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

DEPARTMENT: Parks and Recreation

AGENDA DATE: June 12, 2007

CONTACT PERSON/PHONE: Norman C. Merrifield (915) 541-4910

DISTRICT(S) AFFECTED: District 1

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SUBJECT:
APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.
An ordinance authorizing a lease agreement to be signed by the City Manager between the City and the EL Paso Border Youth Athletic Association (EPBYAA) on property located adjacent to Lower Tom Lea Park in the Rim Road area.

BACKGROUND / DISCUSSION:
Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?
Prior to 2003 the EPBYAA, represented by Dr. Aboud, approached the City about leasing the identified property to develop as a baseball complex. In October of 2003 a lease agreement was reached with the EPBYBA is do so. The agreement stated that Dr. Aboud would raise all the funding necessary to complete the project. Over the course of two years Dr. Aboud worked at securing the funding. Dr. Aboud contacted staff in late 2006 and informed staff that he had a funding partner in the El Paso Independent School District (EPISD) and was ready to proceed with the project. Because of the new partnership, staff reviewed the original agreement and found that there had been a surveying error in the original document. Running concurrently, staff revised the agreement while Dr. Aboud revised the survey. The survey has been completed and is in order.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?
Yes. City Council approved the original lease agreement at their meeting of October 6, 2003.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
The EPBYBA will fund the project.

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A
The Parks and Recreation Advisory Board confirmed their support for this project at their September 2003 meeting.

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

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

DEPARTMENT HEAD: _____ For NCM

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

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: Jayne A. Wilson **DATE:** 6/05/07

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ORDINANCE NO._____

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO ENTER INTO A LEASE AGREEMENT WITH EL PASO BORDER YOUTH ATHLETIC ASSOCIATION FOR THE PURPOSE OF DEVELOPING A PLAN FOR, CONSTRUCTING, AND UTILIZING A YOUTH BASEBALL AND SOFTBALL FACILITY ON PROPERTY LOCATED ADJACENT TO BROWN STREET AND SCHUSTER AVENUE CONSISTING OF ALL OF BLOCKS 104, 105, AND 136, ALEXANDER ADDITION, AND A PORTION OF BLOCKS 68, 69, 99, 106, 107, 135, 137, 138, 139, 142, 143, AND 174, AND A PORTION OF ANGE STREET, OCTAVIA STREET, PRICE STREET, NOBLE STREET, DAGGETT STREET, WADE STREET, UNIVERSITY AVENUE, BLANCHARD AVENUE, HAGUE AVENUE AND RIM ROAD RIGHTS-OF-WAY (VACATED), ALEXANDER ADDITION, EL PASO, EL PASO COUNTY, TEXAS; AND CANCELING THE LEASE AGREEMENT APPROVED BY ORDINANCE #15568

WHEREAS, the City owns certain real property ("the Property") located adjacent to Brown Street and Schuster Avenue consisting of all of Blocks 104, 105, and 136, Alexander Addition, and a portion of Blocks 68, 69, 99, 106, 107, 135, 137, 138, 139, 142, 143, and 174, and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue, Hague Avenue and Rim Road Rights-of-way (Vacated), Alexander Addition, El Paso, El Paso County, Texas, part of which has been set aside for use by the El Paso Water Utilities Public Service Board as the Art Woods Reservoir site and the remainder of which is currently set aside for park use as Lower Tom Lea Park; and

WHEREAS, facilities for practicing and playing baseball and softball and related amenities ("the Facilities") are proposed to be constructed on the Property, which will be operated for the benefit of the citizens of El Paso, Texas; and

WHEREAS, the City, acting by and through its City Council, has determined that in order to provide for the early and successful design, development, construction, operation, maintenance and promotion of the Facilities; as well as the greatest benefit to the citizens of El Paso, all aspects of the Facilities design, development, construction, operation, maintenance and promotion should be contracted for with a private business entity for carrying out the public purpose; and

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WHEREAS, El Paso Border Youth Athletic Association, a corporation formed pursuant to the Texas Non-Profit Corporation Act, proposes to design, construct, operate, maintain, and promote the Facilities; and

WHEREAS, El Paso Border Youth Athletic Association has the capability and desire to design, construct, operate, maintain, and promote the Facilities on the Property upon the terms, conditions and covenants herein provided in the attached Lease Agreement; and

WHEREAS, the City Council of the City of El Paso finds that the execution of such Lease Agreement, upon the terms and conditions set forth therein, serves a public purpose and is in the public interest; and

WHEREAS, the City Council desires to cancel the Lease Agreement authorized on September 30, 2003, through Ordinance #15568.

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

That the Mayor be authorized to sign the Lease Agreement between the City of El Paso and El Paso Border Youth Athletic Association providing for design, development, construction, operation, maintenance and promotion of a youth baseball and softball facility at Lower Tom Lea Park in central El Paso for an initial term of thirty years with options to extend for no more than two additional terms of ten years each. The Lease Agreement shall be in the form which is attached hereto marked Exhibit "A," and made a part hereof for all purposes. Further, the prior Lease Agreement authorized by the City of El Paso by way of Ordinance #15568 is hereby canceled and replaced by Exhibit "A" hereto.

(signatures on following page)

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PASSED AND APPROVED this _____day of_____, 2007.

CITY OF EL PASO:

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Norman C. Merrifield, Ed.D., Director
Parks & Recreation Department

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ORDINANCE NO._____

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STATE OF TEXAS)
) **LEASE AGREEMENT**
COUNTY OF EL PASO)

THIS LEASE AGREEMENT ("Agreement") is made and entered into this _____ day of_____, 2007 (the "Effective Date"), by and between THE CITY OF EL PASO, a municipal corporation existing under the laws of the State of Texas ("City" or "Lessor"), and EL PASO BORDER YOUTH ATHLETIC ASSOCIATION, a corporation formed under the Texas Non-Profit Corporation Act ("Lessee").

WITNESSETH:

WHEREAS, the City owns the real property described in Exhibit "A" ("Property"), on which facilities for practicing and playing baseball and softball and related amenities (herein the "Facilities") are proposed to be constructed and which will be operated for the benefit of the citizens of El Paso, Texas; and

WHEREAS, the City, acting by and through its City Council, has determined that in order to provide for the early and successful design, development, construction, operation, maintenance and promotion of the Facilities, as well as, the successful operation and greatest benefit to the citizens of El Paso, all aspects of the Facilities design, development, construction, operation, maintenance and promotion should be contracted for with a private business entity for carrying out the public purpose; and

WHEREAS, Lessee has the capability and desire to construct, operate and maintain the Facilities at the Lower Tom Lea Park site upon the terms, conditions and covenants herein provided; and

WHEREAS, the parties desire to bind themselves in the interest of the construction, maintenance and operation of said Facilities in a manner best suited to meet the public needs and interest.

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

SECTION 1: LEASED PREMISES

1.01 DEMISE OF REAL PROPERTY. For and in consideration of the mutual covenants hereof, Lessor hereby leases to Lessee and Lessee hereby agrees to lease from Lessor the real property known as the Lower Tom Lea Park and adjoining property set aside for the use of the Public Service Board ("Leased Premises"), located adjacent to Brown Street and Schuster Avenue consisting of all of Blocks 104, 105, and 136, Alexander Addition, and a portion of Blocks 68, 69, 99, 106, 107, 135, 137, 138, 139, 142, 143, and 174, and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue, Hague Avenue and Rim Road Rights-of-way (Vacated), Alexander Addition, El Paso, El Paso County, Texas, and more specifically described in Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

1.02 DEFINITIONS AND USE OF TERMS. The terms used in this Agreement shall have their normal and customary meaning except when they are expressly defined herein. When used in this Agreement the following terms are expressly defined:

1.02.1 "Land" or "Leased Premises" means the real property described in Subsection 1.01 above, including a fifty-foot (50') buffer around the perimeter of the adjacent reservoir.

1.02.2 "Year" shall mean each annual calendar period beginning on the Start Date of the Agreement.

1.02.3 "Start Date" shall have the meaning set forth in Section 3.01.

SECTION 2: TERM

2.01. INITIAL TERM. The term of this Agreement shall be for a periodof thirty (30) years commencing on the Start Date (as defined in Section 3.01) and expiring on the last day of the month thirty years thereafter ("Initial Term"). Notwithstanding the foregoing, Lessee shall have a period of ninety (90) days from the Effective Date (the "Feasibility Period") to determine

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whether the Leased Premises are suitable for Lessee's use. Lessee may terminate this Agreement for any reason by providing written notice to Lessor prior to the expiration of the Feasibility Period. If Lessee fails to provide such notice prior to the expiration of the Feasibility Period, Lessee shall be deemed to have accepted the Leased Premises, and this Agreement shall remain in full force and effect. Lessor agrees to allow Lessee and its agents reasonable access to the Leased Premises during the Feasibility Period, and agrees to provide Lessee with complete access to any and all boundary and topographical surveys, soils reports, environmental reports, and other documents in Lessor's possession and control relating to the Leased Premises. Lessee agrees to indemnify and hold Lessor harmless from and against any liens, claims, or damages suffered or incurred by Lessee as a result of Lessee's conduct of said review. The indemnification provisions shall survive the termination of this Agreement. During the Feasibility Period, Lessee shall carry the liability coverages required by this Agreement and shall provide Lessee with evidence of same.

2.02. EXTENSION. Lessee shall have the option to extend this Agreement for a period of ten (10) years beginning on the day following the conclusion of the Initial Term, as described in 2.01, and a second extension term for a period of ten (10) years beginning on the date following the conclusion of the first extension described in this paragraph. Lessee shall communicate its intent to exercise either extension option by sending written notice to Lessor prior to ninety (90) days of the expiration of the Initial Term or the first extension as described in this paragraph. The Initial Term plus any extension, if any, shall be referenced herein as the "Term".

SECTION 3: USES, PRIVILEGES AND OBLIGATIONS OF THE LESSEE

3.01. START DATE. The "Start Date," as such term is used herein, shall be the first day on which any phase of the Facilities is formally open to the public. Although the Start Date is the date from which the Initial Term of this Agreement (as defined in Section 2.01) is measured, this Agreement shall be in full force and effect from and after the Effective Date first

set forth herein for all purposes, including the City's and Lessee's rights and obligations hereunder and Lessee's use and enjoyment of the Leased Premises.

3.02. CONSTRUCTION TIMETABLE. Notwithstanding anything in this Agreement to the contrary, Lessee agrees that it shall begin construction of the Facilities, in phases as described in Exhibit "B", within ninety (90) days of the Feasibility Period. Lessee shall diligently prosecute same to completion so that the initial phase of the Facilities selected by Lessee shall be open to the public within two hundred seventy (270) days of the Feasibility Period. If Lessee fails to meet these deadlines for a reason other than force majeure or a breach by the City of its obligations hereunder, the City may terminate this Agreement upon not less than ninety (90) days' written notice to Lessee specifying the alleged default and giving Lessee an opportunity to cure.

3.02.1 PERFORMANCE BONDS. Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

3.02.1.1 Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of each phase of construction, as follows. Once Lessee has determined during the Feasibility Period that the Leased Premises are suitable for Lessee's use, prior to construction of the first phase described in the attached Exhibit "B", Lessee shall deliver to Lessor a contract surety bond equal to the full amount of that first phase. Once that first phase is complete and prior to construction of the second phase described in Exhibit "B", Lessee shall deliver to Lessor a contract surety bond equal to the full amount of the second phase of construction. Said process shall repeat until the final phase of construction is complete.

Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

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3.02.1.2 Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the each phase, in accordance with the process described in 3.02.1.1 herein. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

3.03. USE. The Leased Premises shall be used for the operation of a baseball and softball complex, including, but not limited to, two (2) regulation baseball diamonds, complete with all appropriate appurtenances, an administrative structure, restrooms, and parking facilities according to plans and specifications determined by Lessee. Lessee may construct one or more buildings and other facilities, install equipment, furniture and fixtures on the Leased Premises at any time and from time to time during the Term. Any and all buildings, improvements, fixtures, machinery and equipment of whatever nature at any time constructed, placed or maintained on any part of the Leased Premises are and remain the property of the party constructing such improvements during the Term of this Agreement. Upon the expiration of the Term or earlier termination of this Agreement, all improvements to the Leased Premises shall be owned by the City. Lessee shall not use the Leased Premises or any portion thereof for any other purpose than that hereinabove set forth without first having obtained the written approval of Lessor, which consent shall not be unreasonably withheld. Lessee agrees that, in the use and operation of the Leased Premises, it shall comply with all present or future City ordinances, state and federal laws, and respective rules and regulation; provided, however, that the City agrees to authorize any zoning change or special permits required by Lessee to use the Leased Premises for the authorized use. In addition, the City shall permit Lessee to place a pole sign on that portion of the Leased Premises adjacent to Schuster Avenue in conformance with the applicable provisions of the El Paso Municipal Code. In the event that a sign location involves the proposed use of a public right of way designated as a state or federal highway or road, written approval from the appropriate state or federal agency shall be required prior to approval of the location by the City.

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3.03. PUBLIC NECESSITY. It is understood and agreed that should Lessor determine at any time that it requires the Leased Premises for a public purpose different from that for which the Leased Premises are being used, then, and in that event, Lessor and Lessee shall negotiate a termination of this Agreement upon terms as mutually agreed upon, which agreement shall include, at a minimum, reimbursement to Lessee of the fair market value of its assets, improvements, and leasehold interest.

3.04. MAINTENANCE. Lessee expressly agrees that, throughout the lease Term, it shall, at its cost, maintain, use and operate the Leased Premises and all improvements, furnishings, fixtures and equipment thereon in a clean, wholesome, and sanitary condition.

3.05. FACILITIES. Lessee shall perform or cause to be performed all the duties normally and customarily required in the operation of a baseball and softball facility of a similar type. Lessee agrees that it will at all times during the Agreement Term faithfully, industriously and to the best of its ability, experience and talent perform the duties herein.

3.06. DESIGN CONSIDERATIONS. Lessee acknowledges that the primary purposes of the Leased Premises are as a City park and as property used by the Public Service Board. All construction plans shall be reviewed and approved by the City of El Paso Engineering Department and the Director of the City of El Paso Department of Parks and Recreation prior to any construction and, where appropriate as determined by the City of El Paso Engineering Department or the Engineering Department of the Public Service Board. Furthermore, prior to any construction, the site plan shall be reviewed and approved by the Public Service Board and by the City Council of the City of El Paso. The City shall not unreasonably withhold such review and approval. In addition, Lessee shall provide the City Engineer with a grading and drainage plan and a geological study to demonstrate that the development of the Leased Premises will not result in flooding problems or destabilization of the slope. Construction oversight shall be done by the City of El Paso Engineering Department to assure that the design capacities and storm water run-off flows for the Leased Premises are not materially changed.

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SECTION 4: RENTALS

Lessee shall pay to the City of El Paso as rent the sum of Ten and no/100 Dollars ($10.00) in advance on the first day of October in each year during the Term hereof. The Facilities shall be open to the public and all charges and fees to the members of the public shall be subject to approval by the City Council annually no later than the twelve (12) month anniversary of the Start Date as defined herein. Fifteen (15) days of each calendar year, Lessee shall make the Facilities available to the City free of charge during the period that does not interfere with Lessee's use of the Facilities.

SECTION 5: FACILITIES

5.01 GENERAL. Lessee shall install lighting on only one of the two baseball diamonds (and on one softball diamond, if any) of the Facilities, such lighting to minimize light pollution. The height of the light standards shall not exceed the height of the slope to Rim Road, north of the Leased Premises. The sound system shall be installed so as to minimize the impact on the surrounding residences. Walking/jogging paths are to be constructed around the Facilities that will be available for use by the public. The Facilities constructed shall meet or exceed all standards for facilities constructed in City parks.

5.02 MAINTENANCE. Authorized agents of Lessor, may at any reasonable time, without notice, enter upon the Leased Premises to determine if satisfactory maintenance is being performed. If it is determined by Lessor's agents qualified or certified in the care and maintenance of parks facilities that maintenance is not being reasonably performed in the judgment of Lessor, Lessor shall notify Lessee in writing specifying Lessor's complaints and, if satisfactory maintenance is not performed or ongoing with due diligence by Lessee within thirty (30) days after receipt of written notice, Lessor or its agents shall have the right to enter upon the Leased Premises and perform the maintenance therefor, and Lessee agrees to promptly reimburse Lessor for the cost thereof.

5.03 TRASH AND GARBAGE. Lessee shall provide and pay all costs for a complete and proper arrangement for the adequate, sanitary handling of all trash, garbage and other refuse

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caused as a result of its operations pursuant hereto and shall provide for its timely removal in accordance with all applicable laws or regulation.

5.04 CHANGES, ALTERATIONS AND ADDITIONS. No substantial changes, alterations or additions shall be made to the Leased Premises by Lessee without the prior written approval of the City's Director of Parks and Recreation, or designee, which consent shall not be unreasonably withheld or delayed.

SECTION 6: STANDARDS OF SERVICE

6.01 STANDARD. Throughout the entire Term of this Agreement, Lessee shall operate the Facilities in accordance with high standards of service and materials for a baseball complex of a similar nature.

6.02 PERSONNEL. Lessee shall, in its operations under this Agreement, use its best efforts to employ such personnel as will assure a high standard of service to the public. All personnel, while on or about the Leased Premises, shall be clean, neat in appearance and courteous and appropriately attired.

SECTION 7: INSURANCE AND INDEMNIFICATION PROVISIONS. Lessee agrees to provide the following as a condition of the Agreement:

7.1 LIABILITY INSURANCE. Lessee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one accident or other cause.

7.1.1 Because the Agreement is solely for the benefit of Lessee and recognizing that the City taxpayers should not incur any additional costs beyond the contracted amount, Lessee is required to purchase liability insurance on

behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement.

7.1.2 Lessee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Lessee, its officers, agents, servants or employees.

7.1.3 No Service shall be provided by the City until Lessee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the Term of this Agreement shall be grounds for cancellation of this Agreement.

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7.2 INDEMNITY. **As a condition of this Agreement, Lessee or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City will promptly forward to Lessee every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Lessee will 1) investigate or cause the investigation of**

accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Lessee may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Lessee will pay all judgments in actions defended by Lessee pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Lessee, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to Lessee's property from any cause.

SECTION 8: FIRE INSURANCE

8.01 Lessee's obligations with respect to fire insurance are as follows:

8.01.1 Lessee, at its own cost and expense, shall insure for fire and extended coverage for all buildings on the Leased Premises. Such insurance shall be in a form acceptable to Lessor and in an amount equal to the full insurable replacement value of such leasehold improvements. Any payments received by either Lessee or Lessor from insuring companies by reason of loss under such policy or policies shall be applied toward repair or reconstruction of the leasehold improvements.

8.01.2 A Certificate or certificates evidencing such insurance coverage shall be filed with the City Clerk within thirty (30) days after execution of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled, reduced or materially changed without thirty (30) days' prior written notice to the City Clerk.

8.01.3 At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City Clerk.

8.01.4 In the event that Lessee shall at any time fail to provide the certificate or certificates required under this subsection, Lessor, upon ten (10) days written notice to Lessee, shall have the right to secure the required insurance, at the cost and expense of Lessee, and Lessee agrees promptly to reimburse Lessor for the cost thereof.

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SECTION 9: DAMAGE OR DESTRUCTION OF LEASED PREMISES.

9.01 PARTIAL DAMAGE. If all or a portion of the Leased Premises, developed by Lessee, are partially damaged by flood, fire, explosion, the elements, public enemy, or other casualty, but if none of the Leased Premises is rendered untenable, the same will be repaired with due diligence by Lessee, subject to the limitations of Subsection 9.03.

9.02 EXTENSIVE DAMAGE. If the damage by causes referred to in Subsection 9.01 shall be so extensive as to render a substantial portion of the Leased Premises unusable, the same shall be repaired with due diligence by Lessee subject to the limitation of Subsection 9.03, and the Minimum Rental payable herein shall abate from the time of such damage until such time as the Leased Premises are fully restored and certified by the Lessee's architects as ready for occupancy.

9.03 COMPLETE DESTRUCTION.

9.03.1 In the event that the main club house or any other building or substantial facility is completely destroyed by fire, explosion, the elements, the public enemy or other casualty or so damaged that they are untenable within the last two years of the Initial Term or either the first or second extension (as described in section 2.02) of this Agreement, Lessee shall be under no obligation to repair, replace and reconstruct said premises, and rental payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as such buildings are fully restored, if ever. If within three (3) months after the time of such damage or destruction such portions of the Leased Premises shall not have been repaired or reconstructed, Lessee may cancel this Agreement in its entirety or only as to that portion of the Leased Premises completely destroyed as of the date of such damage or destruction.

9.03.2 Notwithstanding the foregoing, if the Leased Premises, or a portion thereof, are completely destroyed as a result of the negligent act or omission of Lessee, its sublessees, agents or employees, rentals shall not abate and Lessor may, in its discretion, require Lessee to repair and reconstruct the said premises within twenty-four (24) months of such destruction and pay the costs therefore; or Lessor may repair and reconstruct the said premises and Lessee shall be responsible for reimbursing Lessor for the costs and expenses incurred in such repair.

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9.04 LIMIT OF OBLIGATIONS. It is understood that, in the application of the foregoing Subsections 9.01, 9.02, and 9.03, Lessee's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement date hereof.

SECTION 10: TERMINATION

10.01 TERMINATION GENERAL. This Agreement may be terminated by Lessor after the happening of one or more of the following events:

10.01.1 The abandonment of the Leased Premises from and after the date Lessee formally opens to the public for a period of greater than ninety (90) consecutive days, except for periods when the Leased Premises are closed for repair or construction.

10.01.2 The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Leased Premises, or any substantial part or parts thereof, in such a manner as substantially to restrict the Facilities' use for a period of at least ninety (90) days from operating thereon; provided, however, that Lessee shall be entitled to receive compensation from such Government or agency for condemnation.

10.01.3 Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Leased Premises as the Facilities, and the remaining in force of such injunction for a period of at least ninety (90) days.

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10.01.4 The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of sixty (60) days after receipt from the Lessor of written notice to remedy the same.

10.01.5 Failure of Lessee, in accordance with the terms hereinabove, to repair and reconstruct the Leased Premises, or portion thereof, that are completely destroyed.

10.02 TERMINATION EXPRESS PROVISION: Should any one or more of the following events of default happen:

10.02.1 Lessee shall fail to pay any part of the rentals, fees or charges agreed upon hereunder when the same shall become due and Lessee does not

remedy such failure for a period of twenty (20) days after receipt from Lessor of written notice to remedy same; or

10.02.2 Any interests of Lessee hereunder shall be levied upon under execution which levy is not lifted within sixty (60) days; or

10.02.3 Lessee shall file a voluntary petition in bankruptcy, shall have an involuntary petition in bankruptcy filed against it and the same shall not be dismissed within ninety (90) days, the Lessee shall be adjudged insolvent according to law, or the Lessee shall make any assignment of its property for the benefit of creditors; or

10.02.4 Lessee shall default on any other obligations assumed by it hereunder; then and in any such event, should Lessee fail to cure such default within (60) days from the time Lessor shall mail written notice thereof to Lessee, Lessor shall have the right to terminate this Agreement and re-enter and take possession of the Leased Premises; provided, however, should the nature of the default be such that it cannot be cured within sixty (60) days, Lessee shall be deemed to have cured such default if within such sixty (60) day period it shall commence performance and thereafter diligently prosecute the same to completion.

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10.03. RIGHT OF ENTRY UPON TERMINATION. In any case in which provision is made herein for the termination or cancellation of this Agreement by Lessor or in the case of abandonment or vacating the premises by Lessee, Lessor in lieu of declaring forfeiture may enter upon the Leased Premises. In such case, Lessor shall use its best efforts to relet the Leased Premises upon commercially reasonable terms, and if a sufficient sum shall not be realized thereby, after paying expenses of such reletting, to satisfy the rent and other sums herein agreed to be paid by Lessee, Lessee agrees to pay any such deficiency. Lessee further agrees to hold Lessor harmless of and from any loss or damage or claim arising out of the action of Lessor in pursuance of this paragraph, except for any loss, damage or claim caused by the negligence of Lessor or its employees.

10.04 NOTICE OF TERMINATION. If any of the events enumerated in Subsection 10.01 and 10.02 shall occur and after due notice the defaulting party has failed to cure or correct

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same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by thirty (30) days' notice in writing, as provided in Section 27 of this Agreement, such cancellation and termination to be effective upon the date specified in such notice. Rental due shall be payable only to the date of cancellation.

10.05 EMINENT DOMAIN. If the Leased Premises, or a substantial part thereof, shall be lawfully taken or condemned (or conveyed under threat of such taking or condemnation) for any public or quasi-public use or purpose, the Term of this Agreement shall end upon, and not before, the date of the taking of possession by the condemning authority. Current Rentals shall be apportioned as of the date of such termination, and Lessee shall be entitled to pursue an award with respect to such taking or condemnation. If any part of the Leased Premises not constituting a substantial part thereof shall be so taken or condemned or conveyed under threat of such taking or condemnation, or if the grade of any street adjacent to the Leased Premises is changed by any competent authority and such taking or change of grade makes it necessary or desirable substantially to remodel or restore the Leased Premises, Lessee shall have the right to cancel this Agreement, such cancellation to take place not later than the date of this taking of possession by the condemning authority, and Lessee shall be entitled to pursue an award with respect to such taking or condemnation. Lessor will give Lessee notice of such intended taking or condemnation within a reasonable time of its receipt of same.

SECTION 11: ASSIGNMENT, TRANSFER AND SUBLETTING

Except as provided hereinafter, Lessee shall not lease, sell, assign or transfer this Agreement or any interest in this Agreement without the prior written consent of Lessor, not to be unreasonably withheld. Lessor acknowledges that one or more shareholders of Lessee may form a separate corporation or other legal entity (the "Affiliated Entity") on or before the expiration of the Feasibility Period, and Lessee may, upon written notice to Lessor, assign this Agreement to the Affiliated Entity without the prior consent of Lessor, provided that the Affiliated Entity expressly assumes in writing all of the obligations of Lessee hereunder, and

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upon such assignment, Lessee shall be released from any obligations hereunder. Lessee may also sublease the Leased Premises or any portion thereof, with the prior written consent of Lessor, provided that the sublease is for a use permitted herein.

SECTION 12: TAXES AND LICENSES

Lessee shall pay, or in good faith contest, all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Lessee or Lessor with respect to the Leased Premises, the Equipment, Furnishings, and Fixtures, the leasehold privileges and operations or both hereunder and upon Lessee's rights to use the Leased Premises during the Term of this Agreement including any extensions or option periods granted thereto; provided, however, that any such taxes paid shall reduce the rental amount specified in Section 4 herein. The Lessee shall obtain and pay for all licenses or permits necessary or required by law for the construction of additions or improvements, the installation of equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder. Lessor shall assist Lessee where necessary in the process of obtaining said licenses and permits.

SECTION 13: INSPECTION OF PREMISES

Lessor or its duly authorized representatives may enter upon the said Leased Premises at any reasonable time during the Term of this Agreement for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of Lessor.

SECTION 14: HOLDING OVER

Should Lessee hold over said Leased Premises after this Agreement has terminated in any manner, during such holding over the Lessee shall be deemed a tenant at sufferance and at a rental to be fixed by Lessor, upon thirty (30) days' advance written notice, otherwise on the same terms and conditions as herein provided.

SECTION 15: REDELIVERY OF PREMISES

Lessee shall, upon termination or expiration of this Agreement, quit and deliver up the Leased Premises to Lessor peaceably, quietly and in as good order and condition as the same

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now are or may be hereafter improved by the Lessee, reasonable use and wear thereof excepted. In addition to any landlord's lien provided by Texas law, Lessor shall have a specific lien on all personal property of Lessee on the Leased Premises as security for payment of Rentals, which lien shall be subordinate to the lien of any lender of Lessee, and Lessor agrees to sign such documents as may be reasonably requested by such third-party lender to evidence the subordination. Lessee agrees that it shall provide Lessor notice and description of any personal property that it desires to have covered by this subordination and that such subordination to a lender's lien shall be effective only for so long as the loan is outstanding on the particular item of personal property.

SECTION 16: QUIET ENJOYMENT

Lessor agrees that Lessee, upon payment of the Rentals and all other payments and charges to be paid by Lessee under the terms of this Agreement and upon observing and keeping each of the covenants of this Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Leased Premises, equipment, furniture and fixtures during the Term of this Agreement.

SECTION 17: NO LIENS

Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Leased Premises by Lessee, and shall keep said Leased Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission. Nothing herein shall prevent Lessee from, in good faith, contesting any such lien.

SECTION 18: HAZARDOUS SUBSTANCE

No goods, merchandise or materials shall be kept, stored or sold in or on said Leased Premises which are explosive or hazardous and which are not in customary use in the businesses herein authorized; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon. Nothing shall be done on the Leased Premises, other than as is provided for in this Agreement, which will increase the rate of or suspend the insurance upon said Leased

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Premises. All herbicides and pesticides should conform to the Texas Department of Agriculture standards.

SECTION 19: WAIVERS

No waiver by Lessor or Lessee at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter or the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. It is agreed that each and all of the rights, powers, options, or remedies given to Lessee and to Lessor by this Agreement are cumulative and no one of them shall be exclusive of the other or inclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by Lessee or by Lessor shall not impair its right to any other right, power, option, or remedy.

SECTION 20: WAIVER OF CLAIMS

Lessee hereby waives any claim against the City of El Paso and its elected officials, officers, agents or employees only as regards loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or suit or proceeding seeking to declare this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

SECTION 21: UTILITIES; WATER

21.01 Lessee shall pay before delinquency all charges for water, sewer, gas, heat, air cooling, electricity, power, telephone, garbage and other utility services used on or serving the Leased Premises during the Term of this Agreement.

21.02 From and after the Effective Date and throughout the date of this Agreement, City shall be obligated to provide to Lessee treated effluent water for all irrigation needs of the Facilities, at the lowest rate at which City has sold treated effluent water.

SECTION 22: ENCUMBRANCE OF LEASEHOLD INTEREST PROHIBITED

Lessee shall have the right during the Term of this Agreement, with Lessor's prior written consent not to be unreasonably withheld, to mortgage, pledge, or otherwise encumber

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Lessee's interest in the Agreement, including the buildings and all fixtures, trade fixtures, inventory, and equipment located thereon, to a lender (the "Lender"). Lessee shall not have the right to mortgage or pledge Lessor's fee interest or reversionary interest in the Leased Premises or any improvements located thereon, and no such mortgage or pledge shall affect Lessor's rights under this Agreement. Any mortgage, pledge or other encumbrance of Lessee's interest in the Agreement and improvements shall at all times be subordinate to Lessor's fee interest in the Leased Premises and reversionary interest in the improvements. Lessor agrees to execute all documents reasonably requested by the Lender, which shall include, but not be limited to, an agreement which provides for notice to the Lender of Lessee defaults and a reasonable opportunity to cure, removal of trade fixtures and equipment by the Lender provided that rent is paid during such removal period, and subordination of Lessor's lien against the personal property of Lessee pledged to the Lender shall not encumber its interest or rights under this Agreement by any mortgage, deed of trust, or other instrument in the nature of a security agreement, lien, mortgage or deed of trust.

SECTION 23: SEVERABILITY

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

SECTION 24: NON-DISCRIMINATION

24.01 Lessee in the operation and use of the Leased Premises as described herein, will not, on grounds of sex, race, color, creed, or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by established law.

SECTION 25: TERMS BINDING UPON SUCCESSORS

All the terms, conditions and covenants of this Agreement shall inure to the benefit of and by binding upon the successors and assigns of the parties hereto. The provisions of this

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Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinbefore set forth.

SECTION 26: TIME OF ESSENCE

Time is expressed to be of the essence of this Agreement.

SECTION 27: NOTICES

All notices provided for herein shall be in writing. Any notice permitted or required to be given to the parties hereto shall be effective if hand delivered or mailed certified, return receipt requested to the parties at the following addresses:

Lessee:	Dr. Dwayne Aboud El Paso Border Youth Athletic Association 5407 North Mesa El Paso, Texas 79912
City (Lessor):	Joyce A. Wilson City Manager City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196
Copy to:	Department of Parks and Recreation Director City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196

Any of the necessary notices may be sent to the foregoing addresses or another address of the party, provided that notice of change of address has been given to the party to be bound by the notice in writing before hand.

SECTION 28: AGREEMENT MADE IN TEXAS

This Agreement has been made in and shall be construed in accordance with the laws of the State of Texas. All duties obligations, liabilities of the parties with respect to the Leased Premises are expressly set forth herein, and this Agreement can only be amended by an instrument in writing and agreed to by both parties.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF EL PASO

Joyce A. Wilson
City Manager

EL PASO BORDER YOUTH ATHLETIC ASSOCIATION

Dwayne Aboud
Title: Executive Director

WITNESS:
APPROVED AS TO FORM

Name (printed) _____
Title: _____

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Norman C. Merrifield, Ed.D., Director
Parks & Recreation Department

(Acknowledgments on following page)

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ACKNOWLEDGMENT

THE STATE OF TEXAS }
}
COUNTY OF EL PASO }

This instrument was acknowledged before me on this _____ day of _____, 2007, by Joyce A. Wilson, as City Manager of the CITY OF EL PASO.

_____
Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS }
}
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 4 day of June, 2007, by Dwayne Aboud, as Executive Director of EL PASO BORDER YOUTH ATHLETIC ASSOCIATION.

Matthew Phillips
Notary Public, State of Texas

MATTHEW PHILLIPS
Notary Public, State of Texas
My Commission Expires
July 25, 2010

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EXHIBIT "A"

PROPERTY DESCRIPTION

(See attached pages)

Property Description: All of Blocks 104, 105 and 136 and a portion of Blocks 68, 69, 99, 106, 107, 135, 137, 138, 139, 142, 143 and 174 and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue, Blacker Avenue, Hague Avenue and Rim Road Rights-of-way (Vacated), Alexander Addition, El Paso, El Paso County, Texas.

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METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Blocks 104, 105 and 136 and a portion of Blocks 68, 69, 99, 106, 107, 135, 137, 138, 139, 142, 143 and 174 and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue, Blacker Avenue, Hague Avenue and Rim Road Rights-of-way (Vacated), Alexander Addition, El Paso, El Paso County, Texas. and is more particularly described by metes and bounds as follows:

Commencing at on existing city monument lying on the centerline intersection of Kansas Street and Schuster Drive; Thence, along the centerline of Schuster Drive the following courses:

North 52° 23' 00" East, a distance of 1,685.00 feet to a point for a curve;

251.39 feet along the arc of a curve to the left, having a radius of 376.02 feet, a central angle of 38° 18' 19" and a chord which bears North 33° 12' 29" East, a distance of 246.73 feet to a point;

North 14° 03' 35" East, a distance of 69.93 feet to a point;

Thence, North 75° 56' 25" West, a distance of 45.00 feet to a point lying on the westerly right-of-way line of Schuster Avenue (a 90' right-of-way public street), said point being the TRUE POINT OF BEGINNING of this description;

THENCE, North 54° 11' 20" West, a distance of 488.66 feet to a point for a curve, lying on the easterly right-of-way line of Rim Road (a 100' right-of-way public street), said point being a found 5/8-inch iron with SLI cap;

THENCE, along said right-of-way line, the following courses:

> 320.57 feet along the arc of a curve to the left, having a radius of 483.83 feet, a central angle of 37° 57' 46" and a chord which bears North 02° 58' 55" East, a distance of 314.74 feet to a set 5/8-inch iron with SLI cap;

North 16° 00' 00" West, a distance of 285.42 feet to a point for a curve, said point being a set 5/8-inch iron with SLI cap;

258.18 feet along the arc of a curve to the right, having a radius of 465.83 feet, a central angle of 31° 45' 19" and a chord which bears North 00° 21' 35" East, a distance of 254.89 feet to a set 5/8-inch iron with SLI cap;

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North 16° 43' 00" East, a distance of 253.80 feet to a point for a curve, said point being a set 5/8-inch iron with SLI cap;

343.53 feet along the arc of a curve to the left, having a radius of 690.63 feet, a central angle of 28° 30' 00" and a chord which bears North 02° 28' 00" East, a distance of 340.00 feet to a set 5/8-inch iron with SLI cap;

North 11° 47' 00" West, a distance of 86.74 feet to a set 5/8-inch iron with SLI cap;

THENCE, North 74° 50' 06" East, a distance of 164.60 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 37° 39' 34" East, a distance of 410.36 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 56' 55" 42" East, a distance of 97.50 feet to a set 5/8-inch iron with SLI cap;

THENCE, North 52° 22' 41" East, a distance of 359.57 feet to a set 5/8-inch iron with SLI cap;

THENCE, North 28° 16' 48" East, a distance of 61.23 feet to a set 5/8-inch iron with SLI cap;

THENCE, North 52' 22' 41" East, a distance of 436.53 feet to a set 5/8-inch iron with SLI cap lying on the common boundary line between Alexander Addition and Tract 16, H. F. Fisher Survey No. 293;

THENCE, South 00° 00' 11" West, along said boundary line, a distance of 40.18 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 52° 25' 59" West, a distance of 401.80 feet to a point for a curve, said point being a set 5/8-inch iron with SLI cap;

THENCE, 7.86 feet along the arc of a curve to the left, having a radius of 10.00 feet, a central angle of 45° 01' 23" and a chord which bears South 29' 55' 18" West, a distance of 7.66 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 07° 24' 36" West, a distance of 5.10 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 37° 37' 00" East, a distance of 364.62 feet to a point for a curve lying on the westerly right-of-way line of Schuster Avenue (a 90' right-of-way public street), said point being a set 5/8-inch iron with SLI cap;

THENCE, 245.45 feet along said right-of-way line and along the arc of a curve to the left, having a radius of 344.60 feet, a central angle of 40° 48' 38" and a chord which bears South 03' 10' 11" West, a distance of 240.30 feet to a point for a curve, said point being a set 5/8-inch iron with SLI cap;

THENCE, 223.95 feet, continuing along said right-of-way line and along the arc of a curve to the right, having a radius of 517.98 feet, a central angle of 24° 46' 19" and a chord which bears South 01' 03' 42" East, a distance of 222.21 feet to a point for a curve, said point being a set 5/8-inch iron with SLI cap;

THENCE, 184.83 feet along the arc of a curve to the right, having a radius of 412.91 feet, a central angle of 25° 38' 50" and a chord which bears North 50' 26' 27" West, a distance of 183.29 feet to a point for a set 5/8-inch iron with SLI cap;

THENCE, South 52° 23' 00" West, a distance of 400.00 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 37° 37' 20" East, a distance of 35.00 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 52° 23' 00" West, a distance of 660.00 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 37° 37' 00" East, a distance of 330.00 feet to a set 5/8-inch iron with SLI cap;

THENCE, North 52° 23' 00" East, a distance of 35.00 feet to a set 5/8-inch iron with SLI cap;

THENCE, South 37° 37' 00" East, a distance of 142.63 feet to a point lying on the westerly right-of-way line of Schuster Avenue, said point being a set 5/8-inch iron with SLI cap;

THENCE, South 14° 03' 35" West, along said right-of-way line, a distance of 44.61 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 23.232 acres (1,011,966 sq. ft.) of land more or less.

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