

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

DEPARTMENT: Financial Services
AGENDA DATE: January 22, 2008
CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074
DISTRICT(S) AFFECTED: 8



SUBJECT:

That the City Manager be authorized to sign a Contract of Sale and all other necessary documents, in a form approved by the City Attorney's Office, conveying the following property to Mills Acquisition Company LP, n/k/a Mills Plaza Properties LP:

11,057 square feet, more or less, being a portion of Block 17, Anson Mills Map of the City of El Paso, El Paso County, Texas, commonly known as 319-327 Oregon Street, and being more particularly described by metes and bounds in Exhibit "A," attached hereto and made a part hereof for all purposes,

BACKGROUND / DISCUSSION:

This property was identified as a key driver to economic development in the El Paso Downtown area. It is located in the Central Business District and is surrounded by office, museum, theatre, and convention improvements. The City believes that development of a structure that contains parking, retail and office space or a combination thereof, is the highest and best use of the property.

Sun Metro, the City's Mass Transit Department is currently using the facility on the site as a ticket office. The City is planning to relocate the services within this facility to another City location. The proposed timeline to relocate the ticket office is approximately one year.

PRIOR COUNCIL ACTION:

Yes, Sale of city owned property

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

On October 2, 2007, Council moved to solicit bids on this property with conditions of sale.

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

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

DEPARTMENT HEAD: Carmen Quintanilla Cardelana
(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:** _____

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO SELL 11,057 SQUARE FEET, MORE OR LESS, BEING A PORTION OF BLOCK 17, ANSON MILLS MAP OF THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, COMMONLY KNOWN AS 319-327 OREGON STREET, TO MILLS ACQUISITION COMPANY LP n/k/a MILLS PLAZA PROPERTIES LP.

WHEREAS, the City of El Paso staff has recommended the sale of 11,057 square feet, more or less, being a portion of Block 17, Anson Mills Map of the City of El Paso, El Paso County, Texas, commonly known as 319-327 Oregon Street; and

WHEREAS, the City of El Paso has received an independent appraisal as the market value of its interest in the identified property; and

WHEREAS, in accordance with Section 272.001 of the Texas Local Government Code, the City of El Paso advertised and solicited bids for the purchase of the identified property; and

WHEREAS, Mills Acquisition Company LP, n/k/a Mills Plaza Properties LP, is the highest bidder and submitted a bid of \$451,000.00, which amount includes additional fees for an appraisal and a survey incurred by the City to sell the identified property,

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

That the City Manager be authorized to sign a Contract of Sale and all other necessary documents, in a form approved by the City Attorney's Office, conveying the following property to Mills Acquisition Company LP, n/k/a Mills Plaza Properties LP:

11,057 square feet, more or less, being a portion of Block 17, Anson Mills Map of the City of El Paso, El Paso County, Texas, commonly known as 319-327 Oregon Street, and being more particularly described by metes and bounds in Exhibit "A," attached hereto and made a part hereof for all purposes,

PASSED AND APPROVED this _____ day of _____, 2008.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Momsen
City Clerk

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

APPROVED AS TO CONTENT:

Gonzalo Cedillos
Gonzalo Cedillos
Capital Assets Manager

08 JAN 14 PM 3:42
CITY CLERK DEPT.

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney, Deputy City Attorney

DORADO ENGINEERING INC.

2717 E Yandell El Paso, Texas 79903 (915) 562-0002 Fax (915) 562-7743

**Mills Addition
Block 17**

Metes and Bound description of a parcel of land being a portion of Block 17, Mills Addition out of the City of El Paso, County of El Paso, Texas and being more particularly described as follows;

From a chiseled "x" located at the point of intersection of the Westerly Right-of-Way line of Oregon Street and the Southerly Right-of-Way line of Main Avenue, said marked point being the Point of Beginning for this parcel of land;

Thence South 37° 15' 00" East along said Right-of-Way line of Oregon Street, a distance of one hundred and no hundredths (100.00) feet to a corner, said corner being the Southeasterly corner of this parcel;

Thence South 52° 45' 00" West a distance of one hundred twenty one and seventy seven hundredths (121.77) feet to corner said corner being the Southwesterly corner;

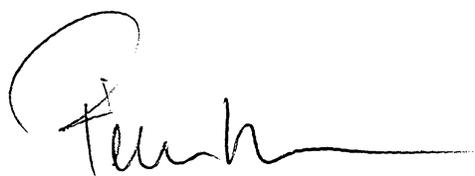
Thence North 37° 15' 00" West a distance of thirty three and seven hundredths (33.07) feet to a point;

Thence North 09° 05' 00" West a distance of fifty six and thirty four hundredths (56.34) feet to a point;

Thence North 37° 15' 00" West a distance of seventeen and twenty six hundredths (17.26) feet to a corner, said corner being the Northwesterly corner and also lying on the Southerly Right-of-Way line of Main Avenue;

Thence continuing along said Right-of-Way line of Main Avenue North 52° 45' 00" East a distance of ninety five and eight hundredths (95.08) feet to a corner, said corner being the Northeasterly corner and also the Point of Beginning.

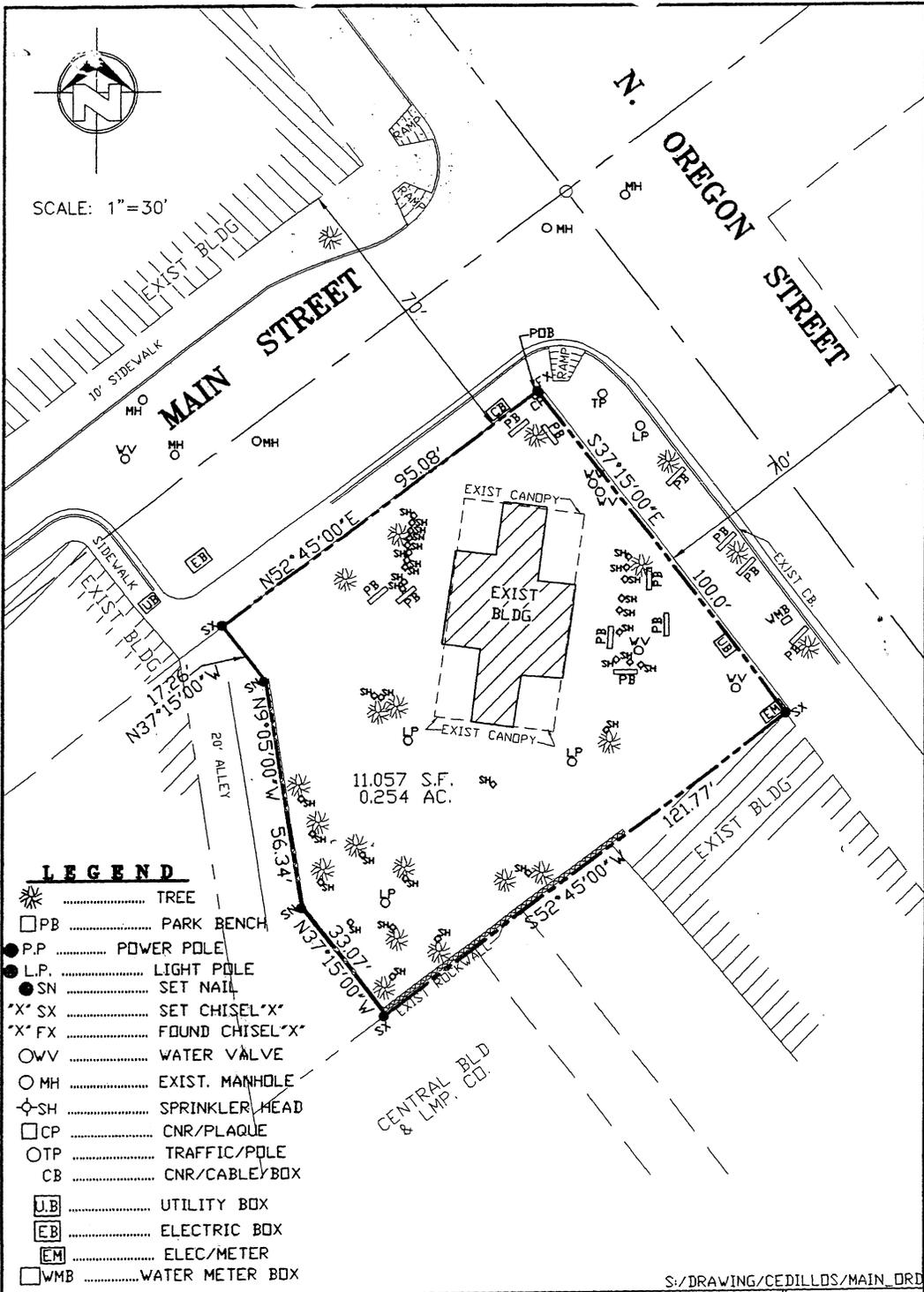
Said parcel of land contains 11,057 square feet or 0.254 acres of land more or less.



Fermin Dorado R.P.L.S.



August 29, 2007



SCALE: 1"=30'

LEGEND

- TREE
- PB PARK BENCH
- P.P. POWER POLE
- L.P. LIGHT POLE
- SN SET NAIL
- *X* SX SET CHISEL *X*
- *X* FX FOUND CHISEL *X*
- OWV WATER VALVE
- MH EXIST. MANHOLE
- SH SPRINKLER HEAD
- CP CNR/PLAQUE
- OTP TRAFFIC/POLE
- CB CNR/CABLE/BOX
- U.B UTILITY BOX
- E.B ELECTRIC BOX
- E.M ELEC/METER
- WMB WATER METER BOX

11,057 S.F.
0.254 AC.

S:/DRAWING/CEDILLDS/MAIN_DRD

THIS IS TO CERTIFY THAT THIS PLAT REPRESENTS AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY SUPERVISION.

333 N. OREGON STREET
MILLS ADDITION
PART OF BLOCK 17
CITY OF EL PASO, EL PASO COUNTY, TEXAS

DORADO
ENGINEERING, INC.

ENGINEERS SURVEYORS PLANNERS
2717 E. YANDELL, EL PASO, TEXAS 79903 (915)562-0002

DATE: 08/29/07
SCALE: 1" = 30'
DRAWN BY: S.G.
CHECKED BY: FD
FLOOD ZONE: C
PANEL NUMBER: 480214-0039B
DATED: 10/15/82

**ASSIGNMENT OF
PROPOSED BID AWARD**
[Metro Bus Booth]

 THIS ASSIGNMENT OF PROPOSED BID AWARD (this "Assignment") is made and entered into this 29 day of January, 2008, by and between **MILLS PLAZA PROPERTIES LP**, a Texas limited partnership (f/k/a Mills Acquisition Company LP) ("Assignor"), and **MILLS PLAZA PARKING LP**, a Texas limited partnership ("Assignee"). Assignor and Assignee are sometimes referred to herein collectively as the "Parties".

RECITALS

A. Pursuant to the terms and conditions of Solicitation 2008-028, the City of El Paso awarded to Assignor the right to enter into a Contract of Sale (the "**Bid**") for the purchase and sale of 11,057 square feet, more or less, being a portion of Block 17, Anson Mills Map of the City of El Paso, El Paso County, Texas, commonly known as 319-327 Oregon Street, El Paso, El Paso County, Texas, as more particularly described in the Bid.

B. The Parties desire to enter into this Assignment to, among other things, assign the Assignor's rights and interests in the Bid to Assignee and to evidence Assignee's assumption of Assignor's obligations and liabilities under the Bid.

ASSIGNMENT:

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assignment of the Bid. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and to the Bid. Assignee hereby releases Assignor and waives any and all claims Assignee may have against Assignor with respect to the Bid.

2. Assumption. Assignee hereby acknowledges and agrees to all of the terms of the Bid and accepts the foregoing assignment and assumes and agrees to perform all obligations of Assignor under the Bid in accordance with the terms thereof. Except as otherwise set forth herein, Assignor is hereby released from any and all obligations and liabilities with respect to the Bid.

3. Ratification of Agreement. The Parties hereby ratify and affirm the terms and provisions of the Bid in their entirety. Assignor hereby affirms and represents to Assignee that prior to the date hereof, Assignor has not assigned the Bid.

Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas.

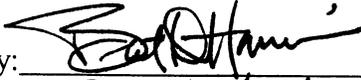
[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the day and year first above written.

ASSIGNOR:

MILLS PLAZA PROPERTIES LP,
a Texas limited partnership

By: FML Acquisition GP LLC,
a Texas limited liability company
Its: General Partner

By: 
Name: Brent D. Harris
Title: V.P.

ASSIGNEE:

MILLS PLAZA PARKING LP,
a Texas limited partnership

By: FML Acquisition GP LLC,
a Texas limited liability company
Its: General Partner

By: 
Name: Brent D. Harris
Title: V.P.

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into this _____ day of _____, 2008, by and between the **CITY OF EL PASO**, hereinafter referred to as the “City”, and **MILLS ACQUISITION COMPANY LP**, n/k/a Mills Plaza Properties LP, hereinafter referred to as the “Buyer”.

NOW THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Description of Property.** The City hereby agrees to sell and convey and the Buyer hereby agrees to acquire free and clear of any liens or encumbrances, the following described real property located in El Paso County, Texas:

11,057 square feet, more or less, being a portion of Block 17, Anson Mills Map of the City of El Paso, El Paso County, Texas, commonly known as 319-327 Oregon Street, El Paso, El Paso County, Texas, and being more particularly described by metes and bounds in Exhibit “A,” attached hereto and made a part hereof for all purposes,

together with any interest in (i) all improvements, if any, (ii) all right, title and interest of the City in and to any easements, appurtenances, and right-of-ways, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, and (iii) all ground water, water rights or rights to surface water will be subject to all easements, restrictions, reservations, right of ways, dedications, and other encumbrances of record or apparent upon the real property, all of such property, hereinafter collectively referred to as the “Property.” In addition, the following conditions will be applicable to the City’s sale of the Property:

- 1.1 **Radioactive Materials.** Any conveyance of this Property will be subject to a restrictive covenant to the effect that the Buyer, its successors or assigns, will not, for a period of at least seventy-five (75) years, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the City.
- 1.2 **Surveys.** The Buyer accepts responsibility for conducting its own archeological and environmental surveys of the Property. Any mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the Buyer who shall take the Property subject to all existing conditions. The Buyer accepts responsibility for its determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by its complete inspection of the Property.
- 1.3 **Groundwater.** All ground water, water rights, or rights to surface water shall be reserved to the City and will be subject to all easements, restrictions, reservations, rights

of way, dedications and other encumbrances of record apparent upon the property. The Buyer shall not have the right to drill a well and produce therefrom any quantity of groundwater.

- 1.4 **Easements.** Easements for water and wastewater lines, if not located in public streets, shall be provided at no cost to the City or its Public Service Board.
2. **Amount of Payment of Purchase Price.** The purchase price for the Property shall be **FOUR HUNDRED FIFTY-ONE THOUSAND AND 00/100THS DOLLARS (\$451,000.00)**, which sum includes the appraisal services fee of \$2,200.00, surveying costs of \$1,375.00, plus any additional closing costs as identified in Paragraph 5.2.
 - 2.1 **Payment of Sales Price.** The full amount of the purchase price will be payable in cash at the closing.
 - 2.2 **Earnest Money.** The City acknowledges the receipt of earnest money paid to the City by the Buyer in the amount of **ONE HUNDRED TWELVE THOUSAND SEVEN HUNDRED FIFTY AND 00/100THS DOLLARS (\$112,750.00)**, which will be credited to the purchase price at the time of closing.
3. **Conditions to the Buyer's Obligations.** The obligations of the Buyer hereunder is to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the Buyer, at or prior to Closing.
 - 3.1 **Title Insurance.** Within fourteen (14) days after receipt of written notification of the City's acceptance of the Buyer's offer, the Buyer shall provide the City with all information necessary to close the sale with the intent that, without good cause existing or further delay, it is anticipated that the City and the Buyer will close within thirty (30) days from the date of the approval of the City Council of an ordinance authorizing the sale of the Property. The Buyer at its expense will order a title commitment ("Commitment"), accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the Buyer ("Owner's Policy").
 - 3.2 **Title Objections.** The Buyer will give the City written notice after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the Buyer states that the condition is not satisfactory, the Buyer will specifically set forth in such notice the defect or exception to title that is deemed objectionable. City may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the Buyer. Otherwise, this condition will be deemed acceptable and any objection by the Buyer will be deemed waived.
4. **Representations of City.** The City hereby represents, to the extent allowed by law, to the Buyer that to the best of its knowledge, as follows:

- 4.1 **Parties in Possession.** At the time of closing, other than the Buyer, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.
- 4.2 **Mechanic's Lien.** (i) No action has been taken, suffered or permitted by or on behalf of the City, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; and (ii) no liens or lien claims, choate or inchoate, arising from the City's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property; and (iii) except as expressly disclosed in the documents relating to this transaction, the City has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the City.
- 4.3 **Litigation.** There is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property.
- 4.4 **Bills Paid.** At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.
- 4.5 **Compliance Law.** All laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property, have been complied with.
- 4.6 **Taxes.** While the City owned the Property, the Property was exempt from ad valorem taxes.
- 4.7 **Pre-Closing Claims.** City agrees that the Buyer's acceptance of title to the Property under the conveyance documents should not create any liability on the Buyer's part to third parties that have claims of any kind against the City in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the City.
- 4.8 **Condition of Property Prior to Closing.** Prior to Closing, the City shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the Buyer.
- 4.9 **"AS IS, WHERE IS."** THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE PROPERTY "AS IS, WHERE IS", AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE

REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OR FITNESS OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE CITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

- 4.10 **ENVIRONMENTAL MATTERS.** AFTER CLOSING, AS BETWEEN THE CITY AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE CITY'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE CITY'S REPRESENTATIVES.** THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING

LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE CITY IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

IN PARTICULAR, THE BUYER ACKNOWLEDGES THAT THE CITY HAS ADVISED IT THAT THERE IS ASBESTOS ON THE PROPERTY AND THAT IT MUST COMPLY WITH ANY APPLICABLE LAWS AND REGULATIONS IN ADDRESSING THE ASBESTOS.

- 4.11 **Buyer's use.** The Buyer represents to the City that it intends to use the property in accordance with the representations in Exhibit "B," attached hereto and made a part hereof for all purposes.
- 4.12 **Survival.** All agreements of the City made in this document shall survive the execution and delivery hereof and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.
5. **Closing.** The closing of this transaction ("Closing") shall take place at the offices of Lone Star Title of El Paso, 601 N. Mesa, Suite 100, El Paso, Texas 79901 on or before the later of (i) thirty (30) days from the Effective Date; or (ii) thirty (30) days after the execution of this Agreement by the City, subject to delays due to the City's efforts to cure any title objection under Section 2.2.
- 5.1 **Possession.** Possession of the Property will be transferred to the Buyer upon Closing.
- 5.2 **Closing Costs.**
- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property in the Buyer shall be paid by the Buyer.
 - (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the Buyer.
 - (c) The fees for advertising in the amount of \$116.97 and any other costs the City may have incurred in the preparation for the sale of the Property up to but not to exceed \$250 (Solicitation No. 2008-028) shall be paid by the Buyer.
 - (d) The appraisal services fee of \$2,200.00, and surveying costs of \$1,376.00, which are included in the purchase price of the Property, shall be paid by the Buyer. These fees are included within the stated Purchase Price, and are not in addition to the stated Purchase Price.
- 5.3 **City's Obligations.** At Closing, the City shall deliver to the Buyer a duly executed and acknowledged Special Warranty Deed conveying the Property and any related easements, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing, if any, which

shall be assumed by the Buyer upon closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the Buyer has approved pursuant to Paragraph 4 above.

5.4 **Other Obligations.** Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. **Default.**

6.1 **Breach by City.** In the event that the City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the Buyer's default, or the termination of this Agreement in accordance with its terms, the City agrees to absorb the cost of the appraisal services and other costs the City may have incurred in preparation for the sale of the Property. In addition, the City will return the earnest money provided by the Buyer.

6.2 **Breach by the Buyer.** In the event that the Buyer shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the Buyer agrees to forfeit the earnest money it has provided to the City.

7. **Miscellaneous.**

7.1 **Notice.** Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

City: Joyce A. Wilson
City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Buyer: Mills Acquisition Company LP, n/k/a Mills Plaza Properties LP
1865 Northwestern Drive
El Paso, Texas 79912

8. **Entire Agreement / Governing Law.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

CITY CLERK DEPT.
08/11/14 PM 3:43

8.1 **Time.** Time is of the essence of this Agreement and each and every provision hereof.

8.2 **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 **Survival of Provisions.** The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

8.5 **Compliance.** In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the Buyer is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

8.6 **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Property.

The above instrument, together with all conditions thereto, is hereby executed by the City this _____ day of _____, 2008.

CITY OF EL PASO
A Municipal Corporation

By _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

APPROVED AS TO CONTENT:

Gonzalo Cedillos
Gonzalo Cedillos
Capital Assets Manager

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2008, by Joyce Wilson, City Manager of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

The above instrument, together with all conditions thereto is hereby executed by Brent Harris, Vice President of Mills Acquisition Company LP n/k/a Mills Plaza Properties LP, this 14th day of January, 2008.

BUYER
Mills Acquisition Company LP, n/k/a Mills Plaza Properties LP

By: FML Acquisition SP LLC

Its: General Partner
[Signature] (Brent D Harris)
IT: V.P.

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 14th day of January, 2008, by Brent Harris, Vice President of Mills Acquisition Company LP n/k/a Mills Plaza Properties LP.

My Commission Expires:

[Signature]
Notary Public, State of Texas



Exhibit "A"
(Property Description)

DORADO ENGINEERING INC.

2717 E Yandell El Paso, Texas 79903 (915) 562-0002 Fax (915) 562-7743

**Mills Addition
Block 17**

Metes and Bound description of a parcel of land being a portion of Block 17, Mills Addition out of the City of El Paso, County of El Paso, Texas and being more particularly described as follows;

From a chiseled "x" located at the point of intersection of the Westerly Right-of-Way line of Oregon Street and the Southerly Right-of-Way line of Main Avenue, said marked point being the Point of Beginning for this parcel of land;

Thence South 37° 15' 00" East along said Right-of-Way line of Oregon Street, a distance of one hundred and no hundredths (100.00) feet to a corner, said corner being the Southeasterly corner of this parcel;

Thence South 52° 45' 00" West a distance of one hundred twenty one and seventy seven hundredths (121.77) feet to corner said corner being the Southwesterly corner;

Thence North 37° 15' 00" West a distance of thirty three and seven hundredths (33.07) feet to a point;

Thence North 09° 05' 00" West a distance of fifty six and thirty four hundredths (56.34) feet to a point;

Thence North 37° 15' 00" West a distance of seventeen and twenty six hundredths (17.26) feet to a corner, said corner being the Northwesterly corner and also lying on the Southerly Right-of-Way line of Main Avenue;

Thence continuing along said Right-of-Way line of Main Avenue North 52° 45' 00" East a distance of ninety five and eight hundredths (95.08) feet to a corner, said corner being the Northeasterly corner and also the Point of Beginning.

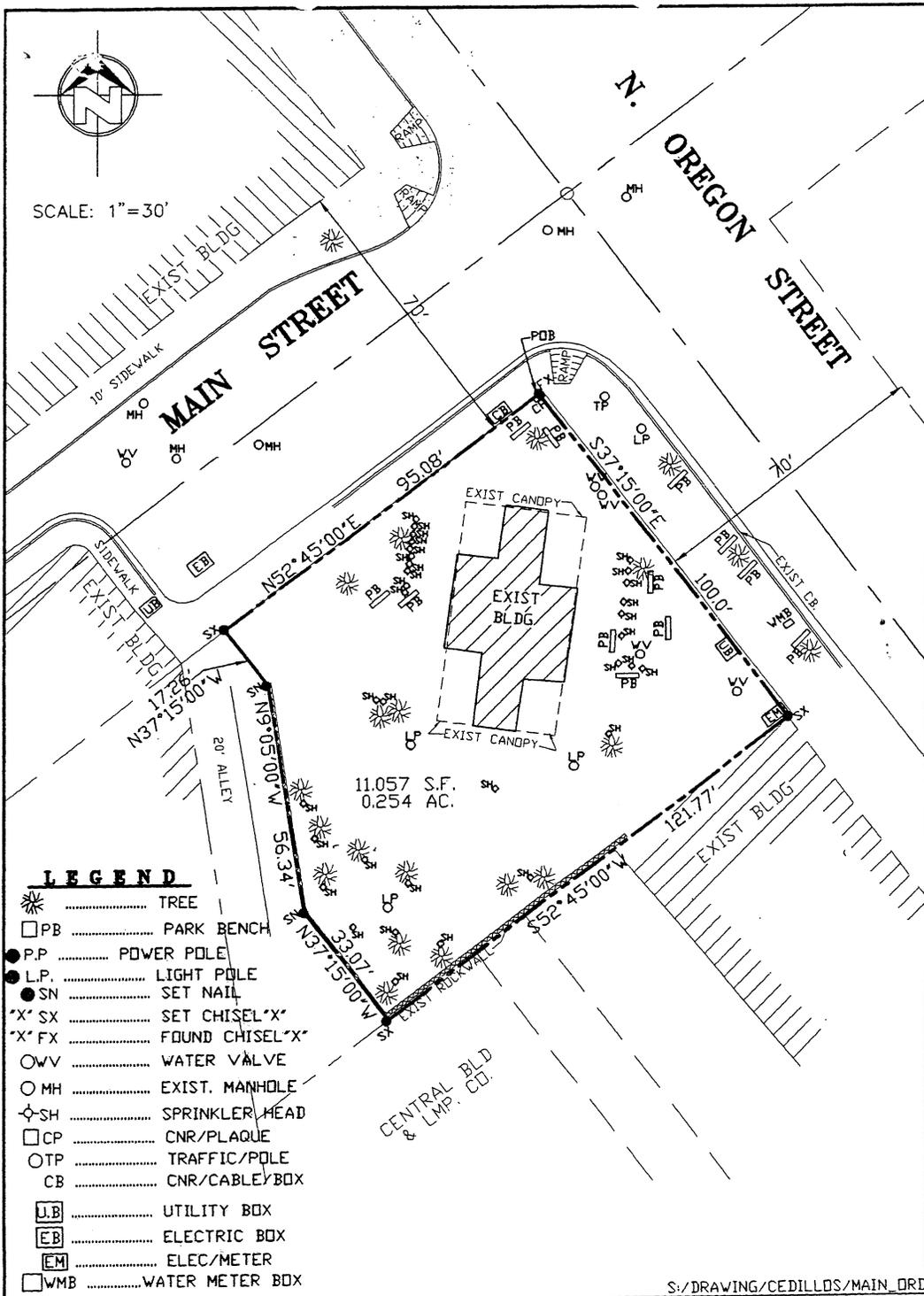
Said parcel of land contains 11,057 square feet or 0.254 acres of land more or less.



Fermin Dorado R.P.L.S.



August 29, 2007



11,057 S.F.
0.254 AC.

LEGEND

- TREE
- PARK BENCH
- POWER POLE
- LIGHT POLE
- SET NAIL
- SET CHISEL "X"
- FOUND CHISEL "X"
- WATER VALVE
- EXIST. MANHOLE
- SPRINKLER HEAD
- CNR/PLAQUE
- TRAFFIC/POLE
- CNR/CABLE/BOX
- UTILITY BOX
- ELECTRIC BOX
- ELEC/METER
- WATER METER BOX

S:\DRAWING\CEDILLOS\MAIN_ORD

THIS IS TO CERTIFY THAT THIS PLAT REPRESENTS AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY SUPERVISION.

Fermin Dorado
REGISTERED PUBLIC SURVEYOR

333 N. OREGON STREET
MILLS ADDITION
PART OF BLOCK 17
CITY OF EL PASO, EL PASO COUNTY, TEXAS

DORADO
ENGINEERING, INC.

ENGINEERS SURVEYORS PLANNERS
2717 E. YANDELL, EL PASO, TEXAS 79903 (915)562-0002

DATE: 08/29/07
SCALE: 1" = 30'
DRAWN BY: S.G.
CHECKED BY: FD
FLOOD ZONE: C
PANEL NUMBER: 480214-0039B
DATED: 10/15/82

Exhibit “B”

1. Improvements and development of the property must commence within six (6) months following the date of either the vacation of the property by Sun Metro or one (1) year from the inception of the lease, whichever is later as proposed in condition 3. below.
2. Buyer agrees to lease the property back to the City for a lease term up to twelve (12) months for \$1.00 per year, or up to the time of the relocation of the Ticket Office presently on the property, whichever is earlier. A copy of the lease description is attached hereto as Exhibit “C” and made a part hereof for all purposes. In the event the Buyer desires to commence construction prior to the relocation of the Ticket Office, the Buyer, at the Buyer’s cost, may provide adequate space in an alternative location in close proximity of the current location. Such space must be acceptable by the City.
3. All development of this parcel is to be consistent with the City 2015 Downtown Plan approved by the City Council in October 2006. The City’s 2015 Downtown Plan is on the home page of the City’s website at elpasotexas.gov.
4. Buyer cannot sell or assign this contract, or after the closing of the property, without the express written consent of the City, for a three-year period following the date of the closing of the contract of sale.
5. All development must comply with all applicable City of El Paso Code provisions.
6. Buyer agrees to develop the property in accordance with the attached conceptual drawing.

Exhibit “C”

(Lease)

LEASE AGREEMENT

THIS LEASE AGREEMENT (“this Lease”) is made as of the Effective Date by and between by the City and the Landlord hereinafter named.

**ARTICLE I.
Definitions and Certain Basic Provisions**

1.01.

- (A) City: City of El Paso
- (B) City's Address: City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196
- (C) Landlord: Mills Acquisition Company LP n/k/a Mills Plaza Properties LP .
- (D) Landlord's Address: 1865 Northwestern Drive
El Paso, Texas 79912
- (E) Premises: The real property and improvements in the City of El Paso, El Paso County, Texas described as being a portion of Block 17, Anson Mills Map of the City of El Paso, El Paso County, Texas, commonly known as 319-327 Oregon Street, and more particularly described by metes and bounds in Attachment “1”, attached hereto and incorporated herein.
- (F) Lease Term: As set forth in Article III.
- (G) Rent: As set forth in Article IV.
- (H) Permitted Use: Ticket Office and related City uses.
- (I) Security Deposit: \$0

Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by the references thereto in the other provisions of this Lease.

**ARTICLE II.
Granting Clause**

2.01. In consideration of the obligation of the City to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, the Landlord hereby demises and

Exhibit "C"

leases to the City, and the City hereby takes from the Landlord, the Premises as described in Section 1.01(E), TO HAVE AND TO HOLD said Premises for the lease term specified in Section 1.01(F), all upon the terms and conditions set forth in this Lease.

ARTICLE III.

Term

3.01. The Landlord agrees to, and does hereby, lease the Premises to the City for a one-year term (the "Term") commencing as of _____, 2008 (the "Effective"), and terminating at 11:59 P.M. on _____, 2009.

3.02. Should the Buyer desire to commence construction on the Premises prior to the termination of the one-year term of this lease and prior to the City's relocation of the Ticket Office, the Buyer, at the Buyer's cost, may provide adequate space in an alternative location in close proximity to the Premises. Such space must be acceptable by the City. The Landlord may terminate the Agreement upon _____ () days' written notice to the City and the City's agreement that the alternative location is acceptable. Upon the City's relocation to the acceptable location and the execution of a new lease agreement for the alternative location, all rights of the City in the Premises shall then be terminated, and the Tenant shall be entitled to no reimbursement or compensation under this Lease Agreement.

ARTICLE IV.

Rent and Other Matters

4.01 As rent for the Premises (the "Rental"), the City agrees to pay to the Landlord rent of One and no/100 Dollars (\$1.00), payable in advance.

4.02. Rental shall accrue hereunder from _____, 2008 (the "Rent Commencement Date"), and shall be payable to the Landlord at the place designated as the Landlord's address. It is agreed by the City and the Landlord that this Lease is binding upon the parties and enforceable according to its terms, even if the Rent Commencement Date hereof is after the Effective Date hereof.

4.03. The City shall pay to the Landlord at its address the Rental in the amount specified in Section 4.01 above. The Rental shall be due and payable on or before the Rent Commencement Date. The Rental shall be paid to the Landlord without notice or demand and without deduction, abatement or setoff.

4.04. The obligation of the City to pay rent during any term hereof is an independent covenant, and no act or circumstance whatsoever, whether such act or circumstance constitutes a breach of covenant by the Landlord or not, shall release the City of the obligation to pay rent as required by this Lease.

ARTICLE V.
Use and Care of Premises

5.01. The Premises may be used only for the purpose or purposes specified in Section 1.01(H) above, and for no other purpose or purposes without the prior written consent of the Landlord.

5.02. UPON THE EFFECTIVE DATE OF THIS LEASE, THE PARTIES ACKNOWLEDGED THAT THE LANDLORD HAS DELIVERED TO THE CITY POSSESSION OF THE PREMISES SUBJECT TO THE TERMS AND CONDITIONS OF THIS LEASE, AND CITY ACCEPTS THE PREMISES "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY BY THE LANDLORD THAT THE PREMISES IS SUITABLE, HABITABLE, OR FIT FOR A PARTICULAR PURPOSE. THE CITY ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION WITH RESPECT TO THE CONDITION OF THE PREMISES, BUT IS RELYING UPON ITS OWN EXAMINATION OF THE PREMISES.

ARTICLE VI.
Maintenance and Repair of Premises

6.01. The City shall have the obligation at its expense to maintain all parts and portions of the Premises in their current condition.

6.02. Should the City fail to promptly perform any maintenance or repairs required by the provisions of this Lease to be performed by the City, the Landlord may request that the City make such repairs or perform such maintenance and upon the City's failure or refusal to do so promptly (and in any event, in case of an emergency irrespective of whether the Landlord shall have requested or obtained the City's prior consent), the Landlord shall have the right (but shall not be obligated) to perform such maintenance or make such repairs; thereupon, the City will, at the Landlord's election, on demand, pay (or reimburse the Landlord for) the reasonable cost of such maintenance or repairs.

6.03. At the expiration of this Lease, the City shall surrender the Premises in good condition, reasonable wear and tear and loss by fire or other casualty excepted.

6.04. The City shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force relating to or affecting the condition, use or occupancy of the Premises.

ARTICLE VII.
Alterations

7.01 The City shall not make any alterations, additions or improvements to the Premises without the prior written consent of the Landlord, except for (i) the erection and installation of signs at the City's expense and in conformity with any laws or ordinances of the City of El Paso pertaining to signs, and (ii) the installation of unattached, movable trade fixtures which may be installed without drilling, cutting or otherwise defacing the Premises.

7.02. All construction work done by the City at the Premises shall be performed in a good and workmanlike manner, and in compliance with all governmental requirements.

7.03. The City shall not permit any mechanic's, materialmen's or other liens to be fixed or placed against the Premises and agrees immediately to discharge (whether by payment or by filing of the necessary bond, or otherwise) any mechanic's, materialmen's or other lien which is allegedly fixed or placed against any of the foregoing as the result of an act or omission of the City.

ARTICLE VIII.
The Landlord's Right of Access

8.01. The Landlord shall have the right to enter upon the Premises at any time for the purpose of inspecting the same, or making repairs to the Premises, or making repairs, alterations or additions to adjacent Premises, or showing the Premises.

8.02. The Landlord, directly and through its contractors and representatives, shall further have the right to enter upon the Premises upon reasonable notice to the City to conduct surveys, studies, design and engineering, and other activities, conducted in a manner so as to not unreasonably interfere with or disrupt the City's operations at the Premises. Each such contractor of the Landlord shall maintain liability insurance in a minimum amount of \$1,000,000.00, covering its activities at the Premises. The Landlord shall be liable for all damage or injury to any person or Property resulting from any such inspection occasioned by the acts of the Landlord, its employees, agents or representatives.

ARTICLE IX.
Utilities

9.01. The City shall promptly pay before delinquency all charges for electricity, water, gas, telephone service, sewerage service and other facilities furnished to the Premises, including any hook-up or connection fees.

9.02. The Landlord shall not be liable for any interruption whatsoever in utility services.

9.03. During the term of this Lease, the City shall be entitled to use any existing utility easements on the Premises, whether or not of record, in order to provide utility service to the improvements and its operations on the Premises.

ARTICLE X.
Indemnity and Public Liability Insurance

10.01. The Landlord and the Landlord's agents and employees shall not be liable to the City for any injury to person or damage to property caused by the Premises coming out of repair or by defect in or failure of equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises. The Landlord shall be liable to the City for any loss or damage that may be occasioned by or through the acts or omissions of

any of its employees, representatives, invitees and agents. The City agrees to be responsible for its actions arising from or out of its occupancy of use of the Premises, as allowed by state and federal law.

ARTICLE XI
Environmental Matters

11.01 Neither the City nor the City's agents or contractors shall, without the Landlord's prior written consent, which consent shall not be unreasonably withheld, keep on or around the Premises for use, handling, transport, disposal, treatment, generation, storage, or sale, any of the following: hazardous materials, hazardous substances, toxic wastes, toxic substances, pollutants, petroleum products, underground tanks, oils, pollution, asbestos, PCB's, materials, or contaminants, as those terms are commonly used or as defined by federal, state, and/or local law or regulation related to protection of health or the environment, including but not limited to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601, et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.); the Clean Water Act (33 U.S.C. § 1251, et. seq.); and the Clean Air Act (42 U.S.C. § 7401 et. seq.); and as any of the same may be amended from time to time, and/or by any rules and regulations promulgated thereunder (collectively, the "Hazardous Substances"), and/or is subject to regulation by any federal, state, or local law, regulation, statute, ordinance, or management plan.

ARTICLE XII.
Damage by Casualty

12.01. The City shall give immediate written notice to the Landlord of any damage caused to the Premises by fire or other casualty.

12.02. In the event that the Premises shall be damaged or destroyed by fire or other casualty, then either party may elect to terminate this Lease upon prior written notice to the other party. In no event shall the Landlord or the City have an obligation to repair or rebuild.

ARTICLE XIII.
Condemnation

13.01. If any part of the Premises shall be taken by any public or private authority under the power of eminent domain, and a part thereof remains which is susceptible of occupation for the City's business hereunder, this Lease shall, as to the part so taken, terminate as of the date title vests in the condemnor, but in such event, the City or the Landlord shall have the option to terminate this entire Lease as of the date when title to the part so condemned vests in the condemnor. If all of the Premises is taken, or such a large part thereof is taken that there does not remain any portion susceptible of occupation for the City's business hereunder, this entire Lease shall thereupon terminate. In the event of condemnation of the whole or any part of the Premises, all compensation awarded or paid in the event of such taking shall belong to and be the property of the Landlord, whether such compensation be awarded for diminution in value of the leasehold or to the fee of the Premises and the Lease shall be considered to have terminated prior to the taking; provided, however, that the Landlord shall have no interest in any award made to the City for loss of use/business or depreciation to and cost of removal of the City's stock

and fixtures and other property, if a separate award for such items is made to the City. The Landlord hereby irrevocably assigns the interest, if any, it shall have in the compensation awarded or to be paid the City under the provisions of this Article XIII.

ARTICLE XIV.
Property Taxes

14.01. The Landlord shall be liable for all taxes levied against real property.

ARTICLE XV.
Default by City and Remedies

15.01. The following events shall be deemed to be events of default by the City under this Lease:
(1) The City shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and shall not cure such failure within sixty (60) days after written notice thereof to the City.

ARTICLE XVI.
The City's Lien

16.01 Intentionally Deleted.

ARTICLE XVII.
Subordination, Attornment and Estoppel

17.01. The City accepts this Lease subject and subordinate to any mortgage, deed of trust or other liens presently existing or hereafter created upon the Premises, building or improvements located thereon, and to any renewals and extensions thereon, and the City agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust and other lien to this Lease. The Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien hereafter placed upon the Premises, or the buildings or improvements located thereon, as the City agrees upon demand to execute such further instruments subordinating this Lease as the Landlord may request.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the Premises, the City shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the property owner under this Lease.

The provisions of this Article to the contrary notwithstanding and so long as the City is not in default hereunder, this Lease shall remain in full force and effect for the term hereof.

17.02. The City agrees upon reasonable request of the Landlord to execute, acknowledge and deliver to the Landlord (or to any party specified by the Landlord) an instrument ratifying this Lease and certifying each of the following, if same is true and correct, to-wit: (i) that the City has entered into

occupancy of the Premises and the date of such entry; (ii) that this Lease is in full force and effect, and has not been assigned, modified, supplemented or amended in any way (or if there has been any assignment, modification, supplement or amendment identifying the same); (iii) that this Lease represents the entire agreement between the City and the Landlord as to the subject matters hereof (or if there has been any assignment, modification, supplement or amendment identifying the same); (iv) the date of commencement and expiration of the term; (v) that all conditions under the Lease to be performed by the Landlord have been satisfied; (vi) that no default exists in the performance or observance of any covenant or condition in this Lease and there are no defenses or offsets against the enforcement of this Lease by the Landlord (or specifying such default, defense or offset); (vii) that, except for a security deposit, no rental has been paid in advance and no security has been deposited with the Landlord; and (viii) the date to which rental has been paid under this Lease.

ARTICLE XVIII.
Assignment and Subletting

18.01. The City may not assign or in any manner transfer this Lease or any interest therein, directly or indirectly, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises without the prior written consent of the Landlord.

ARTICLE XIX.
Security Deposit

19.01. Intentionally Deleted.

ARTICLE XX.
Commissions

20.01. The City represents and warrants that it has incurred no liabilities or claims for brokerage commissions or finder's fees in connection with the execution of this Lease and that it has not dealt with, and has no knowledge of, any real estate broker, agent, or salesperson in connection with this Lease.

ARTICLE XXI.
Miscellaneous

21.01. In the event of the transfer and assignment by the Landlord of its interest in this Lease and the Premises, with the City's prior written approval, to a person expressly assuming the Landlord's obligations under this Lease, the Landlord shall thereby be released from any further obligations hereunder, and the City agrees to look solely to such successor in interest of the Landlord for performance of such obligations.

21.02. Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States Mail, postage prepaid, registered

mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.01 above, or at such other addresses as they have theretofore specified by written notice.

21.03. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender. The captions used herein are for convenience only and do not limit or amplify the provisions hereof. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive, or render unnecessary, consent to or approval of any subsequent similar act. Whenever a period of time is herein prescribed for action to be taken by the Landlord or City, the Landlord and the City shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages or labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the Landlord and the City. At any time when there is outstanding a mortgage, deed of trust or similar security instrument covering the Landlord's interest in the Premises, the City may not exercise any remedies for default by the Landlord hereunder unless and until the holder of the indebtedness secured by such mortgage, deed of trust or similar security instrument shall have delivered written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

21.04. The Landlord agrees that if the City shall perform all of the covenants and agreements herein required to be performed by the City, the City shall, subject to the terms of this Lease, at all times during the continuance of this Lease have the peaceable and quiet enjoyment and possession of the Premises.

21.05. THIS LEASE CONTAINS THE FINAL, ENTIRE, AND INTEGRATED AGREEMENT BETWEEN THE PARTIES [IN CONJUNCTION WITH THE PURCHASE AND SALE AGREEMENT AND WARRANTY DEED OF EVEN DATE BETWEEN THE PARTIES], AND NO AGREEMENT SHALL BE EFFECTIVE TO CHANGE, MODIFY OR TERMINATE THIS LEASE IN WHOLE OR IN PART UNLESS SUCH AGREEMENT IS IN WRITING AND DULY SIGNED BY THE PARTY AGAINST WHOM ENFORCEMENT OF SUCH CHANGE, MODIFICATION OR TERMINATION IS SOUGHT.

21.06. The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors and permitted assigns.

21.07. THE LAWS OF THE STATE OF TEXAS SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LEASE. IF ANY PROVISION OF THIS LEASE SHALL BE HELD TO BE INVALID OR UNENFORCEABLE, THE VALIDITY AND ENFORCEABILITY OF THE REMAINING

PROVISIONS OF THIS LEASE SHALL NOT BE AFFECTED THEREBY. EXCLUSIVE VENUE FOR ANY LITIGATION ARISING OUT OF THE INTERPRETATION, VALIDITY, PERFORMANCE OR ENFORCEMENT OF THIS LEASE SHALL BE EL PASO COUNTY, TEXAS.

21.08. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE CITY RESERVES, AND DOES NOT WAIVE, ITS RIGHTS OF SOVEREIGN IMMUNITY AND SIMILAR RIGHTS AND ITS RIGHTS UNDER THE TEXAS TORT CLAIMS ACT.

(Signatures begin on next page)

Executed to be effective as of the _____ day of _____, 2008.

LANDLORD: MILLS ACQUISITION COMPANY LP n/k/a MILLS PLAZA PROPERTIES LP

By: FML Acquisition GP LLC
As Name: General Partner
Title: _____
BY: [Signature] (Brent D. Harris)
As: V.P.

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 14th day of January, 2008, by Brent Harris, Vice President of Mills Acquisition Company LP n/k/a Mills Plaza Properties LP.

My Commission Expires:



Josie Hernandez
Notary Public, State of Texas

CITY: City of El Paso

By: _____
Joyce Wilson, City Manager

APPROVED AS TO CONTENT:

Gonzalo Cedillos, P.E.
Capital Assets Manager

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2008, by Joyce Wilson, City Manager of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

ATTACHMENT "1"

(Behind this page will be the August 29, 2007 M&B description and survey for a portion of Block 17, Anson Mills Map of City of El Paso, El Paso County, Texas prepared by Dorado Engineering, Inc.)

DORADO ENGINEERING INC.
2717 E Yandell El Paso, Texas 79903 (915) 562-0002 Fax (915) 562-7743

**Mills Addition
Block 17**

Metes and Bound description of a parcel of land being a portion of Block 17, Mills Addition out of the City of El Paso, County of El Paso, Texas and being more particularly described as follows;

From a chiseled "x" located at the point of intersection of the Westerly Right-of-Way line of Oregon Street and the Southerly Right-of-Way line of Main Avenue, said marked point being the Point of Beginning for this parcel of land;

Thence South 37° 15' 00" East along said Right-of-Way line of Oregon Street, a distance of one hundred and no hundredths (100.00) feet to a corner, said corner being the Southeasterly corner of this parcel;

Thence South 52° 45' 00" West a distance of one hundred twenty one and seventy seven hundredths (121.77) feet to corner said corner being the Southwesterly corner;

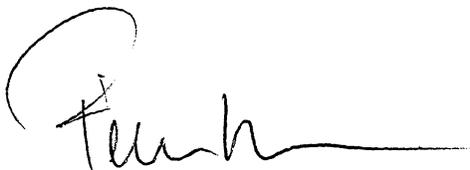
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Thence North 09° 05' 00" West a distance of fifty six and thirty four hundredths (56.34) feet to a point;

Thence North 37° 15' 00" West a distance of seventeen and twenty six hundredths (17.26) feet to a corner, said corner being the Northwesterly corner and also lying on the Southerly Right-of-Way line of Main Avenue;

Thence continuing along said Right-of-Way line of Main Avenue North 52° 45' 00" East a distance of ninety five and eight hundredths (95.08) feet to a corner, said corner being the Northeasterly corner and also the Point of Beginning.

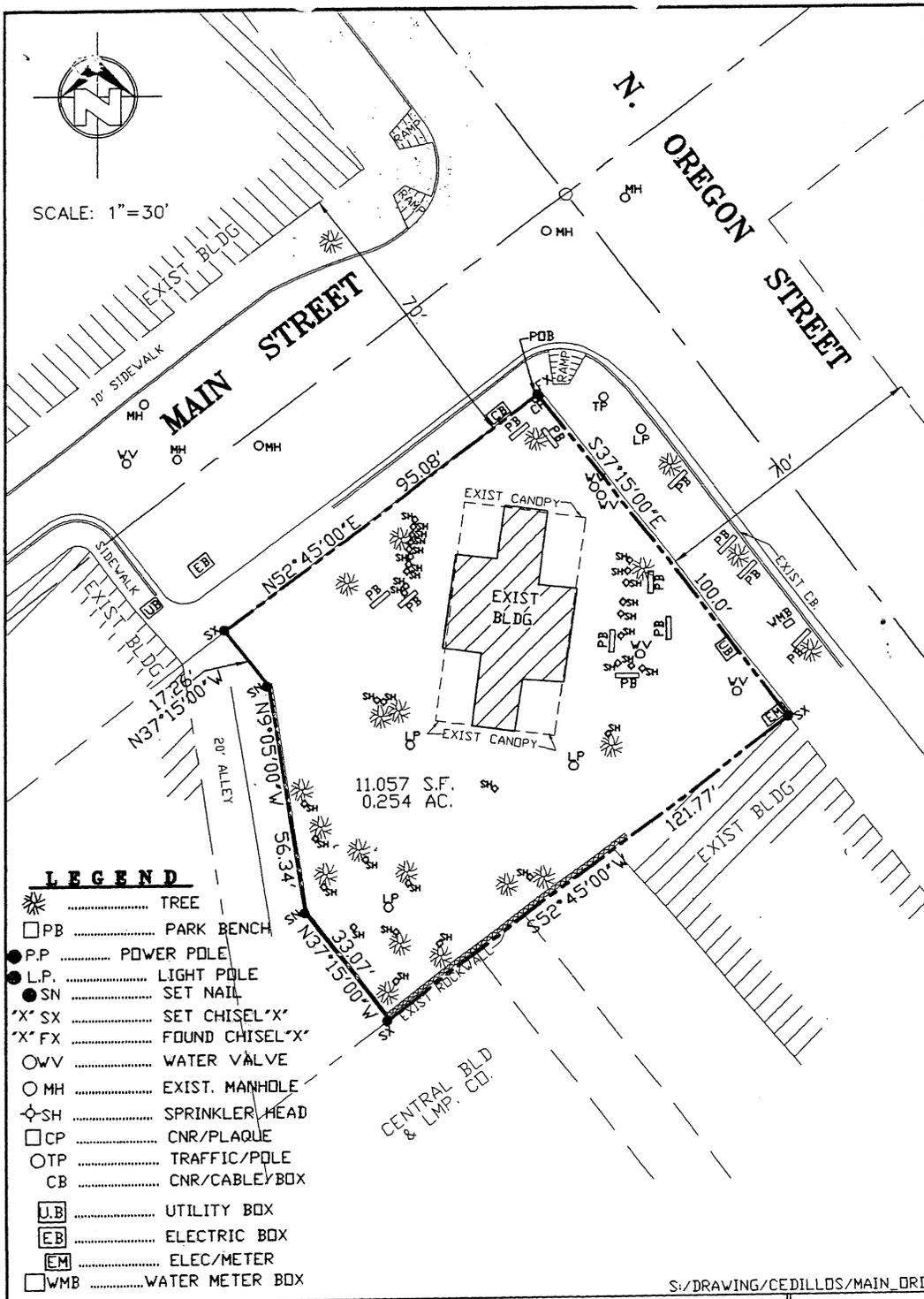
Said parcel of land contains 11,057 square feet or 0.254 acres of land more or less.



Fermin Dorado R.P.L.S.



August 29, 2007



LEGEND

- ☼ TREE
- PB PARK BENCH
- P.P POWER POLE
- L.P LIGHT POLE
- SN SET NAIL
- *X* SX SET CHISEL *X*
- *X* FX FOUND CHISEL *X*
- WV WATER VALVE
- MH EXIST. MANHOLE
- ◇ SH SPRINKLER HEAD
- CP CNR/PLAQUE
- TP TRAFFIC/POLE
- CB CNR/CABLE/BOX
- U.B UTILITY BOX
- E.B ELECTRIC BOX
- E.M ELEC/METER
- W.M.B WATER METER BOX

S:/DRAWING/CEDILLOS/MAIN.DRD

THIS IS TO CERTIFY THAT THIS PLAT REPRESENTS AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY SUPERVISION.

REGISTERED PUBLIC SURVEYOR

333 N. OREGON STREET
MILLS ADDITION
 PART OF BLOCK 17
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

DORADO
 ENGINEERING, INC.

ENGINEERS SURVEYORS PLANNERS
 2717 E. YANDELL, EL PASO, TEXAS 79903 (915)562-0002

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