City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 17 **Ordinance/Resolution# 2793**

For Meeting of October 3, 2016 (Ordinance First Reading Date) **For Meeting of** October 17, 2016 (Adoption Date)

Please check box that applies to this item:
☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: **AN ORDINANCE TO AUTHORIZE THE CONVEYANCE OF A PARCEL OF CITY-OWNED PROPERTY LOCATED AT 2834 NORTH TELSHOR BOULEVARD FROM THE CITY OF LAS CRUCES (CITY) TO GMB INVESTMENTS, INC., (GMB), IN ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312.**

PURPOSE(S) OF ACTION:

To convey ownership of City owned land.

COUNCIL DISTRICT: 6		
Drafter/Staff Contact: Bill R. Hamm	**Department/Section:** Public Works/Facilities Management	**Phone:** 528-3410
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On May 2, 2016, City Council approved Resolution No. 16-207, which authorized the City Manager to negotiate a Purchase Agreement (agreement) between the City and GMB for a 16.57 acre parcel of City owned land located at 2834 North Telshor Boulevard. The negotiated agreement was fully executed between the City Manager and GMB on May 5, 2016. The City property may now be transferred to GMB, pursuant to the terms of the agreement.

The negotiated purchase price, which was based on the fair market value of prior appraisals is $3.05 per square foot, for a total purchase price of $2,201,457.00. All proceeds from the payment resulting from the property transfer and agreement must be deposited into the Flood Control Fund.

This Ordinance has been prepared by City staff in accordance with LCMC 1997, Section 2-1312. The closing date for the transfer will not occur until forty-five (45) days after the adoption of the Ordinance and would occur no later than ninety (90) days after adoption. This Ordinance has been published prior to its adoption and will be published at least once after its adoption.

SUPPORT INFORMATION:

1. Ordinance.

2. Exhibit "A", Executed Purchase Agreement.
3. Attachment "A", Site Plan.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☒	If No, then check one below:
	Budget Adjustment Attached *will be processed at later time.	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: 4400-4400-599900 in the amount of $2,201,457.00 for FY2017.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize the conveyance of a parcel of City property located at 2834 North Telshor Boulevard from the City to GMB.
2. Vote "No"; this will not authorize the conveyance of a parcel of City property located at 2834 North Telshor Boulevard from the City to GMB.
3. Vote to "Amend"; this could allow City Council to modify the conditions for conveyance of City property located at 2834 North Telshor Boulevard from the City to GMB.
4. Vote to "Table"; this action will result in a delay of the conveyance of a parcel of City property located at 2834 North Telshor Boulevard from the City to GMB and will require direction from City Council to staff.

THAT

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 16-207.

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of October 3, 2016 (Ordinance First Reading Date)

For Meeting of October 17, 2016 (Adoption Date)

TITLE: AN ORDINANCE TO AUTHORIZE THE CONVEYANCE OF A PARCEL OF CITY-OWNED PROPERTY LOCATED AT 2834 NORTH TELSHOR BOULEVARD FROM THE CITY OF LAS CRUCES (CITY) TO GMB DEVELOPMENT NM, LLC (GMB), IN ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes ☐ No ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	[signature] for B.H.	X2616	9/29/16
Department Director	David Sedillo FOR LR	3105	9/29/16
Other			
Assistant City Manager /CAO Management & Budget Manager	[signature]	2022	9/29/16
Assistant City Manager/COO	[signature] for DA	2506	9-29-16
City Attorney	[signature] DEPUTY CITY ATTORNEY	2010	9-30-16
City Clerk	[signature]	X2115	9-30-16

Rev. 8/2011

COUNCIL BILL NO. 17-007
ORDINANCE NO. 2793

AN ORDINANCE TO AUTHORIZE THE CONVEYANCE OF A PARCEL OF CITY-OWNED PROPERTY LOCATED AT 2834 NORTH TELSHOR BOULEVARD FROM THE CITY OF LAS CRUCES (CITY) TO GMB INVESTMENTS, INC., (GMB), IN ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312.

The City Council is informed that:

WHEREAS, on May 2, 2016, City Council approved Resolution No. 16-207, which authorized the City Manager to negotiate a Purchase Agreement (agreement) between the City and GMB for a 16.57 acre parcel of City owned land located at 2834 North Telshor Boulevard; and

WHEREAS, the negotiated agreement was fully executed between the City Manager and GMB on May 5, 2016; and

WHEREAS, the City property may now be transferred to GMB, pursuant to the terms of the agreement; and

WHEREAS, the negotiated purchase price, which was based on the fair market value of prior appraisals is $3.05 per square foot, for a total purchase price of $2,201,457.00; and

WHEREAS, all proceeds from the payment resulting from the property transfer and agreement must be deposited into the Flood Control Fund; and

WHEREAS, the closing date for the transfer will not occur until forty-five (45) days after the adoption of the Ordinance and would occur no later than ninety (90) days after adoption.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the conveyance of a parcel of City owned property located at 2834 North Telshor Boulevard from the City to GMB, attached hereto as Exhibit "A", and made part of this Resolution, is hereby approved.

(II)

THAT all proceeds from the payment resulting from the property transfer and agreement must be deposited into the Flood Control Fund.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20____.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Gandara: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Eakman: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit 'A'

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is entered into by the **CITY of LAS CRUCES, New Mexico (CLC)** (hereinafter called the ***"Seller"***) and **GMB INVESTMENTS, INC**, a Texas corporation or it's assigns (hereinafter called the ***"Purchaser"***);

ARTICLE 1
Sale and Purchase

Section 1.1 Subject to the terms and provisions hereof, the Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller a Tract of Land consisting of approximately 16 acres as described below:

> Las Cruces Flood Control Project Subdivision #5, located in Section32, T.22S. R.2E., N.M.P.M. of the U.S.G.L.O. Surveys as part of the Property of the Las Cruces Flood Control Dam, City of Las Cruces, Dona Ana County, New Mexico, consisting of approximately 16 acres.

Seller shall provide an updated Survey for the tract; to be shown as Exhibit "A" attached hereto and made a part hereof together with all right, title and interest of the Seller in and to any and all roads, easements, streets and ways bounding the Property, and rights of ingress and egress thereto. Upon delivery of the Survey (hereinafter defined) to Purchaser, the legal description of the Property shown thereon shall be substituted for the legal description originally attached hereto as Exhibit "A".

ARTICLE 2
Consideration for Conveyance

Section 2.1 The ***Purchase Price*** (herein so called) for the Property shall be the sum of the total useable square footage of land being purchased times a per square foot price of $3.05, for an estimated total amount of $2,125,728.00. It is agreed and understood that the final purchase price shall adjust based on the final new Survey that will establish the correct total amount of land to be conveyed, times the per agreed square foot price. Buyer is aware that City Council must approve this real estate purchase agreement.

Section 2.2 The Purchase Price shall be payable by Purchaser to Seller at ***Closing*** in cash, certified check or bank cashiers check, or by wire transfer of immediately available funds to the account of Seller, or as Seller and Purchaser may agree otherwise.

Section 2.3 Purchaser shall have the right to close the purchase on only a portion of the entire tract of land at the same per square foot costs as detailed in Section 2.1. This right shall be subject to mutual agreement among the parties, and with a commitment of continuing with the Option to purchase the balance of the tract of land under the same terms and conditions. Any partial purchase shall be subject to permanently establishing acceptable access to the unsold land insuring that the Seller does not become land-locked or without acceptable access and use of the unsold land, until such time as the Purchaser closes the purchase of the balance of the land. In the event a partial purchase of land is completed, the Seller shall renew and extend the existing Purchase Contract and Option by an additional 2 year period, commencing on the date of the initial closing. The Purchaser shall post Earnest Money of Ten Thousand and no/100 Dollars ($10,000.00) with the same Title Company as detailed in Section 3.1 below. This extension will be subject to a new Due Diligence Period concurrent with the new extension period.

ARTICLE 3
Earnest Money

Section 3.1 Upon execution of this Contract, Purchaser shall deposit Ten Thousand and no/100 Dollars ($10,000.00) with Southwestern Abstract and Title Company of New Mexico, ATTN: Kevin Davis, 1125 S. Main, Las Cruces, New Mexico 88005 (hereinafter called the ***"Earnest Money"***) to be held throughout the term of this Contract.

It is herein acknowledged that the required Earnest Money has previously been deposited with the Title Company as of May 14, 2015, in compliance with the existing Option to Purchase dated May 11, 2015 which is still in effect (see Exhibit "B" attached). In the event this Contract is closed, all Earnest Money shall be applied to the Purchase Price at Closing. In the event this Contract is not closed, then Southwestern Abstract and Title Company of New Mexico shall disburse the Earnest Money in the manner provided for elsewhere herein.

The Earnest Money shall be deposited in an interest bearing account with interest thereon payable to the Purchaser.

Section 3.2 Notwithstanding the provisions of this Contract, One Hundred and no/100 Dollars ($100.00) out of the Earnest Money shall in all respects be non-refundable to Purchaser and shall be paid to Seller on the Effective Date as independent consideration for Seller's execution of this Contract.

ARTICLE 4
Survey and Title Policy

Section 4.1 Within thirty (30) days from the date of execution of this Contract, Seller, at Seller's expense, shall furnish to Purchaser a certified survey (the ***"Survey"***) of the Property made by a Registered Professional Land Surveyor acceptable to the Purchaser, Title Company and any lender. The Survey shall: (i) identify the Property by metes and bounds or platted lot description; (ii) show that the Survey was made and staked on the ground with corners permanently marked; (iii) set forth the dimensions and total area of the Property; (iv) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other waterways, fences, easements, and rights of way on the Property with all easements and rights of way referenced to their recording information; (v) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property lying within the 100 year flood plain or within any wetlands; and (vi) contain the surveyor's certificate that the survey is true and correct.

Section 4.2 Within thirty (30) days from the effective date of this Contract, the Seller, at Seller's expense, shall obtain a title commitment (hereinafter called the ***"Title Commitment"***) for the issuance of an Owner's Policy of Title Insurance in the amount of the Purchase Price to the Purchaser from Southwestern Abstract and Title Company (hereinafter called the ***"Title Company"***), together with legible copies of all documents constituting exceptions to Seller's title as reflected in the Title Commitment. Purchaser shall have a period of thirty days (30) from receipt of the Title Commitment and the documents referred to therein as conditions or exceptions to title to the Property in which to review such items and to deliver to Seller in writing such objections as Purchaser may have to anything contained or set forth in the Title Commitment, and Purchaser shall have an additional period of thirty (30) days from receipt of the Survey to deliver to Seller in writing such objections as Purchaser may have to anything contained or set forth in the Survey. Any items to which Purchaser does not object within the thirty (30) day periods shall be deemed to be ***"Permitted Exceptions"*** (herein so called). In the event Purchaser timely objects to either the Title Commitment and/or the Survey as hereinabove provided, Seller shall have the right, but not the obligation, for a period of thirty (30) days from receipt of Purchaser's objections within which to attempt to cure such objections specified as aforesaid by Purchaser. In the event that Seller fails or refuses to cure any such objections within such thirty (30) days period, then, in such event, Purchaser may, at its option, and as its sole remedy, by a written notice to Seller and the Title Company either (a) terminate this Contract (whereupon the Earnest Money shall be immediately returned to the Purchaser) and the parties hereto shall have no further obligation one to the other hereunder except for the indemnity obligation of Purchaser as specified in Section 5.1 below, or (b) Purchaser may waive any such defects as aforesaid and the transaction contemplated hereby shall be

consummated as provided herein with such uncured objections being deemed additional Permitted Exceptions.

Section 4.3 At Closing, the Seller shall furnish the Purchaser, at the Seller's sole cost and expense, with an Owner's Policy of Title Insurance issued by the Title Company on the standard form in use in the State of Property location, insuring good and indefeasible title to the Property in the Purchaser, subject only to the Permitted Exceptions and the standard printed exceptions, except:

(a) The exception relating to restrictions against the Property shall be endorsed by the Title Company to read "none of record", except for such restrictions as may be included in the Permitted Exceptions; and

(b) The exception relating to ad valorem taxes shall except only to taxes owing for the current and subsequent years.

ARTICLE 5
Inspection and Zoning

Section 5.1 Purchaser shall have until and through 365 (365) days from the Effective Date of this Contract (the ***"Feasibility Period"***) within which to conduct any and all engineering and economic feasibility studies of the Property which Purchaser may, at Purchaser's sole discretion, deem necessary to determine whether or not the Property is physically and economically suitable for Purchaser's intended use. Purchaser's representatives may enter upon the Property for the purpose of conducting any studies or tests, including, but without limitation, soil tests, obtaining topographical information, conducting engineering and economic feasibility studies and for all other similar preliminary work; provided, however, Purchaser shall indemnify and hold harmless Seller from and against mechanic's liens or claims that may be filed on or asserted against the Property by contractors, subcontractors or materialmen performing such work for Purchaser and further shall hold Seller harmless from any claim for personal injury or property damage arising out of Purchaser's use and investigations of the Property. Seller shall assist Purchaser in obtaining a change to the current zoning, in the event it is required, and consistent with current City zoning standards. Such change in zoning is to accommodate a development consistent with multi-usage of the land, to include but not limited to: retail, commercial, restaurant, office, multi-family, hotel and any other typical commercial usage.

Section 5.2 Special Off-Site and On-Site Development Conditions that need to be mutually agreed to and resolved by the Parties, during the Feasibility Period and prior to acceptance of the Property:

(a) Secondary Access – Purchaser and Seller mutually agree to develop a plan for secondary access to the Property that is acceptable to the Purchaser and City Approved;

(b) Off-Site Ponding – Purchaser and Seller mutually agree to develop a plan to enable off-site drainage and ponding of the Property into adjacent City owned property and City owned drainage systems that is acceptable to the Purchaser and City Approved;

(c) The Survey required at Section 4.1 above shall include Topographical Elevation Data of the Property and adjacent properties, as needed, in order to facilitate a new drainage plan and site development calculations;

(d) Applicable documentation confirming approval of off-site drainage plan for the Property; issued by all appropriate governmental agencies;

(e) Documentation and/or verification of City Utility systems in and around the Property are adequate in their capacity to accommodate Buyer's proposed multi-purpose development.

Section 5.3 In the event Purchaser, based upon its activities as set forth in Section 5.1 and 5.2 hereinabove, decides that Purchaser desires to purchase the Property, then, and in such event, Purchaser shall notify Seller, in writing, of such fact, on or before the expiration of the Feasibility Period. In the event Purchaser shall fail to so notify Seller as specified above, then Purchaser shall be deemed not to have approved the physical condition of the Property as being acceptable and this Contract shall, ipso facto, terminate. In such event, all Earnest Money in deposit with the Title Company shall be immediately returned to Purchaser without any conditions, or off-set and the parties hereto shall have no further obligations one to the other hereunder, except for any indemnity obligations specified in Section 5.1 hereinabove.

ARTICLE 6
Representations and Warranties of Seller

Section 6.1 At Closing, the Seller shall represent and warrant to the purchaser that:

(a) The Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions;

(b) Seller has no knowledge of any condemnation proceedings having been instituted or threatened against the Property;

(c) Seller has received no notice of, nor has Seller any knowledge of, any violations of any federal, state, county or municipal laws, ordinances, orders, regulations or requirements affecting the Property or any portion thereof, including, without limitation, any notice relating to the testing for, the presence in, or the removal from the Property of any hazardous or toxic materials, hazardous or toxic wastes, contaminants, or asbestos or of compliance or failure to comply with any federal, state or local laws, rules, regulations or orders relating thereto. Seller confirms that all real estate and personal property taxes are paid current.

(d) To the best of Seller's knowledge, there is no action, suit or proceeding pending or threatened against the Property or any portion thereof or relating to or arising out of the ownership or use of the Property or any portion thereof in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

(e) There are no adverse or other parties in possession of the Property.

(f) Seller has neither taken any action nor failed to take any action with respect to the property or having an affect on the property which has or could result in a violation of any applicable federal and/or state securities laws.

(g) Seller shall deliver the Property to Purchaser at the Closing free and clear of any indebtedness secured by liens affecting the property, except the Permitted Exceptions. Any Deed of Trust securing indebtedness owed by Seller will be paid from sums due Seller at Closing.

(h) Seller shall not encumber the Property between the date of execution hereof and the Closing without permission of Purchaser, which will not be unreasonably withheld. The Property has direct access to a public road which abuts the property.

(j) The Seller is not a foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended (***"IRC"***), i.e., the Seller is not a nonresident alien, foreign corporation, foreign trust or foreign estate (as those terms are defined in the IRC and Income Tax Regulations).

Section 6.2 The representations and warranties contained in Section 6.1 shall be true and correct on the date of Closing and shall survive the Closing and continue in full force and effect notwithstanding the Closing and consummation of the sale contracted for herein, and the obligation of the Purchaser to close this transaction is expressly conditioned upon said representations and warranties being true and correct on the date of Closing.

ARTICLE 7
Closing

Section 7.1 The Closing hereunder shall take place at the offices of the Title Company thirty (30) days after completion of the Feasibility Period or thirty (30) days after Purchaser accepts Property. In the event that the Closing would occur on a day on which the Title Company is not open for business then the Closing shall be the next business day following such date.

Section 7.2 At the Closing, Seller shall deliver or cause to be delivered to Purchaser, at Seller's sole cost and expense, each of the following items:

(a) A general warranty deed duly executed and acknowledged by Seller, and in form for recording, conveying good, indefeasible fee simple title in the Property to Purchaser, subject only to the Permitted Exceptions;

(b) The Title Policy in the form specified in Section 4.2 hereof;

(c) Such evidence or documents as may be reasonably required by the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of the Seller in connection with the sale of the Property; and

(d) A Certification in a form to be provided or approved by the Purchaser, signed by the Seller under penalties of perjury, containing the following:

(i) The Seller's U.S. Taxpayer Identification Number;

(ii) The home address of the Seller (or the business address of the Seller if the Seller is not an individual); and

(iii) A statement that the Seller is not a foreign person within the meaning of the "IRC" as defined above.

In the event that the Seller fails to deliver such Certification at Closing or the Seller delivers such Certification but the Purchaser has actual knowledge that such Certification is false or the Purchaser receives notice that the Certification is false from any agent of the Purchaser or the Seller, the Purchaser shall be entitled to withhold from the Purchase Price a sum equal to ten percent (10%) of the total amount which otherwise would have been realized by the Seller from such sale, which sum will be paid by the Purchaser to the United States Treasury pursuant to the requirements of Section 1445 of the IRC and the regulations promulgated thereunder.

Section 7.3 At the Closing, Purchaser shall deliver to Seller the following items:

(a) The Purchase Price, as specified in Section 2.2 or 2.3 hereof; and

(b) Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of the Purchaser in connection with the sale of the Property.

Section 7.4 At Closing, the following items shall be paid by, adjusted or prorated between Seller and Purchaser:

(a) Ad valorem taxes for the Property for the current calendar year shall be prorated to date of Closing, and the Seller shall pay to the Purchaser in cash at Closing, the Seller's pro rata portion of such taxes. Seller's pro rata portion of such taxes shall be based upon taxes actually assessed for the current calendar year. If, for any reason, ad valorem taxes for the current calendar year have not been assessed on the Property, such proration shall be estimated based upon ad valorem taxes for the immediately preceding calendar year, and adjusted when exact amounts are available. Seller shall be responsible for all rollback taxes, if any.

(b) In the event any adjustments pursuant to this Section 7.4 are, subsequent to Closing, found to be erroneous, then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amount shall be paid within ten (10) days from receipt of the invoice.

(c) Seller shall pay the Owner's Title Policy, the cost of preparation of the deed and one-half of any escrow fee.

(d) Purchaser shall pay one-half of any escrow fee, the cost of filing the deed, all due diligence expenses and costs associated with financing arranged by Purchaser.

(e) Each party will pay its own attorneys and accountants.

ARTICLE 8
Real Estate Commission

Section 8.1 N/A

ARTICLE 9
Remedies of Default

Section 9.1 In the event that performance of this Contract is tendered by the Seller and the sale is not consummated through default on the part of the Purchaser on the Closing Date, then the Earnest Money shall be delivered to the Seller as liquidated damages for the Purchaser's default, as the Seller's sole remedy. Such amount is agreed upon by and between the Seller and the Purchaser as liquidated damages, due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof; and no other damages, rights or remedies shall in any case be collectible, enforceable or available to the Seller other than those damages which may be payable under Article 5.1, but the Seller shall accept said cash payment as the Seller's total damages and relief.

Section 9.2 In the event performance of this Contract is tendered by the Purchaser and the sale is not consummated through default on the part of the Seller on the Closing Date, then the Earnest Money will be immediately returned to Purchaser by the Title Company, and Purchaser shall be entitled to enforce specific performance of this Contract.

ARTICLE 10
Miscellaneous

Section 10.1 All notices, demands, or other communications of any type (herein collectively referred to as ***"Notices"***) given by the Seller to the Purchaser or by the Purchaser to the Seller, whether required by this Contract or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Article 10. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person or by United States Mail, as a registered or certified item, return receipt requested, or by an overnight mail service. Notices delivered by mail shall be effective when deposited in a post office or other depository under the care or custody of the

United States Postal Service, enclosed in a wrapper with proper postage affixed, addressed, to the Seller, as follows:

City of Las Cruces
Attn: Robert L. Garza, PE
City Manager
P.O. Box 20000
Las Cruces, New Mexico 88004

and addressed, to the Purchaser, as follows:

GMB Investments, Inc
Attn: Lawrence M. Bower
412 Pocano Lane
El Paso, Texas 79912

Either party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

Section 10.2 Any representation, warranty, covenant or agreement herein of either party to this Contract whether to be performed before or after the time of Closing shall not be deemed to be merged into or waived by the instruments of Closing, but shall expressly survive Closing and shall be binding upon the party obligated thereby.

Section 10.3 For purposes of determining the time for performance of various obligations under this Contract, the effective date of this Contract shall be the date the Title Company acknowledges hereon the receipt of said executed Contract.

Section 10.4 It is herein agreed that this Contract may be assigned, conveyed or sold by the Purchaser to a "to be formed" development company or to any person, firm, corporation or other entity and shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators and assigns.

Section 10.5 The obligations of the parties hereto shall be performable in Dona Ana County, New Mexico. THIS CONTRACT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW MEXICO. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms ***"heirs, executors, administrators and assigns"*** shall include successors, legal representatives and assigns.

Section 10.6 This Contract may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

Section 10.7 Each person executing this Contract warrants and represents that he or she is fully authorized to do so.

Section 10.8 Time is of the essence of this Contract.

Section 10.9 In the event it becomes necessary for either party hereto to file a suit to enforce this Contract or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees incurred in such suit.

Section 10.10 The descriptive headings of the several Articles, Sections and Paragraphs contained in this Contract are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 10.11 This Contract, including the Exhibits hereto and the items to be furnished in accordance herewith, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenants, agreement or condition not expressed in this Contract shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Contract.

Section 10.12 This contract may be part of an IRC Section 1031 "Tax Deferred Exchange" for Seller and/or Purchaser. Seller agrees to execute all necessary documents for Purchaser to complete the exchange, if requested by either party.

EXECUTED on this the 5th day of ~~April~~ May 2016, by Seller.

CITY of LAS CRUCES

By: _____
Robert L. Garza, City Manager

EXECUTED on this the 5 day of ~~April~~ May 2016, by Purchaser

GMB INVESTMENTS, INC.

By: _____
Lawrence M. Bower, President

Purchaser(s) _____ Seller(s) _____

TITLE COMPANY RECEIPT

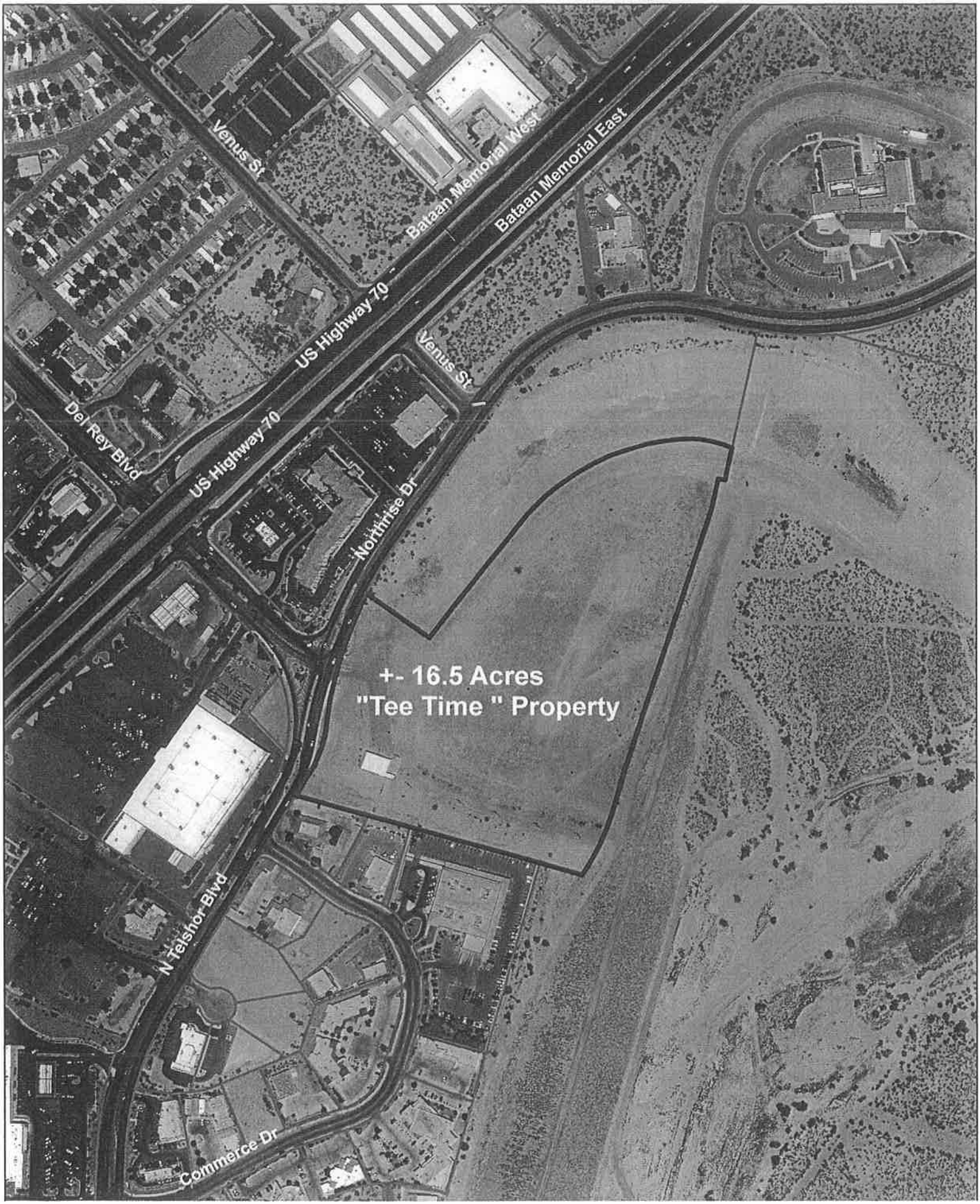
The Contract has been Received by Title Company this the _____ day of April 2016 by Southwestern Abstract and Title Company of New Mexico.

SOUTHWESTERN ABSTRACT AND TITLE COMPANY OF NEW MEXICO

By: _____

Its: _____

Printed Name: _____

Vicinity Map

ATTACHMENT "A"