

RIGHT OF ENTRY, POSSESSION AND USE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

This Right of Entry, Possession and Use Agreement (“Agreement”) is entered into by and between THE COUNTY OF LUBBOCK (hereinafter “LUBBOCK COUNTY” or “Condemnor”) and AMMMK, LTD. (hereinafter “OWNER”).

WHEREAS, LUBBOCK COUNTY seeks to condemn and acquire a permanent easement and right of way to construct, operate and maintain a public roadway and related improvements as more particularly described and depicted in the attached DRAFT of LUBBOCK COUNTY’s Original Petition and Statement in Condemnation and exhibits thereto (the “Petition”). The Petition is attached hereto as Exhibit “AA”;

WHEREAS, OWNER is the owner in fee of the land upon, over, under, along, and across which LUBBOCK COUNTY’s easement is sought, as described and depicted in Exhibits “A” and “B” to the Petition (“Easement Property”);

WHEREAS, LUBBOCK COUNTY desires to have a right of entry upon and possession of the Easement Property for the purposes stated in the Petition so as to allow LUBBOCK COUNTY to construct and operate the planned improvements;

WHEREAS, OWNER is agreeable to permit LUBBOCK COUNTY, including its employees, agents, contractors, successors and assigns the right to enter upon and take possession of the Easement Property so that LUBBOCK COUNTY may use and possess the Easement Property to the same effect as if: (i) negotiations had been completed and conveyance of the easement and right-of-way to LUBBOCK COUNTY had been irrevocably made; or alternatively, (ii) a Special Commissioners’ Hearing had been held in a condemnation proceeding and the award of Special Commissioners had been deposited in the registry of the Court;

WHEREAS, OWNER and LUBBOCK COUNTY agree that the sole remaining issue in dispute relating to the easement sought is the amount of compensation OWNER should receive in relation to the rights being acquired which the parties agree may be resolved through either: (i) further negotiation and agreement, or (ii) if no agreement is reached, a condemnation case filed in the appropriate court in the form attached hereto as Exhibit “AA”;

WHEREAS, OWNER and LUBBOCK COUNTY agree that the Entry Deposit, defined below, will be paid directly to the OWNER with a check made payable to OWNER and that by paying the OWNER directly, OWNER specifically agrees that OWNER waives (i) any and all of the OWNER's rights to challenge LUBBOCK COUNTY's right to acquire the easement and right-of-way through condemnation, and (ii) any other jurisdictional challenges. LUBBOCK COUNTY recognizes and acknowledges that OWNER's consent to the entry upon and possession of the Easement Property by LUBBOCK COUNTY shall not be construed as a waiver of OWNER's right to seek additional compensation, if any, for the Easement Property in the condemnation case, which shall be the only remaining issue therein; and

WHEREAS, it is necessary for LUBBOCK COUNTY to construct and reconstruct Woodrow Road (the "Road"), and to place any other related public improvements over, under, across, and upon the Easement Property, as more specifically stated in the Petition.

NOW, THEREFORE, in consideration of the above-stated Recitals, which are incorporated herein for all purposes, and LUBBOCK COUNTY's agreement to pay monies to OWNER in the amount of Lubbock County's official final offer, to-wit: the sum of Fifteen Thousand One Hundred Ninety-One Dollars (\$15,191.00) (hereinafter "Entry Deposit"), the receipt and sufficiency of which are hereby acknowledged and confessed, OWNER hereby consents and agrees to allow LUBBOCK COUNTY, and its employees, agents, contractors, successors and assigns the right to enter upon and take irrevocable possession of the Easement Property as follows:

1. The "Effective Date" of this Agreement shall be when this Agreement is signed by both parties (hereafter "Effective Date"). LUBBOCK COUNTY (hereinafter including its employees, agents, contractors, successors and assigns) shall have the right of entry upon and possession of the Easement Property on the Effective Date, and LUBBOCK COUNTY shall promptly pay the Entry Deposit to OWNER with a check made payable to OWNER. If a Special Commissioners' Hearing is held and the amount of the Special Commissioners' award exceeds the Entry Deposit, LUBBOCK COUNTY agrees to deposit the difference into the registry of the court within forty-five (45) days from the date of the Award of Special Commissioners. The Entry Deposit is made for the purpose of allowing LUBBOCK COUNTY the right to enter upon and take possession of the Easement Property for the purposes stated in the Petition so as to allow LUBBOCK COUNTY to construct and operate the planned improvements.

2. OWNER agrees to permit LUBBOCK COUNTY to enter immediately upon the Easement Property and perform any and all activities necessary for carrying out the purposes of the easement as stated in Exhibit "AA".

3. LUBBOCK COUNTY shall have the right of ingress and egress on the Easement Property. LUBBOCK COUNTY will use reasonable efforts to avoid construction activities outside of the Easement Property during construction of the planned improvements.

4. It is further agreed that the granting of this Agreement shall not preclude or prejudice OWNER in any manner from contesting the consideration for such easement and any damages to OWNER's remaining property or from seeking additional compensation as allowed by law, in the event that the parties fail to agree on the terms and/or consideration for the easement, and the condemnation case is pursued through a Special Commissioners' hearing and/or an appeal and trial de novo. Further, this Agreement does not preclude or prohibit OWNER from pursuing and seeking any damages allowed by law caused by LUBBOCK COUNTY to OWNER's property as a result of LUBBOCK COUNTY's activities on the Easement Property.

5. **OWNER HEREBY EXPRESSLY WAIVES ANY RIGHT TO CHALLENGE, CONTEST OR OBJECT TO LUBBOCK COUNTY'S RIGHT TO ACQUIRE THE EASEMENT PROPERTY SOUGHT IN THE CONDEMNATION CASE OR TO ACQUIRE THE RIGHTS INCLUDED IN THE EXHIBIT AA ATTACHED HERETO, AND SUCH WAIVERS SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

6. OWNER and LUBBOCK COUNTY agree to and hereby designate the Effective Date as the date of taking for all purposes, including the determination of just compensation owed to OWNER.

7. If LUBBOCK COUNTY and OWNER are unable to agree on the amount of adequate compensation for the acquisition of the Easement Property by October 15, 2022, LUBBOCK COUNTY agrees that it will proceed with condemnation. LUBBOCK COUNTY agrees that its condemnation pleadings will seek to condemn the easement and right-of-way as set forth in the Petition attached hereto as Exhibit "AA". Further, nothing herein shall prevent LUBBOCK COUNTY from filing its condemnation petition prior to October 15, 2022, if LUBBOCK COUNTY, in its sole discretion, has determined that it is expedient to file such condemnation petition.

8. After LUBBOCK COUNTY files its condemnation petition and upon the appointment of the Special Commissioners, LUBBOCK COUNTY and OWNER agree to work together in

the setting of a Special Commissioners' hearing. In the event that the parties are unable to agree within twenty (20) days of the appointment of the Special Commissioners on a date for such hearing, either party may then request that a Special Commissioners' hearing be set and convened, provided that such setting requested shall not be later than ninety (90) days after the appointment of the Special Commissioners.

9. LUBBOCK COUNTY's right of entry upon Easement Property is limited to carrying out the intent of this Agreement.

10. OWNER and LUBBOCK COUNTY agree that if any portion of this Agreement is deemed to be illegal, invalid or unenforceable, such illegal, invalid or unenforceable provision shall not affect the legality, validity or enforceability of the remainder of this Agreement.

11. OWNER and LUBBOCK COUNTY agree that Texas law governs this Agreement and all obligations of the parties are performable in Lubbock County, Texas.

12. This Agreement shall continue from the Effective Date defined in Paragraph 1, above and terminate upon the earlier of the following two events:

- (a) The execution and delivery of an easement and right of way by OWNER to LUBBOCK COUNTY conveying the easement rights sought in the condemnation and identified in Exhibit "AA", attached hereto, or an alternative easement that is acceptable to LUBBOCK COUNTY; or,
- (b) Upon the conclusion of a Special Commissioners' hearing and subsequent deposit of the monies awarded by the Special Commissioners, pursuant to Texas Property Code §21.021(a)(1), with a credit to LUBBOCK COUNTY for the Entry Deposit already paid to OWNER, and further compliance with the obligations of Texas Property Code §21.021, this Agreement shall terminate and all rights, obligations and privileges of possession and use shall be governed by LUBBOCK COUNTY's condemnation pleadings. It is further agreed that LUBBOCK COUNTY shall comply with its obligations under Texas Property Code §21.021 and pay any and all sums which exceed the Entry Deposit, make deposits or post bonds within forty-five (45) days from the date that the Award by Special Commissioners is filed with the Court in this condemnation case. It is expressly agreed that this Agreement may be presented to the trial

court as evidence that LUBBOCK COUNTY has complied with Texas Property Code §21.021(a)(1) by the tender and payment of the Entry Deposit described above. Upon Final Judgment or upon the execution of a final easement between the parties, the rights defined in said judgment or easement will be the final, sole and exclusive rights acquired by LUBBOCK COUNTY.

13. Nothing in the Agreement is intended to limit any rights, including rights of ingress and egress, which LUBBOCK COUNTY may have pursuant to any existing easement it owns burdening any property owned by OWNER.

14. This Agreement runs with the land and will extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties; however, LUBBOCK COUNTY and OWNER agree that only a memorandum of this Agreement that LUBBOCK COUNTY drafts may be filed of record in the real property records of Lubbock County.

15. Time is of the essence in this Agreement.

EXECUTED the ____ day of _____, 2022, to be effective as set forth above.

OWNER: AMMMK, LTD.

By: Arthur Stojan
Title: Partner

Curtis Parrish
Lubbock County Judge

Terence Kovar, Commissioner, Pct. 1

Jason Corley, Commissioner, Pct. 2

Gilbert A. Flores, Commissioner, Pct. 3

Chad Seay, Commissioner, Pct. 4

ATTEST:

Kelly Pinion, County Clerk

CAUSE NO. _____

THE COUNTY OF LUBBOCK, TEXAS	§	EMINENT DOMAIN PROCEEDING
	§	
	§	
	§	IN THE COUNTY COURT AT
	§	
V.	§	
	§	LAW NO. 3
	§	
	§	
AMMMK, LTD.	§	LUBBOCK COUNTY, TEXAS

ORIGINAL PETITION AND STATEMENT IN CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

The County of Lubbock, Texas (“Lubbock County”) files this Original Petition and Statement in Condemnation, respectfully showing as follows:

I. DISCOVERY

Discovery is intended to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure, upon completion of the administrative phase of this case.

II. STATEMENT REGARDING CLAIMS FOR RELIEF

Pursuant to Texas Rule of Civil Procedure 47(c)(2), Lubbock County believes this case involves monetary relief under \$250,000. Texas Rule of Civil Procedure 47(c)(3),

III. PARTIES

Lubbock County was created in 1876 by act of the Texas Legislature. *See* Act of Aug. 21, 287, 15th Leg., ch. 144, 1876 Tex. Gen. Laws 238. Lubbock County was organized in February of 1891 and is vested with the power of eminent domain pursuant to Chapters 261 and 561 of the Texas Local Government Code and the general laws of the State of Texas. *See* Tex. Loc. Gov’t

Code §§ 261.001, (LexisNexis, Lexis Advance through the 2021 Regular Session of the 87th legislature.)

To the best of Lubbock County’s knowledge, AMMMK, Ltd. (“Defendant”) is the owner of and/or possesses title to or some interest in property, more particularly described in Exhibits “A” and “B” attached hereto, consisting of a total of 0.111 acres of land, more or less, and all improvements thereon. (the “Property”). Service is not requested at this time.

Defendant is, to the best of Lubbock County’s knowledge, the only person and/or entity owning, holding, or claiming any interest in the Property. However, should it be disclosed or discovered that other persons or entities own or claim some interest in the Property, Lubbock County reserves the right to amend this Petition and join such persons or entities as parties to this proceeding.

Pursuant to Section 21.012 of the Texas Property Code, Lubbock County will serve Defendant by providing a copy of this Petition to the Defendant by certified mail, return receipt requested and first-class mail. If the Defendant has given Lubbock County notice that it is represented by an attorney, Lubbock County will also concurrently provide a copy of the petition to Defendant’s attorney by first class mail, commercial delivery service, fax, or e-mail.

IV. JURISDICTION AND VENUE

Lubbock County seeks the acquisition of certain real property rights in the Property by eminent domain pursuant to Chapter 21 of the Texas Property Code. This Court has jurisdiction under Texas Property Code § 21.001. Under Texas Property Code § 21.013, venue is proper in Lubbock County because all or part of the real property at issue in this lawsuit is located in Lubbock County, and all or a part of the cause of action arises in Lubbock County.

V. NECESSITY FOR ACQUISITION OF DEFENDANT'S PROPERTY AND LUBBOCK COUNTY'S EASEMENT RIGHTS

Lubbock County has determined and declared that there exists a public necessity and that it is in the public interest for Lubbock County to acquire by condemnation a permanent and perpetual street easement and right-of-way (the "Easement") upon, over, under, along, and across a portion of the Property. The Easement will encompass a 0.111 acre tract of the Property (the "Easement Tract"). The Property and the Easement Tract are more particularly described and depicted in Exhibits "A" and "B" attached hereto and incorporated herein by reference.

Due to increased growth of Lubbock County and increased traffic and development along Woodrow Road, it is necessary for Lubbock County to acquire the Easement across the Property in order to have the right to widen and improve Woodrow Road between Highway 87 and Slide Road for the public's use, such improvements to include the construction and reconstruction of Woodrow Road ("the Road"), an adjoining sidewalk, at the discretion of Lubbock County, public utilities, and other related public improvements on the Property for the purpose of serving the public convenience and necessity. Lubbock County is acquiring the following rights, privileges, and easements with respect to the Easement Tract:

(a) The right to use and utilize the Easement Tract for the construction, maintenance, repair, replacement, and operation of a public street and other related public improvements, including but not limited to sidewalks, public utilities, traffic control facilities, drainage facilities and other such improvements for the control of flooding, whether by Lubbock County or by others acting with the permission of Lubbock County;

(b) The right to build canals, drains, levees, and other improvements to provide for flood control and water outlets within the Easement Tract; and

(c) The right to have access across, along, under, and upon the Easement Tract and to enter upon the Easement Tract to engage in such activities as may be necessary, requisite, convenient, or appropriate in connection with the exercise of such rights, including without limitation the right to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purposes for which the Easement is being acquired.

Lubbock County shall have exclusive use of the Easement Tract for the purposes set forth herein, and no use of the Easement Tract shall be permitted for any purpose that is inconsistent with the purposes of the Easement.

The easement rights acquired in the Property shall be exclusive, perpetual rights and a permanent easement and right-of-way over, across, under and upon the Property for the purposes sought herein.

VI. LIMITATIONS ON LUBBOCK COUNTY'S RIGHTS

Lubbock County shall have no right to permanently occupy any part of the Property, except the Easement Tract, and shall have no right to use such land for any purpose other than as set forth herein.

The rights to be acquired by Lubbock County in this proceeding are limited to the Easement Tract described in Exhibits "A" and "B" attached hereto, and do not extend onto Defendant's adjacent lands.

VII. MINERAL RIGHTS

Lubbock County is not acquiring the rights to any oil, gas, and other minerals (whether by law classified as part of the mineral estate or the surface estate) and groundwater in, on and under the Property, but is acquiring all surface rights of any kind to explore for or develop any mineral interests on or under the Easement Tract; provided, however, that the acquisition of such surface rights shall not prevent the owners of any mineral estate, interest, or lease from extracting oil, gas, and other minerals in, on and under the Easement Tract by directional drilling or other means, so long as no part of the surface of the Easement Tract is used or affected and Lubbock County's use of the Easement Tract is not disturbed, as well as the right that the Road and other related public improvements, including but not limited to drainage facilities and other such improvements for the

control of flooding shall not be endangered, obstructed, or interfered with by such operations. which use shall include the right of Lubbock County to physical and/or lateral support for the improvements, as well as the right that the improvement shall not be endangered, obstructed, or interfered with by such operations.

VIII. LUBBOCK COUNTY'S COMPLIANCE WITH EMINENT DOMAIN PROCEDURES

This proceeding is brought under the applicable provisions of Chapter 21 of the Texas Property Code and all other pertinent provisions of law. Lubbock County specifically states that it has provided Defendant, with the Landowner's Bill of Rights in accordance with Section 21.0112 of the Texas Property Code, and made a bona fide offer to acquire the easement from the Defendant voluntarily as provided by Section 21.0113 of the Texas Property Code, but those efforts have failed, and Lubbock County and the Defendant are unable to agree on compensation and/or easement terms. Further, because any further attempts to reach an agreement would be futile, it has become necessary for Lubbock County to institute this proceeding.

Defendant or Defendant's heirs, successors, or assigns may be entitled to (a) repurchase the property under Subchapter E of the Texas Property Code, or (b) request from Lubbock County certain information relating to the use of the property and any actual progress made toward that use. The repurchase price for the property is the price paid to Defendant by Lubbock County at the time Lubbock County acquires the property through eminent domain.

IX. PRAYER

WHEREFORE, Lubbock County prays that: (1) this Court appoint three disinterested real property owners who reside in Lubbock County, Texas, as Special Commissioners and two disinterested real property owners who reside in Lubbock County, Texas, as Alternate Special Commissioners; (2) the Commissioners promptly set a time and place for a hearing; (3) the

Commissioners assess the compensation owed for the Property being acquired; (4) the Court grant Lubbock County a Writ of Possession to enforce the decision of the Special Commissioners; (5) the Court, upon final judgment herein, grant to Lubbock County the property rights sought in this condemnation proceeding; and (6) the Court award Lubbock County its respective costs of suit, and any other relief, both general and special, legal and equitable, to which it may be entitled.

Respectfully submitted,

C. MATTHEW TERRELL
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Facsimile: 806-762-3510
amiller@cdmlaw.com

**ATTORNEYS FOR PLAINTIFF
THE COUNTY OF LUBBOCK, TEXAS**



SCALE: 1"=50'

Line Table		
Line #	Length	Direction
L1	38.67'	S01° 48' 38"W
L2	62.88'	N84° 29' 06"W
L3	73.25'	N88° 12' 18"W
L4	34.63'	N01° 48' 38"E
L5	136.00'	S88° 11' 22"E

PARCEL 160

40' RIGHT-OF-WAY
COMMISSIONER COURT MINUTES, MARCH 23, 1912

WOODROW ROAD
(STRIP PAVED)

PARCEL 164

1.091 ACRES
ERIC & HALEY BUSKE
CCFN 2010005750
1203 WOODROW ROAD

1.090 ACRES
AMMMK, LTD.
CCFN 2016014195
1109 WOODROW ROAD

1.090 ACRES
SANTIAGO & VICTORIA MARTINEZ
VOL. 1769, PG. 765
1103 WOODROW ROAD

PARCEL 166

PARCEL 168

1.230 ACRES
FLOYD MCCRARY
VOL. 4988, PG. 26
1005 WOODROW RD

PARCEL 167

20' SOUTH PLAINS TELEPHONE CO-OP
AFFIDAVIT VOL. 1717, PG. 892

SECTION 20, BLOCK E
SECTION 26, BLOCK 20

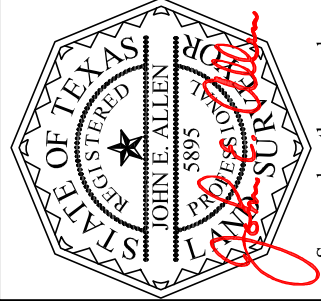
P.O.B.
N= 7,227,568.33
E= 947,677.36'

Note: Recorded or unrecorded documents other than those shown on this survey may exist and encumber this property.

WOODROW ROAD DESIGN PROJECT
STATE LOOP 493 TO SLIDE ROAD

Parcel 165 - Permanent Easement
PERIMETER SURVEY OF A
0.1111 ACRE PARCEL LOCATED IN
SECTION 26, BLOCK 20
LUBBOCK COUNTY, TEXAS

John E. Allen, Registered Professional Land Surveyor No. 5895
State of Texas



Surveyed on the ground.
May 10, 2021

HR HUGO REED
AND ASSOCIATES, INC.

LAND SURVEYORS
CIVIL ENGINEERS

TEXAS LICENSED SURVEYING FIRM 100876-00
TEXAS REGISTERED ENGINEERING FIRM F-760

1601 AVENUE N
LUBBOCK, TEXAS 79401
PHONE: 806/763-5642
FAX: 806/763-3891

Bearings are relative to the Texas Coordinate System of 1983,
North Central Zone, NAD 83 (2011), Epoch 2010.0
Distances and coordinates are surface, U.S. Survey feet.
Combined Scale Factor: 1.0002539

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LEGEND:

- SURVEYED PROPERTY
- ADJACENT PROPERTY
- RIGHT-OF-WAY
- EASEMENT
- - SET 1/2" ROD w/CAP
- ⊗ - SET MAG NAIL WITH SHINER
- - FD. 3/8" IRON ROD
- ⊙ - FD. 5/8" IRON ROD

P.O.B. - POINT OF BEGINNING
CCFN - COUNTY CLERK FILE NUMBER,
LUBBOCK COUNTY, TEXAS

EXHIBIT "A"

DESCRIPTION FOR PARCEL 165

METES AND BOUNDS DESCRIPTION of a 0.111 acre parcel located in Section 26, Block 20, Lubbock County, Texas, being a portion of a 1.090 acre tract described in County Clerk File Number 2016014195, Official Property Records, Lubbock County, Texas (OPRLCT), being further described as follows:

BEGINNING at a mag nail with shiner (N=7,227,568.33', E=947,677.36') set in the East line of said 1.090 acre tract and in the West line of a 1.090 acre tract described in Volume 1769, Page 765, Deed Records, Lubbock County, Texas, and in the South line of 40.00 foot Right-of-Way described in Commissioner Court Minutes, March 23, 1912, which bears N. 88° 11' 22" W. a distance of 232.51 feet and S. 01° 48' 38" W. a distance of 20.00 feet from a 1/2" iron rod found at the Northwest corner of 0.949 acres described in Volume 2153, Page 194, Real Property Records, Lubbock County, Texas, for the Northeast corner of this parcel;

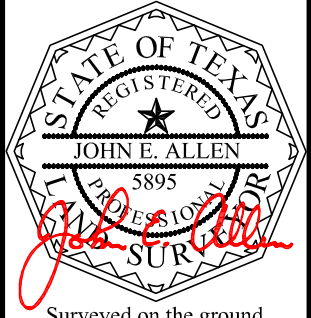
THENCE S. 01° 48' 38" W. along the common line of both said 1.090 acre tracts, a distance of 38.67 feet to a 1/2" iron rod with yellow cap marked "HUGO REED & ASSOC" set for the Southeast corner of this parcel;

THENCE N. 84° 29' 06" W. a distance of 62.88 feet to a 1/2" iron rod with yellow cap marked "HUGO REED & ASSOC" set for a point of intersection of this parcel;

THENCE N. 88° 12' 18" W. a distance of 73.25 feet to a mag nail with shiner set in the West line of said 1.090 acre tract and in the East line of a 1.091 acre tract described in County Clerk File Number 2010005750, OPRLCT, which bears N. 01° 48' 38" E. a distance of 4.46 feet from a found 3/8" iron rod, for the Southwest corner of this parcel;

THENCE N. 01° 48' 38" E. along the common line of said 1.090 acre tract and said 1.091 acre tract, a distance of 34.63 feet to a mag nail with shiner set for the Northwest corner of this parcel.

THENCE S. 88° 11' 22" E. a distance of 136.00 feet to the Point of Beginning. Containing 0.111 acre (4,835 sq. ft.) of land, more or less.

<p>WOODROW ROAD DESIGN PROJECT STATE LOOP 493 TO SLIDE ROAD</p>	 <p>Surveyed on the ground. May 10, 2021</p>	<p>HR HUGO REED AND ASSOCIATES, INC.</p>
<p>Parcel 165 - Permanent Easement PERIMETER SURVEY OF A 0.111 ACRE PARCEL LOCATED IN SECTION 26, BLOCK 20 LUBBOCK COUNTY, TEXAS</p>		<p>LAND SURVEYORS CIVIL ENGINEERS TEXAS LICENSED SURVEYING FIRM 100676-00 TEXAS REGISTERED ENGINEERING FIRM F-760</p> <p>1601 AVENUE N LUBBOCK, TEXAS 79401 PHONE: 806 / 763-5642 FAX: 806 / 763-3891</p>
<p>John E. Allen, Registered Professional Land Surveyor No.5895 State of Texas</p>	<p>Bearings are relative to the Texas Coordinate System of 1983, North Central Zone, NAD 83 (2011), Epoch 2010.0 Distances and coordinates are surface, U.S. Survey feet. Combined Scale Factor: 1.0002539</p>	<p>Copyright 2021, Hugo Reed and Associates, Inc. Page 2 of 2</p>