

RESOLUTION

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

That the City Manager be authorized to sign an Easement Agreement by and between the **CITY OF EL PASO** and **PLEXXAR CENTRE, LTD.** granting the City a perpetual easement within a portion of Block 17, Herald Subdivision of Mills Map, City of El Paso, El Paso County Texas for emergency egress from the Plaza Theatre.

ADOPTED 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:



Patricia D. Aداuto
Deputy City Manager
Development & Infrastructure Services

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Agreement”) is entered into by and between THE CITY OF EL PASO, TEXAS (along with its successors and assigns, the “City”) and PLEXXAR CENTRE, LTD., a Texas limited partnership (along with its successors and assigns, “Plexxar”).

RECITALS

WHEREAS, the City owns the real property and improvements located at 125 Pioneer Plaza, El Paso, El Paso County, Texas 79901, as more particularly described in Exhibit “A” attached hereto and incorporated herein by reference for all purposes, which property is operated as the “Plaza Theatre Performing Arts Centre” (the “Plaza Theatre”); and

WHEREAS, Plexxar owns the real property and improvements located at 123 Pioneer Plaza, El Paso, El Paso County, Texas 79901, as more particularly described in Exhibit “B” attached hereto and incorporated herein by reference for all purposes (the “Centre Building”); and

WHEREAS, Plexxar owns a portion of the alley located between the Plaza Theatre and the Centre Building as more particularly described on Exhibit “C” attached hereto and incorporated herein by reference for all purposes (the “Alley”); and

WHEREAS, portions of the Alley are, pursuant to various applicable codes and regulations and in accordance with historical usage associated with the Plaza Theatre, designated as a means of egress from the Plaza Theatre in the event of a fire or other emergency at the Plaza Theatre; and

WHEREAS, the City has, pursuant to various applicable codes and regulations, installed a fire escape (the “Fire Escape”) on the eastern wall of the Plaza Theatre which Fire Escape extends over the Alley, and will, when lowered during use, be in physical contact with the surface of the Alley; and

WHEREAS, Plexxar has, pursuant to the terms and conditions set forth herein, agreed to grant the City a perpetual easement with respect to the Fire Escape and emergency egress, the Alley, and other matters related thereto,

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** Plexxar hereby grants, sells, and conveys to the City a perpetual easement (collectively, the “Easement”) over, upon, across, and otherwise associated with the Alley for: (i) the Fire Escape as it is currently located and as it may reasonably be relocated from time to time; (ii) the purpose of emergency egress from the Plaza Theatre; (iii) the purpose of effecting lighting, signage, maintenance, and locks associated with, or to be associated with, such Easement or usage of such Easement; and (iv) the purpose of allowing the City or its designated representatives to inspect the Alley to assure compliance with this

Agreement, together with all and singular the rights and appurtenances thereto, to have and hold such Easement to the City, the City's successors, and assigns forever.

Reference is hereby made to that certain alley easement in favor of the City set forth in Book 38, Page 458, Film Records, El Paso County, Texas. To the extent Plexxar is a successor-in-interest to any of the parties set forth in such instrument, the parties hereto have entered into this Agreement for the purpose of clarifying the scope and nature of the alley easement set forth in such instrument and such alley easement shall be subject to all of the terms, conditions and agreements set forth in this Agreement.

2. Duration and Character of Easement. The Easement shall be perpetual, shall be appurtenant to the Alley and shall run with the Alley and portions thereof, whether this Agreement is referenced in any conveyance of the Alley, the Centre Building and/or the Plaza Theatre.

3. Signs, Lighting; Maintenance. Plexxar further grants the City the right, at the City's sole cost and expense, to install such emergency and directional signage and emergency lighting in the Alley as is legally required or reasonably necessary to accomplish the purposes for which the Easement is granted; PROVIDED, HOWEVER, that Plexxar shall be afforded the right to review and consent with respect to any such matters, such consent to be exercised by Plexxar in a reasonable manner and without unreasonable delay. It is expressly understood that the City's right to install lighting shall not include any light fixtures to be installed on the exterior wall of the Centre Building or any lighting which will be connected to the Centre Building power sources. The City acknowledges and agrees that it shall be solely responsible for the maintenance and upkeep of (i) all such signage and lighting, which it installs pursuant to this easement, and (ii) the Fire Escape.

4. Locked Gate; Passage Through Alley.

a. The City shall, at its sole cost and expense, maintain the locked gate and fence near the overhead emergency metal steps for the purpose of prohibiting unauthorized persons from entering the Alley. The gate shall be maintained so as to allow persons in the Alley to open the gate from the south side of the gate without the use of a key. Both the City and Plexxar shall have keys to such gate.

b. Neither party shall store, nor permit, suffer or allow any other person or entity to store, any equipment or other items (including, without limitation, trash dumpsters) in the Alley or in areas leading away from the Alley which would (i) violate any then applicable law, regulation, or code or (ii) otherwise interfere with the passage of persons through and away from the Alley and the Plaza Theatre.

5. Amendment. This Agreement may be amended only by the mutual consent of the parties hereto or their respective successors or assigns.

6. Entire Agreement. This Agreement embodies the complete agreement between the parties.

7. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

8. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Texas

9. **Binding Effect.** This Agreement shall bind and inure to the benefit of the respective parties and their respective successors and assigns.

10. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Whenever required by the context as used in this Agreement, the singular number shall include the plural and neuter and shall include the masculine or feminine gender, and vice versa. Section headings appearing in this Agreement are for convenient reference only and are not intended to restrict or define the text of any section.

11. **Waiver.** Any waiver as to any of the terms or conditions of this Agreement shall not operate as a future waiver of the same terms and conditions or prevent the future enforcement of any of the terms and conditions hereof.

12. **Further Assurances.** Each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

13. **Amendment and Termination of Agreement.** This Agreement may be amended or terminated only upon the written agreement of the parties or their respective successors and assigns.

14. **Notice.** All notices to be given under this Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

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

PLEXXAR: Plexxar Centre, Ltd.
Brent D. Harris
1865 Northwestern Dr.
El Paso, Texas 79912

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

15. **Rights of Plexxar.** Plexxar shall have the right, without the City's consent or approval, to use the Easement in any manner Plexxar deems appropriate so long as such use does not block the emergency pedestrian egress from the Plaza Theatre into the Alley and such use is otherwise in compliance with applicable City, State and federal code requirements and regulations. PROVIDED, HOWEVER, that Plexxar shall give the City prior written notice before Plexxar alters or modifies any existing improvements or constructs any new improvements located within the Alley that directly affect the uses granted to the City pursuant to this Easement. The purpose of this prior written notice is to allow the City the opportunity to relocate or make other arrangements if necessary, for the Fire Escape or any lighting, signage, maintenance or locks associated with the grant of this Easement and not to create or otherwise give the City any approval right, other than any approval required pursuant to code compliance review, of any alteration or modification of existing improvements or construction of any new improvements located within the Alley. At the time this Easement is granted to the City, the City specifically acknowledges and understands that Plexxar and its affiliates are redeveloping the Center Office Building and such redevelopment necessarily will likely include use of the Alley and improvements, changes, alterations and modifications in and to the Alley.

IN WITNESS WHEREOF, this Agreement is executed this ___ day of _____, 2009.

THE CITY OF EL PASO

Joyce Wilson, City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto
Deputy City Manager
Development & Infrastructure Services

(Signatures and acknowledgments continued on next page)

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the ____ day of _____, 2009, by Joyce Wilson, as City Manager, on behalf of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

PLEXXAR CENTRE, LTD.,
a Texas limited partnership

By: **Plexxar GP LLC,**
a Texas limited liability company, its General Partner

By: *Brent D Harris*
Name: Brent D Harris
Title: Member

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 21st day of April, 2009, by Brent D. Harris as the member of Plexxar GP LLC, a Texas limited liability company, the General Partner of Plexxar Centre, Ltd.

My Commission Expires:

Margaret Diane Mais
Notary Public, State of Texas

February 21, 2010

After recording return to:

City of El Paso
City Attorney's Office
9th Floor
2 Civic Center Plaza
El Paso, Texas 79901



EXHIBIT "A"

Legal Description of Plaza Theatre

Legal Description of Historic Plaza Theatre Property:

A portion of Lots 38, 39, 40 and 41, Block 17, ANSON MILLS MAP, an addition to El Paso County, Texas, being more particularly described by metes and bounds as follows:

METES AND BOUNDS DESCRIPTION

Beginning at a point on the South line of Main Street 108.23 feet West from the intersection of the West line of North Oregon Street with the South line of Main Street;

THENCE: Along the South line of Main Street 151.77 feet to the Northwest corner of this plot of land being the intersection of the South line of Main Street with the East line of North El Paso Street;

THENCE: With an angle of 90 degrees to the right along the East line of North El Paso Street 72.8 feet;

THENCE: With an angle of 208 degrees 20 minutes to the right along the East line of North El Paso Street, 73.27 feet;

THENCE: Turning an angle of 90 degrees 14 minutes to the right 56.25 feet;

THENCE: With an angle of 248 degrees 15 minutes to the right 26.90 feet;

THENCE: With an angle of 201 degrees 19 minutes to the right of 58.3 feet to a point on the North line of the property now owned by LUCKETT, SANDERS, & WISBRUN;

THENCE: With an angle of 89 degrees 58 minutes to the right 73 feet along the North line of the LUCKETT, SANDERS & WISBRUN property to the most Southerly corner of this plot of land;

THENCE: With an angle of 71 degrees 34 minutes to the right 124.14 feet along a private alley;

THENCE: Turning an angle of 198 degrees 26 minutes to the right 174.1 feet to the place of beginning, together with all improvements and building thereon.

Legal Description of Centre Annex:

A portion of Block 17, MILLS MAP, an Addition to the City of El Paso, El Paso County, Texas, according to a resurvey made for tax purposes and being more particularly described by metes and bounds as follows:

Property Description: A portion of Block 17, Herald Subdivision, of Mills Map, El Paso, El Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Block 17, Herald Subdivision, of Mills Map, 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 intersection of the monument lines of El Paso Street and Main Avenue, said monument lines lying 10-feet north and 10-feet east of the respective centerlines of El Paso Street and Main Avenue; Thence, North 52° 23' 57" East, along the monument line of Main Avenue, a distance of 25.00 feet; Thence, South 37° 36' 03" East, a distance of 45.00 feet to a point lying on the southerly right-of-way line of Main Avenue and the easterly right-of-way line of El Paso Street (vacated); Thence, South 37° 36' 03" East along said right-of-way line, a distance of 72.80 feet, Thence, South 09° 16' 03" East, a distance of 247.52 feet to a point lying on the northerly right-of-way line of San Francisco Street (vacated); Thence, North 80° 30' 12" East, along said right-of-way line, a distance of 68.14 feet to the TRUE POINT OF BEGINNING of this description;

THENCE, North 09° 29' 51" West, a distance of 91.09 feet;

THENCE, North 80° 30' 09" East, a distance of 50.48 feet;

THENCE, South 14° 47' 33" East, a distance of 26.07 feet;

THENCE, North 80° 30' 09" East, a distance of 20.40 feet to a set chiseled "x";

THENCE, South 12° 09' 21" East, a distance of 65.20 feet to a set chiseled "x" lying on the northerly right-of-way line of San Francisco Street (vacated);

THENCE, South 80° 30' 09" West, a distance of 76.31 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 0.143 acres (6,213 sq. ft.) of land more or less.

EXHIBIT "B"

**Legal Description of Centre Building
123 Pioneer Plaza (Parcel 1)**

PROPERTY DESCRIPTION

123 Pioneer Plaza (Parcel 1)

Description of a 0.5568 acre parcel of land being a Portion of Block 17, Mills Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows to wit:

Starting at an existing city monument located 10.00' feet northeast and 10.00' northwest from the centerline intersection of Main Street (70' wide public right-of-way) and El Paso Street (70' wide public right-of-way), Thence North 52° 23' 00" East along said centerline of Main Street a distance of 176.77 feet, Thence South 37° 37' 00" East a distance of 45.00 feet to a set chiseled "mark" on concrete, said point being the "True Point of Beginning",

Thence North 52° 23' 00" East along the southerly right-of-way of Main Street a distance of 13.17 feet to a found chiseled "x" mark;

Thence South 37° 37' 00" East a distance of 17.20 feet to a set nail with orange flagging;

Thence South 09° 27' 00" East a distance of 56.34 feet to a set nail with orange flagging;

Thence South 37° 37' 00" East a distance of 33.62 feet to a set chiseled "x" mark on concrete;

Thence North 52° 23' 00" East a distance of 34.17 feet to a set "x" mark on concrete;

Thence South 37° 37' 00" East along the common building line between the Mills Building (301 N. Oregon Street) and Center Building (123 Pioneer Plaza) a distance of 187.94 feet to a set "x" mark on brick pavers;

Thence South 29° 40' 00" West a distance of 69.60 feet to a set "x" mark on brick pavers;

Thence South 75° 04' 00" West a distance of 65.59 feet to a set "x" mark on brick pavers;

Thence North $13^{\circ} 07' 00''$ West a distance of 14.40 feet to a set "x" mark on door frame;

Thence South $63^{\circ} 35' 00''$ West a distance of 4.94 feet to a set chiseled "x" mark on concrete;

Thence North $27^{\circ} 57' 00''$ West along the building line of The Plaza Theater (125 Pioneer Plaza) a distance of 124.14 feet to a set chiseled "x" mark on concrete;

Thence North $09^{\circ} 31' 00''$ West a distance of 174.09 feet back to the "True Point of Beginning" and said parcel containing in all 24,253.96 square feet or 0.5568 acres of land more or less.

EXHIBIT "C"

Legal Description of Alley

(Portion of Block 17, Herald Subdivision of Mills Map, City of El Paso, El Paso County, Texas. June 30, 2008 Plat and Metes and Bounds Description prepared by SLI Engineering, Inc., and sealed by Guillermo Licon, Registered Professional Land Surveyor, Texas License No. 2998)

Property Description: Portion of Block 17, Herald Subdivision of Mills Map, City of El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Block 17, Herald Subdivision of Mills Map, 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 located 10 feet north and 10 feet east of the centerline intersection of El Paso Street (70' right-of-way) and Main Avenue (70' right-of-way). Thence, along the monument line of Main Avenue, North 52°23'57" East a distance of 176.77 feet to a point; thence, leaving said monument line, South 37°36'03" East a distance of 45.00 feet to a found chiseled "X" on concrete drive, said point lies on the south right-of-way line of Main Avenue, said point also being the TRUE POINT OF BEGINNING of this description;

THENCE, North 52°23'57" East, along said right-of-way line, a distance of 6.80 feet to a point;

THENCE, South 09°27'28" East, leaving said right-of-way line, a distance of 176.33 feet to a point;

THENCE, South 27°56'03" East, a distance of 126.16 feet to a point;

THENCE, South 62°03'57" West, a distance of 6.00 feet to point, said point being the southeasterly property corner of the Plaza Theater;

THENCE, North 27°56'03" West, along the east boundary line of the Plaza Theater, a distance of 124.14 feet to a point;

THENCE, North 09°27'28" West, continuing with said boundary line, a distance of 174.10 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 0.041 acres (1,793 sq. ft.) of land more or less.

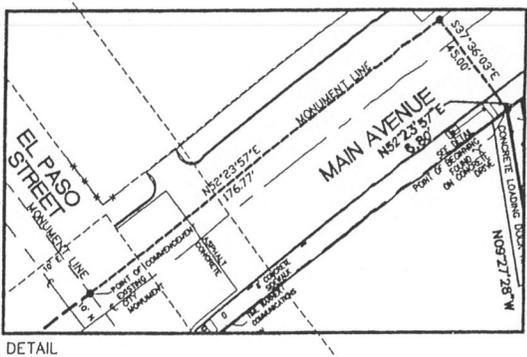
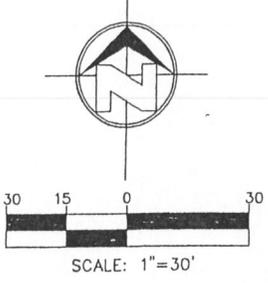
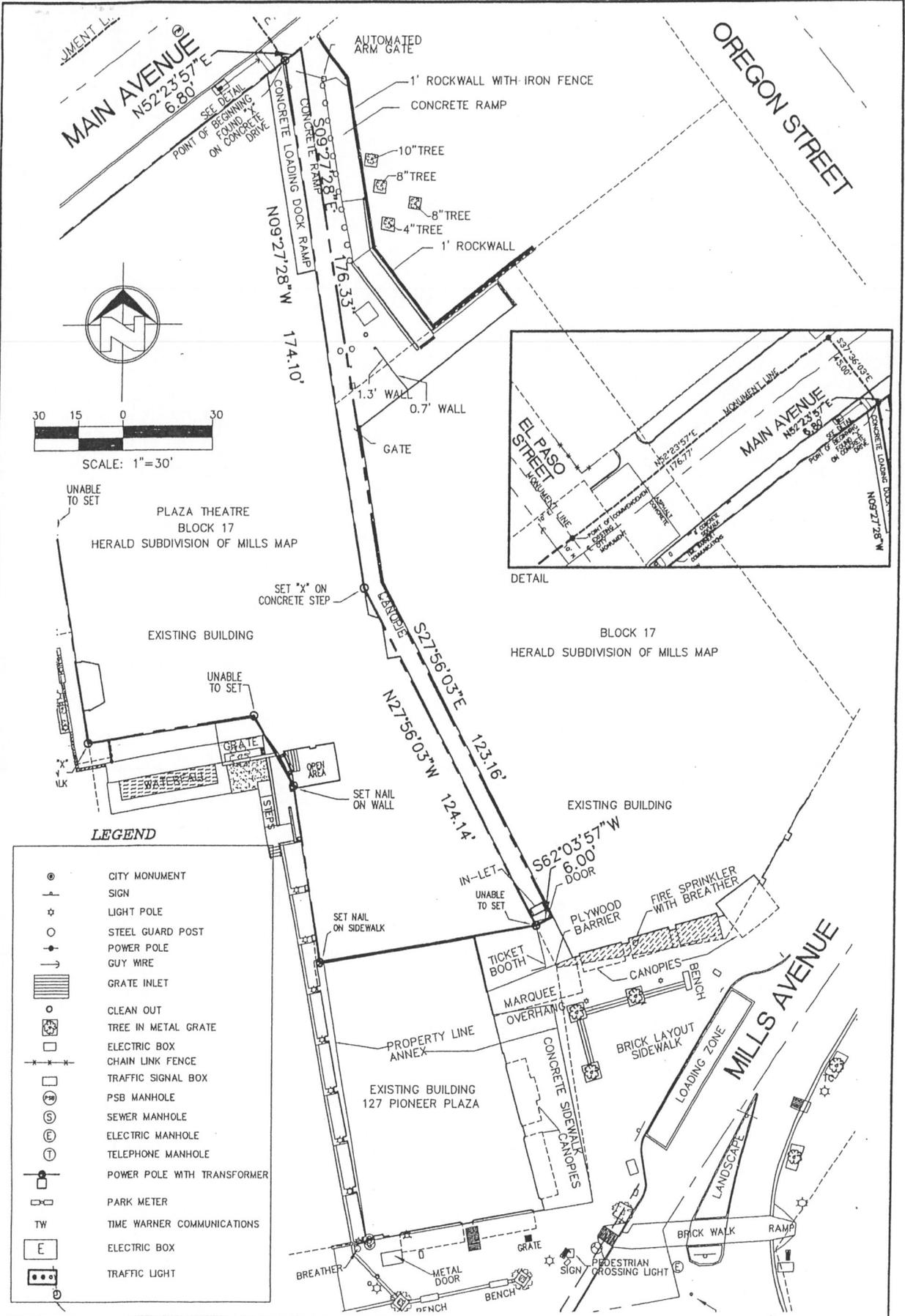
A PLAT OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC,
Consulting Engineers—Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

June 30, 2008
Job Number 09-06-2440

Page 1 of 2
M&B/



LEGEND

- ⊙ CITY MONUMENT
- ⊕ SIGN
- ⊛ LIGHT POLE
- STEEL GUARD POST
- ⊙ POWER POLE
- ⊙ GUY WIRE
- ▨ GRATE INLET
- CLEAN OUT
- ⊕ TREE IN METAL GRATE
- ELECTRIC BOX
- ⊕ CHAIN LINK FENCE
- ⊕ TRAFFIC SIGNAL BOX
- ⊕ PSB MANHOLE
- ⊕ SEWER MANHOLE
- ⊕ ELECTRIC MANHOLE
- ⊕ TELEPHONE MANHOLE
- ⊕ POWER POLE WITH TRANSFORMER
- ⊕ PARK METER
- TW TIME WARNER COMMUNICATIONS
- ⊕ ELECTRIC BOX
- ⊕ TRAFFIC LIGHT

PLAT OF SURVEY

SLI ENGINEERING, INC.
 CIVIL ENGINEERS
 LAND SURVEYORS
 LAND PLANNERS
 5600 WESTMIND DRIVE
 EL PASO, TEXAS 79912
 915-584-4457

JOB #: XX-XX-XXXX DR. BY: HIG

SCALE: 1"=30' F.B. #: XXXX
 F:\PROJECTS\PLAZA THE\WORKING\
 DATE: XX/XX/2008 DWG.: PLAZTHEA.dwg

6' ALLEY
 PORTION OF BLOCK 17, HERALD
 SUBDIVISION OF MILLS MAP
 CITY OF EL PASO,
 EL PASO COUNTY, TEXAS

PLAT REFERENCE
 VOLUME x PAGE xx

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

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

