

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

DEPARTMENT: **Engineering**

AGENDA DATE: **Consent Agenda August 30, 2011**

CONTACT PERSON NAME AND PHONE NUMBER: **R. Alan Shubert, City Engineer, (915) 541-4423**

DISTRICT(S) AFFECTED: **Rep. Emma Acosta, District #3**

SUBJECT:

A resolution that the City Manager be authorized to sign a Lease Agreement between the City of El Paso and Bank of the West, for the property located at the site described in Exhibit "A", for an initial term of (5) years with four automatic renewal terms of an additional five (5) years each in the annual rental amount of ONE THOUSAND THREE HUNDRED SIX DOLLARS AND 08/100 (\$1,306.08).

BACKGROUND / DISCUSSION:

The city owns a small, parcel containing 2,469 square feet or 0.0567 acres of land more or less on the corner of Gateway West and Paisano. The Bank of the West will lease the property for five (5) years with four extensions. The Bank of the West will pay the monthly sum of \$108.84. As additional consideration The Bank of the West will make improvements to the parcel. The Bank of the West will be responsible for all maintenance. There is no city use for the parcel.

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

Revenue Generating

BOARD / COMMISSION ACTION:

CARE recommends approval

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also) Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a Lease Agreement between the City of El Paso and Bank of the West, for the property located at the site described in Exhibit "A", for an initial term of five (5) years with four automatic renewal terms of an additional five (5) years each in the annual rental amount of ONE THOUSAND THREE HUNDRED SIX DOLLARS AND 08/100 (\$1,306.08).

ADOPTED this _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
City Engineer

EXHIBIT "A"

Being a portion of U.S. Interstate
Highway No. 10 out of Lots 14 and 15
Block 12, Womble Addition,
City Of El Paso, El Paso County, Texas
Prepared for: Bank of the West
April 19, 2010

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of U.S. Interstate Highway No. 10 out of lots 14 and 15, Block 12, Womble Addition recorded in Volume 13, Page 32, Plat records City of El Paso, El Paso County, Texas, said lots 14 and 15, Block 12, Womble Addition described in volume 1257, page 307 and volume 1258, page 241, Real property records of El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 5/8" rebar with cap marked TX 5372, NM 17779 on the intersection of the northerly right of way line of U.S. Interstate Highway No. 10 with the common line of lots 3 and 4, block 12, Womble Addition, Thence along the northerly right of way line of U.S. Interstate Highway No. 10, North 65°00'15" East a distance of 89.12 feet to a found pk nail on the westerly line of an alley in block 12, Womble Addition; Thence leaving said line North 67°04'47" East a distance of 28.19 feet to a found concrete nail set in asphalt on the easterly line of a 20 foot Alley out of Block 12, Womble Addition for THE "TRUE POINT OF BEGINNING";

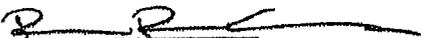
Thence along said line, North 21°54'00" East a distance of 75.54 feet to a found nail in asphalt on the common line of Lots 13 and 14, Block 12, Womble Addition;

Thence along said line, South 89°49'55" East (South 89°50'00" East, Volume 113, Pg. 200) a distance of 63.00 feet to a set 1/2" rebar with cap marked TX 5152;

Thence 115.15 feet along the arc of a curve to the right which has a radius of 490.42 feet a central angle of 13°27'11" a chord which bears South 52°31'25" West a distance of 114.89 feet to "TRUE POINT OF BEGINNING" and containing 2,469 square feet or 0.0567 acres of land more or less.

Bearing basis is record for Womble Addition recorded in volume 13, page 32, Plat records of El Paso County, Texas.

A drawing of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 310-81



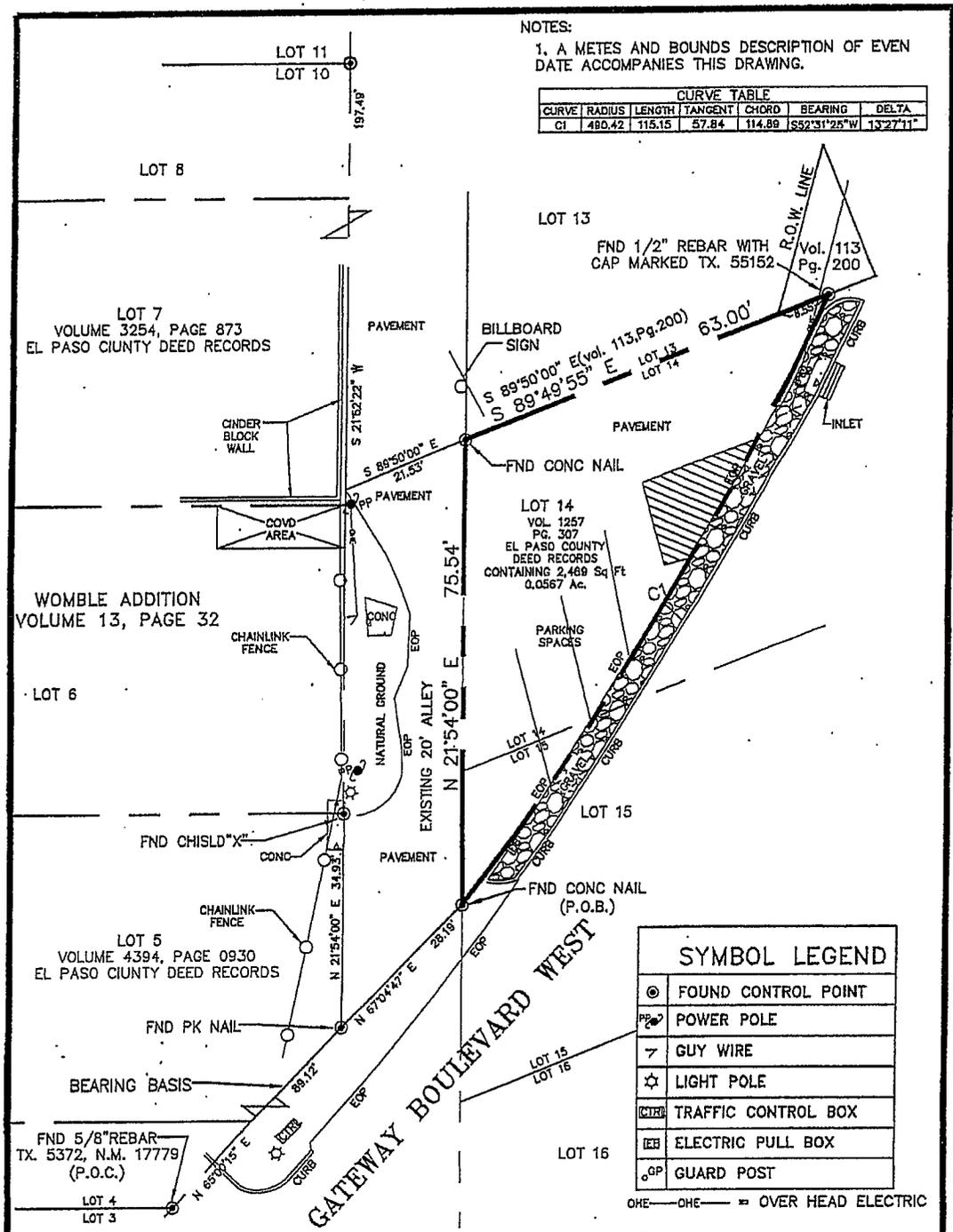
CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE, SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283

OK
CAC
4/20/10

NOTES:

1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS DRAWING.

| CURVE TABLE | | | | | | |
|-------------|--------|--------|---------|--------|-------------|-----------|
| CURVE | RADIUS | LENGTH | TANGENT | CHORD | BEARING | DELTA |
| C1 | 480.42 | 115.15 | 57.84 | 114.89 | S82°31'25"W | 13°27'11" |



| SYMBOL LEGEND | |
|---------------|---------------------|
| ⊙ | FOUND CONTROL POINT |
| PP | POWER POLE |
| ⌵ | GUY WIRE |
| ☆ | LIGHT POLE |
| ⊠ | TRAFFIC CONTROL BOX |
| ⊞ | ELECTRIC PULL BOX |
| ⊙ | GUARD POST |

OHE—OHE—= OVER HEAD ELECTRIC

CERTIFICATION

THIS PLAT REPRESENTS A SURVEY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED ON THE FACTS EXISTING AT TIME OF THIS SURVEY.

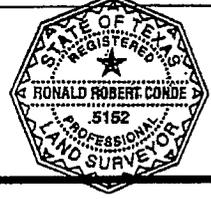
RON R. CONDE R.P.L.S #5152



SCALE: 1"=20'

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| | | | |
|--|----------------------|-----------|--------------|
| JOB # 310-81 | DATE: APRIL 19, 2010 | FIELD: JH | OFFICE: F.R. |
| RECORDED IN VOLUME 13, PAGE 32, PLAT RECORDS OF EL PASO COUNTY, TX | | | |
| BEING A PORTION OF U.S INTERSTATE HIGHWAY NO. 10 OUT OF LOTS 14 AND 15, BLOCK 12; WOMBLE ADDITION CITY OF EL PASO, EL PASO COUNTY, TEXAS | | | |
| CONDE INC. 6080 SURETY DRIVE, SUITE 100 EL PASO, TEXAS 79905 | | | |



STATE OF TEXAS)
)
COUNTY OF EL PASO)

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into this 22nd day of August, 2011 ("Effective Date"), by and between **THE CITY OF EL PASO**, a municipal corporation existing under the laws of the State of Texas ("Lessor"), and **BANK OF THE WEST**, a Texas banking corporation ("Lessee").

WITNESSETH:

WHEREAS, the Lessor owns the real property described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the property for the terms and conditions and covenants set forth herein.

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

**SECTION 1
LEASED PREMISES**

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

1.02 DEFINITIONS AND USE OF TERMS. The terms used in this Agreement shall have their normal and customary meaning except when they are expressly defined herein. When used in this Agreement the following terms are expressly defined:

1.02.1 "Premises" means the real property described in Subsection 1.01 above.

1.02.2 "Year" shall mean each twelve (12) month period beginning on the Effective Date of the Agreement.

**SECTION 2
TERM**

2.01. TERM. The term of this Agreement shall be for a period of five (5) years commencing on the Effective Date and expiring on the last day of the month five (5) years

thereafter ("Term"). In the event Lessee is not in default of any terms of this Lease, the Lease term shall automatically renew for up to four (4) additional terms of five (5) years (each a "Renewal Term") unless Lessee notifies Lessor in writing of Lessee's election to terminate this Lease (the "Termination Notice") at least ninety (90) days prior to the expiration of the Initial Term or Renewal Term, as the case may be. In the event the Termination Notice is not given, the Lease shall be extended for five (5) years on the same terms and conditions.

2.02 PURCHASE OPTION. Lessor has determined that the Premises consist of the type of land covered by Section 272.001(b) of the Texas Local Government Code and that the Premises may be sold to Lessee as the abutting property owner as long as all of the applicable provisions of Section 272.001(c) of the Texas Local Government Code are satisfied. Accordingly, Lessor grants Lessee the option to purchase the Premises (the "Option") at any time during the Term or any Renewal Term, at a purchase price equal to the fair market value of the Premises as determined by Lessor in compliance with the applicable provisions of the Texas Local Government Code. Lessor shall obtain an appraisal and shall advise Lessee of the fair market value purchase price within sixty (60) days of receipt by Lessor of written notice from Lessee to Lessor stating that Lessee desires to exercise the Option. Lessor and Lessee agree that if Lessee exercises the Option after reaching agreement as to the purchase price, the parties will enter into a Contract of Sale, and Ground Rent will be prorated up to and including the date of closing of the Contract of Sale. If the parties are unable to agree upon the purchase price, this Agreement will remain in effect according to its terms unless the Agreement is at the end of a Term and no option for a Renewal Term has been exercised.

SECTION 3 USES OF LEASES PREMISES/ALTERATIONS

3.01. USE. The Premises shall be used for the operation of parking facilities. Lessee shall not use the Premises, or any portion thereof, for any other purpose than that hereinabove set forth without first having obtained the written approval of Lessor. Any attempt to change the use without the prior written consent of Lessor will be void and an event of default that may result in termination of the Agreement. Lessee agrees that, in its use and operation of the Premises, it shall comply with all applicable City ordinances, state and federal laws, and respective rules and regulation.

3.02 IMPROVEMENTS AND ALTERATIONS. Lessee, at its own expense, may construct improvements necessary for the use of the Premises as parking facilities (the "Parking Facilities"). Lessee understands that all improvements that it makes or causes to be made to the Premises, shall be subject to the review and approval by the City Engineer and other City officials as required by the City Code, which approval shall not be unreasonably withheld, and must comply with all applicable City ordinances, and state and federal laws. Lessor makes no representations or warranties regarding the condition of the improvements or their fitness for a particular purpose and parking facilities. Any and all improvements, fixtures, machinery and equipment of whatever nature at any time constructed, placed or maintained on any part of the

Premises are and remain the property of the party constructing such improvements during the Term of this Agreement. In the event Lessee does not exercise the Option to purchase the Premises prior to the expiration or earlier termination of this Agreement, all improvements to the Premises shall be owned by the City.

3.03 REMOVAL OF IMPROVEMENTS. In the event Lessee does not exercise the Option to purchase the Premises prior to the expiration or earlier termination of this Agreement, Lessor retains the option to have the Premises returned to Lessor clear of all improvements above ground level other than the Parking Facilities, which need not be removed. Lessor shall notify Lessee of its election to require removal of the improvements or take possession of the improvements at least ninety (90) days prior to the beginning of the last year of this Agreement. In the event Lessor requests that Lessee remove the improvements, Lessee shall have thirty (30) days after expiration of the Term in which to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the rent due hereunder. If Lessee fails to so remove said improvements, Lessor may remove same at Lessee's expense. Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee.

3.04. BONDS. In the event of any construction on the Premises, Lessee shall cause its contractor, at its own cost and expense, to make, execute, and deliver to Lessor two (2) separate bonds, as follows:

3.04.1 Prior to the date of commencement of any construction, a performance bond in a sum equal to the full amount of cost of construction. 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 judgment caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

3.04.2 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 construction. 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.

3.05. MAINTENANCE. Lessee expressly agrees that, throughout the lease Term, it shall, at its cost, maintain, use and operate the Premises and all improvements, furnishings, fixtures and equipment thereon.

3.06. TRASH AND GARBAGE. Lessee shall provide and pay all costs for a complete and proper arrangement for the adequate, sanitary handling of all trash, garbage and other refuse caused as a result of its operations pursuant hereto and shall provide for its timely removal in accordance with all applicable laws or regulation.

3.07. SECURITY. Lessee shall bear sole responsibility for the provision and full cost of security for the Premises. Lessor shall not be responsible for any coordination of or expense related to security at the Premises.

SECTION 4 RENTALS

4.01 LESSEE RENTAL. Lessee shall pay to the City of El Paso as annual rent the sum of ONE THOUSAND THREE HUNDRED SIX AND 08/100 DOLLARS (\$1,306.08) (the "Ground Rent"), commencing on the Effective Date and continuing thereafter on an annual basis on the same day of each year throughout the Term and any Renewal Term, unless sooner terminated as provided herein.

SECTION 5 INSURANCE

5.01 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.

5.02 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.

5.03 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 and ten (10) days prior to the date that City Council considers this Lease. Each such certificate shall contain:

- 5.04.1 A statement of the coverage provided by the policy;
- 5.04.2 A statement certifying the Lessor to be listed as an additional insured in the policy;
- 5.04.3 A statement of the period during which the policy is in effect;
- 5.04.4 A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- 5.04.5 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.

5.05 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.

5.06 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.

SECTION 6 DAMAGE OR DESTRUCTION OF LEASED PREMISES.

6.01 Obligations of Lessee. During the term hereof, except as provided in Section 6.03 below, should the improvements constructed by Lessee upon the Premises be damaged or

destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and in accordance with the following terms and conditions:

6.01.1 Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms Section 3.02 of this Agreement.

6.01.2 Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond to the extent required by Section 3.04.

6.02 Insurance Proceeds. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

6.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial Term or last year of any Renewal Term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

SECTION 7 TERMINATION

7.01 TERMINATION GENERAL. This Agreement may be terminated by Lessor after the happening of one or more of the following events:

7.01.1 The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Premises, or any substantial part or parts thereof, in such a manner as substantially to restrict the Facilities' use for a period of at least

ninety (90) days from operating thereon; provided, however, that Lessee shall be entitled to receive compensation from such Government or agency for condemnation.

7.01.2 The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of thirty (30) days, except as provided in Section 7.02 below, after receipt from the Lessor of written notice to remedy the same.

7.01.3 Failure of Lessee, in accordance with the terms hereinabove, to repair and reconstruct the Premises, or portion thereof, that are completely destroyed.

7.02 TERMINATION EXPRESS PROVISION: Should any one or more of the following events of default happen:

7.02.1 Lessee shall fail to pay any part of the rentals, fees or charges agreed upon hereunder when the same shall become due and Lessee does not remedy such failure for a period of twenty (20) days after receipt from Lessor of written notice to remedy same; or

7.02.2 Any interests of Lessee hereunder shall be levied upon under execution which levy is not lifted within sixty (60) days; or

7.02.3 Lessee shall file a voluntary petition in bankruptcy, shall have an involuntary petition in bankruptcy filed against it and the same shall not be dismissed within ninety (90) days, the Lessee shall be adjudged insolvent according to law, or the Lessee shall make any assignment of its property for the benefit of creditors; or

7.02.4 Lessee shall vacate or abandon the Premises for more than ninety (90) days except during construction or when performing repairs; or

7.02.5 Lessee shall default on any other obligations assumed by it hereunder; then and in any such event, should Lessee fail to cure such default within thirty (30) days from the time Lessor shall mail written notice thereof to Lessee, Lessor shall have the right to terminate this Agreement and re-enter and take possession of the Premises; provided, however, should the nature of the default be such that it cannot be cured within thirty (30) days, Lessee shall be deemed to have cured such default if within such thirty (30) day period it shall commence performance and thereafter diligently prosecute the same to completion.

7.03 NOTICE OF TERMINATION. If any of the events enumerated in Subsection 7.01 and 7.02 shall occur, or as otherwise provided for in this Agreement, and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by thirty (30) days notice in writing, as provided in Section 8.15 of this Agreement, such cancellation and termination to be effective upon the date specified in such notice.

7.04 EMINENT DOMAIN.

7.04.1 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

7.04.1.1 "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The Taking shall be considered to take place on the date actual physical possession is taken by the condemning authority.

7.04.1.2 "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.

7.04.1.3 "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:

7.04.1.3.1 The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;

7.04.1.3.2 The conduct of Lessee's business on the Premises would be substantially prevented or impaired;

7.04.1.3.3 The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the Ground Rent and after performance of all covenants and conditions required of Lessee under this Lease.

7.04.1.4 "Partial taking" means the taking of a fee title that is not either a total or substantial taking.

7.04.1.5 "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

7.04.1.6 "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as

expressing an existing intention of taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.

7.04.1.7 "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.

7.04.1.8 "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

7.04.2 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

7.04.2.1 Notice of intended taking;

7.04.2.2 Service of any legal process relating to condemnation of the Premises or improvements; or

7.04.2.3 Notice in connection with any proceedings or negotiations with respect to such a condemnation.

7.04.3 Rights of Parties During Condemnation Proceeding. Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

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

7.04.5 Total Taking. All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

7.04.6 Partial Taking. Upon a partial taking, all awards shall be disbursed as follows:

7.04.6.1 To the cost of restoring the improvements on the Premises; and

7.04.6.2 The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

7.04.7 Obligations of Lessee Under Partial Taking. Promptly after any such partial taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial Term or any Renewal Term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

7.04.8 Taking of Temporary Use of Premises and Improvements. Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the Ground Rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

7.04.9 If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

**SECTION 8
MISCELLANEOUS**

8.01 ASSIGNMENT. Lessee shall not lease, sell, assign or transfer this Agreement or any interest in this Agreement without the prior written consent of Lessor, not to be unreasonably withheld. Any attempt to sell, assign or transfer without the prior written consent of Lessor shall be void and an event of default which may, at the discretion of Lessor, result in termination of the Agreement.

8.02 TAXES and LICENSES. The Lessee shall be responsible for payment of any and all taxes and assessments arising from the Lessee's use of the Premises, if any. The Lessee shall obtain and pay for all licenses or permits necessary or required by law for the construction of additions or improvements, the installation of equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder.

8.03 INSPECTION OF PREMISES. Lessor or its duly authorized representatives may enter upon the Premises at any reasonable time during the Term of this Agreement for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of Lessor.

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

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

8.06 QUIET ENJOYMENT. Lessor agrees that Lessee, upon payment of the Rentals and all other payments and charges to be paid by Lessee under the terms of this Agreement and upon observing and keeping each of the covenants of this Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises, equipment, furniture and fixtures during the Term of this Agreement and any Renewal Term.

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.

8.08 HAZARDOUS SUBSTANCE. No goods, merchandise or materials shall be kept, stored or sold in or on said Premises which are explosive or hazardous and which are not in customary use in the businesses herein authorized; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon. All herbicides and pesticides applied to the Premises should conform to the requirements of the Texas Occupations Code, as such may hereafter be amended, a copy of which has been provided to and approved by the City.

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

8.10 UTILITIES; WATER. Lessee shall pay before delinquency all charges for water, sewer, gas, heat, air cooling, electricity, power, telephone, garbage and other utility services used on the Premises during the Term of this Agreement. Lessee shall be responsible for the connection and maintenance as well as for the payment for said connection and maintenance of any utility services required by Lessee during the Term of this Agreement.

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

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

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

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

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

Lessee: Bank of the West
Attn: Larry L. Patton
President and CEO
500 N. Mesa
El Paso, Texas 79901

City (Lessor): Joyce A. Wilson
City Manager
City of El Paso
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

Copy to: Department of Engineering and
Construction Management
Capital Assets Section
City of El Paso
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901-1196

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

8.16 AGREEMENT MADE IN TEXAS. This Agreement has been made in and shall be construed in accordance with the laws of the State of Texas. All duties obligations, liabilities

of the parties with respect to the Premises are expressly set forth herein, and this Agreement can only be amended by an instrument in writing and agreed to by both parties.

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

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Josette Flores
Assistant City Attorney



R. Alan Shubert, P.E.
City Engineer

ACKNOWLEDGMENT

THE STATE OF TEXAS }
 }
COUNTY OF EL PASO }

This instrument was acknowledged before me on this ____ day of _____, 2011,
by Joyce A. Wilson, as City Manager of the **CITY OF EL PASO**.

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

BANK OF THE WEST

Larry L. Patton
By: Larry L. Patton
Title: President / CEO

ACKNOWLEDGMENT

THE STATE OF TEXAS }
 }
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 22nd day of August, 2011,
by Larry L. Patton, _____ of **BANK OF THE**
WEST, a Texas banking corporation, on behalf of said bank.

Cindy Gallardo
Notary Public, State of Texas

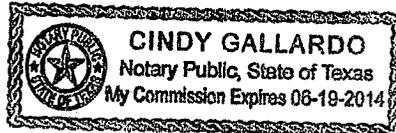


EXHIBIT "A"

Being a portion of U.S. Interstate
Highway No. 10 out of Lots 14 and 15
Block 12, Womble Addition,
City Of El Paso, El Paso County, Texas
Prepared for: Bank of the West
April 19, 2010

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of U.S. Interstate Highway No. 10 out of lots 14 and 15, Block 12, Womble Addition recorded in Volume 13, Page 32, Plat records City of El Paso, El Paso County, Texas, said lots 14 and 15, Block 12, Womble Addition described in volume 1257, page 307 and volume 1258, page 241, Real property records of El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 5/8" rebar with cap marked TX 5372, NM 17779 on the intersection of the northerly right of way line of U.S. Interstate Highway No. 10 with the common line of lots 3 and 4, block 12, Womble Addition, Thence along the northerly right of way line of U.S. Interstate Highway No. 10, North 65°00'15" East a distance of 89.12 feet to a found pk nail on the westerly line of an alley in block 12, Womble Addition; Thence leaving said line North 67°04'47" East a distance of 28.19 feet to a found concrete nail set in asphalt on the easterly line of a 20 foot Alley out of Block 12, Womble Addition for THE "TRUE POINT OF BEGINNING";

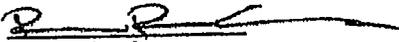
Thence along said line, North 21°54'00" East a distance of 75.54 feet to a found nail in asphalt on the common line of Lots 13 and 14, Block 12, Womble Addition;

Thence along said line, South 89°49'55" East (South 89°50'00" East, Volume 113, Pg. 200) a distance of 63.00 feet to a set 1/2" rebar with cap marked TX 5152;

Thence 115.15 feet along the arc of a curve to the right which has a radius of 490.42 feet a central angle of 13°27'11" a chord which bears South 52°31'25" West a distance of 114.89 feet to "TRUE POINT OF BEGINNING" and containing 2,469 square feet or 0.0567 acres of land more or less.

Bearing basis is record for Womble Addition recorded in volume 13, page 32, Plat records of El Paso County, Texas.

A drawing of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 310-81

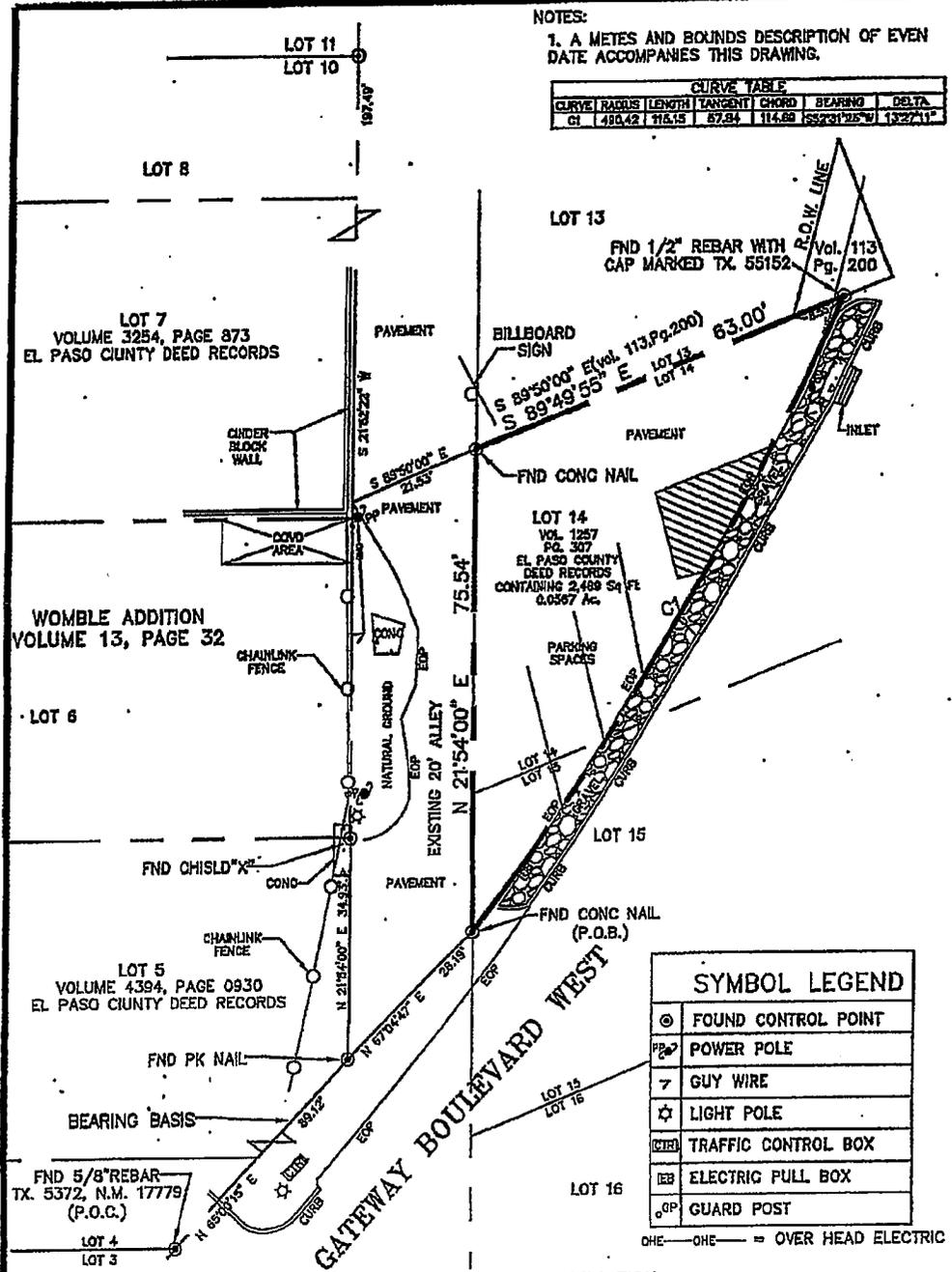


CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE, SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283

NOTES:

1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS DRAWING.

| CURVE TABLE | | | | | | |
|-------------|--------|--------|---------|--------|--------------|---------|
| CURVE | RADIUS | LENGTH | TANGENT | CHORD | BEARING | DELTA |
| CH | 480.42 | 116.15 | 67.84 | 114.88 | S89°21'25" W | 132°11' |



| SYMBOL LEGEND | |
|---------------|---------------------|
| ⊙ | FOUND CONTROL POINT |
| ⚡ | POWER POLE |
| ⌵ | GUY WIRE |
| ☆ | LIGHT POLE |
| ⊠ | TRAFFIC CONTROL BOX |
| ⊞ | ELECTRIC PULL BOX |
| ⊙ | GUARD POST |

OHE—OHE— = OVER HEAD ELECTRIC

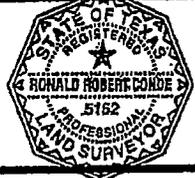
CERTIFICATION

THIS PLAT REPRESENTS A SURVEY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED ON THE FACTS EXISTING AT TIME OF THIS SURVEY.

RON R. CONDE R.P.L.S #5152

JOB # 310-81 DATE: APRIL 19, 2010 FIELD: JII OFFICE: F.R.

RECORDED IN VOLUME 13, PAGE 32, PLAT RECORDS OF EL PASO COUNTY, TX



BEING A PORTION OF U.S INTERSTATE HIGHWAY NO. 10 OUT OF LOTS 14 AND 15, BLOCK 12; WOMBLE ADDITION CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE INC. 6080 SURETY DRIVE, SUITE 100 EL PASO, TEXAS 79905

SCALE: 1"=20'

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Subject Property

