

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

**DEPARTMENT:** Economic & International Development Department

**AGENDA DATE:** CCA Regular, August 21, 2018

**CONTACT PERSON/PHONE:** Jose Carlos Villalva, Real Estate Manager, (915) 212-1631

**DISTRICT(S) AFFECTED:** District 8

**SUBJECT:**

That the City Manager be authorized to sign a Lease Agreement between WESTSIDE COMMUNITY CHURCH ("Lessor") and the CITY OF EL PASO ("Lessee") for a portion of Tract 12HI, A.F. Miller Survey No. 210, City of El Paso, El Paso County Texas. The property will be used as an additional parking area for the Westside Regional Command Center, at 4801 Osborne Drive, El Paso, Texas.

**BACKGROUND/DISCUSSION:**

Westside Regional Command Center has a shortage of parking for Police vehicles; they currently have to find street parking in the surrounding area. The property will be converted to a parking lot for the Regional Command Center.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD/COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



## RESOLUTION

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

That the City Manager be authorized to sign a Lease Agreement between WESTSIDE COMMUNITY CHURCH ("Lessor") and the CITY OF EL PASO ("Lessee") for a portion of Tract 12HI, A.F. Miller Survey No. 210, City of El Paso, El Paso County Texas. The property will be used as an additional parking area for the Westside Regional Command Center, at 4801 Osborne Drive, El Paso, Texas.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

### THE CITY OF EL PASO

#### ATTEST:

\_\_\_\_\_  
Dee Margo  
Mayor

\_\_\_\_\_  
Laura D. Prine  
City Clerk

#### APPROVED AS TO FORM:



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

#### APPROVED AS TO CONTENT:



 \_\_\_\_\_  
Jessica L. Herrera, Director  
Economic and International Development

#### APPROVED AS TO CONTENT:

\_\_\_\_\_  
Greg Allen, Chief  
Police Department

STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO    )

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date"), by and between **WESTSIDE COMMUNITY CHURCH** ("Lessor") and **THE CITY OF EL PASO**, a municipal corporation existing under the laws of the State of Texas ("Lessee").

**WITNESSETH:**

**WHEREAS**, the Lessor owns property on Sunset Road which abuts the Westside Regional Command Center at 4801 Osborne Drive, El Paso, Texas; and

**WHEREAS**, Lessee desires to lease a portion of unimproved property from Lessor to provide overflow parking spaces for the Westside Regional Command Center.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions and covenants herein contained, the parties agree as follows:

**SECTION 1  
LEASED PREMISES**

**1.01. REAL PROPERTY.** For and in consideration of the mutual covenants hereof, Lessor hereby leases to Lessee and Lessee hereby agrees to lease from Lessor the real property more specifically described in Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof ("Premises").

**SECTION 2  
TERM**

**2.01. TERM.** The term of this Agreement shall be for a period of five (5) years commencing on the Effective Date ("Term"). In the event Lessee is not in default of any terms of this Lease, the Lease term shall automatically renew for an additional term of five (5) years ("Renewal Term") unless Lessee notifies Lessor in writing of Lessee's election to terminate this Lease (the "Termination Notice") at least thirty (30) days prior to the expiration of the Term. In the event the Termination Notice is not given, the Lease shall be extended for five (5) years on the same terms and conditions and with no increase in the monthly rental.

**SECTION 3  
USES OF LEASES PREMISES/ALTERATIONS**

**3.01. USE.** The Premises shall be used as an overflow parking lot for Lessee's Westside Regional Command Center. Lessee will access the Premises from the Westside Regional Command Center and not from Sunset Road.

**3.02. IMPROVEMENTS AND ALTERATIONS.** Lessee, at its own expense, may construct improvements necessary for using the Premises as a parking lot, including but not limited to grading and fencing the Premises and installing security devices ("Improvements"). Lessee's Improvements will be constructed or installed in accordance with best practices to prevent any flooding of Lessor's buildings and grounds.

**3.03. OWNERSHIP OF IMPROVEMENTS.** All Improvements constructed or installed by Lessee shall be owned by Lessee until the expiration or earlier termination of this Lease. Lessee may remove any of its Improvements on the Premises at the expiration or earlier termination of this Lease. Any Improvements which are not removed by Lessee shall, without compensation to Lessee, become Lessor's property free and clear of all claims to or against them by Lessee or anyone claiming by, through, or under Lessee.

**3.04. MAINTENANCE.** Lessee, at its sole cost and expense, will maintain, use and operate the Premises and all Improvements thereon.

**3.05. UTILITIES.** Lessee shall pay (or cause to be paid) when due all bills for water, heat, gas, telephone, electricity, garbage disposal and collection, and other utilities used on the Premises and shall pay (or cause to be paid) all connection charges, capital recovery fees, utility expansion charges, tap fees, sewer rents, sewer charges, and all other similar fees and charges associated therewith.

**3.06. TRASH AND GARBAGE.** Lessee, at its sole cost and expense, will provide for a timely removal of all trash, garbage and other refuse caused as a result of its operations on the Premises in accordance with all applicable laws or regulation.

**3.07. SECURITY.** Lessee, at its sole cost and expense, will be responsible for the security for the Premises.

## **SECTION 4 RENTALS**

**4.01. RENTAL.** For the Term of this Lease and any Renewal Term, Lessee agrees to pay as rent the sum of Nine Hundred and No/100 Dollars (\$900.00) per month, and such rent shall be payable monthly, in advance, on the first day of each month, unless sooner terminated as provided herein.

**4.02. ADDITIONAL CONSIDERATION.** As additional consideration for this Lease, Lessee agrees to pay one-half of the costs for Lessor to extend a sidewalk along Sunset Road and install landscaping in the area adjacent to the Premises and said amount shall not to exceed One Thousand Six Hundred and no/100 Dollars (\$1,600.00). Lessor will provide Lessee with an itemized invoice for the construction of the sidewalk and the landscaping, and Lessee will pay Lessor the additional consideration upon completion of installation of the sidewalk and landscaping.

**4.03. PLACE OF PAYMENT AND FORM OF PAYMENT OF RENT.** Rent shall be payable to Westside Community Church at the following address: 201 E. Sunset El Paso Texas, 79922, or to such other persons or at such other addresses as Lessor may designate from time to time in writing to Lessee.

**4.04. HOLDING OVER.** Should Lessee holdover the Premises after this Agreement has terminated in any manner, during such holding over, Lessee shall be deemed a tenant at sufferance and Lessee shall pay Lessor for each month of such holding over a sum equal to one hundred fifty percent (150%) of the annual rent applicable hereunder at the expiration of the term or termination of the Lease, prorated for the number of days of such holding over, upon thirty (30) days' advance written notice, otherwise on the same terms and conditions as herein provided.

## **SECTION 5 INSURANCE**

**5.01. LESSEE'S RIGHT TO SELF-INSURE.** Lessor agrees that Lessee shall have the right, at its option, to (a) obtain liability insurance protecting Lessee and its employees and property insurance protecting Lessee's interests in the Premises and its Improvements located on the Premises, to the extent authorized by the laws of the State of Texas or other law; or (b) self-insure against any risk that may be incurred by Lessee as a result of its operations under this Lease.

## **SECTION 6 DAMAGE OR DESTRUCTION OF LEASED PREMISES.**

**6.01. OBLIGATIONS OF LESSEE.** Should the Lessee's Improvements be damaged or destroyed in whole or in part by fire or other casualty, Lessee, in its sole discretion and at its own cost and expense, will promptly repair, replace and rebuild the same, as nearly as practical to the character of the Improvements existing immediately prior to such time.

## **SECTION 7 TERMINATION, EMINENT DOMAIN**

**7.01. TERMINATION GENERAL.** Lessee may cancel this Lease with written notice of thirty (30) days to Lessor. All payments by Lessee under this Lease are payable only out of current City of El Paso revenues. In the event that funds relating to this Lease do not become available, such as by the City Council not appropriating the funds, Lessee shall have no obligation to pay for any services related herein to Lessor for the City's fiscal year during which time such funding is not available or appropriated. Should Tenant experience a funding unavailability, Lessee will provide written notice to the Lessor of Lessee's cancellation of the lease effective upon termination of funding.

### **7.02. EMINENT DOMAIN.**

(a) **Rights of Parties During Condemnation Proceeding.** Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with

respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

(b) **Taking of Leasehold.** Upon a total taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation. If the taking is substantial, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

## **SECTION 8 MISCELLANEOUS**

**8.01. MUNICIPAL PURPOSE.** Lessor acknowledges that Lessee has informed Lessor that Lessee is entering into this Lease to serve a municipal purpose and government function under the authority of and for the benefit of the sovereign state.

**8.02. ASSIGNMENT.** Lessee will not lease, assign or transfer this Agreement or any interest in this Agreement without the prior written consent of Lessor, not to be unreasonably withheld.

**8.03. TAXES AND LICENCES.** Lessor shall be responsible for payment of any and all taxes and assessments arising from Lessee's use of the Premises, if any. Lessee, at its sole cost and expense, any licenses or permits necessary pursuant to federal, state and local laws and regulations for the construction and installation of Improvements on the Premises..

**8.04. REDELIVERY OF PREMISES.** Lessee shall, upon termination or expiration of this Agreement, quit and deliver up the Premises to Lessor peaceably, quietly and in as good order and condition and in accordance with Section 3.03 above.

**8.05. QUIET ENJOYMENT.** Lessor agrees that Lessee, upon payment of the Rental to be paid by Lessee under the terms of this Agreement and upon observing and keeping each of the covenants of this Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term and any Renewal Term of this Agreement.

**8.06. HAZARDOUS SUBSTANCE.** No goods, merchandise or materials shall be kept, stored or sold in or on the Premises which are explosive or hazardous and which are not in

customary use in the businesses herein authorized; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon. All herbicides and pesticides applied to the Premises should conform to the requirements of the Texas Occupations Code, as such may hereafter be amended.

**8.07. WAIVERS.** No waiver by Lessor or Lessee at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter or the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. It is agreed that each and all of the rights, powers, options, or remedies given to Lessee and to Lessor by this Agreement are cumulative and no one of them shall be exclusive of the other or inclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by Lessee or by Lessor shall not impair its right to any other right, power, option, or remedy.

**8.08. SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

**8.09. NON-DISCRIMINATION.** Lessee in the operation and use of the Premises as described herein, will not, on grounds of sex, race, color, creed, or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by established law.

**8.10. TERMS BINDING UPON SUCCESSORS.** All the terms, conditions and covenants of this Agreement shall inure to the benefit of and by binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinbefore set forth.

**8.11. TIME OF ESSENCE.** Time is expressed to be of the essence of this Agreement.

**8.12 NOTICES.** All notices provided for herein shall be in writing. Any notice permitted or required to be given to the parties hereto shall be effective if hand delivered or mailed certified, return receipt requested to the parties at the following addresses:

Lessor: Westside Community Church  
201 Sunset Dr.  
El Paso, Texas 79922

Copy to: Jose E. Troche  
Attorney at Law  
1216 Montana  
El Paso, Texas 79902

Lessee: City of El Paso  
City Manager  
P.O. Box 1890  
El Paso, TX 79950-1890

Copy to: City of El Paso  
Real Estate Manager  
P.O. Box 1890  
El Paso, Texas 79950-1890

Any of the necessary notices may be sent to the foregoing addresses or another address of the party, provided that notice of change of address has been given to the party to be bound by the notice in writing beforehand.

**8.13. AGREEMENT MADE IN TEXAS.** This Agreement has been made in and shall be construed in accordance with the laws of the State of Texas. All duties obligations, liabilities of the parties with respect to the Premises are expressly set forth herein, and this Agreement can only be amended by an instrument in writing and agreed to by both parties.

**8.14. REMEDIES.** This Lease shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. The prevailing party shall be entitled to recover reasonable and necessary attorney's fees and costs.

**8.15. PROHIBITION ON VIOLATION OF STATE LAW AND CONSTITUTION.** Notwithstanding anything to the contrary in this Lease, Lessor and Lessee agree that Lessor shall not be required to perform any act or to refrain from any act if that performance or non-performance would constitute a violation of the Constitution or laws of the State of Texas. In addition, all obligations imposed upon Lessee pursuant to this Lease and any related agreements shall be subject to the limitations set forth below:

(a) **Waivers, Indemnity, and Attorneys' Fees.** Notwithstanding any provision in this Lease stating that Lessee limits, waives, or releases a right to make a claim against Lessor or any other party or exculpates Lessee or any other party from liability, such limitation, waiver, release, or exculpation shall be effective only to the extent authorized by the Constitution and laws of the State of Texas. Notwithstanding any provision in this Lease stating that Lessee will pay attorneys' fees incurred by Lessor or any other party, Lessee, as a governmental entity of the State of Texas, shall be obligated to pay attorneys' fees only to the extent authorized by the Constitution and laws of the State of Texas.

(b) **Remedies.** Notwithstanding any provision in this Lease specifying remedies to which Lessee shall be entitled, or stating that Lessee consents to jurisdiction of any court, no provision in this Lease shall constitute nor is it intended to constitute a waiver of Lessee's sovereign immunity to suit.

**8.16. ENTIRE AGREEMENT.** This Lease constitutes the entire understanding of the parties hereto and no amendment, modification, or alteration of the terms shall be binding the same be in writing dated subsequent to the date hereof and signed by the parties hereto.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

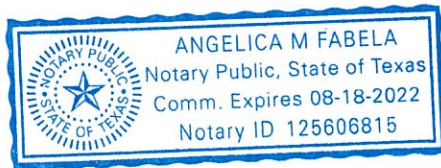
LESSOR: WESTSIDE COMMUNITY CHURCH

By: [Signature]  
Printed Name: Joe Williams  
Title: Pastor

ACKNOWLEDGMENT

THE STATE OF TEXAS        }  
   }  
COUNTY OF EL PASO        }

This instrument was acknowledged before me on this 13 day of August, 2018, by Joe Williams, Pastor of Westside Community Church.



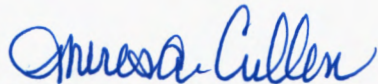
[Signature]  
Notary Public in and for the State of Texas  
Printed Name: Angelica M. Fabela  
My Commission Expires: 8-18-2022

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

**LESSEE: CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

**APPROVED AS TO FORM:**



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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Jose Carlos Villalva  
Real Estate Manager  
Economic & International Development

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Greg Allen, Chief  
Police Department

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS**       }  
  }  
**COUNTY OF EL PASO**       }

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2018, by Tomás González, as City Manager, of the City of El Paso, Texas.

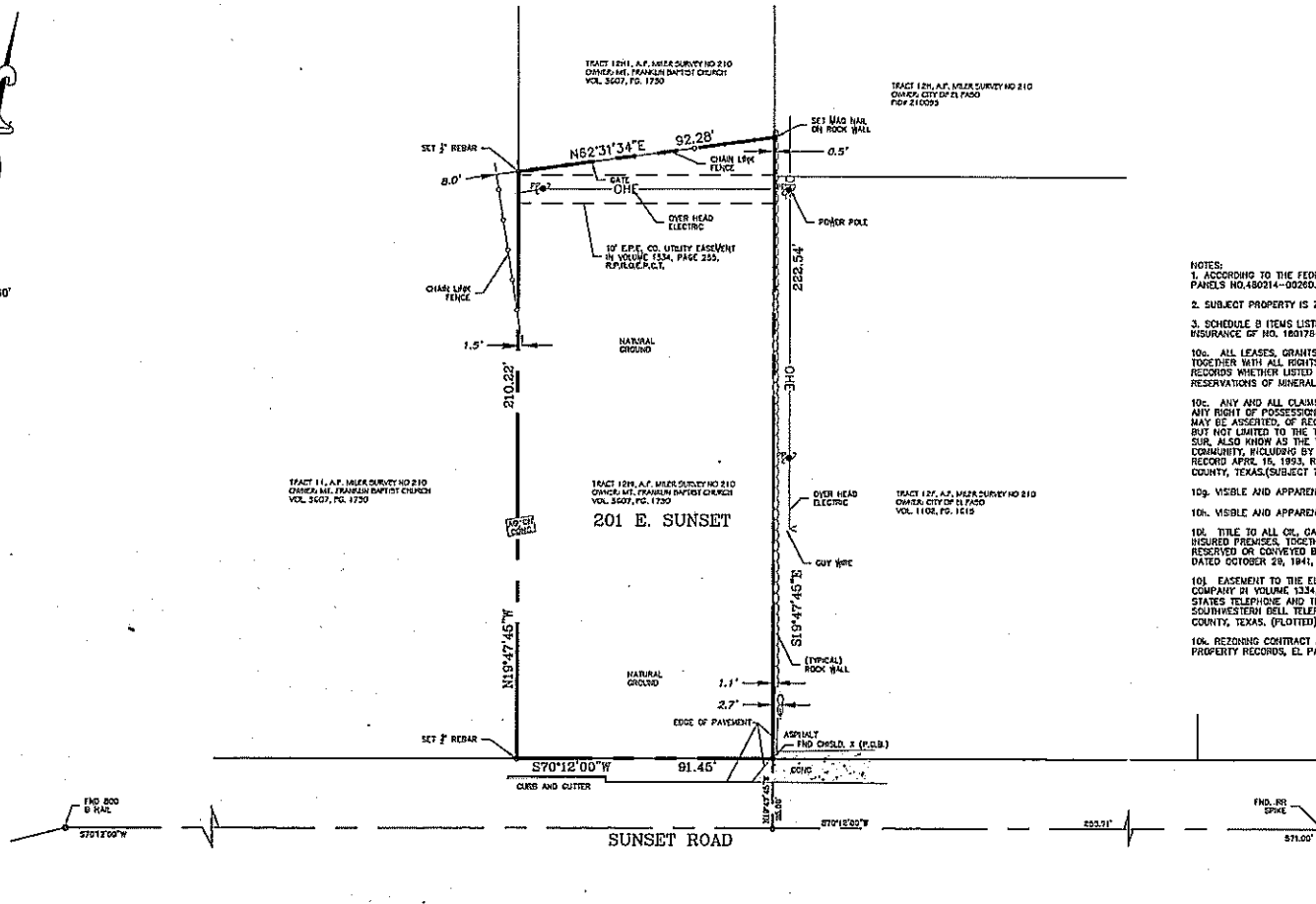
\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

# PLAT OF SURVEY

A PORTION OF TRACT 12H1  
A.F. MILLER SURVEY NO 210  
CITY OF EL PASO, EL PASO COUNTY, TX  
CONTAINING: 19,788 SQUARE FEET OR  
0.4543 ACRES

SCALE: 1"=30'



## NOTES:

1. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY PANELS NO. 48014-0000, EFFECTIVE DATE: JANUARY 23, 2018, ISSUED: FEBRUARY 2, 2018.
2. SUBJECT PROPERTY IS ZONED: C-4.
3. SCHEDULE B ITEMS LISTED BELOW PER FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE OF NO. 180178-000, EFFECTIVE DATE: JANUARY 23, 2018, ISSUED: FEBRUARY 2, 2018.
- 10a. ALL LEASES, GRANTS, EXCEPTIONS OR RESERVATIONS OF COAL, Lignite, GAS AND OTHER MINERALS, TOGETHER WITH ALL RIGHTS, PRIVILEGES, AND INTERESTS RELATING THERETO, APPEARING IN THE PUBLIC RECORDS WHETHER LISTED IN SCHEDULE B OR NOT, THERE MAY BE LEASES, GRANTS, EXCEPTIONS OR RESERVATIONS OF MINERAL INTEREST THAT ARE NOT LISTED. (SUBJECT TO PROPERTY)
- 10c. ANY AND ALL CLAIMS OF RIGHT, TITLE AND INTEREST TO THE LAND, INCLUDING BUT NOT LIMITED TO ANY RIGHT OF POSSESSION OR CLAIM FOR DAMAGES RELATING TO THE LAND WHICH HAS BEEN ASSERTED OR MAY BE ASSERTED, OF RECORD OR NOT, BY OR ON BEHALF OF ANY INDIAN OR INDIAN TRIBE, INCLUDING BUT NOT LIMITED TO THE TIOGA INDIAN TRIBE OF EL PASO, TEXAS, ALSO KNOWN AS PUEBLO DE LA YSLETA DE SUR, ALSO KNOWN AS THE YSLETA, SUR PUEBLO INDIAN TRIBE, ALSO KNOWN AS THE TIOGA INDIAN COMMUNITY, INCLUDING BY NOT LIMITED TO CLAIMS APPEARING IN AFFIDAVIT OF JUAN GRANKLO, FILED FOR RECORD APRIL 16, 1993, RECORDED IN VOLUME 2553, PAGE 1858, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS. (SUBJECT TO PROPERTY)
- 10g. VISIBLE AND APPARENT EASEMENTS FOR ROADS AND PUBLIC UTILITIES EXISTING ON THE GROUND.
- 10h. VISIBLE AND APPARENT RIGHT OF WAY ROADS, DRAINAGE, AND/OR IRRIGATION DITCHES.
- 10i. TITLE TO ALL OIL, GAS, AND MINERALS OF EVERY KIND AND CHARACTER IN, ON AND UNDER THE INSURED PREMISES, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND INTERESTS RELATING THERETO, HERETOFORE RESERVED OR CONVEYED BY PREDECESSORS IN TITLE TO THE STATE OF TEXAS, IN VOLUME 671, PAGE 361, DATED OCTOBER 28, 1941, REAL PROPERTY RECORDS, EL PASO COUNTY, TEXAS.
- 10j. EASEMENT TO THE EL PASO ELECTRIC COMPANY AND MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY IN VOLUME 1234, PAGE 253, REAL PROPERTY RECORDS, EL PASO COUNTY, TEXAS, WITH MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY'S INTEREST THERETO GRANTED, SOLD AND OBTAINED TO SOUTHWESTERN BELL TELEPHONE COMPANY IN VOLUME 1233, PAGE 640, REAL PROPERTY RECORDS, EL PASO COUNTY, TEXAS. (PLOTTED)
- 10k. REZONING CONTRACT AND RESTRICTIONS DATED JULY 16, 1985, FILED IN VOLUME 1548, PAGE 850, REAL PROPERTY RECORDS, EL PASO COUNTY, TEXAS.

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ALL RIGHTS RESERVED

CONDE INC. C.C. FIELD: W.B. DATE: 2-1-2018 JOB # NO. 1118-47 CADD FILE: S:\Survey\project\103\W.F. MILLER SURV #210, #215\100\44\201 Sunday



This is to certify that this plot and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6, 7(a), 8, 9, 10, 11, 13 and 20 of Table A thereof. The field work was completed on JANUARY 30, 2018.

*Ron R. Conde*  
Ron R. Conde  
Registered Professional Land Surveyor  
Texas License No. 5152

Exhibit "A"