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

DEPARTMENT: **Engineering & Construction Management**

AGENDA DATE: **February 14, 2012**

CONTACT PERSON/PHONE: R. Alan Shubert, City Engineer

DISTRICT AFFECTED: 3

SUBJECT:

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a Contract of Sale between the City of El Paso and Miles El Paso Investments, Ltd. for a property commonly known as 390 Colfax/5230 Gateway Boulevard East and situation in the area designated as the Medical Center of the Americas.

BACKGROUND / DISCUSSION:

City Council authorized City staff to enter into negotiations for the purchase of 390 Colfax/5230 Gateway Boulevard East due to its strategic location abutting City-owned property in the Medical Center of the Americas area (MCA). The negotiated purchase price for the 1,943 s.f., vacant, commercial-zoned property is $10,000.00, a per square foot value comparable to other transactions executed by the City in the MCA area.

PRIOR COUNCIL ACTION:

March 9, 2010 – authorization by Mayor and Council to enter into negotiations and present a contract of sale to Council for sites in the proximity to the real estate owned by the City in the MCA area.

AMOUNT AND SOURCE OF FUNDING:

PCP10MF2 – Property Acquisitions
27269 – 2010 CO's
508000 - Land

BOARD / COMMISSION ACTION:

(N/A)

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

DEPARTMENT HEAD: _____

Information copy to appropriate Deputy City Manager

RCAmilesCOS

RESOLUTION

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

That the City Manager be authorized to sign a Contract of Sale between the CITY OF EL PASO and MILES EL PASO INVESTMENTS LTD, a Texas limited partnership, for the purchase of the property commonly known as 390 Colfax Street/5230 Gateway East Boulevard, El Paso, Texas more particularly described as a portion of Lot 1, Block 1, of Miles Midtown Subdivision, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof, recorded in Volume 77, Page 24, Plat Records of El Paso County, Texas.

And that the City Manager, or her designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

ADOPTED this _____ day of _____, 2012

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
R. Alan Shubert, P.E., City Engineer
Engineering and Construction Management

11-1040- 023 - Reso Miles COS
Doc#100064 BAO

CONTRACT OF SALE

between

MILES EL PASO INVESTMENTS LTD

SELLER

AND

CITY OF EL PASO

BUYER

FOR

390 Colfax Street/5230 Gateway East Boulevard
El Paso, Texas

CONTRACT OF SALE

This Contract of Sale (the ***Contract***) is made and entered into as of the Effective Date by and between **MILES EL PASO INVESTMENTS LTD,** a Texas limited partnership (***Seller***), and **CITY OF EL PASO, TEXAS** (***Buyer***).

ARTICLE I
DEFINED TERMS

1.1 **Definitions**. As used herein, the following terms have the meanings set forth below:

"Business Day" means any day, other than a Saturday or Sunday, on which national banks in El Paso, Texas, are open for business.

"Buyer's Objection Letter" has the meaning assigned to such term in Section 4.3 hereof.

"Closing" means consummation of the sale and purchase of the Property contemplated by this Contract by the deliveries required under Section 7.2.

"Closing Date" means the date on which the Closing will be held as specified in Section 7.1.

"Cure Period" has the meaning assigned to such term in Section 4.4 hereof.

"Deed" has the meaning assigned to such term in Section 7.2(a)(ii) hereof.

"Earnest Money Deposit" means the money, plus any accrued interest thereon, deposited by Buyer in escrow with the Title Company at the time and in the amount specified in Section 3.2 hereof.

"Effective Date" means the date upon which the City Manager signs this contract on behalf of Buyer.

"Existing Survey" has the meaning assigned to such term in Section 4.2 hereof.

"Improvements" means the buildings and other improvements located on the Land and all fixtures and other property owned by Seller that is affixed to the Land.

"Inspection Period" means the period commencing on the Effective Date and ending 30 Business Days after Seller provides written notification it has completed demolition and site preparation as provided in Section 4.6 hereof.

"Inspections" has the meaning assigned to such term in Section 4.7 hereof.

"Land" means that certain tract of land located in El Paso County, Texas, described as on **Exhibit A** appended hereto, together with all rights appurtenant thereto.

"Liabilities" means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unfixed, unliquidated, unsecured, unmatured, unaccrued, unasserted, contingent, conditional, inchoate, implied, vicarious, joint, several or secondary liability, and strict liability including strict liability arising under ***environmental laws).***

"Ownership Documents" has the meaning assigned to such term in Section 5.2(a) hereof.

"Permitted Exceptions" means (i) those exceptions or conditions that affect or may affect title to the Property that are approved or deemed to be approved by Buyer.

"Personal Property" means all (i) furnishings, furniture, appliances, equipment, machinery and other personal property owned by Seller and located on or used in connection with the ownership, maintenance or operation of the Land or the Improvements; (ii) all plans and specifications, if any, in the possession of Seller which were prepared in connection with the construction or renovation of any of the Improvements; and (iii) all licenses, permits and warranties, if any, for the benefit of Seller, now in effect with respect to any portion of the Land or the Improvements.

"Property" means, collectively, the Land, Improvements and the Personal Property.

"Purchase Price" means the total consideration to be paid by Buyer to Seller for the purchase of the Property.

"Seller's Title Cure Period" has the meaning assigned to such term in Section 4.4 hereof.

"Survey" has the meaning assigned to such term in Section 4.2 hereof.

"Title Company" means Lone Star Title Company, 6701 Mesa, Suite A, El Paso, Texas, Attn: John Martin.

"Title Commitment" has the meaning assigned to such term in Section 4.1 hereof.

"Title Review Period" has the meaning assigned to such term in Section 4.3 hereof.

"Title Policy" has the meaning assigned to such term in Section 4.5 hereof.

1.2 **Other Defined Terms.** Certain other defined terms have the respective meanings assigned to them elsewhere in this Contract.

ARTICLE II
AGREEMENT OF PURCHASE AND SALE

On the terms and conditions stated in this Contract, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, the Property.

ARTICLE III
PURCHASE PRICE

3.1 **Purchase Price.** The total purchase price to be paid by Buyer for the Property shall be Ten Thousand and No/100 Dollars ($10,000.00) (the "**Purchase Price**"). The Purchase Price, net of all prorated amounts allocated to Seller as set forth in this Contract, shall be payable to Seller through the Title Company at the Closing by wire transfer of immediately available federal funds.

ARTICLE IV
TITLE AND SURVEY AND INSPECTION

4.1 **Title Commitment.** Within five (5) Business Days following the Effective Date, Buyer agrees to order, at Buyer's sole cost and expense, a current commitment for Title Insurance for the Property (the "**Title Commitment**"), a copy of which shall be furnished to Seller and Buyer. The Title Commitment shall contain the express commitment of the Title Company to issue a Texas Form T-1 Owner Policy of Title Insurance for the Property, which shall otherwise be in form and content consistent with Section 4.5 hereof. The Title Commitment shall be accompanied by copies of all instruments that create or evidence title exceptions affecting the Property.

4.2 **Survey.** Buyer shall obtain an update of any existing survey or obtain a new survey at Buyer's cost (any such updated survey or new survey being herein called the "**Survey**"). The parties agree that the Survey must satisfy the following requirements unless waived in writing by Seller and Buyer: The Survey shall (i) be an accurate Category 1A Land Title Survey of the Property by a surveyor registered under the laws of the State of Texas, which Survey shall be prepared in accordance with the *Manual of Practice for Land Surveying in Texas* and shall show the number of acres contained in the Property to the nearest one thousandth (1/1000th) of an acre; (ii) contain a legally sufficient description of the metes and bounds of the Property; (ii) be dated no more than 24 months prior to the Closing Date and (iii) certified to Seller, Buyer and the Title Company. The parties agree to use the metes and bounds description of the Land contained in the Survey, if different from that appended hereto as **Exhibit A,** for purposes of describing the Property in the warranty deed conveying to Buyer title to the Property.

4.3 **Review of Title Commitment and Survey.** Buyer shall have a period of 20 Business Days following its receipt of the Title Commitment and the Survey (the "**Title Review Period**") in which to review the Title Commitment and the Survey and give written notice to Seller specifying Buyer's objections, if any, to the Title Commitment, the Survey (the "**Buyer's Objection Letter**"). If Buyer fails to give the Buyer's Objection Letter to Seller prior to the expiration of the Title Review Period, then all exceptions to title shown on Schedule B but not on Schedule C of the Title Commitment are deemed to be Permitted Exceptions. Except as the Buyer may direct, all items on Schedule C can never be deemed to be Permitted Exceptions and

must be removed by Seller at Seller's sole cost as a precondition to closing and Buyer shall have no obligation to object to them.

4.4 **Seller's Obligation to Cure; Buyer's Right to Terminate.** If Buyer delivers to Seller the Buyer's Objection Letter before the end of the Title Review Period, then Seller may, but is not obligated to, within 10 Business Days of the date of receipt of such letter (the "**Cure Period**"), give written notice ("**Seller's Title Cure Notice**") to Buyer of Seller's intention to satisfy none, some or all of Buyer's objections concerning Schedule B items. It is expressly understood that in no event shall Seller be obligated or required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any matter contained in Buyer's Objection Letter. If Seller fails to timely give Buyer the Seller's Title Cure Notice or if Seller fails or refuses to satisfy any or all of Buyer's objections, then Buyer, as its sole and exclusive right and remedy, shall notify Seller in writing within 10 Business Days after the expiration of the Cure Period, that either:

(a) Buyer waives its right to further object to any objections it has asserted which Seller has failed or refused to satisfy in which event those objections asserted by Buyer shall be deemed Permitted Exceptions and waived by Buyer and the parties shall proceed to close this transaction;

(b) Buyer may in its sole discretion agree to extend the Cure Period to allow Seller additional time to cure objections; or

(c) Terminate this Contract, in which event the Title Company shall return to Buyer the Earnest Money Deposit as provided herein, and Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract except as otherwise provided herein.

4.5 **Title Policy.** At the Closing, or as soon thereafter as the Title Company can issue the same, the parties shall cause, at Buyer's sole cost and expense, a standard T-1 form Owner Policy of Title Insurance (the "**Title Policy**") to be furnished to Buyer by the Title Company. The Title Policy shall be issued by the Title Company and shall insure that Buyer has good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy shall contain no exceptions other than Permitted Exceptions and shall provide that:

(a) The survey exception may be amended, at Buyer's expense, to except only "shortages in area";

(b) The exception for rights of parties in possession shall be deleted;

(c) The tax exception shall be limited to taxes for the year of Closing and subsequent years not yet due and payable; and

(d) Unless waived by Buyer, all exceptions, conditions, or requirements described in Schedule C of the Title Commitment shall be released and satisfied prior to or at Closing and such items and requirements shall not be exceptions to the Owner Title Policy to be provided by Seller.

4.6 **Demolition.** Following the Closing, Buyer shall, at Buyer's sole cost and expense, cause the Improvements to be demolished, all refuse to be removed from the land and properly disposed of, and the site graded and prepared as development ready.

4.7 **Inspection.**

(a) Buyer, at Buyer's expense, shall have the right during the Inspection Period to make such physical examinations, studies, appraisals, inspections, engineering, environmental and insurance underwriting tests and investigations (the "**Inspections**") of the Property as Buyer may deem advisable. Seller shall reasonably cooperate with Buyer in making the Property reasonably available for Buyer's Inspections. Buyer may also reinspect the Property prior to Closing to verify that the Project has remained in similar physical shape, ordinary wear and tear excepted, as the Property was during the Inspection Period. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer relating to such inspection and its other due diligence shall be at the sole cost and expense of Buyer. Buyer agrees to be responsible and liable for any claims or damages, including mechanic's and materialmen's liens and reasonable attorneys' fees incurred by Seller, caused or arising out of or in connection with Buyer's Inspections of the Land and/or Improvements. Buyer shall require its representatives, agents, consultants and contractors ("**Buyer Representatives**") entering upon the Property for any purpose to obtain and maintain during in the Inspection Period general liability insurance in an amount not less than $500,000.00 and property damage insurance in an amount not less than $500,000.00, with an insurance carrier which is licensed in the State of Texas and is reasonably acceptable to Seller. The provisions of this Section shall survive the Closing or the earlier termination of this Contract. If Buyer elects to terminate this Contract in accordance with the terms hereof, Buyer shall provide Seller with copies of all documents, tests and reports generated from Buyer's Inspection within five (5) Business Days following the date of Buyer's termination.

(b) If Buyer has not terminated this Contract (i) during the Inspection Period or (ii) within 10 Business Days after the expiration of the Cure Period as provided in Section 4.4(b), then Buyer waives its right to terminate this Contract. If Buyer terminates this Contract during the Inspection Period or within 10 Business Days after the expiration of the Cure Period, then, in either event, the Earnest Money Deposit shall be returned to Buyer, and thereafter Seller and Buyer shall have no

further obligations to each other with respect to the subject matter of this Contract except as otherwise expressly provided herein.

ARTICLE V
REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS OF SELLER

5.1 **Representations and Warranties of Seller.** Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date as follows:

(a) Seller has the full right, power, and authority to sell and convey to Buyer the Property as provided in this Contract and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Contract and to carry out Seller's obligations hereunder has been, or on the Closing Date will have been, taken, and this Contract constitutes a valid and binding obligation of the Seller, enforceable in accordance with its terms;

(b) On the Effective Date, and as of the date of Closing, there are no adverse or other parties in possession of the Property or who have any leasehold rights in the Property;

(c) Seller has removed all of Seller's inventory, goods, supplies and furniture, and all personal possessions from the Property, and left the Property free and clear of all personal possessions and debris;

(d) There is no litigation pending or, to Seller's current actual knowledge, threatened, affecting the Property; and Seller has no knowledge of, and has received no written notice from, any governmental authority requiring any work, repairs, construction, alterations or installations on or in connection with the Property, or asserting any violation of any federal, state or municipal laws, ordinances, codes, orders, regulations or requirements affecting any portion of the Property, including, without limitation, the Americans with Disabilities Act and any applicable environmental laws or regulations;

(e) Seller has not received written notice of any pending condemnation action with respect to all or any portion of the Property and there are no existing condemnation or other legal proceedings affecting the existing use of the Property by any governmental authority having jurisdiction over or affecting all or any part of the Property;

(f) At Closing, Seller shall have good and indefeasible title to the Property free and clear of any claim, lien, or encumbrance, specifically including any claims for mechanics liens, subject only to the Permitted Exceptions;

(g) Seller has no notice that the current use of the property does not comply with all currently applicable zoning ordinances and governmental requirements. Seller has not received any written notice of suspension or cancellation of any certificates of occupancy;

(h) At the Closing, there will be no unpaid bills or claims in connection with any repair of the Improvements or other work performed or material purchased in connection with the Improvements;

(i) No one will have the right to occupy the Property after the Closing Date and no contracts of any kind, including contracts for maintenance, security, disposal, or fire suppression will survive the Closing;

(j) Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act or the Tax Reform Act of 1986, and Buyer is not obligated to withhold any portion of the Purchase Price for the benefit of the Internal Revenue Service;

(k) To the best of Seller's knowledge the Land is not in violation of any applicable law, now, nor has it at any time during Seller's ownership thereof been, used for the manufacture, processing, distribution, use, treatment, storage, disposal, placement, transport or handling of toxic materials, hazardous wastes or hazardous substances (as those terms are defined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); oils, petroleum-derived compounds; or pesticides (the ***Hazardous Materials***). In addition, no (i) underground storage tanks, (ii) asbestos (either commercially processed or excavated raw materials), (iii) electrical transformers, fluorescent light fixtures with ballast, or other items or equipment containing polychlorinated biphenyls, or (iv) other Hazardous Materials are present on the Property in violation of any applicable law. Seller has not received any written notice from any neighboring property owners indicating they have any concerns about existing environmental conditions which could affect the Property or indicating in any way they might hold Seller liable for any contribution to clean up and remediate such condition; and

(l) No party (other than Buyer) has any right or option to acquire all or any part of the Property, whether subject to earnest money contract, option agreement, right of first refusal, reversionary or future interests, or right of reverter.

5.2 **Agreements of Seller**. Seller covenants and agrees with Buyer as follows:

(a) **Ownership Documents**. Within 5 Business Days following the Effective Date, Seller shall deliver to Buyer the following items (the "**Ownership Documents**") with respect to the Property, to the extent in the possession or under the reasonable control of Seller:

(i) Any "as-built" plans and specifications for the Improvements and a copy of the results of all physical inspections, all structural, mechanical, engineering or soil reports, if any, prepared with respect to the Property;

(ii) A copy of current real estate and personal property tax bills or other documentation showing the amount of current real property taxes and the assessed value of the Land and Improvements; and

(iii) A copy of all environmental reports, inspections or assessments, if any, of the Land and Improvements.

If the parties fail to consummate the transaction described herein for any reason other than the Seller's default, Buyer agrees to return to Seller all materials delivered by or on behalf of Seller pursuant to or in connection with this Contract within 10 Business Days of such event.

5.3 **Seller's Indemnity**. In addition to any other applicable rights under this Agreement, Seller agrees to indemnify and defend Buyer and its City Council members, agents, and employees, (collectively, ***Buyer's Indemnified Parties***) from and against any and all liabilities, liens, claims, damages, costs, expenses, suits or judgments paid or incurred by any of Buyer's Indemnified Parties and all expenses related thereto, including, without limitation, court costs and reasonable attorneys' fees arising out of or in any way connected or related to: (i) the ownership, maintenance, or operation of the Seller's business operations on the Property; (ii) the existence of any historical underground storage tanks on the property; (iii) any breach or nonperformance by Seller of any provision or covenant contained in this Agreement or in any certificate or other instrument or document furnished (or to be furnished) by Seller with respect to the transactions contemplated hereunder; (iv) any liability arising because of a breach of contract or other matter related to the Property which occurred or is alleged to have occurred prior to Closing and which is not due to actions taken by Buyer; (v) the breach of any representation or warranty of Seller contained in this Agreement; or (vi) violation of any applicable laws or regulations relating to the demolition of the improvements located on the Property and disposition of all debris.

5.4 **Survival Beyond Closing**. The representations, warranties, undertakings and agreements of Seller contained herein survive the Closing and are not merged therein. The provisions of this Section 5.4 shall survive any termination of this Contract as well as the Closing.

ARTICLE VI
REPRESENTATIONS, WARRANTIES OF BUYER

6.1 **Buyer's Representations**. Buyer hereby represents and warrants to Seller as of the date of this Contract and as of the Closing Date as follows:

(a) Once this contract is approved by City Council and signed by the City Manager, Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Contract.

6.2 **Survival Beyond Closing**. The representations, warranties, undertakings and agreements of Buyer contained herein survive the Closing and are not merged therein.

ARTICLE VII
CLOSING

7.1 **Date and Place of Closing**. Provided that Buyer has not terminated this Contract as herein provided and all of the other conditions of this Contract shall have been satisfied prior to or on the Closing Date, the Closing of this transaction shall take place at at a time agreed by the parties at the offices of the Title Company 60 Business Days after the expiration of the Inspection Period (the "**Closing Date**"), or such earlier date as may be specified by Buyer by not less than 5 Business Days advance written notice to Seller.

7.2 **Items to be Delivered at Closing**

(a) **Seller**. At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, the following items fully executed by Seller or Buyer, as the case may be, and acknowledged where so indicated by all necessary parties in respect to the Property:

(i) The Title Policy, in the form specified in Section 4.5 hereof (unless waived by Buyer in accordance with the provisions of Section 4.5);

(ii) A General Warranty Deed (the "**Deed**"), duly executed and acknowledged by Seller, conveying title to the Land and Improvements, in substantially the form of **Exhibit B** appended hereto, subject only to the Permitted Exceptions;

(iii) A Bill of Sale for any Personal Property in substantially the form of **Exhibit D** appended hereto. The Bill of Sale shall be without warranty and contain the disclaimer of condition set forth in Section 5.4 and shall be acknowledged by Buyer by its signature on the Bill of Sale;

(iv) An affidavit, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury the Seller's United States identification number and that each of Seller is not a "foreign person" as that term is defined in Section 1445, duly executed and acknowledged by Seller;

(v) The environmental reports, test results and disposal documentation with regard to the demolition and removal of asbestos from the site, if any;

(vi) All keys or other access devices in the possession of Seller or their agents to the locks located at the Project; and

(vii) Any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

(b) **Buyer**. At the Closing, Buyer shall deliver or cause to be delivered to Seller or the Title Company, the following items:

(i) The Purchase Price, less any Earnest Money being held by the Title Company which is applicable to the Purchase Price, payable by wire transfer as required by Section 3.1 hereof;

(ii) Appropriate evidence of authorization reasonably satisfactory to Seller and the Title Company for the consummation of the transaction contemplated by this Contract; and

(iii) Any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.3 **Prorations**. The following items shall be adjusted or prorated between Seller and Buyer as set forth below:

(a) **Taxes**. General real estate taxes for the then current year relating to the Property shall be prorated as of midnight preceding the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Land and Improvements. Within 30 Business Days after the actual taxes for the year in which the Closing occurs are

determined, Seller and Buyer shall adjust the proration of such taxes and Seller and Buyer, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Seller.

7.4 **Recalculation of Prorations**. In the event the Closing does not occur and fund as of 12:00 noon, local time, on the Closing Date, all prorations shall extend to the midnight of the following day.

7.5 **Possession**. Possession of the Property shall be delivered to Buyer by Seller at the Closing subject to the rights of any approved third parties under the Permitted Exceptions.

7.6 **Costs of Closing**. Each party is responsible for paying the legal fees of its counsel in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer shall pay for the premium for Title Policy and all endorsements requested by Buyer; all real estate tax searches; UCC searches; the cost of the Survey; its own engineering inspections as well as for the charges attributable to recording the Deed. Any other expenses that are incurred by either party that are expressly identified herein as being the responsibility of a particular party shall be paid by such party. All other expenses are allocated between the parties in the customary manner for sales of real property similar to the Property in El Paso County, Texas.

7.7 **Provisions of Article VII to Survive Closing**. The provisions of this Article VII survive the Closing.

ARTICLE VIII
DEFAULTS AND REMEDIES

8.1 **Default of Buyer**. If the Buyer has not terminated this Contract pursuant to any of the provisions hereof authorizing such termination, and Buyer defaults hereunder and fails to perform any of the covenants and/or agreements contained herein which are to be performed by Buyer, Seller shall be entitled to receive the Earnest Money Deposit as Seller's sole and exclusive remedy, as liquidated damages, due to the inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof.

8.2 **Default of Seller**. If Seller fails or refuses to consummate the sale of the Project to Buyer pursuant to this Contract at the Closing, or Seller fails to perform any of its other obligations hereunder for any reason other than Buyer's failure to perform Buyer's obligations under this Contract, then Buyer may, as Buyer's sole and exclusive right and remedy for any such default, either (i) bring an action against the Seller for specific performance of the Seller's obligations under this Contract and have Seller pay Buyer's attorney's fees and costs if specific performance is granted, or (ii) terminate this Contract by giving written notice thereof to Seller

and the Title Company and Seller shall deliver all of the Earnest Money Deposit to Buyer and thereafter neither party hereto shall have any further rights or obligations hereunder.

8.3 **Effect of Termination.** Upon termination of this Contract under this Section 8 or pursuant to any other provision of this Contract, no party thereafter shall have any further obligations to the other hereunder except for the payment of any sums or damages upon termination as provided herein and except for any covenants and obligations which expressly survive such termination.

ARTICLE IX
BROKERAGE COMMISSIONS

9.1 **Representations Concerning Brokerage Commission.** Seller hereby represents and warrants to Buyer that it has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated hereby. Buyer hereby represents and warrants to Seller that Buyer has not contracted or entered into any agreement with any real estate broker, agent, finder, or other party in connection with this transaction.

ARTICLE X
CASUALTY OR CONDEMNATION

10.1 **Right of Termination.** Seller agrees to give Buyer and Title Company prompt notice of any fire or other casualty affecting the Project or of any actual or threatened taking or condemnation of all or any portion of the Project. If, prior to the Closing, there shall occur damage to the Project caused by fire or other casualty, then Seller or Buyer shall have the right to postpone the Closing Date or terminate this Contract by written notice delivered to the other party within 30 Business Days after Buyer has received notice from Seller of that event or the date of the fire or other casualty or Seller's receipt of notice of taking or condemnation, whichever shall first occur. If this Contract is terminated pursuant to this Section 10.1, the Earnest Money Deposit shall be returned to Buyer and the parties shall have no further obligations under this Contract, or to each other with respect to the subject matter of this Contract. Notwithstanding the foregoing, in the event that the cost of repairing or restoring such damage shall be covered by available insurance and such cost shall be less than $10,000, then Buyer shall proceed to Closing and Seller shall assign at Closing to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss insurance and, in addition, Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

10.2 **Postponement of Closing.** In the event that Buyer gives notice to postpone the Closing Date pending a determination of the nature and extent of such damage or destruction and the

availability and adequacy of insurance proceeds, the postponement shall be in effect for an additional 20 Business Days after the 30 Business Day period that Buyer has to give notice of its desire to postpone (the ***Damages Determination Period***).

10.3 **Insurance for Repair**. If the cost to repair or replace the damage is reasonably estimated by the Seller's insurance adjuster to exceed $10,000, then at Buyer's election and in its sole discretion, Buyer may elect to proceed with the Closing and at the Closing, Seller shall assign to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss proceeds, and Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

ARTICLE XI
MISCELLANEOUS

11.1 **Notices**. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered (i) if personally delivered, upon receipt; (ii) if sent by expedited prepaid reputable overnight delivery, the next business day after delivery to such service; (iii) if sent by United States registered or certified mail, return receipt requested, postage prepaid, 3 Business Days after having been deposited in the United States Postal Service, properly addressed as follows (or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other party in the manner provided for in this Section):

Seller: Daniel A. Miles
Miles El Paso Investments LTD
820 Rosinante Road
El Paso, Texas 79922

City: City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy: City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy: Engineering-Capital Assets
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

11.2 **Governing Law**. This Contract is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of Texas shall govern the validity, construction, enforcement, and interpretation of this Contract. This Contract is performable in, and the exclusive venue for any action brought with respect hereto shall lie in El Paso County, Texas, where the Property is located.

11.3 **Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Project, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

11.4 **Parties Bound.** This Contract is binding upon and inure to the benefit of Seller and Buyer, and their respective permitted successors and assigns.

11.5 **Saturday, Sunday or Legal Holiday.** If any date set forth in this Contract for the performance of any obligation by Buyer or Seller or for the delivery of any instrument or notice should be on other than a Business Day, the compliance with such obligations or delivery is deemed accepted on the next following Business Day.

11.6 **Time is of the Essence.** It is expressly agreed by Seller and Buyer that time is of the essence with respect to this Contract.

11.7 **Exhibits.** The Exhibits which are referenced in, and attached to, this Contract are incorporated in and made a part of this Contract for all purposes. If one or more Exhibits to be attached to this Contract are not so attached or are incomplete upon the Effective Date, then Seller agrees to prepare or complete any such Exhibits and furnish Buyer with a copy of same. Buyer have the right to approve the form and contents of each such Exhibit supplied by Seller within 5 Business Days of receipt thereof in its sole and absolute discretion. Buyer reserves the right to terminate this Contract should Buyer not approve the form and content of such Exhibits, provided, however, such Exhibits shall be deemed accepted by Buyer if Buyer fails to provide Seller of any written objections to such Exhibits submitted by Seller within 10 Business Days following receipt of the same.

11.8 **Attorney's Fees.** If either party hereto shall be required to employ an attorney to bring suit to enforce or defend the rights of such party hereunder, the prevailing party in such suit shall be entitled to recover its reasonable attorney's fees and costs, in addition to any other relief to which it or they may be entitled.

11.9 **Expiration of Offer.** The execution by the Buyer hereto and delivery to the Seller of an executed counterpart of this Contract shall constitute an offer to purchase the Property upon the terms stated herein. If a counterpart of this Contract executed by the Seller is not approved by the City Council of the City of El Paso and executed by the Buyer within 3 Business Days thereafter without modification, the offer contained in this Contract shall be null and void.

11.10 **Severability.** If for any reason any provision of this Contract is held to violate any applicable law, and so much of this Contract is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Contract which shall remain in full force and effect.

11.11 **Assignment**. Buyer may assign this Contract in whole, but not in part, without Seller's consent, provided, however, Buyer shall give Seller written notice of any such assignment not less than one (1) Business Day prior to such assignment together with a copy of the assignee's written agreement to assume and perform the obligations of Seller hereunder, and no assignment shall discharge or release the assigning party from any obligation or liability hereunder, whether arising before or after such assignment. Subject to the foregoing, this Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11.12 **Multiple Counterparts**. This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and either of the parties hereto may execute this Contract by signing any such counterpart.

11.13 **Electronic Signature**. Delivery of an executed counterpart signature pages of the Contract by facsimile or electronic mail is effective as delivery of an original of an executed counterpart signature page.

11.14 **No Third Party Beneficiary**. Except as otherwise expressly provided herein, this Contract is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary or otherwise.

11.15 **Effect of Headings.** The subject headings of sections and subsections of this Contract included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.16 **Recording.** Neither this Contract, nor any memorandum or evidence hereof shall be recorded in any public records without the prior written consent of both parties.

[Signatures Begin on Next Page]

EXECUTED by Seller the 2nd day of February 2012.

SELLER:

MILES EL PASO INVESTMENTS LTD
a Texas limited partnership

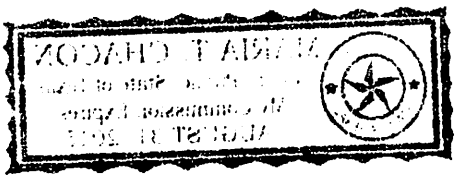
By: Miles El Paso, Inc., its General Partner

By: _____
Daniel A. Miles, Secretary

MARIA T. CHACON
Notary Public, State of Texas
My Commission Expires
AUGUST 31, 2015

Maria T Chacon
Feb. 2, 2012

[Signatures Continue on Next Page]



EXECUTED by the City of El Paso the ___ day of September, 2012.

CITY OF EL PASO, TEXAS

By:_____
Joyce Wilson, City Manager

APPROVED AS TO FORM:

Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E., City Engineer
Engineering & Construction Management

[Signatures Continue on Next Page]

Receipt of a fully executed copy of the Contract received this ___ day of _____ _____, 2012.

LONE STAR TITLE COMPANY

By:_____
Printed Name: _____
Title: _____

EXHIBITS

Exhibit A	-	Description of Land
Exhibit B	-	Form of General Warranty Deed
Exhibit C	-	Form of Bill of Sale

EXHIBIT A

PROPERTY DESCRIPTION

A portion of Lot 1, Block 1, of Miles Midtown Subdivision, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof, recorded in Volume 77, Page 24, Plat Records of El Paso County, Texas and more particularly described by metes and bounds in **Exhibit "A-1"** attached hereto and made a part of for all purposes intended.

PORTION OF LOT 1, BLOCK 1
MILES MIDTOWN SUBDIVISION
CITY OF EL PASO, EL PASO COUNTY, TEXAS

Property Description: Portion of Lot 1, Block 1, Miles Midtown Subdivision, an addition to the City of El Paso, El Paso County, Texas.

METES AND BOUNDS

Portion of Lot 1, Block 1, Miles Midtown Subdivision, an addition to the City of El Paso, El Paso County, Texas:

Commencing at a 5/8" rebar located at the northeast corner of Lot 8, Block 22, Miles Midtown Subdivision, from which a city monument located on Colfax Drive and the southerly Right-of-Way of Interstate 10 bears S 89° 56' 37" E, a distance of 159.52 feet. Thence from the point of commencement, S 05° 23' 26" E, a distance of 177.43 feet to a set ½" rebar with yellow SLI cap marked "TX 2998", being the northwest corner of the parcel herein described and the "TRUE POINT OF BEGINNING";

THENCE, N 89° 22' 00" E, a distance of 77.62 feet to a set "PK" nail on a concrete rock wall;

THENCE, S 00° 38' 00" E, a distance of 25.00 feet to a set "PK" nail with shiner in the pavement;

THENCE, S 89° 22' 00" W, a distance of 77.60 feet to a set "PK" nail on a concrete rock wall;

THENCE, N 00° 41' 00" W, a distance of 25.00 feet to the TRUE POINT OF BEGINNING of this description.

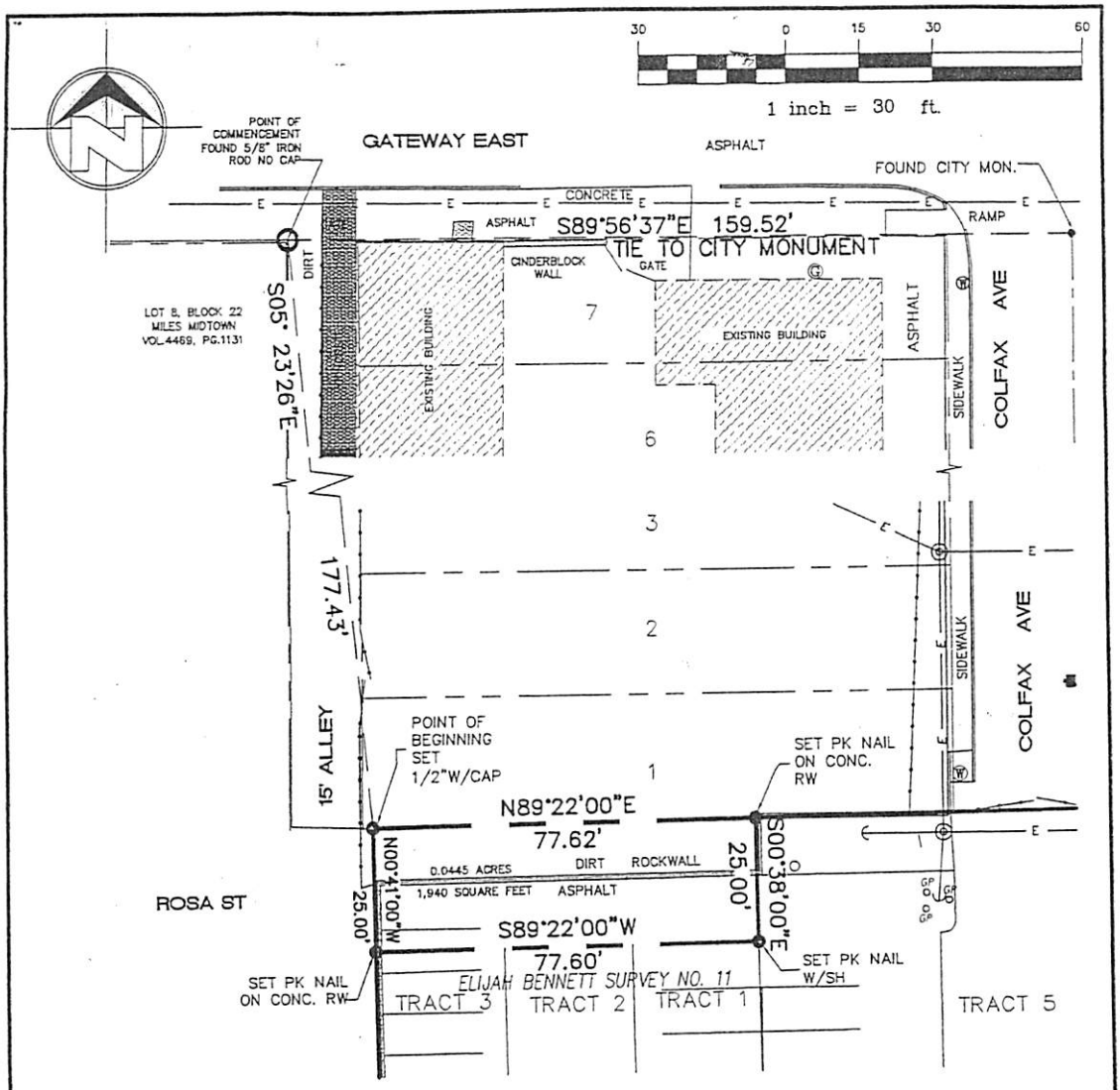
This parcel of land contains 0.0445 acres (1,940 square feet) of land, more or less.

A PLAT OF SURVEY OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC.
Consulting Engineers - Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

October 20, 2010
Job# 06-10-2918b
M&B/1669



NOTE:
ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED.

UNLESS SPECIFICALLY ACCEPTED BY SLI ENGINEERING. INC. IN WRITING, SLI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY–PANEL NUMBER 480214 0040 B, DATED OCTUBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE C.

ZONE C AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

NOTES:
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. SET 1/2" IRON WITH SLI CAP STAMPED TX2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
3. DEED REFERENCE IN VOL. 77, PG. 24 DEED RECORDS OF EL PASO COUNTY.
4. BASIS OF BEARING: PLAT OF MILES MIDTOWN SUBDIVISION NO. 1, RECORDED IN VOL. 77 PG. 24.
5. NO BUILDING EXIST ON PROPERTY

Copyright 2010 SLI Engineering, Inc.

This map and survey are being provided solely for the use of the City of El Paso and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon October 20, 2010.

STATE OF TEXAS REGISTERED GUILLERMO LICON 2998 PROFESSIONAL LAND SURVEYOR

BOUNDARY SURVEY

SLI ENGINEERING, INC.
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS
6500 WESTWIND DRIVE
EL PASO, TEXAS 79912
915-584-4457

PORTION OF LOT1, BLOCK 1
MILES MIDTOWN SUBD.
CITY OF EL PASO,
EL PASO COUNTY, TEXAS.

JOB #: 06-10-2918 DR. BY: JCH/TR
SCALE: 1"=30' F.B. #: 2010-1
10-2918-b
DATE: 10/20/2010 DWG.: COLFAX VACATE).dwg

PLAT REFERENCE
VOLUME 77 PAGE 24

CERTIFICATION
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

GUILLERMO LICON, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 2998

DATE: 10-20-10

EXHIBIT B

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

Effective Date: _____, 2012

Grantor: **Miles El Paso Investments LTD**, a Texas limited partnership

Grantor's Mailing Address: 820 Rosinante Road, El Paso, Texas 79922

Grantee: **THE CITY OF EL PASO, A MUNICIPAL CORPORATION**

Grantee's Mailing Address: City of El Paso, #2 Civic Center Plaza, El Paso County, El Paso, Texas 79901-1196

Consideration: TEN and 00/100 DOLLARS ($10.00), and other valuable consideration, receipt of which is hereby acknowledged.

Property (including any improvements):

A portion of Lot 1, Block 1, of Miles Midtown Subdivision, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof, recorded in Volume 77, Page 24, Plat Records of El Paso County, Texas and more particularly described by metes and bounds in **Exhibit "A-1"** attached hereto and made a part of for all purposes intended.

EXCEPTIONS TO CONVEYANCE AND WARRANTY:

See the Exhibit "B" attached hereto and made a part hereof for all purposes.

GRANT AND CONVEYANCE:

Grantor, for the consideration and subject to the Exceptions to Conveyance and Warranty, GRANTS, SELLS, and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

For the same Consideration, Grantor hereby grants, sells, conveys, assigns and delivers to Grantee, all right, title and interest, if any, of Grantor, as owner of the Property but not as owner of any other Property in and to (i) strips or gores, if any, between the Property and abutting properties, (ii) any land lying in or under the bed of any street, alley, road or right-of-way, opened or proposed, abutting or adjacent to the Property, (iii) if accepted by Grantee, any leases and rental agreements (whether written or verbal) that grant a possessory interest in or that otherwise grant rights with regard to the use of all or any portion of the Property, and (iv) any easements, rights of way, rights of ingress and egress or other interests in, on or to, any land, highway, street, road or avenue, open or proposed, in, on, across from, in front of, abutting, adjoining or otherwise appurtenant to the Property, as well as all other rights, privileges and appurtenances owned by Grantor and in any way related to the Property and other rights and interests of Grantor hereunder conveyed.

When the context of this instrument requires, singular nouns and pronouns will include the plural.

EXECUTED the ____ day of _____, 2012.

GRANTOR:

MILES EL PASO INVESTMENTS LTD
a Texas limited partnership

By: Miles El Paso, Inc., its General Partner

By: _____
Daniel A. Miles, Secretary

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the ___ day of _____, 2012, by Daniel A. Miles.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ___ day of _____, 2012.

_____
Notary Public in and for the State of Texas
My Commission expires: _____

EXHIBIT C

BILL OF SALE

MILES EL PASO INVESTMENTS LTD ("**Seller**"), in consideration of Ten and No/100 Dollars ($10.00), the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign, transfer, quit claim and set over to the **City of El Paso, Texas** ("**Buyer**"), all of the personal property described on Exhibit A attached hereto and made a part hereof (the "**Personal Property**") located at, on and about the real estate located at_____, El Paso, Texas (the "**Property**").

TO HAVE AND TO HOLD the Personal Property unto Buyer and Buyer's successors and assigns forever.

Signed this this ___ day of _____, 2012.

SELLER:

MILES EL PASO INVESTMENTS LTD
a Texas limited partnership

By: Miles El Paso, Inc., its General Partner

By: _____
Daniel A. Miles, Secretary

TEWAY EAST
PLATA
RAMP
ROSA
COLFAX