



**TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2014

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Tom Green County

Address: 113 W. Beauregard, San Angelo, TX 76903
 Phone: (325) 659-6500 E-mail: steve.floyd@co.tom-green.tx.us
 Fax: _____ Other: _____

Buyer: Luke Burnett and/or assigns

Address: 127 Kilt Road, San Angelo, TX 76901
 Phone: (325) 234-2698 E-mail: lukeburnett@wcc.net
 Fax: _____ Other: _____

2. PROPERTY:

A. "Property" means that real property situated in Tom Green County, Texas at 7100 N US HWY 87

(address) and that is legally described on the attached Exhibit A-B or as follows:
Being 17.34 acres of land out of Llano County School Land Survey 964, Abstract 1609 save and except the Southeast 50' portion along Grape Creek Road as per Exhibit B.

- B. Seller will sell and convey the Property together with:
- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
 - (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
 - (3) Seller's interest in all licenses and permits related to the Property.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)
 (If mineral rights are to be reserved an appropriate addendum should be attached.)*

3. SALES PRICE:

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing	\$ <u>108,000.00</u>
(2) Sum of all financing described in Paragraph 4	\$ <u>252,000.00</u>
(3) Sales price (sum of 3A(1) and 3A(2))	\$ <u>360,000.00</u>

(TAR-1802) 4-1-14 Initialed for Identification by Seller SCF, _____ and Buyer LB, JK Page 1 of 13

B. Adjustment to Sales Price: (Check (1) or (2) only.)

(1) The sales price will not be adjusted based on a survey.

(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ _____ per:

(i) square foot of total area net area.

(ii) acre of total area net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

(i) public roadways;

(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and

(iii) _____

(c) If the sales price is adjusted by more than _____ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING**: Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

A. Third Party Financing: One or more third party loans in the total amount of \$ 252,000.00 .

This contract:

(1) is not contingent upon Buyer obtaining third party financing.

(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).

B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____ .

C. Seller Financing: The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____ .

5. **EARNEST MONEY**:

A. Not later than 3 days after the effective date, Buyer must deposit \$ 25,000.00 as earnest money with Guaranty Title (title company) at 1 E. Twohiq, San Angelo, TX 76903 (address) _____ (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

B. Buyer will deposit an additional amount of \$ -0- with the title company to be made part of the earnest money on or before:

(i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or

(ii) _____ .

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
- (3) Within 30 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 10 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer _____ (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller \$1,500.00 (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 15 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a

special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

B. Feasibility Period: Buyer may terminate this contract for any reason within 120 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

[X] (1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 2,500.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

[] (2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:
(a) employ only trained and qualified inspectors and assessors;
(b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
(c) abide by any reasonable entry rules or requirements of Seller;
(d) not interfere with existing operations or occupants of the Property; and
(e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer: *(Check all that apply.)*

- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) Existing Easements.

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*

- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
- (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. **LEASES:**

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;

- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within n/a days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than n/a by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: <u>Steve Eustis Co.</u>	Cooperating Broker: _____
Agent: <u>Brandon K Sanders</u>	Agent: _____
Address: <u>1207 S. Bryant, Ste A</u>	Address: _____
<u>San Angelo, TX 76903</u>	_____
Phone & Fax: <u>(325) 653-1489</u> <u>(325) 658-8372</u>	Phone & Fax: _____
E-mail: <u>brandon@steveeustisrealestate.co</u>	E-mail: _____
License No.: _____	License No.: _____

Principal Broker: <i>(Check only one box)</i>	Cooperating Broker represents Buyer.
<input checked="" type="checkbox"/> represents Seller only.	
<input type="checkbox"/> represents Buyer only.	
<input type="checkbox"/> is an intermediary between Seller and Buyer.	

B. Fees: *(Check only (1) or (2) below.)*
(Complete the Agreement Between Brokers on page 13 only if (1) is selected.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:	Cooperating Broker a total cash fee of:
<input checked="" type="checkbox"/> <u>6.000</u> % of the sales price.	<input type="checkbox"/> _____ % of the sales price.
<input type="checkbox"/> _____	<input type="checkbox"/> _____

The cash fees will be paid in Tom Green County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The date of the closing of the sale (closing date) will be on or before the later of:
- (1) 30 days after the expiration of the feasibility period.
 _____ (specific date).

 - (2) 7 days after objections made under Paragraph 6C have been cured or waived.
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) an assignment of all leases to or on the Property;
 - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
 - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
 - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the title company;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

Per Paragraph 19B - Seller will deliver all known information within 10 days of opening for escrow.

13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental

payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or
(Check if applicable)
- enforce specific performance, or seek such other relief as may be provided by law.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
- (1) Seller and the sales price will be reduced by the same amount; or
 - (2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.**18. ESCROW:**

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR-1408).
- B. Except as otherwise provided in this contract, Seller is not aware of:
- (1) any subsurface: structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of

a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- D. Addenda which are part of this contract are: *(Check all that apply.)*
- (1) Property Description Exhibit identified in Paragraph 2;
 - (2) Commercial Contract Financing Addendum (TAR-1931);
 - (3) Commercial Property Condition Statement (TAR-1408);
 - (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
 - (5) Notice to Purchaser of Real Property in a Water District (MUD);
 - (6) Addendum for Coastal Area Property (TAR-1915);
 - (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
 - (8) Information About Brokerage Services (TAR-2501); and
 - (9) Exhibit A, Exhibit B, Exhibit C

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

- E. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can

receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on April 15, 2015, the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.

Seller: Tom Green County

Buyer: Luke Burnett and/or assigns

By: _____
 By (signature): [Signature]
 Printed Name: Stephen J. Floyd
 Title: County Judge

By: _____
 By (signature): [Signature]
 Printed Name: Luke Burnett
 Title: President

By: _____
 By (signature): _____
 Printed Name: _____
 Title: _____

By: _____
 By (signature): [Signature]
 Printed Name: DAVID A HOELSCHER
 Title: _____

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ _____, or
- _____ % of the sales price, or
- _____ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: _____ Cooperating Broker: _____

By: _____ By: _____

ATTORNEYS

Seller's attorney: Keith Davis Buyer's attorney: _____

Address: PO Box 271 Address: _____

San Angelo TX 76902

Phone & Fax: (325) 658-2728 (325) 655-2278 Phone & Fax: _____

E-mail: wkd@hwddb.com E-mail: _____

Seller's attorney requests copies of documents, notices, and other information:

- the title company sends to Seller.
- Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

- the title company sends to Buyer.
- Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:

- A. the contract on this day _____ (effective date);
- B. earnest money in the amount of \$ _____ in the form of _____ on _____.

Title company: _____ Address: _____

By: _____ Phone & Fax: _____

Assigned file number (GF#): _____ E-mail: _____



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

**THIRD PARTY FINANCING ADDENDUM FOR CREDIT APPROVAL
(Not for use with Reverse Mortgage Financing)**

TO CONTRACT CONCERNING THE PROPERTY AT

7100 N US HWY 87

Tom Green County, TX

(Street Address and City)

Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain credit approval for the financing (Credit Approval). Buyer shall furnish all information and documents required by lender for Credit Approval. Credit Approval will be deemed to have been obtained when (1) the terms of the loan(s) described below are available and (2) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history. If Buyer cannot obtain Credit Approval, Buyer may give written notice to Seller within 120 days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer. **If Buyer does not give such notice within the time required, this contract will no longer be subject to Credit Approval. Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

NOTE: Credit Approval does not include approval of lender's underwriting requirements for the Property, as specified in Paragraph 4.A.(1) of the contract.

Each note must be secured by vendor's and deed of trust liens.

CHECK APPLICABLE BOXES:

A. CONVENTIONAL FINANCING:

(1) A first mortgage loan in the principal amount of \$ 252,000.00 (excluding any financed PMI premium), due in full in 5 year(s), with interest not to exceed 6.500 % per annum for the first 5 year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed 2.000 % of the loan.

(2) A second mortgage loan in the principal amount of \$ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____ % per annum for the first _____ year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan.

B. TEXAS VETERANS LOAN: A loan(s) from the Texas Veterans Land Board of \$ _____ for a period in the total amount of _____ years at the interest rate established by the Texas Veterans Land Board.

C. FHA INSURED FINANCING: A Section _____ FHA insured loan of not less than \$ _____ (excluding any financed MIP), amortizable monthly for not less than _____ years, with interest not to exceed _____ % per annum for the first _____ year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan. As required by HUD-FHA, if FHA valuation is unknown, *"It is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ _____ . The purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the*

7100 N US HWY 87, Tom Green County, TX,

(Address of Property)

appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The purchaser (Buyer) should satisfy himself/herself that the price and the condition of the Property are acceptable."

- ☐ D. VA GUARANTEED FINANCING: A VA guaranteed loan of not less than \$ _____ (excluding any financed Funding Fee), amortizable monthly for not less than _____ years, with interest not to exceed _____ % per annum for the first _____ year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan.

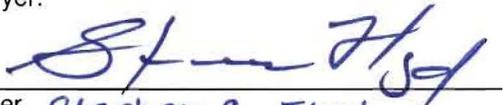
VA NOTICE TO BUYER: "It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the Property described herein, if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs."

If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Price, Seller may reduce the Sales Price to an amount equal to the VA reasonable value and the sale will be closed at the lower Sales Price with proportionate adjustments to the down payment and the loan amount.

- ☐ E. USDA GUARANTEED FINANCING: A USDA-guaranteed loan of not less than \$ _____ (excluding any financed Funding Fee), amortizable monthly for not less than _____ years, with interest not to exceed _____ % per annum for the first _____ year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan.

Buyer hereby authorizes any lender to furnish to the Seller or Buyer or their representatives information relating only to the status of Credit Approval of Buyer.


Buyer


Seller Stephen C. Floyd


Buyer

Seller

This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC No. 40-6. This form replaces TREC No. 40-5.

EASEMENT FOR RIGHT-OF-WAY

354045



STATE OF TEXAS §
COUNTY OF TOM GREEN §

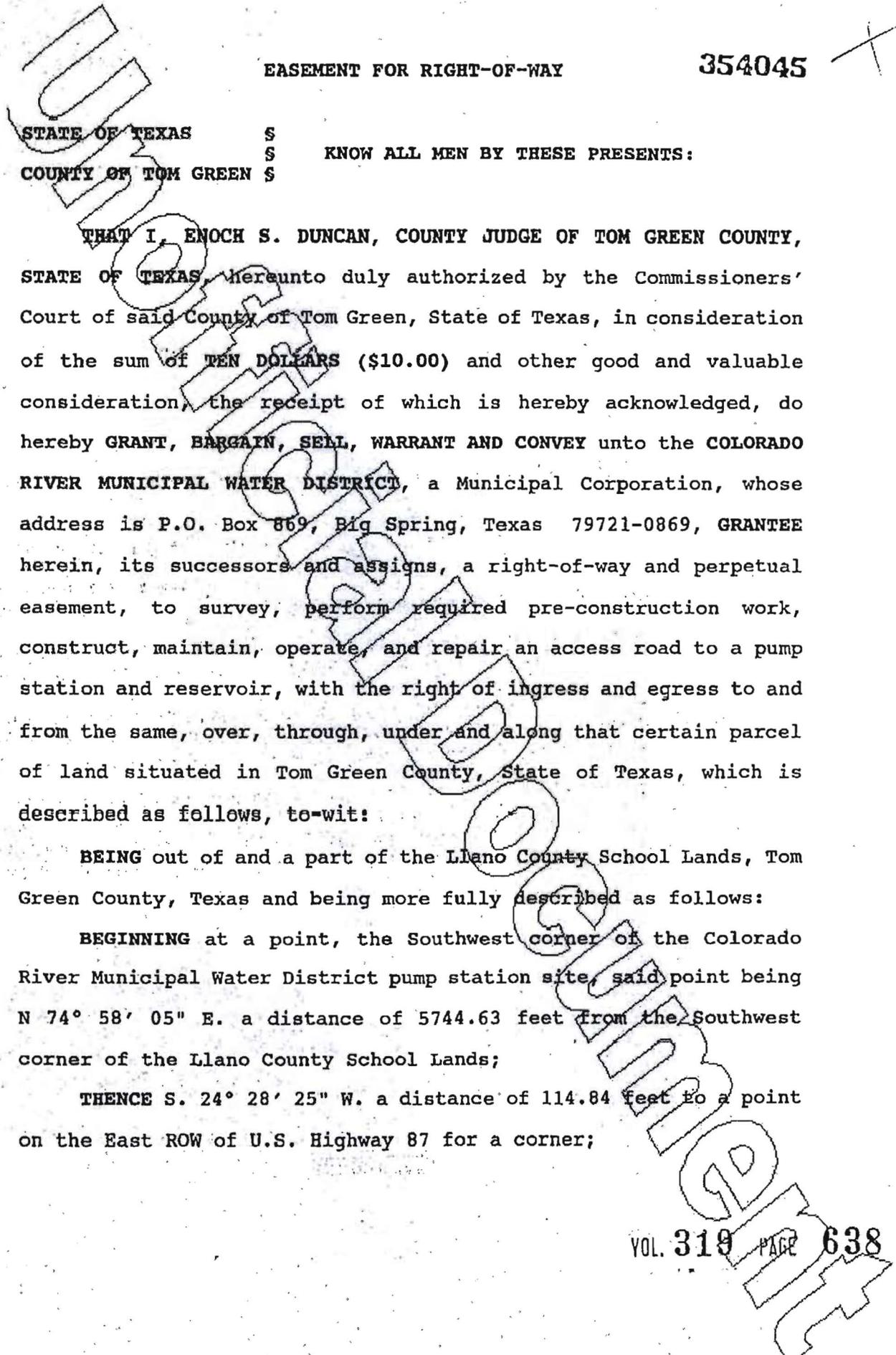
KNOW ALL MEN BY THESE PRESENTS:

THAT I, ENOCH S. DUNCAN, COUNTY JUDGE OF TOM GREEN COUNTY, STATE OF TEXAS, hereunto duly authorized by the Commissioners' Court of said County of Tom Green, State of Texas, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL, WARRANT AND CONVEY unto the COLORADO RIVER MUNICIPAL WATER DISTRICT, a Municipal Corporation, whose address is P.O. Box 869, Big Spring, Texas 79721-0869, GRANTEE herein, its successors and assigns, a right-of-way and perpetual easement, to survey, perform required pre-construction work, construct, maintain, operate, and repair an access road to a pump station and reservoir, with the right of ingress and egress to and from the same, over, through, under and along that certain parcel of land situated in Tom Green County, State of Texas, which is described as follows, to-wit:

BEING out of and a part of the Llano County School Lands, Tom Green County, Texas and being more fully described as follows:

BEGINNING at a point, the Southwest corner of the Colorado River Municipal Water District pump station site, said point being N 74° 58' 05" E. a distance of 5744.63 feet from the Southwest corner of the Llano County School Lands;

THENCE S. 24° 28' 25" W. a distance of 114.84 feet to a point on the East ROW of U.S. Highway 87 for a corner;



THENCE in a Southeasterly direction along the Easterly ROW of U.S. Highway 87, the same being a curve with a radius of 5829.58 feet, a distance of 50.1 feet to a point for a corner;

THENCE N. 24° 28' 25" E. a distance of 123.52 feet to a point in the South line of said pump station site for a corner;

THENCE N. 65° 31' 35" W. a distance of 50 feet to the Place of Beginning and containing 0.14 acres more or less.

TO HAVE AND TO HOLD all and singular the rights and privileges aforesaid unto the COLORADO RIVER MUNICIPAL WATER DISTRICT, its successors and assigns, for as long as the lands herein described shall be used by the COLORADO RIVER MUNICIPAL WATER DISTRICT to construct, maintain, operate and repair said access road in accordance with plans and specifications prepared for such installation, until such time as the pump station and reservoir shall be abandoned, and upon abandonment of said pump station and reservoir, the said COLORADO RIVER MUNICIPAL WATER DISTRICT shall have the right to remove any and all materials from the lands. Upon removal of all desired materials, all rights of the GRANTEE under this Easement shall cease.

IT IS FURTHER AGREED that the GRANTEE shall have the right to fence the lands described herein.

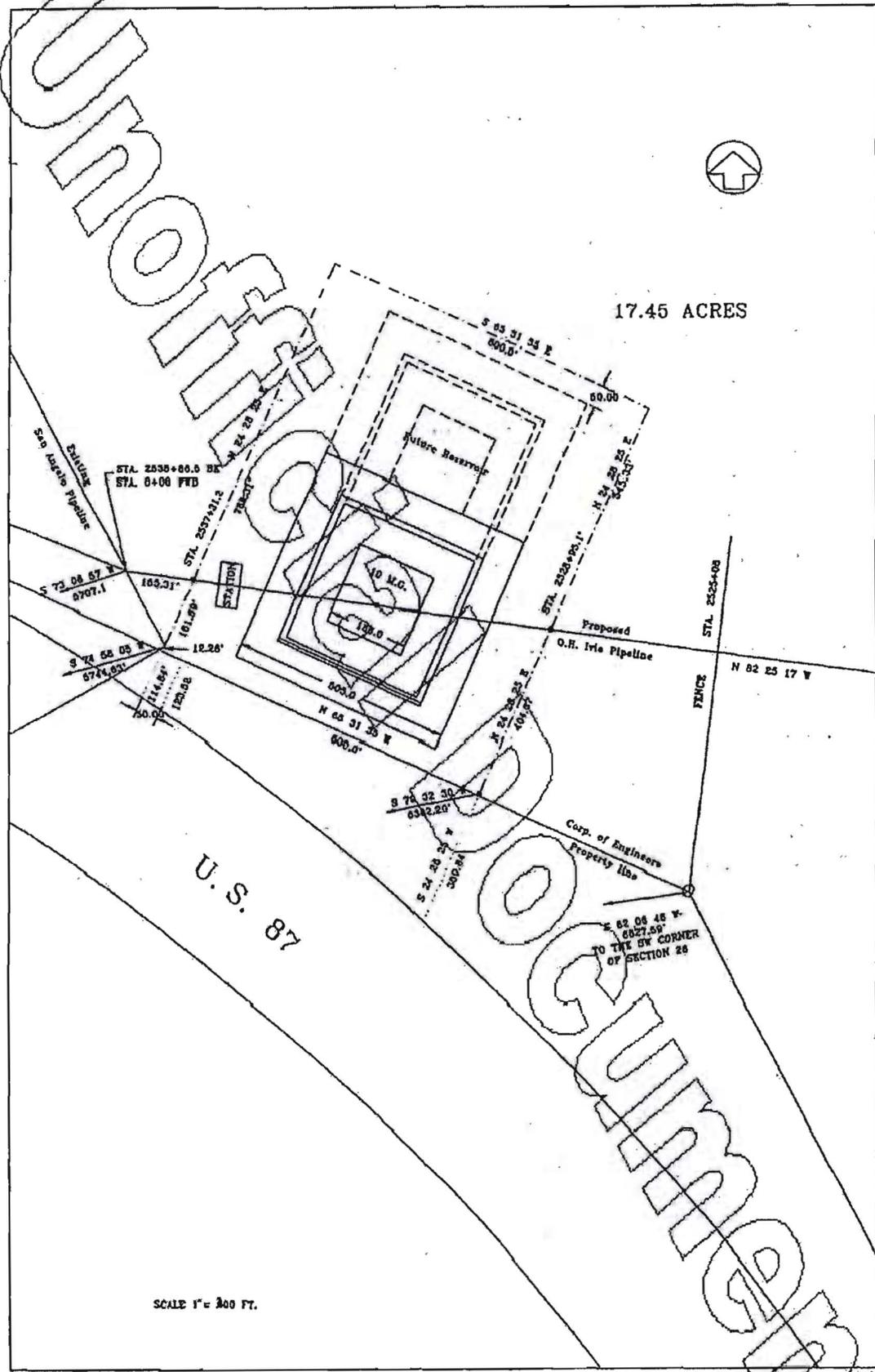
WITNESS OUR HANDS this the 10th day of August, 1992.


ENOCH S. DUNCAN, COUNTY JUDGE
OF TOM GREEN COUNTY, STATE OF
TEXAS

UNOFFICIAL



17.45 ACRES



U. S. 87

SCALE 1" = 300 FT.

UNOFFICIAL

STATE OF TEXAS §
COUNTY OF TOM GREEN §

BEFORE ME, Judith Hawkins, County Clerk of said County and State, on this day personally appeared ENOCH S. DUNCAN, COUNTY JUDGE OF TOM GREEN COUNTY, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 10th day of AUGUST, 1992.



Judith Hawkins
County Clerk, Tom Green County,
State of Texas

FILED FOR RECORD
92 AUG 10 PM 4:19
JUDITH HAWKINS
COUNTY CLERK
COUNTY OF TOM GREEN, TEXAS

ANY PROVISION HEREIN 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 TOM GREEN

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED in the Official Public Records of Real Property of Tom Green County, Texas on



Judith Hawkins
JUDITH HAWKINS COUNTY CLERK
TOM GREEN COUNTY, TEXAS
AUG 11 1992



Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

WATER UTILITY EASEMENT AND RIGHT-OF-WAY AGREEMENT

Date: April 1, 2013

Grantor: Tom Green County, a political subdivision of the State of Texas (hereinafter "County")

Grantor's Mailing Address: 122 West Harris, San Angelo, Tom Green County, Texas 76903

Grantee: City of San Angelo, a Texas home rule municipality (hereinafter "City")

Grantee's Mailing Address: 72 W. College Ave, San Angelo, Tom Green County, Texas 76903

Easement and Right-of-Way Property: A non-exclusive perpetual water utility easement and right-of-way for two water pipelines and related appurtenances over, on, under and across Grantor's property as more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by reference for all purposes.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Easement Purpose: The purpose for this easement and right-of-way shall be for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of two water pipelines and related appurtenances (collectively, the "Facilities") within the Easement and Right of Way Property.

RECITAL

WHEREAS, City obtained a certain thirty-five foot (35') Easement for Right of Way (Pipeline), for a fifty-year term as recorded in Vol. 557, Page 366, et. seq., Deed Records of Office of the County Clerk, Tom Green County, Texas, (hereinafter "Original Easement") for placement of a thirty-three inch (33") water pipeline; and,

WHEREAS, in addition to the 33" water pipeline described above, City installed a second, thirty-six inch (36") water pipeline within County's property, and outside of the easement area for the 33" water pipeline; and,

WHEREAS, it is the intention of the parties to execute one water utility easement and right-of-way agreement providing for the perpetual right to install, construct, operate, maintain, replace, repair, upgrade and remove two (2) water pipelines and related appurtenances within a single easement and right-of-way across County property and to terminate and declare void that

portion of the Easement for Right of Way (Pipeline) which traverses Grantor's property as recorded in Vol. 557, Page 366, et. seq, Deed Records of the Office of the County Clerk, Tom Green County, Texas.

NOW, THEREFORE, County, for the Consideration of the sum of Ten Dollars (\$10.00), the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by County, the Parties do hereby agree as follows:

AGREEMENT

1. **Grant of Easement and Right of Way.** County, for the Consideration, grants, sells and conveys to City and City's successors, and assigns a perpetual non-exclusive water utility easement over, on, under and across the Easement and Right-of-Way Property for the Easement Purpose set forth hereinabove, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement and Right-of-Way to City and City's successors and assigns forever.

2. **Duration of Easement.** The duration of the Easement shall be non-exclusive and is perpetual.

3. **Reservation of Rights.** All rights not specifically granted to City are reserved to County and County shall have the right to full use and enjoyment of the surface, subsurface, mineral, and airspace estates of the Easement so long as such does not unreasonably interfere with City's enjoyment of the rights conferred under this Water Utility Easement and Right-of-Way Agreement. The rights reserved to County include, but are not limited to the following: (1) all mineral (including for oil, gas and other hydrocarbons) exploration, mining, drilling, development, and production; (2) constructing or laying of pipe, cable, electric lines, water lines, or other utilities whether buried, on the surface, or overhead; (3) existing and new fencing and roads; (4) water rights; (5) wind and wind power rights; and (6) any other surface, air, or subsurface property use. No permanent structures may be constructed upon the surface of the Easement.

The rights and privileges granted by County to City hereby are non-exclusive, and County reserves the right to convey similar rights and privileges to other persons and entities so long as such does not unreasonably interfere with City's enjoyment of the rights conferred to City hereunder.

4. **Access.** City's access for authorized purposes shall be limited by ingress and egress over the Easement. City shall stay inside the Easement at all times and shall have no access over any other part of County's property unless agreed upon prior to City's actions.

5. **Secondary Easement.** City shall have the right (the "Secondary Easement") to use as much of the surface of the County's property that is adjacent to the Easement ("Adjacent Property") as may be reasonably necessary for the exercise of City's rights under this instrument.

However, City shall be responsible for all damages and harm to Adjacent Property and improvements and must promptly restore Adjacent Property and improvements to its previous physical condition if changed by City in the exercise of City's rights hereunder.

6. **Improvement and Maintenance of Easement Property.** Improvement and maintenance of the Easement and the Facilities will be at the sole expense of City. City shall have the right to remove or relocate any fences, roads, improvements or obstructions within the Easement and Right-of-Way Property or along or near its boundary lines if reasonably necessary to maintain, replace, or remove the Facilities, subject to replacement by the City of fences, roads, improvements and structures to substantially their original condition on the completion of the work, except permanent structures constructed on the surface of the Easement in violation of paragraph 3 above.

7. **Prohibitions.** City shall prohibit anyone acting under City from coming on Easement with firearms, explosives, alcohol, or drugs either on person or in vehicles or equipment and shall enforce this prohibition to the extent that there shall be full compliance herewith.

8. **Damages.** City shall be liable to County in Tom Green County, Texas, for (i) all damages resulting from City's operation of the Facilities including but not limited to loss, injury, damage to personal property, loss or damage to improvements, and loss or damage to structures; (ii) all loss and damages resulting from City's construction, operation, maintenance, repair, replacement, management, or removal of the Facilities thereafter; and (iii) all damages to County's property and improvements adjoining the Easement provided such is a consequence of City's actions.

9. **Default.** In the event of either party defaulting hereunder, the other party shall be entitled to all remedies and damages provided for by law. The non-defaulting party shall also be entitled to recover all reasonable costs and expenses incurred as a result of or arising out of the other party's default, including but not limited to reasonable attorneys' fees, court costs, expert witness fees and expenses of litigation.

10. **Choice of Law.** This agreement shall be construed under the laws of the State of Texas, without regard to choice of law rules of any jurisdiction; and venue shall lie in Tom Green County, Texas.

11. **Termination.** Upon the termination of this Water Utility Easement and Right-of-Way Agreement, City shall, within six months thereafter, remove the Facilities located on the Easement. City shall restore the Easement to its natural state. City shall pay to County all damages caused to the Easement by the removal of the Facilities.

12. **Taxes, Assessments, etc.** City shall pay all taxes, assessments and charges, general and specific, that may be levied or assessed by reason of City's use of the Easement and improvements and equipment situated thereon, including, without limitation, any and all taxes, assessments, and charges of any nature levied or assessed against City's interest hereunder or any improvements on the easement and right-of-way constructed by or belonging to City.

13. **Authority.** County represents it has the authority to grant the rights conveyed by the Water Utility Easement and Right-of-Way Agreement by virtue of County's interest in the property. Grantee accepts this easement without express or implied warranty and subject to all rights of third persons or parties existing prior to the date hereof. All warranties that may arise in common law and the warranties in §5.023 of the Texas Property Code (or its successors) are excluded.

14. **Obligations Survive.** The terms, conditions, obligations, and provisions of this Water Utility Easement and Right-of-Way Agreement shall survive the termination of the Water Utility Easement and Right-of-Way Agreement.

15. **Remedies.** Pursuit of any remedy set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

16. **Recitals.** The foregoing recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

This Water Utility Easement and Right-of-Way Agreement shall be binding upon and shall inure to the benefit of Grantor and Grantee and their respective heirs, successors, assigns, and representatives forever or until terminated by a recordable instrument or as may otherwise be provided herein or by law.

IN WITNESS WHEREOF, this Water Utility Easement and Right-of-Way Agreement has been executed to be effective as of the 1st day of April, 2013.

[Signature Page to Follow]

APPROVED AS TO CONTENT:



Ricky Dickson, Water Utilities Director

After recording, return to:

Wm. Keith Davis

Attorney at Law

P.O. Box 271

San Angelo, TX 76902

EXHIBIT "A"

Tom Green County
to
City of San Angelo

Description
Water Line Easement

Being an easement over, under and across Llano County School Land Survey 964, Abstract 1609, Tom Green County, Texas and also being part of that "17.66 Ac." tract described in Deed from U.S.A. to Tom Green County dated January 26, 1978 and recorded in Volume 669 at page 152 of the Deed Records of Tom Green County, Texas. Said easement being described by metes and bounds as follows:

Beginning at a point in a NE line of said "17.66 Ac." tract for the north corner of this easement from which a concrete monument with brass disk marked "C-202-4" found for the most northerly corner of said "17.66 Ac." tract bears N.65°58'50"W. 1390.67 feet.

Thence with said NE line of "17.66 Ac." tract, S.65°58'50"E. 57.88 feet to a point for the east corner this easement from which the position of a concrete monument with brass disk marked "C-202-5" previously found, now gone, for an east corner of said "17.66 Ac." tract bears S.65°58'50"E. 1315.53 feet.

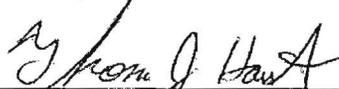
Thence crossing said "17.66 Ac." tract, S.31°49'06"W. 116.45 feet to a point in the SW line of said "17.66 Ac." tract and the NE line of U.S. Highway 87 for the south corner of this tract.

Thence with said SW line of "17.66 Ac." tract and said NE line of Highway 87 and being a curve to the left having a central angle of 0°35'31", radius of 5829.58 feet, length of 60.23 feet and long chord course and distance of N.56°37'20"W. 60.23 feet, a curve length distance of 60.23 feet to a point for the west corner of this easement.

Thence crossing said "17.66 Ac." tract N.33°20'56"E. 106.99 feet to the place of beginning and containing 0.151 acre of land.

NOTE: Courses and distances recited herein are of the Texas Coordinate System of 1927- Central Zone.

Surveyed on the ground February 13 and 21, 2013.



Thomas J. Houston

Registered Professional Land Surveyor No. 4261



CERTIFIED FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Elizabeth McGill

Elizabeth McGill, County Clerk

Tom Green County TEXAS

June 17, 2013 12:13:30

FEE: \$0.00

738651



NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, cash in hand paid by **Tom Green County**, a political subdivision of the State of Texas, **Atmos** does hereby release, relinquish and surrender from under the terms of the Right of Way and Easement Agreement the above referenced "17.66 acres", SAVE AND EXCEPT:

1. A strip of land sixty feet (60') in width, upon which is located a 6-inch pipeline owned by **Atmos**, known as Line R10; the said 60 foot strip being described by metes and bounds attached hereto as Exhibit "A" and as shown and further described on the Plat attached hereto as Exhibit "B", and incorporated herein by reference for all purposes.
2. The right of ingress to and egress from said 60 foot strip of land on, over and across all of the premises described in said Right of Way and Easement Agreement, for the purposes granted therein.

It is expressly understood and agreed that this partial release is limited to the premises specifically released herein, but as to the remainder of the land and premises covered by the said Right of Way and Easement Agreement and the land and rights reserved herein, same shall remain in full force and effect, in the same manner as though this partial release had not been executed.

For and in consideration of the premises hereinabove stated, **Atmos** and **Tom Green County** hereto agree and stipulate that the easement area herein reserved, shall be free and unobstructed, and is and shall be subject to the following restrictive covenants, which shall run with the land so long as the easement exists:

No tree, shrub, structure or obstruction, including parking lots, shall be placed, planted or built in the easement.

No fence shall be built on or over the pipeline within the easement. Fences of wood or wire may cross the pipeline at approximately 90° angles.

Any proposed crossing of the pipeline by utilities or driveways shall meet **Atmos** crossing standards.

No road shall be built on, over or along the pipeline except to cross the pipeline at approximate 90° angles, and none of the easement shall be dedicated as a public utility easement, road or alley, other than that portion of the easement crossed at an approximate 90° angle and any such crossing shall meet **Atmos** crossing standards.

No dirt shall be removed from the surface of the easement, no water impounded over the pipeline, and the grade of the surface shall not be changed on the easement.

No septic tanks, or drain or lateral lines from such a tank shall be installed within the easement.

Atmos, its successors and assigns shall have the right to prevent construction or placement of any structure or obstruction, including trees and shrubbery, within the easement, and to remove or require to be removed said obstruction placed or constructed within the easement, if said obstruction has been so placed without the written consent of **Atmos**.

Tom Green County shall not subdivide the property using the pipeline as the dividing line.

Tom Green County shall not dig, excavate or drill within the easement without first notifying **Atmos** to permit the location and protection of the pipeline by Company personnel.

Atmos by the foregoing restrictive covenants shall not be understood to have dedicated or subordinated its easement to public right of way where its pipeline might be crossed by public road or alley in the future.

Tom Green County agrees to include the foregoing restrictive covenants in any subdivision dedication in the event any portion of the redefined easement is included within a platted subdivision in the future, and to furnish a certified copy to **Atmos**.

There shall be no exceptions to the above requirements without the prior written consent of **Atmos**.

WITNESS THE EXECUTION HEREOF this the 17th day of September, A.D., 2013.

Tom Green County

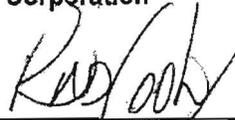
By: _____



Michael D. Brown, County Judge
acting in his official capacity and
not in his individual capacity

Atmos Energy Corporation

By: _____



Rad Cook
Vice President, Operations
Mid-Tex Division

ATTEST:



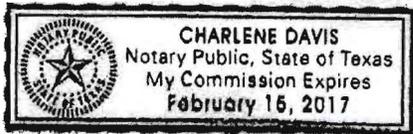
Elizabeth McGill, Tom Green County Clerk



STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Rad Cook, Vice President, Operations, Mid-Tex Division of Atmos Energy Corporation**, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of September A.D., 2013.



Charlene Davis
Notary Public in and for the State of Texas
My Commission Expires: February 16, 2017
Print Name: Charlene Davis

Exhibit “A”

WILSON LAND SURVEYING, INC.

LICENSED STATE & REGISTERED PROFESSIONAL LAND SURVEYORS
PHONE 325/653-3916 * FAX 325/655-1895
P.O. BOX 3326-ZIP 76902
1514 W. BEAUREGARD AVE.
SAN ANGELO, TEXAS 76901

WM. C. WILSON, JR.
R.P.L.S., L.S.L.S.,
(1932-2005)

THOMAS J. HOUSTON
R.P.L.S., L.S.L.S.,
B.S.S

Llano County
to
Atmos

Description
60' Wide Easement

Being an easement over, under and across Llano County School Land Survey 964, Abstract 1609, Tom Green County, Texas and also being partly across that "17.66 Ac." tract described in deed from U.S.A. to Tom Green County dated January 26, 1978 and recorded in Volume 669 at page 152 of the Deed Records of Tom Green County, Texas. Said easement being described by metes and bounds as follows:

Being at a point in the south line of said "17.66 Ac." tract for the SE corner of this easement from which a concrete monument with brass disk marked "C-202-6" found on NE side of corner post for the SE corner of said "17.66 Ac." tract bears S.88°45'27"E. 53.28 feet.

Thence with said south line of "17.66 Ac." tract, N.88°45'27"W. 73.33 feet to a point for the SW corner of this easement from which a 5/8" iron rod with cap marked "RPLS 4261" set for the SW corner of said "17.66 Ac." tract bears N.88°45'27"W. 126.77 feet.

Thence about 20 feet Southwesterly of an existing buried pipeline, N.33°51'21"W. 81.13 feet, N.38°13'06"W. 162.45 feet, N.39°35'53"W. 234.52 feet, N.42°12'01"W. 316.51 feet, N.44°46'44"W. 250.37 feet, N.47°21'25"W. 248.31 feet, N.50°20'04"W. 338.17 feet, N.52°50'53"W. 187.52 feet, N.55°06'45"W. 207.50 feet, N.57°18'16"W. 298.91 feet, N.60°25'25"W. 285.23 feet, N.61°35'28"W. 321.49 feet and N.65°33'30"W. 35.04 feet to a point in the SW line of said "17.66 Ac." tract and the NE line of U.S. Highway 87 and being in a curve to the left having a central angle of 3°55'36", radius of 5829.58 feet, length of 399.52 feet and long chord course and distance of N.64°48'59"W. 399.44 feet.

Thence with said SW line of "17.66 Ac." tract, said NE line of Highway and said curve to the left a curve length distance of 399.52 feet to a point for the west corner of this easement.

Thence N.41°36'57"E., at 35.01 feet cross a NE line of said "17.66 Ac." tract at a point from which a concrete monument with brass disk marked "C-202-4" found for the north corner of said "17.66 Ac." tract bears N.65°58'50"W. 384.40 feet, a total distance of 63.20 feet to a point for the north corner of this easement.

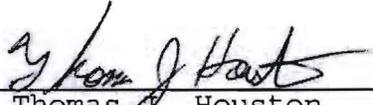
Thence with a curve to the right having a central angle of $3^{\circ}43'04''$, radius of 5889.58 feet, length of 382.17 feet and long chord course and distance of $S.64^{\circ}43'36''E.$ 382.10 feet, a curve length distance of 382.17 feet to a point for corner.

Thence about 40 feet northeasterly of an existing buried pipeline, $S.65^{\circ}33'30''E.$ 35.79 feet and $S.61^{\circ}35'28''E.$, at 238.30 feet cross said NE line of "17.66 Ac." tract, in all 324.18 feet to a point for corner.

Thence continuing about 40 feet northeasterly of said pipeline, $S.60^{\circ}25'25''E.$ 287.47 feet, $S.57^{\circ}18'16''E.$ 301.69 feet, $S.55^{\circ}06'45''E.$ 209.84 feet, $S.52^{\circ}50'53''E.$ 190.03 feet, $S.50^{\circ}20'04''E.$ 341.05 feet, $S.47^{\circ}21'25''E.$ 251.22 feet, $S.44^{\circ}46'44''E.$ 253.07 feet, $S.42^{\circ}12'01''E.$ 319.22 feet, $S.39^{\circ}35'53''E.$ 236.61 feet, $S.38^{\circ}13'06''E.$ 165.46 feet and $S.33^{\circ}51'21''E.$ 125.58 feet to the place of beginning and containing 4.68 acres of land including 4.40 acres out of said "17.66 Ac." tract.

NOTE: Courses and distances recited herein are of the Texas Coordinate System of 1927- Central Zone.

Surveyed on the ground February 13 thru March 20, 2013.



Thomas J. Houston

Registered Professional Land Surveyor No. 4261



Also see accompanying descriptions and plat "TGC-ATMO.DWG"

CERTIFIED FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Elizabeth McGill

Elizabeth McGill, County Clerk

Tom Green County TEXAS

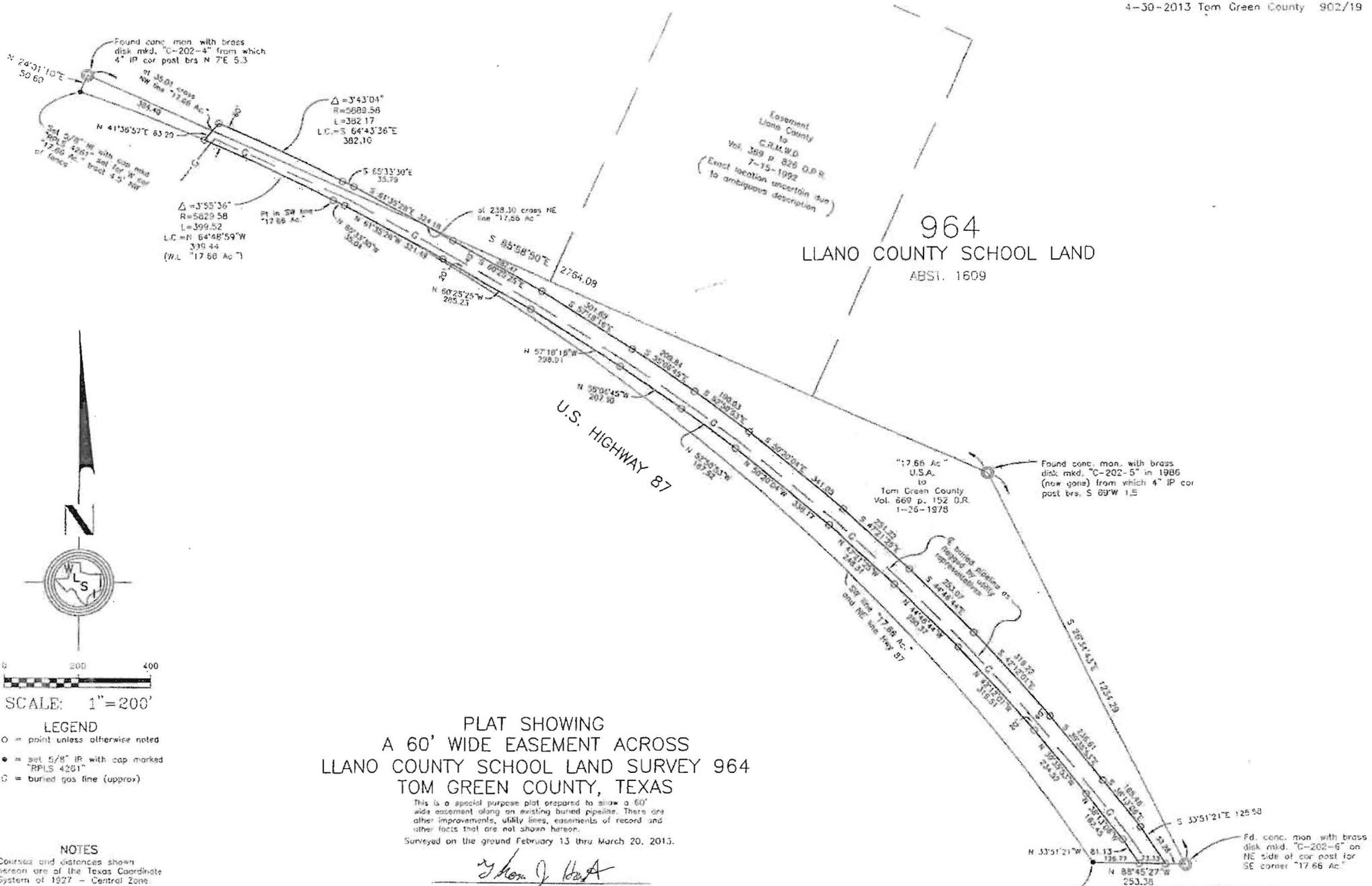
October 07, 2013 01:25:51 PM

FEE: \$58.00

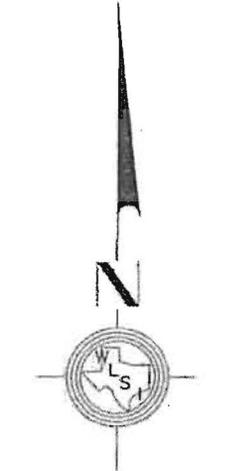
745091



Exhibit "B"



964
LLANO COUNTY SCHOOL LAND
ABS. 1609



SCALE: 1"=200'

- LEGEND**
- = point unless otherwise noted
 - = set 5/8" IR with cap marked "RPLS 4281"
 - = buried gas line (approx)

**PLAT SHOWING
A 60' WIDE EASEMENT ACROSS
LLANO COUNTY SCHOOL LAND SURVEY 964
TOM GREEN COUNTY, TEXAS**

This is a special purpose plat prepared to show a 60' wide easement along an existing buried pipeline. There are other improvements, utility lines, easements of record and other facts that are not shown hereon.
Surveyed on the ground February 13 thru March 20, 2013.

Thomas J. Houston
Thomas J. Houston
Registered Professional Land Surveyor No. 4261

OFFICE OF
WILSON LAND SURVEYING, INC.
1514 W. DEARBORN AVE.
P. O. BOX 3026 PH. 325-623-3919
SAN ANGELO, TEXAS 76902

This plat is invalid without original signature and embossed seal.

NOTES
Courses and distances shown hereon are of the Texas Coordinate System of 1927 - Central Zone.

For additional survey information, utilities, matters of record and other information see survey plat T0CHRYB7.DWG and descriptions that accompany this plat.
Easement contains 4.63 acres including 4.40 acres out of "17.66 Ac." tract