

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

DEPARTMENT: Development Services Department

AGENDA DATE: March 10, 2009

CONTACT PERSON/PHONE: Mathew McElroy, 541-4056

DISTRICT(S) AFFECTED: 4

SUBJECT:

Discussion and action on providing direction to the City Manager to research, review and provide recommendations to the City Council reference a request from EPT Land Assets, LP to amend a special warranty deed to remove certain restrictions from the deed for property sold by the City to EPT Land Assets, LP, such property located in Sandstone Ranch and Sandstone Ranch Estates, City of El Paso, El Paso County, Texas. (District 4)

BACKGROUND / DISCUSSION:

Staff is requesting that the City Council provide direction regarding a request by EPT Land Assets, LP to amend a special warranty deed to remove certain restrictions regarding neighborhood support services within the subject property. The conditions were imposed by the City Council in 2006 as part of the land sale of City land in the Northeast Planning Area to EPT Land Assets, LP. Should the City Council provide direction to move forward with the item, staff will research and review the request and bring forward recommendations at a later date.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Victor Q. Torres

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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Doc# 20060008470

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED OF RECORD IN THE PUBLIC RECORDS: SOCIAL SECURITY NUMBER AND DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: January 25, 2006

Grantor: The City of El Paso, Texas, a Texas Municipal Corporation
On Behalf of El Paso Water Utilities Public Service Board

Grantor's Mailing Address (including county): Two Civic Center Plaza
El Paso, Texas
El Paso County, Texas 79901-1196

Grantee: EPT Land Assets, LP

Grantee's Mailing Address (including county): 109 N. Oregon, 12th Floor
El Paso, Texas 79901
El Paso County, Texas

Consideration: TEN AND NO/100 DOLLARS and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed.

PROPERTY: PARCEL D:

Being approximately 100.5 acres of land out of Section 21, Block 81, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas; and more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference for all purposes.

Restrictions, Conditions, and Reservations from and Exceptions to Conveyance and Warranty:

1. This conveyance is subject to all easements, rights-of-way, and prescriptive rights whether of record or not, all presently recorded instruments, other than liens and conveyances that affect the property.
2. Any conveyance of this land will be subject to a restrictive covenant to the effect that the successful bidder, its successors or assigns will not, discard, place or store upon such land, any radioactive material or other hazardous waste material which would contaminate or otherwise damage the ground water supply or sources of the City of El Paso.
3. Development of the property shall be governed by all applicable provisions of the El Paso Municipal Code, including Title 15, Chapter 12 (Water and Sewer System) and 13 (Water

Conservation), Turf areas exclusive of parks, golf courses and non-irrigated or non-maintained landscape areas, shall not exceed 50% (fifty percent) of landscaped areas. Turf and/or sprinkler spray heads shall not be installed in the following locations: along street curbs; in areas whose width is less than eight (8) feet; and in rights-of-way whose slopes are a ratio of 1:3 or greater from the horizontal.

4. Grantor reserves for itself, its successors and assigns, all water, water rights, or rights to surface water that is in or under the property, or that may be produced from the property, including any right to drill water wells or receive water from appropriate irrigation districts.

5. As a condition to the sale of the Property, the Grantee covenants that the development of the property shall be primarily for single-family or multi-family dwelling and neighborhood support services. Neighborhood Support Services are defined as C-1 uses as defined by Title 20 (Zoning) of the El Paso Municipal Code, with the exclusion of Section 20.36.020 (C-1 Commercial District - Permitted Uses) numbers (15), (25), (31), (32), (33) (36, (40) and (43), and the C-1 usage is restricted to 5% of the total acreage within each Parcel A, B, C, and D, as each parcel may be eligible for rezoning consistent with these provisions.

6. Property is within the city limits of the City of El Paso, Texas. The Grantee covenants that the design, location and construction of any improvements shall be in accordance the El Paso Municipal Code. A subdivision plat and a master drainage plan shall be submitted to and approved by the City of El Paso prior to the issuance of any building permits for the Property.

7. The Grantee shall conduct an archeological field survey of the Property. Any mitigation of any archeological site or issue shall be the responsibility of the Grantee.

8. Grantee shall begin development of the Property within one (1) year of closing. Should development of the property not begin within one (1) year of closing, the property shall revert to the El Paso Water Utilities at the same price per acre as purchased from the El Paso Water Utilities- City of El Paso. Grantee acknowledges that the Property is one of several parcels in close proximity sold by Grantor and; as such, Grantee agrees to coordinate the necessary phasing of infrastructure requirements with the owners of the other parcels. Such coordination shall not be such as to unreasonably detain Grantee's development in its judgment. Grantee agrees to grant easements for water and sewer facilities to the El Paso Water Utilities, City of El Paso, necessary to serve any and all of the parcels as shown on the attached Exhibit "A" or as requested by the El Paso Water Utilities at the time of subdivision plat submittal by the Grantee.

9. Grantor shall make available to Grantee water and sewer services in accordance with the most current El Paso Water Utilities Rules and Regulations at the time of application for service. Grantee agrees to be responsible for the costs of any necessary on-site and off-site extensions, relocations, replacements or adjustments of water and sanitary sewer mains and appurtenances as a result of approved subdivision improvement plans.

10. Grantee shall comply with all applicable federal, state and local laws, ordinances or rules.

11. Grantee agrees to pay all costs associated with realigning or relocating the existing twelve (12) inch water line and existing electrical supply line due to any necessary right-of-way realignment of the Sean Haggerty street right-of-way. In addition, Grantee shall pay all costs associated with relocating the twelve (12) inch well water line due to any ground cover deficiencies not in accordance with El Paso Water Utilities' construction standards within the Sean Haggerty right-of-way. Grantee agrees to update the existing electrical line to El Paso Municipal Code requirements. It is understood that the electrical supply line service must be continuously maintained during the development of Grantee's

property.

12. Grantee shall construct all required infrastructure within dedicated public rights-of-way fronting the existing well site on Exhibit "A".

13. Grantee agrees to construct, in further consideration of the acquisition of this Property its proportionate share of improvements to Sean Haggerty right-of-way and Marcus Uribe right-of-way in accordance with City of El Paso subdivision requirements and in coordinating effort with neighboring parcel owners. In order to provide access to adjoining parcel owners, Grantee agrees that the improvements of Sean Haggerty shall be completed within one (1) year of closing on the sale.

14. Grantee shall fully improve all street rights-of-way within and abutting the Property. This shall include arterial streets. No over-width paving reimbursement shall be required of the El Paso Water Utilities nor by the City of El Paso for this work.

15. The Grantor has set aside a twenty (20) acre tract of land within the Property as a combination park/school site. Said site has been identified by the Grantor and is hereby reserved from this conveyance. Said site is further identified on Exhibit "A" attached hereto and incorporated herein by this referenced for all purposes. Grantee, in further consideration for the purchase of the Property, shall be responsible to construct all required infrastructure fronting any dedicated public right-of-way for the site. Infrastructure for the site shall include, but not by way of limitation, paved streets, curb and gutter, necessary drainage structures and sidewalks.

16. Grantee shall submit a development plan to El Paso Water Utilities within sixty (60) days of receiving notification from El Paso Water Utilities of successful bid to include a consistent community theme of development to include architectural style of construction and color scheme. This development plan shall be incorporated as covenants for construction in the subdivision plat. This development plan shall be adhered to by each homebuilder constructing within each parcel.

17. Sean Haggerty shall be highlighted and improved in such a manner as to provide a sense of location, geographical area and overall consistent community theme for the Northeast Master Plan. The intersections of all residential subcollector streets and larger street sections that intersect Sean Haggerty right-of-way shall be hardscaped. Grantee shall provide difference in color tones and material at intersections, such as, pebbled, bricked or stamped concrete.

18. Grantee agrees to construct all required infrastructure within dedicated public rights of way fronting the booster station shown on Exhibit A. The infrastructure shall include all utilities (water, sewer, telephone, electrical, gas, and cable), paving, curb and gutter, drainage provisions and sidewalk as required by the El Paso Municipal Code.

19. If any provision of this Special Warranty Deed is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Special Warranty Deed will not be affected, and in lieu of each provision which is found to be illegal, invalid or unenforceable, there will be added to this Special Warranty Deed a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable

REVERSIONARY PROVISION:

~~The breach or failure to fulfill any covenant or condition as set forth in this instrument and the failure to cure such breach or failure shall, after sixty (60) days written notice of breach or failure from Grantor to Grantee, result in the title to the Property reverting to the Grantor without further notice, foreclosure or action on the part of the Grantor ^{and} and except for the filing by Grantor of an instrument in writing of notice of reversion in the Deed Records of El Paso County, Texas; and, the Grantor shall pay to Grantee its original purchase price only. All improvements made to the Property prior to such breach or failure shall be owned by the Grantor as of the date of reversion without further cost or expense.~~

GRANT AND CONVEYANCE:

Grantor, for the consideration and subject to the restrictions, conditions, covenants, reservations from and exceptions to conveyance and warranty, GRANTS, SELLS and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's, heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through, or under Grantor but not otherwise.

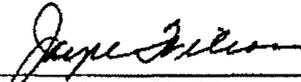
EXCEPT AS EXPRESSLY PROVIDED IN THE WARRANTY OF TITLE DELIVERED IN THIS DEED, GRANTEE ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY AS IS, WHERE IS AND WITH ALL FAULTS, WITHOUT ANY OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THOSE REGARDING (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

GRANTOR SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT

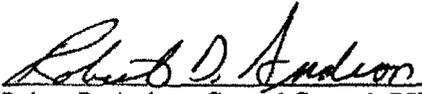
THE PURCHASE PRICE FOR THE PROPERTY HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY GRANTOR AND PURCHASED BY GRANTEE SUBJECT TO THE FOREGOING.

THE CITY OF EL PASO



Joyce Wilson, City Manager

APPROVED AS TO FORM:



Robert D. Andron, General Counsel, PSB

This Deed is hereby accepted by Grantee under the terms, covenants and conditions stated herein:

EPT LAND ASSETS, LP


BY:

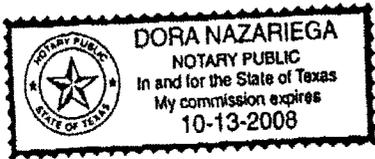
ACKNOWLEDGMENTS ON FOLLOWING PAGE

ACKNOWLEDGMENTS

STATE OF TEXAS }

COUNTY OF EL PASO }

This instrument was acknowledged before me on the 24th day of May, 2005, by Joyce Wilson, the City Manager of the City of El Paso.



Dora Nazariega
Notary Public, State of Texas

STATE OF TEXAS }

COUNTY OF EL PASO }

This instrument was acknowledged before me on the 25 day of January, 2005, by Ricardo Aguilar, the General Partner of EPT Land Assets, LP, a limited partnership.

[Signature]
Notary Public, State of Texas

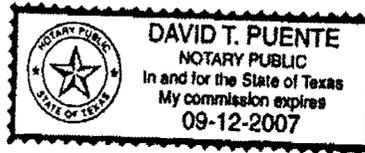


EXHIBIT A

METES AND BOUNDS

PARCEL D



BROCK & BUSTILLOS INC.

CONSULTING ENGINEERS
LAND SURVEYORS
(Formerly Faught & Associates)

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Executive Vice President
SERGIO J. ADAME, P.E.
Vice President - Engineering
OSCAR V. PEREZ
Vice President - Operations
ISAAC CAMACHO, R.P.L.S.
Survey Manager

January 11, 2005

LEGAL DESCRIPTION OF A 100.520 ACRE TRACT

A tract of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as portion of Section 21, Block 81, Township 1, Texas and Pacific Railway Company Surveys and being more particularly described as follows, to wit:

BEGINNING at a 1/2 inch rebar with survey cap No. TX 5337 set on the boundary line common to Sections 21 and 22, Block 81, Township 1, Texas and Pacific Railway Company Surveys, whence a 5/8 inch pipe in concrete found for the corner common to Sections 19, 20, 21, and 22, Block 81, Township 1, Texas and Pacific Railway Company Surveys bears **North 02°00'22" East, 2,279.76 feet**;

THENCE, leaving the boundary line common to said Sections 21 and 22, **South 87°59'38" East, 1,201.90 feet** to a 1/2 inch rebar with survey cap No. TX 5337 set for a point of curvature;

THENCE, following the arc of a curve to the left having a radius of **716.20 feet**, a central angle of **34°31'52"**, an arc length of **431.64 feet**, and whose long chord bears **North 74°44'26" East, 425.14 feet** to a 1/2 inch rebar with survey cap No. TX 5337 set for a point of tangency;

THENCE North 57°28'30" East, 2,683.35 feet to a 1/2 inch rebar with survey cap No. TX 5337 set for the northeast corner of the tract herein described;

THENCE South 38°20'30" East, 820.00 feet to a 1/2 inch rebar with survey cap No. TX 5337 set on the northwesterly boundary line of a 200 feet wide drainage right-of-way for the southeast corner of the tract herein described;

THENCE, following the northwesterly boundary line of said 200 feet wide drainage right-of-way, **South 51°39'30" West, 87.43 feet** to a 1/2 inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE, continuing along the northwesterly boundary line of said 200 feet wide drainage right-of-way, **South 53°08'01" West, 578.58 feet** to a 1/2 inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE, continuing along the northwesterly boundary line of said 200 feet wide drainage right-of-way, **South 56°06'33" West, 572.54 feet** to a 1/2 inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE, continuing along the northwesterly boundary line of said 200 feet wide drainage right-of-way, South 59°04'33" West, 572.55 feet to a 1/2 inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE, continuing along the northwesterly boundary line of said 200 feet wide drainage right-of-way, South 62°02'33" West, 575.06 feet to a 1/2 inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE, continuing along the northwesterly boundary line of said 200 feet wide drainage right-of-way, South 63°31'33" West, 2,523.51 feet to a 1/2 inch rebar with survey cap No. TX 5337 set on the northeasterly right-of-way line of U. S. Highway No. 54 for the southwest corner of the tract herein described;

THENCE, leaving the northwesterly boundary line of said 200 feet wide drainage right-of-way and following the northeasterly right-of-way line of U. S. Highway No. 54, North 06°10'23" West, 81.60 feet to a 1/2 inch rebar set for the northwest corner of the tract herein described;

THENCE, leaving the northeasterly right-of-way line of U. S. Highway No. 54 and following the north right-of-way line of U. S. Highway No. 54, North 87°59'38" West, 60.00 feet to a 1/2 inch rebar set for an angle point;

THENCE North 02°00'22" East, 200.00 feet to a 1/2 inch rebar with survey cap No. TX 5337 set for a point of curvature;

THENCE, following the arc of a curve to the left having a radius of 686.66 feet, a central angle of 22°00'00", an arc length of 263.66 feet, and whose long chord bears North 08°59'38" West, 262.04 feet to a 1/2 inch rebar with survey cap No. TX 5337 set for a point of reverse curvature;

THENCE, following the arc of a curve to the right having a radius of 686.66 feet, a central angle of 22°00'00", an arc length of 263.66 feet, and whose long chord bears North 08°59'38" West, 262.04 feet to a 1/2 inch rebar with survey cap No. TX 5337 set on the boundary line common to said Sections 21 and 22 for a point of tangency;

THENCE, following the boundary line common to said Sections 21 and 22, North 02°00'22" West, 739.69 feet to the POINT OF BEGINNING;

Said tract containing 100.520 acres, more or less, and being subject to easements of record.

I hereby certify that this description was prepared by me or under my supervision.

Isaac Camacho
Isaac Camacho, TX RPLS No. 5337



Doc# 2006008470

#Pages 10 #PDFPages 1

5/30/2006 02:06 PM

Filed & Recorded in

Official Records of

EL PASO COUNTY

WALDO ALARCON

COUNTY CLERK

Fees \$32.00

11

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



Waldo Alarcon

EL PASO COUNTY, TEXAS

CITY CLERK DEPT.
05 MAY 24 AM 8:39

Return to: EPT Land Assets, LP
109 N. Oregon, 12th Floor
El Paso, TX. 79901