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

DEPARTMENT: Financial Services

AGENDA DATE: May 8, 2007

CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance authorizing the to sell the South 20.5 feet of lot 20, Block 41, Magoffin Addition, more commonly known as 820 Tays St., El Paso, El Paso County, Texas, to Olga Cisneros.

BACKGROUND / DISCUSSION:

In 1987 CD Housing remodeled this property using a loan note and grant note. The loan-holder defaulted in payments placing the property on foreclosure. In 2006 CD moved to reclaim the property and secured the building from intrusion and vagrancy. Then proceeded to clean, repair and advertise the building for sale. The property appraised at $19,800. Bids were open through competitive bidding and Mrs. Olga Cisneros is the highest bidder offering $42,000.00 purchase price. Mrs. Cisneros intends to reside in the property and rent the 2nd floor to supplement her income.
Community Development has recommended release of this property.

PRIOR COUNCIL ACTION:

Yes, sales of city real property.

AMOUNT AND SOURCE OF FUNDING:

Revenue of $42,000.00

BOARD / COMMISSION ACTION:

N/A

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

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

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

CITY CLERK DEPT.
07 MAY -3 PM 4:07

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO SELL THE SOUTH 20.5 FEET OF LOT 20, BLOCK 41, MAGOFFIN ADDITION, MORE COMMONLY KNOWN AS 820 TAYS ST., EL PASO, EL PASO COUNTY, TEXAS, TO OLGA CISNEROS.

WHEREAS, the City of El Paso staff has recommended the sale of the South 20.5 feet of Lot 20, Block 41, Magoffin Addition, El Paso, more commonly known as 820 Tays St., El Paso County, Texas; 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, Olga Cisneros is the highest bidder and submitted a bid of $42,000.00, (which amount includes additional fees incurred by the City to sell the 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 Olga Cisneros.

> The South 20.5 feet of Lot 20, Block 41, Magoffin Addition, more commonly known as 820 Tays St., El Paso, El Paso County, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

PASSED AND APPROVED this _____ day of _____, 2007.

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:

_____
William Lilly
Community Development Director

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

#28745 v1 - CAM/Ordinance/820 Tays

Calderon Engineering

3031 Trawood Drive
El Paso, Texas 79936
(915) 855-7552
FAX: (915) 855-8350

September 12, 2006

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being the South 20.5 feet of Lot 20, Block 41, Magoffin's Addition, City of El Paso, Texas, El Paso County, Texas, as filed and recorded in Book 14, Page 19, Deed Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows;

Beginning at a set chiseled cross marking the Southwest corner of Lot 20, and the intersection of the North right-of-way line of Seventh Street and the East right-of-way line of Tays Street in Magoffin's Addition;

Thence North 14°38'00" West along the East right-of-way line of Tays Street and along the West boundary of Lot 20 a distance of 20.50 feet to a set chiseled cross;

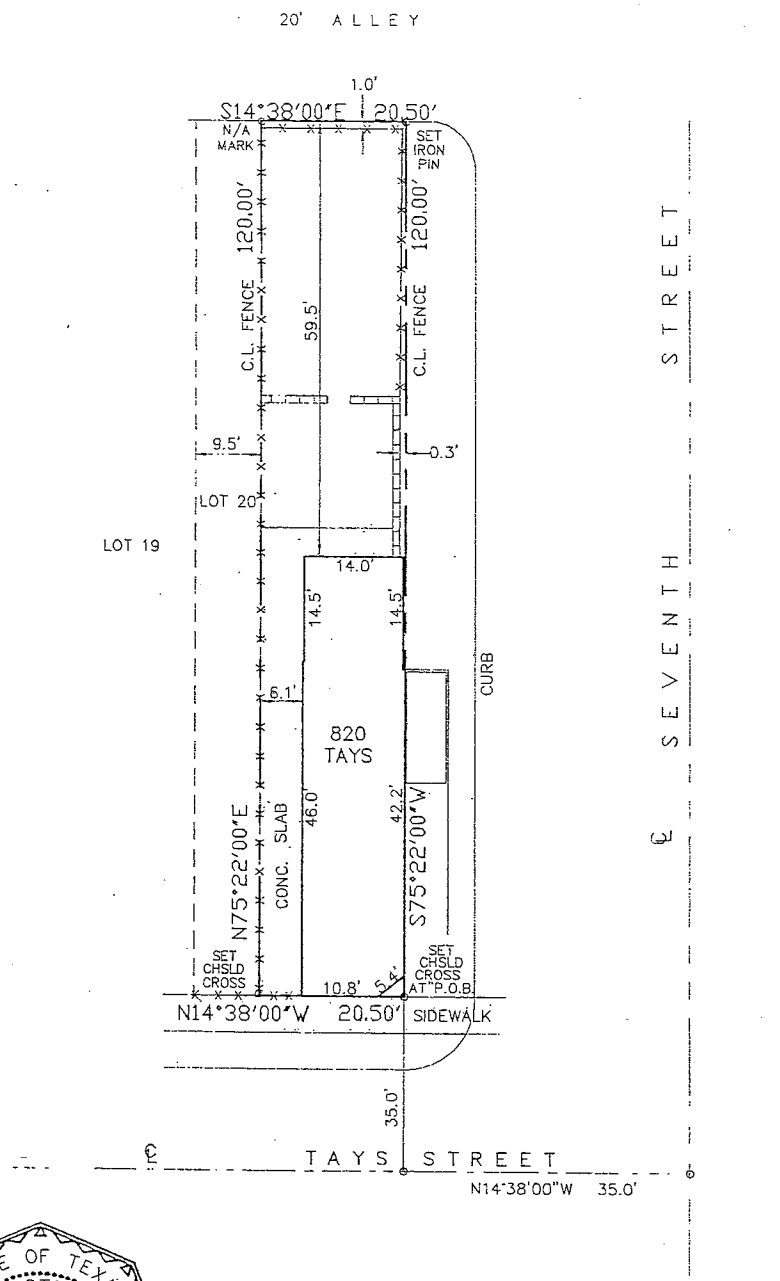
Thence North 75°22'00" East a distance of 120.00 feet to a point;

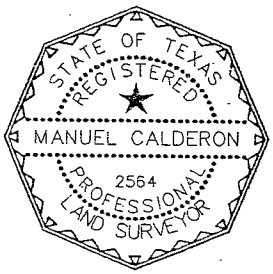
Thence South 14°38'00" East along the East boundary of Lot 20 and the West right-of-way line of a 20 foot wide alley a distance of 20.50 feet to a set iron pin;

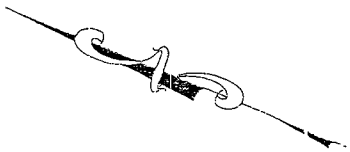
Thence South 75°22'00" West along the South boundary of Lot 20 and along the North right-of-way line of Seventh Street a distance of 120.00 feet to the "Point of Beginning" and containing in all 2,460.00 square feet or 0.057 acres of land more or less. A plat of survey dated September 12, 2006 is a part of this description and is attached hereto.

Manuel Calderon
Registered Professional Land Surveyor No. 2564
Calderon Engineering

906-57MB C-5







BEARING ORIENTATION AS PER PLAT OF MAGOFFIN'S ADDITION

This house is not located in a flood hazard area as determined by the FIRM by U.S. Federal Emergency Management Agency National Federal flood insurance Program.

CERTIFICATION

I hereby certify that the foregoing Boundary and Improvement Survey was made by me or under my supervision and that there are no encroachments except as shown. Only platted easements are shown.

Manuel Calderon
Registered Professional Land Surveyor No. 2564

E-Mail: CalderonEngineering@elptizclass.com

Book 14 Page 19 Job No. 906-57

820 TAYS STREET. THE SOUTH 20.5 FEET OF LOT 20, BLOCK 41, MAGOFFIN'S ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ATTACHED HERETO.

Field JM Office PC-C3 Date 09-12-06 Scale 1"=20'

CALDERON ENGINEERING
3031 TRAWOOD DR.
EL PASO, TEXAS 79936 (915) 355-7552
E-Mail: CalderonEngineering@elptizclass.com

STATE OF TEXAS §
§
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into this _____ day of _____, 2007, by and between the **City of El Paso**, hereinafter referred to as the "City" and **Olga Cisneros**, 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:

   South 20.5 feet of Lot 20, Block 41, Magoffin Addition, more commonly known as 820 Tays St., El Paso, El Paso County, Texas, being more particularly described 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 their determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by their 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.

2. **Amount of Payment of Purchase Price.** The purchase price for the Property shall be **FORTY-TWO THOUSAND AND 00/100THS DOLLARS ($42,000.00)**, which sum includes the appraisal services fee of $450.00 and surveying costs of $380.00, 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 **TWO THOUSAND ONE HUNDRED AND 00/100THS DOLLARS ($2,100.00)**, 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 AS, 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 AND THE CONDITION; (B) THE SUITABILITY 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, BETWEEEN 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 NEGLIGLENCE 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.

4.11 **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 El Paso Title Company, 610 N. Mesa, 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 $437.88 and any other costs the City may have incurred in the preparation for the sale of the Property (Solicitation No. 2007-046) shall be paid by the Buyer.

(d) The appraisal services fee of $450.00, legal fees of $1,123.84, the cost of boarding the property in the amount of $550.00, and surveying costs of $380.00, which are included in the purchase price of the property, shall be paid by the Buyer.

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: Olga Cisneros

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.

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.

CITY CLERK DEPT.
07 APR -6 AM 9:28

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 _____, 2007.

CITY OF EL PASO
A Municipal Corporation

By _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Chief Financial Officer

APPROVED AS TO CONTENT:

William Lilly
Community Development Director

APPROVED AS TO FORM:

Theresa Cullen-Garney
Deputy City Attorney

(Buyer's acknowledgment of conditions in instrument on following page)

The above instrument, together with all conditions thereto is hereby executed by **Olga Cisneros** this 5 day of April, 2007.

Olga E. Cisneros

OLGA CISNEROS, Buyer

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 5th day of April, 2007, by OLGA CISNEROS.

My Commission Expires:

May 15, 2007

Marisela Pacheco

Notary Public, State of Texas

Notary's name printed:

Marisela Pacheco

MARISELA PACHECO
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
MAY 15, 2007

Calderon Engineering

3031 Trawood Drive
El Paso, Texas 79936
(915) 855-7552
FAX: (915) 855-8350

September 12, 2006

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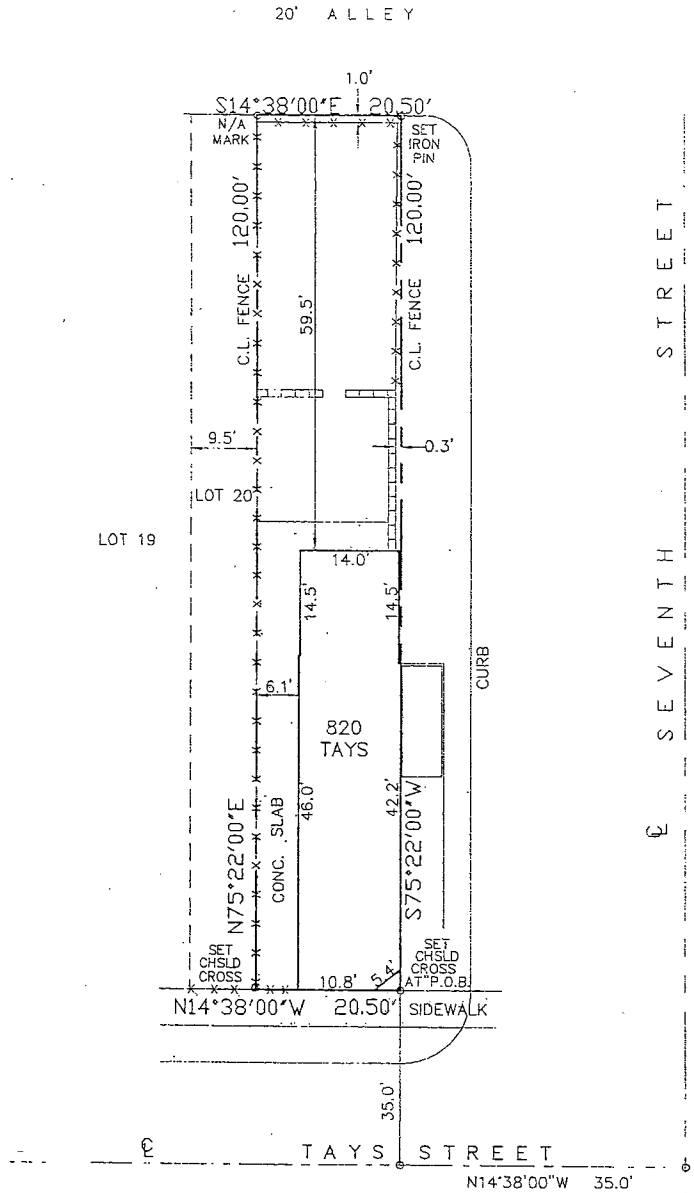

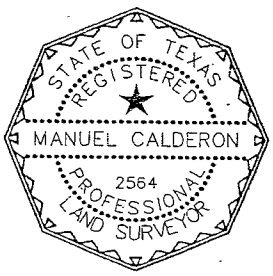

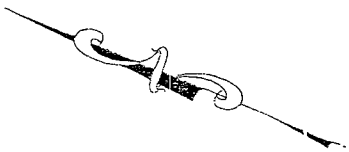

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CERTIFICATION

I hereby certify that the foregoing Boundary and Improvement Survey was made by me or under my supervision and that there are no encroachments except as shown. Only platted easements are shown.

Manuel Calderon
Registered Professional Land Surveyor No. 2564

E-Mail: CalderonEngineering@elptizclass.com

Book 14 Page 19 Job No. 906-57

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Field JM Office PC-C3 Date 09-12-06 Scale 1"=20'

CALDERON ENGINEERING
3031 TRAWOOD DR.
EL PASO, TEXAS 79936 (915) 355-7552
E-Mail: CalderonEngineering@elptizclass.com

Exhibit "A"
Page 2 of 2