

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

DEPARTMENT: Planning and Inspections, Planning Division

AGENDA DATE: Introduction: October 15, 2019
Public Hearing: October 29, 2019

CONTACT PERSON/PHONE: Philip F. Etiwe, (915) 212-1533, etiwepf@elpasotexas.gov
Armida R Martinez, (915) 212-1605, martinezar@elpasotexas.gov

DISTRICT(S) AFFECTED: District 8

SUBJECT:

An ordinance granting a special privilege license to Summit Indigo EP LLC. to permit the construction, installation, maintenance, use, and repair of a surface encroachment of two (2) new planter beds over portions of city right-of-way along Main and Kansas streets adjacent to the property located at 325 N. Kansas street, El Paso, Texas Subject Property: 325 N. Kansas Property Owner: Summit Indigo EP, LLC. NESV2019-00008 District 8

BACKGROUND / DISCUSSION:

NESV2019-00008, Summit Indigo EP LLC. requests to construct sidewalk planter beds along corner of Main Street and Kansas Street. The sidewalk planter total area of encroachment is 21 ft. by 3 ft. (63 ft.) along Main St. and 30 ft. by 3 ft. (90 sf.) along Kansas Street with a total encroachment area of 153 square feet. The encroachment will consist of terracotta pots, custom concrete vessels and concrete planter levelers.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

This item was distributed to the Development Coordinating Committee (DCC) on July 25, 2019.

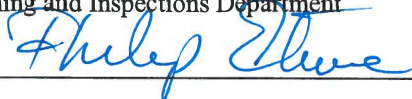
This final License Agreement has been drafted in accordance to staff comments. No subsequent adverse comments were received.

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Philip F. Etiwe, Director
Planning and Inspections Department



APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO SUMMIT INDIGO EP, LLC TO PERMIT THE CONSTRUCTION, INSTALLATION, MAINTENANCE, USE, AND REPAIR OF A SURFACE ENCROACHMENT OF TWO (2) NEW PLANTER BEDS OVER PORTIONS OF CITY RIGHT-OF-WAY ALONG MAIN AND KANSAS STREETS ADJACENT TO THE PROPERTY LOCATED AT 325 N. KANSAS STREET, EL PASO, TEXAS; SETTING THE LICENSE TERM FOR A TERM OF FIFTEEN YEARS (15) WITH ONE (1) RENEWABLE FIFTEEN (15) YEAR TERM.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. DESCRIPTION

The City of El Paso (hereinafter called "City") hereby grants a Special Privilege License (hereinafter called "License") to **SUMMIT INDIGO EP, LLC** (hereinafter referred to as the "Grantee"), to permit the construction, installation, future maintenance, use and repair of a surface encroachment of two (2) new planter beds encroaching sixty-three (63) square feet along Main Street and encroaching ninety (90) square feet along Kansas Street for a total of One hundred fifty-three (153) square feet area of encroachment onto the public right-of-way over portions adjacent to the property located at 325 N. Kansas Street as shown in *Exhibit "A,"* which is made a part hereof for all purposes (hereinafter referred to as "License Area").

SECTION 2. LICENSE AREA

The surface rights granted herein over portions of rights-of-way along Main and Kansas Streets and legally described as a portion of Block 10, Mills Addition, City of El Paso, El Paso County, Texas, to permit the construction, installation, future maintenance, use and repair of aerial encroachment of a vehicular crossing is more particularly shown in *Exhibit "B,"* which is made a part hereof for all purposes (hereinafter referred to as "License Area").

SECTION 3. USE OF PROPERTY

This License is granted solely for the encroachment onto City rights-of-way, which includes the requirement and responsibility for maintenance, construction, use and repair of two (2) planter beds which will serve as a base for different type of terracotta pots, custom concrete vessels and concrete planter levelers which will consist of various plants. Grantee agrees to maintain the License Area in proper working condition and in accordance with all applicable City specifications, which includes restoration to allow and not impede the City's use of the right-of-way for pedestrian and vehicular access.

Except for the waiver of fees as provided herein, this Special Privilege License shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance. Grantee, at no cost to the City, shall clean up all litter and debris within the License Area, leaving City rights-of-way in a clean and orderly condition at all times.

Ordinance No. _____

19-1007-2484 / 915211

Summit Indigo EP, LLC-Special Privilege

RTA

This License shall not permit or be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way. Except for maintenance of two (2) planter beds as provided herein, Grantee shall not construct any additional improvements, or make any additions or alterations on, above, or below the City right-of-way, without prior written consent of the El Paso City Manager or designee.

SECTION 4. REGULATION OF CONSTRUCTION

The work done by Grantee in installation, replacing, repairing, reconstructing, or maintaining the two (2) planter beds shall be subject to and governed by all the applicable laws, rules and regulation of the City, State, and Federal laws that are applicable to the construction, maintenance and repair of two (2) planter beds. Work done in connection with the repair and maintenance of the two (2) planter beds is subject to the continuing police power of the City.

In the event that Grantee desires to reconstruct, repair, maintain, or replace the two (2) planter beds built hereunder, Grantee shall obtain all applicable permits required by the City. Where proposed, any excavation or trenching and other construction in the License Area shall be so carried out as to interfere as little as practical with the surface use of the License Area in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the police and regulatory powers necessary to provide for public convenience.

Grantee covenants and agrees that Grantee shall, at Grantee's own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee, Grantee's employees, contractors, agents or assigns damage so that such repair of the water lines, storm and sanitary sewer lines and water meters shall comply with any applicable City codes.

The City shall have the power at any time to order and require Grantee to remove and abate any portion of the License Area that is dangerous to life or property; provided however that the City agree that the current Surface Encroachment is not a danger to life or property. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate the same, at the expense of Grantee. In the event City removes or abates the License Area as provided herein, Grantee shall not be compensated for the loss of the License Area, or revenues associated with the area, nor shall the City be liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the License Area.

SECTION 5. TERM

License Term for two (2) planter beds: In accordance with City Code, Subsection 15.08.120(E)(2)(p), this license authorizing the encroachment of the two (2) proposed flower beds, as more particularly identified in *Exhibit "B,"* shall be for a term of fifteen (15) years from the Effective Date hereof, unless terminated earlier as provided herein.

Grantee shall have the right to extend this Special Privilege for one (1) additional fifteen (15) year term upon written notice to the City. Grantee shall be required to pre-pay to the City the entire amount for the additional fifteen (15) year term as described in Section 8 of this License. If Grantee wishes the City to extend this License, Grantee shall submit a request in writing to the City no later

Ordinance No. _____

19-1007-2484 / 915211

Summit Indigo EP, LLC-Special Privilege

RTA

than three (3) months prior to the expiration date of this License. Should Grantee fail to submit such request for the extension of this License to the City as herein required, the License shall expire upon the expiration date.

SECTION 6. WORK DONE BY OTHERS

Throughout the term of this License, the City expressly reserves the right to install, repair, or reconstruct the City right-of-way used or occupied by Grantee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures.

The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under the License Area occupied by Grantee, and to change any curb or sidewalk or the street grade of any street. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee for any damages arising out of the performance of any work by the City, its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to the License Area. If the City requires Grantee to alter, change, adapt, remove, or relocate the two (2) planter beds due to imminent public safety concerns, or because of changes in the grade of the License Area or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for the City's consideration. If the City requires Grantee to remove, alter, change, adapt or relocate its two (2) planter beds or any portion thereof to enable any other entity or person, except the City, to use, or to use with greater convenience, the License Area, Grantee shall not be required to make such changes.

SECTION 7. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

Except as provided herein, the City reserves the right to use the surface or subsurface or airspace within the License Area for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said License Area occupied by Grantee provided such use does not interfere with Grantee's use of the License Area.

SECTION 8. CONSIDERATION

As consideration for this special Privilege License, the Grantee shall pay to the City ONE THOUSAND THREE HUNDRED THIRTY AND 00/100 DOLLARS (\$1,330.00) per year. The annual fee shall remain the same for a period of one year from the date of execution by the El Paso

Ordinance No. _____

19-1007-2484 / 915211

Summit Indigo EP, LLC-Special Privilege

RTA

City Council and shall be subject to change after each one year period the License remains in effect. The El Paso City Council retains the right to increase or decrease the annual fee specified in this License.

The City shall notify the Grantee of any proposed changes in fees as prescribed in Section 15 (Notice) of this License. This License is granted on the condition the Grantee pay for all costs associated with the Vehicular crossing, as well as all costs for the restoration of the License Area upon the termination of the License.

The first annual consideration shall be due and owing prior to the El Paso City Council approval of the License. The advance payment shall be in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the Planning and Inspections Department for remittance to the Financial Services Department. If the Special Privilege is disapproved by the El Paso City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action. Subsequent annual considerations shall be due the first day of the month in which the License has been granted by the El Paso City Council and remitted to the Financial Services Department.

ADVANCE PAYMENT OPTION:

Grantee shall have the option of pre-paying the City the entire amount for the FIFTEEN (15) year term of the License, prior to the execution of this License. The FIFTEEN (15) year amount is equal to SIXTEEN THOUSAND THREE HUNDRED FIFTY-THREE AND 16/100 DOLLARS (\$16,353.16). Said \$16,353.16 reflects the net present value (NPV) at a three percent (3%) discount rate of the annual fees for the entire FIFTEEN (15) year term of the License. Should Grantee select the advance payment option, Grantee shall not be entitled to a refund of the consideration paid to the City in case of cancellation by the City and/or the Grantee prior to the expiration of the 15 year term.

Both the annual consideration and the advance payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, ad valorem taxes, assessments for public improvements or any other assessments that may be enacted during the term of this License or any renewal, except hereinafter provided. The fee established in this section shall not be affected by any relocation of Grantee's two (2) planter bed encroachment required by the City pursuant to this License.

The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City Special Privileges and regulations.

SECTION 9. INSURANCE

Prior to commencement of any future construction, repairs, or maintenance operations during the term of this License, Grantee shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the term of this License. The City shall be named as an additional insured on all of the Grantee's insurance policies that are required by this License.

Ordinance No.

19-1007-2484 / 915211

Summit Indigo EP, LLC-Special Privilege

RTA

Failure to maintain insurance after receipt of notice of default and thirty (30) days to cure shall be a material breach of this License and a basis for termination of this License by the City.

Grantee shall obtain and provide a general liability policy with a one million dollar (\$1,000,000.00) limit, per occurrence, for personal injury, death, and property damage, with a minimum one million dollar (\$1,000,000.00) general aggregate limit. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. Such policy or certificate shall provide that the insurance cannot be canceled, modified or the amount of coverage changed without thirty (30) days prior written notice to the Financial Services Department, or ten (10) days prior written notice to the Financial Services Department for cancellation based on non-payment of insurance premiums. Grantee shall file a copy of the policy of insurance with Financial Services Department and the Planning and Inspections Department. If the policy is not kept in full force and effect throughout the term of this License, the License shall automatically become void.

SECTION 10. INDEMNITY

AS A CONDITION OF THIS LICENSE, GRANTEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS), FEES, FINES, PENALTIES, PROCEEDINGS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH OR PROPERTY DAMAGE, ARISING OUT OF, RESULTING FROM OR RELATED TO THE GRANTEE'S ACTIVITIES UNDER THIS LICENSE, INCLUDING ANY ACT OR OMISSION BY THE GRANTEE, THE GRANTEE'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, ALL, WITHOUT, HOWEVER, WAIVING GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, HEREAFTER, THE "DAMAGES". THIS INDEMNIFICATION SHALL APPLY EVEN WHERE SUCH DAMAGES DESCRIBED ABOVE INVOLVE THE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Grantee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. Grantee shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the Grantee may deem expedient, and defend or cause to be defended on behalf of the City all suites for damages, even if groundless, false or fraudulent brought because of such damages. Grantee shall pay all judgments finally establishing liability of the City in actions defended by Grantee pursuant

to this section, along with all attorneys' fees and costs incurred by the City, including interest accruing to the date of payment by Grantee and premiums on any appeal bonds.

The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. In addition, the Grantee shall promptly advise the City in writing of any claim or demand against the City or the Grantee known to the Grantee related to or arising out of the Grantee's activities under this License. **The City will not be responsible for any loss of or damage to the Grantee's property from any cause.**

SECTION 11. RIGHTS IN THE EVENT OF ABANDONMENT

As an express condition of this License, and not as a mere covenant, in the event Grantee abandons the two (2) planter beds or a portion thereof or ceases to use the two (2) planter bed encroachments for the purposes enumerated herein for any period of six (6) months or longer, other than the time elapsing between the Effective Date of this license and the completion of construction of the two (2) planter beds, this License shall automatically terminate, free and clear of any right, title, or interest in Grantee without the necessity of any notice to Grantee or any re-entry by the City.

SECTION 12. CANCELLATION

Grantee shall have the option to terminate this License at any time upon giving the City written notice thirty (30) days in advance of such termination. In addition, the City shall have the option to cancel and terminate this License for failure of Grantee to comply with any material provision or requirement contained in this agreement after thirty (30) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within thirty (30) days, if Grantee shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

The City shall have the option to terminate this License at any time upon giving the Grantee written notice thirty (30) days in advance of such termination, at no cost to the City and may take possession of the City right-of-way. All rights of the Grantee for the City right-of-way shall then be terminated. If the License is cancelled by the City, Grantee shall not be entitled to a refund of the paid annual consideration for the months remaining in the License year (the twelve month period beginning on the effective date of this License). If this License is cancelled due to Grantee's failure to cure any default under this License, abandonment or cancellation by Grantee, Grantee shall not be entitled to a refund of consideration paid to the City.

Upon termination of this License, prior to the expiration of the original term for any reason, Grantee shall remove Grantee's two (2) planter beds Encroachment located in the License Area at no cost to the City. Grantee shall restore the License Area to the reasonable satisfaction of the City Engineer and in accordance with City specifications, at Grantee's own cost and expense. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the License Area as required herein, the City may at its option restore the License Area and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

Ordinance No. _____

19-1007-2484 / 915211

Summit Indigo EP, LLC-Special Privilege

RTA

The City shall have the option to terminate this License at any time or assure that the property is maintained in good order throughout the term of the license upon written notice sixty (60) days in advance of such termination, at no cost to the City and may take possession of the City right-of-way. All rights of the Grantee for the City right-of-way shall then be terminated, unless upon termination of this License, the City agrees to the sale of the land to the Grantee, which upon payment of a fair valuation therefore, the land shall be and become the property of the Grantee.

SECTION 13. RECORDS

The El Paso City Council and the El Paso City Manager or designee shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of Grantee's rights under this License, including the construction, replacement, maintenance, and repair of the two (2) planter beds within the License Area. Obtaining all applicable City permits shall be deemed sufficient to keep such parties informed. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the structure(s) within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

SECTION 14. NOTICE

Any notice or communication required in the administration of this License shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY:	City of El Paso ATTN: City Manager 300 North Campbell Street El Paso, Texas 79901
with copy to:	City of El Paso ATTN: Planning and Inspections Department 811 Texas Avenue El Paso, Texas 79901
with copy to:	City of El Paso ATTN: Financial Services Department – Financial Accounting & Reporting 300 North Campbell Street El Paso, Texas 79901
GRANTEE:	Summit Indigo EP, LLC. ATTN: Bharat Bhakta 300 E. Main El Paso, Texas 79901

or to such other addresses as Grantee may designate from time to time by written notice as required in this paragraph.

SECTION 15. ASSIGNMENT

The rights granted by this License inure to the benefit of the Grantee, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assignable without the express advanced written consent of the El Paso City Manager.

SECTION 16. LEASING OR DEDICATION OF FACILITIES

Grantee, without the advanced written consent of the El Paso City Manager or designee, shall not lease the License Area to any non-grantee person or entity.

SECTION 17. ADMINISTRATION OF LICENSE

The El Paso City Manager or designee is the principal City official responsible for the administration of this License. Grantee recognizes that questions regarding the interpretation or application of this License shall be referred to the El Paso City Manager or designee.

SECTION 18. NO PROPERTY RIGHTS

Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, Grantee's assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

SECTION 19. LIENS AND ENCUMBRANCES

Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the License Area that arises or is alleged to have arisen from Grantee's use of the Licensed Area.

SECTION 20. RIGHT OF ENTRY AND INSPECTION

The City's authorized representative shall have the right to enter upon the licensed area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

SECTION 21. LAWS AND ORDINANCES

Grantee shall comply with all applicable statutes, laws, codes and ordinances applicable to Grantee's construction, repair, renovation, alteration or use of the License Area.

SECTION 22. ENTIRE AGREEMENT

This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

SECTION 23. SEVERABILITY

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

SECTION 24. LAWS GOVERNING/VENUE

The laws of the State of Texas shall govern the validity, performances, and enforcement of this license and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

SECTION 25. RESTRICTIONS AND RESERVATIONS

This License is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this license, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the License Area, Grantee shall have the right to terminate this License upon giving the City prior written notice of its intent to do so.

SECTION 26. EFFECTIVE DATE

The Effective Date of this License shall be the date last entered below. This License shall not take effect unless Grantee files Grantee's written acceptance with the City prior to the enactment of this License by the El Paso City Council.

ADOPTED this ____ day of _____, 2019

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura Prine
City Clerk

Ordinance No. _____
19-1007-2484 / 915211
Summit Indigo EP, LLC-Special Privilege
RTA

APPROVED AS TO FORM:

Russel T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Philip F. Etiwe
Philip F. Etiwe, Director
Planning and Inspections Department

ACCEPTANCE

The above instrument, with all conditions thereof, is here by accepted this 25 day of September, 2019.

GRANTEE:

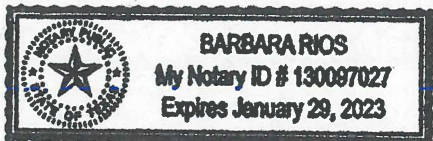
Summit Indigo EP, LLC.

By: Priya Bhakta Naik, as _____

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 25 day of September, 2019, by Priya Bhakta as Grantee.



Barbara Rios
Notary Public, State of Texas

Barbara Rios
Notary's Printed or Typed Name

January 29, 2023
My Commission Expires

Ordinance No. _____

19-1007-2484 / 915211

Summit Indigo EP, LLC-Special Privilege

RTA

EXHIBIT "A"

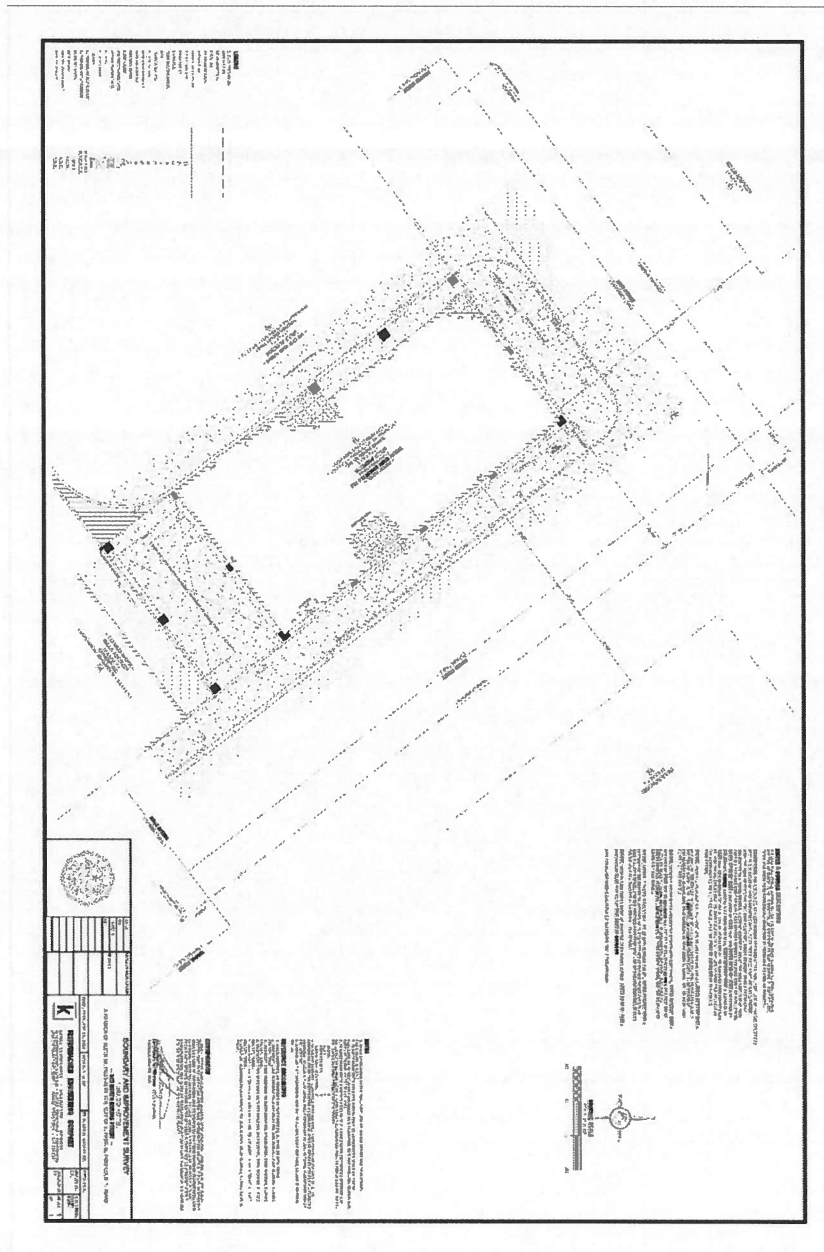


EXHIBIT "B"

METES & BOUNDS DESCRIPTION

A 0.1612 ACRE PARCEL SITUATE WITHIN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS AS A PORTION OF BLOCK 10, MILLS ADDITION, AS RECORDED IN PLAT RECORDS, EL PASO COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT A CITY MONUMENT FOUND AT THE MONUMENT LINE OF KANSAS STREET (70 FEET PUBLIC RIGHT-OF-WAY) AND MILLS AVENUE (70 FEET PUBLIC RIGHT-OF-WAY); **THENCE**, WITH THE MONUMENT LINE OF SAID KANSAS STREET, **NORTH 37°37'00" WEST** A DISTANCE OF **305.00** FEET TO A POINT; **WHENCE**, A CITY MONUMENT FOUND AT THE MONUMENT LINE OF MAIN AVENUE (70 PUBLIC RIGHT-OF-WAY) AND STANTON STREET (70 PUBLIC RIGHT-OF-WAY) BEARS, **NORTH 37°37'00" WEST** A DISTANCE OF **45.00** FEET AND **SOUTH 52°23'00" WEST** A DISTANCE OF **330.00** FEET; **THENCE**, LEAVING SAID MONUMENT LINE, **SOUTH 52°23'00" WEST** A DISTANCE OF **45.00** FEET TO A CHISELED "X" SET AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF SAID KANSAS STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MAIN AVENUE FOR THE NORTHEAST CORNER OF THIS PARCEL AND THE **POINT OF BEGINNING** OF THIS PARCEL DESCRIPTION;

THENCE, WITH THE WESTERLY RIGHT-OF-WAY LINE OF SAID KANSAS STREET, **SOUTH 37°37'00" EAST** A DISTANCE OF **130.00** FEET TO CHISELED "X" IN CONCRETE SET AT THE NORTHEAST CORNER OF A PORTION OF BLOCK 10, MILLS ADDITION, AS CONVEYED TO CATHCART LLC., RECORDED AS INSTRUMENT NO. 20060000693, DEED RECORDS, EL PASO COUNTY, TEXAS, FOR THE SOUTHEAST CORNER OF THIS PARCEL;

THENCE, WITH THE NORTHERLY BOUNDARY LINE OF SAID CATHCART PARCEL, **NORTH 52°23'00" WEST** A DISTANCE OF **54.00** FEET TO CONCRETE NAIL SET AT THE SOUTHEAST CORNER OF A PORTION OF BLOCK 10, MILLS ADDITION, AS CONVEYED TO SULLIVAN CROSBY TRUST, RECORDED AS INSTRUMENT NO. 20120082731, DEED RECORDS, EL PASO COUNTY, TEXAS, FOR THE SOUTHWEST CORNER OF THIS PARCEL;

THENCE, WITH THE EASTERLY BOUNDARY LINE OF SAID SULLIVAN PARCEL, **NORTH 37°37'00" WEST** A DISTANCE OF **130.00** FEET TO CHISELED "X" IN CONCRETE SET AT THE NORTHEAST CORNER OF SAID SULLIVAN PARCEL AND THE SOUTHERLY RIGHT-OF-WAY LINE OF THE AFOREMENTIONED MAIN AVENUE, FOR THE NORTHWEST CORNER OF THIS PARCEL;

THENCE, WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MAIN AVENUE, **SOUTH 52°23'00" EAST** A DISTANCE OF **54.00** FEET TO THE **TRUE POINT OF BEGINNING**

SAID PARCEL CONTAINS 0.161 ACRES (7,020 SQUARE FEET) MORE OR LESS.

Designed by

MAMCIT'S

Anterior	PLANTSCAPE
Desert	XERISCAPE



Page 13 of 13

MEMORANDUM

DATE: October 7, 2019

TO: The Honorable Mayor and City Council
Tomàs Gonzalez, City Manager

FROM: Armida R. Martinez, Senior Planner

SUBJECT: NESV2019-00008

NESV2019-00008, Summit Indigo EP LLC. requests to construct sidewalk planter beds along corner of Main Street and Kansas Street. The sidewalk planter total area of encroachment is 21 ft. by 3 ft. (63 ft.) along Main St. and 30 ft. by 3 ft. (90 sf.) along Kansas Street with a total encroachment area of 153 square feet. The encroachment will consist of terracotta pots, custom concrete vessels and concrete planter levelers.

This item was distributed to the Development Coordinating Committee (DCC) on July 25, 2019. This final License Agreement has been drafted in accordance to staff comments. No subsequent adverse comments were received.

Property Owner: Summit Indigo EP LLC.
Applicant: Summit Indigo EP LLC.

Attachments: Distribution Packet



Planning & Inspections Department

Mayor
Dee Margo

City Council

District 1
Peter Svarzbein

District 2
Alexandra Anello

District 3
Cassandra Hernandez

District 4
Dr. Sam Morgan

District 5
Isabel Salcido

District 6
Claudia Ordaz Perez

District 7
Henry Rivera

District 8
Cissy Lizarraga

City Manager
Tommy Gonzalez

To: Development Coordinating Committee (DCC)
CC: Russel Abeln, Assistant City Attorney
Omar DeLa Rosa, Assistant City Attorney
From: Armida Martinez, Planner
Date: July 25, 2019
Subject: Case Distribution – New Special Privilege Application

Attached for your review and comment is a special privilege for request for consideration. Please submit comments via Accela and/or email, on or before August 1, 2019 to Armida Martinez at martinezar@elpasotexas.gov.

NESV2019-00008 A request for the surface encroachment is for two (2) new planter beds along the corner of Main and Kansas Streets. The planter bed along Main Street will measures 21 ft. by 3 ft. and 30 ft. by 3 ft. along Kansas street for a total surface encroachment of 153 sq. ft. The planter beds will consist of terracotta pots / custom concrete vessels and concrete planter levelers. The planters will consists of various plants.

The special privilege license will be for a term of fifteen (15) years with the option to renew for one (1) additional five (15) year terms.

Applicant: Summit Idogo (Hotel Indigo)
Representative: Chris Fisher
Zoning: C-5
District: 8
Staff Contact: Armida Martinez (915) 212-1605, martinezar@elpasotexas.gov

Attachments: NESV2019-00008

Planning & Inspections Department
Philip F. Etiwe, Director
City 3 | 801 Texas Ave | El Paso, Texas 79901

"Delivering Outstanding Services"

Priya Nair
Summit Indigo EP, LLC
325 N. Kansas
El Paso, Texas 79901

July 18, 2019

Armida R. Martinez
Senior Planner
City of El Paso | Planning and Inspections
City 3 | 801 Texas
El Paso, Texas 79901

Dear Mrs. Martinez,

Enclosed you will find the Special Privilege Permit & Licenses Application and the required documents requested from Planning and Inspections Department City of El Paso, Texas. The application is for the surface encroachment of sidewalk planters along corner of main street and Kansas Street. The Sidewalk planter total area of encroachment is 21 ft by 3 ft. (63 sf) along Main St. & 30 ft by 3 ft (90 sf) along Kansas St. with a total encroachment on both sides of 153 square feet.

The encroachment will consist of terracotta pots/ custom concrete vessels and concrete planter levelers consisting of the following plants:

- Agave Ovatifolia "Frosty Blue"
- Agave Parvi "Truncata"
- Agave "Slendrida"
- Agave "Victoria Regina"
- Agave "Neomexicana"
- Mangave "Mars Attacks"
- Mangave "Macho Mocha"
- Manfreda Native Tex
- Candelila wax plant euphorbia
- Euphorbia "Red Lady Slipper"
- Wholley Stemodia
- Nessela "Feather grass"
- Graptoveria "Ghost Plant"
- Secreteria "Purple Heart"
- Opuntia
- Echinocerus "Blue Barrel Cactus"
- Ferocactus "Fish hook"
- Mamilarin "clumpin cacti"
- Ralanchoe "hardy perennial"
- Mexican Chocolate Plant
- Daisylirion Wheelri "Blue Sotel"
- Cycad Dioon "Edule"
- Purslain "Puerto Rican"
- Ruellia "Mexican Petunim"
- Nelina Nelsonii

If you have any questions about this submission or if additional information is necessary, you may reach me at (970) 306-5508 or p_bhakta@hotmail.com. Thank you in advance for your attention.

Regards,

Priya Nair

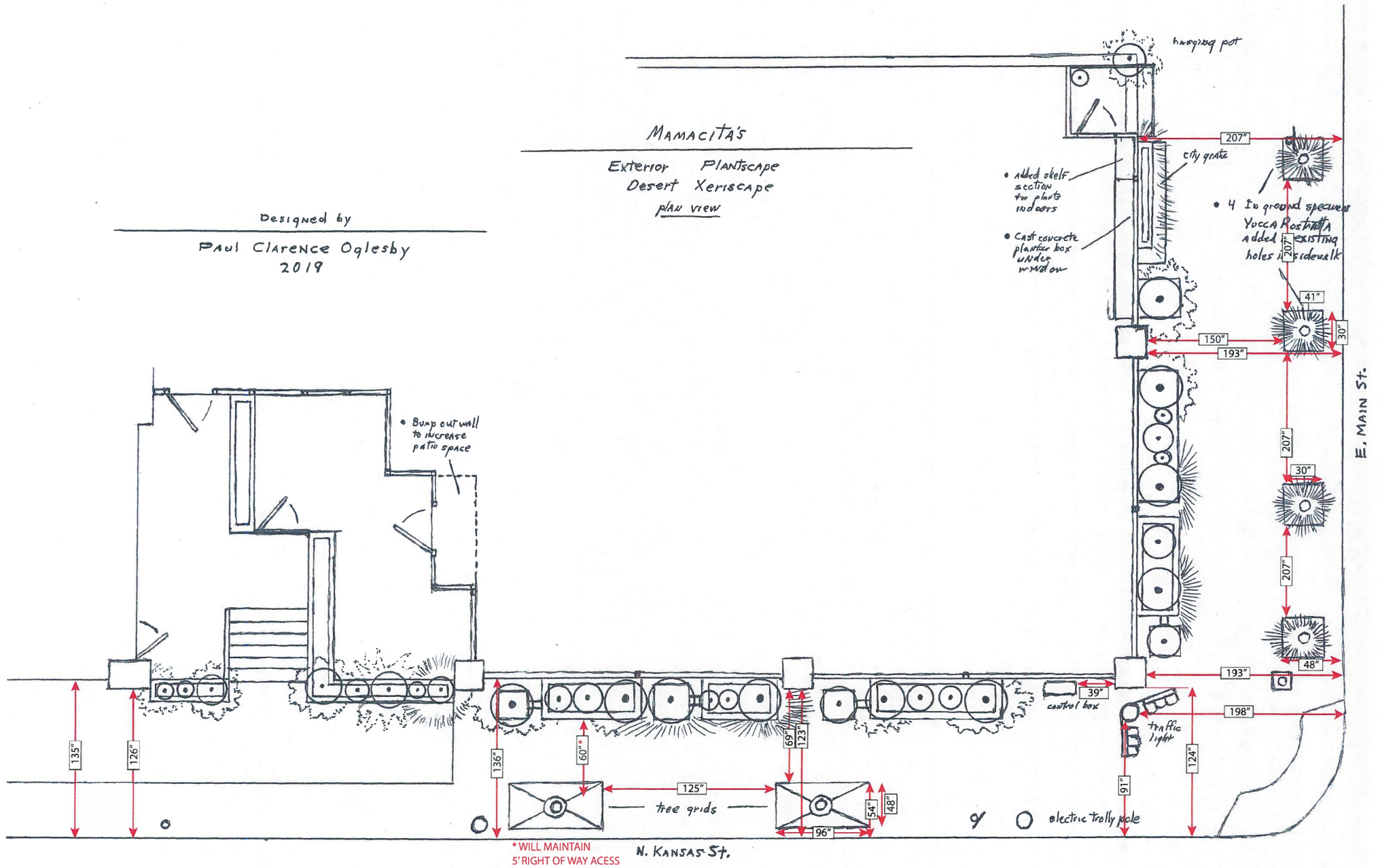


7/22/2019

Enclosure: Special Privilege Application, 325 N Kansa Street Survey, Indigo Insurance, Indigo Landscape Plans.

Designed by
Paul Clarence Oglesby
2019

MAMACITA'S
Exterior Plantscape
Desert Xeriscape
plan view



MAMACITA'S

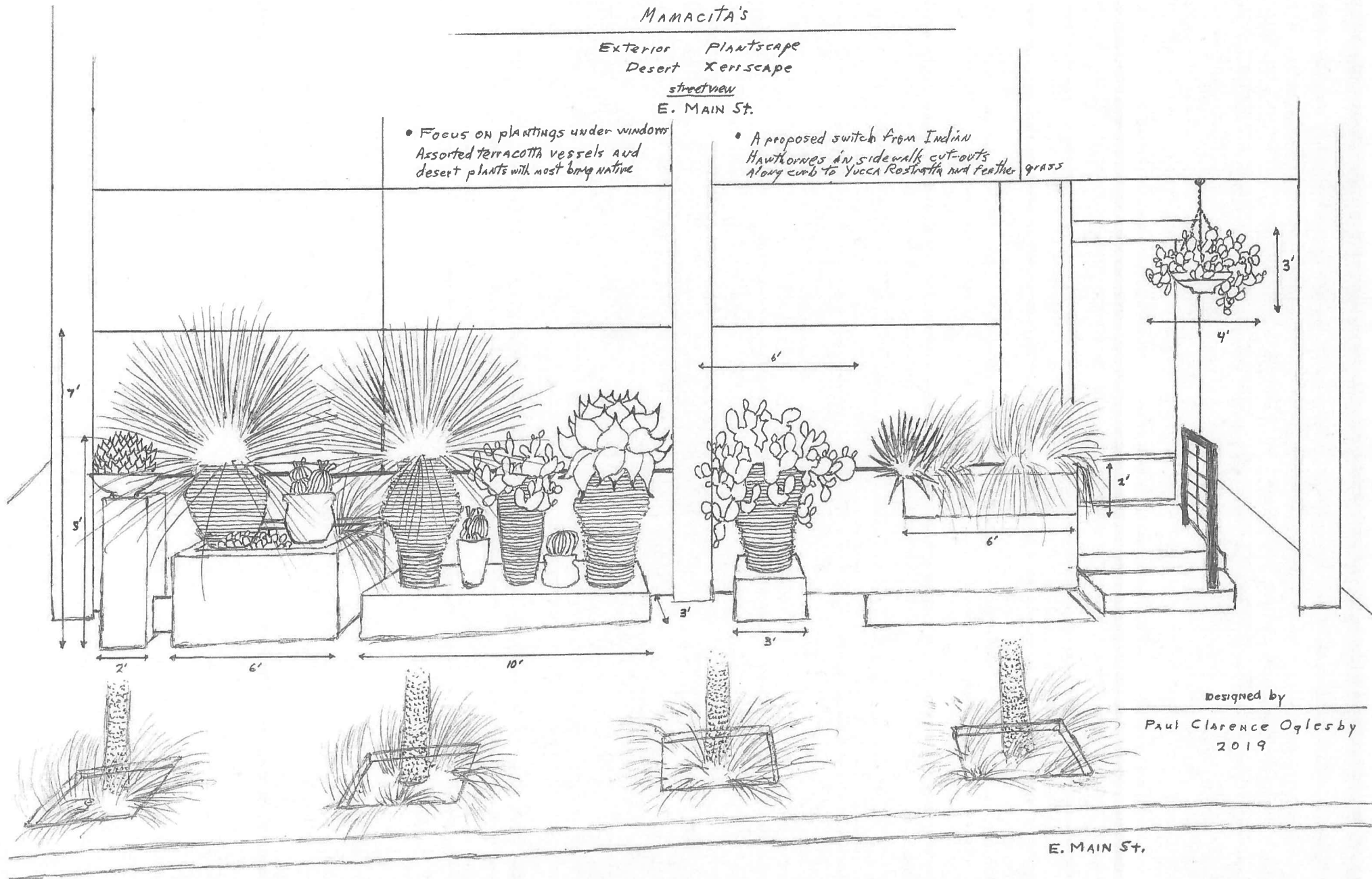
Exterior PLANTSCAPE
Desert XERISCAPE

street view

E. MAIN ST.

- Focus on plantings under windows
Assorted terracotta vessels and
desert plants with most being native

- A proposed switch from Indian
Hawthornes in sidewalk cut-outs
Along curb to Yucca Rostrata and feather grass



Designed by

Paul Clarence Oglesby
2019

E. MAIN ST.

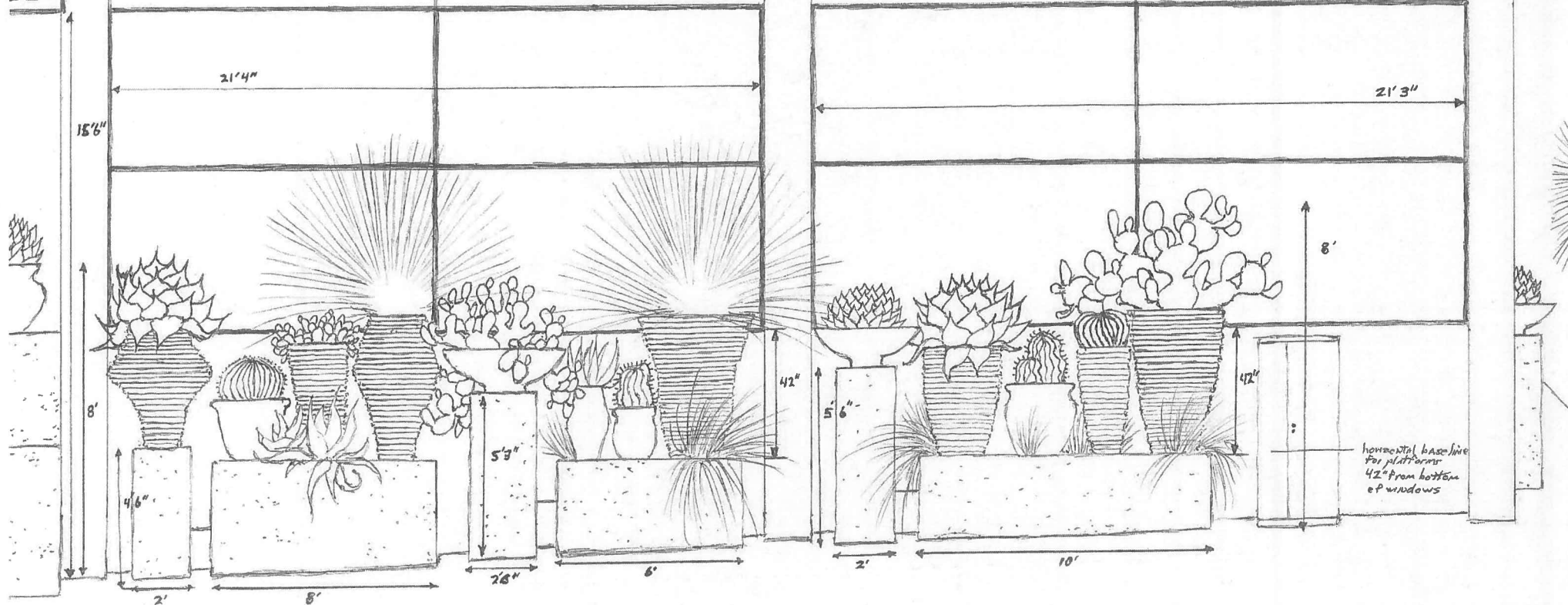
MAMACITA'S

Exterior PLANTScape
Desert XERIScape

streetview

N. KANSAS ST.

- Focus on plantings under windows
- Assorted terracotta vessels and desert plants



- Platforms step at 3' away from the wall
some larger pots may extend out from the
edge of the platform/planters by a few
inches

Designed by

Paul Clarence Oglesby
2019

N. KANSAS ST.

NESV2019-00008

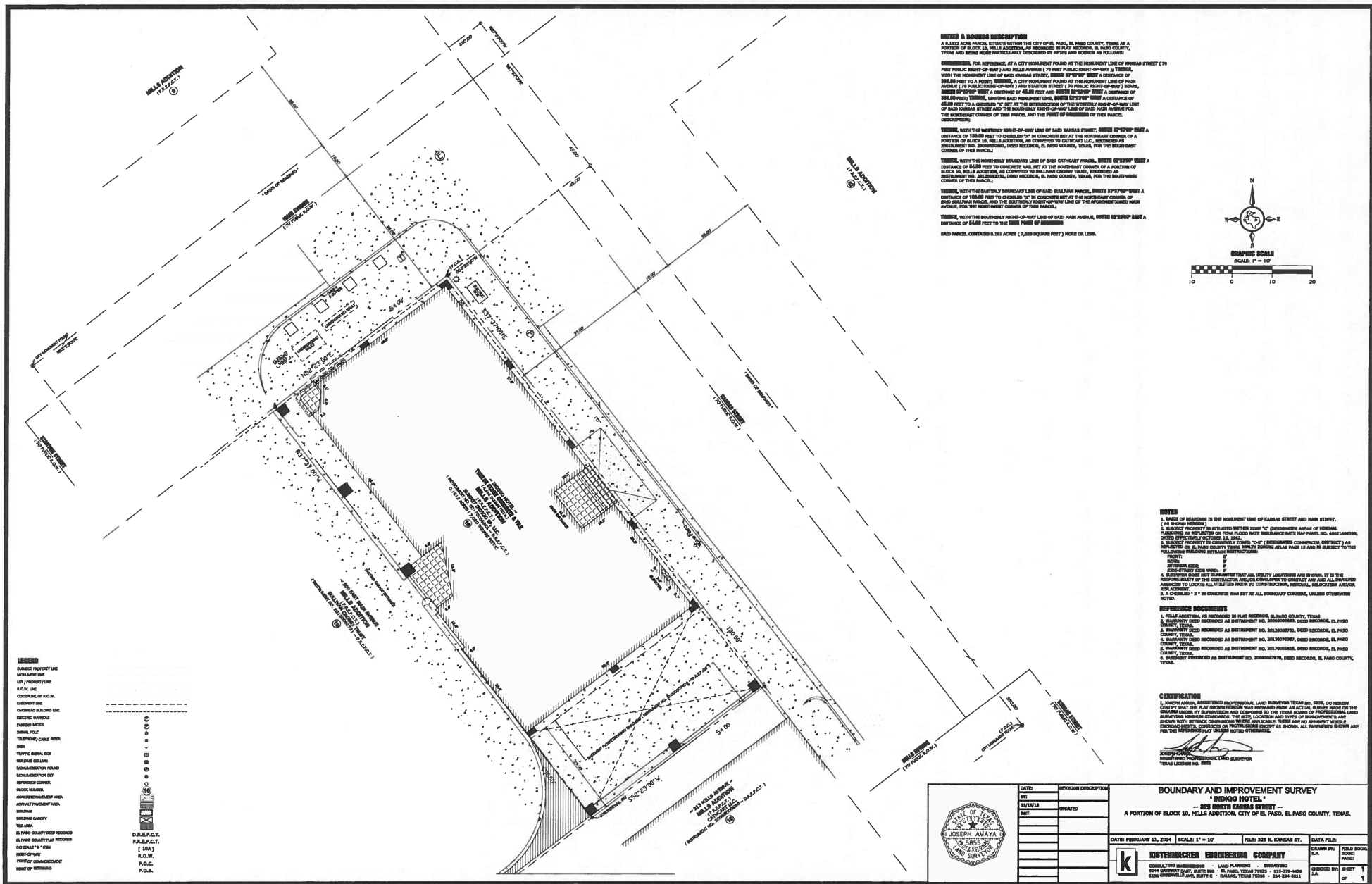


This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargement of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Planning & Inspection Department Planning Division makes no claim to its accuracy or completeness.



0 15 30 60 90 120 Feet





ENTER A BOUNDARY DESCRIPTION

A 3.642 ACRE PARCEL, SITUATE WITHIN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS AS A PORTION OF BLOCK 10, HELLS ADDITION, AS RECORDED IN PLAT RECORDS, EL PASO COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY NOTES AND BOUNDARY AS FOLLOWS:

COMMENCEMENT, FOR REFERENCE, AT A CITY MONUMENT POULD AT THE NORTHEAST CORNER OF KANSAS STREET (75 FEET PUBLIC RIGHT-OF-WAY) AND HELLA AVENUE (75 FEET PUBLIC RIGHT-OF-WAY) IN TRIMBLE, WITH THE MONUMENT LINE OF SAID HELLA AVENUE, BEING 87°27'00\"/>

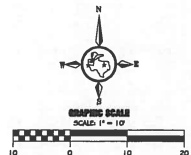
TERMINAL, WITH THE WESTERLY RIGHT-OF-WAY LINE OF SAID KANSAS STREET, BEING 87°27'00\"/>

TERMINAL, WITH THE SOUTHERLY BOUNDARY LINE OF SAID CATHART PARCEL, BEING 87°27'00\"/>

TERMINAL, WITH THE SOUTHERLY BOUNDARY LINE OF SAID KALLANNE PARCEL, BEING 87°27'00\"/>

TERMINAL, WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID PARK AVENUE, BEING 87°27'00\"/>

SAID PARCEL, CONTAINING 3.642 ACRES (7,808 SQUARE FEET) MORE OR LESS.



NOTES

1. BASE OF BOUNDARY IS THE MONUMENT LINE OF KANSAS STREET AND MAIN STREET.
2. AS SHOWN HEREON.
3. SUBJECT PROPERTY IS SITUATED WITHIN ZONE "C" (UNDEVELOPED AREAS OF RURAL PLANNING) AS INDICATED ON TEXAS PLANNED UNIT DEVELOPMENT MAP NO. 10, EL PASO COUNTY, TEXAS, DATED EFFECTIVELY OCTOBER 13, 1982.
4. SUBJECT PROPERTY IS CURRENTLY ZONED "C" OF A DISCONTINUED COMMERCIAL DISTRICT 1 AS SHOWN ON EL PASO COUNTY ZONING MAP NO. 10, EL PASO COUNTY, TEXAS, DATED EFFECTIVELY OCTOBER 13, 1982.
5. A CORNERED "X" IN CONCRETE WAS SET AT ALL BOUNDARY CORNERS, UNLESS OTHERWISE NOTED.

REFERENCE DOCUMENTS

1. HELLA ADDITION, AS RECORDED IN PLAT RECORDS, EL PASO COUNTY, TEXAS.
2. WARRANTY DEED RECORDED AS INSTRUMENT NO. 261,800,000, DEED RECORDS, EL PASO COUNTY, TEXAS.
3. WARRANTY DEED RECORDED AS INSTRUMENT NO. 261,800,000, DEED RECORDS, EL PASO COUNTY, TEXAS.
4. WARRANTY DEED RECORDED AS INSTRUMENT NO. 261,800,000, DEED RECORDS, EL PASO COUNTY, TEXAS.
5. WARRANTY DEED RECORDED AS INSTRUMENT NO. 261,800,000, DEED RECORDS, EL PASO COUNTY, TEXAS.
6. WARRANTY DEED RECORDED AS INSTRUMENT NO. 261,800,000, DEED RECORDS, EL PASO COUNTY, TEXAS.

CERTIFICATION

I, JOSEPH AMAYA, REGISTERED PROFESSIONAL LAND SURVEYOR TEXAS NO. 9925, DO HEREBY CERTIFY THAT THIS PLAT SURVEY WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND AND IN ACCORDANCE WITH THE TEXAS RULES OF PROFESSIONAL LAND SURVEYING. I HAVE PERSONALLY EXAMINED THE LOCATION AND TYPES OF MONUMENTS AND BOUNDARY LINES SHOWN ON THIS PLAT AND HAVE FOUND THEM TO BE CORRECT AND ACCURATE. I HAVE ALSO PERSONALLY EXAMINED THE PLAT AND HAVE FOUND IT TO BE CORRECT AND ACCURATE.

JOSEPH AMAYA
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 9925



DATE	REVISION DESCRIPTION
12/12/14	1.00
12/12/14	2.00
12/12/14	3.00
12/12/14	4.00
12/12/14	5.00
12/12/14	6.00
12/12/14	7.00
12/12/14	8.00
12/12/14	9.00
12/12/14	10.00

BOUNDARY AND IMPROVEMENT SURVEY "INDIGO HOTEL" A PORTION OF BLOCK 10, HELLS ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

DATE: FEBRUARY 13, 2014	SCALE: 1" = 10'	FILE: 325 N. KANSAS ST.	DATA FILE:
DESIGNER: J.A.	CHECKED: J.A.	DATE: 12/12/14	OF 1
KUSTENMACHER ENGINEERING COMPANY			
CONSULTING ENGINEER: LAND PLANNING - SURVEYING			
804 WEST 10TH AVE., SUITE 100 - EL PASO, TEXAS 79901 - 532-775-4571			
4200 WINTERHILL AVE., SUITE C - DALLAS, TEXAS 75204 - 214-224-0111			



ESPEDEV-01

JUSTINEB

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/27/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Mountain West In & Fin Serv LLC 100 E Victory Way Craig, CO 81625	CONTACT NAME: Justine Bossow	
	PHONE (A/C, No, Ext): (970) 824-8185	FAX (A/C, No): (970) 824-8188
INSURED Esperanto Developments, LLC 300 E Main Suite 620 El Paso, TX 79901	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Travelers Casualty Insurance Company of America	NAIC # 19046
	INSURER B: ACE Property & Casualty Insurance Company	20699
	INSURER C: Affiliated FM Insurance Company	10014
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			6804H6827301842	9/16/2018	9/16/2019	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000				
			MED EXP (Any one person) \$ 5,000				
			PERSONAL & ADV INJURY \$ 0				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> OTHER: Liquor Liability						Liquor Liab. \$ 1,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			G70155497	9/16/2018	9/16/2019	EACH OCCURRENCE \$ 50,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		AGGREGATE \$ 50,000,000				
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N	N/A					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
C	Commercial Property			SS416	9/16/2018	9/16/2019	Blanket Bldg & BPP 115,616,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following entities are covered on all policies: Summit 11 Investment Group, LLC, Summit PEI Properties, LLC, Summit Holding 1, LLC, Summit Holding 2, LLC, Lobby Bar, LLC, Indigo EP Management, Inc., Summit Indigo EP, LLC.

Insured premises: Hotel Indigo located at 325 N. Kansas Street El Paso, TX 79901.

City of El Paso is listed as an Additional Insured on the General Liability policy IF such status is required in a written contract with the Named Insured.

CERTIFICATE HOLDER

CANCELLATION

City of El Paso
811 Texas Ave.
El Paso, TX 79901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE