



**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 **PIERCE HARDY LIMITED PARTNERSHIP**, a Pennsylvania Limited Partnership, for the purchase of

**A 3.4742-acre parcel of land, more or less, being a portion of Tracts 98-B and 98-C, S.A. & M.G. Railroad Company Survey No. 267, Abstract 179, City of El Paso, El Paso County, Texas,**

for the Upper Valley Phase I project.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.**

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Theresa Cullen-Garney  
Deputy City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia A. Adauto, Deputy City Manager  
Development & Infrastructure Services



such notice the defect or exception to title that is deemed objectionable. The Seller may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. The Seller warrants that no person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the Seller's best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the Seller, 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; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of 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 Seller.

4.4 Litigation. To the Seller's best knowledge, 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.

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance With Law. To the Seller's best knowledge, the Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision related to the Seller's activities thereof.

4.7 Taxes. To the best of the Seller's knowledge, no state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The Seller agrees to pay the prorated taxes due on the Property for the year 2008 through the date of Closing.

4.8 Pre-Closing Claims.

- A. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the

Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any claims, injuries, liabilities, losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

4.9 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and indefeasible title to a fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the City.

4.12 Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller.

4.13 Termination. All representations, warranties, covenants and agreements of the Seller made in this document, except as noted in Paragraph 4.8, hereof, shall terminate upon the execution and delivery of the Deed and the Closing hereunder.

4.14 DISCLAIMER. THE SELLER IS MAKING NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ANY NATURE WHATSOEVER WITH RESPECT TO THE PROPERTY, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY AS TO THE CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, EXCEPT FOR THE WARRANTIES OF TITLE SPECIFICALLY SET FORTH IN THE DEED OF CONVEYANCE.

DISCLAIMER BY THE CITY OF WARRANTIES OF THE SELLER, THE CITY ACKNOWLEDGES THAT (I) IT AND ITS OFFICERS, AGENTS, EMPLOYEES, AND ADVISORS HAVE BEEN GIVEN FULL AND COMPLETE OPPORTUNITY TO THE EXTENT THAT THEY IN THEIR SOLE JUDGMENT DEEMED APROPRIATE, DESIRABLE AND PRUDENT, (II) THE CITY AND SUCH PARTIES TAKE FULL RESPONSIBILITY FOR DETERMINING THE SCOPE OF THEIR INVESTIGATIONS OF THE PROPERTY AND FOR THE MANNER IN WHICH SUCH INVESTIGATIONS HAVE BEEN CONDUCTED, (III) THE CITY, TOGETHER WITH SUCH OTHER PARTIES, ARE FULLY CAPABLE OF EVALUATING THE ACCURACY OF THE INFORMATION AND MATERIAL OBTAINED

BY THE CITY IN THE COURSE OF SUCH INVESTIGATION, AND (IV) THE CITY AND SUCH PARTIES HAVE NOT RELIED ON THE SELLER OR ON ANY OFFICER, EMPLOYEE, OR AGENT OF THE SELLER OR UPON ANY WRITTEN OR ORAL INFORMATION, REPRESENTATION OR FACT PROVIDED BY ANY SUCH PARTY WITH RESPECT TO ANY MATTER IN CONNECTION WITH THE CITY'S EVALUATION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE PHYSICAL CONDITION THEREOF. ACCORDINGLY, THE CITY AGREES TO PURCHASE THE PROPERTY "AS IS" AND "WHERE IS," WITHOUT ANY WARRANTY WHATSOEVER EXPRESS OR IMPLIED FROM THE SELLER TO THE CITY.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Del Norte American Title Insurance Company, 320 Texas Ave., El Paso, Texas 79901 (the "Title Company") on or before thirty (30) days after the execution of this Agreement by the City.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing.

5.2 Real Property Taxes. Real property taxes and assessments shall be prorated at Closing, effective as of the date of Closing, based upon the latest tax bill available. Taxes shall be prorated in accordance with the foregoing provision and the parties shall appropriately and promptly adjust such pro-rations on the basis of the correct, applicable tax bill when such tax bill becomes available. The Seller agrees to pay ad valorem taxes through the day of closing.

5.3 Closing Costs.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Escrow fees, if any, shall be paid by the City.

5.4 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Special Warranty Deed to the Property, 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 which shall be prorated to the date of 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 City has approved pursuant to Paragraph 3.2 above.

5.5 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 Seller. In the event that the Seller 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 City may enforce specific performance of this Agreement.

6.2 Breach by City. In the event that 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 Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive the ONE HUNDRED and 00/100 DOLLARS (\$100.00), such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief or shall be permitted to seek to enforce specific performance.

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

Seller: Cheri B. Bomar, Assistant Vice President  
Pierce Hardy Limited Partnership  
1019 Route 519  
Eighty Four, PA 15330

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.

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

The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller this 19 day of July, 2008.

Pierce Hardy Limited Partnership

By: [Signature]  
Cheri B. Bomar, Assistant Vice President

**ACKNOWLEDGEMENT**

STATE OF PENNSYLVANIA )  
COUNTY OF Washington )

This instrument was acknowledged before me on the 14<sup>th</sup> day of July, 2008 by Cheri B. Bomar, Assistant Vice President of **Pierce Hardy Limited Partnership.**

Bethany L. Weight  
Notary Public, State of Pennsylvania

My commission expires:

April 14, 2009

NOTARIAL SEAL  
BETHANY L. WEIGHT  
Notary Public  
NORTH STRABANE TWP, WASHINGTON COUNTY  
My Commission Expires Apr 14, 2009

(Signatures continued on next page)



EXECUTED by the City of El Paso this \_\_\_\_ day of \_\_\_\_, 2008.

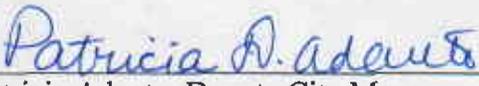
City of El Paso

By: \_\_\_\_\_  
Joyce Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Theresa A. Cullen-Garney  
Deputy City Attorney

  
\_\_\_\_\_  
Patricia Aduato, Deputy City Manager  
Development & Infrastructure Services

**ACKNOWLEDGEMENT**

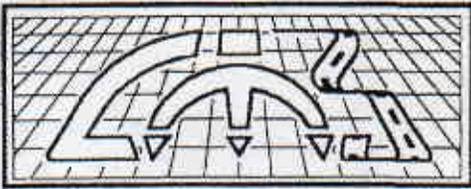
STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

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

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:

\_\_\_\_\_



# Land - Mark Professional Surveying Inc.

"Serving Texas, New Mexico and Arizona"

## METES AND BOUNDS DESCRIPTION

**A 3.4742 ACRE PARCEL OF LAND LYING WITHIN A PORTION OF TRACTS 98-B AND 98-C, S. A. & M. G. RAILROAD COMPANY SURVEY NO. 267, ABSTRACT 179, CITY OF EL PASO, EL PASO COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

COMMENCING for reference at an existing City of El Paso Monument lying at the turning heel intersection of McCutcheon Lane (50.00 feet wide right of way); THENCE, South  $60^{\circ}36'07''$  West, with the centerline of said McCutcheon Lane a distance of 440.89 feet to a point lying in the easterly right of way line of Doniphan Drive; THENCE, South  $18^{\circ}16'00''$  East with said easterly right of way line a distance of 235.48 feet to point identical with the southwesterly corner of Lot 1, Block 3, Redd Road Commercial Park as recorded in Volume 57, Page 42, Plat Records of El Paso County, Texas; THENCE, leaving said easterly right of way line, North  $60^{\circ}36'07''$  East with the common boundary line of said Lot 1, Tract 98-B and Tracts 97-G1 and 97-H1, S. A. & M. G. Railroad Company Survey No. 267, Abstract 179, City of El Paso, El Paso County, Texas, a distance of 488.14 feet to a 5/8" rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel and the POINT OF BEGINNING for the following parcel description.

THENCE, continuing with the common boundary line of said Tract 98-B and Tract 97-H1, North  $60^{\circ}36'07''$  East a distance of 211.22 feet to an existing 5/8" rebar with cap stamped "TX5511 NM16467 AZ36621", for a corner of this parcel, said point identical with the northwesterly corner of Lot 33, La Paz Estates Unit Two as recorded in Volume 59, Page 69, Plat Records of El Paso County, Texas;

THENCE, continuing with the common boundary line of said Tract 98-B and said Lot 33 and its prolongation thereof, South  $29^{\circ}11'00''$  East a distance of 509.69 feet to a 5/8" rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel;

THENCE, South  $71^{\circ}41'00''$  West a distance of 285.39 feet to a 5/8" rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel;

THENCE, North  $51^{\circ}19'16''$  West a distance of 186.04 feet to a 5/8" rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel;

THENCE, North  $18^{\circ}16'00''$  West a distance of 240.00 feet to a 5/8" rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel;

THENCE, North  $34^{\circ}07'26''$  East a distance of 104.89 feet to the TRUE POINT OF BEGINNING.

Containing 3.4742 Acres (151,337 Square Feet) more or less.

LAND-MARK PROFESSIONAL  
SURVEYING, INC.

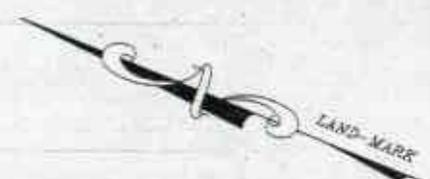
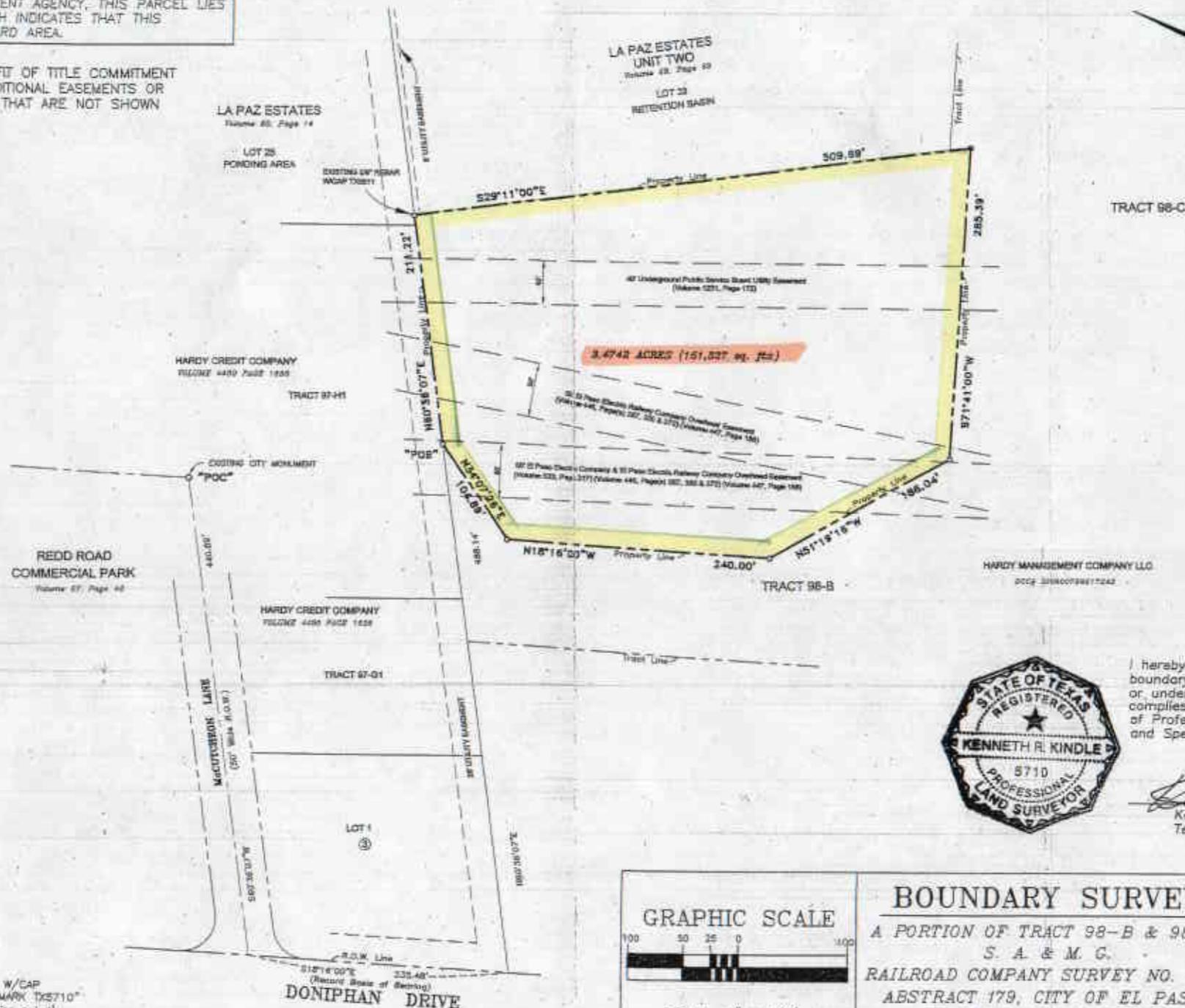
  
Kenneth R. Kindle, K.P.L.S.  
Texas Reg. No. 5710  
Job # 08-03-25256  
February 5, 2008



Exhibit "A"  
Page 1 of 2

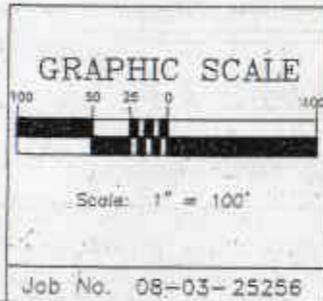
FLOOD CERTIFICATE: ACCORDING TO FLOOD INSURANCE RATE MAP, COMMUNITY-PANEL NUMBER 480214 0021D, EFFECTIVE DATE: JANUARY 3, 1997 OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THIS PARCEL LIES WITHIN A ZONE DESIGNATION OF "C", WHICH INDICATES THAT THIS PARCEL DOES NOT LIE WITHIN A FLOOD HAZARD AREA.

SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT OR TITLE REPORT. THERE MAY BE ADDITIONAL EASEMENTS OR ENCUMBRANCES AFFECTING THIS TRACT THAT ARE NOT SHOWN HEREON.



I hereby certify that the foregoing boundary survey was made by me or under my supervision and substantially complies with the current Texas Society of Professional Surveyors minimum Standards and Specifications.

*Kenneth R. Kindle*  
Kenneth R. Kindle, R.P.L.S.  
Texas 5710



**BOUNDARY SURVEY**  
A PORTION OF TRACT 98-B & 98-C  
S. A. & M. G.  
RAILROAD COMPANY SURVEY NO. 267,  
ABSTRACT 179, CITY OF EL PASO,  
EL PASO COUNTY, TEXAS  
(Metes and Bounds Description Attached)  
Job No. 08-03-25256 Date: FEBRUARY 5, 2008. Sheet # 1 OF 1

**Land-Mark Surveying**  
1420 Bessemer Drive "Suite A"  
El Paso, Texas 79936  
(915) 598-1300  
email: bot@Land-MarkSurveying.com  
"Serving Texas, New Mexico & Arizona"



Exhibit "A"  
Page 2 of 2