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

CITY CLERK DEPT.
04 DEC 14 PM 12: 18

DEPARTMENT: Economic Development

AGENDA DATE: December 21, 2004

CONTACT PERSON/PHONE: David G. Dobson, Director 541-4872

DISTRICT(S) AFFECTED: 1

SUBJECT:
APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

Approve a Tax Abatement Agreement by and between High Desert Investors, L.P. and the City of El Paso with regard to development of a hotel project on the northwest corner of University and Oregon and Authorize the Mayor to execute said Agreement.

BACKGROUND / DISCUSSION:
Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

A proposed Tax Abatement Agreement has been negotiated with High Desert Investors, L.P., developer of a proposed Hilton Garden Inn Hotel to be located on land leased from the University of Texas at El Paso (UTEP). The development site is located on the northeast corner of University and Oregon. Development of the hotel at in estimated cost of approximately $15 million is a totally private sector venture and UTEP will have no ownership or investment in the privately owned and operated facility.

New Interim Tax Abatement Guidelines have been drafted and are proposed for adoption of resolution in advance of City Council consideration of the proposed Agreement, which is the subject of this communication. The proposed hotel development qualifies for a flat 25% tax abatement for a maximum of five years under the provisions of the new Interim Tax Abatement Guidelines.

More significantly, the proposed project qualifies as a "Infill Project" under the Interim Guidelines as it represents a capital investment in excess of $10 million and is to be located on property within an "older neighborhood" of the City. Older neighborhoods are those legally recorded and developed subdivisions that have existed for a period of at least thirty (30) years.

Infill projects are not required to meet any additional requirements as they are viewed as having major impact upon revitalization of areas disadvantaged by their age and location. In this particular case, the hotel will further assist in the revitalization of an area in transition through new construction and rehabilitation undertaken by the nearby hospitals, medical groups and the University. The hotel project will help to strengthen revitalization of the entire area.

The staff recommends approval of the proposed Tax Abatement Agreement with High Desert Investors, L.P. and authorization of the Mayor to execute said Agreement.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

City Council has approved numerous tax abatements.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

N/A

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

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

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the Mayor be authorized to sign a Tax Abatement Agreement by and between the City of El Paso and High Desert Investors, L.P., which will provide for twenty-five percent (25%) abatement of the assessed value of the Eligible Real Property it proposes to construct within a designated reinvestment zone and a twenty-five (25%) percent abatement of the assessed value of the Eligible Personal Property to be installed within a designated reinvestment zone. The term of abatement under this Agreement shall be five (5) calendar years beginning on January 1 of the year following completion of construction of the Improvements.

ADOPTED this 21st day of December, 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Jeff McElroy
Assistant City Attorney

APPROVED AS TO CONTENT:

David Dobson, Director
Economic Development

Document #: 7167
Document Name: ECO\10\Reso Tax Abatement Hilton Garden Hotel
Document Author: JMCE

TAX ABATEMENT AGREEMENT

STATE OF TEXAS }
} KNOW ALL MEN BY THESE PRESENTS
COUNTY OF EL PASO }

The City of El Paso (the "City") and **High Desert Investors, L.P.,** and its assignees (the "Company") have entered into this Agreement (the "Agreement") on the date specified below as follows:

WHEREAS, the Property Redevelopment and Tax Abatement Act, §312.001 et seq., Texas Tax Code, as amended (the "Act"), creates certain areas of the City as reinvestment zones and authorizes the City Council of the City to create a reinvestment zone for commercial-industrial tax abatement purposes;

WHEREAS, the terms defined and as used in the Act shall have the same meaning when used or referred to in this Agreement;

WHEREAS, the City Council of the City did adopt a Resolution on December 21, 2004, entitled "Approving Interim Guidelines and Criteria Governing Tax Abatement Agreements" (the "Guidelines"), pursuant to the requirements of the Act, and which Resolution is incorporated herein by reference for all applicable purposes;

WHEREAS, the Company has requested that the City enter into a Tax Abatement Agreement with the Company which will provide for twenty-five (25%) percent abatement of the assessed value of the Eligible Real Property it proposes to construct within a designated reinvestment zone and a twenty-five (25%) percent abatement of the assessed value of the Eligible Personal Property to be installed within a designated reinvestment zone;

WHEREAS, the City has evaluated the improvements to be constructed, the estimated assessed value of the Eligible Personal Property to be installed and the capital investment by the Company and has determined that the Company qualifies for tax abatement as required by the Act;

WHEREAS, the State of Texas has designated area within the City of El Paso as an Enterprise Zone pursuant to Chapter 2303, of Government Code and whereas said Enterprise Zone designation also constitutes designation of the same area as a Reinvestment Zone without further hearing or procedural requirements.

WHEREAS, the Company is the owner, or has a possessory interest in certain taxable real and personal property located in the Zone;

WHEREAS, the City and the Company desire to enter into this Agreement to exempt from taxation a part of the increase in the assessed value of the Eligible Real Property and exempt from taxation a part of the increase in the assessed value of the Eligible Personal Property over its value in the year this Agreement is executed for a term as hereinafter set forth, all pursuant to the following: the Act, Ordinance No. _____, the Guidelines, and the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the Company do agree, stipulate and covenant by and among themselves, as follows:

I. GENERAL TERMS

A. Term. This Agreement is effective upon execution hereof by all parties. The term of abatement under this Agreement shall be five (5) calendar years beginning on January 1 of the year following completion of construction of the Improvements (as herein defined);

B. Percentage of Abatement. Throughout the abatement term, the City shall abate the Eligible Real and Personal Property Taxes (as provided for in Table I of this Section), as those terms are defined in the Guidelines, assessed against the Eligible Real & Personal Property constructed in the Zone and as the same may be rebuilt or restored after any casualty loss, change, modification or addition thereto in the future. The percentage of abatement for any taxable period shall depend upon the assessed value of the capital expenditures in place. The parties recognize that, under the current system, a tax bill for the Zone would show taxes payable as net of the abatement. The City makes no assurances, however, that such method of billing will continue in effect during the term of this Agreement. Provided that the Company has complied with this Agreement, the tax abatement shall be applied notwithstanding that the Company may not be the taxpayer. It is specifically agreed and understood that the abatement of such taxes shall be applicable only to the "Eligible" Real and Personal Property constructed within the Zone. Inventory and the land upon which such Eligible Property is situated are specifically excluded from tax abatement under this Agreement.

Table I

Eligible Real Property	**Appropriate Abatement (25%)**
Eligible Personal Property	**Appropriate Abatement (25%)**

C. Abatement Site Description. This Agreement shall be applicable only to the improvements and personal property placed on the property described in Exhibit "B".

D. Compliance with City Ordinances. The Company agrees to limit the use of the property made the subject of this Agreement to uses that conform with all applicable City ordinances including the City's zoning ordinances and Comprehensive Plan and are consistent with the general purpose of encouraging development of the Zone during the term hereof.

II. CONSTRUCTION OF IMPROVEMENTS

A. Improvements. In consideration for the City's agreement to abate taxes as specified herein, the Company agrees to construct improvements and install personal property as described substantially in Exhibit "A" attached hereto and incorporated herein by reference (the "Improvements & Personal Property") in accordance with the schedule set forth in the same exhibit.

B. Certificate of Completion. Upon completion of construction of the Improvements substantially as described on Exhibit "A" attached hereto, the City shall issue to the Company a written certificate (the "Certificate"), capable of being recorded in the Real Property Records of El Paso County, Texas, wherein the City will certify and acknowledge in form and substance substantially as provided on Exhibit "B" attached hereto and incorporated herein for all purposes: (i) the City's acceptance of such constructed Improvements and installation of Personal Property as being substantially in accordance with Exhibit "A" hereto; and (ii) subject to the Company's continuing compliance thereafter with the remaining terms of this Agreement, the City's acceptance that the Company has qualified for tax abatement hereunder.

C. Failure to Complete Construction. The Company agrees that should it fail to complete the Improvements substantially as described on Exhibit "A" hereto the City may, after giving notice and opportunity to cure as hereinafter set forth, cancel this Agreement and recapture all tax revenue on the property located within the Zone which was lost as a result of this Agreement.

D. Right of Inspection. The Company agrees that the City shall, at reasonable times and upon reasonable notice, and accompanied by a representative of the Company, have access to the Company's facilities located within the Zone and that employees of the City or its duly designated agents shall be able to inspect the property to ensure that the Improvements are being made in accordance with the terms and conditions hereof and the Company has complied with all the terms of this Agreement. The City's inspection constitutes a right, not a duty, to inspect the improvements made to the property.

III. PERSONAL PROPERTY

A. Personal Property. As a condition precedent to tax abatement pursuant to this Agreement, the Company agrees to install in the Zone Eligible Personal Property as described substantially on Exhibit "B."

B. Failure to Locate Eligible Personal Property in the Zone. The Company agrees that should it fail to locate in the Zone Eligible Personal Property as described substantially on Exhibit "B" prior to the end of the first year of the term of abatement, the City may reduce the abatement which the Company is eligible to receive for Eligible Real and Personal Property for the second and all subsequent years to such level of abatement as would otherwise be permitted under the Guidelines, based upon the "Added Value" of the property established for each year.

C. Local Administration. The Company shall be responsible for notifying the El Paso Central Appraisal District (the "C.A.D.") of the existence of this Agreement and for scheduling the appropriate meetings with the C.A.D. each year after receiving the annual notice of assessment. The City shall cooperate with the Company and the C.A.D. in establishing the appropriate level of abatement.

IV. RECAPTURE

A. Cessation of Operations. In the event that the Improvements are completed and the Company conducts its operations as contemplated herein, but subsequently discontinues its operations for any reason (excepting fire, explosion or other casualty, accident or natural disaster) for a period of one year during the abatement period, such continued cessation for a period of one year shall be deemed a "Discontinuation Event." If a Discontinuation Event occurs, then this Agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the Discontinuation Event occurs. The taxes otherwise abated for the calendar year in which the Discontinuation Event occurs shall be paid to the City within sixty (60) days from the date of termination according to the following table:

PERIOD DURING WHICH DISCONTINUATION EVENT OCCURS	TOTAL TAXES PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
Years 1-5	**100 %**

B. Default. Should the Company default (for any reason except the failure to make the required capital expenditures) according to the terms and conditions of any provision of this Agreement, the City shall notify the Company in writing at the address stated in this Agreement, and if the default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then this Agreement may be terminated.

C. Payment of Taxes. In the event that the ad valorem taxes for the Zone become delinquent beyond all notice and cure periods and without timely and proper legal protest or contest, then this Agreement may be terminated and the City may recover from the taxpayer all taxes previously abated by virtue of this Agreement, which shall be paid within sixty (60) days of termination.

D. Relocation. In the event that the Company, during the term of abatement under this Agreement relocates its operations of the Improvements to a location outside of the designated reinvestment zone, the City shall have the right to recapture a percentage of abated taxes based on the following table:

PERIOD DURING WHICH RELOCATION OCCURS	TOTAL TAXES PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
Years 1-5	**100 %**

The City shall be informed as to the nature and change of address of any main office or the physical facilities made the subject of this Agreement.

V. REMEDIES

This Agreement sets forth the exclusive remedies available to the City for any defaults by the Company or any failure by the Company to otherwise perform its obligations pursuant to this Agreement.

VI. MISCELLANEOUS

A. Restatement. The determinations recited and declared in the preamble to this Agreement are hereby restated, repeated and incorporated herein as part of this Agreement.

B. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their representatives, successors and assigns.

C. Assignability. The City agrees that this Agreement may be assigned without the necessity of any further consent by the City, as provided in this subsection, by the Company to any Affiliate of the Company; provided, however, that notice of such assignment shall be given to the City within 45 days of the effective date of the assignment. As used herein, an "Affiliate" of the Company shall mean any partnership, corporation, trust or other entity controlling, controlled by, or under common control with the Company. The term "control" shall mean the ownership directly or indirectly of fifty-one percent (51%) or more of the beneficial interest of any partnership, corporation, trust or other entity. Subject to the foregoing, the Company agrees that this Agreement may not be assigned without first obtaining the prior written consent of the City which shall not be unreasonably withheld. Any attempt to assign this Agreement other than to an Affiliate as specifically allowed herein without the prior written consent of the City shall be void and shall constitute an event of default hereunder.

D. Modifications. At any time before the expiration of the term hereof, this Agreement may be modified by the mutual action of the parties hereto. Such modification must be in writing and signed by all parties hereto and made by the same procedure by which this Agreement was approved and executed. In no event may this Agreement be modified so as to extend the term of tax abatement beyond five (5) years from the effective date tax abatement commences hereunder.

E. Applicable Law. 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.

F. Addresses For Notice. Notices required by this Agreement shall be deemed to have been sufficiently given when sent by certified mail, postage prepaid, return receipt requested to the address specified below or at such other address as may be designated in writing by the parties:

CITY:	City Manager City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196
WITH COPY TO:	City Attorney City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196

WITH COPY TO: Economic Development Director
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

COMPANY: High Desert Investors, L.P.
c/o TVO North America
Wells Fargo Plaza
221 North Kansas St., 16th Floor
El Paso, Texas 79901

G. Severability. In the event that any provision of this Agreement is subsequently determined to be unenforceable for any reason, the remaining provisions shall not in any way be affected or impaired; provided, however, that if for any reason, other than the Company's continued default under this Agreement beyond all applicable notice and cure periods, the City is unable or unwilling to provide in full the tax abatement called for under this Agreement, then the Company shall be released from all of its liabilities and obligations under this Agreement.

H. Prior Agreements Superseded. This Agreement contains and constitutes the entire agreement between the parties hereto and supersedes any and all prior understandings and agreements, whether written or oral, between the parties hereto relating to the subject matter hereof.

I. Effective Date. This Agreement shall be effective immediately upon execution hereof, but eligibility for abatement of taxes shall only commence upon completion of the Improvements as specified in Section I.A. hereof. Moreover, the Company agrees to file reports required hereunder through the end of the term and for a period of eighteen (18) months following the expiration of the tax abatements.

(SIGNATURES ON FOLLOWING PAGE)

EXECUTED this 28th day of December 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Momsen Duffy
City Clerk

APPROVED AS TO FORM:

John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:

David G. Dobson, Director
Economic Development Department

COMPANY:

High Desert Investors, L.P

By: _____

Title: _____

Exhibit "A"

Improvements "to-be" Constructed

The improvements to be constructed will be a 5-story structure that will maintain the UTEP Bhutanese architecture. The hotel will contain 150 rooms and 3000 sq ft of meeting space. The meeting space will break out with a 2200 Sq ft. ballroom, outdoor pre-function area and a smaller boardroom. The hotel will include a 770 sq ft exercise facility, outdoor swimming pool and full service restaurant and small bar area. A one-story parking structure that will include a total of approximately 150 spaces will also be constructed. All construction will conform to or exceed the form and character of the hotel product generally know as "Hilton Garden Inn" as of December 2004.

Personal Property "to-be" Installed

The project will include Furnishing, Fixtures and Equipment (FFE), referred to as "personal property" typically required in "focused-service" hotel projects with approximately 150 rooms. All rooms will be fully furnished and include hospitality centers and essential bathroom equipment. All common areas will contain seating and accessories. The restaurant will contain the required kitchen equipment and serving features. All personal property will conform to or exceed the form and character of the hotel product generally know as "Hilton Garden Inn" as of December 2004.

Schedule of Improvement Construction and Personal Property Installation

Commencement of Construction: February 28, 2005
Construction Period: February 28, 2005 thru May 31, 2006

EXHIBIT "B"

Property description: All of Block 162 and a portion of Blocks 161 and 187 and the vacated streets and alleys included therein, Alexander Addition, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Block 162 and a portion of Blocks 161 and 187 and the vacated streets and alleys included therein, Alexander Addition, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the intersection of the monument lines of Kansas Street (70-foot right-of-way) and University Avenue (70-foot right-of-way), said monument lines lying10 feet east and 10 feet north of the respective centerlines of Kansas Street and University Avenue, from which a city monument at the intersection of the monument lines of Kansas Street and Cincinnati Avenue (70-foot right-of-way) bears North 37°00'20" West, a distance of 1650.46 feet; Thence, South 52°59'40" West, along the monument line of University Avenue, at 1320.92 feet passing a city monument on the monument line of El Paso Street, a total distance of 1330.92 feet; Thence, North 37°00'20" West, a distance of 25.00 feet to the northerly right-of-way of University Avenue and the **POINT OF BEGINNING** of this description;

THENCE, North 52°59'40" East, along said right-of-way, a distance of 295.23 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the westerly right-of-way of Oregon Street (70-foot right-of-way);

THENCE, North 37°00'20" West, along said right-of-way, a distance of 329.94 feet to a chiseled "X" set on the northerly right-of-way of vacated Kerbey Street (70-foot right-of-way vacated May 22, 2001, City of El Paso Ordinance No. 014855);

THENCE, South 52°59'40" West, along said right-of-way, a distance of 295.23 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the centerline of vacated El Paso Street (70-foot right-of-way vacated February 8, 1962, City of El Paso Ordinance No. 2611);

THENCE, North 37°00'20" West, along said centerline, a distance of 180.00 feet;

THENCE, South 52°59'40" West, a distance of 179.00 feet to the westerly line of that certain 6-foot easement described October 2, 1956, in Book 1586, Page 289, Deed Records, El Paso County, Texas;

THENCE, South 37°00'20" East, along said westerly line, a distance of 383.73 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, South 52°59'40" West, a distance of 52.62 feet to a set P-K nail;

THENCE, South 37°00'20" East, a distance of 126.21 feet to a chiseled "X" set on the northerly right-of-way of University Avenue;

THENCE, North 52°59'40" East, along said right-of-way, a distance of 231.62 feet to the **POINT OF BEGINNING** of this description.

Said parcel of land contains 4.484 acres (195,330 square feet) of land more or less.

NOTE: A PLAT OF EVEN DATE HEREWITH ACCOMPANIES THIS DESCRIPTION.

ROBERT SEIPEL ASSOCIATES, INC.
Professional Land Surveyors

Robert R. Seipel, R.P.L.S.
President
Texas License No. 4178

Job Number 04-0033B
September 13, 2004

REVISED: October 27, 2004

04-0033B metes and bounds (2)

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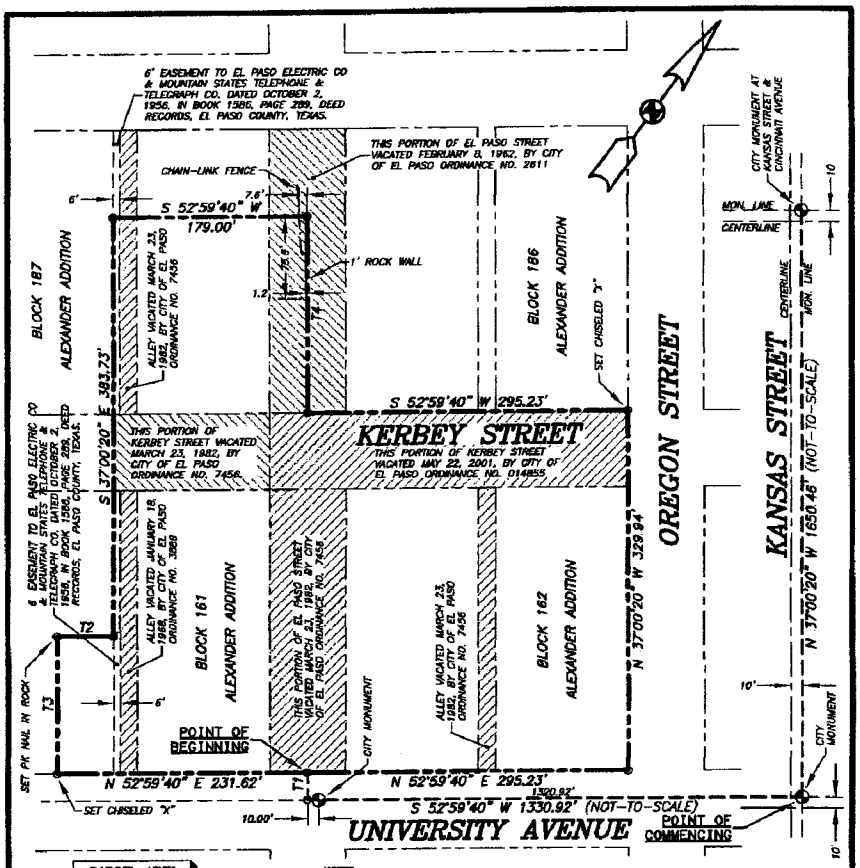

PARCEL AREA
4.484 ACRES
195,330 SQ. FT.

NUMBER	BEARING	DISTANCE
T1	N 37°00'20" W	25.00'
T2	S 52°59'40" W	52.62'
T3	S 37°00'20" E	126.21'
T4	N 37°00'20" W	180.00'

SCALE: 1" = 100'

0 50 100 200

NOTES:

1. SET 5/8" REBAR WITH CAP MARKED "RPLS 4176" AT ALL CORNERS UNLESS OTHERWISE INDICATED.
2. A NARRATIVE METES AND BOUNDS DESCRIPTION OF EVEN DATE HEREWITH ACCOMPANIES THIS PLAT.
3. BASIS-OF-BEARINGS IS THE MONUMENT LINE OF KANSAS STREET (AS SHOWN).
4. BLOCK DIMENSIONS WERE PRORATED BASED ON EXISTING MONUMENTS FOUND WITHIN THE ALEXANDER ADDITION.
5. ALL VACATED STREETS AND ALLEYS ARE SUBJECT TO RESERVATIONS AND CONDITIONS BY THE CITY OF EL PASO; REFER TO THE VACATION ORDINANCES FOR MORE SPECIFIC INFORMATION.
6. ALL STREET RIGHTS-OF-WAY ARE 70 FEET.
7. THE RIGHT-OF-WAY OF EL PASO STREET IS BASED ON THE CITY MONUMENT FOUND AT THE INTERSECTION OF THE MONUMENT LINES OF UNIVERSITY AVENUE AND EL PASO STREET.
8. THE PLAT OF ALEXANDER ADDITION IS NOT FILED OF RECORD.
9. ON-SITE IMPROVEMENTS WERE NOT ADDRESSED AS PART OF THIS SURVEY.

REVISED: OCTOBER 27, 2004

ROBERT SEIPEL ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
1845 NORTHWESTERN DR. SUITE C EL PASO, TX 79912 915-877-1928

PLAT OF SURVEY

ALL OF BLOCK 162 AND A PORTION OF BLOCKS 161 AND 187 AND THE VACATED STREETS AND ALLEYS INCLUDED THEREIN, ALEXANDER ADDITION, EL PASO, EL PASO COUNTY, TEXAS.

SURVEY DATE: 09-13-04
SCALE: 1" = 100'
DRAWN BY: RRS
CHECKED BY: RRS
FIELD BOOK: 274
FILE #: 04-0033B

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