'06 SEP 29 A8:17

DATE: September 29, 2006

TO: Municipal Clerk

FROM: Gonzalo Cedillos, P.E.
Financial Services – 541-4074

THRU: Christine Perez
Senior Office Assistant, 541-4841

Please place the following item on the **REGULAR** agenda for the Council Meeting of **OCTOBER 10, 2006**.

INTRODUCTION OF ORDINANCE:

An Ordinance authorizing the City of El Paso to sell a 1.060-acre parcel, more or less, being all of Tract 8C1, S.A. & M.G.R.R. Survey, El Paso, El Paso County, Texas to EP Summit, LP.

Contact person: Gonzalo Cedillos, P.E., Financial Services, 541-4074

****

AGENDA FOR: **OCTOBER 10, 2006**

****

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

'06 SEP 29 A8:17

DEPARTMENT: Financial Services

AGENDA DATE: October 10, 2006

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

DISTRICT(S) AFFECTED: 1

SUBJECT:

An Ordinance authorizing the City of El Paso to sell a 1.060-acre parcel, more or less, being all of Tract 8C1, S.A. & M.G.R.R. Survey, El Paso, El Paso County, Texas to EP Summit, LP.

BACKGROUND / DISCUSSION:

Capital Assets Manager has recommended release of this property.

PRIOR COUNCIL ACTION:

Yes, sales of city land.

AMOUNT AND SOURCE OF FUNDING:

Revenue of $376,250.00

BOARD / COMMISSION ACTION:

Capital Assets Real Estate Committee has approved sale.

*********************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:** _____

'06 SEP 29 A8:17

CITY COUNCIL REGULAR AGENDA ITEM (S) FOR MEETING OF OCTOBER 10, 2006:

INTRODUCTION OF ORDINANCES:

ORDINANCE:

An Ordinance authorizing the City of El Paso to sell a 1.060-acre parcel, more or less, being all of Tract 8C1, S.A. & M.G.R.R. Survey, El Paso, El Paso County, Texas to EP Summit, LP.

PUBLIC HEARING WILL BE HELD ON OCTOBER 24, 2006.

****

ORDINANCE NO. _____

'06 SEP 29 A8:17

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO SELL A 1.060 ACRE PARCEL, MORE OR LESS, BEING ALL OF TRACT 8C1, S.A. AND M.G.R.R. SURVEY, EL PASO, EL PASO COUNTY, TEXAS TO EP SUMMIT L.P.

WHEREAS, the City of El Paso staff has recommended the sale of a 1.060 acres parcel, more or less, being all of Tract 8C1, S.A. and M.G.R.R. Survey, El Paso, 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, EP Summit, L.P. is the highest bidder and submitted a bid of $376,250.00, (which includes an appraisal fee of $1,400.00 and survey costs of $2,200.00).

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 a 1.060 acres parcel, more or less, being all of Tract 8C1, S.A. and M.G.R.R. Survey, being more particularly described in Exhibit "A" attached hereto and made a part hereof, to EP Summit, L.P.

PASSED AND APPROVED this _____ day of _____, 2006.

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 FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

Document #: 24819
Document Name: CAM/ordinance/crusade property

Property Description: All of Tract 8C1, S.A. and M.G. R.R. Survey No. 268, EL Paso, EL Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Tract 8C1, S.A. and M.G. R.R. Survey No. 268, EL Paso, EL Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at an existing city monument lying on the centerline intersection of Crusade Drive (60' Right-of-way) and Southwestern Drive (60' Right-of-way); Thence, South 77° 20' 06" West, along said centerline of Crusade Drive, a distance of 50.00 feet to a point; Thence, South 12° 39' 54" East, a distance of 30.00 feet to a point lying on the southerly right-of-way line of Crusade Drive, Thence, South 77° 20' 06" West, along said right-of-way line, a distance of 277.05 feet to a point lying on the common boundary line between Tract 8C1, S.A. and M.G. R.R. Survey No. 268 and Lot 1, Block1, Harvest Addition, said point being a found 5/8-inch iron with "Conde" plastic cap, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, South 11° 27' 39" East, along said boundary line, a distance of 282.32 feet to a point lying on the common boundary line between Tracts 8C1 and 8F3, S.A. and M.G. R.R. Survey No. 268, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, South 78° 12' 30" West, along the southerly boundary line of said Tract 8C1, a distance of 148.47 feet to a point lying on the easterly right-of-way line of Interstate Highway No. 10 (right-of-way varies), said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

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

North 16° 49' 59" West, a distance of 79.84 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

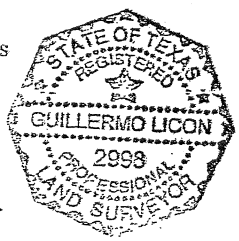
North 18° 55' 00" West, a distance of 201.56 feet to a point lying on the southerly right-of-way line of Crusade Drive, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 77° 20' 06" East, along said right-of-way line, a distance of 182.14 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.060 acres (46,165 Sq. Ft.) of land more or less.

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

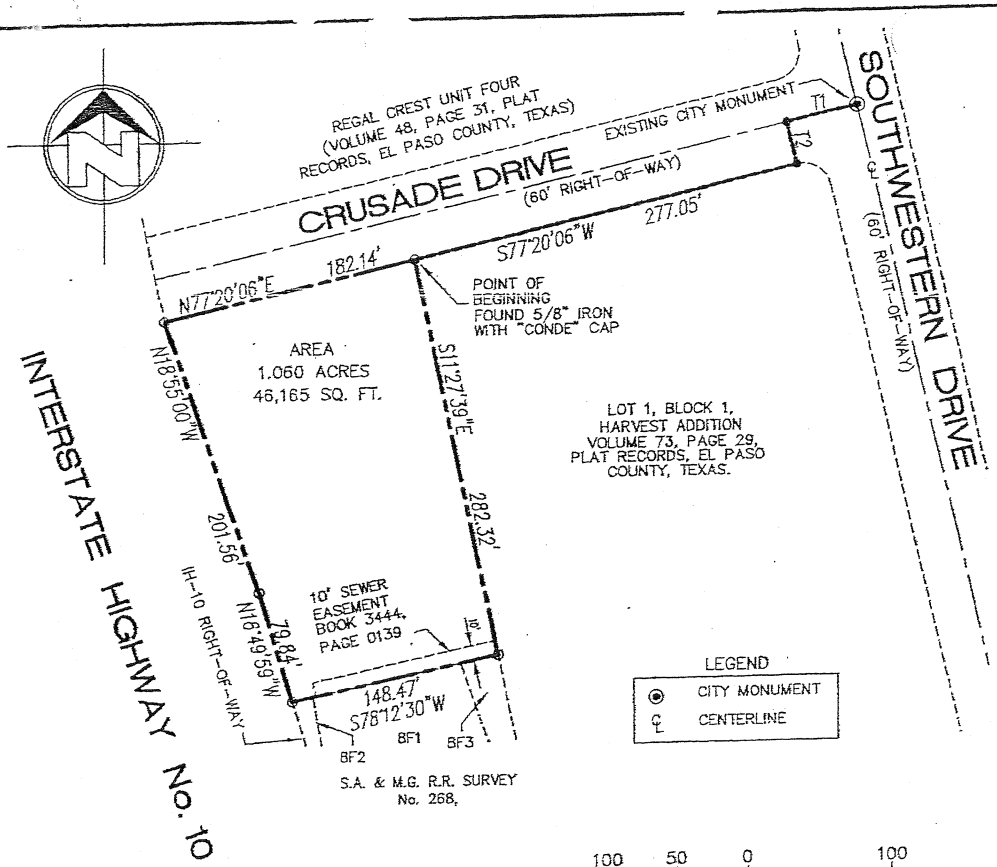
SLI ENGINEERING, INC.
Consulting Engineers - Land Surveyors



Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

March 31, 2006
Job # 06-06-2427
M&B/1280

Exhibit "A"
1 of 2



LINE TABLE

TANGENT	BEARING	DISTANCE
T1	S77°20'06"W	50.00'
T2	S12°39'54"E	30.00'

NOTES:
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. SET 1/2" IRON WITH SLI CAP TEXAS NO. 2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
3. DEED REFERENCE IN VOL. 1556, PG. 1276 DEED RECORDS OF EL PASO COUNTY.
4. BASIS OF BEARING: PLAT OF REGAL CREST UNIT FOUR, RECORDED IN VOL. 48, PG. 31.
5. THIS SURVEY WAS PERFORMED WITHOUT THE BENIFIT OF A TITLE COMITTMENT.
6. REVISED: 06-03-2006 – ADDED 10-FOOT SEWER EASEMENT (BOOK 3444, PAGE 0139).

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214002ID DATED FEBRUARY 5, 1986, THIS PROPERTY LIES IN FLOOD ZONE C .

ZONE C AREAS OF MINIMAL FLOODING.

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

Copyright 2006 SLI Engineering, Inc.

This map and survey are being provided solely for the use of The City of El Paso, and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon March 31, 2006.

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

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

STATE OF TEXAS
REGISTERED
GUILLERMO LICON
2998
PROFESSIONAL
LAND SURVEYOR

PLAT OF SURVEY

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

ALL OF TRACT BC1,
S.A. & M.G. R.R. SURVEY
No. 268, EL PASO,
EL PASO COUNTY, TEXAS.

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

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

JOB #: 06-06-2427 DR. BY: AFV
SCALE: 1"=100' F.B. #: 2005-D
F:\PROJECTS\CITYPROJ\
DATE: 03-31-2006 DWG.: somg-tBc.dwg

PLAT REFERENCE
VOLUME 48 PAGE 31

Exhibit "A"
2 of 2

'06 SEP 29 A8:17

STATE OF TEXAS §
§ **CONTRACT OF SALE**
COUNTY OF EL PASO §

THIS Agreement is entered into this ____ day of_____, 2006, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City" and **EP SUMMIT, L.P.,** 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:

> 1.060 acre parcel of land, more or less, being ALL OF Tract 8C1, S.A. and M.G.R.R. Survey No. 268, 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 rights-of-way, 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, rights of way, dedications and other encumbrances of record or apparent upon the real property (including any right to drill a well and produce therefrom any quantity of groundwater), all of such property, hereinafter collectively referred to as the "Property". In addition, the following conditions will be applicable to the City's sale of the Property:

1.1 Radioactive Materials. Any conveyance of this Property will be subject to a restrictive covenant to the effect that the Buyer, its successors or assigns, will not, for a period of at least seventy-five (75) years, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the City.

1.2 Surveys. The Buyer accepts responsibility for conducting its own archeological and environmental surveys of the Property. Any mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the Buyer who shall take the Property subject to all existing conditions. The Buyer accepts responsibility for its determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by its complete inspection of the Property.

1.3 Development

1.3.1 Buyer will be required to bring the Property to an elevation of two (2) feet above the Base Flood Elevation (BFE) before developing.

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be **THREE HUNDRED SEVENTY-SIX THOUSAND TWO HUNDRED FIFTY AND 00/100THS DOLLARS ($376,250.00)**, which sum includes the appraisal services fee of $1,400.00 and surveying costs of $2,200.00. Buyer agrees to pay 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 in by the Buyer in the amount of **EIGHTEEN THOUSAND, EIGHT HUNDRED TWELVE AND 50/100 DOLLARS ($18,812.50)**, 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 delivered by the City 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 IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS TO 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, BETWEEN THE CITY AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING ONCE CLOSING HAS OCCURED, THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL

RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE CITY'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE CITY'S REPRESENTATIVES.** THE BUYER INDEMNIFIES, HOLDS, HARMLESS, AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE CITY IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

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 Stewart Title of El Paso, 415 N. Mesa, El Paso, Texas 79901, on October 30, 2006.

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) Any fees for surveys shall be paid by the Buyer.

(d) The fees for advertising in the amount of $125.25 and a sign in the amount of $250.00, and any other costs the City may have incurred in the preparation for the sale of the Property (Solicitation No. 2006-182) shall be paid by the Buyer.

(e) The appraisal services fee of $1,400.00 and surveying costs of $2,200.00, which are included in the purchase price of the property.

5.3 City's Obligations. At Closing, the City shall deliver to the Buyer a duly executed and acknowledged Special Warranty 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 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: EP Summit, L.P.
Attention: Chris Malooly
3737 Gateway West
El Paso, Texas 79902

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 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_____, 2006.

CITY OF EL PASO, a Municipal Corporation

By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

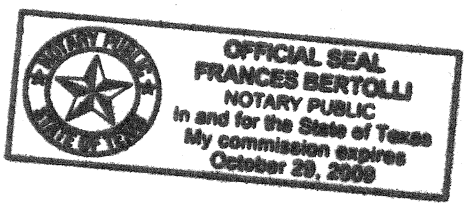
Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

The above instrument, together with all conditions thereto is hereby executed by Chris Malooly as partner for EP Summit, L.P. this 27th day of September, 2006.

EP SUMMIT, L.P.
By _____
Name Chris Malooly
Its Partner



Property Description: All of Tract 8C1, S.A. and M.G. R.R. Survey No. 268, EL Paso, EL Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Tract 8C1, S.A. and M.G. R.R. Survey No. 268, EL Paso, EL Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at an existing city monument lying on the centerline intersection of Crusade Drive (60' Right-of-way) and Southwestern Drive (60' Right-of-way); Thence, South 77° 20' 06" West, along said centerline of Crusade Drive, a distance of 50.00 feet to a point; Thence, South 12° 39' 54" East, a distance of 30.00 feet to a point lying on the southerly right-of-way line of Crusade Drive, Thence, South 77° 20' 06" West, along said right-of-way line, a distance of 277.05 feet to a point lying on the common boundary line between Tract 8C1, S.A. and M.G. R.R. Survey No. 268 and Lot 1, Block1, Harvest Addition, said point being a found 5/8-inch iron with "Conde" plastic cap, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, South 11° 27' 39" East, along said boundary line, a distance of 282.32 feet to a point lying on the common boundary line between Tracts 8C1 and 8F3, S.A. and M.G. R.R. Survey No. 268, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, South 78° 12' 30" West, along the southerly boundary line of said Tract 8C1, a distance of 148.47 feet to a point lying on the easterly right-of-way line of Interstate Highway No. 10 (right-of-way varies), said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

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

North 16° 49' 59" West, a distance of 79.84 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

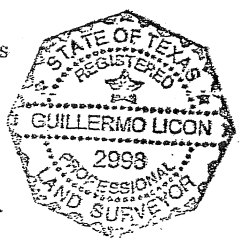
North 18° 55' 00" West, a distance of 201.56 feet to a point lying on the southerly right-of-way line of Crusade Drive, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 77° 20' 06" East, along said right-of-way line, a distance of 182.14 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.060 acres (46,165 Sq. Ft.) of land more or less.

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

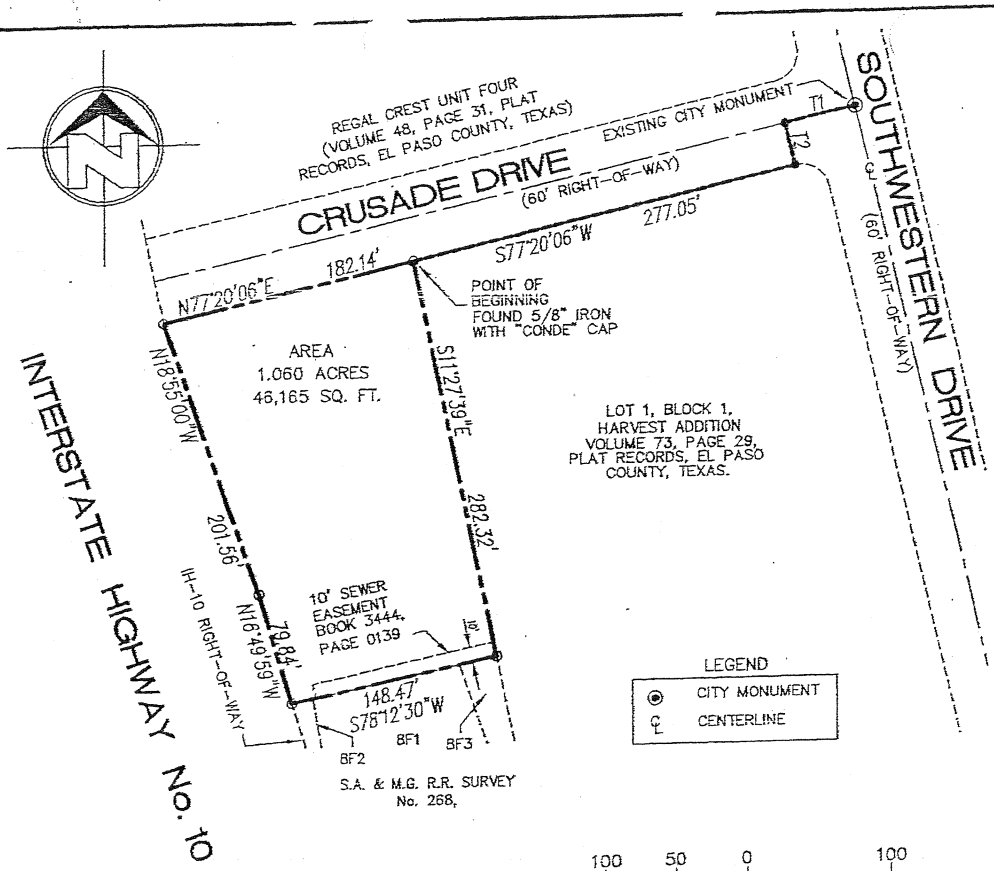
SLI ENGINEERING, INC.
Consulting Engineers - Land Surveyors



Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

March 31, 2006
Job # 06-06-2427
M&B/1280

Exhibit "A"
1 of 2



LINE TABLE

TANGENT	BEARING	DISTANCE
T1	S77°20'06"W	50.00'
T2	S12°39'54"E	30.00'

NOTES:
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. SET 1/2" IRON WITH SLI CAP TEXAS NO. 2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
3. DEED REFERENCE IN VOL. 1556, PG. 1276 DEED RECORDS OF EL PASO COUNTY.
4. BASIS OF BEARING: PLAT OF REGAL CREST UNIT FOUR, RECORDED IN VOL. 48, PG. 31.
5. THIS SURVEY WAS PERFORMED WITHOUT THE BENIFIT OF A TITLE COMITTMENT.
6. REVISED: 06-03-2006 - ADDED 10-FOOT SEWER EASEMENT (BOOK 3444, PAGE 0139).

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0021D DATED FEBRUARY 5, 1986, THIS PROPERTY LIES IN FLOOD ZONE C .

ZONE C AREAS OF MINIMAL FLOODING.

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

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This map and survey are being provided solely for the use of The City of El Paso, and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon March 31, 2006.

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

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

STATE OF TEXAS
REGISTERED
GUILLERMO LICON
2998
PROFESSIONAL
LAND SURVEYOR

PLAT OF SURVEY

SLI ENGINEERING, INC.
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS
6600 WESTWIND DRIVE
EL PASO, TEXAS 79912
915-584-4457

ALL OF TRACT 8C1,
S.A. & M.G. R.R. SURVEY
No. 268, EL PASO,
EL PASO COUNTY, TEXAS.

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

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

JOB #: 06-06-2427 DR. BY: AFV
SCALE: 1"=100' F.B. #: 2005-D
DATE: 03-31-2006 DWG.: F:\PROJECTS\CITYPROJ\ samg-tBc.dwg

PLAT REFERENCE
VOLUME 48 PAGE 31

Exhibit "A"
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