

RESOLUTION

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

That the City Manager be authorized to sign a Lease between the CITY OF EL PASO and HOUCHEM COMMUNITY CENTER for the lease of the property commonly known as 631 Franklin Avenue, El Paso, Texas more particularly described as

Lots 4-8, Block 13, Sunset Heights in the City of El Paso, El Paso County, Texas, as more fully described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Premises").

And that the City Manager, or her designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

ADOPTED this _____ day of _____, 2012.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

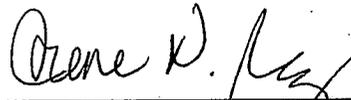
Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



for _____
R. Alan Shubert, P.E., City Engineer
Engineering and Construction Management

CITY CLERK DEPT.
2012 MAY 15 AM 7:31

LEASE

By and between

CITY OF EL PASO

Lessor

and

HOUCHEN COMMUNITY CENTER

Lessee

for the Premises located at
631 W. Franklin Avenue, El Paso, Texas

Effective Date

CITY CLERK DEPT.
2012 MAY 15 AM 7:32

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	PREMISES AND PRIVILEGES	1
1.01	Description of Premises Demised.....	1
1.02	Structures and Improvements.....	1
1.03	Restriction of Privileges, Uses and Rights.....	2
1.04	Conditions of Granting Lease.....	2
ARTICLE II	OBLIGATIONS OF LESSOR	2
2.01	Quiet Enjoyment.....	2
2.02	No Cost.....	2
ARTICLE III	OBLIGATIONS OF LESSEE	3
3.01	Net Lease.....	3
3.02	Condition of Premises.....	3
3.03	Annual Inspection.....	3
3.04	Compliance With Laws.....	4
3.05	Lessor's Approval of Plans.....	6
3.06	Maintenance.....	6
3.07	Utilities.....	7
3.08	Trash, Garbage, Etc.....	7
3.09	Outside Lighting.....	7
3.10	Signs.....	7
3.11	Cutting or Filling.....	7
3.12	Permitted Uses.....	7
ARTICLE IV	TERM OF LEASEHOLD	8
4.01	Term.....	8
4.02	Holding Over.....	8
ARTICLE V	CONSIDERATION	9
5.01	Rent.....	9
5.02	Place of Payment.....	9
5.03	Additional Consideration, Services.....	9
ARTICLE VI	INSURANCE AND INDEMNIFICATION	9
6.01	Fire and Other Risks Insurance.....	9
6.02	Liability Insurance.....	9
6.03	Workers Compensation.....	10
6.04	Payment and Performance Bonds.....	10
6.05	Authorized Insurance Companies.....	11
6.06	Indemnification.....	11
6.07	Waiver of Liability.....	12

ARTICLE VII	ENCUMBRANCES	12
7.01	Encumbrance.....	12
ARTICLE VIII	EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER	12
8.01	Expiration.....	12
8.02	Termination.....	12
8.03	Cancellation	12
8.04	Repossessing and Reletting.....	14
8.05	Assignment and Transfer	14
8.06	Rights Upon Expiration	14
8.07	Landlord's Lien	14
ARTICLE IX	GENERAL PROVISIONS	15
9.01	Time is of the Essence	15
9.02	Independent Contractor.....	15
9.03	Notices	15
9.04	Attorney's Fees.....	15
9.05	Agreement Made in Texas	16
9.06	Nondiscrimination Covenant	16
9.07	Cumulative Rights and Remedies	16
9.08	Interpretation.....	16
9.09	Agreement Made in Writing	17
9.10	Paragraph Headings	17
9.11	Severability	17
9.12	Successors and Assigns.....	17
9.13	Taxes and Other Charges	17
9.14	Waiver of Warranty and Suitability.....	17
9.15	Survival of Certain Provisions	17
9.16	Restrictions and Reservations.....	18
9.17	Authorization To Enter Lease.....	18
9.18	Effective Date	18
	LESSOR'S SIGNATURE AND ACKNOWLEDGMENT.....	19
	LESSEE'S SIGNATURE AND ACKNOWLEDGMENT	20

ATTACHMENTS

EXHIBIT "A" - Property Description & Metes and Bounds of Premises

LEASE

THIS LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2012 by and between the **City of El Paso**, a home rule municipal corporation ("Lessor") and the **Houchen Community Center**, a Texas nonprofit corporation ("Lessee").

WHEREAS, Lessor owns the property located at 631 W. Franklin Avenue, El Paso, Texas 79901 and further described in this Lease as the leased Premises (as defined in Section 1.01 below);

WHEREAS, Lessee has indicated a desire lease of the property to create a community garden and has the willingness and ability to use the property accordance with the terms of this Lease and to properly keep, maintain and improve said premises in accordance with standards established by Lessor;

WHEREAS, Lessor has determined that a public purpose will be served by leasing the property to Lessee for use as a community garden in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

Lots 4-8, Block 13, Sunset Heights in the City of El Paso, El Paso County, Texas, as more fully described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Premises").

1.02 Structures and Improvements. Lessee shall have the right and privilege to maintain, and remove structures and improvements it may make to the Leased Premises during the Lease Term subject to the terms, covenants, and conditions contained herein. Lessee will comply with all federal, state and local laws, including all zoning and land use ordinances and regulations. No work shall commence until Lessee has obtained any and all permits and/or complied with any and all applicable legal requirements pertaining to the Lessee's construction and permitted use. Lessee shall obtain and keep in effect all licenses and permits as may be required for the operation of its project upon the Premises.

For the purposes of this section, no prior approval shall be required for routine operations relating to a garden, including, but not limited to, building beds for growing flowers and plants, bringing in top soil and compost, and designing a garden on the Premises.

All structures and other improvements constructed on the Premises shall be of substantial construction and good architectural design. Lessee shall employ competent engineers and architects to prepare architectural plans, construction plans and specifications.

1.03 Restriction of Privileges, Uses and Rights. The rights and privileges granted Lessee hereunder are subject and expressly limited to use as a community garden. The Premises shall be for the use of the public, and therefore, no person shall be denied entrance thereto, nor will anyone be refused the use of the same.

Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than the purposes set forth herein shall constitute an event of default and may result in termination of the Lease.

1.04 Conditions of Granting Lease. The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

ARTICLE II - OBLIGATIONS OF LESSOR

2.01 Quiet Enjoyment. Lessor agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

2.02 No Cost. This Lease shall be without any cost whatsoever to Lessor during the Term, including but not limited to any cost for construction, maintenance, or improvement of the property. Prior to commencement of the Lease, Lessor has constructed certain improvements to deliver and meter water to the Premises.

ARTICLE III - OBLIGATIONS OF LESSEE

3.01 Net Lease. This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times; and
- B. Keep, water and maintain the plants and flowers on the Premises in a good condition at all times and free of weeds; and
- C. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- D. Pay any and all operational costs including, but not limited to, all utilities, trash pickup and security; and
- E. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

3.02 Condition of Premises. Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

3.03 Annual Inspection. At least once each calendar year during the term of this lease, Lessor may conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. Upon completion of the inspections, Lessor shall provide written notice of any repairs or maintenance which Lessor in its sole discretion determines must be made to the Premises and improvements in order to ensure compliance with all federal, state and local laws and regulations and maintain the property to the standard set forth in Section 3.1. Failure to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

3.04 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will operate and maintain, and to the extent applicable, construct, improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be

obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

3.05 Lessor's Approval of Plans. Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Engineering and Construction Management Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Engineering and Construction Management Department, Lessee may be required to obtain the approval of other departments as well, such as Capital Assets and Real Estate Manager.

3.06 Maintenance. Lessee shall maintain the Premises and keep the improvements on the Premises in a good state of repair and condition. Lessee shall water, trim and maintain any plants installed and maintain any gardening materials and equipment used on the Premises so that the same shall be kept in neat, orderly and attractive condition at all times, free from any weeds, noises, odors or other nuisance that might diminish the quality of life of neighbors or users of adjacent city park. The Premises shall be maintained free from any obstacles or hazards

that may affect the safety of the persons designated by Lessee to use the Premises or the neighbors, pedestrians or park users.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

3.07 Utilities. Lessee shall pay for all costs for utility services during the term hereof. Lessee is responsible for paying the cost of extending sewer, gas and electric lines to the boundary of the property and within the boundaries of the property (connecting to such lines and setting meters), if any.

3.08 Trash, Garbage, and Other Refuse. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

3.09 Outside Lighting. Outside lighting on the Premises will not be operated at such hours or with such intensity as to constitute a public nuisance to the occupants of other property in the neighborhood. If this provision is violated, the City Council may require any such lighting to be extinguished, changed or removed at Lessee's expense.

3.10 Signs. All signs on the Premises shall comply with all building codes and other ordinances of the City of El Paso. The size, design and location of all signs shall be subject to approval by the Lessor prior to installation. No outdoor advertising signs, billboards or flashing lighting shall be permitted. Signs on the property shall be limited to those identifying the uses conducted on the Premises and those necessary for informational and directional purposes.

3.11 Cutting or Filling. No cuts or fills shall be done on the property nor any grubbing, grading or moving of earth performed, unless such work has received prior written approval of the City Engineer and a grading permit obtained if required by the grading ordinance of the City of El Paso.

3.12 Permitted Uses.

- A. Lessee will not enter into any activity on the Premises other than those permitted in Paragraph 1.03 and during daylight hours. The Lessee shall not permit on the Premises any entertainment, amusement or other activity which violates any statute or

ordinance, and will use Lessee's best efforts to prevent disorder and conduct amounting to a nuisance. The Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained.

- B. Lessee shall provide all materials and equipment required for the permitted use of the Premises, including all seeds, fertilizer and tools. Except for organic materials, no herbicides or pesticides may be used on the Premises to control garden pests (weeds, insects, and diseases).
- C. Lessor and Lessee may make reasonable rules for use of the Premises to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be made available to every member of the community.
- D. To the best of Lessee's ability, the Lessee shall limit access to the site to persons who sign and agree to a waiver in the form described herein. Clear communication, including appropriate signs that meet the requirements of Section 3.10 herein, about how to sign up and participate in the garden project should be provided. The Lessee shall require any persons participating in the garden to sign an agreement, substantially in the form attached as Exhibit __, clearly documenting the use of the site and holding the Lessor harmless for any liability, damage, loss or claim that occurs in connection with the use of the garden by such persons.

ARTICLE IV - TERM OF LEASEHOLD

4.01 Term. This Lease shall be for a term of five (5) years, commencing on the Effective Date, as defined in Section 11.17. This shall hereinafter be referred to as the "Initial Term".

4.02 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent payable as defined in Section V, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of payment after expiration or cancellation of this Lease or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

ARTICLE V - CONSIDERATION

5.01 Rent. As monetary consideration for this Lease, Lessee will deliver to the City the sum of ONE AND NO/100 DOLLARS (\$1.00) per year in advance on the first day of May in each year of the Term of this Lease.

5.02 Place of Payment. All rent payments provided herein shall be paid to Lessor at the following address:

City of El Paso
2 Civic Center Plaza, 7th Floor
El Paso, TX 79901
ATTN: FINANCIAL SERVICES DEPARTMENT

5.03 Additional Consideration, Services. The proposed use of the Premises to operate a community garden are of general benefit to the citizens of El Paso.

ARTICLE VI – INSURANCE AND INDEMNIFICATION

6.01 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selects be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.03 Workers Compensation. In addition, LESSEE, at its sole cost and expense, throughout the Initial Term of this Lease Agreement and any extensions thereto, shall obtain and maintain Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

- A. A Waiver of Subrogation in favor of the City of El Paso; and
- B. A thirty (30) day Notice of Cancellation/Material Change in favor of the City.

LESSOR agrees that LESSEE may self-insure against the risks described in this Section 6.03 to the extent permitted by state law, providing that LESSEE shall provide evidence of such compliance with state law. LESSEE hereby waives its right of recovery against LESSOR and its officers, employees or agents of any amounts paid by LESSEE or on LESSEE's behalf to satisfy applicable worker's compensation laws.

6.04 Payment and Performance Bonds. In the event of any construction on the Premises in an amount over \$25,000, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.
- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and

surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

- C. Lessee acknowledges that these bonds are required for construction projects on city-owned property and state law prohibits divide a single project into separate, sequential or component projects in order to avoid the statutory requirements.

6.05 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying the Lessor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days prior written notice to Lessor.

6.06 Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including

claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

6.07 Waiver of Liability. Lessor shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, office equipment, vehicles, inventory, etc. By signing this Lease Lessor acknowledges that the Lessor, its agents, employees and invitees will be on Premises and agrees to accept whatever risks come from the use of the Premises.

ARTICLE VII – ENCUMBRANCES

7.01 Encumbrance. Lessee may not permit any liens or encumbrances upon its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises, except as may be approved by the Lessor.

ARTICLE VIII- EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

8.01 Expiration. This Lease shall expire five (5) years from the Effective Date of this Lease, unless as extended pursuant to paragraph 4.02 above. Upon expiration or any termination of the Lease pursuant to the terms and conditions herein, Lessee shall peacefully surrender such Premises and improvements to the City free of all such liens or encumbrances. Lessee shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Premises or improvements, together with reasonable attorney's fees, costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.

8.02 Termination. The Lessor and Lessee agree that at any time during the Term of the Lease, the Lessor or the Lessee may terminate this Lease without cause by giving the other party 90 days prior written notice of Lease termination. Upon such termination, the Premises and all the improvements thereon will either be returned to its prior condition, reasonable wear and tear excepted or Lessor will agree to accept the improvements placed on the Premises by Lessee. On the date stated in the notice, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

8.03 Cancellation. Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Fail to maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;

- B. Fail to maintain insurance and provide proof of said insurance;
- C. Fail to use the Premises for the purpose identified in paragraph 1.03;
- D. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- E. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- F. Make any general assignment for the benefit of creditors;
- G. Abandon the Premises;
- H. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- I. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- J. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

8.04 Repossessing and Reletting. In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

8.05 Assignment and Transfer. Lessee may not assign or transfer any part of its interest in this Lease. Any attempt to transfer shall be void and an event of default which may result in immediate termination of the Lease.

8.06 Rights Upon Expiration. At the expiration of this Lease, at the sole option of Lessor, the Premises and all the improvements thereon will either be returned to its prior condition, reasonable wear and tear excepted or Lessor will agree to accept the improvements placed on the Premises by Lessee. Lessee shall peacefully surrender such Premises and improvements to the City.

8.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor,

after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE IX - GENERAL PROVISIONS

9.01 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

9.02 Independent Contractor. Nothing herein shall be construed as creating a relationship of employer and employee, partnership or joint venture between the parties hereto. The Lessor shall not be subject to any obligations or liabilities of the Lessee incurred in its performance under this Lease.

9.03 Notices. All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: City Manager

Copy to: City of El Paso
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901
Attn: Capital Assets Manager

LESSEE: Houchen Community Center
609 S. Tays
El Paso, Texas 79901
Attn: Executive Director

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

9.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party

shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

9.05 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

9.06 Nondiscrimination Covenant. Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27. D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

9.07 Cumulative Rights and Remedies. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

9.08 Interpretation. Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

9.09 Agreement Made in Writing. This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

9.10 Paragraph Headings. The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

9.11 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

9.12 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

9.13 Taxes and Other Charges. The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

9.14 Waiver of Warranty of Suitability. Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose.

9.15 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 3.03 and 6.05.

9.16 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

9.17 Authorization To Enter Lease. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

9.18 Effective Date. This Lease shall be effective on the date executed by the City Manager for the City of El Paso.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2012.

LESSOR:
CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



for R. Alan Shubert, City Engineer
Engineering & Construction Management

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2012,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**, Texas.

Notary Public, State of Texas
Printed Name: _____

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY CLERK DEPT.
2012 MAY 15 AM 7:32

LESSEE:
Houchen Community Center

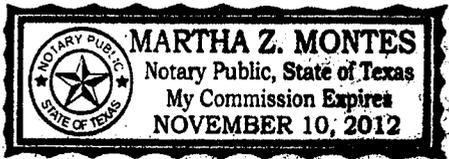
By: *Cheryl Felder*
~~Dr. Donald J. Clark~~ Cheryl Felder
~~Executive Officer~~ Board President

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this day 13 of APRIL, 2012,

by Cheryl Felder, County, of El Paso Texas.



Martha Z. Montes
Notary Public, State of Texas

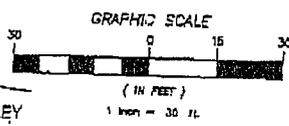
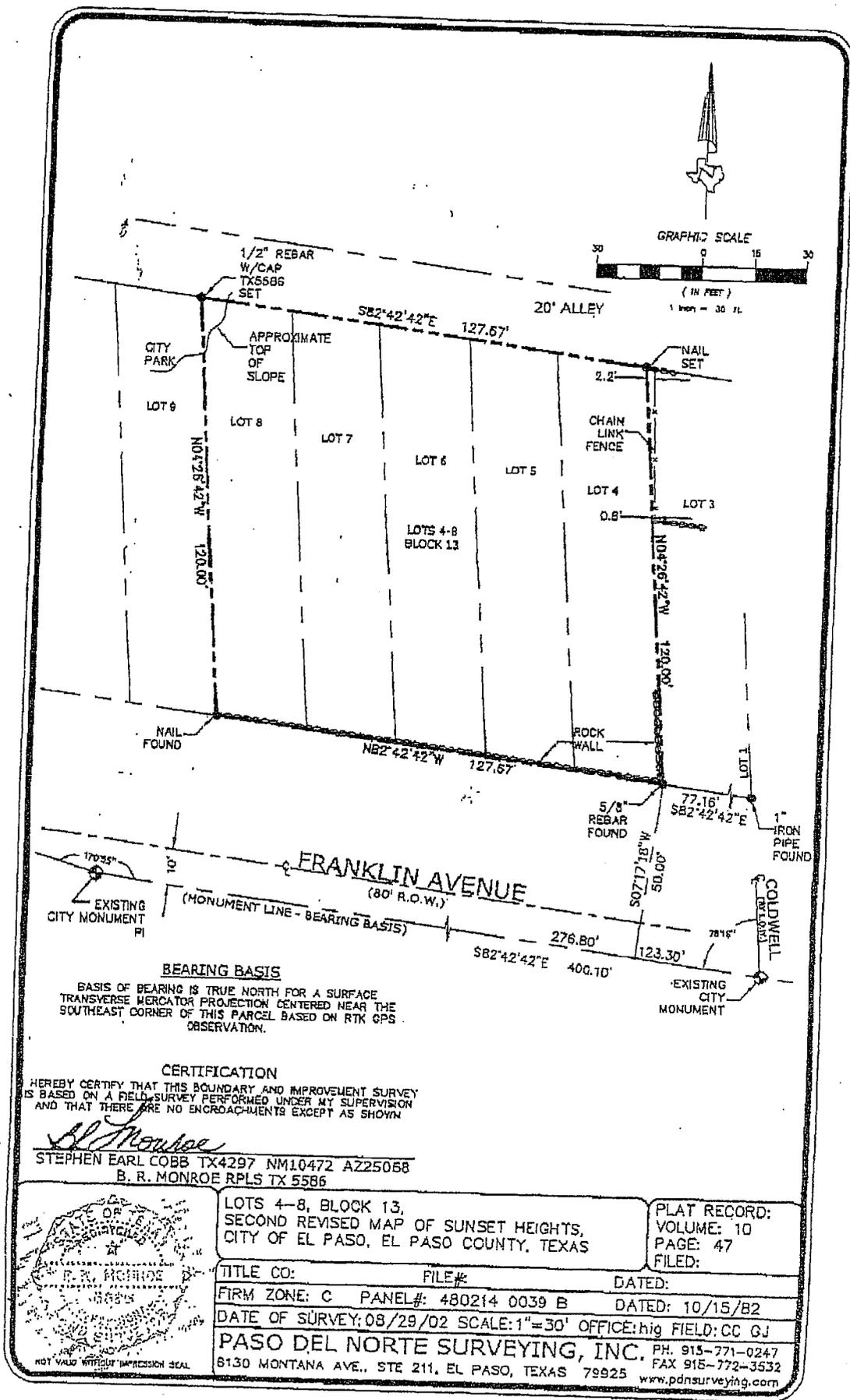
Printed Name: MARTHA Z. MONTES

My Commission Expires: 11-10-12

CITY CLERK DEPT.
2012 MAY 15 AM 7:32

EXHIBIT A

**Property Description
and
Metes and Bounds of Premises**



BEARING BASIS
 BASIS OF BEARING IS TRUE NORTH FOR A SURFACE TRANSVERSE MERCATOR PROJECTION CENTERED NEAR THE SOUTHEAST CORNER OF THIS PARCEL BASED ON RTK GPS OBSERVATION.

CERTIFICATION
 HEREBY CERTIFY THAT THIS BOUNDARY AND IMPROVEMENT SURVEY IS BASED ON A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND THAT THERE ARE NO ENCROACHMENTS EXCEPT AS SHOWN

B. R. Monroe
 STEPHEN EARL COBB TX4297 NM10472 AZ25068
 B. R. MONROE RPLS TX 5586



LOTS 4-8, BLOCK 13,
 SECOND REVISED MAP OF SUNSET HEIGHTS,
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

PLAT RECORD:
 VOLUME: 10
 PAGE: 47
 FILED:

TITLE CO:	FILE#	DATED:
FIRM ZONE: C	PANEL#: 480214 0039 B	DATED: 10/15/82
DATE OF SURVEY: 08/29/02 SCALE: 1"=30' OFFICE: hlg FIELD: CC GJ		
PASO DEL NORTE SURVEYING, INC. PH. 915-771-0247		
8130 MONTANA AVE., STE 211, EL PASO, TEXAS 79925 FAX 915-772-3532		
www.pdnsurveying.com		

300
022129
Barker
①

GENERAL WARRANTY DEED

Date: October 31, 2002

Grantor: HARRY J. BARKER and MARIE E. BARKER

Grantor's Mailing Address:
6015 Escondido
El Paso, Texas 79912

Grantee: THE CITY OF EL PASO

Grantee's Mailing Address:
2 Civic Center Plaza
9th Floor City Attorney's Office
El Paso, Texas 79999

Consideration: TEN AND NO/100 DOLLARS and other good and valuable consideration.

Property (including any improvements):
Lots 4 through 8, Block 13, SUNSET HEIGHTS, an addition to the City of El Paso, El Paso County, Texas.

Reservations From and Exceptions to Conveyance and Warranty:

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

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

Harry J. Barker
Harry J. Barker

Marie E. Barker
Marie E. Barker

ACKNOWLEDGMENT

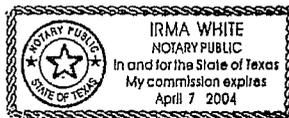
STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me on Oct 31, 2002, by Harry J. Barker.

Irma White
Notary Public
State of Texas

My Commission Expires:



ACKNOWLEDGMENT

STATE OF TEXAS

§
§
§

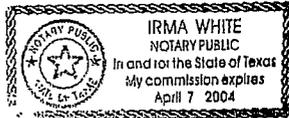
COUNTY OF EL PASO

This instrument was acknowledged before me on Oct. 31, 2002, by Marie E. Barker.

Irma White

Notary Public
State of Texas

My Commission Expires:



001507 002004 110103

AFTER RECORDING RETURN TO:
The City of El Paso

Prepared in the Office of:
Sheral K. Peterson, P.C.
7300 Viscount Blvd., Suite 102
El Paso, Texas 79925

9

Doc# 20020088372
Pages 2
11/1/02 3:08:16 PM
Filed & Recorded in
Official Records of
EL PASO COUNTY
RECTOR ENRIQUEZ, JR
COUNTY CLERK
FEE \$11.00

ANY PROVISIONS, HERIN WHICH RESTRICTS THE SALE, RENTAL
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
STATE OF TEXAS
COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped
hereon, by me and was duly recorded in the volume and page of the Official
Public Record of Real Property El Paso County.



11 2
NOV 01 2002

EL PASO COUNTY, TEXAS

City of El Paso
2 Civic Center Plaza
City Attorneys Office
El Paso, TX 79909
OK Floor
AFTER RECORDING RETURN TO:

END OF
INSTRUMENT

0910 0304 0050

