



**ORDINANCE No. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND RIVER OAKS PROPERTIES, LTD. AND OTHER RELATED DOCUMENTS, TO ALLOW THE SURFACE USE OF A PORTION OF TRACT 1P1, H.G. FOSTER SURVEY NO. 256, CITY OF EL PASO, EL PASO COUNTY, TEXAS.**

**WHEREAS**, in 1959 the City of El Paso leased an identified 60-foot wide tract to El Paso Natural Gas (EPNG) for its pipelines, and the lease has been amended and recorded in Volume, 01541, Page 00085; Volume 1541, Page 00090, Volume 01572, Page 00235, and Volume 807, Page 1889, Real Property Records, El Paso, El Paso County, Texas; and

**WHEREAS**, River Oaks Properties, LTD has requested permission to use a portion of the identified 60-foot wide tract leased to EPNG in Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas; and

**WHEREAS**, the 1959 lease and amendments reserved the City's right to full use and enjoyment of the identified 60-foot wide tract except for the rights granted to EPNG; and

**WHEREAS**, the City staff has recommended the lease of the identified property if River Oaks Properties, Inc. uses the surface of the identified 60-foot wide tract solely for sidewalks, directional access/driveway signs, parking, landscaping, curbing and access to its abutting properties and the use does not hinder, conflict or interfere with EPNG's rights under the 1959 lease and its amendments; and

**WHEREAS**, EPNG has given its approval to the River Oak Properties, LTD's proposed use of the identified 60-foot wide tract; and

**WHEREAS**, at the termination of the lease for any reason, the property, together with any improvements thereto, made or erected during the term of the lease shall revert to the City, without any additional compensation to River Oaks Properties LTD.

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

That the City Manager is hereby authorized to execute a Lease Agreement between the City of El Paso and River Oaks Properties, LTD, and other related documents, to use the surface of a portion of an identified 60-foot wide in Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas.

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF EL PASO

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

ATTEST:

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

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**

  
for Liza Ramirez-Tobias  
Capital Assets Manager

**MEMORANDUM OF LEASE AGREEMENT**

This MEMORANDUM OF LEASE AGREEMENT (the "Memorandum") is executed as of September \_\_, 2009, between CITY OF EL PASO ("Lessor") and RIVER OAKS PROPERTIES, LTD. ("Lessee") and with respect to the following Lease:

1. Title, Date and Parties: Lease Agreement (the "Lease") dated \_\_\_\_\_, 2009, between Lessor and Lessee.
2. Name and Address of Lessor: City of El Paso, 2 Civic Center Plaza, El Paso, Texas, 79912, Attn: Ms. Liza Ramirez-Tobias.
3. Name and Address of Lessee: River Oaks Properties, Ltd., 106 Mesa Park, El Paso, Texas 79912, Attention: Mr. Adam Frank.
4. Description of Premises Subject to Lease: The property described on Exhibit "A" attached hereto and incorporated herein (the "Property").
5. Term of Lease:
  - a. Original Term: Thirty (30) years from the effective date.
  - b. Renewal Term: The Lease Agreement may be extended for an additional nineteen (19) year period through May 31, 2058, unless terminated as provided in Section 6.0 of the Lease Agreement.

This Memorandum is executed for the purpose of giving notice to the public of the existence of the Lease as described above, the terms and conditions of the Lease which are incorporated into this instrument by reference; and further to give notice to the public that the said Lease between Lessor and Lessee, as referenced above, is in effect and has not been terminated.

This Memorandum is intended for notice purpose only and is not intended to modify or alter the actual terms of said Lease, as amended, to which reference is made for the specific terms thereof.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 2009.

LESSOR:

CITY OF EL PASO

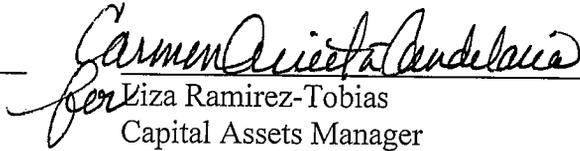
By: \_\_\_\_\_  
Joyce Wilson, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Theresa Cullen  
Deputy City Attorney



Liza Ramirez-Tobias  
Capital Assets Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on \_\_\_\_\_, 2009, by  
Joyce Wilson, City Manager for the City of El Paso.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

\_\_\_\_\_  
My commission expires

LESSEE:

RIVER OAKS PROPERTIES, LTD.

By: River Oaks Asset Management, Inc.

Its: General Partner

By: \_\_\_\_\_

Adam Frank, President

**ACKNOWLEDGMENT**

STATE OF TEXAS            )

)

COUNTY OF EL PASO        )

This instrument was acknowledged before me on \_\_\_\_\_, 2009, by Adam Frank, President of RIVER OAKS ASSET MANAGEMENT, INC. as General Partner of River Oaks Properties, Ltd., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

\_\_\_\_\_  
My commission expires

EXHIBIT A  
Property

60 FOOT EL PASO NATURAL GAS Co.  
RIGHT-OF-WAY

Property Description: A portion of Tract 7D, H.G. Foster Survey No. 256, El Paso, El Paso, County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 7D, H.G. Foster Survey No. 256, 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 E. Redd Road (120' public right-of-way) and Resler Drive (130' public right-of-way); Thence, North 89° 44' 36" West, along said centerline of E. Redd Road, a distance of 742.30 feet to a point; Thence, abandoning said center line, North 00° 15' 24" East, a distance of 60.00 feet to a point lying on the northerly right-of-way line of E. Redd Road and the common boundary line of said El Paso Natural Gas Co. and Westview Place Subdivision, also being the TRUE POINT OF BEGINNING of this description;

THENCE, North 88° 56' 04" West, along said right-of-way line, a distance of 63.83 feet to a point for a corner;

THENCE, North 21° 01' 27" East, a distance of 155.36 feet to a point for a corner;

THENCE, North 13° 37' 29" East, a distance of 611.60 feet to a point for a corner;

THENCE, South 89° 57' 30" East, a distance of 61.73 feet to a point for a corner lying on the common boundary line between El Paso Natural Gas Co. Right-of-way and the westerly boundary line of Westview Place Subdivision;

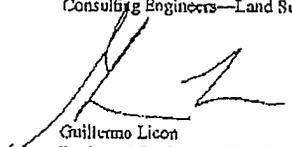
THENCE, South 13° 37' 29" West, a distance of 629.98 feet to a point for a corner;

THENCE, South 21° 01' 27" West, a distance of 137.45 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.057 acres (46,032 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  
September 26, 2008  
Job # 09-07-2550

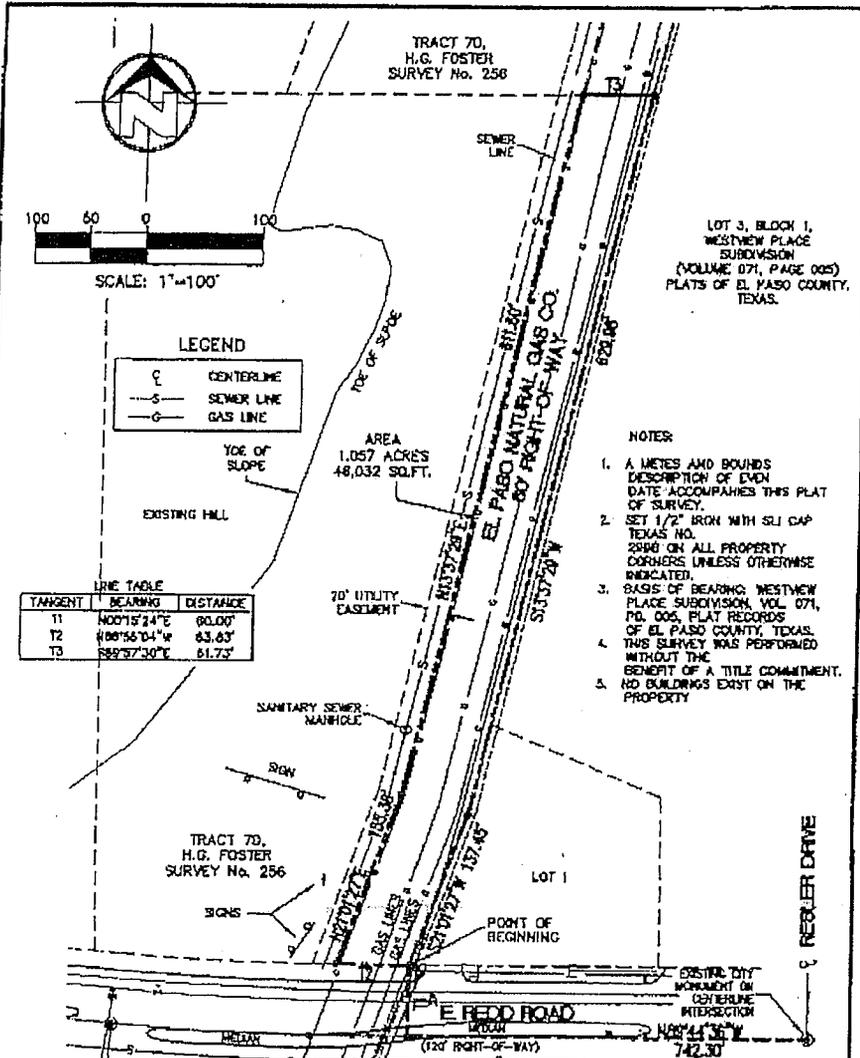


M&B/1510

Exhibit "B"  
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**LEGEND**

- CENTERLINE
- S- SEWER LINE
- G- GAS LINE

**LINE TABLE**

TANGENT	BEARING	DISTANCE
T1	N00°15'24"E	60.00'
T2	N06°56'04"W	63.63'
T3	S82°37'30"E	61.73'

- NOTES:**
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
  2. SET 1/2" IRON WITH SUI CAP TEXAS NO. 2898 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
  3. BASIS OF BEARING: WESTVIEW PLACE SUBDIVISION, VOL. 071, P.D. 005 PLAT RECORDS OF EL PASO COUNTY, TEXAS.
  4. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
  5. NO BUILDINGS EXIST ON THE PROPERTY.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0022 E DATED JANUARY 3, 1997, 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.

**NOTE:** ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY GROUND 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 SUI ENGINEERING, INC. IN WRITING. SUI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

Copyright 2008 SUI Engineering, Inc.  
 This map and survey are being provided solely for the use of [redacted] and no license has been created, expressed or implied, to copy the survey 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 September 26, 2008.



<p><b>SUI ENGINEERING, INC.</b>          CIVIL ENGINEERS          LAND SURVEYORS          LAND PLANNERS          6500 WESTVIEW DRIVE          EL PASO, TEXAS 79912          315-364-4457</p>	<p>EXISTING 60 FOOT EL PASO NATURAL GAS CO. R.O.W. BEING A PORTION OF TRACT 70, H.G. FOSTER SURVEY No. 250, CITY OF EL PASO, EL PASO COUNTY, TEXAS.</p>	<p><b>CERTIFICATION</b>          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.</p> <p><i>Guillermo Licon</i>          GUILLERMO LICON, R.P.L.S.          REGISTERED PROFESSIONAL LAND SURVEYOR          TEXAS LICENSE NO. 2998</p>
	<p>JOB # 09-07-2550 DR. BY: LM</p> <p>SCALE: 1"=100' F.B. # 294</p> <p>DATE: 09/26/2008 (ENCLOSURE TO BE ATTACHED TO THIS PLAT)</p>	<p>PLAT OF SURVEY</p>

THE STATE OF TEXAS §

§

LEASE AGREEMENT

COUNTY OF EL PASO §

This Lease Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2009, between the **CITY OF EL PASO**, a home rule municipal corporation (the "CITY"), and **RIVER OAKS PROPERTIES, LTD**, a Texas limited partnership (the "LESSEE").

**WHEREAS**, in 1959 the CITY of El Paso leased an identified 60-foot wide tract to El Paso Natural Gas (EPNG) for its pipelines, and the lease has been amended and recorded in Volume, 01541, Page 00085; Volume 1541, Page 00090, Volume 01572, Page 00235, and Volume 807, Page 1889, Real Property Records, El Paso, El Paso County, Texas; and

**WHEREAS**, the LESSEE has requested permission to use a portion of the identified 60-foot wide tract leased to EPNG in Tract 1P1, H.G. Foster Survey No. 256, CITY of El Paso, El Paso County, Texas; and

**WHEREAS**, the 1959 lease and amendments reserved the CITY's right to full use and enjoyment of the identified 60-foot wide tract except for the rights granted to EPNG; and

**WHEREAS**, the CITY staff has recommended the lease of the identified property if the LESSEE uses the surface of the identified 60-foot wide tract solely for sidewalks, directional access/driveway signs, parking, landscaping, curbing and access between its abutting properties as more particularly described in Exhibit "A" and Exhibit "B" attached hereto and made a part hereof by reference, and referred to throughout this Lease Agreement as the "Abutting Property," and the use does not hinder, conflict or interfere with EPNG's rights under the 1959 lease and its amendments; and

**WHEREAS**, EPNG has given its approval to the LESSEE'S proposed use of the identified 60-foot wide tract,

**NOW, THEREFORE**, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration,

## 1.0 PREMISES

- 1.1 The CITY hereby grants to the LESSEE a lease of a 1.057-acre parcel, more or less, located within an existing 60-foot wide El Paso Natural Gas Company Easement, being a portion of Tract 7D, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas, being more particularly described in Exhibit "C" attached hereto and made a part hereof by reference, and referred to throughout this Lease Agreement as the "Premises," for the limited use defined herein.

- 1.2 This lease is subject to the terms and conditions of the 1959 lease between the CITY of El Paso and El Paso Natural Gas (EPNG) for its pipelines, and the lease has been amended and recorded in Volume, 01541, Page 00085; Volume 01541, Page 00090; Volume 01572, Page 00235, and Volume 807, Page 1889, Real Property Records, El Paso, El Paso County, Texas, copies of which are attached hereto as Exhibit "C" and incorporated herein for all purposes.

## 2.0 TERM AND RENT

- 2.1 Term of Agreement. This Lease Agreement shall become effective October 6, 2009 and shall be for a primary term of thirty (30) years from the effective date. The Lease Agreement may be extended for an additional nineteen (19) year period through May 31, 2058, unless terminated as hereinafter provided in Section 6.0 of this Lease Agreement. The LESSEE must submit a written notice addressed to the City Capital Assets Manager no later than sixty (60) days prior to the expiration of Lease Agreement of its intention to renew.
- 2.2 Rent. The CITY and the LESSEE agree that the rental value for the Premises is FIVE HUNDRED EIGHTY- ONE AND 40/100THS DOLLARS (\$581.40) per month (the Initial Base Rent") for the first year of the primary lease term of this Lease Agreement, as stated in Section 1.1 above. Beginning one year from the Commencement Date, the annual rental will be adjusted on each anniversary of the Commencement date (the "Adjustment Date") to reflect increases in the Consumer Price Index for "All Urban Consumers, U.S. City Average, All Items," issued by the Bureau of Labor Statistics of the United States Department of Labor.
- a. The adjustments in the Base Rent will be determined by multiplying the Base Rent specified in the lease ("the Initial Base Rent") by a fraction, the numerator of which is the index number for the last month before the adjustment and the denominator of which is the index number for the first month of the first year of the Term. If the product is greater than the Initial Base Rent, LESSEE will pay this greater amount as Base Rent until the next rental adjustment. Base Rent will never be less than the Initial Base Rent.
  - b. The CITY will notify LESSEE of each adjustment to Base Rent no later than sixty (60) days after the Adjustment Date.

## 3.0 USE OF PREMISES

- 3.1 Use. The LESSEE agrees that it has permission to only use the surface of the Premises solely for sidewalks, directional access/driveway signs, parking, landscaping, curbing and access to its properties that are located adjacent to the Premises. LESSEE agrees to abide by the terms and conditions of EPNG's May 19, 2008 consent, a copy of which is attached hereto as Exhibit "D" and incorporated herein for all purposes. No additional use of the Premises shall be allowed or constructed on the Premises without EPNG's written consent being tendered to and approved by the CITY.

LESSEE'S use of the Premises shall include use of the Premises by LESSEE's assigns, employees, business invitees, subtenants, and their agents, employees, servants, contractors, and business invitees.

Should the LESSEE fail to use the Premises for the identified uses, the CITY may send notice of failure, by certified mail, return receipt requested, to the LESSEE at the following address: 106 Mesa Park Drive, El Paso, Texas 79912, and the LESSEE shall have thirty (30) days from the date of notice to correct the default; provided however, that LESSEE shall have an additional thirty (30) days, or a time period approved by the CITY, to cure such default if LESSEE commences to cure such failure within the original thirty (30) day period and therefore diligently and continuously pursues the cure of such default.

- 3.2 Improvements. The LESSEE shall submit to the CITY's Capital Assets Manager, the plans and specifications for any improvements, additions, alterations or changes as approved by EPNG's consent in writing, and no work thereon shall be commenced until the CITY's Capital Assets Manager has given his/her approval, which permission the CITY agrees not to unreasonably withhold or delay. The LESSEE will remove or relocate any improvements, additions, alterations or changes, at its sole cost and expense, upon notice from the CITY's Capital Assets Manager if the LESSEE's improvements, additions, alterations or changes are constructed without the LESSEE's prior approval.

This Lease Agreement in every sense shall be without cost to the CITY for the development, maintenance or improvement of the Premises, unless the CITY is specifically made responsible for such development, maintenance or improvement by the terms hereof. Except as noted in this paragraph, it shall be the sole responsibility of the LESSEE to keep, maintain, repair and operate the entirety of the Premises to the extent such use is granted to Lessee pursuant to this Lease Agreement and its improvements additions, alterations or changes at the LESSEE's sole cost and expense.

- 3.3 Repairs. The LESSEE shall keep the Premises, including the improvements in good condition and repair during the lease term of this Lease Agreement. The LESSEE shall be solely responsible for any repairs needed during the lease term. The LESSEE shall at all times during the term of this Lease Agreement keep the Premises clean, orderly and in an attractive condition. In the event of damage or destruction of the improvements on the Premises, the LESSEE shall promptly restore or replace the same in a reasonable time. Should the Premises not be in substantially the same condition as same were at the beginning of the term of this Lease Agreement except for those modifications approved by the CITY, the LESSEE shall make the necessary repairs to restore Premises to its pre-lease condition. At the conclusion of the lease, and at the discretion of the City Manager, a payment in the amount of such repairs, in an amount determined appropriate by the sole discretion of the City Manager may be accepted in lieu of completion of said repairs, cleaning, or painting. Notwithstanding the foregoing, LESSEE will not be responsible for the condition of the Premises

arising out of the use of the Premises under the EPNG Agreement or that are the responsibility of the parties under the EPNG Agreement.

- 3.4 AS IS. The LESSEE agrees that it has fully inspected the Premises prior to execution of this Lease and acknowledges that the Premises are leased "AS IS" and no warranties or representations expressed or implied have been made by the CITY, its employees, agents or representatives concerning the condition of the Premises, its habitability or fitness for a particular purpose. The CITY shall not be responsible for completion of any improvements, modifications, corrections, repairs or the like believed helpful or necessary to the LESSEE's stated purpose, agenda or mission or believed necessary for the continuance of the Premises.
- 3.5 Maintenance. All other maintenance and upkeep of the Premises, other than as to matters arising under the EPNG Agreement, shall be the responsibility of the LESSEE.
- 3.5.1 Garbage and Trash. The LESSEE shall provide a complete and proper arrangement for the adequate and proper handling and disposal, away from the Premises, of all trash, garbage and other refuse on the Premises.
- 3.5.2 Vegetation. The LESSEE shall maintain all vegetation on the Premises in accordance with applicable City Code provisions and other applicable laws, rules and regulations.
- 3.6 Utilities. The LESSEE shall be responsible for the payment of all utilities that are used on the Premises by LESSEE.
- 3.7 Improper Use. The LESSEE shall not permit on the Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations.
- 3.8 Municipal Regulations. The LESSEE expressly agrees that the Premises will only for the uses allowed by this Lease Agreement and which must be in compliance with municipal regulations including applicable municipal zoning regulations. The CITY will join in any applications to assist in LESSEE's use of the Premises as provided in this Agreement. However, such participation by the CITY is not a guarantee that any application will be approved by the CITY. In the event that such application shall not be approved by the CITY, LESSEE shall have the option to immediately terminate the Lease upon written notice to the CITY, in accordance with the terms and conditions of this lease.

#### 4.0 CONTRACTUAL RELATIONSHIP

- 4.1 The LESSEE is an independent Contractor and is otherwise a tenant in a landlord-tenant relationship with the CITY. Except as may be expressly and unambiguously provided in this Lease Agreement, no partnership or joint venture is intended to be

created by this Lease Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.

4.1.1 As an independent Lease Contractor, the LESSEE understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to the LESSEE's officers, employees, agents, representative or sub-contractors who perform any service in connection with this Lease Agreement.

4.1.2 The LESSEE shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of the LESSEE.

4.2 The LESSEE understands and expressly agrees that, in all things relating to this Lease Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Lease Agreement as a governmental entity for the purpose of performing a governmental function.

## 5.0 INSURANCE

5.1 Liability Insurance. The LESSEE, at its sole cost and expense shall, throughout the Term of this Agreement, provide and keep in force for the benefit of the LESSEE, commercial general liability insurance in amounts as reasonably set from time to time by the CITY, but not less than the following amounts: \$250,000 per individual per occurrence for personal injury; \$500,000 per occurrence for personal injury for more than one person; \$100,000 for Premises damage (including damage to the facilities and the Premises) or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater for the term of this Lease Agreement. The CITY, as owner of the Premises, shall be named as an additional named insured under the coverage. A Certificate of Insurance indicating such coverage will be provided to the CITY's Capital Assets Manager upon execution of this Lease Agreement. Failure to provide the required proof of insurance, after ten (10) days notice, naming the CITY as an additional insured, shall result in the LESSEE's default in the terms of this Lease Agreement.

5.2 Cancellation. Each policy must expressly state that it may not be cancelled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City Clerk's office by the insurance company.

5.3 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the CITY, its elected and appointed officials, officers, agents or employees.

- 5.4 Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to the CITY, the Additional Insured, with respect to claims arising hereunder and that the insurance applies separately to each insured.
- 5.5 Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to the LESSEE for any further premium payment and has no right to recover any premiums for the CITY.

## 6.0 INDEMNIFICATION

- 6.1 THE LESSEE UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, INCLUDING, BUT NOT LIMITED TO, INJURY TO OR DEATH OF ANY PERSON, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF THE LESSEE, ITS AGENTS, SUB-LEASE AGREEMENTORS, EMPLOYEES OR REPRESENTATIVES WHICH ARISE UNDER THIS LEASE AGREEMENT.

THE LESSEE FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE CONDUCT, ACTS OR OMISSIONS OF THE CITY AS THEY RELATE DIRECTLY OR INDIRECTLY TO THIS LEASE AGREEMENT, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OR ITS OFFICERS, EMPLOYEES OR AGENTS.

- 6.1.1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to the LESSEE every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.
- 6.1.2 In addition, the LESSEE shall promptly advise the CITY in writing of any claim or demand against the CITY or the LESSEE known to the LESSEE related to or arising out of the LESSEE's activities under this Lease Agreement.
- 6.1.3 The LESSEE understands and agrees that it 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 the LESSEE may deem expedient; and 3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, frivolous, false or fraudulent, brought because of such injuries or damages.

- 6.1.4 The LESSEE understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by the 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 the LESSEE, and premiums on any appeal bonds.
- 6.1.5 The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving the LESSEE of any of its obligations under this section.
- 6.1.6 In addition, the LESSEE hereby releases the CITY from any damage to its facilities or business that may result from the operation of CITY equipment or the work of CITY crews engaged in maintaining or repairing the Premises.

## 7.0 TERMINATION

This Lease Agreement may be terminated as provided herein.

- 7.1 Termination by Mutual Consent. The parties may terminate this Lease Agreement by mutual consent upon such terms as they may agree in writing.
- 7.2 Termination by Either Party. It is further understood and agreed by the LESSEE and the CITY that either party may terminate this Lease Agreement, in whole or in part, upon thirty (30) days written notice if the other party fails to perform any of its material obligations hereunder and fails to completely cure the breach after notice and an opportunity to cure such breach; provided however that LESSEE shall have an additional thirty (30) days or a time period reasonably approved by the CITY to cure such default if LESSEE commences to cure such failure within the original thirty (30) day period and therefore diligently and continuously pursues the cure of such default.
- 7.3 Termination by the CITY. If the LESSEE ceases to use or occupy the Premises for the purposes herein contemplated for a time period of more than twelve (12) continuous months, if LESSEE does not provide written proof of required insurance coverage within ten (10) days written notice, or if the LESSEE defaults in any of its obligations under this Lease Agreement and fails to correct such default within thirty (30) days written notice, the CITY may cancel said Lease Agreement and take possession of the Premises and retain possession of the Property, with no further consideration due the LESSEE for the Property; provided however that LESSEE shall have additional thirty (30) days or a time period reasonably approved by the CITY to cure such default if LESSEE commences to cure such failure within

the original thirty (30) day period and therefore diligently and continuously pursues the cure of such default. In such an event, all rights of the LESSEE in the Premises, including improvements, shall then terminate. Any waiver by the CITY of any breach of any of the LESSEE's obligations shall not be deemed a continuing waiver and shall not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of the LESSEE.

- 7.4 Time of Performance – Force Majeure. Neither party to this Lease Agreement will be liable for failure to comply with any term of this Lease Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Lease Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.
- 7.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Lease Agreement.
- 7.6 Reversion of Improvements or Land. Upon termination of this Lease Agreement for any reason, ownership of all improvements done by the LESSEE on the Premises shall revert to the CITY, without any additional compensation to the LESSEE.
- 7.7 Right to Cure. The LESSEE has entered into a Ground Lease with FMN Land LLC ("FMN"), which provides for access points ("Access") between LESSEE's adjoining properties across the Premises. Such Access is essential to FMN and as such, CITY agrees to serve FMN Land, LLC, its successors or assigns with a true copy of any notice of default served on LESSEE for failure to comply with the of this Lease. FMN Land, LLC shall have the right, but not the obligation, at any time during any applicable cure period, without payment of any penalty, to do any act or thing, and to make any payment, that may be necessary and proper to be done to cure any default or to perform and observe the terms of the LESSEE, and such payment or performance shall be accepted by CITY and shall cure the default. CITY shall service such notice to FMN Land, LLC by certified mail to the following address:

FMN Land, LLC  
1501 N. Mesa, Suite 102  
El Paso, Texas 79902  
Attn: Mike Norwich

The address for notice above may be changed by written notice of FMN to the CITY in the manner provided for other notices to the CITY under this Lease.

## 8.0 GENERAL PROVISIONS

- 8.1 Taxes and Assessments. The LESSEE will promptly pay all taxes and assessments lawfully levied of the LESSEE's leasehold interest, on the use and crossing on the Premises.
- 8.2 Assignments and Subletting. The LESSEE shall not assign this Lease Agreement nor sublet the Premises or any part thereof without the prior written consent of the CITY. Provided, however, without the prior consent of the CITY, the LESSEE may collaterally assign this Lease Agreement to its interim and permanent lender in connection with the financing of the acquisition and construction of the improvements on the LESSEE's adjacent property. In the event of a collateral assignment, the LESSEE will provide the CITY with a copy of the collateral assignment upon execution thereof.
- 8.3 Liens and Encumbrances. The LESSEE shall not give nor permit any liens or encumbrances on the Premises, including but not limited to the facilities, buildings and improvements. Upon termination of this Lease Agreement, the LESSEE shall peacefully surrender such Premises to the CITY free of all such liens and encumbrances. **The LESSEE shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Premises, including facilities, buildings and improvements, together with reasonable attorneys' fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens and encumbrances.**
- 8.4 Inspections. The CITY shall have the right to enter the Premises at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Lease Agreement.
- 8.5 Outside Lighting. Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants of other Premises in the neighborhood or otherwise violate Chapter 18.18 (Outdoor Lighting) of the El Paso City Code. If this provision is violated, the CITY may require any such lighting to be extinguished, changed or removed at the LESSEE's expense.
- 8.6 Right of Assurance. Whenever one party to this Lease Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) City business days, the demanding party may treat this failure as an anticipatory repudiation of the Lease Agreement.
- 8.7 Survival. Each party shall remain obligated to the other under all clauses of this Lease Agreement that expressly or by their nature extend beyond the expiration of termination of this Lease Agreement, including but not limited to the indemnification provisions hereof.

- 8.8 Amendments and Waiver. The parties may amend this Lease Agreement at any time by mutual consent. Unless otherwise provided herein, this Lease Agreement may be amended only by written instrument duly executed on behalf of the CITY and the LESSEE. No claim or right arising out of a breach of this Lease Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 8.9 Complete Agreement. This Lease Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Lease Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Lease Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Lease Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Lease Agreement.
- 8.10 Governing Law. This Lease Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.
- 8.11 Severability. All agreements and covenants contained in this Lease Agreement are severable. Should any term or provision of this Lease Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Lease Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 8.12 Venue. For the purpose of determining place of this Lease Agreement and the law governing the same, this Lease Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.
- 8.13 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso  
Attention: City Manager  
Two Civic Center Plaza  
El Paso, Texas 79901-1196

COPY TO: Capital Assets Manager  
Two Civic Center Plaza  
El Paso, Texas 79901-1196

LESSEE: River Oaks Properties, Ltd.  
106 Mesa Park Drive  
El Paso, Texas 79912  
Attn: Adam Z. Frank, President

8.14 Warranty of Capacity to Execute Agreement. The person signing this Lease Agreement on behalf of the LESSEE warrants that he/she has the authority to do so and to bind the LESSEE to this Lease Agreement and all the terms and conditions contained herein.

Witness the following signatures:

CITY OF EL PASO

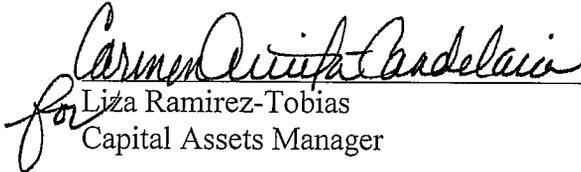
\_\_\_\_\_  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

  
\_\_\_\_\_  
Liza Ramirez-Tobias  
Capital Assets Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas**.

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

\_\_\_\_\_  
My Commission Expires

(Signatures and acknowledgments continue on next page)



EXHIBIT A

Property Description: A portion of Tract 7, H.G. Foster Survey No. 256, El Paso, El Paso, County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 7, H.G. Foster Survey No. 256, El Paso, El Paso County, Texas and is more particularly described by metes and bounds as follows:

Commencing at a found 2" pipe in concrete, said point being the northwest corner of H.G. Foster Survey No. 256, from which a found brass cap for the southeast corner of S. J. Larkin Survey No. 264, bears North 89° 58' 57" West, a distance of 47.10 feet; Thence, South 00° 00' 13" East, along the common boundary line of H.G. Foster Survey No. 256 and S.A. & M.G. R.R. 268, a distance of 211.21 feet to a set 1/2" iron pin with SLI plastic cap stamped "TX 2998", said point being the TRUE POINT OF BEGINNING of this description;

THENCE, North 80° 29' 05" East, a distance of 393.66 feet to a set 1/2" iron pin with SLI plastic cap stamped "TX 2998";

THENCE, North 35° 57' 12" West, a distance of 120.18 feet to a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

THENCE, North 58° 03' 05" East, a distance of 92.09 feet to a point lying on the common boundary line between H.G. Foster Survey No. 256 and S.J. Larkin Survey No. 264, said point being a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

THENCE, South 89° 58' 57" East, along said boundary line, a distance of 133.71 feet to a point lying on the westerly right-of-way line of a 60-foot El Paso Natural Gas Company right-of-way, said point being a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

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

South 03° 26' 41" West, a distance of 266.12 to a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

South 13° 36' 02" West, a distance of 1058.46 feet to a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

South 21° 00' 00" West, a distance of 155.36 feet to a point lying on the northerly right-of-way line of Redd Road, said point being a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

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

North 89° 57' 56" West, a distance of 2.96 to a point for a curve, said point being a set 1/2-inch iron rod with SLI plastic cap stamped "TX 2998";

184.99 feet along the arc of a curve to the right, having a radius of 2190.00 feet, a central angle of 04° 50' 23" and a chord which bears North 87° 32' 44" West, a distance of 184.93 feet to a set ½-inch iron rod with SLI plastic cap stamped "TX 2998";

North 85° 07' 33" West, a distance of 21.24 to a point lying on the common boundary line between H.G. Foster Survey No. 256 and S.A. & M.G. R.R. 268, said point being a set ½-inch iron rod with SLI plastic cap stamped "TX 2998";

THENCE, North 00° 00' 13" West, along said boundary line, a distance of 1218.68 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 11.665 acres (508,112 sq. ft.) of land more or less.

A PLAT 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

July 14, 2005  
Job Number 06-05-2277  
M&B/0000

SAVE AND EXCEPT the property described on Exhibit A-1 and A-2 attached hereto:

## EXHIBIT A-1

Properly Description: All of Tract 1P1, H.G. Foster Survey No. 256, El Paso, El Paso, County, Texas.

### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Tract 1P1, H.G. Foster Survey No. 256, El Paso, El Paso County, Texas and is more particularly described by metes and bounds as follows:

Commencing at a found 2" pipe in concrete, said point being the northwest corner of H.G. Foster Survey No. 256, from which a found brass cap for the southeast corner of S. J. Larkin Survey No. 264, bears North 89° 58' 57" West, a distance of 47.10 feet; Thence, South 89° 58' 57" East, along the common boundary line of H.G. Foster Survey No. 256 and S.J. Larkin Survey No. 264, a distance of 589.65 feet to a point lying on the easterly boundary line of a 60-foot El Paso Natural Gas Company right-of-way said point being a set 1/2-inch iron pin with SU plastic cap stamped "TX 2998", also being the TRUE POINT OF BEGINNING of this description;

THENCE, South 89° 58' 57" East, along said boundary line, a distance of 355.25 feet to a point lying on the westerly right-of-way line of Resler Drive, said point being a found 5/8-inch iron pin with plastic cap;

THENCE, South 00° 11' 19" East, along said right-of-way line, a distance of 30.00 feet to a point lying on the common boundary line between Tract 1P1, H. G. Foster Survey No. 256 and Lot 1, Block 71, West Hills Unit Twenty One said point being a set 1/2-inch iron rod with SU plastic cap stamped "TX 2998";

THENCE, North 89° 58' 57" West, along said boundary line, a distance of 357.18 feet to a point lying on the easterly boundary line of a 60-foot El Paso Natural Gas Company right-of-way, said point being a set 1/2-inch iron rod with SU plastic cap stamped "TX 2998";

THENCE, North 03° 26' 41" East, along said boundary line, a distance of 30.05 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 0.245 acres (10,686 sq. ft.) of land more or less.

## EXHIBIT A-2

Properly Description: A portion of Tract 7D, H.G. Foster Survey No. 256, El Paso, El Paso, County, Texas.

### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 7D, H.G. Foster Survey No. 256, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at a found 2" pipe in concrete, said point being the northwest corner of H.G. Foster Survey No. 256, from which a found brass cap in concrete lying on the southeast corner of S.J. Larkin Survey No. 264 bears North 89° 58' 57" West, a distance of 47.10 feet for a reference; Thence, South 00° 00' 13" East, along the common boundary line between Tracts 7D, H.G. Foster Survey No. 256 and Tract 11, S.A. & M.G. RR Survey No. 268, a distance of 211.21 feet to a set 1/2-inch iron with SLI plastic cap stamped "TX2998", said point being the TRUE POINT OF BEGINNING of this description;

THENCE, North 80° 28' 05" East, a distance of 393.66 feet to a found 5/8-inch iron;

THENCE, North 35° 57' 12" West, a distance of 120.18 feet to a found nail;

THENCE, North 58° 03' 05" East, a distance of 92.09 feet to a point lying on the common boundary line between Tract 1A, S.J. Larkin Survey No. 264 and Tract 7D, H.G. Foster Survey No. 256, said point being a found nail;

THENCE, South 89° 58' 57" East, along said boundary line, a distance of 133.71 feet to a point lying on the common boundary line between Tract 7D, H.G. Foster Survey No. 256 and the westerly boundary line of El Paso Natural Gas right-of-way, said point being a found nail;

THENCE, South 03° 26' 41" West, along said boundary line, a distance of 266.12 feet to a found 4" pipe;

THENCE, South 13° 36' 02" West, continuing along said boundary line, a distance of 446.86 feet to a set 1/2-inch iron with SLI plastic cap stamped "TX2998";

THENCE, North 89° 58' 57" West, a distance of 258.55 feet to a set 1/2-inch iron with SLI plastic cap stamped "TX2998";

THENCE, North 18° 38' 22" East, a distance of 83.85 feet to a set 1/2-inch iron with SLI plastic cap stamped "TX2998";

THENCE, North 00° 02' 53" West, a distance of 125.96 feet to a set 1/2-inch iron with SLI plastic cap stamped "TX2998";

THENCE, North 20° 46' 24" West, a distance of 100.00 feet to a set 1/2-inch iron with SLI plastic cap stamped "TX2998";

THENCE, North 41° 47' 35" West, a distance of 182.21 feet to a point lying on the common boundary line between Tract 11, S.A. & M.G. RR Survey No. 268 and Tract 7D, H.G. Foster Survey No. 256, said point being a set 1/2-inch iron with SLI plastic cap stamped "TX2998";

THENCE, North 00° 00' 13" West, along said boundary line, a distance of 55.64 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 5.037 acres (219,420 Sq. Ft.) of land more or less.

## EXHIBIT B

931 Resler Drive

### 931 Resler Drive Legal Metes and Bounds

Property description: A 0.953-acre portion of lot 3, Block 1, Westview Place, El Paso, El Paso County, Texas.

The parcel of land herein described is a 0.953-acre portion of Lot 3, Block 1, Westview Place (Book 71, Page 5, Plat records, El Paso County, Texas), El Paso, El Paso County, Texas is being more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the centerline intersection of Redd Road (120 foot right-of-way from the plat of West Hills Unit Eleven in Book 65, Pages 2 and 2A, Plat Records, El Paso County, Texas) and Resler Drive (130 foot right-of-way from the plat of West Hills Unit Eleven in Book 65, Pages 2 and 2A, Plat Records, El Paso County, Texas); Thence North 00° 09' 52" west, along the centerline of Resler Drive, a distance of 80.63 feet, from which a city monument at the centerline intersection of Resler Drive and Imperial Ridge Drive bears North 00° 03' 59" West, a distance of 1558.11 feet; Thence, South 89° 50' 08" West a distance of 65.00 feet to the westerly right-of-way of Resler Drive; Thence 31.56 feet along arc of a curve to the right, having a radius of 20.00 feet, a central angle of 90° 25' 16", and a chord which bears South 45° 02' 46" West, a distance of 28.39 feet to the northerly right-of-way of Redd Road; Thence North 89° 44' 36" West, along said right-of-way, a distance of 434.81 feet to a bridge nail and shiner set for the POINT OF BEGINNING of this description:

THENCE North 00° 13' 24" East a distance of 91.32 feet to a set bridge nail and shiner;

THENCE North 29° 59' 12" East a distance of 83.58 feet to a set bridge nail and shiner;

THENCE North 60° 00' 48" West, a distance of 209.09 feet to a common boundary between Westview Place and a 60-foot El Paso Natural Gas Company right-of-way (July 9, 1954, Book 1181, Page 545, June 3, 1959, Book 1541, Page 85, and October 31, 1960, Book 1572, Page 235, Deed Records, El Paso County, Texas);

THENCE North 13° 37' 29" East, along said boundary, a distance of 43.30 feet to a nail and shiner set on the southerly boundary of that certain parcel of land originally described November 14, 1995, in Book 2974, Page 1459, and revised April 3, 1998 in Book 3343, Page 701, Deed Records, El Paso County, Texas;

THENCE along said boundary, the following courses:

South 76° 22' 31" East, a distance of 80.88 feet to a set bridge nail and shiner;

North 13° 37' 29" East, a distance of 109.40 feet to the wall of the existing building;

South 76° 20' 24" East, along said building wall, a distance of 150.76 feet;

South 13° 37' 29" West, a distance of 101.04 feet to a set bridge nail and shiner;

South 00° 05' 19" East, a distance of 73.91 feet to a set nail and shiner;

South 89° 54' 41" West, a distance of 10.46 feet to a set nail and shiner;

South 00° 05' 19" East a distance of 87.86 feet to a set nail and shiner;

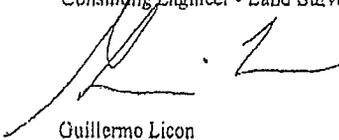
South 89° 54' 41" West, a distance of 63.43 feet to a set nail and shiner;

South 00° 05' 19" East, a distance of 102.00 feet to the POINT OF BEGINNING of this description.

931 Reeler Drive

Said parcel of land contains 0.953 acres (41,493 square feet) of land more or less.

SLI ENGINEERING, INC.  
Consulting Engineer - Land Surveyors



Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998



Job # 09-07-2623  
August 11, 2008

EXHIBIT B (continued)

LEGAL METES AND BOUNDS

Property Description: A portion of Lots 1 and 3, Block 1, Westview Place Subdivision,  
An addition to the city of El Paso, El Paso County, Texas.

The parcel of land herein described is a portion of Lots 1 and 3, Block 1, Westview Place  
Subdivision (Volume 71, Page 5, Plat Records of El Paso County, Texas), an addition to  
the City of 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 Redd  
Road (120 foot right-of-way) and Resler Drive (130' public right-of-way, West Hills Unit  
Eleven, Book 65, Page 2 and 2A, Plat Records, El Paso County, Texas); Thence, North  
89°44' 36" West, along the centerline of Redd Road, a distance of 520.40 feet to a point;  
Thence, North 00° 15' 24" East, abandoning said centerline, a distance of 65.00 feet to a  
point set for corner lying on the southerly right-of-way line of Redd Road, said point  
being a found nail, also being the TRUE POINT OF BEGINNING of this description.

THENCE, North 00°15' 24" East, a distance of 91.32 feet to a point for a corner, said  
point being a set nail;

THENCE, North 29°59' 12" East, a distance of 83.58 feet to a point for a corner, said  
point being a set nail;

THENCE, North 60°00' 46" West, a distance of 209.08 feet to a point for a corner, said  
point being a set nail;

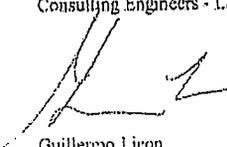
THENCE, South 13°37' 29" West, a distance of 142.94 feet to a point for a corner, said  
point being a set nail;

THENCE, South 21°01' 27" West, a distance of 137.45 feet to a point for a corner on the  
northerly right-of-way line of Redd Road, said point being a set nail;

THENCE, South 89°44' 36" East, along said right-of-way line, a distance of 221.90 feet  
to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.000 Acres (43,559 Sq. Ft.) more or less.

SLI ENGINEERING, INC.  
Consulting Engineers - Land Surveyors

  
Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998

December 10, 2008  
Job # 09-07-2623



M&B/1517

EXHIBIT C

60 FOOT EL PASO NATURAL GAS Co.  
RIGHT-OF-WAY

Property Description: A portion of Tract 7D, H.G. Foster Survey No. 256, El Paso, El Paso, County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 7D, H.G. Foster Survey No. 256, 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 E. Redd Road (120' public right-of-way) and Reuler Drive (130' public right-of-way); Thence, North 89° 44' 36" West, along said centerline of E. Redd Road, a distance of 742.30 feet to a point; Thence, abandoning said center line, North 00° 15' 24" East, a distance of 60.00 feet to a point lying on the northerly right-of-way line of E. Redd Road and the common boundary line of said El Paso Natural Gas Co. and Westview Place Subdivision, also being the TRUE POINT OF BEGINNING of this description;

THENCE, North 88° 56' 04" West, along said right-of-way line, a distance of 63.83 feet to a point for a corner;

THENCE, North 21° 01' 27" East, a distance of 155.36 feet to a point for a corner;

THENCE, North 13° 37' 29" East, a distance of 611.60 feet to a point for a corner;

THENCE, South 89° 57' 30" East, a distance of 61.73 feet to a point for a corner lying on the common boundary line between El Paso Natural Gas Co. Right-of-way and the westerly boundary line of Westview Place Subdivision;

THENCE, South 13° 37' 29" West, a distance of 629.98 feet to a point for a corner;

THENCE, South 21° 01' 27" West, a distance of 137.45 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.057 acres (46,032 Sq. Ft.) of land more or less

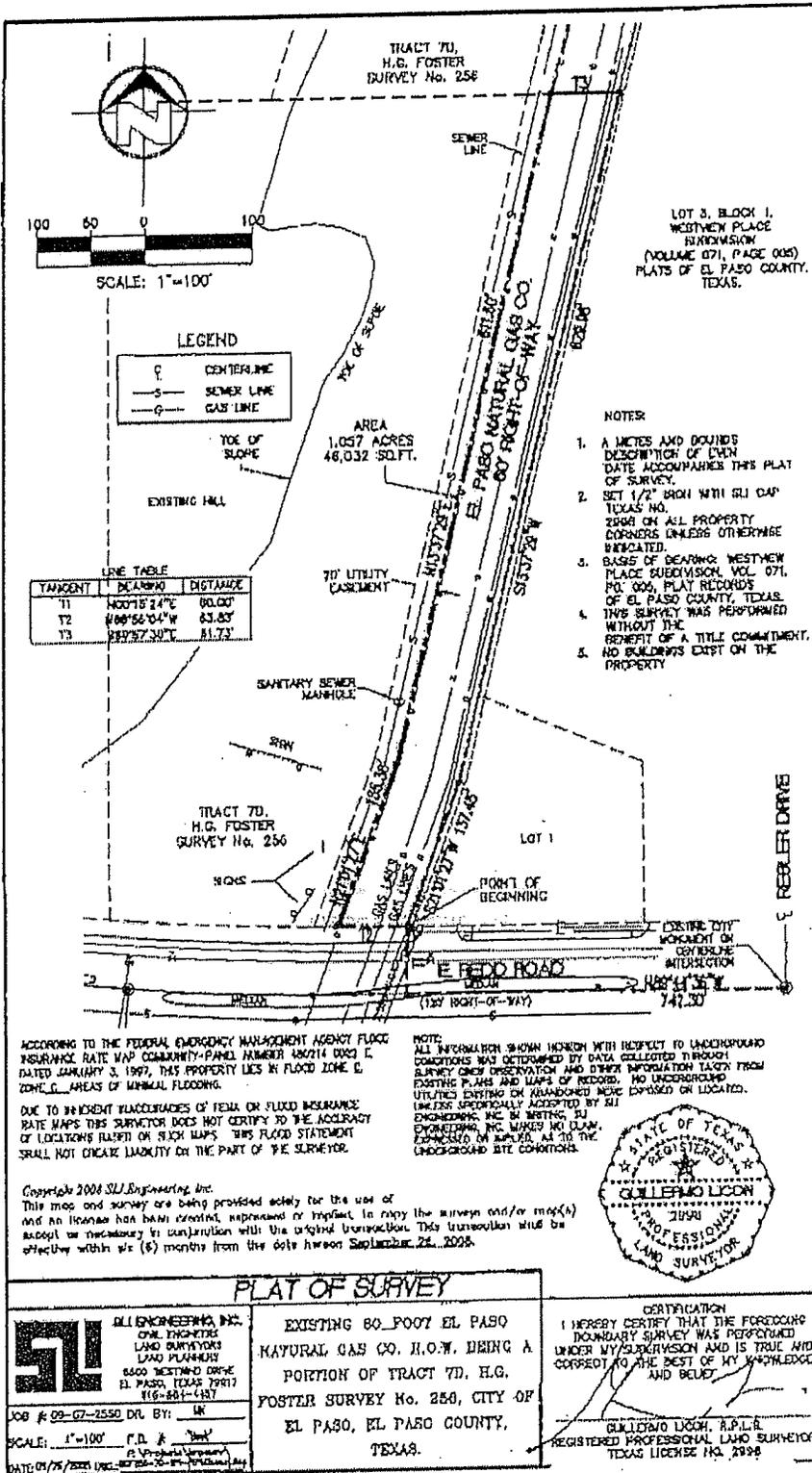
A PLAT OF SURVEY OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC,  
Consulting Engineers—Land Surveyors

Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998  
September 26, 2008  
Job # 09-07-2350



M&B/1510



PAGE 2 OF 2

Page 2 of 2

EXHIBIT D

85 85

STATE OF TEXAS  
COUNTY OF EL PASO

1808

THIS LEASE, made this 18th day of June, 1959,  
by and between the CITY OF EL PASO, TEXAS, hereinafter called  
"Lessor," and EL PASO MARSHAL GAS COMPANY, a Delaware corporation,  
hereinafter called "Lessee,"

**W I T N E S S E T H:**

I. Lessor has leased and devised and by these presents does  
lease and devise unto Lessee the following described vacant land  
situated in the County of El Paso and State of Texas, hereinafter  
designated as Tracts I, II, III and IV, being more particularly  
described as follows:

**TRACT I**

A strip of land 60 feet in width and a total length  
of 61,330 feet, lying within Sections 29, 28, 35, 34,  
and 33, Block 80, Township 2, and being a portion of  
the same land granted to El Paso Natural Gas Company  
by right-of-way easement by the U. S. Government  
acting through the Secretary of War by instrument  
dated July 29, 1941, reference to which is here made  
for all purposes, the center line of which coincides  
with the land where Lessee's pipelines are laid at  
present and which center line begins at a point in the  
Northeast part of said Section 29; thence in a south-  
easterly direction to a point on the North edge of the  
pavement of U. S. Highway No. 62.

**TRACT II**

A strip of land 60 feet in width, the center line of  
which coincides with the land where Lessee's pipelines  
are laid at present, and which center line begins at a  
point in the North section line of Section 232, Laura E.  
Wandy Survey, El Paso County, Texas, which point is 1750  
feet East of the West line of said Section 232; thence  
in a straight line southeasterly to a point in the South  
line of said Section 232 which is 1950 feet East of the  
West line of said section.

**TRACT III**

A strip of land 60 feet in width, the center line of  
which coincides with the land where Lessee's pipelines  
are laid at present, and which center line begins at a  
point in the North section line of Section 245, Nellie D.  
Wandy Survey, El Paso County, Texas, which point is 2230  
feet West of the East line of said Section 245; thence  
in a straight line southeasterly to a point in Section  
10, Block 82, Texas & Pacific Railway Company Survey,  
El Paso County, Texas; thence southeasterly in a straight  
line to a point in the South section line of said

86 86

Section 10 which is 1400 feet from the West line of said section.

TRACT IV

A strip of land 60 feet in width, the center line of which coincides with the land where Lessee's pipelines are laid at present, and which center line begins at a point in the North section line of Section 256, Range 11, Foster Survey, El Paso County, Texas; thence in a westerly direction to a point in the South section line of said Section 256 which is 781.9 feet from the West section line of Section 211.

A survey is now being made by Lessor's engineers to determine a better and bounds description of the land herein leased and desired. The parties hereto agree that when said survey is completed, said notes and bounds description will be added to this agreement as a supplement.

2. The term of this lease shall be for ninety-nine (99) years commencing on the date of the execution of this agreement and ending in May, 2058, on a day which shall be a full ninety-nine (99) years from and after the execution date, unless sooner abandoned pursuant to Section 10 hereof.

3. As consideration for the execution of this lease, Lessee has leased and granted to Lessor, by instrument of even date herewith, the following described property:

Beginning at a point, said point being the Northwest corner of the B. C. Foster Survey 256 and the Northeast corner of the S.A. & M.O.R.R. Co. Survey 269 and said point being also in the South line of the S. J. Larkin Survey 264; thence North a distance of 3200 feet; thence West a distance of 2800 feet to a point in the West boundary line of the S. J. Larkin Survey 264; thence South a distance of 3200 feet to a point, said point being the Southwest corner of the S. J. Larkin Survey 264; thence East along the South boundary line of the S. J. Larkin Survey 264, a distance of 2000 feet to the point of beginning and containing in all, 205.7 acres of ground, more or less.

4. The Lessee may use the land leased for the construction, maintenance, repair and operation of a pipeline or pipelines and facilities for the transportation of natural gas; and will not use the premises for any other purpose except by written consent of the Lessor. The Lessee will comply with all applicable laws, ordinances and regulations relating to health and safety and will keep the property in good and clean condition.

5. Lessor under the lease reserves the right to full use and enjoyment of said premises except as to the rights hereinafter granted

87 87

under this lease and the Lessee hereby agrees to pay any damages which may arise from the exercise of the rights herein granted; said damages, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the Lessor, one by the Lessee or assigns, and the third by the two so appointed as aforesaid. The award of such three persons or any two of them shall be final and conclusive. Lessor represents to Lessee that the leased property is so zoned as to permit its use for a pipeline or pipelines.

6. The Lessor in the use of the property shall not hinder, conflict or interfere with the exercise of the Lessee's rights hereunder, and no building, reservoir or structure shall be constructed on the leased premises without the Lessee's written consent.

7. Lessee under this lease shall have the right of ingress and egress across Lessor's property but shall be entitled, though not required, to use the most convenient roadway across same.

8. For the same consideration expressed herein, the Lessor, its successors or assigns, shall have the right at any time to lay additional lines of pipe alongside the line or lines already laid, and all the terms hereof shall apply to such additional lines.

9. Lessee agrees to bury all pipelines to a sufficient depth so as not to interfere with the cultivation of said land by Lessor or others to whom Lessor may lease said land for grazing purposes, cultivation or otherwise.

10. Lessee, upon permanent abandonment of the right-of-way and removal of all lines and other improvements constructed thereon, shall execute and record a release hereof, whereupon this lease and all rights and privileges herein mutually granted shall be fully cancelled and terminated.

11. The Lessor and the Lessee agree that the Lessor shall have the right to build roads and streets over the easement granted herein, and in the event a road crosses over said easement and pipelines in such a manner that in the opinion of the Lessor requires a change in the grade of the pipeline which is constructed in this

88

reement by the Lessee, then the Lessee agrees to change the grade of said pipeline at its expense.

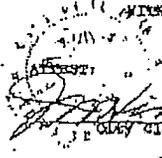
12. It is expressly agreed by the Lessee that no fences shall be constructed upon the easement granted herein unless the written consent to construct such a fence is first obtained from the Lessor.

13. The Lessee agrees to indemnify and hold the Lessor free and harmless from any and all claims or damages which the said Lessor may be compelled to pay on account of the injury to the person or property of any other person where said injuries aforesaid are caused by the use of the said easement, or maintenance, repair or operation of its pipeline in said easement granted to the Lessee or misconduct of the Lessee or negligence of the Lessee, its agents, servants or employees.

14. The Lessee may assign this lease to any reputable person, firm or corporation without obtaining permission of the Lessor, but will give Lessor written notice of any such assignment within sixty (60) days after it becomes effective.

15. The Lessor may cancel this lease for breach of any obligation of the Lessee hereunder, if the Lessor has first given Lessee written notice of such intention and the Lessee has failed to correct such breach within sixty (60) days after such notice.

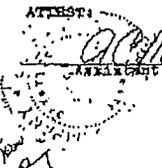
WITNESS the following signatures and seals:

ATTEST:  
  
[Signature]  
City Clerk

THE CITY OF EL PASO, Lessor

[Signature]  
Mayor

EL PASO NATIONAL GAS COMPANY,  
Lessee

ATTEST:  
  
[Signature]  
Assistant Secretary

By [Signature]  
Vice President

*Check for  
1/11/61*

- 4 -

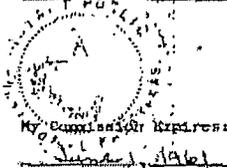
NOTARY PUBLIC  
STATE OF TEXAS

89 89

STATE OF TEXAS  
COUNTY OF EL PASO

Before me, the undersigned authority, on this day personally appeared RAYMOND L. THOMAS, JR., Mayor of the CITY OF EL PASO, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said city.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 5 day of June, 1959.



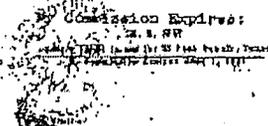
R. H. Chabel  
Notary's Signature

R. H. Chabel  
Notary's Name Typed or Printed  
Notary Public in and for the  
County and State aforesaid.

STATE OF TEXAS  
COUNTY OF EL PASO

Before me, the undersigned authority, on this day personally appeared W. N. DICK, Vice President of the EL PASO NATURAL GAS COMPANY, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 5 day of June, 1959.



W. N. Dick  
Notary's Signature

W. N. Dick  
Notary's Name Typed or Printed  
Notary Public in and for the  
County and State aforesaid.

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90  
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As authorized by the last paragraph of Section 1 of this lease from the City of El Paso, Texas to El Paso Natural Gas Company, dated June 3, 1959, it is agreed by the parties hereto that the following supplemental description of Tract No. 1 shall be substituted for, and is in lieu of and completely supplants the description set out for said Tract No. 1 on the first page of this lease.

A strip of land 60 feet in width across Sections 39, 34, 33, 28 and 29, Block 80, Township 2, T. & P. R. Co. Survey, El Paso County, Texas, the center line of which coincides with the line where Lawco's pipelines are laid at present and which center line description is more particularly described as follows:

Beginning at a point on the North Right of Way line of U. S. Highway No. 62, said point bears South 80° 40' 34" East, distant 3090.63 feet from the northwest corner of said Section 39 (a concrete monument with belt marked); thence North 8° 50' West, a distance of 34.8 feet; thence North 40° 40' West, a distance of 666.4 feet to a point which bears North 13° 40' 12" West, distant 4400.37 feet from the northwest corner of said Section 39 (previously described) containing 8.63 acres, more or less.

Beginning at a point in said Section 28, said point bears South 25° 01' 05" East, distant 2397.4 feet from the northwest corner of said Section 28 (a concrete monument and marked brass cap); thence North 40° 40' West, a distance of 2000.0 feet to a point which bears South 25° 50' 55" West, distant 744.8 feet from the northwest corner of said Section 28 containing 2.75 acres, more or less.

THE CITY OF EL PASO, LESSOR

 *Richard J. ...*  
MAYOR

EL PASO NATURAL GAS COMPANY,  
LESSEE

*S. ...*  
Assistant Secretary  
*...*  
Vice President

6/3/59

FILED FOR RECORD  
MAY 1959  
REC'D 1959 MAY 4 53  
COUNTY CLERK

*For Don ...*  
*...*  
RECORDS

235 235

Document: 16958  
From: 43013, G.P.A.

SECOND AMENDMENT TO LEASE

STATE OF TEXAS  
COUNTY OF EL PASO

16958

WHEREAS, the CITY OF EL PASO, TEXAS and EL PASO NATURAL GAS COMPANY heretofore entered into a lease agreement, as amended by first amendment affixed thereto, said lease and amendment being dated June 3, 1979 and recorded at Volume 1541, page 08 of the Deed Records of El Paso County, Texas, covering four tracts of land situated in El Paso County, Texas, and being more particularly described in said lease and amendment, and

WHEREAS, the said parties desire to further amend said lease for the purpose of correcting the description of Tract IV thereof,

NOW, THEREFORE, said parties hereby amend said lease by substituting the following description for that given as Tract IV thereof:

A strip of land 80 feet in width, the westerly line of which begins at a point on the north section line of Section 256, Range 9, T.28N., R.10W., El Paso County, Texas, distant 536.8 feet East of the northwest corner of said Section 256; thence South 13° 24' East a distance of 258 feet; thence South 81° 07' West a distance of 1059.8 feet; thence South 81° 07' West a distance of 762.5 feet to a point on the west section line of said Section 256, distant 1997.9 feet South of the northwest corner of said Section 256.

Also beginning at a point on the west section line of said Section 256, distant 161.4 feet north of the southeast corner of said Section 256; thence South 20° 20' West a distance of 272.5 feet to a point on the north section line of said Section 256, distant 762.5 feet East of the northwest corner of Section 256, A.P. Miller Harvey, El Paso County, Texas.

Except as hereby amended, all the terms and provisions of said lease and first amendment are hereby ratified and confirmed by the parties thereto.

WITNESSED this 31st day of October, 1980.

AZULENTE:

CITY OF EL PASO

*[Signature]*  
CITY CLERK

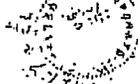
*[Signature]*  
1980

WITNESSED:

EL PASO NATURAL GAS COMPANY

*[Signature]*  
VICE PRESIDENT

*[Signature]*  
VICE PRESIDENT



480.40.2111

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- 2 -

STATE OF TEXAS  
COUNTY OF EL PASO

HERBERT M., the undersigned authority, on this day personally appeared R. J. Agers, Mayor of THE CITY OF EL PASO, a municipal corporation known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed and delivered the foregoing instrument for the purpose and considerations therein expressed, and as the act of said municipal corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27th day of October 1960.

Notary Public in and for El Paso County, State of Texas

R. J. Agers  
Mayor of the City of El Paso  
County, State of Texas

STATE OF TEXAS  
COUNTY OF EL PASO

HERBERT M., the undersigned authority, on this day personally appeared R. J. Agers, Vice President of EL PASO NATURAL GAS COMPANY, a corporation known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed and delivered the foregoing instrument for the purpose and considerations therein expressed, and as the act of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of October 1960.

Notary Public in and for El Paso County, State of Texas

R. J. Agers  
Vice President of El Paso Natural Gas Company  
County, State of Texas

1/11 00013, 0-24

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1960  
NOV 23 PM 2 47  
El Paso Natural Gas Co.  
Notary Public in and for El Paso County, State of Texas

62746

THIRD AMENDMENT TO LEASE

STATE OF TEXAS  
COUNTY OF EL PASO

WHEREAS, the CITY OF EL PASO, TEXAS and EL PASO NATURAL GAS COMPANY heretofore entered into a lease agreement, as amended by three amendments defined therein, said lease and amendments being dated June 3, 1959 and recorded at Volume 1341, page 85 of the Deed Records of El Paso County, Texas, covering four tracts of land situated in El Paso County, Texas, and being more particularly described in said lease and amendments; and

WHEREAS, said parties further amended said lease correcting the description of Tract IV by instrument dated October 3, 1960 and recorded in Volume 1372 at page 235 of the Deed Records of El Paso County, Texas, and

WHEREAS, the said parties desire to further amend said lease for the purpose of further correcting the description of said Tract IV thereof,

NOW, WHEREFORE, said parties hereby amend said lease by substituting the following description for that given in Tract IV thereof:

A strip of land 60 feet in width, out of Section 256, Hugh C. Foster Survey, El Paso County, Texas, the westerly line of said strip being more particularly described as follows:

Beginning at a point on the north section line of said Section 256, distant 543.68 feet East of the northwest corner of said Section 256; thence South  $3^{\circ}31'30''$  West, a distance of 266.39 feet; thence South  $13^{\circ}40'51''$  West, a distance of 1038.45 feet; thence South  $21^{\circ}04'49''$  West, a distance of 757.94 feet to a point of exit on the west section line of said Section 256, distant 1002.23 feet South of the northwest corner of Section 256.

Re-entering said Section 256 at a point on the west section line of said Section 256, distant 160.13 feet North of the southwest corner of said Section 256; thence South  $20^{\circ}18'23''$  East, a distance of 170.81 feet to a point on the south section line of said Section 256, distant 58.93 feet East of the southwest corner of said Section 256.

Except as hereby amended, all the terms and provisions of said lease, as amended, shall remain in full force and effect.

Page 9 of 11

807 1889

EXECUTED this 28th day of July, 1977.

ATTEST:

THE CITY OF EL PASO

*Philip T. Cole*  
PHILIP T. COLE  
ATTORNEY FOR PUBLIC SERVICE BOARD

*Ray Salazar*  
Mayor

EL PASO NATURAL GAS COMPANY

*W. F. Howard*  
W. F. HOWARD  
Attorney-in-Fact

STATE OF TEXAS  
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared Ray Salazar, Mayor of THE CITY OF EL PASO, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed and delivered the foregoing instrument for the purposes and considerations therein expressed and in the act of said municipal corporation.

WITNESS UNDER MY HAND AND SEAL OF OFFICE this 28th day of July, 1977.

*Billie Anne Beckwith*  
Billie Anne Beckwith  
Notary Public in and for El Paso County, State of Texas

*Billie Anne Beckwith*  
Notary Public in and for El Paso County, State of Texas

BEFORE ME, the undersigned authority, on this day personally appeared W. F. Howard, known to me to be the person whose name is subscribed to the foregoing instrument as Attorney-in-Fact for El Paso Natural Gas Company, the party thereto, and acknowledged to me that he executed the same as Attorney-in-Fact for the said El Paso Natural Gas Company and that the said El Paso Natural Gas Company executed the same by and through him for the purposes and consideration therein expressed.

WITNESS UNDER MY HAND AND SEAL OF OFFICE this 7th day of July, 1977.

*Billie Anne Beckwith*  
Billie Anne Beckwith  
Notary Public in and for El Paso County, State of Texas

*Billie Anne Beckwith*  
Notary Public in and for El Paso County, State of Texas

N/V 42013, 0-7A

Bluel 200

62746

FILED FOR RECORDS  
TRIMTY OFFICE

JUL 29 PM 3:58

*Handwritten signature*

STATE OF TEXAS  
COUNTY OF EL PASO  
I hereby certify that this instrument was filed  
with me this 29th day of July 1958, and  
was duly recorded in the volume and page of the  
Official Public Records of said County, Texas.



JUN 29 1957

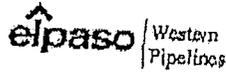
*Handwritten signature*  
COUNTY CLERK, El Paso, County, Texas

Return To  
El Paso, Texas

Page 11 of 11

807 1891

EXHIBIT E



May 19, 2008

City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

Re: 0700086 ENC: Road and Parking Lot Line 2034/2058 at MP 4+750, El Paso County, Texas

To Whom It May Concern:

El Paso Natural Gas has reviewed the design plans provided by SLL Engineering, Inc., for River Oak Properties, for the pavement over our pipelines easement near Redd Road and Hester. We have approved the design for paving over our pipelines with the following stipulations: Before they begin the excavation of the dirt, they make a 1 call and they contact our operations person, Rudy Estrada at 915-842-7313 or 915-491-7043, 48 hours in advance so we can have a representative there to watch the excavation and work over our right of way. Also we will need "sniffer" pipes install at locations designated by operations when the easement is paved.

Sincerely,

A handwritten signature in black ink that reads "Bill Frost".

Bill Frost  
Principal Right of Way Negotiator  
El Paso Natural Gas