

AN ORDINANCE 81217

ACCEPTING FEE SIMPLE TITLE FROM SILVERIO CUELLAR AND BEATRICE CUELLAR TO THAT CERTAIN PROPERTY AT 616-618 FUNSTON PLACE, SAN ANTONIO, TEXAS, ALSO KNOWN AS LOT 19, NEW CITY BLOCK 7186, HILLTOP TERRACES, IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1625, PAGE 163, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND ACCEPTING THE CONDITIONS FOR THE USE OF SAID PROPERTY.

\* \* \* \* \*

WHEREAS, vandalism has caused extensive damage to glass panels at the Lucile Halsell Conservatory in the San Antonio Botanical Center; and

WHEREAS, City ownership of additional property along Funston Place and the future rerouting of Funston Place will create a buffer to discourage such vandalism; and

WHEREAS, the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC., has signed an Earnest Money Contract to purchase Lot 19, 616-618 Funston Place, in proximity of said Conservatory, thus making available property to form the needed buffer and provide land for expansion of the San Antonio Botanical Center; and

WHEREAS, the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC., has graciously offered to donate said lot to the CITY OF SAN ANTONIO and will advise the Sellers, SILVERIO CUELLAR and BEATRICE CUELLAR, to transfer the property by Warranty Deed directly to the CITY OF SAN ANTONIO at a closing to take place on or about November 30, 1994; and

WHEREAS, the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC., will pay the purchase price and all closing costs for said transaction; and

WHEREAS, the acceptance of such offer with its conditions is advantageous to the CITY OF SAN ANTONIO; and

WHEREAS, the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC., desires that said property be used as a buffer zone for the San Antonio Botanical Center and that the structure currently in place on the premises be demolished by the City; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Fee Simple Title by Warranty Deed from SILVERIO CUELLAR and BEATRICE CUELLAR is hereby accepted, transferring to the CITY OF SAN ANTONIO the ownership of one (1) Lot, including real property and all improvements and fixtures located thereon, legally described as Lot 19, New City Block 7186, Hilltop Terraces, San Antonio, Bexar County, Texas, as a result of a donation by the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC., to the CITY OF SAN ANTONIO.

SECTION 2. The CITY OF SAN ANTONIO hereby agrees to the following conditions for use of said property as requested by the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC.:

1. The City agrees to use the premises as a buffer zone, free of any structures and improvements, to enhance and protect the adjoining San Antonio Botanical Center property. Therefore, the CITY OF SAN ANTONIO agrees that it shall not place, erect or construct, or permit the erection, construction or placement of, any structure, feature or appurtenance on the premises or any part thereof without the prior written consent of the Society, and this provision is intended to be and is deemed to be a covenant running with the land.
2. The CITY OF SAN ANTONIO will demolish and remove the structure on the premises as soon as reasonably possible unless the Society agrees otherwise.

PASSED AND APPROVED this 22nd day of November, 1994.

M A Y O R

ATTEST:

*Ramon S. Rodriguez*  
CITY CLERK

APPROVED BY:

*Albert J. Pardo*  
CITY ATTORNEY

94-55

- ALAMODOME
- ARTS & CULTURAL AFFAIRS
- ASSET MANAGEMENT
- AVIATION
- BUILDING INSPECTIONS
- BUILDING INSPECTIONS-HOUSE NUMBERING
- CITY ATTORNEY
  - MUNICIPAL COURT
  - REAL ESTATE (FASSNIDGE)
  - REAL ESTATE (WOOD)
  - REAL ESTATE (HUBBARD)
- TRIAL SECTION
- CITY MANAGER
  - TRAVIS BISHOP, ASST. TO CITY MGR.
  - CODE COMPLIANCE
  - INTERGOVERNMENTAL RELATIONS
  - INTERNATIONAL RELATIONS
  - YOUTH INITIATIVES
- CITY PUBLIC SERVICE-GENERAL MANAGER
- CITY PUBLIC SERVICE-MAPS & RECORDS
- COMMERCIAL RECORDER (PUBLISH)
- COMMUNITY INITIATIVES
- CONVENTION & VISITORS BUREAU
- CONVENTION FACILITIES
- DOME DEVELOPMENT OFFICE
- ECONOMIC DEVELOPMENT
- FINANCE DIRECTOR
  - ASSESSOR
  - CONTROLLER
  - GRANTS
  - RISK MANAGEMENT
  - TREASURY
- FIRE DEPARTMENT
- HOUSING & COMMUNITY DEVELOPMENT
- INFORMATION SERVICES
- INTERNAL REVIEW
- LIBRARY
- MANAGEMENT SERVICES (BUDGET)
- MANAGEMENT SERVICES (PERSONNEL)
- MARKET SQUARE
- METROPOLITAN HEALTH DISTRICT
- MUNICIPAL COURTS
- PARKS & RECREATION
- PLANNING
  - DISABILITY ACCESS OFFICE
  - LAND DEVELOPMENT SERVICES
- POLICE DEPARTMENT
- POLICE DEPARTMENT-GROUND TRANSPORTATION
- PUBLIC INFORMATION OFFICE
- PUBLIC UTILITIES
- PUBLIC WORKS
  - CAPITAL PROJECTS
  - CENTRAL MAPPING
  - ENGINEERING
  - PARKING DIVISION
  - REAL ESTATE (BILL TOUDOUZE)
  - SOLID WASTE
  - TRAFFIC ENGINEERING
- PURCHASING & GENERAL SERVICES
- SAN ANTONIO WATER SYSTEM (SAWS)
- MUNICIPAL CODE CORPORATION (PUBLISH)

ITEM NO. 19  
 NOV 22 1994

MEETING OF THE CITY COUNCIL DATE: \_\_\_\_\_

MOTION BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

ORD. NO. 81217 ZONING CASE \_\_\_\_\_

RESOL. \_\_\_\_\_ PETITION \_\_\_\_\_

	ROLLCALL	AYE	NAY
ROGER PEREZ DISTRICT 1			
RUTH MC-CLENDON DISTRICT 2			
LYNDA BILLA BURKE DISTRICT 3			
HENRY AVILA DISTRICT 4			
JUAN F. SOLIS III DISTRICT 5			
HELEN AYALA DISTRICT 6			
BOB ROSS DISTRICT 7			
BILL THORNTON DISTRICT 8			
HOWARD PEAK DISTRICT 9			
LYLE LARSON DISTRICT 10			
NELSON WOLFF MAYOR			

94-55

UNCONSENT AGENDA

SILVERIO CUELLAR AND  
BEATRICE CUELLAR

95- 0003171

TO

THE CITY OF SAN ANTONIO

WARRANTY DEED

THE STATE OF TEXAS \*  
\* KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF BEXAR \*

That SILVERIO CUELLAR AND BEATRICE CUELLAR ("Grantor") of the County of Bexar and State of Texas for and in consideration of the sum of SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) to the Grantor paid by the SAN ANTONIO BOTANICAL CENTER SOCIETY, INC. ("Donor") on behalf of Grantee and pursuant to an agreement between Donor and Grantee, hereinafter named, to donate the premises to Grantee, the receipt and adequacy of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto THE CITY OF SAN ANTONIO ("Grantee" whether one or more) of the County of Bexar and State of Texas, all of the following described real property (with all improvements and fixtures thereon) in Bexar County, Texas (the "premises") to-wit:

Lot 19, New City Block 7186, HILLTOP TERRACES, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 1625, Page 163, Deed and Plat Records of Bexar County, Texas.

This conveyance is made and accepted subject to restrictions and easements of record, if any, in Bexar County, Texas, to the extent that same are valid and still in force and effect, including, but not limited to, the following:

1. 7.5' Front Setback Line as shown on plat recorded in Volume 1625, Page 163, Deed and Plat Records of Bexar County, Texas.
2. 25' Front and 7.5' Side Street Setback Line as recorded in Volume 1903, Page 446, Deed Records of Bexar County, Texas.
3. Restrictive covenants set forth in Volume 279, Page 120; Volume 316, Page 596; Volume 515, Page 370; Volume 1903, Page 446; and, Volume 5853, Page 981, Deed Records of Bexar County, Texas.

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Ad valorem taxes having been prorated as of the date of this conveyance, Grantee hereby assumes liability for any ad valorem taxes on the premises.

Grantee, by its acceptance hereof, hereby agrees that it shall not place, erect or construct, or permit the erection, construction or placement of any structure, feature, or appurtenance on the premises or any part thereof without the prior written consent of Donor, and this provision is intended to be and is deemed to be a covenant running with the land and shall be binding upon Grantee, its legal representatives, successors, and assigns. Donor has arranged for and has provided the consideration for the acquisition of the premises from Grantor and has requested the direct conveyance of the premises from Grantor to Grantee as a donation to Grantee, it being Donor's intent, and a requirement and condition of said transaction, that the premises be used as a buffer zone, free of any structure or improvement, to enhance and protect the adjoining San Antonio Botanical Center property, unless Donor shall authorize any other use by Grantee of the premises.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind its heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 3rd day of January, 1995.

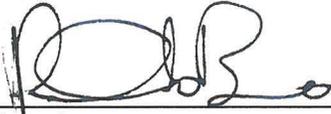
  
\_\_\_\_\_  
SILVERIO CUELLAR

  
\_\_\_\_\_  
BEATRICE CUELLAR

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AGREED AND ACCEPTED:

THE CITY OF SAN ANTONIO,  
a Texas municipal corporation

By:   
Rolando Bono

Its: ASSISTANT CITY MANAGER

Pursuant to Ordinance #81217  
passed and approved on November 22, 1994.

Grantee's Address:

City of San Antonio  
Attention: Warner Fassnidge  
Post Office Box 839966  
San Antonio, Texas 78283-3966

(Acknowledgments)

State of Texas                   \*  
                                          \*  
County of Bexar                \*

This instrument was acknowledged before me on the 3rd day of  
January, 1995, by Silverio Cuellar.



  
Notary Public, State of Texas

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State of Texas \*  
\*  
County of Bexar \*

This instrument was acknowledged before me on the 3rd day of January, 1995, by Beatrice Cuellar.



Alice Titzman  
Notary Public, State of Texas

State of Texas \*  
\*  
County of Bexar \*

This instrument was acknowledged before me on the 4th day of JANUARY, 1995, by Rolando Bono, Asst. City Manager of the CITY OF SAN ANTONIO, a Texas municipal corporation, on behalf of said corporation.



Mary Alice Ramirez  
Notary Public, State of Texas

After recording, please return to Grantee at the above address.

City of San Antonio  
P.O. Box 839966  
San Antonio TX 78283-3966  
Attn: Horner Fassnidge

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Any provision herein which restricts the sale, rental, or use of the described real property because of race is invalid and unenforceable under Federal Law.

STATE OF TEXAS, COUNTY OF BEXAR

I, hereby certify that this instrument was FILED in the Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

JAN 11 1995



*Gerry Rickhoff*

COUNTY CLERK BEXAR COUNTY, TEXAS

Deputy - Jane Hernandez

Doc/Num : 95-0003171  
Receipt #: 99116  
Recording: 9.00  
Doc/Mgmt : 6.00

At 3:59pm

On Jan 05 1995

Filed for Record in:  
BEXAR COUNTY, TX  
GERRY RICKHOFF, COUNTY CLERK

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# SAN ANTONIO BOARD OF REALTORS, INC.

9110 IH 10 WEST  
SAN ANTONIO, TX 78230



## IMPROVED COMMERCIAL PROPERTY EARNEST MONEY CONTRACT

1. PARTIES: SILVERIO AND BEATRICE CUELLAR<sup>SR.</sup> (Seller) agrees to sell and convey to THE SAN ANTONIO BOTANICAL CENTER SOCIETY, INC. (Buyer), and Buyer agrees to buy from Seller, the following property for the consideration and upon and subject to the terms, provisions and conditions hereinafter set forth.

2. PROPERTY: A tract of land situated in BEXAR County, Texas, together with all buildings, improvements, fixtures, equipment, furniture and all other property of every kind and character owned by Seller located on, attached to, or used in connection therewith; all privileges and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way; Seller's interest in and to all leases granting a possessory interest in the Property (the "Tenants Leases") and all rents and security deposits thereunder; Seller's interest in and to all licenses and permits with respect to the Property; Seller's interest in all service, maintenance, management and other contracts relating to the ownership or operation of the Property; Seller's interest in any and all warranties, guaranties and bonds relating to the Property or any part thereof; Seller's interest in any and all site plans, surveys, architectural drawings, plans and specifications, engineering plans and studies, promotional material, market studies and other data relating to the Property; and Seller's interest in any trade names used in connection with the Property; (all of the above hereinafter collectively called the 'Property', and all of the above other than the real property being collectively called the 'Personal Property'), the real property being described as follows and/or as set out on Exhibit 'A' attached hereto and incorporated herein by reference: NCB 7186 LOT 19 ALSO KNOWN AS 616-618 FUNSTON PL., SAN ANTONIO, TEXAS

The metes and bounds description, determined by the survey of the Property hereinafter provided for, will replace Exhibit "A" attached hereto in the event it should differ from the attached Exhibit "A".

### 3. CONTRACT SALES PRICE:

A. Cash, payable at closing ..... \$ 75,000.00  
 B. Sum of all notes described in Paragraph 4 below ..... \$ 0  
 C. Sales Price (Sum of A and B) ..... \$ 75,000.00

D. Check applicable box for determination of Sales Price:

- (1) The Sales Price shall not be based upon the number of acres/square feet comprising the Property as determined by the Survey.
- (2) If the Survey of the Property required by Paragraph 6 reflects that the number of total ( ) acres ( ) square feet comprising the Property is more or less than ( ) total acres of ( ) total square feet ("Total Area"), the Sales Price and the cash payable at Closing shall be increased or reduced by the product of \$ multiplied by the amount of increase or decrease of the Total Area.

### 4. FINANCING (Check A, B, C, or D, as applicable): NONE APPLICABLE

- A. SUBJECT TO: Buyer shall take subject to, and shall not assume payment of, the unpaid balance of that Promissory Note payable to \_\_\_\_\_ dated \_\_\_\_\_, and shall not assume those obligations imposed by the Deed of Trust securing the payment of said Note, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Official Public Records of Real Property of the county where the Property is situated. Buyer shall pay the installment payment due after the date of Closing. The principal balance at Closing will be \$ \_\_\_\_\_ allowing for an agreed \_\_\_\_\_ variance. The cash payable at Closing shall be adjusted for the amount of such variance. Should this sale not be approved by the holder of the Note (if a "due on sale" clause is applicable) within \_\_\_\_\_ days from the Effective Date hereof or if the variance exceeds the amount above, or should the terms of the Note or Deed of Trust be modified or interest rate be raised above \_\_\_\_\_%, or should the Buyer be required to pay a transfer fee in excess of \$ \_\_\_\_\_, this Contract may be terminated at Buyer's option, and the Earnest Money shall be refunded to Buyer.
- B. ASSUMPTION: Buyer shall assume the unpaid balance of that Promissory Note payable to \_\_\_\_\_, dated \_\_\_\_\_, and those obligations imposed by the Deed of Trust recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Official Public Records of Real Property in the county where the Property is situated. Buyer shall pay the installment payment due after the date of Closing. The principal balance at Closing will be \$ \_\_\_\_\_, allowing for an agreed \$ \_\_\_\_\_ variance. The cash payable at Closing shall be adjusted for the amount of such variance. Should this sale not be approved by the holder of the note (if a "due on sale" clause is applicable) within \_\_\_\_\_ days from the Effective Date hereof or if the variance exceeds the amount above, or should the terms of the Note or Deed of Trust be modified or interest rate be raised above \_\_\_\_\_%, or should the Buyer be required to pay a transfer fee in excess of \$ \_\_\_\_\_, this Contract may be terminated at Buyer's option, and the Earnest Money shall be refunded to Buyer.
- C. THIRD PARTY FINANCING: This contract is subject to approval of a loan for Buyer by a third party in the amount of \$ \_\_\_\_\_, payable in \_\_\_\_\_ installments for not less than \_\_\_\_\_ years, with the interest rate not to exceed \_\_\_\_\_% per annum, and with each principal and interest installment not to exceed \$ \_\_\_\_\_ (  including interest or  plus interest for the first \_\_\_\_\_ years of the loan). Buyer shall apply for the loan within \_\_\_\_\_ days from the Effective Date hereof and shall make every reasonable effort to obtain approval. If the loan has not been approved within \_\_\_\_\_ days from the Effective Date hereof, this Contract shall terminate and the Earnest Money shall be refunded to Buyer.
- D. SELLER FINANCING: Buyer shall execute a Promissory Note payable to the order of Seller in the principal sum of \$ \_\_\_\_\_, bearing \_\_\_\_\_% interest per annum prior to default and payable (Check 1, 2, 3, 4, 5 and/or 6 below):
- (1) in full, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ with accrued interest being due and payable \_\_\_\_\_.
- (2) in  monthly  annual  other: \_\_\_\_\_ installments of \$ \_\_\_\_\_ (  including interest or  plus interest each), beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and continuing regularly thereafter until the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, when the entire amount of principal and interest then remaining unpaid, shall be due and payable.
- (3) interest only in  monthly  annual  other: \_\_\_\_\_ installments of \$ \_\_\_\_\_ each, beginning on the \_\_\_\_\_

Any Seller financed Note may be prepaid in whole or in part at any time without penalty. Any prepayments are to be applied toward the payment of the installments of principal last maturing, but interest shall immediately cease upon the amount of principal so prepaid. Each Note provided for herein shall be secured by Vendor's and Deed of Trust liens, by a perfected security interest in all Personal Property, and by an assignment of leases covering all present and future "Tenant Leases". In case of dispute as to the form of the Deed, Note(s), or Deed(s) of Trust, the most current forms prepared by the State Bar of Texas shall be used. Each note herein provided for shall contain provisions for acceleration of maturity in the event of default and for the payment of reasonable attorney's fees if the Note is placed in the hands of an attorney for collection. SC

5. **EARNEST MONEY AND DEFAULT:** As a condition precedent to the validity of this Contract, within three (3) days following the Effective Date of this Contract, Buyer shall be required to deposit as Earnest Money (the "Earnest Money") with the Title Company the sum of FIVE

THOUSAND AND NO/00 Dollars (\$ 5,000.00 ) in the form of CHECK (e.g. cashiers check, etc.) or in the form of an unconditional irrevocable letter of credit issued by a national banking association or savings association doing business in Texas, expiring no earlier than thirty (30) days following the last date upon which the Closing can occur, as provided in Paragraph 8 hereof, in a form reasonably approved by Seller. In the event Buyer should default in its obligations hereunder, Seller may declare as liquidated damages the Earnest Money, ~~one-half (1/2) thereof to go to Seller, and one-half (1/2) thereof to go to the Broker stated in Paragraph 9 hereto (but in no event to exceed the sum to which Broker would otherwise be entitled hereunder), or Seller may seek the enforcement of specific performance and/or such other damages as provided by law.~~ In the event Seller should default in Seller's obligations hereunder, Buyer may seek its damages at law and/or enforce specific performance. SC

SAID EARNEST MONEY SHALL BE SELLER'S SOLE REMEDY IN CASE OF BUYER'S DEFAULT  
In the event either party hereto becomes entitled to the Earnest Money as liquidated damages or upon termination of this Contract in accordance with its terms, Buyer and Seller covenant and agree to deliver a letter of instruction to the Title Company directing the disbursement of the Earnest Money to the party entitled thereto. In the event either party hereto fails or refuses to sign or deliver such an instruction letter when the other party is entitled to a disbursement of the Earnest Money, then the party so failing or refusing to sign or deliver such letter shall pay, upon the final order of the court with appropriate jurisdiction, stating that such other party is entitled to a disbursement of the Earnest Money, all reasonable attorney's fees incurred by the party so entitled to the Earnest Money in connection with its recovery thereof, and all sums deducted from such Earnest Money to pay the Title Company's costs and/or attorney's fees. In the event a personal or corporate check is deposited as Earnest Money and same does not clear for any reason (insufficient funds, etc.), this Contract shall be voidable at Seller's sole option.

6. **SURVEY:** Seller shall, at Seller's expense, cause the Property to be surveyed by \_\_\_\_\_ or such other Registered Public Surveyor licensed by the State of Texas as may be approved by Buyer and as may be satisfactory to the herein named Title Company for the purpose of deleting the so-called "survey exceptions" to its Title Insurance Policy, and a plat of such Survey (the "Survey") to be delivered to Buyer within \_\_\_\_\_ days from the Effective Date hereof. Such Survey shall reflect:

- (1) the total number of  acres and decimal fraction thereof  square feet comprising the Property (if acreage, to the nearest thousandth); SC
- (2) a certification by the surveyor as to whether or not the Property is located within a 100 year Special Flood Hazard Area designated in studies conducted by the Federal Emergency Management Agency, U.S. Army Corps of Engineers or any other governmental agency and, if so, shall show the approximate limits and approximate area of the flood area;
- (3) the perimeter boundaries of the Property and any encroachments thereon; and
- (4) the location of all recorded and apparent easements and platted building setback lines and encroachments thereon; which easements, if recorded, and setback lines, shall be identified by reference to the place of recordation of the instruments creating the same, and the location of any improvements, streets, waterways, fences, alleys or rights of way upon or immediately abutting the Property.

The Survey shall contain the usual and customary certificate in favor of Buyer and the Title Company. The surveyor's registered number and seal must appear on the Survey. The Survey shall locate and mark all corners and angles of the perimeter of the Property on the ground, with permanent, buried surveyor's pins or stakes.

7. **TITLE:** Within 15 days from the Effective Date hereof, Seller shall deliver to Buyer an Owner's Title Insurance Policy Commitment issued by SAEWAY TITLE CO. of SAN ANTONIO, Texas (the "Title Company"), covering the Property and committing to issue an Owner's Policy of Title Insurance (the "Title Policy") to Buyer, with legible copies of all instruments and documents referred to therein as exceptions to title ("Title Commitment"). Buyer shall have a period of 15 days after the receipt of the latter of the Title Commitment or Survey to review the same and advise Seller of any exceptions to title appearing in the Title Commitment or Survey which Buyer finds unacceptable. Any exceptions or conditions of title not so objected to are herein sometimes called "permitted exceptions". Seller shall promptly proceed to cure all objections to title; provided, however, in the event objections to title are made, which objections are other than existing liens and/or liquidated claims, and the same may not be cured without undue expense to Seller, then Seller may so notify Buyer, specifying the title objections in question; and, unless Buyer shall, within ten (10) days after the receipt of such notice elect to waive such objections (so that the exceptions in question shall be deemed to be permitted exceptions), then this Contract shall terminate, all sums paid as Earnest Money shall be returned to Buyer, and neither party shall have any further obligations hereunder.

8. **CLOSING:** The Closing of the sale shall be on or before FEBRUARY 28, 1994 (the "Closing Date"). SC

- A. At closing (the "Closing"), Seller shall deliver to Buyer, at Seller's sole cost and expense, the following:
- (1) A duly executed and acknowledged General Warranty Deed conveying good and indefeasible title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, except for the permitted exceptions;
  - (2) An Owner's Policy of Title Insurance issued by the Title Company herein mentioned, in the full amount of the Sales Price, dated as of Closing, insuring Buyer's fee simple title to the Property to be good and indefeasible, subject only to the permitted exceptions and standard printed exceptions contained in the usual form of the Title Policy; provided, however: (See P. 12 - Res. Cert. of Title Policy to be passed by Buyer). B.C. SC
    - (a) the exception as to area and boundaries  shall not be deleted  shall be deleted, except for "any shortages in area"; and, if deleted, such deletion shall be an expense of \_\_\_\_\_;
    - (b) the Exception as to restrictive covenants shall be endorsed "None of Record" except for permitted exceptions;
    - (c) the exception as to taxes shall be limited to taxes for the current year and subsequent years, and subsequent assessments for prior years due to changes in land usage or ownership;
  - (3) A duly executed Bill of Sale containing general warranties or title, conveying title to all Personal Property free and clear of all liens;
  - (4) ~~A duly executed Assignment of Leases and Security Deposits covering the Tenant Leases and all prepaid rents and security deposits thereunder;~~ B.C.
  - (5) ~~An estoppel certificate in form acceptable to Buyer's attorney, executed by the holder of each mortgage which Buyer is assuming or taking the Property subject to, indicating (i) the present principal balance of such mortgage, (ii) the date to which interest is paid, (iii) the current balance of any reserve or fund held by such mortgagee for the payment of taxes and/or insurance, and (iv) that there exists no default in the payment thereof or in the performance of any of the covenants of any of the documents evidencing or securing the same.~~
  - (6) ~~A current rent roll covering the Tenant Leases, certified by Seller as being true and correct;~~
  - (7) ~~If requested by Buyer, and to the extent assignable, an assignment of any one or more of the insurance policies held by Seller which pertain to the Property.~~
  - (8) Evidence of its capacity and authority for the Closing of this transaction; and

(9) All other necessary documents reasonably required by the Title Company to Close this transaction.

(10) PREMISES FREE OF ALL OCCUPANTS / TENANTS SC

9. **BROKER'S FEE:** CAMBRIDGE REALTY GROUP, INC., Listing Broker and N/A, Co-Broker (collectively, "Broker") have negotiated this purchase and sale, and represent Seller. Seller agrees to pay Listing Broker the fee specified by separate agreement between Listing Broker and Seller. If there is no separate agreement, Seller agrees to pay Listing Broker in \_\_\_\_\_ County, Texas, on consummation of this sale or on Seller's default, a total cash fee of \_\_\_\_\_ per cent (\_\_\_\_\_% ) of the Total Sales Price. The Title Company is authorized and directed to pay Listing Broker said fee from the sale proceeds. Each of the parties represent to the other that no brokerage commission will be due by the other as a result of such party's acts in connection with this transaction, and agrees to indemnify and hold harmless the other from and against any and all liabilities or expenses arising out of claims made for any commissions or fees resulting from such party's acts.

10. **FEASIBILITY:** SELLER SHALL HAVE NO RESPONSIBILITY TO COMPENSATE BROKER AND ACKNOWLEDGES & BC  
BC THAT ABOVE LISTED BROKER REPRESENTS BUYER.

A. Buyer  is  is not granted the right to conduct an engineering and/or market and economic feasibility study (the "Feasibility Study") of the Property, including a physical inspection of all improvements, fixtures, mechanical equipment and Personal Property. In the event Buyer is granted such right, Buyer shall have N/A days from the Effective Date hereof to perform such study and inspection; and in this regard, Buyer or its designated agents may enter upon the Property for purposes of such analysis, core drilling or other tests and inspections which may be deemed necessary by Buyer. If Buyer determines, in Buyer's sole judgment, that the Property is not suitable for any reason for Buyer's intended use or purpose, then Buyer may, on written notice to Seller on or before N/A days from the Effective Date hereof, terminate this Contract, and it shall be null and void for all purposes and the Earnest Money, less \$ N/A which shall be given to Seller as an option fee, shall be returned to Buyer. If the written notice is not given to Seller within such period, this condition and any and all objections with respect to the Feasibility Study shall be deemed to have been waived by Buyer for all purposes. In the event this Contract shall not close through no fault of Seller, Buyer shall restore the Property to its original condition if changed due to the tests and inspections performed by Buyer, and shall provide Seller with a copy of the results of any tests and inspections made by Buyer, excluding any market and economic feasibility studies. Seller acknowledges and agrees that Buyer shall expend substantial sums of money in connection with its investigation of the Property, and that such expenditures shall be deemed as additional consideration for this Contract. Buyer shall further indemnify Seller and hold Seller harmless from and against any and all liability arising out of the exercise of Buyer's rights under this Paragraph 10.

BC B. Seller shall deliver to Buyer copies of the following within five (5) days from the Effective Date hereof:

- BC (1) ~~a current rent roll in form reasonably acceptable to Buyer, certified by Seller as being true and correct as of the date of delivery;~~
- (2) ~~all Tenant Leases, including any and all modifications, supplements or amendments thereto;~~
- (3) ~~a current inventory of all Personal Property, certified by Seller as being true and correct as of the date of delivery;~~
- (4) ~~all Note(s), Deed(s) of Trust and other loan documents pertaining to loan(s) assumed or taken subject to;~~
- (5) ~~all services, maintenance, management or other contracts and all personal property leases relating to the ownership and operation of the Property;~~
- (6) ~~any and all warranties, guaranties and bonds relating to the Property, or any part thereof;~~
- (7) ~~all fire, hazard, liability and other insurance policies maintained by Seller with regard to the Property;~~
- (8) ~~the most recent real estate and personal property tax statements with regard to the Property;~~
- (9) ~~any and all leasing or other commission agreements with respect to the Tenant Leases, which commissions will be assumed by Buyer pursuant hereto;~~
- (10) ~~any and all site plans, surveys, soil studies, architectural drawings, plans and specifications with respect to the Property;~~
- (11) ~~a true and correct statement of income and expense for the Property from \_\_\_\_\_ to \_\_\_\_\_, including specific information on utility and repair expenses.~~

If Buyer is granted the right above to conduct a Feasibility Study and Seller fails to deliver to Buyer copies of any of the above at least ten (10) days prior to the end of the period granted for the Feasibility Study, the period for the Feasibility Study shall be extended by the number of days that pass between ten (10) days prior to the original expiration thereof and the date of delivery to Buyer of all items set forth in this Paragraph 10B.

11. **POSSESSION:** The possession of this Property shall be delivered to Buyer at Closing. SELLER SHALL HAVE THIRTY (30) DAYS AFTER CLOSING TO REMOVE ALL PROPERTY IMPROVEMENTS IT WISHES TO REMOVE.

12. **SPECIAL PROVISIONS:**

THIS EARNEST MONEY CONTRACT IS CONTINGENT UPON: BC

1. FORMAL APPROVAL OF THE PURCHASE BY THE BOARD OF DIRECTORS OF THE SAN ANTONIO BOTANICAL CENTER SOCIETY, INC.; AND
2. RECEIPT OF FUNDING OF PURCHASE PRICE BY BUYER FROM OUTSIDE FOUNDATION.

~~THIS EARNEST MONEY CONTRACT IS TO BE ACCEPTED BY BUYER PRIOR TO~~

SEPTEMBER 23, 1994.

BC 3. The cost of the title policy shall be paid by Buyer.  
(See SPECIAL PROVISIONS ADDENDUM) BC

13. **SALES EXPENSE TO BE PAID IN CASH AT OR PRIOR TO CLOSING:**

A. **SELLER'S EXPENSES:** All costs of releasing existing loans and recording the Releases; Owner's Title Policy; tax statements; one-half (1/2) of any escrow fee; preparation of Deed; Seller's attorney's fees; and other expenses stipulated to be paid by Seller under other provisions of this Contract.

B. **BUYER'S EXPENSES:** All expenses incident to any loan (e.g., loan procurement or transfer fees; preparation of Note, Deed of Trust, and other loan documents; recording fees; Mortgagee Policy of Title Insurance; prepayable interest; credit reports); one-half (1/2) of any escrow fee; copies of restrictions, easements, reservations or conditions affecting the Property; Buyer's attorney's fees; and expenses stipulated to be paid by Buyer under other provisions of this Contract.

14. **PRORATIONS:** Interest on any debt assumed or taken subject to, assessments, current taxes, insurance premiums (at the option of Buyer), rents and maintenance fees shall be prorated to the date of Closing. At Closing, Buyer will receive a credit against the Sales Price in the amount of that portion of any prepaid rents paid to Seller under the Tenant Leases which are allocable to periods from and after Closing. No proration shall be made for delinquent rents existing as of Closing; and all rents collected by Buyer from and after Closing shall be applied first to current rents then due and payable, and then to past due rents. Buyer shall have no obligation to collect past due rents. Buyer shall promptly refund to Seller Seller's share of any past due rents collected by Buyer. Percentage or overage rentals not yet payable under Tenant Leases shall be prorated at the time Buyer receives the same by Buyer refunding to Seller that portion of such percentage rentals bearing the same relation to the whole as the period of time in respect to which such rentals were paid which expires prior to Closing shall bear to the whole such period of time. Buyer shall receive a credit against the Sales Price in the amount of any deposits paid to Seller by tenants of the Property, including, but not limited to, all security, cleaning, utility, key, damage and other deposits. All other income and ordinary operating expenses of the Property, including but not limited to public utility charges, maintenance, management and other normal operating charges, shall be prorated as of Closing. If ad valorem taxes for the year in which Closing occurs are not available at Closing, proration of taxes shall be made

17. **APPLICATION OF EARNEST MONEY:** The Earnest Money is deposited with the Title Company with the understanding that the Title Company (i) does not assume or have any liability for performance or nonperformance of any party nor to pay interest on such Earnest Money (ii) has the right to require the written release of the Title Company by the signatories hereto and (iii) has the right to require the authorization from all signatories to disburse the Earnest Money. At Closing, the Earnest Money shall be applied to any cash down payment required, next, to Buyer's Closing costs; and, any excess, refunded to Buyer. In preparation for Closing, the Title Company or Broker may incur actual expenses on behalf of Seller or Buyer; therefore, any refund or payment of the Earnest Money under this Contract shall be reduced by the amount of any actual expenses incurred on behalf of the party receiving the Earnest Money, and the Title Company will pay the same to the creditors entitled thereto.

18. **REPRESENTATIONS:** Seller hereby makes the following REPRESENTATIONS AND WARRANTIES to Buyer, which representations and warranties shall be deemed made by Seller to Buyer also as of Closing Date, and to expressly survive Closing:

- A. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers, ~~except as otherwise provided herein.~~ *JK*
- B. To the best of Seller's knowledge, there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof; nor, to the best knowledge and belief of Seller, is any such proceeding or assessment contemplated by any governmental authority. *B C*
- C. Seller is the fee simple owner of the title to the Property and is duly authorized and empowered to sell said Property.
- D. Seller has paid, or will pay at Closing, through the current year, all taxes, charges, debts and other assessments due by the Seller with respect to the Property.
- E. Seller knows of no existing condition with respect to the Property or its operation which violates any government code or regulation.
- F. The Property is not being used, and Seller has no knowledge that it has ever been used, for the storage or disposal of any hazardous or toxic materials.
- G. To the best of Seller's knowledge, no fact or condition exists which would result in the termination of the current access from the Property to any presently existing highways and/or roads adjoining or situated on the Property, or to any existing sewer or other utility facilities servicing, adjoining or situated on the Property.
- H. Seller shall not further encumber or allow the encumbrance of the title to the Property, or modify the terms or conditions of any existing encumbrances, if any, without the prior written consent of Buyer.
- I. To the best of Seller's knowledge, there are no pending or threatened claims or lawsuits materially affecting the Property.
- J. All loan(s) assumed or taken subject to are not presently in default and will not be in default at Closing;
- K. Seller has no knowledge of any pending or contemplated change in any statute, ordinance, rule or other governmental regulation applicable to the Property, or any action pending or threatened by any governmental body, adjacent land owners or other persons, or of any condition upon or affecting the Property, which would result in any material change in the condition of the Property or in any way limit the use of the Property;
- L. Seller has not received, and has no other knowledge of, any notice from any insurance company requesting the performance of any work regarding the Property or relating to an increase in the insurance premiums applicable to the Property;
- M. Seller has all necessary licenses and permits required by any and all applicable statutes, ordinances, rules or other governmental regulations for the use and operation of the Property.
- N. All obligations of Seller arising from the ownership and operation of the Property, including, but not limited to, salaries, taxes, leasing commissions and the like, have been paid as they became due or will be paid at or prior to Closing. Except for obligations for which provisions are made herein for proration or other adjustment at Closing, and the indebtedness assumed or taken subject to, there will be no obligations of Seller with respect to the Property outstanding as of Closing;
- O. There are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened against Seller or the Property.
- P. Seller knows of no material repairs that need to be made to the Property and has no knowledge of any latent structural defects or any other defects in the Property except for the following: BUYER IS PURCHASING PROPERTY IN "AS IS" CONDITION AND IS NOT CONCERNED WITH LATENT STRUCTURAL DEFECTS *B.C JK*

19. **ASSIGNMENT:**

- A. Buyer may not assign this Contract without the prior written approval of Seller.
- B. ~~Buyer may~~ assign this Contract and all rights hereunder and shall be relieved of any future liability under this Contract, provided the assignee shall assume in writing ~~all the obligations of Buyer hereunder;~~ and, provided further, Buyer has furnished Seller with an executed copy of such assignment.

20. **CONDEMNATION:** Seller shall notify Buyer promptly of any condemnation or notice of intent to condemn the Property or any part thereof by any public or quasi-public authority. ~~If condemnation proceedings are commenced against any portion of the Property prior to Closing, Buyer may, at its option, either (i) terminate this Contract by written notice to Seller given within ten (10) days after Buyer is advised of the commencement of condemnation proceedings, whereupon the Earnest Money shall be returned to Buyer and neither party shall have any further obligation hereunder, or (ii) elect to close this transaction, in which event Buyer may appear and defend in such condemnation proceedings, and all amounts paid or received on account of such taking, at the option of Buyer, shall be either payable to Seller (with the Sales Price reduced by the same amount), or payable to Buyer (with the Sales Price not to be reduced):~~

21. **CASUALTY:** Risk of loss by damage or destruction to the Property prior to Closing shall be borne by Seller. ~~In the event any such damage or destruction is not fully repaired prior to Closing, Buyer may, at its option, either (i) terminate this Contract, in which event the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation to the other hereunder, or (ii) elect to close this transaction, in which event Seller's right to all insurance proceeds resulting from such damage or destruction shall be assigned to Buyer.~~

22. **TENANT LEASES:** PROPERTY IS TO BE DELIVERED FREE OF LEASES AND TENANTS *B.C JK*

- A. ~~Each~~ Tenant Lease is in full force and effect, and has not been amended or modified except as disclosed to Buyer in writing. The Tenant Leases constitute all of the written and oral agreements of any kind for the leasing, rental or occupancy of any portion of the Property. Seller has performed and complied with all obligations under the Tenant Leases as and when required, and there exists no fact or circumstance that could constitute a default of the landlord under any of the Tenant Leases, or entitle any tenant thereunder to offsets or defenses against the prompt, current payment of rent. Each tenant under the Tenant Leases actually occupies the premises leased thereunder. Except as disclosed to Buyer in writing on the rent rolls furnished to Buyer hereunder, no rental under any Tenant Lease has been collected more than one month in advance, and except as so disclosed on such rent rolls, there are no concessions, bonuses, free month's rental, rebates or other matters affecting the rental under any Tenant Lease. Seller is the owner of the entire landlord's interest in and to each of the Tenant Leases, and none of the Tenant Leases or the rentals or other sums payable thereunder have been assigned or otherwise encumbered, except as security for the loan(s) assumed or taken subject to as provided herein. To the best of Seller's knowledge, no tenant under any of the Tenant Leases is in default thereunder.
- B. At least seven (7) days prior to Closing, Seller shall deliver to Buyer estoppel certificates dated not earlier than ten (10) days prior to Closing and executed by each of the tenants under the Tenant Leases, stating, as of Closing, (i) that no default exists under the terms of the Tenant Lease by either landlord or tenant, (ii) the amount of any rental payments made in advance, if any, (iii) the amount of any security deposits made, if any, (iv) that the tenant has no defenses or offsets against the payment of rent accruing under the terms of the Tenant Lease, (v) that the copy of the Tenant Lease attached to the estoppel certificate is a true and correct copy thereof, and that there are no amendments or modifications thereto or other agreements with regard thereto except for those which have been attached to such certificate, and (vi) a warranty by Seller that the Tenant Lease is in full force

- E. Not enter into any written or oral service contract or other agreement with respect to the Property that will not be fully performed on or before Closing, or that will not be cancellable by Buyer without liability on or after Closing.
- F. Promptly advise Buyer of any litigation, arbitration, administrative hearing or legislation before any governmental body or agency of which Seller becomes aware, concerning or affecting the Property, which is instituted or threatened after the Effective Date hereof.
- G. Keep, observe and perform all its obligations under any loan(s) assumed or taken subject to.
- H. Maintain and keep in full force and effect the present fire, casualty and liability insurance maintained by Seller with regard to the Property.
- I. Not take or omit to take any action which would have the effect of violating any of the representations, warranties, covenants or agreements of Seller contained herein.

**24. MISCELLANEOUS:**

- A. Any notice required or permitted to be delivered hereunder shall be deemed received when personally delivered or sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the address set forth below the signature of such party hereto or to such other address provided in writing by notice to the other party hereto.
- B. This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in BEXAR County, Texas.
- C. This contract shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns, but may be assigned only if permitted by Paragraph 19.
- D. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- E. This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter herein contained and cannot be changed except by their written consent.
- F. Time is of the essence of this Contract.
- G. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
- H. Buyer is hereby advised by Broker:

- (1) that Buyer should be furnished with or obtain a Policy of Title Insurance or have the abstract covering the Property examined by an attorney of Buyer's own selection; and
- (2) that if the Property is situated in any Utility District, Section 50.301 of the Texas Water Code requires the Buyer to sign and acknowledge a statutory notice; and
- (3) that unless otherwise agreed to in writing by the parties hereto, Broker ~~and Co-Broker~~ <sup>is</sup> ~~are~~ being paid by ~~Seller~~ <sup>BUYER IS</sup> and ~~are~~ <sup>is</sup> representing ~~Seller~~ <sup>BUYER</sup> in this transaction. BC BC BC

**25. TERMINATION OF OFFER:** In order to become valid and binding, this Contract must be fully executed by all parties hereto and delivered to and receipted by the Title Company no later than 5:00 o'clock P.M., SEPTEMBER 23, 1994. In the event same is not accomplished, this Contract shall become null and void.

**26. CONSULT YOUR ATTORNEY:** This is intended to be a legally binding Contract. READ IT CAREFULLY. NO REPRESENTATION OR RECOMMENDATION IS MADE BY BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION RELATING THERETO. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND TAX ADVISOR. CONSULT YOUR ATTORNEY BEFORE SIGNING THIS DOCUMENT. The Broker cannot give you legal advice - only factual and business details concerning land and improvements.

**NOTE:** ALL APPLICABLE BOXES SHOULD BE MARKED AND BLANKS FILLED IN BY THE PARTIES HERETO.

THIS CONTRACT MAY BE EXECUTED in multiple originals, on this the 23<sup>RD</sup> day of Sept, 1994, and shall be effective as of the date that the Title Company receipts for a fully executed original hereof.

X THE SAN ANTONIO BOTANICAL CENTER SOCIETY, INC.  
 by: BANKS M. SMITH Buyer  
X Banks M. Smith  
 AS ITS: 121 VICE PRESIDENT Buyer  
 Address: 300 CONVENT STREET, SUITE 1775  
SAN ANTONIO, TEXAS 78205  
 Phone Number: 224-4491

SILVERIO CUELLAR  
X Silverio Cuellar 9/20/94 Seller  
BEATRICE CUELLAR  
Beatrice Cuellar 9-20-94 Seller  
 Address: 9219 OVERTON  
SAN ANTONIO, TX 78217  
 Phone Number: 653-2446

Buyer's Attorney: Banks M. Smith  
 Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_

Seller's Attorney: Jack A. Efron  
 Address: 70 N.E. Loop 410, #660  
SAN ANTONIO, TX - 78216  
 Phone Number: 366-9676, FAX - 366-0412

BROKER'S AGREEMENT

Listing Broker agrees to pay N/A, Co-Broker, a fee of N/A percent (N/A%) of the total Sales Price when the Broker's fee described in Paragraph 9 is received. The Title Company is authorized and directed to pay Co-Broker from Listing Broker's fee at Closing.

0398846 CAMBRIDGE REALTY GROUP, INC  
License No. Listing Broker

License No. Co-Broker

By: Robert A Shearer

By: \_\_\_\_\_

Address: P.O. BOX 15039  
SAN ANTONIO, TX 78212

Address: \_\_\_\_\_

Phone Number: 299-1172

Phone Number: \_\_\_\_\_

TITLE COMPANY RECEIPTS

Receipt of fully executed contract:

Receipt of Earnest Money:

\$ 5,000.00 cb#10010

or

Letter of Credit

Stewart Title Co.  
Title Company

Stewart Title Co.  
Title Company

By: Alice Sigman

By: Alice Sigman

Dated: 9/23/94

Dated: 9/23/94

MAHNCKE

PARK



EXHIBIT "A"

1542.17'

FUNSTON

PLACE

55'												55'	51.43'									
00000160	071860000170		071860000190		071860000200		071860000210		071860000220		071860000230		071860000240		071860000250		071860000260		071860000270		071860000280	
16	17	18	19	20	21	22	23	24	25	26	27	28										
												147.35'	150.56'									
55'												55'	40.51'									

PINCKNEY

ST.

34.02'													34.02'
010760030010	010760030020	010760030030	010760030040	010760030050	010760030060	010760030070	010760030080	010760030090	010760030100	010760030110	010760030120		
1	2	3	4	5	6	7	8	9	10	11	12		
34.02'													34.02'
010760030230	010760030240	010760030250	010760030260	010760030270	010760030280	010760030290	010760030300	010760030310	010760030320	010760030330	010760030340		
24	23	22	21	20	19	18	17	16	15	14	13		
34.02'													34.02'

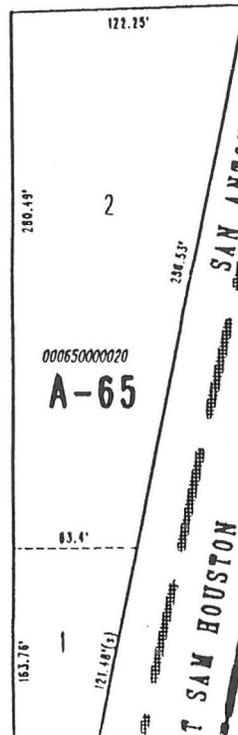
ANDREWS

ST.

34.02'													34.02'
010770040020	010770040030	010770040040	010770040050	010770040060	010770040070	010770040080	010770040090	010770040100	010770040110	010770040120	010770040130		
1	2	3	4	5	6	7	8	9	10	11	12		
34.02'													34.02'
010770040140	010770040150	010770040160	010770040170	010770040180	010770040190	010770040200	010770040210	010770040220	010770040230	010770040240	010770040250		
24	23	22	21	20	19	18	17	16	15	14	13		
34.02'													34.02'

LANE

GATE



I.S.D.  
I.S.D.  
CITY

AUSTIN  
SAM

ANTONIO

SAN ANTONIO

SAN HOUSTON

FORT

B.C.

7  
PARA 12: SPECIAL PROVISIONS ADDENDUM (CONT)

4. FORMAL APPROVAL BY THE BOARD OF DIRECTORS OF THE SAN ANTONIO BOTANICAL CENTER SOCIETY AND RECEIPT OF FUNDING OF PURCHASE PRICE BY BUYER FROM OUTSIDE FOUNDATION SHALL BE ACCOMPLISHED ON OR BEFORE 30 DAYS FROM CONTRACT DATE. AFTER THIS DATE, BUYER'S EARNEST MONEY SHALL BE FORFEITED TO SELLER IF <sup>BUYER</sup> SELLER FAILS TO CLOSE ON THE CLOSING DATE. THIS CLAUSE SHALL BE

DEEMED BUYER'S INSTRUCTION TO TITLE COMPANY PER PARAGRAPH 5 REGARDING DISBURSEMENT OF EARNEST MONEY

5. THIS TRANSACTION MAY AT SELLER'S OPTION BE STRUCTURED AS A TAX-DEFERRED EXCHANGE UNDER I.R.C. SECTION 1031.

6. THIS COUNTER OFFER SHALL BE VOID IF NOT ACCEPTED BY 5:00 PM, FRIDAY, 9/23/94.

7. THIS CONTRACT IS CONTINGENT UPON SELLER OBTAINING RELEASE FROM TENANTS IN SUBJECT PROPERTY ON OR BEFORE 5 DAYS FROM CONTRACT DATE.

San Antonio Botanical Society Center, Inc

By: Frank M. Smith

BUYER

9.23.94

DATE

Silvia Cuellar Jr. 9/20/94  
SELLER

Beatrice Cuellar 9-20-94  
SELLER

CITY OF SAN ANTONIO

CONSENT AGENDA

Department of Parks and Recreation

ITEM NO. 19

TO: City Council

FROM: Ron Darner, Director, Department of Parks and Recreation

COPIES TO: \_\_\_\_\_

SUBJECT: Accepting a Deed to Lot 19, 616-618 Funston Place

DATE: November 9, 1994

SUMMARY AND RECOMMENDATION: This ordinance accepts fee simple title to one lot located at 616-618 Funston Place near the San Antonio Botanical Center. This lot, on which the San Antonio Botanical Center Society has an Earnest Money Contract, is being acquired by the Society for conveyance to the City as a follow-up to previous acquisitions by the Society in the same area. Those parcels were also conveyed to the City.

The advantage of City ownership is long-range buffering protection of the Lucile Halsell Conservatory. Since its completion, that facility, especially its glass panels, has sustained considerable damage by vandals who can operate within a stone's throw of the Conservatory. At some undetermined time in the future, the intent is to reroute Funston Place through these lots thereby creating a much larger buffer between the street and the Conservatory. The present Funston Place R.O.W. (a part of which is dedicated park land) at this particular location would become a part of the Botanical Center; thus, providing not only a buffer but space for future expansion of the Center.

The Mahncke Park Neighborhood Association concurs with the overall long-range purpose of the land acquisition program on Funston Place.

This ordinance also accepts two conditions of the Warranty Deed: (1) That the premises be used as a buffer zone for the Botanical Center and that it be kept free of structures; and (2) that the existing structure on the premises be removed as soon as reasonably possible.

I recommend approval of this ordinance.

POLICY ANALYSIS: This action is consistent with the City's agreement with the Botanical Center Society approved by Ordinance 53676, April 23, 1981. The Society, which totally financed the Conservatory project at a cost of \$6 million, continues to actively support the project. This action is another manifestation of that support. To date, sixteen parcels have been purchased for the City by the Society.

FISCAL DATA: Acquisition cost of this lot and improvements is \$75,000, funded entirely by the Society. No cost estimate is available for the long-range plan to reroute Funston Place. Funds to remove the existing structure will be provided through the current budget.

SUPPLEMENTAL INFORMATION: The San Antonio Botanical Center Society, Inc. is a non profit organization and is therefore exempt from disclosure provisions of the Ethics Ordinance.

  
RONALD R. DARNER, Director  
Department of Parks and Recreation

RRD:be

Recommendation Approved:

  
ALEXANDER E. BRISEÑO  
City Manager