

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

DEPARTMENT: Planning and Economic Development
AGENDA DATE: April 26, 2011
CONTACT PERSON/PHONE: Kathy Dodson, PhD, Director 541-4670
DISTRICT(S) AFFECTED: All

SUBJECT:

Discussion and action that the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and EPT Mesa Development, L.P., EPT Montecillo Development West, L.P., and EPT Montecillo Development East, L.P. (collectively, the "Applicant") in relation to the Applicant's development of a Smart Code Master Planned Community on approximately 292.0754 acres of real property located on North Mesa Avenue, El Paso, Texas.
[Planning and Economic Development, Kathryn B. Dodson, (915) 541-4872]

BACKGROUND / DISCUSSION:

EPT Land Communities, L.P. (the Developer) owns approximately 292 acres of undeveloped or underdeveloped land within the limits of the City of El Paso, which the developer intends to redevelop as a master planned mixed-use community known as "Montecillo." The large-scale redevelopment project will create complete neighborhoods containing multi-family and single-family detached housing, active senior living, mixed use commercial, parks, open space, and components of a mass transit system. If developed in accordance with plans presented to the City, the construction of the development will significantly enhance the quality of life within the City and increase the City's ad valorem and sales tax base. The total amount rebated to the developer Chapter 380 Agreement will be determined by the City portion of ad valorem property tax revenue – 100% will be rebated for years 1-5, 50% for years 6-15, and 25% for years 16-20.

PRIOR COUNCIL ACTION:

On December 1, 2009 the El Paso City Council voted to begin investigating potential incentives for a Smart Code development at Montecillo.

AMOUNT AND SOURCE OF FUNDING:

[FUNDING IS GENERAL REVENUE FUNDS]

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Department Head

RESOLUTION

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

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and EPT Mesa Development, L.P., EPT Montecillo Development West, L.P., and EPT Montecillo Development East, L.P. (collectively, the "Applicant") in relation to the Applicant's development of a Smart Code Master Planned Community on approximately 292.0754 acres of real property located on North Mesa Avenue, El Paso, Texas.

APPROVED AND ADOPTED this _____ day of _____, 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor

Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Planning & Economic Development

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This Chapter 380 Economic Development Program Agreement (“Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS** (“City”), a Texas home rule municipal corporation, and **EPT MESA DEVELOPMENT L.P.**, a Delaware Limited Partnership, **EPT MONTECILLO DEVELOPMENT WEST, L.P.**, Texas Limited Partnership, and **EPT MONTECILLO DEVELOPMENT EAST, L.P.**, a Texas Limited Partnership (collectively, “Applicant”), for the purposes and considerations stated below:

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”); and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to Applicant to develop a Smart Code Master Planned Community as more fully described below; and

WHEREAS, the City has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City determines that a grant of funds to Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the City seeks to induce Applicant to construct the Smart Code Master Planned Community, a large-scale redevelopment project which will create complete neighborhoods containing multi-family and single-family detached housing, active senior living, mixed use commercial, parks, open space, and components of a mass transit system; and

WHEREAS, the City and Applicant desire that development of the Smart Code Master Planned Community occur in the City of El Paso; and

WHEREAS, the creation of the Smart Code Master Planned Community will encourage increased economic development in the City, provide significant increases in the City’s property tax revenues, and improve the City’s ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible “program” and clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and Applicant.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word "Applicant" means EPT MESA DEVELOPMENT L.P., a Delaware Limited Partnership, EPT MONTECILLO DEVELOPMENT WEST, L.P., Texas Limited Partnership, and EPT MONTECILLO DEVELOPMENT EAST, L.P., a Texas Limited Partnership.
- C. **Base Property Tax Valuation.** The words "Base Property Tax Valuation" mean the valuation of the Property by the El Paso Central Appraisal District as of January 1, 2011.
- D. **City.** The word "City" means the City of El Paso, Texas.
- E. **Development.** The word "Development" means the entirety of Applicant's proposed Smart Code Master Planned Community development upon the Property as more fully described in Exhibits "A" and "A-1", which are attached hereto and incorporated herein for all purposes.
- F. **Grant.** The word "Grant" means a payment on a yearly basis to Applicant under the terms of this Agreement computed with reference to the designated percentage of the City's portion of the ad valorem real property tax increment revenue generated from the Property in the Development as identified in Exhibit "A-1" based upon the increased value of the Property over the value of the Base Property Tax Valuation, as determined by the El Paso Central Appraisal District and collected by the City during the term of this Agreement.
- G. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to the City on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in Exhibit "B", which is attached hereto and incorporated herein for all purposes.
- H. **Property.** The word "Property" means the approximately 292.0754 acres of real property located on North Mesa Avenue, El Paso, Texas, more fully described by metes and bounds as shown in Exhibit "A-1."
- I. **Qualified Expenditures.** The words "Qualified Expenditures" means those costs related to horizontal infrastructure improvements incurred by Applicant in the acquisition,

construction or furnishing of the Development, said cost items being specifically described in Exhibit "C."

SECTION 2. TERM AND GRANT PERIOD.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined in Section 8 below) and shall terminate on the first to occur of the following: (i) the date when the Grant amount is fully paid; (ii) subject to the provisions of Section 3 below, twenty (20) years from the commencement of the Grant Period (as such term is defined below), plus such additional time thereafter as may be necessary to process the final annual Grant payment pursuant to the procedures described in Sections 3 and 4 below; or (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein. Applicant's eligibility for annual Grant payments shall be limited to twenty (20) consecutive years (the "Grant Period") within the term of this Agreement. The Grant Period shall begin with the filing of the first Grant Submittal Package, which must occur no later July 1, 2014.

SECTION 3. OBLIGATIONS OF APPLICANT.

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

A. Development.

- (1) Within twenty four (24) months of the Effective Date, Applicant agrees to commence or caused to be commenced the construction of the Development, at its sole cost and expense, or the expense of third parties, the Development as depicted in Applicant's preliminary regulating plan in Exhibit "D". Further, Applicant agrees to satisfy or cause to be satisfied certain construction build-out requirements for each Phase of the Development such that the valuation of the Property in the Development, as determined by El Paso Central Appraisal, at years five (5), ten (10), and fifteen (15) following the Effective Date, is at least fifty percent (50%) of the estimated valuation of the Development as shown in Exhibit "E".
- (2) Within twelve (12) months of the Effective Date of this Agreement, Applicant shall file with the City a complete application to re-zone all Property within the Development as Smart Code under Title 21, "SmartCode," El Paso City Code, said application to be in conformance with all requirements enumerated in Title 21, El Paso City Code. If within ten (10) business days prior to the expiration of the performance deadline stated herein, Applicant submits to the City a written request for extension along with a reasonable justification for the delay and the same is approved by the City Manager or designee, the performance deadline will automatically extend for an additional thirty (30) days without written amendment to this Agreement. Re-zoning of all Property in the Development to Title 21 "SmartCode" zoning is a material term of this Agreement and is a condition precedent to Applicant's receipt of any Grant payment under this Agreement.

- (3) Applicant agrees that it shall make or cause to be made the Qualified Expenditures of not less than Twenty Two Million Dollars (\$22,000,000.00); provided, however, that if Applicant fails to make Qualified Expenditures of at least Twenty Two Million Dollars (\$22,000,000.00) on the Property, Applicant shall not be deemed to be in default under this Agreement, but the amount of the Grant shall be reduced proportionately based on the amount by which the Qualified Expenditures are less than Twenty Two Million Dollars (\$22,000,000.00). Applicant shall submit to the City such documentation as may be reasonably necessary to verify the incurred costs of Qualified Expenditures, i.e., invoices marked "paid" to third parties and not submitted or to be submitted to any other governmental and/or taxing entity as part of any expenditure verification obligation for receipt of an economic development financial incentive or other similar verifiable documentation, as reasonably required by the City.
- (4) Modifications to the preliminary regulating plan depicted in Exhibit "D" may be made by Applicant without written amendment to this Agreement, so long as such modification(s): (i) are required to meet the minimum requirements of Title 21 or are otherwise required by City staff as part of Applicant's Title 21 re-zoning application or administrative approvals; or (ii) will result in a final regulating plan that consists only of the following development types: traditional neighborhood development, cluster land development, and regional center development, all consistent with Table 14 of Title 21, as may be amended, and does not include any Special District(s). Within thirty (30) days following such modification(s), Applicant will provide the City a revised Exhibit "D", to substitute and replace the original Exhibit attached herein. Changes other than the modifications identified above shall require approval by City Council as a written contract amendment.
- (5) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the Property. Developer will be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Development for so long as Applicant is the owner of the Property.
- B. **Amount of Grant.** The total Grant amount payable by the City under this Agreement, if any, shall not exceed the aggregate of all payments made by the City capped at the maximum aggregate amount of Twenty Two Million Dollars (\$22,000,000.00), subject to reduction as specified in Section 3(A) above.
- C. **Disbursement of Grant.**
- (1) During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2014 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, Applicant will be eligible to receive on a yearly basis a Grant payment, determined as follows: for tax years 2013 through and including 2017, an amount equal to one hundred percent (100%) of the City's portion of ad valorem real property tax increment revenue

generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2018 through and including 2027, an amount equal to fifty percent (50%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2028 through and including 2032, an amount equal to twenty five percent (25%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation. For any and all Grant payments the ad valorem real property tax increment revenue must be attributable to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the City in the fiscal year.

- (2) Eligibility for any Grant payment is expressly contingent upon Applicant's satisfaction of the requirements of this Section 3 of the Agreement.
- (3) Grant payments will continue until the earlier of the expiration of Grant Period or termination or expiration of this Agreement or until the aggregate of all payments made by the City has reached the capped amount of TWENTY TWO MILLION DOLLARS (\$22,000,000.00), or an amount reduced by the provisions of Section 3(A). Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all payments made by the City that would exceed TWENTY TWO MILLION DOLLARS (\$22,000,000.00), subject to reduction as specified in Section 3(A), above.
- (4) A Grant payment for any given year may not result in the cumulative Grant payments to date exceeding the cumulative amount of Qualified Expenditures verified as to the date of the active Grant Submittal Package. Such Grant payment may be reduced to an amount that results in a cumulative Grant payment amount not to exceed the cumulative qualified expenditures verified as of the date of the Grant Submittal. A payment balance equal to the amount of any such reduction will be carried forward and paid only when an increase in the cumulative amount of Qualified Expenditures will allow for payment to be made.
- (5) In order to receive the disbursement of the Grant, Applicant must submit a Grant Submittal Package, as specified in Section 3(D) below.

D. Grant Submittal Package.

- (1) Unless otherwise agreed by the City and Applicant in writing, each Grant Submittal Package shall be in the form provided in Exhibit "B" together with the requisite documentation. No later than July 31, 2014, Applicant shall submit to the City an initial Grant Submittal Package to commence the Grant Period. Thereafter, the Applicant's annual Grant Submittal Package must be submitted no later than July 1 of each year.
- (2) Concurrent with the submittal of a Grant Submittal Package, Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of

the Qualified Expenditures identified in Exhibit "C", which have not otherwise been verified as part of a prior submittal. The City will provide to Applicant a written explanation for any Qualified Expenditures that the City determines cannot be verified.

- (3) If Applicant fails to timely submit a Grant Submittal Package for a particular year, the City may give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. The City's determination of the amount of the Grant payment due to Applicant is final so long as such determination is made in accordance with the terms and conditions of this Agreement; provided, however, that the Applicant may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant's rights and remedies as described in Section 5 of this Agreement.

E. **Payment of Taxes.**

- (1) Applicant shall pay or cause to be paid by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the real and business personal property it owns in the Development and any other property owned within the City of El Paso. Applicant must demonstrate that it has incurred no delinquent taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso, upon the City's request in determining Applicant's eligibility for Grant payment receipt.
- (2) Applicant shall have the right to contest the appraised value of the Property and Development as provided by law. However, Applicant covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the El Paso Central Appraisal District at Base Property Tax Valuation or lower.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), City shall comply with the following terms and conditions:

- A. The City agrees to process any Grant Payments to Applicant within ninety (90) days after receipt of the Applicant's Grant Submittal Package.
- B. During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2014 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein,

an amount from the City's general fund will be tendered to Applicant as a Grant payment on a yearly basis, to be determined as follows: for tax years 2013 through and including 2017, an amount equal to one hundred percent (100%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2018 through and including 2027, an amount equal to fifty percent (50%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2028 through and including 2032, an amount equal to twenty five percent (25%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation. For any and all Grant payments the ad valorem real property tax increment revenue must be attributable to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the City in the fiscal year.

- (1) Such Grant payments will continue until the earlier of the expiration of the term of the Agreement or until the aggregate of all payments has reached the capped amount of TWENTY TWO MILLION DOLLARS (\$22,000,000.00).
- (2) It is expressly understood by the Applicant and the City that Grant payments made pursuant to this Agreement are conditioned upon: (i) Applicant's construction of the Development or portion thereof in accordance with the terms and conditions set forth in this Agreement; (ii) the City's receipt of ad valorem property tax increment revenue which is attributable solely to the Property's increase in property tax value over the Base Property Tax Valuation in sufficient amount of such Grant payment and from annual appropriations of such funds of the City as may be legally set aside by the City for the implementation of economic development or financing programs authorized by Chapter 380 of the Texas Local Government Code, Section 52-a, Article III of the Texas Constitution, or other statutory authority or the home-rule powers of the City under applicable Texas law. In no event shall any Grant payment exceed the total value of the City's designated percentage amounts of its portion of the ad valorem property tax increment revenues generated from the Property in the Development based upon the increased value over the Base Property Tax Valuation as are actually received in hand by the City.
- (3) Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all Grant payments made by the City if above the capped amount of TWENTY TWO MILLION DOLLARS (\$22,000,000.00), subject to reduction as specified in Section above, nor shall Applicant be entitled to receive the Grant unless it satisfies all the requirements of Section 3 of this Agreement.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Failure to Obtain Title 21 "SmartCode" Zoning.** Failure to obtain re-zoning of all Property in the Development under Title 21 "SmartCode", El Paso City Code within the proscribed deadline and Applicant's failure to cure such failure within thirty (30) days after written notice from the City describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure to the City's satisfaction, such event shall be deemed an event of default.
- B. **Failure to Construct and Maintain Development.** Applicant's failure or refusal to construct the Development and maintain or caused to be maintained the Development thereafter through the entire Grant Period of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the City describing such failure, shall be deemed an event of default; provided, however, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall then also be deemed an event of default.
- C. **False Statements.** In the event the Applicant knowingly provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to cure same within thirty (30) days after written notice from the City describing the violation shall be deemed an event of default; provided, however, if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within ten (10) days after Applicant learns of its false or misleading nature, such action or omission shall then be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.
- D. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

- E. **Property Taxes.** Applicant has the right to contest the appraised value of the Property and Development as provided by law, subject to the restrictions contained in this Agreement. In the event Applicant allows any property taxes owed to the City by Applicant to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the City and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default.
- F. **Other Defaults.** Failure of Applicant or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or City fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default; provided, however, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Applicant or City also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission then shall be deemed an event of default.
- G. **Failure to Cure.** If any event of default by Applicant shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the City and the City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

Section 6. RECAPTURE.

Should Applicant default under Section 5(C) of this Agreement and provided that the cure period for such default has expired, the City reserves the right to recapture any and all previously awarded Grant payments.

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **Assignment of Applicant's Rights.** Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds or its performance obligations under this Agreement without the City's prior written consent, which will not be unreasonably withheld. Any such attempt to sell, transfer, assign or convey without the City's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- D. **Applicant's Sale or Transfer of the Development.** Within thirty (30) days following any sale or other transfer of ownership rights in the Development or of individual parcels within the Development, Applicant will notify the City in writing of such sale or transfer. Applicant agrees to incorporate property maintenance requirements in its sale or transfer documents with respect to any sale or transfer of individual parcels within the Development. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an event of default.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. **Completion of Development.** As consideration for the agreements of the City as contained herein, Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- G. **Confidentiality Obligations.** Applicant acknowledges that the City is subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant further acknowledges that the Act excepts disclosure of trade secret and confidential commercial information and that Applicant will need to assert its proprietary interest as a basis for nondisclosure.

- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- I. **Effective Date.** The effective date (the “Effective Date”) of this Agreement shall be the date upon which both parties have fully executed this Agreement.
- J. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney’s fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- K. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the subject matter of this Agreement. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties are superseded by this Agreement. There exists no other written or oral understanding, agreements, or assurances with respect to such matters except as are set forth herein.
- L. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- M. **Exhibits.** The following Exhibits are attached and incorporated by reference for all purposes.
- Exhibit “A”: Development Description
 - Exhibit “A-1”: Property Description
 - Exhibit “B”: Grant Submittal Form
 - Exhibit “C”: Qualified Expenditures
 - Exhibit “D”: Preliminary Regulating Plan
 - Exhibit “E”: Total Estimated Valuation of Development
- N. **Filing.** The City shall file this Agreement in the deed records of El Paso County, Texas upon Applicant’s request and payment of all recordation costs.

- O. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- P. **Headings and Construction.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural , and to the plural the singular.
- Q. **Inspections, Access to Records.** Applicant, at its principal place of business in El Paso, shall allow the City or its agents reasonable access and inspect operating records, accounting, books and any other records related to the economic development considerations and incentives described herein, which are in Applicant's, possession, custody or control, for purposes of verifying the Qualified Expenditures generated by the Development and for audit, if so requested by the City. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws including the Public Information Act, Chapter 552, Texas Government Code. Further, Applicant shall allow the City reasonable access to the subject property owned or controlled by Applicant for inspections during construction of the Development. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and or operations of the Applicant or the Development. For physical inspections, any inspection will be made with one (1) or more representatives of Applicant, and in accordance with its safety standards, if any.
- R. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- S. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present, and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Developer or the design, construction or operation of any portion of the Development.
- T. **Non-Binding Mediation.** In the event of any disagreement or conflict concerning this Agreement or the interpretation thereof, and such disagreement cannot be resolved by the signatories hereto, the signatories will submit such disagreement to non-binding mediation prior to commencing any litigation. Applicant and City shall equally share the costs associated with any such mediation. Each party shall be responsible for the payment of its own attorney fees in connection therewith.

- U. **Non-Waiver.** No course of dealing on the part of the City or Applicant nor any failure or delay by the City or Applicant in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power, or privilege owing under this Agreement.
- V. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, by certified or registered mail addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso
City Manager
2 Civic Center Plaza
El Paso, Texas 79901

Copy To: City of El Paso
Director
Planning and Economic Development Department
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: EPT Mesa Development L.P.
EPT Montecillo Development West, L.P.
EPT Montecillo Development East, L.P.

all c/o EPT Land Communities, L.P.
444 Executive Center Blvd., Suite 238
El Paso, Texas 79902

- W. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- X. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPLICANT:

EPT Mesa Development, L.P.
A Delaware limited partnership

By its General Partner
EPT MESA DEVELOPMENT MANAGEMENT , LLC
A Delaware Limited Liability Company

By its Manager
EPT Land Management, LLC
A Texas Limited Liability Company

By its Manager
Mountain Sunshine, LLC
A Texas Limited Liability Company

By: _____
Richard Aguilar, Manager

EPT Montecillo Development East, L.P.
A Texas Limited Partnership

By its General Partner
EPT Montecillo Development Management, LLC
A Texas Limited Liability Company

By: _____
Richard Aguilar, Manager

EPT Montecillo Development West, L.P.
A Texas Limited Partnership

By its General Partner
EPT Montecillo Development Management, LLC
A Texas Limited Liability Company

By: _____
Richard Aguilar, Manager

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by Richard Aguilar, Manager of Mountain Sunshine, LLC, a Texas limited liability company, Manager of EPT Land Management, LLC, a Texas liability company, Manager of EPT Mesa Development Management, LLC, a Delaware limited liability company, General Partner of **EPT MESA DEVELOPMENT, L.P.**, on behalf of said entity. (**APPLICANT**).

Notary Public, State of _____

My Commission Expires:

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by Richard Aguilar, Manager of EPT Montecillo Development Management, LLC, a Texas limited liability company, General Partner of **EPT Montecillo Development East, L.P.**, a Texas limited partnership, on behalf of said entity. (**APPLICANT**).

Notary Public, State of _____

My Commission Expires:

[ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

EXHIBIT "A"

The Development is comprised of approximately 292.0754 acres. The Development is a proposed Smart Code zoned master planned mixed-use community to be located within the City Limits of El Paso, Texas. The community will contain multi-family and single-family detached housing, active senior living, mixed commercial, retail, parks, open space and components of a mass transit system. The Development is divided into development parcels and defined by metes and bounds as shown in **Exhibit A-1**.

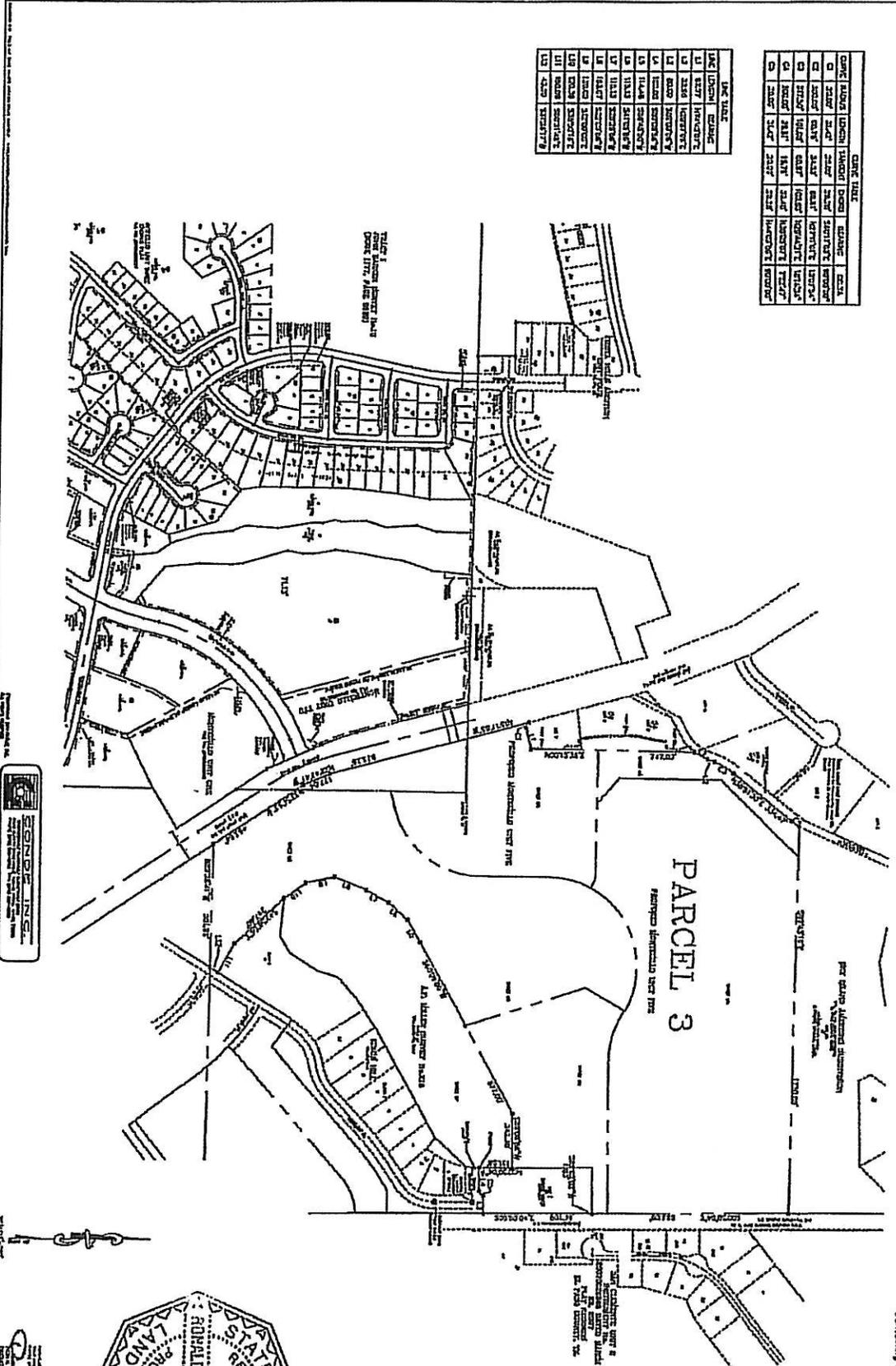
Exhibit "A-1"

Property Metes & Bounds and Boundary Survey

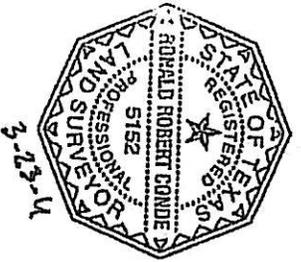
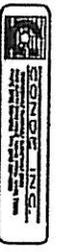
Notes:
 1. Verify all corner monuments.
 2. Verify all section corners by 1971 plat and all other monuments.

CONVEYANCE	SECTION	RANGE	COUNTY	STATE
1	36	10N	10E	TX
2	36	10N	10E	TX
3	36	10N	10E	TX
4	36	10N	10E	TX
5	36	10N	10E	TX
6	36	10N	10E	TX
7	36	10N	10E	TX
8	36	10N	10E	TX
9	36	10N	10E	TX
10	36	10N	10E	TX
11	36	10N	10E	TX
12	36	10N	10E	TX

CONVEYANCE	SECTION	RANGE	COUNTY	STATE
13	36	10N	10E	TX
14	36	10N	10E	TX
15	36	10N	10E	TX
16	36	10N	10E	TX
17	36	10N	10E	TX
18	36	10N	10E	TX
19	36	10N	10E	TX
20	36	10N	10E	TX
21	36	10N	10E	TX
22	36	10N	10E	TX



PLAT OF SURVEY
 BEING LOT 1, BLOCK 8, MOSES HILL SUBDIVISION
 AND BLOCK 14, BE AND A PORTION OF
 TRACT 64, A.T. HALL'S SURVEY NO. 216 AND
 TRACT 21, JOHN DORSET SURVEY NO. 10,
 COUNTY OF TARRANT, STATE OF TEXAS
 Certified Approved by 182312, 1/10/12



Tract 4, John Barker Survey No. 10,
 City Of El Paso, El Paso County, Texas
 March 14, 2011
 (Parcel 2)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being **Tract 4, John Barker Survey No. 10, City Of El Paso, El Paso County, Texas,** and being more particularly described by metes and bounds as follows:

Commencing for reference at a found brass disk marking the northeast corner of tract 3A, John Barker survey No. 10, Thence along the line between tract 1 and 3, John Barker No. 10, **South 00°49'08" West** a distance of **2,252.05** feet to a set 1/2" rebar with cap "5152" set for the northeasterly corner of tract 4 as described in Book 3712, Page 1055, from which a found E.P.E.C. brass cap bears **North 00°48'24" East** a distance of 200.13 feet;

Thence along the easterly line of said tract 4, **South 00°48'24" West** (South 00°01'45" West, Bk. 3712, Pg. 1055) a distance of **1,283.08** feet (1283.47 feet, Bk. 3712, Pg. 1055) to a found TX.D.O.T. sheared concrete monument at the easterly right of way line of Interstate 10 as per R.O.W. Map Control No. 2121, Sect. 2, Job No. 27;

Thence with said right of way line, **North 21°16'42" West** (North 18°07'32" West, Cont 2121, Sect. 2, Job No. 27) a distance of **663.74** feet (661.79 feet, Cont 2121, Sect. 2, Job No. 27) to a found TX.D.O.T. brass cap;

Thence with said right of way line, **North 71°39'13" East** (North 71°52'28" East, Cont 2121, Sect. 2, Job No. 27) a distance of **49.73** feet (50.00 feet, Cont 2121, Sect. 2, Job No. 27) to a found TX.D.O.T. brass cap;

Thence with said right of way line, **North 21°53'42" West** (North 18°39'33" West, Cont 2121, Sect. 2, Job No. 27) a distance of **537.26** feet (536.77 feet, Cont 2121, Sect. 2, Job No. 27) to a found TX.D.O.T. brass cap;

Thence with said right of way line, **North 37°37'35" West** (North 34°27'12" West, Cont 2121, Sect. 2, Job No. 27) a distance of **175.03** feet (175.26 feet, Cont 2121, Sect. 2, Job No. 27) to a point the southerly line of 175 foot El Paso Electric Company Right of Way as described by Book 1357, Page 385, Book 1324, Page 273, and Book 552, Page 446, recorded with the El Paso County Deed Records, from which a found 1/2" rebar bears **North 30°35'53" West** a distance of 0.23 feet;

Thence leaving said right of way line, **North 88°42'39" East** (North 87°59' 00" East, Bk. 1324, Pg. 273) a distance of **519.06** feet to the "TRUE POINT OF BEGINNING" and containing in all 300,801.16 square feet or 6.9054 acres of land more or less.

Bearing basis is true north for a transverse Mercator surface projection as determined by GPS methods centered at an El Paso Electric Company brass disk.

Plat of even date accompanies this Metes and Bounds.


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



#311-22

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
 6080 SURETY DRIVE SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283

Being Tracts 3, 3A, 4, 4F2B, 6 and 7, John Barker Survey No. 10,
And Montecillo Unit Three Amending Plat save and except
Lot 2, Block 2 thereof
City of El Paso, El Paso County, Texas
Prepared for: EPT Land Communities
March 14, 2011
(Parcel 1)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 1, John Barker Survey No. 10 and a portion of Montecillo Unit Three Amending Plat as recorded in clerks file no. 20090065237, City of El Paso City, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe in concrete marked "NE 10" for the northeast corner of John Barker Survey No. 10; from which a found pipe for the northwest corner of John Baker Survey No. 10 bears North 89°10'00" West a distance of 2,596.86 feet; Thence from said northeast corner of John Baker No. 10, North 89°10'00" West a distance of 978.66 feet to a point on the westerly line of Lot 2, Block 2, Montecillo Unit Three Amending for the "TRUE POINT OF BEGINNING".

Thence along the westerly line of Lot 2, Block 2, Montecillo Unit Three Amending Plat the following courses;

South 05°24'34" West a distance of 178.31 feet to a point;

South 18°45'13" West a distance of 133.53 feet to a point;

South 09°53'25" West a distance of 133.88 feet to a point;

South 10°01'41" West a distance of 124.87 feet to a point;

South 05°56'36" West a distance of 54.88 feet to a point;

South 10°14'52" East a distance of 95.04 feet to a point;

South 01°18'09" West a distance of 49.46 feet to a point;

South 11°35'01" West a distance of 71.13 feet to a point;

South 15°50'34" East a distance of 206.33 feet to a point;

South 06°49'19" East a distance of 46.74 feet to a point;

South 01°32'51" West a distance of 152.97 feet to a point;

South 06°11'09" East a distance of 156.42 feet to a point;

South 49°10'11" East a distance of 212.37 feet to a point on the northwesterly right of way line of Montecillo Blvd;

Thence along said right of way line 64.94 feet along the arc of a curve to the left which has a radius of 1045.00 feet a central angle of $03^{\circ}33'29''$ a chord which bears North $15^{\circ}30'36''$ East a distance of 64.93 feet to a point;

Thence along said right of way line North $13^{\circ}43'46''$ East a distance of 67.75 feet to a point of curve;

Thence along said right of way line 450.97 feet along the arc of a curve to the right which has a radius of 860.00 feet a central angle of $30^{\circ}02'42''$ a chord which bears North $28^{\circ}45'07''$ East a distance of 445.82 feet to a point;

Thence along said right of way line North $43^{\circ}46'28''$ East a distance of 10.23 feet to a point of curve;

Thence along said right of way line 213.50 feet along the arc of a curve to the right which has a radius of 1068.00 feet a central angle of $11^{\circ}27'14''$ a chord which bears North $49^{\circ}30'05''$ East a distance of 213.15 feet to a point on the intersection of the westerly line of Montecillo Unit Two and the northerly right of way line of Montecillo Blvd;

Thence along the northerly right of way line of Montecillo Blvd., 200.54 feet along the arc of a curve to the right which has a radius of 1068.00 feet a central angle of $10^{\circ}45'30''$ a chord which bears North $60^{\circ}36'28''$ East a distance of 200.24 feet to a point;

Thence along said right of way line North $65^{\circ}59'13''$ East a distance of 56.37 feet to a point of curve;

Thence 39.27 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of $89^{\circ}59'44''$ a chord which bears North $20^{\circ}59'21''$ East a distance of 35.35 feet to a point on the westerly right of way line of Mesa Street (U.S. 80);

Thence along said right of way line South $24^{\circ}00'31''$ East a distance of 160.00 feet to a point;

Thence leaving said right of way line 39.27 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of $90^{\circ}00'16''$ a chord which bears North $69^{\circ}00'39''$ West a distance of 35.36 feet to a point on the southerly right of way line of Montecillo Blvd.;

Thence along said right of way line South $65^{\circ}59'13''$ West a distance of 56.35 feet to a point;

Thence 371.40 feet along the arc of a curve to the left which has a radius of 958.00 feet a central angle of $22^{\circ}12'45''$ a chord which bears South $54^{\circ}52'51''$ West a distance of 369.08 feet to a point on the westerly line of Montecillo Unit One;

Thence along said line South $28^{\circ}33'14''$ East a distance of 538.18 feet to a point on the southerly line of Montecillo Unit One;

Thence along said line North $63^{\circ}20'17''$ East a distance of 269.84 feet to a point on the easterly line of Montecillo Unit Three;

Thence along said line South $00^{\circ}46'50''$ West a distance of 953.90 feet to a point on the southerly line of Montecillo Unit Three;

Thence along said line North $82^{\circ}25'27''$ West a distance of 1051.35 feet to a point on the easterly right of way line of Montecillo Blvd;

- Thence 152.54 feet along the arc of a curve to the left which has a radius of 2144.12 feet a central angle of $04^{\circ}04'34''$ a chord which bears South $17^{\circ}58'17''$ West a distance of 152.50 feet to a point;
- Thence leaving said right of way line North $82^{\circ}25'27''$ West a distance of 111.12 feet to a point on the westerly right of way line of Montecillo Blvd ;
- Thence along said right of way line 152.29 feet along the arc of a curve to the right which has a radius of 2254.12 feet a central angle of $03^{\circ}52'15''$ a chord which bears North $17^{\circ}27'29''$ East a distance of 152.26 feet to a point;
- Thence leaving said right of way line North $82^{\circ}25'27''$ West a distance of 1452.81 feet to a point on the westerly line of Montecillo Unit Three Amending;
- Thence along said line North $00^{\circ}49'12''$ East a distance of 75.05 feet to a point;
- Thence, South $88^{\circ}42'39''$ West (South $87^{\circ}59'$ West, Bk. 1357, Pg. 385) a distance of 731.43 feet to a point at the easterly right of way line of Interstate Highway no.10 as per R.O.W. Map Control No. 2121, Sect. 2, Job No. 27;
- Thence along said right of way line, North $37^{\circ}37'35''$ West (North $34^{\circ}27'12''$ West, Cont 2121, Sect. 2, Job No. 27) a distance of 86.51 feet (87.29 feet book 3712, page 1055);
- Thence along said right of way line, North $53^{\circ}33'34''$ West a distance of 1,031.67 feet to a point;
- Thence along said right of way, North $73^{\circ}22'05''$ West a distance of 596.01 feet to a point;
- Thence along said right of way line, North $89^{\circ}50'45''$ West a distance of 1156.06 feet to a point at the intersection of said right of way and the southeasterly line of Rubin Heights Unit Two Replat "A" Amending Plat;
- Thence along said southeasterly line, North $57^{\circ}42'45''$ East a distance of 364.55 feet to a point;
- Thence along said southeasterly line, South $21^{\circ}57'44''$ East (South $21^{\circ}58'17''$ East, Vol. 75, Pg. 53) a distance of 51.42 feet (51.56 feet book. 3019, page 1895) to a point;
- Thence along said southeasterly line, North $48^{\circ}10'04''$ East (North $48^{\circ}09'31''$ East, Vol. 75, Pg. 53) a distance of 949.15 feet (book 3019, page 1895) to a point;
- Thence along said southeasterly line, North $53^{\circ}40'20''$ East (North $53^{\circ}39'47''$ East, Vol. 75, Pg. 53) a distance of 265.80 feet to a point;
- Thence along the westerly right of way extension of Suncrest Drive described as northeasterly line of Tract 6, I.F. Harrison Survey No. 54 in Book 3019, Page 1895 with the El Paso County Deed Records, 378.95 feet (379.09 feet, Bk. 3019, Pg. 1895) along the arc of a curve to the left which has a radius of 695.00 feet, a central angle of $31^{\circ}14'25''$ ($31^{\circ}15'08''$, Bk. 3019, Pg. 1895), and a chord which bears South $36^{\circ}00'23''$ East (South $36^{\circ}02'41''$ East, Bk. 3019, Pg. 1895) a distance of 374.27 feet (374.41 feet Bk. 3019, Pg. 1895) to a point;

Thence along said right of way extension, South $51^{\circ}37'35''$ East (South $51^{\circ}40'15''$ East, Bk. 3019, Pg. 1895) a distance of 90.00 feet to a point at the common line between Tract 6 and Tract 7;

Thence with the westerly line of Tract 7, I.F. Harrison Survey No. 54 described in Book 3019, Page 1895 with the El Paso County Deed Records, North $38^{\circ}22'25''$ East (North $38^{\circ}19'45''$ East, Bk. 3019, Pg. 1895) a distance of 35.00 feet to a point at the centerline extension of Suncrest Drive;

Thence with said centerline extension, North $51^{\circ}37'35''$ West (North $51^{\circ}40'15''$ West, Bk. 3019, Pg. 1895) a distance of 90.00 feet to a point at a point of curvature;

Thence with said centerline extension, 360.00 feet along the arc of a curve to the right which has a radius of 660.00 feet, a central angle of $31^{\circ}15'08''$, and a chord of 355.55 feet that bears North $36^{\circ}00'01''$ West (North $36^{\circ}02'41''$ West, Bk. 3019, Pg. 1895) to a point;

Thence leaving said centerline, North $69^{\circ}37'36''$ East (North $69^{\circ}34'53''$ East, Bk. 3019, Pg. 1895) a distance of 35.00 feet to a point at the southwesterly corner of Lot 1, Block 2, Rubin Heights Unit One recorded in Volume 37, Page 8 with the El Paso County Plat Records;

Thence with the southerly line of said lot, North $85^{\circ}08'41''$ East (North $85^{\circ}04'36''$ East, Bk. 3019, Pg. 1895) a distance of 665.73 feet (665.94 feet, Bk. 3019, Pg. 1895) to a point;

Thence continuing with the southerly line of said lot, North $68^{\circ}51'17''$ East (North $68^{\circ}47'14''$ East, Bk. 3019, Pg. 1895) a distance of 480.17 feet to a point at the common line between I.F. Harrison No. 54 and A.F. Miller Survey No. 215;

Thence with said common line, North $00^{\circ}50'42''$ East (North $00^{\circ}48'15''$ East, Bk. 3019, Pg. 1895) a distance of 23.28 feet to a point;

Thence continuing with said common line, North $00^{\circ}48'05''$ East (North $00^{\circ}45'38''$ East, Bk. 3019, Pg. 1895) a distance of 22.00 feet to a point on the southerly line of Fiesta Hills Addition Unit Three recorded in Volume 19, Page 28 with the El Paso County Plat Records;

Thence along the southerly line of said Fiesta Hills Addition Unit Three, North $77^{\circ}12'38''$ East (North $77^{\circ}10'11''$ East, Bk. 3019, Pg. 1895) a distance of 1,463.16 feet (1463.37 feet, Bk. 3019, Pg. 1895) to a point on the westerly line of Fiesta Hills Addition Unit Four recorded in Volume 52, Page 11, of the El Paso County Plat Records;

Thence with said westerly line, South $00^{\circ}48'00''$ West (South $00^{\circ}46'56''$ West, Bk. 3019, Pg. 1895) a distance of 260.73 feet (260.49 feet, Bk. 3019, Pg. 1895) to a point at the southwest corner of Lot 36, Block 3, Fiesta Hills Addition Unit Four;

Thence with the south line of said Lot 36, South 89°55'57" East (South 89°57'01" East, Bk. 3019, Pg. 1895) a distance of 153.24 feet to a point on the northerly right of way of New Orleans Drive;

Thence, South 00°04'03" West (South 00°02'59" West, Bk. 3019, Pg. 1895) a distance of 171.00 feet (171.16 feet, Bk. 3019, Pg. 1895) to a point at the north line of Tract 1, J. Barker Survey No. 10 as described by Book 1177, Page 0599 recorded with the El Paso County Deed Records;

Thence along said line South 89°10'00" East a distance of 985.14 feet to the "TRUE POINT OF BEGINNING and containing 201.26 acres of land more or less.

Note: Not a ground survey, Bearings basis on plat of Montecillo Unit Three Amending Plat recorded in clerks file no. 20090065237, Real property records of El Paso County, Texas.




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

Job # 311-22

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVER SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283 FAX (915) 592-0286

Being Lot 1, Block 3, Kings Hill Replat
And Tract 4A, 6G and a portion of Tract 6A,
A.F. Miller Survey No. 216, And Tract 21,
John Barker Survey No. 10
City of El Paso, El Paso County, Texas
Prepared for: EPT
March 14, 2011
(Parcel 3)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 1, Block 3, Kings Hill Replat and Tracts 4A, 6G and a Portion of Tract 6A, A.F. Miller Survey No. 216 and Tract 21, John Barked Survey No. 10, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found city monument at the centerline intersection of Argonaut Drive and Kingspoint Drive thence along the centerline of Kingspoint Dr., South 89°09'56" West a distance of 150.00 feet to a point; Thence leaving said centerline North 00°50'04" West a distance of 30.00 feet to a point on the northerly right of way line of Kingspoint Dr. for The "TRUE POINT OF BEGINNING";

Thence leaving said right of way line North 00°50'04" West a distance of 151.58 feet to a point on the line between Tracts 6F and 6G;

Thence along said line South 89°09'56" West a distance of 242.35 feet to a point;

Thence along said line South 60°09'56" West a distance of 877.00 feet to a point;

Thence South 58°48'50" West a distance of 114.48 feet to a point;

Thence South 41°09'56" West a distance of 115.13 feet to a point;

Thence South 28°29'56" West a distance of 115.13 feet to a point;

Thence South 22°09'56" West a distance of 153.07 feet to a point;

Thence South 12°00'00" East a distance of 130.00 feet to a point;

Thence South 35°50'16" East a distance of 120.36 feet to a point on the common boundary line of tracts 6A and lot 11, Block 1, Kings Hills;

Thence along said boundary line South 42°56'56" East a distance of 297.80 feet to a point;

Thence continuing along said boundary line South 60°31'49" East a distance of 150.09 feet to a point on the westerly right of way line of Argonaut Drive;

Thence along said right of way line South 31°26'17" West a distance of 43.20 feet to a point on the southerly boundary line of tract 6A, A.F. Miller Survey No 216;

Thence along said boundary line North $89^{\circ}28'41''$ West a distance of 551.99 feet to a point on the easterly right of way line of Mesa Street;

Thence along said right of way line the following three courses

North $33^{\circ}51'53''$ West a distance of 483.84 feet to a point;

North $22^{\circ}47'47''$ West a distance of 127.04 feet to a point;

North $15^{\circ}17'53''$ West a distance of 923.26 feet to a point;

Thence 31.42 feet along the arc of a curve to the left whose interior angle is $90^{\circ}00'00''$ whose radius is 20.00 feet whose chord bears South $60^{\circ}17'53''$ East a distance of 28.28 feet to a point on the common boundary line of tract 4A, A.F. Miller Survey No. 216 and Mesa Hills Unit Fifteen recorded in volume 61, page 66, Plat records of El Paso County, Texas;

Thence along said boundary line North $74^{\circ}42'07''$ East ($N75^{\circ}16'56''E$ vol. 61, pg. 66) a distance of 97.77 feet to a point on the easterly boundary line of Mesa Hills Unit 15;

Thence along the easterly boundary line of Mesa Hills Unit 15 the following Six Courses

North $00^{\circ}15'38''$ East ($N00^{\circ}50'27''E$ vol. 61, pg. 66) a distance of 747.02 feet to a point;

68.76 feet along the arc of a curve to the left whose interior angle is $13^{\circ}07'54''$ whose radius is 300.00 feet whose chord bears North $27^{\circ}11'01''$ East a distance of 68.61 feet to a point;

North $20^{\circ}37'09''$ East ($N21^{\circ}11'58''E$ vol. 61, pg. 66) a distance of 33.96 feet to a point;

101.08 feet along the arc of a curve to the right whose interior angle is $18^{\circ}14'24''$ whose radius is 317.50 feet whose chord bears North $29^{\circ}44'21''$ East a distance of 100.65 feet to a point;

North $38^{\circ}51'30''$ East ($N39^{\circ}26'19''E$ vol. 61, pg. 66) a distance of 334.47 feet to a point;

39.51 feet along the arc of a curve to the left whose interior angle is $07^{\circ}32'47''$ whose radius is 300.00 feet whose chord bears North $35^{\circ}05'07''$ East a distance of 39.48 feet to a point;

Thence South $89^{\circ}43'19''$ East ($S89^{\circ}08'30''W$ vol. 76, pg. 48) a distance of 1730.88 feet to a point on the westerly boundary line of an 75 feet El Paso Electric Company right of way;

Thence along said right of way line South $00^{\circ}50'04''$ East a distance of 883.05 feet to a point;

Thence South $89^{\circ}02'02''$ West a distance of 1.83 feet to a point on the easterly line of lot 1, Block 9, Kings Hill Replat;

Thence along said line South $00^{\circ}50'04''$ East a distance of 501.39 feet to a point on the northerly right of way line of Kingspoint Dr.

Thence along said right of way line South 89°09'56" West a distance of 80.00 feet to a point;

Thence along said right of way line 31.42 feet along the arc of a curve to the left whose interior angle is 90°00'00" whose radius is 20.00 feet whose chord bears South 44°09'56" West a distance of 28.28 feet;

Thence along said right of way line South 89°09'56" West a distance of 100.00 feet to the "TRUE POINT OF BEGINNING" and containing 83.91 acres of land more or less.

NOTES:

- 1) Bearings based on centerline monumentation of Argonaut Drive as shown on plat of Kings Hill recorded in volume 23, page 41, Plat Records of El Paso County, Texas


Ron R. Conde
R.P.L.S. No. 5152
Job No. 311-22



EXHIBIT B

[Grant Submittal Package Form]

Applicant believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ___ day of _____, 20___ and signed by _____. Pursuant to the Agreement, **Applicant** submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

1. Property Tax Payment Receipt(s) of payment for tax year _____ not previously submitted.
2. Qualified Expenditures to date.
3. Copy of ordinance evidencing Smart Code Zoning for property defined by Exhibit "A-1". (Only required upon first submission of Grant Submittal Package).
4. List of current PID's within the geographic boundaries of the area defined by metes and bounds on Exhibit "A-1"

It is understood by **Applicant** that the City of El Paso has up to ninety (90) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

APPLICANT:

EPT Mesa Development, L.P.
A Delaware limited partnership

By its General Partner
EPT MESA DEVELOPMENT MANAGEMENT, LLC
A Delaware Limited Liability Company

By its Manager
EPT Land Management, LLC
A Texas Limited Liability Company

By its Manager
Mountain Sunshine, LLC
A Texas Limited Liability Company

By: _____
Richard Aguilar, Manager

Exhibit C
Qualified Expenditures

Qualified expenditures are those horizontal infrastructure improvements within the Development that are located in the public right of way or are dedicated to the City of El Paso for public use including: water, water facilities, sanitary sewer, sanitary sewer facilities, storm drainage, roadway improvements, bridge facilities, pond facilities, ponds, parks, park facilities, sidewalks, landscaping, and streetscape. Qualified Expenditures may also include costs to design, construct and/or install the aforementioned horizontal infrastructure; engineering and surveying; and all hard costs and the soft costs related to design, construction, installation of such horizontal infrastructure improvement projects, as determined by the City and to include land acquisition costs to the extent the land acquisition costs for any land for horizontal infrastructure required under Smart Code provisions in excess of land required to be dedicated absent Smart Code zoning. The proposed horizontal infrastructure improvements and their anticipated associated cost for the Development are shown summarized below:

Water Facilities	\$2,554,232
Sanitary Sewer Facilities	\$2,177,535
Storm Sewer Facilities	\$2,001,677
Road Facilities	\$7,812,353
Bridge Facility	\$2,599,307
Pond Facilities	\$1,210,715
Park Facilities	\$1,834,483
Lift Station/Offsite Sewer	\$1,143,741
<i>Contingency</i>	\$1,529,083
Total:	\$22,863,126

Exhibit D - Preliminary Regulating Plan (Attached)

Exhibit D

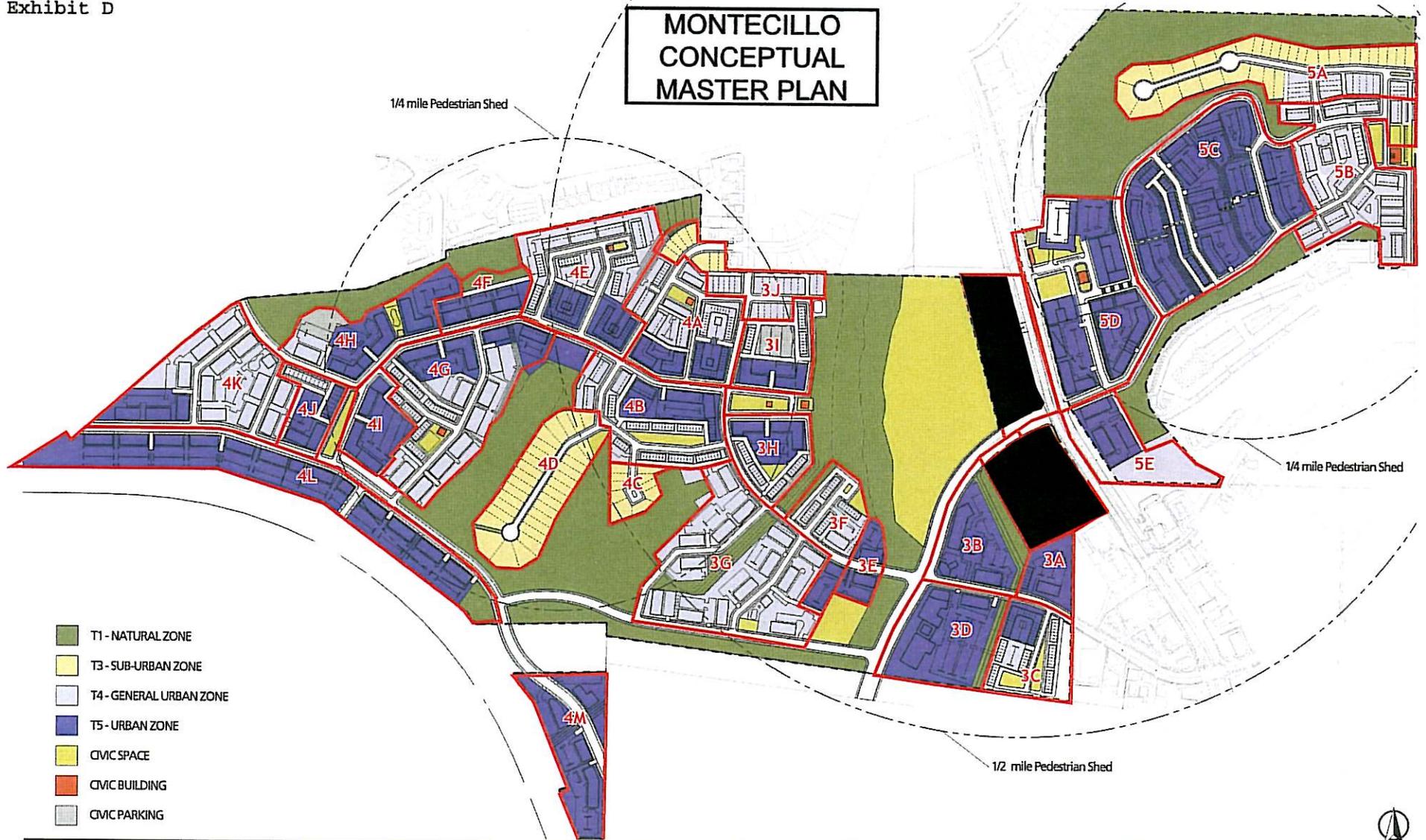


Exhibit E – Total Estimated Valuation of Development

<i>Year</i>	<i>Valuation</i>
2017	\$ 382,100,103
2022	\$ 710,202,098
2027	\$ 728,135,501