

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

DEPARTMENT: Capital Improvement Department

AGENDA DATE: September 1, 2020

CONTACT PERSON/PHONE: Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: No. #7: Enhance and Sustain El Paso's Infrastructure Network

SUBJECT:

Property acquisition of 9566 Railroad Drive for Coronavirus (Covid-19) response logistics, City health laboratory, and regional clinic.

BACKGROUND / DISCUSSION:

The City requests approval for a Contract of Sale with Annlynn Corporation for the purchase of the property, which is necessary to respond to the COVID-19 public health crisis. The City plans to purchase the property using Coronavirus Relief Funds received from a Federal CARES Act grant.

SELECTION SUMMARY:

N/A

PROTEST

No protest received for this requirement.

Protest received.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? Yes or Not Applicable (Routine)
If yes, select the applicable districts.

- District 1
- District 2
- District 3
- District 4
- District 5
- District 6
- District 7
- District 8

All Districts

PRIOR COUNCIL ACTION:

May 12, 2020

AMOUNT AND SOURCE OF FUNDING:

Property acquisition of 9566 Railroad Drive totally \$5,495,000.00. On March 27, 2020, the federal government enacted the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), which established the Coronavirus Relief Fund to address the economic fallout caused by the COVID-19 pandemic. The City is a recipient of the a the Coronavirus Relief Fund under the CARES Act grant and on May 12, 2020 the City Council appropriated the Coronavirus Relief Fund grant funds to be used by the City in accordance with the requirements stipulated by the CARES Act and federal guidelines.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



RESOLUTION

WHEREAS, on March 13, 2020 the President of the United States declared a national emergency, the Governor of the State of Texas declared a state of disaster, and the Mayor of the City of El Paso (“City”) declared a local state of disaster in relation to COVID-19; and

WHEREAS, on March 17, 2020 City Council Issued an Emergency Ordinance Instituting Emergency Measures Due to A Public Health Emergency (“Emergency Ordinance”); and

WHEREAS, some local businesses have been ordered to cease operations due to national and local regulations related to the COVID-19 pandemic, causing a large number of lay-offs and economic strain for the City and its residents and businesses; and

WHEREAS, on March 27, 2020, the federal government enacted the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”), which established the Coronavirus Relief Fund and appropriated \$150 billion to the Fund to be used to address the economic fallout caused by the COVID-19 pandemic; and

WHEREAS, the City is a recipient of the a the Coronavirus Relief Fund under the CARES Act grant; and

WHEREAS, on May 12, 2020 the City Council appropriated the Coronavirus Relief Fund grant funds to be used by the City in accordance with the requirements stipulated by the CARES Act and federal guidelines; and

WHEREAS, Annlynn Corporation is the owner of the Property identified in this Contract of Sale; and

WHEREAS, Annlynn Corporation, from the date of purchase until November 2019, had the property leased to a tenant who solely occupied the property and maintained it and have not at any time ever operated a business on the property themselves or acted in any manner other than as landlord; and

WHEREAS, the City desires to enter into a Contract of Sale with Annlynn Corporation for the purchase of the property, which is necessary to respond to the public health crisis; and

WHEREAS, the City plans to purchase the property using Coronavirus Relief Funds; and

WHEREAS, the purchase of this property is a necessary expenditure in the reasonable judgement of the City Council of the City of El Paso; and

WHEREAS, the City’s expenditure under the Contract of Sale is a necessary expenditure incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19), which was not accounted for in the budget most recently approved as of the date of enactment of this section for the City, and will be incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

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

That the City Manager, or designee, is authorized to effectuate the purchase and closing of the property commonly known as 9566 Railroad Drive, El Paso, Texas more particularly described as a portion of a 60 foot quitclaimed roadway and a portion of lots 239 and lots 240, South Parkland Addition, City of El Paso, El Paso County Texas for the appraised value of \$5,495,000. Such property being owned by Annlynn Corporation. Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with Annlynn Corporation for the purchase of the property, (2) sign any and all documents related and/or necessary to effectuate the purchase and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, and (4) sign any documents necessary to effectuate any rights or obligations in relation to the purchase and closing of the property.

ADOPTED this _____ day of _____, 2020.

THE CITY OF EL PASO:

ATTEST:

Dee Margo
Mayor

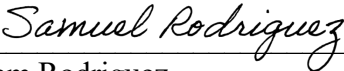
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Sam Rodriguez
City Engineer

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT OF SALE

This Contract of Sale (“**Agreement**”) is made this _____ day of _____, 2020 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (“**Buyer**”) and Annlynn Corporation a California Corporation (“**Seller**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined. The parties agree as follows:

RECITALS

WHEREAS, on March 13, 2020 the President of the United States declared a national emergency, the Governor of the State of Texas declared a state of disaster, and the Mayor of the City of El Paso (“**City**”) declared a local state of disaster in relation to COVID-19; and

WHEREAS, on March 17, 2020 City Council Issued an Emergency Ordinance Instituting Emergency Measures Due to A Public Health Emergency (“**Emergency Ordinance**”); and

WHEREAS, some local businesses have been ordered to cease operations due to national and local regulations related to the COVID-19 pandemic, causing a large number of lay-offs and economic strain for the City and its residents and businesses; and

WHEREAS, on March 27, 2020, the federal government enacted the Coronavirus Aid, Relief and Economic Security Act (“**CARES Act**”), which established the Coronavirus Relief Fund and appropriated \$150 billion to the Fund to be used to address the economic fallout caused by the COVID-19 pandemic; and

WHEREAS, the City is a recipient of the a the Coronavirus Relief Fund under the CARES Act grant; and

WHEREAS, on May 12, 2020 the City Council appropriated the Coronavirus Relief Fund grant funds to be used by the City in accordance with the requirements stipulated by the CARES Act and federal guidelines; and

WHEREAS, Annlynn Corporation is the owner of the Property identified in this Contract of Sale; and

WHEREAS, Annlynn Corporation, from the date of purchase until November 2019, had the property leased to a tenant who solely occupied the property and maintained it and have not at any time ever operated a business on the property themselves or acted in any manner other than as landlord; and

WHEREAS, the City desires to enter into a Contract of Sale with Annlynn Corporation for the purchase of the Property identified in this Contract of Sale, which is necessary to respond to the public health crisis; and

WHEREAS, the City plans to purchase the Property using Coronavirus Relief Funds; and

WHEREAS, the purchase of this property is a necessary expenditure in the reasonable judgement of the City Council of the City of El Paso; and

WHEREAS, the City's expenditure under this Contract of Sale is a necessary expenditure incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), which was not accounted for in the budget most recently approved as of the date of enactment of this section for the City, and will be incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

The parties agree as follows:

SECTION 1. CONVEYANCE OF THE PROPERTY.

A. Under the conditions of this Agreement, including the Recitals stated above that are hereby incorporated to this Agreement, the Seller agrees to sell and convey the property described below to the Buyer:

1. An approximate 8.89 acres of property located at 9566 Railroad Drive, El Paso, Texas, containing an approximate 116,312 sq. ft. building, described as:

A PORTION OF A 60 FOOT QUITCLAIMED ROADWAY AND A PORTION OF LOTS 239 AND 240, SOUTH PARKLAND ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

as further described by Metes and Bounds and survey in **Exhibit "A"**, the **"Property"**.

2. All buildings and improvements located on the Property and all of Seller's right, title, and interest in and to any and all fixtures attached there to (collectively, the "Improvements");
3. All equipment, machinery, apparatus, appliances and other articles of personal property located on and used in connection with the operation of the Improvements ("Personal Property");

4. All rights appurtenant to the Land, if any, including without limitation, any strips and gores abutting the Land, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the Land, to the center line thereof;
5. All other rights, privileges, easements, licenses, appurtenances, and hereditaments relating to the Property.

SECTION 2. PURCHASING PRICE.

- A. The Buyer will pay the Seller a total amount of \$5,495,000 for the Property (“**Purchase Price**”). The Purchase Price above is to be paid to the Seller through Buyer-selected (“Title Company”) at the Closing of this Agreement. The parties agree that the purchasing price is just compensation to the Seller for the purchase of this property.
- B. The Buyer will deposit with the Title Company by a check in the amount of \$25,000.00 as earnest money (“**Deposit**”), within 7 calendar days of the Effective Date. The Title Company will hold the Deposit in an escrow to be applied as provided by this Agreement. If the sale of the Property is in accordance with the provisions in this Agreement, then the Seller will apply the Deposit to the Purchase Price of the Property at Closing.

SECTION 3. SELLER’S WARRANTIES, OBLIGATIONS, AND RIGHTS.

- A. **WARRANTIES.** The Seller warrants to the Buyer that :
 1. To the best of Seller’s knowledge, Seller has the full right to convey the Property, as such the Buyer’s rights to the Property conveyed through this Agreement will not be adversely affected by a superior title. The Seller does not have a partner or joint venture with another entity that has an interest or rights to the property;
 2. To the best of Seller’s knowledge, no leasehold rights or interests have been granted and are currently in effect involving the Property;
 3. To the best of Seller’s knowledge, no work has been performed on the Property or any materials have been provided for work on the Property that could result in a mechanic’s or materialman’s lien;
 4. To the best of Seller’s knowledge, there are no litigation pending affecting the Property or claims of damage to property or injury to person occurring on the Property;
 5. The Seller has not received any notices of condemnation regarding the Property;
 6. To the best of Seller’s knowledge, there are no unpaid utility bills or unfulfilled maintenance contracts regarding the Property; and
 7. The Seller has not received notices of any violations of City or international building

- code, and knows of no defects in the improvements violations regarding any improvements on the Property;
8. At Closing, Seller shall have good and indefeasible title to the Property free and clear of any known claim, lien, or encumbrance, specifically including any claims for mechanics liens, subject only to the Permitted Exceptions;
 9. Seller has no notice that the current use of the property does not comply with all currently applicable zoning ordinances and governmental requirements. Seller has not received any written notice of suspension or cancellation of any certificates of occupancy;
 10. At the Closing, there will be no unpaid bills or claims in connection with any repair of the Improvements or other work performed or material purchased in connection with the Improvements;
 11. No one will have the right to occupy the Property after the Closing Date and no contracts of any kind, including contracts for maintenance, security, disposal, or fire suppression will survive the Closing;
 12. Seller is not a “foreign person” within the meaning of the Foreign Investment in Real Property Tax Act or the Tax Reform Act of 1986, and Buyer is not obligated to withhold any portion of the Purchase Price for the benefit of the Internal Revenue Service;
 13. To the best of Seller’s knowledge the Land is not in violation of any applicable law, now, nor to the best of Seller’s knowledge has it been used by Seller or its previous Tenant, used for the manufacture, processing, distribution, use, treatment, storage, disposal, placement, transport or handling of toxic materials, hazardous wastes or hazardous substances (as those terms are defined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); oils, petroleum-derived compounds; or pesticides (the *Hazardous Materials*) in violation of any law or statute. In addition, Seller knows of no (i) underground storage tanks, (ii) asbestos (either commercially processed or excavated raw materials), (iii) electrical transformers, fluorescent light fixtures with ballast, or other items or equipment containing polychlorinated biphenyls, or (iv) other Hazardous Materials are present on the Property in violation of any applicable law. Seller has not received any written notice from its previous Tenant or any neighboring property owners indicating they have any concerns about existing environmental conditions which could affect the Property or indicating in any way they might hold Seller liable for any contribution to clean up and remediate such condition; and
 14. To the best of Seller’s knowledge, no party (other than Buyer) has any right or option to acquire all or any part of the Property, whether subject to earnest money contract,

option agreement, right of first refusal, reversionary or future interests, or right of reverter.

B. OBLIGATIONS. The Seller will comply with the following obligations:

1. Within 3 business days of the Effective Date, the Seller will deliver the following documents to the Buyer, if such documents exist:
 - a. Any “as-built” plans for any improvements on the Property;
 - b. Tax bills showing the amount of the current real property tax and the assessed value of the land;
 - c. All environmental reports, inspections, or assessments of the Property and the improvements on the Property; and
 - d. Survey of Property.
2. If the Seller has contracted a real estate broker, agent, finder, or other party for the transaction of this Agreement, then the Seller is responsible for the payments of that contract.
3. The Seller will direct all payments under this Agreement to the Title Company.
4. The Seller will not physically or legally alter the Property after the Effective Date of this Agreement.
5. Survival Beyond Closing. The representations, warranties, undertakings and agreements of Seller contained herein survive the Closing for a period of one year and are not merged therein. The provisions of this Section shall survive any termination of this Contract as well as the Closing. Notwithstanding anything to the contrary, any covenants and/or representations and warranties of the Seller pertaining to conveyance of title as provided in the General Warranty Deed executed by the Seller regarding the Property are not subject to the one year limitation above and will survive the term of this Agreement.

SECTION 4. Seller’s Indemnity. IN ADDITION TO ANY OTHER APPLICABLE RIGHTS UNDER THIS AGREEMENT, UPON CLOSING AND FOR A PERIOD OF ONE YEAR THE SELLER AGREES TO INDEMNIFY AND DEFEND THE BUYER AND ITS CITY COUNCIL MEMBERS, AGENTS, AND EMPLOYEES, (COLLECTIVELY, *BUYER’S INDEMNIFIED PARTIES*) FROM AND AGAINST ANY AND ALL LIABILITIES, LIENS, CLAIMS, DAMAGES, COSTS, EXPENSES, SUITS OR JUDGMENTS PAID OR INCURRED BY ANY OF THE BUYER’S INDEMNIFIED PARTIES AND ALL EXPENSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS’ FEES ARISING OUT OF OR IN ANY WAY

CONNECTED OR RELATED TO THE BREACH OF ANY REPRESENTATION OR WARRANTY OF THE SELLER CONTAINED IN THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, INDEMNIFICATION OBLIGATIONS OF THE SELLER PERTAINING TO CONVEYANCE OF TITLE AS PROVIDED IN THE GENERAL WARRANTY DEED EXECUTED BY THE SELLER REGARDING THE PROPERTY ARE NOT SUBJECT TO THE ONE YEAR LIMITATION ABOVE AND WILL SURVIVE THE TERM OF THIS AGREEMENT.

SECTION 5. BUYER'S WARRANTIES, OBLIGATIONS, AND RIGHTS.

A. **WARRANTIES.** The Buyer warrants that:

1. There will be no unpaid bills or claims in connection with the inspection of the Property;

B. **OBLIGATIONS.** The Buyer will comply with the following obligations:

1. If the Buyer has contracted a real estate broker, agent, finder, or other party for the transaction of this Agreement, then the Buyer is responsible for the payments of that contract.
2. **SELLER'S INTENT TO EXCHANGE.** It is the intent of Seller to utilize this transaction as part of an exchange of like-kind property under Internal Revenue Code Section 1031 and the regulations promulgated thereunder. Buyer agrees to cooperate with Seller in effectuating such an exchange provided no expenses are incurred by the Buyer, such cooperation is factually accurate, and such cooperation is allowed/not prohibited by law. Buyer agrees to take such actions and execute or consent to such additional documents and transaction as may be reasonably requested by Seller, provided that all other conditions of this Agreement are met, no expenses are incurred by the Buyer, such documents are factually accurate, and such cooperation is allowed/not prohibited by law. The manner of structuring an exchange transaction will have significant tax and legal consequence to Seller and is a material reason why Seller would enter into this transaction.
3. **TITLE.** Within five (5) business days after the Effective Date, Buyer will deliver or cause to be delivered to Buyer and a copy to Seller a commitment for title insurance issued by the Title Company (the "Title Commitment") including legible copies of recorded documents evidencing title exceptions.

C. **RIGHTS.** The Buyer is responsible for all costs associated with exercising the following rights:

1. Intentionally deleted.

2. INSPECTION. The Buyer may inspect the Property within 15 business days of the Effective Date of this Agreement (“**Inspection Period**”). The Buyer will be responsible for all expenses related to the inspection or any other examination of the Property. The Buyer may terminate this Agreement during the Inspection Period in accordance to Section 6(A)(1).

Buyer shall have the right during the Inspection Period to make such physical examinations, studies, appraisals, inspections, engineering, environmental and insurance underwriting tests and investigations (the “Inspections”) of the Property as Buyer may deem advisable. Seller shall reasonably cooperate with Buyer in making the Property reasonably available for Buyer's Inspections. Buyer may also reinspect the Property prior to Closing to verify that the Property has remained in similar physical shape, ordinary wear and tear excepted, as the Property was during the Inspection Period. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer relating to such inspection and its other due diligence shall be at the sole cost and expense of Buyer. Buyer agrees to be responsible and liable for any claims or damages, including mechanic's and materialmen's liens, and reasonable attorneys' fees incurred by Seller caused or arising out of or in connection with Buyer's Inspections of the Land and/or Improvements. Buyer shall require its representatives, agents, consultants and contractors (“Buyer Representatives”) entering upon the Property for any purpose to obtain and maintain during in the Inspection Period general liability insurance in an amount not less than \$500,000.00 and property damage insurance in an amount not less than \$500,000.00, with an insurance carrier which is licensed in the State of Texas and is reasonably acceptable to Seller. The provisions of this Section shall survive the Closing or the earlier termination of this Contract. If Buyer elects to terminate this Contract in accordance with the terms hereof, Buyer shall provide Seller with copies of all documents, tests and reports generated from Buyer’s Inspection within five (5) Business Days following the date of Buyer's termination.

If Buyer does not terminate this Agreement during the Inspection Period per paragraph 5(C)(2) Inspection and 5(C)(4) Title Review Period, then Buyer shall be deemed to have accepted the Property in its current “AS IS WHERE AS CONDITION” and waived any and all objections to the condition of the Property, except that the “AS IS WHERE AS CONDITION” limitation does not limit any covenants, representations or warranties made under this Agreement and/or General Warranty Deed executed by the Seller. Notwithstanding any contrary provision, Seller is not required under this Agreement to repair the improvements on or in the Property or making any improvements or maintenance to the Property or fixtures and equipment contain therein

or thereon.

3. SURVEY. The Buyer may obtain a new survey or update an existing survey at the Buyer's expense within fifteen (15) business days of the Effective Date of this Agreement. If the metes and bounds description of the Property in the survey obtained by the Buyer are different from the ones described in Attachment "A", then the parties may use the new survey to describe the Property in this Agreement.
4. TITLE REVIEW PERIOD. The Buyer may review the commitment for Title Insurance and the survey within 15 business days of the Effective Date ("**Title Review Period**") and send a written notice to the Seller, before the expiration of the Title Review Period, listing the Buyer's objections, if any. If Buyer fails to give written objections to Seller prior to the expiration of the Title Review Period, then all exceptions to title shown on Schedule B but not on Schedule C of the Title Commitment are deemed to be Permitted Exceptions. Except as the Buyer may direct, all items on Schedule C can never be deemed to be Permitted Exceptions and must be removed by Seller at Seller's sole cost as a precondition to closing and Buyer shall have no obligation to object to them. If the Seller receives objections from the Buyer, then the Seller will perform one of the following within 10 calendar days of receiving Buyer's objections:
 - a. Notify the Buyer that the Seller will cure the Buyer's objections before the Closing Date. If the Seller elects this option, then the Seller will cure the Buyer's objections before the Closing Date;
 - b. Notify the Buyer that the Seller will cure the Buyer's objections, however the Seller and the Buyer must agree to postpone the Closing Date to allow the Seller enough time to cure the Buyer's objections. The Buyer may terminate this Agreement in accordance to Section 6(A)(3) if the Buyer refuses to postpone the Closing Date; or
 - c. Buyer and Seller may terminate this Contract of Sale in accordance with Section 6(A)(3) if Seller fails to perform one of the actions listed in this Section upon receipt of objections from the Buyer.

SECTION 6. TERMINATION.

A. This Agreement may be terminated as provided in this Section.

1. TERMINATION DURING INSPECTION PERIOD. The Buyer may terminate this Agreement for any reason at any time only during the Inspection Period by providing

written notice to the Seller. The Buyer may afford the Seller an opportunity to cure any defects on the Property that are discovered and notified to the Seller during the Inspection Period. The cure period is established by Section 6(A)(2) Termination for Cause, of this Contract of Sale. Buyer may terminate the Contract of Sale pursuant to Termination for Cause if Seller refuses to cure the defects. If the Agreement is terminated under this provision, then the Seller will refund, or direct the Title Company to refund, the full deposit to the Buyer and this refund shall be Buyer's sole remedy under this Agreement.

2. **TERMINATION FOR CAUSE.** Either party may terminate this Agreement before or on the Closing Date if the other party fails to fulfill the obligations of this Agreement following written notice of failure to fulfill the obligation. The parties agree to provide the other party an opportunity to cure of 10 business days. If the Seller terminates this Agreement pursuant to this provision, then the Seller may keep an amount up to the Deposit amount made by the Buyer for documented costs to the Seller incurred due to this transaction as the sole remedy under this Agreement. If the Buyer terminates this Agreement for cause, then the Seller will refund the deposit to the Buyer and such will be the Buyer's sole remedy under this Agreement.
3. **TERMINATION DURING TITLE REVIEW PERIOD.** The Buyer may terminate this Agreement if the Seller fails to perform the obligations under Section 5(C)(4) of this Agreement after providing an opportunity to cure. The Buyer will provide 10 business days to cure. If the Agreement is terminated under this provision, then the Seller will refund, or direct the Title Company to refund, the full deposit to the Buyer. The Seller may also terminate this Agreement if the Seller cannot clear or chooses not to clear Buyer's objections under Section 5(C)(4) of this Agreement by giving the Seller written notice of cancellation within ten (10) days of receiving Objections from Seller to the Title Insurance and Survey or notice from Title Company to any Schedule C items on the title insurance. If either Buyer or Seller terminates under this Section 6(A)(3) Buyer is to be refunded by the Title Company the deposit.
4. **TERMINATION FOR CASUALTY.**
 - a. Seller agrees to give Buyer and Title Company prompt notice of any fire or other casualty affecting the Property or of any actual or threatened taking or condemnation of all or any portion of the Property other than the subject condemnation action. Buyer has the right to inspect the Property after receipt of the notice. If, prior to the Closing, there shall occur damage to the Property caused by fire or other casualty, then Buyer shall have the right to postpone the Closing Date or terminate this Contract by written notice delivered to the other party within 10 business days after Buyer has received notice from Seller of that event or the date

of the fire or other casualty or Seller's receipt of notice of taking or condemnation, whichever shall first occur. If this Contract is terminated pursuant to this Section, the Deposit shall be returned to Buyer and the parties shall have no further obligations under this Contract, or to each other with respect to the subject matter of this Contract. Notwithstanding the foregoing, in the event that the cost of repairing or restoring such damage shall be covered by available insurance and such cost shall be less than \$10,000, then Buyer may proceed to Closing and Seller shall assign at Closing to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss insurance and, in addition, Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

- b. Postponement of Closing. In the event that Buyer gives notice to postpone the Closing Date pending a determination of the nature and extent of such damage or destruction and the availability and adequacy of insurance proceeds, the postponement shall be in effect for an additional 20 business days after the 10 business day period that Buyer has to give notice of its desire to postpone (the Damages Determination Period).
 - c. Insurance for Repair. If the cost to repair or replace the damage is reasonably estimated by the Seller's insurance adjuster to exceed \$10,000, then at Buyer's election and in its sole discretion, Buyer may elect to proceed with the Closing and at the Closing, Seller shall assign to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss proceeds, and Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).
 - d. Repair Requirements. Under no circumstances shall Seller be required to contribute any funds or other resources to the Property in addition to the insurance coverage of the Property. If insurance is insufficient to cover the costs to repair or replace the damage, Seller may elect to cancel.
5. TERMINATION DUE TO FUNDING SOURCE RESTRICTIONS. In the event that the federal funding source becomes unavailable by any applicable law, the Buyer has the right to terminate this Contract of Sale prior to Closing. The Seller will refund the Deposit to the Buyer.

SECTION 7. CLOSING.

- A. The parties will have met all the obligations of this Agreement, including finalizing the sale and transfer of the Property ("**Closing**") by 30th day of September, 2020 ("**Closing**").

Date”) A party’s failure to meet all the obligations of this Agreement by the Closing Date is a breach of this Agreement. The Closing Date is subject to change by the mutual agreement of both parties.

B. SELLER’S OBLIGATIONS. At the closing of this Agreement the Seller will deliver the following to the Buyer:

1. A fully executed deed (“**Deed**”) conveying the title to the Property included in this Agreement as **Exhibit “B”**;
2. A Bill of Sale for any Personal Property in substantially the form of **Exhibit “C”** attached to this Contract of Sale.;
3. An affidavit, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury the Seller’s United States identification number and that each of Seller is not a "foreign person" as that term is defined in Section 1445, duly executed and acknowledged by Seller;
4. The environmental reports, test results and disposal documentation with regard to the demolition and removal of asbestos from the site, if any;
5. All keys or other access devices in the possession of the Seller or its agents to the locks located on the Property; and
6. Any other items requested by the Title Company to finalize the closing of this Agreement.

C. BUYER’S OBLIGATIONS. At the closing of this Agreement the Buyer will deliver the following to the Seller:

1. The Purchase Price minus the Deposit that is being held by the Title Company;
2. Evidence accepted by the Seller and the Title Company showing the completion of the transaction set out by this Agreement; and
3. Any other items requested by the Title Company to finalize the closing of this Agreement. The Buyer will be responsible for paying all fees associated with the closing of this Agreement including any Title Company escrow fees. The Buyer will be responsible for paying any fees related to recording the Deed.

D. TAXES. General real estate taxes, if any, for the then current year relating to the Property will be prorated on midnight before the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed

Copy: City of El Paso
Director of CID
P.O. Box 1890
El Paso, Texas 79950-1890

To the Seller: Annlynn Corporation
Attn: Terry L. Milligan
P.O. Box 538
Camarillo, CA 93011

- E. CONFIDENTIALITY. The Seller acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- F. GOVERNING LAW. This Agreement is governed by Texas law.
- G. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- H. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. GOVERNMENTAL FUNCTIONS. The parties agree that the Buyer is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the Seller is entering into this Agreement as a governmental entity performing a governmental function.
- K. COMPLIANCE WITH THE LAWS. The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement, including federal laws. Any applicable laws are deemed to be incorporated to this Contract of Sale.
- L. FORCE MAJEURE. There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- M. SUCCESSORS AND ASSIGNS. This Agreement is binding on the Seller and the Buyer, and the Buyer's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- N. THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries for this Agreement.
- O. REPRESENTATIONS AND WARRANTIES. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- P. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.

[Signatures begin on the following page]

EXECUTED by City the ____ day of _____, 2020.

BUYER:

CITY OF EL PASO, TEXAS

By: _____
Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Omar A. De La Rosa
Assistant City Attorney

Samuel Rodriguez, P.E.
City Engineer

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2020,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

EXECUTED by Seller the ____ day of _____, 2020.

SELLER:

Annlynn Corporation

By: _____
Terry L. Milligan
Treasurer

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2020,
by **Terry L. Milligan**, as **Treasurer** of the **Seller**.

Notary Public, State of Texas

My commission expires:

EXHIBIT "A"
SURVEY

[insert property description or survey and metes and bounds]

EXHIBIT "B"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

Effective Date: , 2020

Grantor: **Annlynn Corporation**

Grantor's Mailing Address: PO Box 538
Camarillo, CA 93011

Grantee: **City of El Paso, Texas**, a Texas home-rule municipality

Grantee's Mailing Address: City of El Paso
P.O Box 1890
El Paso County
El Paso, Texas 79950-1890

PROPERTY (INCLUDING ANY IMPROVEMENTS):

A PORTION OF A 60 FOOT QUITCLAIMED ROADWAY AND A PORTION OF LOTS 239 AND 240, SOUTH PARKLAND ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, also commonly known as 9566 Railroad Drive, El Paso, Texas, such property more particularly described in the attached survey and metes and bounds as **Attachment "A"** of this deed.

CONSIDERATION

\$10.00 and other valuable consideration, receipt of which is hereby acknowledged.

EXCEPTIONS TO CONVEYANCE

Any easements and encumbrances of record prior to the Effective Date.

RESERVATIONS TO CONVEYANCE

NONE

WARRANTY AND CONVEYANCE:

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance, GRANTS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever. The GRANTOR binds

the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the Property to the GRANTEE and the GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED by Grantor the ___ day of _____, 2020.

GRANTOR:

Annlynn Corporation

By: _____
Terry L. Milligan

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me this ____ day of _____, 2020, by Terry L. Milligan, in its capacity as Treasurer, on behalf of Grantor.

Notary Public in and for the State of Texas

ATTACHMENT "A"

Survey and Metes and Bounds

**EXHIBIT C
BILL OF SALE**

Annlynn Corporation (“Seller”), in consideration of Ten and 00/00 Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign, transfer, quit claim and set over to the City of El Paso, Texas (“Buyer”), all of the personal property described on Attachment “A-1” attached hereto and made a part hereof (the “Personal Property”) located at, on and about the property located on 9566 Railroad Drive, El Paso, Texas, such property being the same property that was conveyed by the Seller to the Buyer through a General Warranty Deed executed by the Seller on _____ (the “Property”).

TO HAVE AND TO HOLD the Personal Property unto Buyer and Buyer's successors and assigns forever.

Signed this the _____ day of _____, 2020.

SELLER: Annlynn Corporation

By: _____
Terry L. Milligan
Treasurer

ATTACHMENT "A-1"

"Personal Property" means all (i) furnishings, furniture, appliances, equipment, machinery and other personal property owned by Seller and located on or used in connection with the ownership, maintenance or operation of the Land or the Improvements to which Buyer has given notice that it desires to take title, which are not being relocated in accordance with the relocation details contemplated in the Contract of Sale; (ii) all plans and specifications, if any, in the possession of Seller which were prepared in connection with the construction or renovation of any of the Improvements; and (iii) all licenses, permits and warranties, if any, for the benefit of Seller, now in effect with respect to any portion of the Land or the Improvements.

(Parcel 3)
METES AND BOUNDS DESCRIPTION

Description of a portion of a 60 foot Quitclaimed Roadway and a portion of Lots 239 and 240, South Parkland Addition, in the City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing brass disk city monument at the centerline intersection of Railroad Dr. and Threadgill Ave. from which a found bolt at the centerline intersection of McCombs St. and Threadgill Ave. bears South 89°58'45" West a distance of 1710.56 feet; Thence along the centerline of Threadgill Ave., North 89°58'45" East a distance of 60.00 feet to a point; Thence leaving said centerline South 00°45'53" East a distance of 30.00 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Threadgill Ave. for the "TRUE POINT OF BEGINNING"

Thence along said right of way line North 89°58'45" East a distance of 864.93 feet to a set ½" rebar with cap marked TX 5152 on the westerly right of way line of the Southern Pacific Railroad;

Thence along said right of way line South 28°24'45" West a distance of 746.69 feet to a point;


Thence leaving said right of way line North 61°35'15" West a distance of 235.20 feet to a found x chiseled on concrete;

Thence South 70°38'32" West a distance of 168.49 feet to a point on the easterly right of way line of Railroad Dr.;

Thence along said right of way line 121.04 feet along the arc of a curve to the left which has a radius of 1348.43 feet a central angle of 05°08'34" a chord which bears North 20°01'09" West a distance of 121.00 feet to a set ½" rebar with cap marked TX 5152;

Thence along said right of way line 500.25 feet along the arc of a curve to the right which has a radius of 1337.00 a central angle of 21°26'15" a chord which bears North 11°52'48" West a distance of 497.33 feet to the "TRUE POINT OF BEGINNING" and containing 386,976 Square Feet or 8.8838 Acres of land more or less.

NOTE: A Plat of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152
Job# i411-34



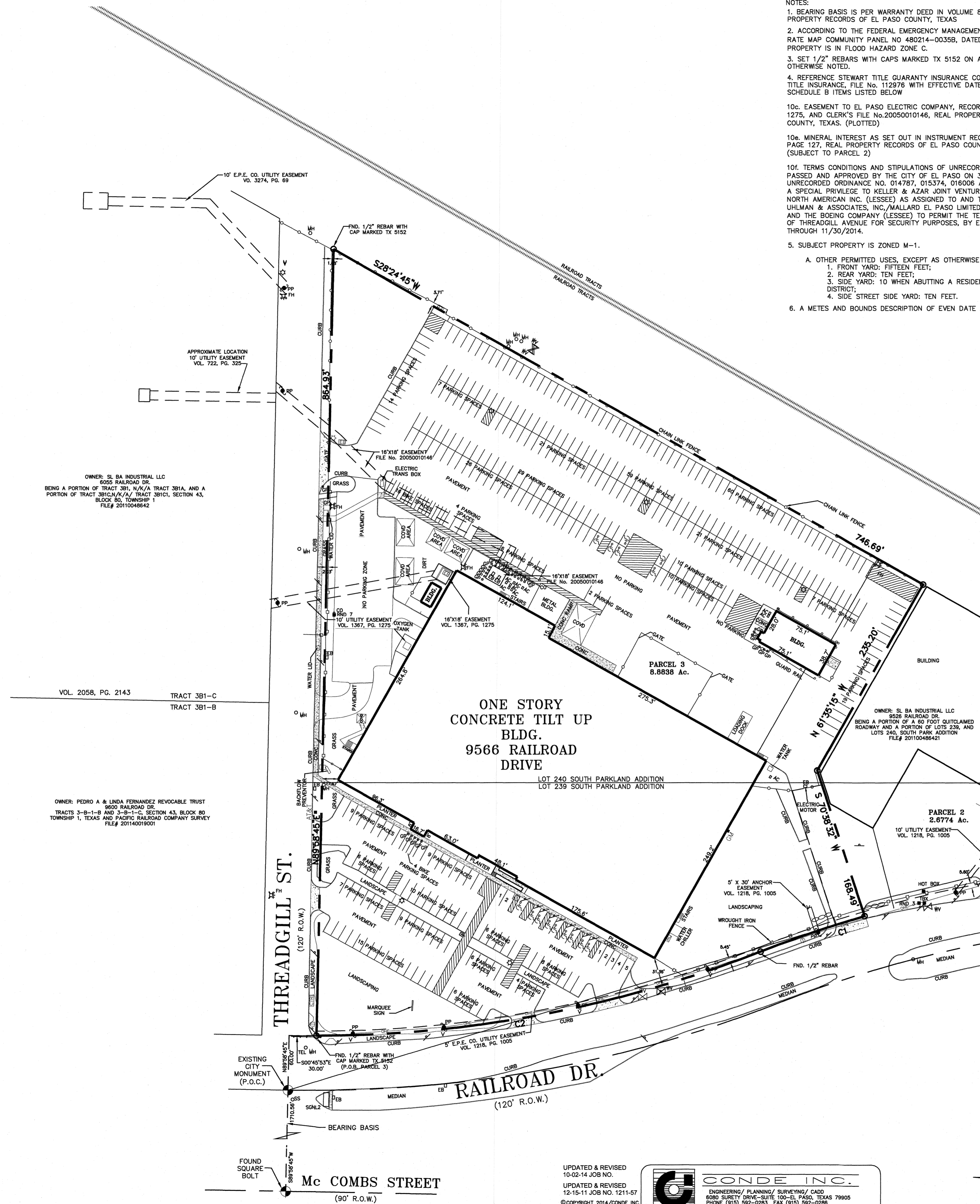
PLAT OF SURVEY

PARCEL 3: BEING A PORTION OF A 60 FOOT QUITCLAIMED ROADWAY AND A PORTION OF LOTS 239, AND LOTS 240, SOUTH PARKLAND ADDITION. CITY OF EL PASO EL PASO COUNTY, TEXAS. Containing Approximately : 8.8838± Acres

- NOTES:
1. BEARING BASIS IS PER WARRANTY DEED IN VOLUME 863, PAGE 1049, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS
 2. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO 480214-00358, DATED OCTOBER 15, 1982 THIS PROPERTY IS IN FLOOD HAZARD ZONE C.
 3. SET 1/2" REBARS WITH CAPS MARKED TX 5152 ON ALL CORNERS UNLESS OTHERWISE NOTED.
 4. REFERENCE STEWART TITLE GUARANTY INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE, FILE No. 112876 WITH EFFECTIVE DATE OF OCTOBER 30, 2011. SCHEDULE B ITEMS LISTED BELOW
 - 10c. EASEMENT TO EL PASO ELECTRIC COMPANY, RECORDED IN VOLUME 1367, PAGE 1275, AND CLERK'S FILE No.20050010146, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS. (PLOTTED)
 - 10e. MINERAL INTEREST AS SET OUT IN INSTRUMENT RECORDED IN VOLUME 168, PAGE 127, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS. (SUBJECT TO PARCEL 2)
 - 10f. TERMS CONDITIONS AND STIPULATIONS OF UNRECORDED ORDINANCE NO. 013980 PASSED AND APPROVED BY THE CITY OF EL PASO ON 3/16/1999, AS AMENDED BY UNRECORDED ORDINANCE NO. 014787, 015374, 016006 AND 17308, WHICH GRANTED A SPECIAL PRIVILEGE TO KELLER & AZAR JOINT VENTURE, INC. (OWNER) AND BOEING NORTH AMERICAN INC. (LESSEE) AS ASSIGNED TO AND TRANSFERRED TO WES UHLMAN & ASSOCIATES, INC./MALLARD EL PASO LIMITED PARTNERSHIP (OWNERS) AND THE BOEING COMPANY (LESSEE) TO PERMIT THE TEMPORARY USE OF A PORTION OF THREADGILL AVENUE FOR SECURITY PURPOSES, BY EXTENDING THE TERM THROUGH 11/30/2014.
 5. SUBJECT PROPERTY IS ZONED M-1.
 - A. OTHER PERMITTED USES, EXCEPT AS OTHERWISE SPECIFIED IN THIS PLAT.
 1. FRONT YARD: FIFTEEN FEET;
 2. REAR YARD: TEN FEET;
 3. SIDE YARD: 10 WHEN ABUTTING A RESIDENTIAL OR APARTMENT DISTRICT;
 4. SIDE STREET SIDE YARD: TEN FEET.
 6. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT.

SYMBOL LEGEND	
	FOUND CITY MONUMENT
	CALCULATED POINT (NOT SET)
	MAN HOLE
	WATER VALVE
	ELECTRIC PULL BOX
	POWER POLE
	GUY WIRE
	TRAFFIC CONTROL BOX
	SGNL PST/MAST
	TRAFFIC SIGN
	TELEPHONE RISER
	GUARD POST
	LIGHT POST
	FIRE HYDRANT
	GAS METER
	FLAG POLE
	AIR CONDITIONER
	TELEPHONE MAN HOLE
	TELEPHONE BOX
	AT&T BOX
	CHAIN LINK FENCE
	WROUGHT IRON FENCE
	OVER HEAD ELECTRIC
	ROCK WALL
	CONCRETE

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	1348.43'	121.04'	60.56'	121.00'	N20°01'09"W	05°08'34"
C2	1337.00'	500.25'	253.08'	497.33'	N11°52'48"W	21°26'15"



CONDE INC.
 ENGINEERING / PLANNING / SURVEYING / CAD
 8080 SURETY DRIVE - SUITE 100 - EL PASO, TEXAS 79905
 PHONE (915) 592-0283 FAX (915) 592-0288

SCALE: 1" = 60'



CERTIFICATION
 RON R. CONDE REGISTERED PROFESSIONAL LAND SURVEYOR REGISTRATION NO. 5152 IN THE STATE OF TEXAS, DOES HEREBY CERTIFY TO TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, SL BA INDUSTRIAL, LLC AND STEWART TITLE GUARANTY COMPANY
 THIS PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A, CONDITION II LAND TITLE SURVEY. IN EFFECT ON THE DATE OF THIS CERTIFICATION AND EXCEPT AS SHOWN THERE ARE NO WRITABLE EASEMENTS OR RIGHTS OF WAY OF WHICH THE UNDERSIGNED HAS BEEN ADVISED, (D) THERE ARE NO OBSERVABLE ABOVE GROUND ENCROACHMENTS EITHER (1) BY IMPROVEMENTS ON THE LAND OR (2) BY THE IMPROVEMENTS ON ADJACENT PROPERTIES, STREET OR ALLEYS UPON THE LAND. THE PARTS LISTED IN THE FIRST PARAGRAPH OF THIS CERTIFICATE ARE ENTITLED TO RELY ON THE SURVEY AND THIS CERTIFICATE AS BEING TRUE AND ACCURATE.
 THE UNDERSIGNED HAS RECEIVED AND EXAMINED A COPY OF STEWART TITLE GUARANTY COMPANY COMMITMENT NO. 112876 AND THE LOCATION OF ANY WATER SHOWN THEREON, TO THE EXTENT IT CAN BE LOCATED, HAS BEEN SHOWN ON THIS SURVEY WITH THE APPROPRIATE RECORDING REFERENCE.
 RON R. CONDE
 TEXAS REGISTRATION NO. 5152