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

DEPARTMENT: Development Services Department

AGENDA DATE: Intro on 6/6/06 and final Public Hearing on 6/20/06

CONTACT PERSON/PHONE: Rudy Valdez/4635

DISTRICT(S) AFFECTED: 5

SUBJECT:
An Ordinance annexing a portion of Section 45 and 46, Block 79, Township 2, Texas & Pacific Railroad Company Surveys, El Paso County, Texas to the City of El Paso, Texas.

BACKGROUND / DISCUSSION:
This ordinance proposes to annex 318.994 acres into the El Paso City Limits. The owner/developer proposes a mix development that includes residential, parks, commercial, and apartment and school uses. GSA Limited Partnership is the current owner of the property. The annexation is subject to an Annexation Agreement and Service Plan that are part of the annexation ordinance.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

City Plan Commission and Development Coordinating Committee recommended approval.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE ANNEXING A PORTION OF SECTION 45 AND 46, BLOCK 79, TOWNSHIP 2, TEXAS & PACIFIC RAILROAD COMPANY SURVEYS, EL PASO COUNTY, TEXAS TO THE CITY OF EL PASO, TEXAS.

WHEREAS, GSA Limited Partnership owners of approximately 318.994 acres, lying in the City of El Paso's East Extraterritorial Jurisdiction, and is contiguous to the current City limits boundary; the property more fully described in the attached metes and bounds description, identified as Exhibit "A" and made a part hereof by reference, request that this area be annexed into El Paso's city limits; and,

WHEREAS, the attached Service Plan, described as Exhibit "B", identifies the municipal services to be extended to this annexed area and adopted as part of this ordinance; and,

WHEREAS, this annexation is subject, however, to certain conditions identified on the attached agreement described as Exhibit "C"; such agreement being by and between the City of El Paso, Texas, and GSA Limited Partnership.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the boundary of the city limits of the *CITY OF EL PASO* is hereby extended so as to annex and include the territory described in Exhibit "A" lying adjacent to the city limits as they are at present established. Further, that the City adopts the Service Plan described as Exhibit "B"; and that the annexation is subject to all terms and conditions cited in the Annexation Agreement, attached as Exhibit "C", by and between the City of El Paso, Texas and GSA Limited Partnership, and that the City Manager is authorized to sign same Agreement.

PASSED AND APPROVED THIS _____ day of _____, 2006.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Carolyn J. Crosby
Assistant City Attorney

APPROVED AS TO CONTENT:

Rodolfo Valdez, Chief Urban Planner
Development Services Department

Doc#22679

ORDINANCE NO._____

AN97002

PROPERTY DESCRIPTION
318.994 Acres

Being the description of a portion of Sections 45 and 46, Block 79, Township 2, Texas & Pacific Railroad Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found 2 inch iron pipe in concrete marked (40-39-45-46) at the Northwest corner of said Section 46 and a found 2 inch iron pipe in concrete marked (45-46-4-3) at the Southwest corner of said Survey 46 bears, South 00°33'12" East, 5234.81 feet (bearing base);

THENCE, along the West line of said Survey 46, South 00°33'12" East, a distance of 2766.51 feet to a set ½ inch rebar marked (Tx2027) at the Northwest corner of Tract 1, said Survey 46 in the South line of a 150 feet El Paso Electric Company Right-of-Way and **POINT OF BEGINNING** for the herein described tract;

THENCE, leaving said West Section line and along the South line of said El Paso Electric Company Right-of-Way, South 89°59'39" East, a distance of 5310.64 feet to a set ½ inch rebar marked (Tx2027) at the Northeast corner of said Tract 1 in the East line of said Section 46 and a found 2 inch iron pipe in concrete marked (39-38-46-47) at the Northeast corner of said Section 46 bears, North 00°35'50" West, 2771.11 feet;

THENCE, along the East line of said Section 46, South 00°35'50" East, a distance of 2464.14 feet to a found 2 inch iron pipe in concrete marked (46-47-3-2) at the Southeast corner of said Section 46;

THENCE, along the South line of said Section 46, South 89°57'39" West, at 5312.48 feet pass said found 2 inch iron pipe in concrete marked (45-46-4-3) at the Southwest corner of said Section 46, in all a distance of 5612.49 feet to a set ½ inch rebar marked Tx2027) in the West line of Tract 2B, said Survey 45;

THENCE, along the West line of said Tract 2B, North 00°33'12" West, a distance of 2625.19 feet to a set ½ inch rebar marked (Tx2027);

THENCE, North 89°26'48" East, a distance of 30.50 feet to a set ½ inch rebar marked (Tx2027);

THENCE, North 00°33'12" West, a distance of 66.00 feet to a set ½ inch rebar marked (Tx2027) in the Southeasterly right-of-way line of Zaragosa Road (100 feet wide);

THENCE, along said right-of-way line, North 42°32'00" East, a distance of 240.81 feet to a set ½ inch rebar marked (Tx2027);

THENCE, leaving said right-of-way line, South 00°33'12" East, a distance of 400.63 feet to a set ½ inch rebar marked (Tx2027);

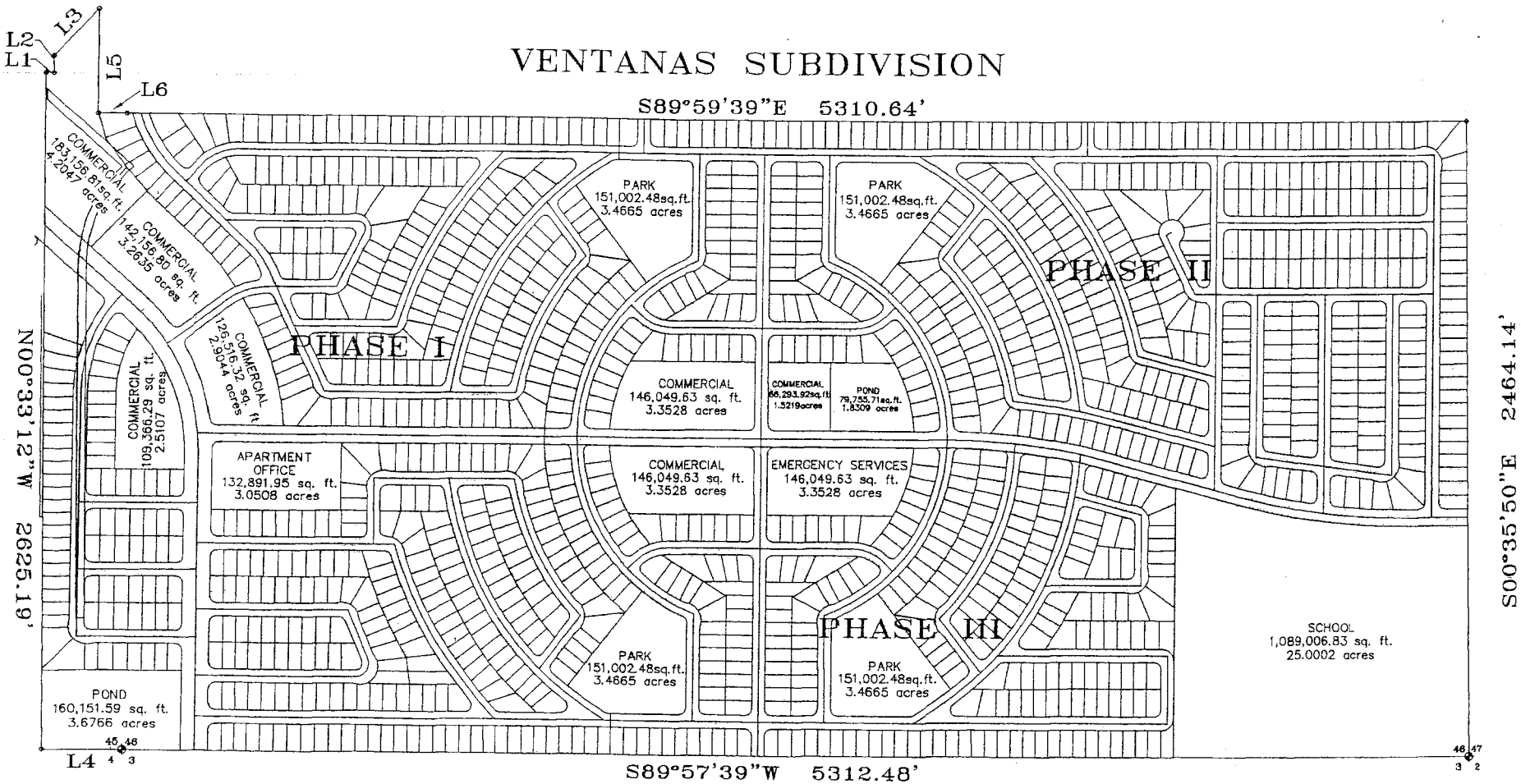
THENCE, South 89°59'39" East, a distance of 105.01 feet to the **POINT OF BEGINNING** and containing **318.994 acres** of land.

This description was prepared from a survey made on February 29, 2000 with a plat of same date.

PREPARED BY:
Cutts Land Surveying, Inc.
El Paso, Texas
December 21, 2005
Job No. 051210

Exhibit A

VENTANAS SUBDIVISION



SCALE 1" = 200'

LINE TABLE		
LINE	LENGTH	BEARING
L1	30.50	N89°26'48"E
L2	66.00	N00°33'12"W
L3	240.81	N42°32'00"E
L4	300.01	N90°00'00"W
L5	400.63	S00°33'12"E
L6	105.01	S89°59'39"E

ATCON
Engineering & Surveying
10950 PELLICANO DRIVE SPACE F 79935
ATCONENGINEERING@SBCGLOBAL.NET
PH. (915) 592-9878 FAX (915) 592-2134

Exhibit "B"

CITY OF EL PASO
ANNEXATION SERVICE PLAN

INTRODUCTION

This Service Plan (Plan) is made by the City of El Paso, Texas (City) pursuant to Chapter 43 of the Texas Local Government Code. This Plan is made specifically for a 318.994-acre property located in the City's East Extraterritorial Jurisdiction (ETJ). The area includes a portion of Sections 45 and 46, Block 79, Township 2, Texas and Pacific Railroad Survey, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit, "A" which is attached to the annexation ordinance for which this Plan is a part.

EFFECTIVE TERM

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council which refers to this Plan and specifically renews this Plan for a stated period of time.

INTENT

It is the intent of the City of El Paso that services under this Plan shall provide full municipal services in accordance with State law and the Annexation Agreement entered into by the property owners and the City, such Agreement being identified as Exhibit "C" and is attached to the annexation ordinance.

The City reserves the right guaranteed to it by Section 43.056(h) Texas Local Government Code, to amend this Plan if the City Council determines that changed conditions or subsequent occurrence or any other legally sufficient circumstances exist under the Local Government Code, or other Texas laws to make this Plan unworkable or obsolete or unlawful.

SERVICE COMPONENTS

This Plan includes three service components: (1) Immediate Services Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities; governmental entities and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

1. Immediate Services Program

The following services will be provided in the annexation area immediately upon the effective date of the annexation, unless otherwise noted.

a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:

EXHIBIT "B"

- normal patrols and responses;
- handling of complaints and incident reports;
- special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.

b. Fire Protection. The El Paso Fire Department will provide emergency and fire prevention services in the annexation area, on the effective date of annexation. These services include:

- fire suppression and rescue;
- emergency medical services;
- hazardous materials mitigation and regulation;
- emergency prevention and public education efforts;
- construction plan review;
- inspections.

c. Solid Waste Collection. The El Paso Solid Waste Management Department will provide solid waste collection services in the annexation area on the effective date of annexation. Services currently provided in the City for single-family residences include:

- garbage collection - once a week in accordance with established policies of the City;
- dead animal collection - dead animals are removed from roadways upon request.

Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.

d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.

e. Maintenance of Roads and Streets, Including Street Lighting. The City's Public Works Department will maintain public streets over which the City has jurisdiction. These services include:

- emergency pavement repair;
- ice and snow monitoring of major thoroughfares
- repair maintenance of public streets on as-needed basis and in accordance with established policies of the City.

f. Maintenance of Parks, Playgrounds, and Swimming Pools. There are no public recreation facilities in the annexation area but the City will provide maintenance of such facilities as they become available.

2. Additional Services

Certain services, in addition to the above services, will be provided within the annexation area. They are as follows:

a. Drainage Services. The City's Street Department will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:

- maintenance of existing public ponding areas and retention dams;
- storm sewer maintenance;
- watershed development review and inspection;
- emergency spills and pollution complaints response;
- flood plain office (information relating to flood plains).

b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.

c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.

d. City-County Health Department. All of the City-County Health services codes and regulations will be extended to the annexed area on the effective date of annexation

e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation. All land annexed shall be classified in the R-3 zoning district pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council. Such hearing shall be held within sixty days after the effective date of annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing.

f. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

3. Capital Improvements Program

The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary. Any such construction or acquisition shall begin within two years of the effective date of the annexation and shall be substantially completed within 4 1/2 years after that date. Construction of any capital improvement within the annexation area will be done accordance with the established policies of the City.

a. Police Protection. No capital improvements are necessary at this time to provide Police services but may be necessary in the future.

b. Fire Protection. No capital improvements are necessary at this time to provide Fire services but may be necessary in the future.

c. Solid Waste Collection. No capital improvements are necessary at this time to provide collection services but may be necessary in the future.

d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area.

Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in accordance with the adopted Rules and Regulations of the El Paso Water Utilities.

e. Roads and Streets. No road or street related capital improvements are necessary at this time but may be necessary in the future. In general, the City will acquire control and jurisdiction of all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.

f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services but may be necessary in the future.

g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future.

h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area upon request in accordance with established street lighting policies of the City.

i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.

j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City.

AMENDMENT: GOVERNING LAW

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules regulations of governmental bodies and officers having jurisdiction.

FORCE MAJEURE

In case of an emergency, such as force majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the annexation area of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the

public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

EXHIBIT "C"
ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this _____ day of 2006, by and between the **City of El Paso**, Texas, a Municipal Corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), and **GSA Limited Partnership** (hereinafter referred to as "Owner");

WHEREAS, Owner is the owner of record of the real property described in Exhibit "A", which is attached hereto and made a part hereof (which real property is hereinafter referred to as "Property"), and which real estate is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and

WHEREAS, Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and

WHEREAS, Owner(s), after full consideration, accept(s) the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and

WHEREAS, the City, after due and careful consideration, has concluded that the annexation of the Property on the terms and conditions hereinafter set forth is in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

One: The City agrees to annex the Property in accordance with the terms and conditions of this Agreement, provided that the terms and conditions of this Agreement are met by the Owner.

Two: Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement.

Three: Owner hereby agrees that the development of any portion of the Property shall be in accordance with a proposed Detailed Site Development Plan (the "Development Plan") as shown on Exhibit "B", which is attached hereto and made a part hereof. In addition a land study for the Property may still be required in accordance with the provisions of Title 19 (Subdivisions) of the El Paso City Code (the "Code").

AN97002

Amendments to the Development Plan may become necessary due to changes in market conditions or other factors. In order to provide flexibility with respect to certain details of the development of the Property, Owner may seek changes in the location and configuration of the proposed uses and streets shown on the Development Plan. Minor modifications to the Plan which do not significantly alter the arrangement of land use, and does not increase the density or relocate major circulation elements or decrease the landscaped area or open space or materially alter the plan or concept for the planned development may be approved administratively by the Director of Development Services. Modifications requested and required by a governmental entity shall be considered minor modifications and may be approved administratively. Major modifications to Exhibit B shall require approval by the El Paso City Council.

Four: Owner hereby agrees that prior to the issuance of any building permits or certificates of occupancy within the Property, Owner shall apply for and secure approval of a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

Five: Immediately upon passage of the ordinance annexing Property, the Property shall automatically be classified as R-F (Ranch and Farm) in accordance with Section 20.08.060 of the Code, pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council as provided in the case of amendment in Sections 20.04.340 through 20.04.380 and 20.04.400. Such public hearing shall be held within sixty days after the effective date of any such annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing. A public hearing by the City Plan Commission on the appropriate zoning classification for a newly annexed parcel, as required by Sections 20.04.340 through 20.04.380 and 20.04.400, may be held jointly with the public hearing required for annexation; provided, that the Commission complies with all the procedures required for each public hearing.

Six: Owner(s) agree(s) to provide for the dedication and improvement of public neighborhood parkland or provide fees based on the requirements of Title 19 (Subdivisions) of the Code. The exact location of the parcel(s) shall be determined as part of the Development Plan required under Paragraph Three of this Agreement, and to the extent possible park sites should be co-located in order to create larger neighborhood park sites. An application for off-site dedication of the parkland shall be filed by the Owner(s), pursuant to the requirements of Title 19 (Subdivisions) of the Code, within sixty (60) days of the land study approval by the City.

Seven: Owner(s) agree(s) to provide for the dedication of an adjunct site of real property within the Property for use by the City solely for public purposes, such as open space, parkland, municipal offices, storage, police, fire and EMS protection, or other municipal operations, necessitated by the development of the Property; and identified as part of the approved attached Development Plan described in Paragraph Three of this Agreement. An application for metes and bounds dedication of the real property shall be filed by the Owner(s), pursuant to the requirements of Title 19 (Subdivisions) of

the Code, with the Subdivision Coordinator for approval by the City within sixty (60) days of the effective date of this Agreement.

Eight: Owner shall dedicate, construct and maintain for a one-year period after acceptance by the City the improvements for the full width of the necessary right-of-way for extensions of any arterial streets as shown in the City's official Major Thoroughfare Plan ("MTP") as of the Effective Date. Except as hereinafter set forth, Owner shall not request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City. Owner shall not be obligated to dedicate, construct, and maintain the improvements to the right-of-way for arterial streets added to the City's MTP after the Effective Date or not shown in the attached Road Plan, unless the MTP is amended at the request of the Owner and results in the addition or upgrade of the status of the arterial street. If the City amends the MTP with respect to the Property, after the Effective Date, then the Owner may request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City.

Nine: Owner agrees to set aside for future acquisition by the City any real property necessary for other public improvements and facilities, not necessitated solely by the development of the Property, and identified as part of the approved land study described in Paragraph Three of this Agreement. The City shall have five (5) years from the date of the land study approval or any amendments thereto, to finalize such acquisition of real property within the Property.

Ten: Owner agrees to pay a water and wastewater connection fee to the El Paso Water Utilities-Public Service Board for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system as follows:

Meter Size	***Water (in Dollars)***	***Wastewater (in Dollars)***
5/8" x ¾"	583	338
1"	1,438	833
1 ½"	2,915	1,689
2"	4,664	2,703
3"	9,328	5,405
4"	14,575	8,446
6"	29,149	16,892
8"	54,412	31,531
10"	77,731	45,045

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No. 1, Sec. 7 (J)

The water and wastewater connection fee shall be increased by three (3) percent on March 1, 2007, and each year thereafter, compounded annually. Payment of the water and wastewater connection fee shall be due at the time of application for water and wastewater connection to the system.

AN97002

In addition, the Owner shall provide and dedicate land to the PSB for PSB's sole use consisting of approximately two and a half (2.5) acres within the Property for the purpose of a water reservoir site. The Owner shall coordinate the exact size and location of the water reservoir site with the PSB, which shall be identified in the land study and subdivision plat.

Eleven: Owner(s) shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner(s) within thirty (30) days from passage of the ordinance annexing Property to the City. The aerial and other evidence shall be submitted to the Zoning Administrator in the Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property.

Twelve: Owner ensures that facilities and services of sufficient capacity, whether public or private, shall be provided as attributable to any development within the Property.

Notice: Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

(1)	CITY:	City of El Paso Attn: City Manager 2 Civic Center Plaza El Paso, Texas 79901
	Copy to:	City Clerk Same Address as above
(2)	OWNER:	GFA Limited Partnership. Attn: Albert Gamboa 1525 Goodyear El Paso, Texas 79936

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday,

AN97002

and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land use regulations that may apply to a specific lot.

Remedies: This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained.

In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty (30) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance a the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inabilities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Owner to be material to the overall purpose and operation of this Agreement. If the City or Owner determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to disannex the Property. If the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such

judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

Entire Agreement: This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

Governing Law, Jurisdiction & Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

No Third Party Beneficiary: This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

Waiver: Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Reservation of Rights: to the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Further Documents: Each Party agrees that at any time after execution of this Agreement, it will upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement.

Incorporation of Exhibits and Other Documents by Reference: All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Effect of State and Federal Laws: Notwithstanding any other provisions of this Agreement, each Party shall, in carrying out the terms of this Agreement, comply with all applicably State and Federal laws.

Headings: The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

Ambiguities: In the even of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

Counterparts: It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

Authority for Execution: Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

THE CITY OF EL PASO

_____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

Carolyn J. Crosby
Assistant City Attorney

APPROVED AS TO CONTENT:

Rodolfo Valdez, Chief Urban Planner
Development Services Department

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2006, by Joyce Wilson, as City Manager of the City of El Paso, Texas.

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

_____

My Commission Expires:

AN97002

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2006.

Owner(s): GFA Limited Partnership, by GFA General LC, its General Partner, by the undersigned manager of GFA General LC.

By: _____
Albert Gamboa

Title: Manager of GFA General L.C.

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 16th day of JUNE, 2006, by Albert Gamboa, on behalf of GFA Limited Partner, as manager of GFA General LC, its general partner.

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

_____

My Commission Expires:

CAROL R. GONZALEZ
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 29, 2007

_____

AN97002