Easterly line of El Paseo Road for the Southwest corner of this tract: Whence, the Southwest corner of U.S.R.S., Tract 11C-2A2 bears S.43°42'40"E., 408.96 feet;

THENCE, from the point of beginning, along the Easterly line of El Paseo Road, N.43°42'36"W., a distance of 70.00 feet to a point for the Northwest corner of this tract;

THENCE, leaving the Easterly line of El Paseo Road, N.46°17'24"E., a distance of 225.00 feet to a point for a corner of this tract;

THENCE, N.43°42'36"W., a distance of 227.15 feet to a point for an angle point of this tract;

THENCE, along a curve to the left, with a radius of 497.63 feet, an arc length of 182.97 feet, a central angle of 21°04'01", and a long chord bearing N.15°23'36"E., a distance of 181.94 feet to a point for a angle point of this tract;

THENCE, N.80°19'07"E., a distance of 183.31 feet to a point for an angle point of this tract:

THENCE, S.43°42'36"E., a distance of 35.00 feet to a point for a corner of this tract;

THENCE, N.46°17'24"E., a distance of 107.50 feet to a point for a corner of this tract;

THENCE, N.43°42'36"W., a distance of 10.00 feet to a point for a corner of this tract;

THENCE, N.46°17'24"E., a distance of 117.50 feet to a point for a corner of this tract;

THENCE, N.43°42'36"W., a distance of 76.73 feet to a point for an angle point of this tract;

THENCE, N.65°12'56"W., a distance of 84.28 feet to a point for an angle point of this tract;

THENCE, N.09°40'47"W., a distance of 24.59 feet to a point for an angle point of this tract;

THENCE, N.80°29'03"E., a distance of 35.00 feet to a point for the Northeast corner of this tract;

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THENCE, S.65°12'56"E., a distance of 93.58 feet to a point for an angle point of this tract;

THENCE, S.53°41'57"E., a distance of 306.57 feet to a point for an angle point of this tract;

THENCE, along a curve to the left, with a radius of 363.56 feet, an arc length of 95.04 feet, a central angle of 14°58'41", and a long chord bearing S.38°07'00"E., a distance of 94.77 feet to a point for an angle point of this tract;

THENCE, S.45°36'16"E., a distance of 59.58 feet to a point for the Southeast corner of this tract;

THENCE, S.46°17'24"W., a distance of 92.03 feet to a point for a corner of this tract;

THENCE, N.43°42'36"W., a distance of 92.00 feet to a point for a corner of this tract;

THENCE, S.46°17'24"W., a distance of 225.00 feet to a point for a corner of this tract;

THENCE, S.43°42'36"E., a distance of 94.14 feet to a point for a corner of this tract;

THENCE, S.46°17'24"W., a distance of 333.04 feet to a point for a corner of this tract;

THENCE, N.43°42'40"W., a distance of 126.16 feet to a point for a corner of this tract;

THENCE, S.46°17'20"W., a distance of 200.00 feet to the point of beginning, enclosing 6.142 acres, more or less.

Easement Estate created by Declaration of Restrictions and Grant of Easements between American Stores Properties, Inc., a Delaware corporation and El Paseo Plaza Partners, a New Mexico General Partnership and Amigo Leasing Company of Las Cruces, New Mexico General Partnership, recorded October 5, 1982, in Book 165 Pages 172 through 220 of Miscellaneous Records, Dona Ana County, New Mexico, as to Easement Tracts 1, 2, 3 and 4 described as follows:

EASEMENT TRACT 1:

Lot 1, SUBDIVISION "B" OF PART OF U.S.R.S. TRACT 11C-2A1A & 11C-2A2, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on October 1, 1982, in Book 13 Page(s) 141 of Plat Records.

EASEMENT TRACT 2:

Lot 3, SUBDIVISION "B" OF PART OF U.S.R.S. TRACT 11C-2A1A & 11C-2A2, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on October 1, 1982, in Book 13 Page(s) 141 of Plat Records.

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EASEMENT TRACT 3:

A tract of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico, lying generally east of El Paseo Road, being a portion of U.S.R.S. Tract 11C-2A2 and being more particularly described as follows, to wit:

BEGINNING at a point on the north right-of-way line of proposed Utah Street Extension (50 foot wide right-of-way) for the southwest corner of the herein described tract whence the southwest corner of U.S.R.S. Tract 11C-2A2 bears S.56°09'31"W., a distance of 203.55 feet;

THENCE leaving the north line of said proposed Utah Street Extension N.43°42'40"W., 317.69 feet to the northwest corner of this tract;

THENCE N.46°17'20"E., 333.04 feet;

THENCE N.43°42'40"W., 94.14 feet;

THENCE N.46°17'20"E., 225.00 feet;

THENCE S.43°42'40"E., 92.00 feet;

THENCE N.46°17'20"E., 92.03 feet to a point on the west line of proposed Mesquite Street Extension (50 foot wide right-of-way) for the northeast corner of this tract;

THENCE along the west line of said proposed Mesquite Street Extension S.45°36'20"E., 159.30 feet to a point of curvature;

THENCE along the arc of a curve to the left having a radius of 300.00 feet, through a central angle of 23°33'23", an arc length of 123.34 feet, and having a long chord that bears S.57°23'02"E., 122.47 feet;

THENCE leaving the west line of said proposed Mesquite Street Extension S.45°36'20"E., 92.80 feet;

THENCE S.45°19'29"E., 137.24 feet to a point on the north line of said proposed Utah Street Extension for the southeast corner of this tract;

THENCE along the north line of said proposed Utah Street Extension S.40°56'11"W., 152.84 feet to a point of curvature;

THENCE along the arc of a curve to the right having a radius of 275.00 feet, through a central angle of 29°28'49", an arc length of 141.50 feet and having a long chord that bears S.55°40'36"W., 139.94 feet to a point of tangency;

THENCE S.70°26'00"W., 439.43 feet to the point and place of beginning.

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EASEMENT TRACT 4:

A tract of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico, being a portion of U.S.R.S. Tract 11C-2A2, and being more particularly described as follows, to wit:

BEGINNING at a point on the east line of El Paseo Road for the southwest corner of the herein described tract, whence the southwest corner of U.S.R.S. Tract 11C-2A2 bears S.43°42'40"E., a distance of 478.96 feet;

THENCE along the east line of El Paseo Road N.43°42'40"W., 199.34 feet to a point on a curve;

THENCE along the arc of a curve to the right having a radius of 25.00 feet, through a central angle of 90°56'29", a length of 39.68 feet, and having a chord that bears N.24°50'44"E., 35.64 feet to a point of reverse curvature;

THENCE along the arc of a curve to the left having a radius of 155.00 feet, through a central angle of 31°28'46 a length of 85.16 feet, and having a long chord that bears N.54°34'35"E., 84.09 feet to a point of complex curvature;

THENCE along the arc of a curve to the left having a radius of 497.63 feet, through a central angle of 12°54'35", a length of 112.12 feet, and having a long chord that bears N.32°22'55"E., 111.89 feet to the northeast corner of this tract;

THENCE S.43°42'40"E., 227.15 feet to the southeast corner of this tract;

THENCE S.46°17'20"W., 225.00 feet to the point and place of beginning.

AND

Easement Estate created by Mutual Grant of Cross Easements between El Paseo Plaza Partners, American Stores Properties, Inc., and McDonald's Corporation recorded November 9, 1983, in Book 176 Pages 222 through 230 of Miscellaneous Records, Dona Ana County, New Mexico, as to Easement Tracts 1, 2 and 3 above described and Easement Tract 5 described as follows:

EASEMENT TRACT 5:

A certain tract of land being a portion of U.S.R.S. Tract 86-A, as shown on Property Map No. 9, of the Elephant Butte Irrigation District, City of Las Cruces, County of Dona Ana, State of New Mexico, and being more particularly described as follows:

BEGINNING at a point, being the southwest corner of this tract from which the southwest corner of U.S.R.S. Tract 9-86A bears S.43°42'40"E., 150.22 feet and a disturbed concrete monument bears S.43°42'40"E., 150.94 feet;

THENCE N.46°20'E., 200.00 feet to a point being a southeast corner of this tract;

Recorded07/07/2010DAC

THENCE N.43°42'40"W., 200.00 feet to a point being the northeast corner of this tract;

THENCE S.46°20'W., 200.00 feet to a point begin the northwest corner of this tract;

THENCE S.43°42'40"E., 200.00 feet along the east R.O.W. line of El Paseo Road to the point and place of beginning.

Recorded07/07/2010DAC

EXHIBIT "B"
SERVIENT ESTATES

TRACT 2 SOUTHERLY PARCEL (BELTRAN AREA):

Lot 1, EL PASEO PLAZA, A SUMMARY COMMERCIAL SUBDIVISION, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the Plat thereof, filed in the Office of the County Clerk of said County on April 14,1989, in Book 16 Page 65 of Plat Records, more particularly described as follows:

A tract of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico, lying generally east of El Paso Road, being a portion of U.S.R.S. Tract 11C-2A2 and being more particularly described as follows to wit:

Beginning at the southwest corner of the herein described tract, whence the southwest corner of U.S.R.S. Tract 11C-2A2 bears S.05 deg. 27'38"W., 264.31 feet;

THENCE from said point of beginning, N.43 deg., 42'40"W., 110.0 feet to the northwest corner of this tract;

THENCE N.46 deg., 17'24"E., 333.04 feet to a point;

THENCE N.43 deg., 42'36"W., 94.14 feet to a point;

THENCE N.46 deg., 17'24"E., 111.89 feet to the northeast corner of this tract;

THENCE S.43 deg., 42'36"E., 326.01 feet to the southeast corner of this tract;

THENCE S.46 deg., 17'24"W., 159.93 feet to a point;

THENCE N.43 deg., 42'36"W., 121.91 feet to a point;

THENCE S.46 deg., 17'24"W., 285.00 feet to the point of beginning, contains 1.813 acres of land more or less.

Recorded07/07/2010DAC

TRACT 3 NORTHERLY (WESTERN WEAR):

Lot 1, of Subdivision "B" of part of U.S.R.S. Tract 11C-2A1A and 11C-2A2, filed in the records of the County Clerk of Dona Ana County, New Mexico on October 1, 1982, in Plat Book 13 Page 141, being more particularly described as follows:

A tract of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico, lying generally east of El Paseo Road, being a portion of U.S.R.S. Tract 11C-2A2 and being more particularly described as follows to wit:

Beginning at a point on a curve on the east right-of-way line of Wyatt Drive (a 55 foot wide right-of-way) for the southwest corner of the tract herein described whence the southwest corner of U.S.R.S. Tract 11C2A2 bears S.18 deg., 11'35"E., a distance of 885.95 feet;

THENCE from the point of beginning along the east right-of-way line of Wyatt Drive along the arc of a curve to the left having a radius of 497.63 feet, a central angle of 12deg.34'16", an arc length of 109.18 feet, and having a long chord that bears N.01deg., 25'32"E., a distance of 108.96 feet to a point of tangency;

THENCE N.01 deg., 51'58"E., with said right-of-way of Wyatt Drive a distance of 109.82 feet to a point of curvature;

THENCE leaving the east line of Wyatt Drive right-of-way along the arc of a curve to the right having a radius of 25.00 feet, a central angle of 88deg.01'49", an arc length of 38.41 feet and having a long chord that bears N.36 deg. 18'14"E., a distance of 34.74 feet to a point of tangency on the south right-of-way line of Arizona Street (a 50 foot wide right of-way);

THENCE N.80 deg., 28'59"E., a distance of 226.93 feet to the northeast corner of the tract herein described;

THENCE leaving the south right-of-way line of Arizona Street S.09 deg., 40'47"E., a distance of 24.59 feet;

THENCE S.65 deg., 12'56"E., a distance of 84.28 feet;

THENCE S.43 deg., 42'36"E., a distance of 76.73 feet to the southeast corner of this tract;

THENCE S.46 deg., 17'24"W., a distance of 117.50 feet;

THENCE S.43 deg., 42'36"W., a distance of 10.00 feet;

THENCE S.46 deg., 17'24"W., a distance of 107.50 feet;

THENCE N.43 deg., 42'36"W., a distance of 35.00 feet;

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THENCE S.80 deg., 19'07"W., a distance of 183.31 feet to the point of beginning, contains 1.711 acres of land less.

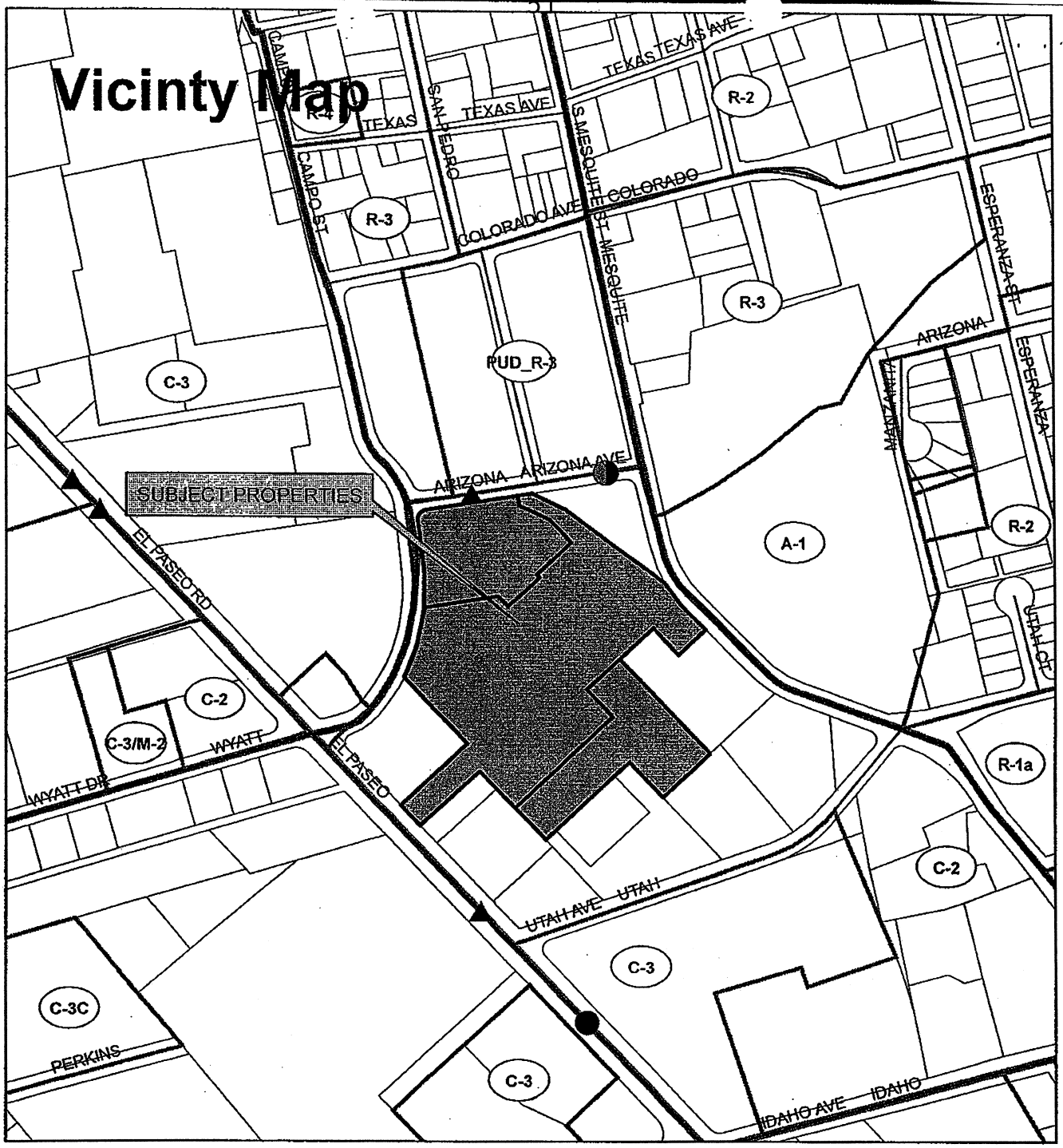
Recorded07/07/2010DAC

AGREEMENT
COUNTY OF DONA ANA) PAGES: 14
STATE OF NEW MEXICO) ss

I Hereby Certify That This Instrument Was Filed for Record On The 7TH Day Of July, 2010 at 03:35:30 PM And Was Duly Recorded as Instrument #1017969 Of The Records Of Dona Ana County

Witness My Hand And Seal Of Office
Lynn J. Ellins
Deputy _____ County Clerk, Dona Ana, NM

Attachment "D"



MAP CREATED FOR: JWHITE (Z2766)

ADDRESS: 1160 El Paseo, 312 & 320 Wyatt

OWNERS: El Paseo Las Cruces PROS RE

DATE: 10/20/2008 10:09:23 AM

ZONING: C-2 to C-3

0 120 240 480 720 960 Feet

Community Development Department
575 S Alameda Blvd.
Las Cruces, NM 88001
(505) 528-3222

This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.