



Resolution

RESOLUTION NO. 544

A Resolution of the Mayor and Council of the City of San Luis, Arizona Approving Development Agreement With EVOS Homes

Whereas, EVOS Homes, or nominee, ("Owner"), desires to develop a two hundred and twenty (220) low income apartment housing project ("Project") in the City of San Luis, Arizona ("City");

Whereas, the Mayor and Council of the City of San Luis, Arizona has, by this resolution, found it to be in the best interests of the citizens of the City of San Luis, Arizona that such a project be developed; and

Whereas, the Owner and City desire to enter into a development agreement to facilitate the development agreement to facilitate the development of the Project;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

Section 1: That the Development Agreement ("Development Agreement") between City and Owner is hereby approved.

Section 2: That the appropriate City officials are hereby authorized and directed to enter into said Development Agreement on behalf of the City and take any all actions as may be necessary to effectuate said agreement.

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Resolution No. 544
EVOS Development Agreement

PASSED AND ADOPTED by the Mayor and Common Council of the
City of San Luis, Arizona, this _____ day of _____,
2003.

Guillermina Fuentes, Mayor

ATTEST:

Alex U. Ruiz, City Clerk

APPROVED AS TO FORM:

Gerald W. Hunt, City Attorney

DEVELOPMENT AGREEMENT

This Agreement is entered into on the ____ day of December, 2003, between the City of San Luis, State of Arizona, a municipal corporation, herein referred to as "City," and EVOS Homes, Inc., A California Corporation, qualified to do business in Arizona, or nominee, herein referred to as "Owner."

RECITALS

A. Owner is the developer and purchaser of a tract(s) of land located in the County of Yuma (approximately 22 acres in size) ("Property"), as described on Exhibit "A" attached hereto and, by this reference, incorporated herein and made a part of this Agreement.

B. City and Owner desire to enter into an agreement providing for the use and development of said land.

In consideration of the mutual agreements and covenants set forth herein, the parties agree as follows:

SECTION ONE DEVELOPMENT AGREEMENT

This Agreement is a "Development Agreement" within the meaning of Arizona Revised Statutes §9-500.05.

SECTION TWO EXCHANGE OF LAND FOR FEES

Owner, or its successor intends to development 220 apartments as a low income housing project on a portion of the Property ("Project"). Said Project will be developed on a portion of the Property, approximately 13 acres+/- as more fully described on Exhibit "B" attached hereto (hereinafter referred to as "Parcel A").

In accordance with its standard procedures for realty development, the City imposes certain building permits fees (including building, plumbing, mechanical and sprinkler), water and waste water hookup fees and plan check fees (collectively "Fees"). In lieu of cash payment for Fees, Owner, or its successor, upon purchase of the Property, agrees to transfer to City a vacant portion of the Property of approximately 8.96 acres in size, as more fully described on Exhibit "C" attached hereto, and hereinafter referred to as "Parcel B." Upon purchase of the Property, Parcel B shall be transferred to the City by Owner, or its successor, by Warranty Deed, free and clear of all liens and encumbrances. A copy of the engineered survey plan of Parcels A and B is attached hereto as Exhibit "D".

Within thirty (30) days after the date of this Agreement, Owner, or its successor, shall obtain and deliver to City a survey ("Survey") of the Property and Parcels A and B to be prepared by a registered surveyor approved by City. Among other things, the survey shall (a) name the City and Owner, or its successor, as parties entitled to rely on it, and (b) separately specify, and legally describe and set forth acreage amounts for the Property and Parcels A and B.

SECTION THREE WAIVER OF DEVELOPMENT IMPACT FEES

The apartments in the Project are qualified as "low income" apartments. Pursuant to the provisions of Ordinance 197 of the City of San Luis, (Section 6-7-7(E), the City may, by council action on specific development projects, waive impact fees for any development that constitutes affordable housing to moderate, low, or very low income households, as defined by current federal criteria, provided that such waiver will not result in an increase of the impact fees for other properties in the same benefit area.

It is agreed that the project fits the requirements of Ordinance 197, and as such, the City shall waive any impact fees for development of the project.

SECTION FOUR EFFECTIVE DATE AND TERM

The term of this Agreement shall be for a period of five (5) years from the effective date of this Agreement, unless otherwise modified or terminated pursuant to the terms and agreements herein contained.

SECTION FIVE CONSISTENCY WITH GENERAL PLAN

As required by State law, the City and Owner stipulate that the development of the Property is consistent with the City's General Plan, as amended.

SECTION SIX WATER AND SEWER SERVICE

City promises to provide Water and Sewer Service to the Property.

Any and all improvements made for the purpose of providing water or sewer service to the Property shall become part of the City's water and sewer systems, and shall be and remain the sole and exclusive property of the City. Owner, or any of its successors, shall have no right, title, interest, or ownership therein. With respect to the water and sewer systems of the City, the City shall have the right to extend, improve, maintain and enlarge the same as provided by law, fix the rates applicable thereto, change the same from time to time and adopt rules and regulations to control, regulate and govern the use of such facilities.

**SECTION SEVEN
ROADS, EASEMENTS AND PERMITS**

A right of ingress and egress for the collection of solid waste, maintenance and reading of water meters, and maintenance and operation of fire hydrants shall be furnished by owner, or owner's successor in interest, to the City at no expense to the City and shall extend to and be in the name of the City.

Developer agrees that roadway access to Parcel A is necessary for proper development. Developer acknowledges that the Yuma Union High School District and other obligated developers are constructing County 22nd from 8th Avenue to HWY 95 as per the City of San Luis Subdivision Regulation Requirements for Minor Arterials. The Owner or its successor agree to construct the remaining portion of County 22nd south of the centerline from the western edge of Parcel A to the eastern edge of Parcel B to be consistent with the City of San Luis Subdivision Regulation Requirements for Minor Arterials with transitions into the paving constructed by Yuma Union High School District. If County 22nd is not constructed to allow access to Parcel A prior to the occupancy date of the apartments and it is necessary for Owner or its successor to complete its construction from HWY 95 to the eastern edge of Parcel B on behalf of Yuma Union High School District and other obligated developers, Owner or its successor shall have the right to obtain reimbursement from those parties. The City of San Luis will only approve certificates of occupancy if the abovementioned road improvements are in place.

**SECTION EIGHT
MUNICIPAL DISTRICTS/SPECIAL DISTRICTS/
FOR STREET LIGHTS**

Owner, or its successor, at its cost, as a condition for the right to development the Property, agrees to participate in the formation of an improvement district or other special district for the construction, maintenance and/or operation of street lighting serving the Property. City will assist Owner in the creation of any and all special districts that are deemed by City to be appropriate for the funding, construction, operation, and/or maintenance of street lighting needs in the development of the territory.

**SECTION NINE
GENERAL PROVISIONS**

A. Time is of Essence; Binding Effect

Time is of the essence of this Agreement. Such Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successor, and assigns of the parties.

B. Notifications

(i) All notices, demands or other communications must be in writing and are deemed newly delivered upon personal delivery, or as of the second business day after mailing by United States

mail, postage prepaid, registered or certified, return receipt requested, addresses as follows:

To City: City Manager
P.O. Box 1170
San Luis, AZ 85349

To Owner: Evos Homes, Inc.
708 Gravenstein Hwy. North #53
Sebastopol, CA 95472

(ii) If either party changes addresses, it must give written notice to the other party. Notice of change of address is deemed effective five days after mailing by the party changing address.

C. *Successors and Assigns*

This Agreement is assignable by the Owner upon written notice to the City. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

D. *Waiver*

If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

E. *Governing Law and Venue*

(I) The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

(ii) This Agreement is subject to the cancellation provisions of Arizona Revised Statute §38-511, as amended.

F. *Severability*

If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provision are nevertheless valid and enforceable.

G. *Counterparts*

This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

H. Attorney Fees and Costs

If either party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorneys fees.

I. Covenants to Run with the Land

The covenants set forth in this Agreement are intended to run with the land. Therefore, the term "Owner" as used in this Agreement shall not only mean the existing Owner "EVOS", but also any heir, successor, assign, or subsequent purchaser of all or part of the territory.

J. Authority of Owner

Owner, and the person or persons executing this Agreement on behalf of Owner, specifically warranty and represent that Owner, and the person or persons executing this Agreement on behalf of Owner, have the capacity to enter into this Agreement and has or will provide the City with the appropriate verifying documentation.

K. Integration

This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the parties.

L. Interpretation

In interpreting the provisions of this Agreement, the Agreement shall not be construed either for or against either party, but his Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.

In Witness Whereof, the parties have executed this Agreement on the day and year first above written.

CITY OF SAN LUIS

ATTEST:

By _____
Guillermina Fuentes, Mayor

By _____
Alex U. Ruiz, City Clerk

APPROVED AS TO FORM

OWNER

By _____
Gerald W. Hunt, City Attorney

By _____
Ray Rappold, President EVOS Homes

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003,
by Guillermina Fuentes, Mayor of the City of San Luis, Arizona.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____,
2003, by Ray Rappold, President of EVOS Homes.

Notary Public

My Commission Expires:

S 00°21'28" W 1321.4'

S 88°32'49" E 2641.42'

Overall Site Survey and Legal Description

A.L.T.A./A.C.S.M. Land Title Survey
Prepared by Dahl, Robbins & Associates, Yuma, AZ
Dated June 2003

1320.71'

AREA

AREA - 23.7023 ACRES GROSS, 22.0162 ACRES NET

BASIS OF BEARINGS

THE WEST LINE OF SECTION 1, T. 11 S., R. 25 W., G.&S.R.B.&M. AS SHOWN ON THE U.S.B.R. BALANCED SECTION DATED NOVEMBER 20, 1969, NAMELY S 00°25'43" W.

LEGAL DESCRIPTION

That portion of the East half of the Northwest quarter of Section 1, Township 11 South, Range 25 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona, lying North of the U.S.R.S. Drainage Canal.

UTILITY WARNING

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM THE FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

SCHEDULE OF EXCEPTIONS

SCHEDULE B PART 2

- 6 Right of Way for USRS Drainage Canal as shown on YUMA Map No. 35-303-647 and disclosed by the description of said land.
- 7 Roadway as shown on map filed on:
Date April 2, 1917
Fee No. 1724
Over The North 33 feet thereof (County 22nd Street)
- 8 Easement and right incident thereto for Road or Highway and public utility services as set forth in instrument recorded in Document No. 88-00693
- 9 Effect of City of San Luis Ordinance No. 173 as set forth in Document No. 2003-005

SURVEYOR'S NOTES

- 1. THE SUBJECT PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE B DESIGNATION (AREAS BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD) BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FLOOD INSURANCE RATE MAP FOR YUMA COUNTY, ARIZONA, COMMUNITY PANEL NUMBER 040099 1075 B DATED FEBRUARY 17 1989 INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PREMISES IS SITUATED.
- 2. THE TITLE REPORT WITH A COMMITMENT NO. 56089 ISSUED BY YUMA TITLE INSURANCE COMPANY DATED MARCH 31, 2003 WAS REFERENCED DURING THE PREPARATION OF THIS A.L.T.A. SURVEY.

EXHIBIT "B"



Parcel A
Project Site

December 10, 2003
EEC No. 203130

AREA RETAINED BY EVOS HOMES

civil engineering

That portion of the East One-Half (E 1/2) of the Northwest One-Quarter (NW 1/4) of Section 1, Township 11 South, Range 25 West, Gila and Salt River Meridian, Yuma County, Arizona, lying North of the U.S.R.S. Drainage Canal;

environmental services

EXCEPT (Exception No. 1)

flood control and drainage

That portion of said East One-Half (E 1/2) of the Northwest One-Quarter (NW 1/4) of said Section 1 described as follows:

COMMENCING at the West One-Quarter (W 1/4) corner of said Section 1, said corner being a found ADOT Brass Cap;

land surveying

THENCE N 00°25'43" E, on a record bearing along the West Line of said Section 1 (as shown on the U.S.B.R. Balanced Section dated November 20, 1969), a measured distance of 2,639.85 feet (record distance of 2,639.93 feet) to the Northwest corner of said Section 1, said corner being a found ADOT brass cap;

landscape architecture

THENCE S 89°40'20" E, along the North Line of said Section 1, a distance of 2,001.36 feet to the POINT OF BEGINNING of said Exception (No. 1);

natural resources

THENCE continue S 89°40'20" E, along said North Line, a distance of 633.61 feet to the North One-Quarter (N 1/4) corner of said Section 1, said corner being a found 1/2" diameter iron rod;

transportation

THENCE S 00°17'14" W, along the East Line of said Northwest One-Quarter (NW 1/4), a distance of 794.03 feet to the North line of said U.S.R.S. Drainage Canal;

water and wastewater

THENCE N 59°17'41" W, along said North line 237.59 feet to an angle point;

THENCE N 63°54'52" W, along said North line 135.12 feet to an angle point;

THENCE N 71°40'56" W, along said North line 200.00 feet to an angle point;

THENCE S 89°49'34" W, along said North line 64.89 feet to an angle point, said point being known as "Point 3014";

THENCE N 05°04'34" W 556.43 feet to the POINT OF BEGINNING of said Exception (No. 1);

Engineering and Environmental Consultants, Inc.
4625 E. Fort Lowell Road • Tucson, Arizona 85712
Tel: 520-321-4625 • Fax: 520-321-0333
www.eec-info.com

EXHIBIT "B"

December 10, 2003
EEC No. 203130
Evos Homes
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ALSO EXCEPT (Exception No. 2)

That portion of said East One-Half (E 1/2) of the Northwest One-Quarter (NW 1/4) of Section 1 lying Southerly of the following described line:

COMMENCING at said "Point 3014";

THENCE S 89°49'34" W, along said North line of the U.S.R.S. Drainage Canal, a distance of 44.93 feet to an angle point;

THENCE S 55°01'32" W, along said North line of the U.S.R.S. Drainage Canal, a distance of 194.81 feet to an angle point;

THENCE S 16°06'04" W, along said North line of the U.S.R.S. Drainage Canal, a distance of 80.91 feet to the POINT OF BEGINNING;

THENCE S 53°00'00" W 334.79;

THENCE S 47°00'00" W 336.43 feet to the POINT OF TERMINATION on the West line of said East One-Half (E 1/2) of Northwest One-Quarter (NW 1/4),

Said parcel, not including Exceptions, containing 13.961 acres, more or less.

Prepared by:

ENGINEERING AND ENVIRONMENTAL CONSULTANTS, INC.

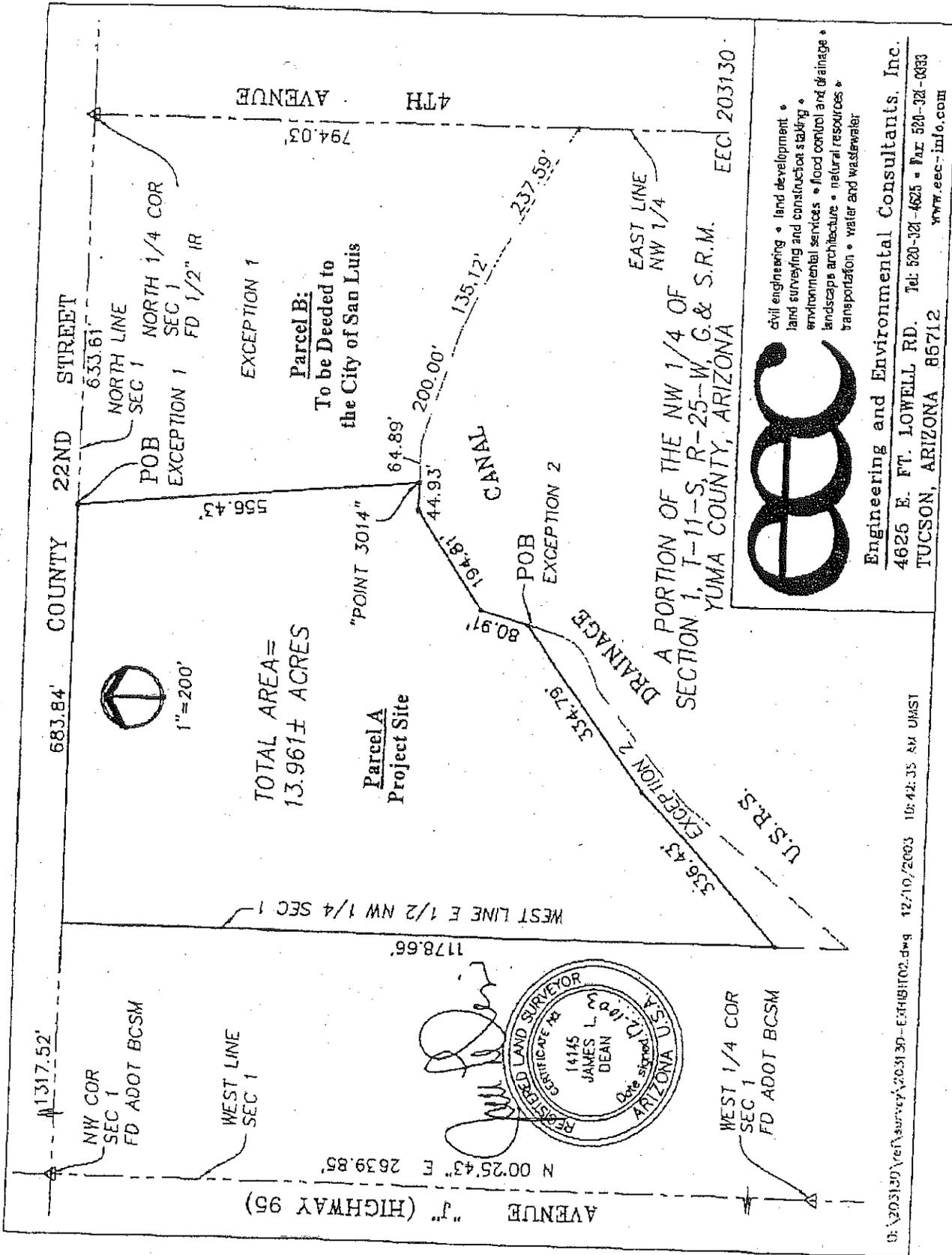
James L. Dean
James L. Dean, R.L.S.

JLD:vy



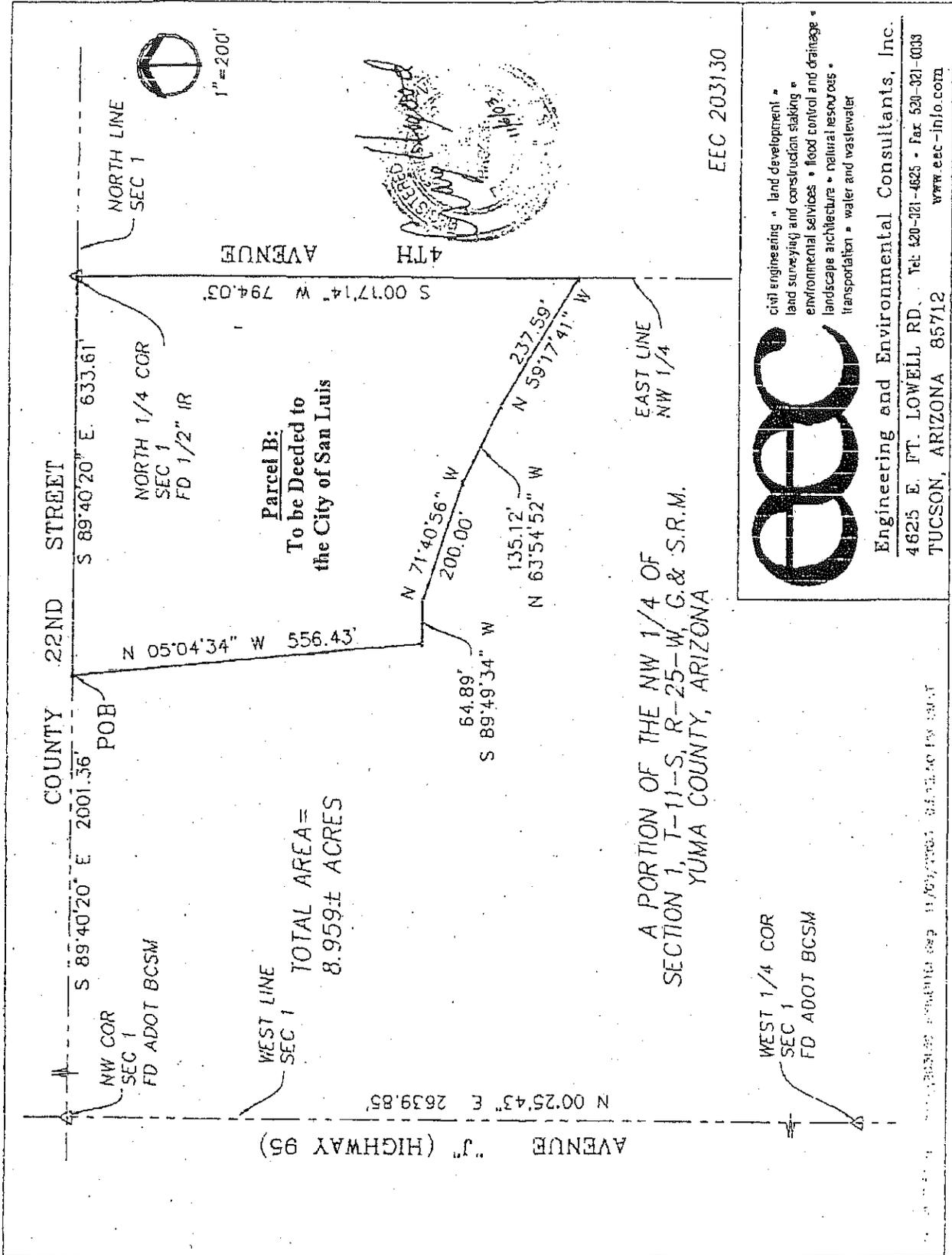
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EXHIBIT "B"



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EXHIBIT "C"



EEC

Engineering and Environmental Consultants, Inc.
 4625 E. FT. LOWELL RD. Tel: 520-321-4625 • Fax: 520-321-0003
 TUCSON, ARIZONA 85712 www.eec-info.com

civil engineering • land development •
 land surveying and construction staking •
 environmental services • flood control and drainage •
 landscape architecture • natural resources •
 transportation • water and wastewater



EXHIBIT "C"

Parcel B:
To be Deeded to
the City of San Luis

November 5, 2003
EEC No. 203130

civil engineering

LEGAL DESCRIPTION

environmental services

A portion of the Northwest One-Quarter (NW ¼) of Section 1, Township 11 South, Range 25 West, Gila and Salt River Meridian, Yuma County, Arizona, described as follows:

flood control and drainage

COMMENCING at the West One-Quarter (W ¼) corner of said Section 1, said corner being a found ADOT brass cap;

land surveying

THENCE N 00°25'43" E, on a record bearing along the West Line of said Section 1 (as shown on the U.S.B.R. Balanced Section dated November 20, 1969), a measured distance of 2,639.85 feet (record distance of 2,639.93 feet) to the Northwest corner of said Section 1, said corner being a found ADOT brass cap;

landscape architecture

THENCE S 89°40'20" E, along the North Line of said Section 1, a distance of 2,001.36 feet to the POINT OF BEGINNING;

natural resources

THENCE continue S 89°40'20" E, along said North Line, a distance of 633.61 feet to the North One-Quarter (N ¼) corner of said Section 1, said corner being a found ½" diameter iron rod;

transportation

THENCE S 00°17'14" W, along the East Line of said Northwest One-Quarter (NW ¼), a distance of 794.03 feet;

water and wastewater

THENCE N 59°17'41" W 237.59 feet;

THENCE N 63°54'52" W 135.12 feet;

THENCE N 71°40'56" W 200.00 feet;

THENCE S 89°49'34" W 64.89 feet;

EXHIBIT "C"

November 5, 2003
EEC No. 203130
Legal Description
Page 2

THENCE N 05°04'34" W 556.43 feet to the POINT OF BEGINNING;

Containing 8.959 acres, more or less.

Prepared by:

ENGINEERING AND ENVIRONMENTAL CONSULTANTS, INC.

Craig Hagood, R.L.S.

CH:jy

j:\shared\survey\jdc\legal\203130\legal description

