

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

DEPARTMENT: **Engineering**

AGENDA DATE: **November 18, 2008**

CONTACT PERSON/PHONE: **R. Alan Shubert, City Engineer**

DISTRICT AFFECTED: **1**

SUBJECT:

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a Contract of Sale for the purchase of a 4,679 s.f. parcel, a part of a whole, to be used as additional right-of-way necessary for the construction of the proposed *Upper Valley Traffic Circle* at the intersection of Country Club Road and Upper Valley Road in District 1 (attached). The proposed purchase price of \$33,000 would be funded with 2006 Certificates of Obligation.

BACKGROUND / DISCUSSION:

The project was approved as part of the 2006 CO issuance. This vacant, undeveloped property is located at the northwest corner of the intersection of Country Club and Upper Valley Roads. Once the right of way is acquired, the design of the traffic roundabout will be finalized and will be bid out for construction. The appraised value of the required land is \$11,700. Legal counsel for the owning entity issued a counter offer to the City for \$33,000 citing pending redevelopment opportunities. Engineering Department advises that there is a cost of proceeding through trial to acquire the property and that there may be claims of loss by the owner and, therefore, recommends an administrative settlement of \$33,000. This purchase would allow Engineering to move forward with the property acquisition, design and construction of the *Upper Valley Traffic Circle*.

PRIOR COUNCIL ACTION:

As part of this project effort, Council previously awarded a design contract to *SLI Engineering, Inc.* along with two amendments and previously authorized the purchase of a perpetual easement from *El Paso County Water Improvement District #1*.

AMOUNT AND SOURCE OF FUNDING:

This expenditure is funded through 2006 Certificates of Obligation. No budgetary adjustments are necessary.

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PCP06ST012A	27263	99331117	508000

BOARD / COMMISSION ACTION:

(N/A) _____

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

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

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Contract of Sale between the **City of El Paso and SHAB, INC.** for THIRTY-THREE THOUSAND and 00/100 DOLLARS (\$33,000.00) for the purchase of:

A 0.107 acre parcel, more or less, being a portion of Tract 2, Block 8, Upper Valley Survey, El Paso, El Paso County, Texas.

Adopted this _____ day of _____, 2008

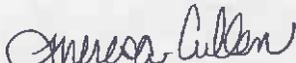
THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Alan Shubert, P.E.
City Engineer

STATE OF TEXAS §
 §
 COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into as of the _____ day of _____, 2008 by and between the CITY OF EL PASO, hereinafter referred to as the "City," and SHAB, INC., hereinafter referred to as the "Seller."

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 Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

A 0.107 acre parcel, more or less, being a portion of Tract 2, Block 8, Upper Valley Survey, El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "A" which is attached hereto and made a part hereof for all purposes,

together with any interest of the Seller in (i) all improvements, if any, (ii) all right, title and interest of the Seller 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, right of ways, 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."

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be a total of THIRTY-THREE THOUSAND and 00/100 DOLLARS (\$33,000.00). The consideration recited herein represents a release of all claims, a settlement and compromise by all parties as to the value of the property herein conveyed in order to avoid litigation and the added expense of litigation.

2.1 Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller hereunder 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 City, at or prior to Closing.

3.1 Title Insurance. Within ten (10) City working days after the date of execution of this contract, the City 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 City ("Owner's Policy").

3.2 Title Objections. The City will give the Seller written notice on or before the expiration of ten (10) City working days 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 City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller may at its option promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

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

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

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

4.3 Mechanic's Lien. (i) No action has been taken, suffered or permitted by or on behalf of the Seller, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

4.4 Litigation. There is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or property.

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

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

4.7 Taxes. No state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The

Seller agrees to pay the prorated taxes due on the Property for the year 2008 through the date of Closing.

4.8 Pre-Closing Claims.

A. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any claims, injuries, liabilities, losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

B. The Seller agrees to indemnify and hold the City harmless from and against any and all claims, injuries, liabilities, losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property, accruing prior to and arising from events that occurred prior to the date of Closing, and arising from any of the following: (i) testing or inspection obligations required by federal or state environmental agencies, including without limitation any required after the date of Closing; (ii) pending environmental investigations or cases by the Texas Commission on Environmental Quality known to the Seller; or (iii) the acts or omissions of the Seller on the Property. The Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

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

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

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

4.12 DISCLAIMER. THE SELLER IS MAKING NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ANY NATURE WHATSOEVER WITH

RESPECT TO THE PROPERTY, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY AS TO THE CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, EXCEPT FOR THE WARRANTIES OF TITLE SPECIFICALLY SET FORTH IN THE DEED OF CONVEYANCE.

DISCLAIMER BY THE CITY OF WARRANTIES OF THE SELLER. THE CITY ACKNOWLEDGES THAT (I) IT AND ITS OFFICERS, AGENTS, EMPLOYEES, AND ADVISORS HAVE BEEN GIVEN FULL AND COMPLETE OPPORTUNITY TO THE EXTENT THAT THEY IN THEIR SOLE JUDGMENT DEEMED APROPRIATE, DESIRABLE AND PRUDENT, (II) THE CITY AND SUCH PARTIES TAKE FULL RESPONSIBILITY FOR DETERMINING THE SCOPE OF THEIR INVESTIGATIONS OF THE PROPERTY AND FOR THE MANNER IN WHICH SUCH INVESTIGATIONS HAVE BEEN CONDUCTED, (III) THE CITY, TOGETHER WITH SUCH OTHER PARTIES, ARE FULLY CAPABLE OF EVALUATING THE ACCURACY OF THE INFORMATION AND MATERIAL OBTAINED BY THE CITY IN THE COURSE OF SUCH INVESTIGATION, AND (IV) THE CITY AND SUCH PARTIES HAVE NOT RELIED ON THE SELLER OR ON ANY OFFICER, EMPLOYEE, OR AGENT OF THE SELLER OR UPON ANY WRITTEN OR ORAL INFORMATION, REPRESENTATION OR FACT PROVIDED BY ANY SUCH PARTY WITH RESPECT TO ANY MATTER IN CONNECTION WITH THE CITY'S EVALUATION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE PHYSICAL CONDITION THEREOF. ACCORDINGLY, THE CITY AGREES TO PURCHASE THE PROPERTY "AS IS" AND "WHERE IS," WITHOUT ANY WARRANTY WHATSOEVER EXPRESS OR IMPLIED FROM THE SELLER TO THE CITY.

4.13 Notices. The Seller has not received any notice that the Property is in violation of any federal or state environmental laws or regulations, or any ordinance of the City of El Paso.

4.14 Right of First Refusal. The Seller has not granted any person or entity an option to purchase the Property.

4.15 Access. The Property has access to all abutting public streets.

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

4.17 Survival. All representations, warranties, covenants and agreements of the Seller made in this document, including without limitation any indemnity obligations, shall survive the execution and delivery hereof and of the Deed as well as the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms, if and as applicable, or shall have been discharged in full.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of LandAmerica Lawyer's Title of El Paso, 310 East Yandell, El Paso, Texas 79902 (the "Title Company") on or before thirty (30) days after the execution of this Agreement by the City.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property for the year 2008 prorated through the day of closing.

5.2 Closing Costs.

(a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.

(b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.

(c) Escrow fees, if any, shall be paid by the City.

5.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

5.4 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.

5.5 Trees. The Seller acknowledges that the consideration for the Property includes consideration to relocate any trees located on the Property. The Seller will relocate all trees from the Property prior to Closing. If the Seller does not relocate the trees prior to Closing, the Seller acknowledges that the City may remove the trees without any additional consideration to the Seller for the trees, and the Seller grants the City a right of entry from its adjacent land to remove the trees.

6. Termination/Default.

6.1 Default by the Seller.

(a) The Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(1) Any of the Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect;

(2) The Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason.

(b) In the event that the Seller shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.2 Default by City. In the event that City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the Seller's default, or the termination of this Agreement in accordance with its terms, the Seller is permitted to seek to enforce specific performance.

7. Miscellaneous.

7.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Seller: SHAB, Inc.
Sam Phillips, President
6875 Oveja
El Paso, Texas 79912

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

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.

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

City of El Paso

By: _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Theresa Cullen
Deputy City Attorney



Alan Shubert, P.E.
City Engineer

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

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

My commission expires:

Notary Public, State of Texas

Property Description: A portion of Tract 2, Block 8, Upper Valley Surveys, El Paso, El Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 2, Block 8, Upper Valley Surveys, El Paso, El Paso County, Texas and is more particularly described by metes and bounds as follows:

Commencing at a found 1-inch iron lying on the centerline intersection of Country Club Road and Upper Valley Road; thence, South $89^{\circ} 56' 00''$ West along the centerline of Country Club Road, a distance of 20.01 feet to a point; thence, North $05^{\circ} 04' 00''$ West, a distance of 30.00 feet to a point lying on the westerly right-of-way line of Country Club Road, said point being a set 1/2-inch iron with plastic SLI cap stamped "TX 2998", also being the TRUE POINT OF BEGINNING of this description;

THENCE, South $89^{\circ} 56' 00''$ West, along said right-of-way line, a distance of 51.85 feet to a point lying on the northerly right-of-way intersection of Country Club Road and Westside Drive, said point being a set 1/2-inch iron with SLI cap stamped "TX2998";

THENCE, North $79^{\circ} 32' 17''$ West, along said right-of-way line of Westside Drive, a distance of 74.50 feet to a set 1/2-inch iron with SLI cap stamped "TX2998";

THENCE, North $72^{\circ} 28' 09''$ East, a distance of 48.91 feet to a point for a curve, said point being a set 1/2-inch iron with SLI cap stamped "TX2998";

THENCE, 110.32 feet along the arc of a curve to the left, having a radius of 125.00 feet, a central angle of $50^{\circ} 34' 09''$ and a chord which bears North $47^{\circ} 11' 05''$ East, a distance of 106.03 feet to a point lying on the westerly right-of-way line of Upper Valley Road, said point being a set 1/2-inch iron with SLI cap stamped "TX2998";

THENCE, South $00^{\circ} 25' 00''$ East, along said right-of-way line, a distance of 180.77 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 0.107 acres (4,679 sq. ft.) of land more or less.

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

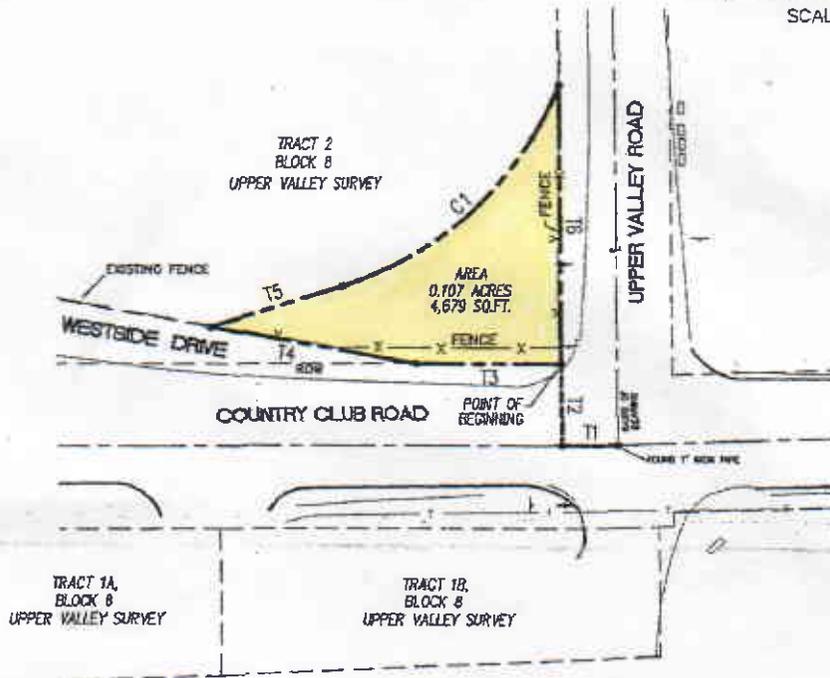
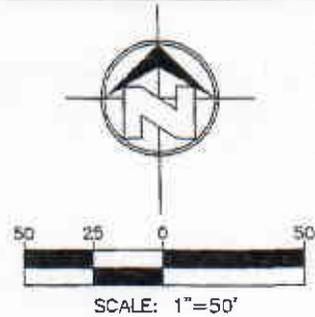
SR ENGINEERING, INC.,
Consulting Engineers—Land Surveyors

Guillermo Linn
Registered Professional Land Surveyor
Texas License No. 2992

May 10, 2007
Job Number 05-04-2953

Page 1 of 2
M&B1391

LINE TABLE		
TANGENT	BEARING	DISTANCE
T1	S89°56'00"W	20.01'
T2	N00°04'00"W	30.00'
T3	S89°56'00"W	51.85'
T4	N79°32'17"W	74.50'
T5	N72°28'08"E	48.91'
T6	S00°05'00"E	100.77'



CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	125.00'	110.32'	59.05'	106.78'	N47°11'05"E	50°34'09"

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480222 01258, DATED SEPTEMBER 4, 1991, THIS PROPERTY LIES IN FLOOD ZONE C.

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 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.

Copyright 2007 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 May 10, 2007.

NOTES:

1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. BASIS OF BEARING: MAP OF BLOCK 8, SUPPLEMENT, UPPER VALLEY SURVEYS.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
4. NO BUILDINGS EXIST ON THE PROPERTY



PLAT OF SURVEY

SLI ENGINEERING, INC.
CIVIL ENGINEERS,
LAND SURVEYORS,
LAND PLANNERS
8600 WESTING DRIVE
EL PASO, TEXAS 79912
915-584-4457

JOB #: 09-04-2253 DR. BY: MN
SCALE: 1"=50' F.B. #: 924-A
P:\Projects\UpperValley\DATE: 05/10/2007 DWG.: Final-Plan\09042253.dwg

A PORTION OF TRACT 2,
BLOCK 8, UPPERR VALLEY
SURVEYS, 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.

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