

AN ORDINANCE 20 1 1 - 1 2 - 1 5 - 1 0 4 3

AUTHORIZING CLOSURE, VACATION, AND ABANDONMENT OF AN UNIMPROVED PORTION OF SPILLER ROAD PUBLIC RIGHT-OF-WAY LOCATED BETWEEN BRAUN ROAD AND KOBORT CANYON ROAD ADJACENT TO COUNTY BLOCK 4470, NCBS 34470, 34471 AND 15663 IN COUNCIL DISTRICT 7, AS REQUESTED BY PRESTO NOVA BRAUN, LTD.

* * * * *

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

SECTION 1. Subject to the reservation and conditions below, and as an exercise of its discretion, the City Council authorizes the Assistant Director for Real Estate of the Capital Improvements Management services Department to execute and record a certificate closing, vacating, and abandoning the right of way. A condition of the closure, vacation, and abandonment is City's receipt of the fee set out below in the funding section of this Ordinance.

SECTION 2. A picture of the subject right of way is set forth at **Attachment I**. The detailed description of the right-of-way subject to this ordinance is set forth on **Attachment II**. Both Exhibits A and B are incorporated into this ordinance for all purposes as if they were fully set forth. The metes and bounds description controls over any discrepancy between the metes and bounds and the summary description in the section above.

SECTION 3. This ordinance does not release the right to remain in place of all presently existing water and wastewater lines and related facilities, electric transmission and distribution lines and related facilities, gas lines, communication lines and facilities of all types, or any other public utility lines and facilities, if any. Any person wanting removal of an existing utility line or facility must negotiate separately with the utility operating the line or facility. After the date of this ordinance, no additional utility lines or facilities of any type may be placed in the subject tract, but existing ones may continue to be used, repaired, augmented, and maintained in the ordinary course of business. This ordinance does not give up any right arising other than from the plat or other document creating the street or alley.

SECTION 4. The certificate of closure must not be signed or recorded until Presto Nova Braun, Ltd. executes and delivers to the City a Road Closure Agreement substantially in the form of **Attachment III** providing for, among other things, Presto Nova Braun, Ltd.'s indemnification of the City from claims by non-consenting abutting owners.

SECTION 5. The City Manager or her designee, severally, are authorized and directed to execute and deliver all documents and to do all other things conducive to reflect this closure, abandonment, and vacation.

SECTION 6. The affected rights of way exist by easement. The underlying fee ownership of the affected rights of way by the adjacent lot owners is now unburdened by the rights closed, vacated, and abandoned. For purposes of future conveyance and to better reflect their ownership

generally, owners of the adjacent property should replat, but no such replat impairs the rights retained by City in the affected right of way.

SECTION 7. Funding in the amount of \$14,436 for this ordinance is available in Fund 11001000, Cost Center 2303050025 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 8. Payment not to exceed \$14,436 is authorized and should be encumbered with a purchase order.

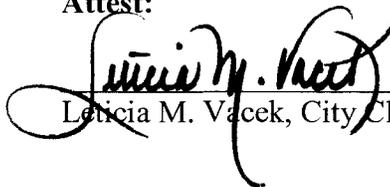
SECTION 9. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 10. This ordinance becomes effective 10 days after passage.

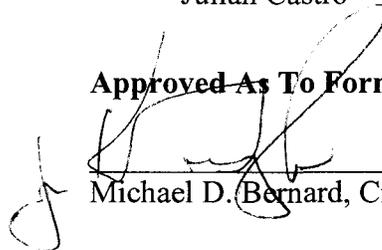
PASSED AND APPROVED this 15th day of December 2011.

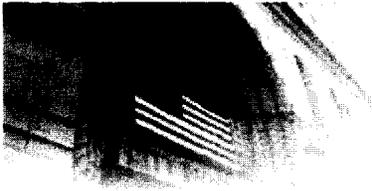

M A I O R
Julián Castro

Attest:


Leticia M. Vacek, City Clerk

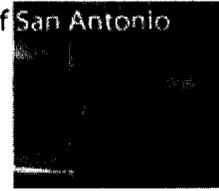
Approved As To Form:


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

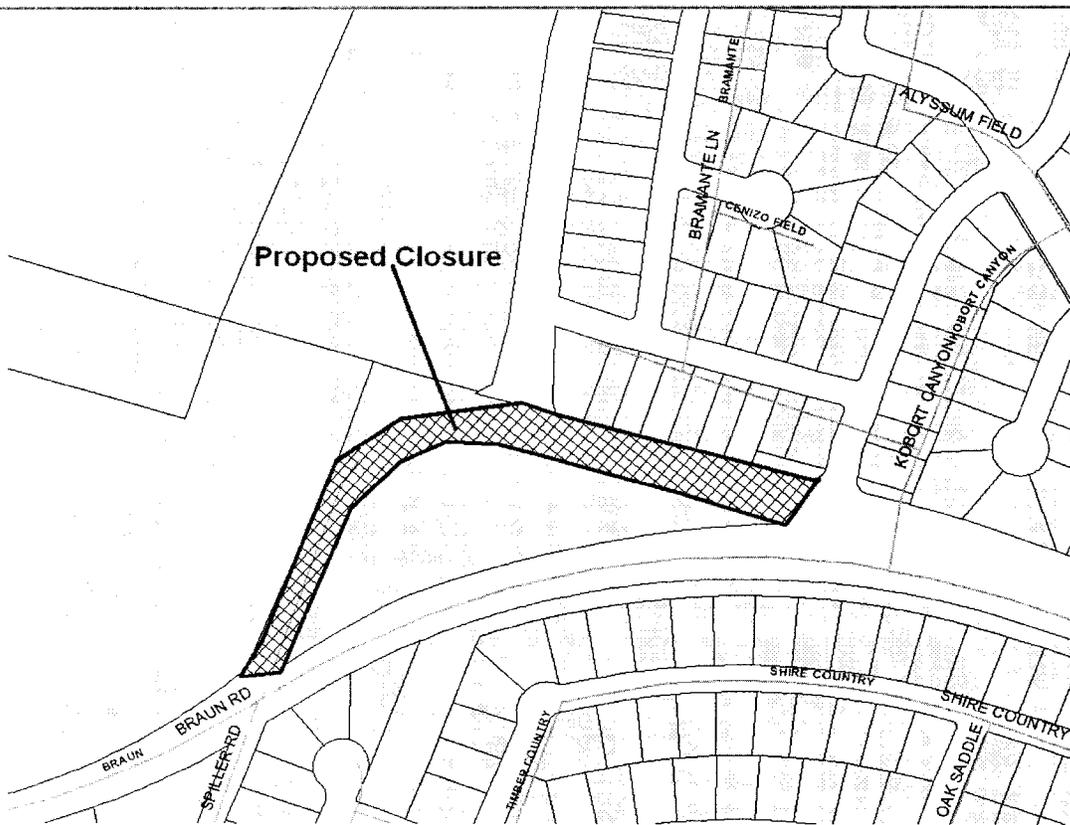
City of San Antonio



Agenda Voting Results - 23

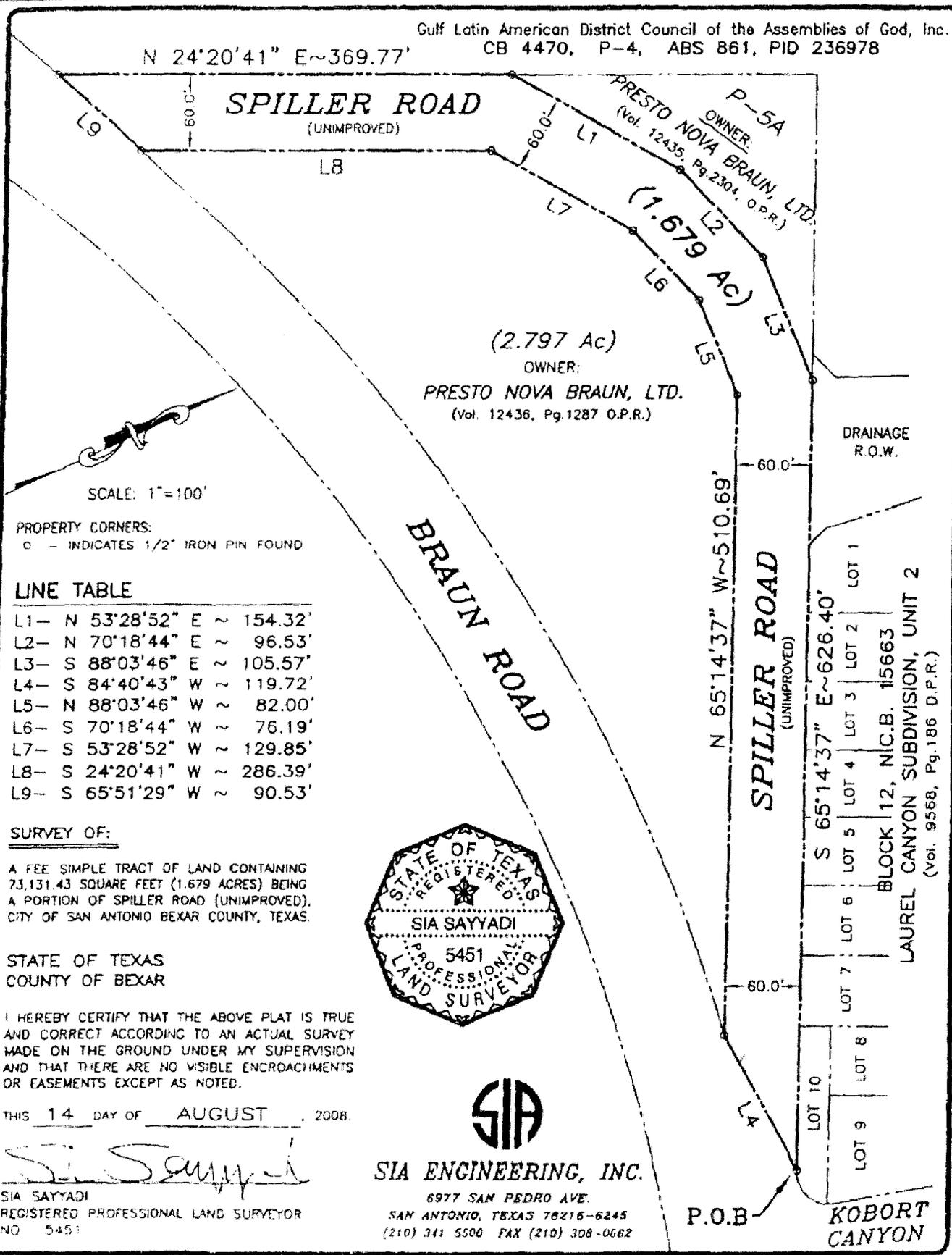
Name:	6, 7, 8, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30A, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48						
Date:	12/15/2011						
Time:	10:36:06 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the closure, vacation and abandonment of an unimproved portion of Spiller Road public right-of-way located between Braun Road and Kobort Canyon Road adjacent to County Block 4470, NCBs 34470, 34471 and 15663 in Council District 7, as requested by Presto Nova Braun, Ltd. [Peter Zanoni, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I



Attachment II

Gulf Latin American District Council of the Assemblies of God, Inc.
 CB 4470, P-4, ABS 861, PID 236978



PROPERTY CORNERS:
 ○ - INDICATES 1/2" IRON PIN FOUND

LINE TABLE

L1-	N 53°28'52"	E ~	154.32'
L2-	N 70°18'44"	E ~	96.53'
L3-	S 88°03'46"	E ~	105.57'
L4-	S 84°40'43"	W ~	119.72'
L5-	N 88°03'46"	W ~	82.00'
L6-	S 70°18'44"	W ~	76.19'
L7-	S 53°28'52"	W ~	129.85'
L8-	S 24°20'41"	W ~	286.39'
L9-	S 65°51'29"	W ~	90.53'

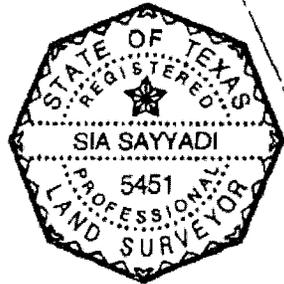
SURVEY OF:
 A FEE SIMPLE TRACT OF LAND CONTAINING 73,131.43 SQUARE FEET (1.679 ACRES) BEING A PORTION OF SPILLER ROAD (UNIMPROVED), CITY OF SAN ANTONIO BEXAR COUNTY, TEXAS.

STATE OF TEXAS
 COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT THERE ARE NO VISIBLE ENCROACHMENTS OR EASEMENTS EXCEPT AS NOTED.

THIS 14 DAY OF AUGUST, 2008.

Sia Sayyadi
 SIA SAYYADI
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 5451



SIA ENGINEERING, INC.
 6977 SAN PEDRO AVE.
 SAN ANTONIO, TEXAS 78216-6245
 (210) 341 5500 FAX (210) 308-0662

P.O.B.

KOBORT CANYON

METES AND BOUNDS

A 1.679 acre (73,131.43 square feet) tract of land, situated in Bexar County, Texas, out of the Thomas S. Tatum Survey No. 219, Abstract No. 756, County Block 4471, being a portion of Spiller Road (unimproved), City of San Antonio, Bexar County, Texas, and being more particularly described as follows:

BEGINNING: at a ½" iron pin found in the North Right of Way Line of Braun Road, in the Southeast line of Lot 10, Block 12, New City Block 15663, Laurel Canyon Subdivision, Unit 2, recorded in Volume 9568, Page 186, Deed and Plat Records of Bexar County, Texas, said point being the Northeast corner of Spiller Road and of this tract;

THENCE: S 84°40'43" W, along the North Right of Way Line of said Braun Road and East Line of said Spiller Road, a distance of 119.72 feet to a ½" iron pin found for the East corner of a 2.797 acres tract recorded in Volume 12436, Page 1287, Official Public Records of Bexar County, Texas, for an angle point of herein described tract;

THENCE: along the North line of said 2.797 acres tract and the South Right of Way Line of said Spiller Road, the following courses:

N 65°14'37" W, a distance of 510.69 feet to a ½" iron pin found for an angle point;
N 88°03'46" W, a distance of 82.00 feet to a ½" iron pin found for an angle point;
S 70°18'44" W, a distance of 76.19 feet to a ½" iron pin found for an angle point;
S 53°28'52" W, a distance of 129.85 feet to a ½" iron pin found for an angle point;
S 24°20'41" W, a distance of 286.39 feet to a ½" iron pin found on the North Right of Way Line of said Braun Road, said point being the West corner of said 2.797 acres tract, for an angle point of this tract;

THENCE: S 65°51'29" W, along the North Right of Way Line of said Braun Road, and the South Line of said Spiller Road, a distance of 90.53 feet to a ½" iron pin found for the Southeast corner of parcel P-4 (Bexar Appraisal PID 236978), owned by Gulf Latin American District Council of the Assemblies of God, Inc., for the Southwest corner of this tract;

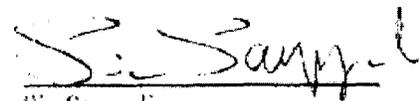
THENCE: N 24°20'41" E, along the East line of the said parcel P-4 and the West Right of Way Line of said Spiller Road, a distance of 369.77 feet to a ½" iron pin found for the Southwest corner of parcel P-5A, recorded in Volume 12435, Page 2304, of the said Official Public Records of Bexar County, Texas, for an angle point.

THENCE: along the South line of said parcel P-5A and the North Right of Way Line of said Spiller Road, the following courses:

N 53°28'52" E, a distance of 154.32 feet to a ½" iron pin found for an angle point;
N 70°18'44" E, a distance of 96.53 feet to a ½" iron pin found for an angle point;
S 88°03'46" E, a distance of 105.57 feet to a ½" iron pin found for an angle point on the South line of said Laurel Canyon Subdivision, Unit 2, for an angle point;

THENCE: S 65°14'37" E, along the South line of said Laurel Canyon Subdivision, Unit 2, a distance of 626.40 feet to the POINT OF BEGINNING.




Sia Sayyadi
RPLS No. 5451
August 14, 2008

Attachment III

Road Closure Agreement

This Road Closure Agreement (“Agreement”) entered into between the City of San Antonio (“City”) and Presto Nova Braun Associates, Ltd (“Presto”) as of the date and year set forth at the end hereof.

Background:

A segment of Spiller Road located within the City’s corporate limits (“Spiller Segment”) is unimproved and is an impediment to Presto’s planned development.

The Spiller Segment is more particularly described on **Exhibit A**, which is incorporated into this Agreement for all purposes as if it were fully set forth.

Presto wants the City to close the Spiller Segment.

Ordinarily for a street closure, the City would require written consent from a abutting property owners and would require the petitioner to pay the fair-market-value of the segment being closed.

Presto does not have the consent of the abutting owners and says it has been unsuccessful.

Presto did receive all Quitclaims required by the City several years ago.

The City is not charging for the closure.

City will nevertheless close the Spiller Segment on the terms and conditions of this agreement.

Rights and Obligations:

Now therefore, in consideration of the premises, the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledges, the parties agree as follows:

1. Clean-up and Construction.

1.01. Presto must clean weeds, brush, and debris from the Spiller Segment and must construct improvements on it. If, not later than one year from the date of the ordinance authorizing this agreement, Presto has not removed all weeds, brush, and debris from the Spiller Road segment, Presto will be liable to the City as provided below. If, not later than five years from the date of the ordinance authorizing this agreement, Presto has not constructed improvements that collectively cover not less than 5,000 square feet on the Spiller Segment or on

property owned by Presto adjacent to the Spiller Segment, Presto will be liable to the City as provided below.

1.02. City and Presto acknowledge that, if Presto fails to timely perform either of the obligations in the preceding paragraph, it is certain that the City will be damaged. They further acknowledge, however, that the calculation of the specific amount of damages will be difficult and uncertain. Accordingly, if Presto fails to timely remove all weeds, brush, and debris from the Spiller Road segment, it must pay City \$35,000 as liquidated damages and not as a penalty. Further, if Presto fails to timely construct improvements that collectively cover not less than 5,000 square feet, it must pay City \$41,000 as liquidated damages and not as a penalty. If Presto fails both to timely remove all weeds, brush, and debris and to timely construct improvements that collectively cover not less than 5,000 square feet, it's total liability is \$76,000.

2. Indemnity.

2.01. These definitions apply to the indemnity provisions of this Contract:

2.01.01. **"Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of lack of consent to closure from any owner or occupier of property abutting the Spiller Segment. Indemnified Claims include attorneys' fees and court costs. Indemnified Claims also include claims in which an Indemnatee is solely negligent.**

2.01.02. **"Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.**

2.01.03. **"Indemnitor" means Presto.**

2.02. **Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.**

2.03. **If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for an Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnatee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnatee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

2.04. **There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.**

2.05. **Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnatee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel**

Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

2.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

2.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

2.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

2.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

3. Successors and Assigns. The obligations set forth in Sections 1.01 and 1.02 may be assigned by Presto, in whole or in part, to a future owner of all or part of the Presto property. Notwithstanding anything set forth above, City will look to Presto for the payments set forth in Section 1.02 and for the indemnity obligations set forth in Section 2.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands as of the date of the later of the two signatures below.

City of San Antonio, a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Presto Nova Braun, Ltd., a Texas limited partnership, by and through its sole general partner

JD General, LLC a Texas limited liability company

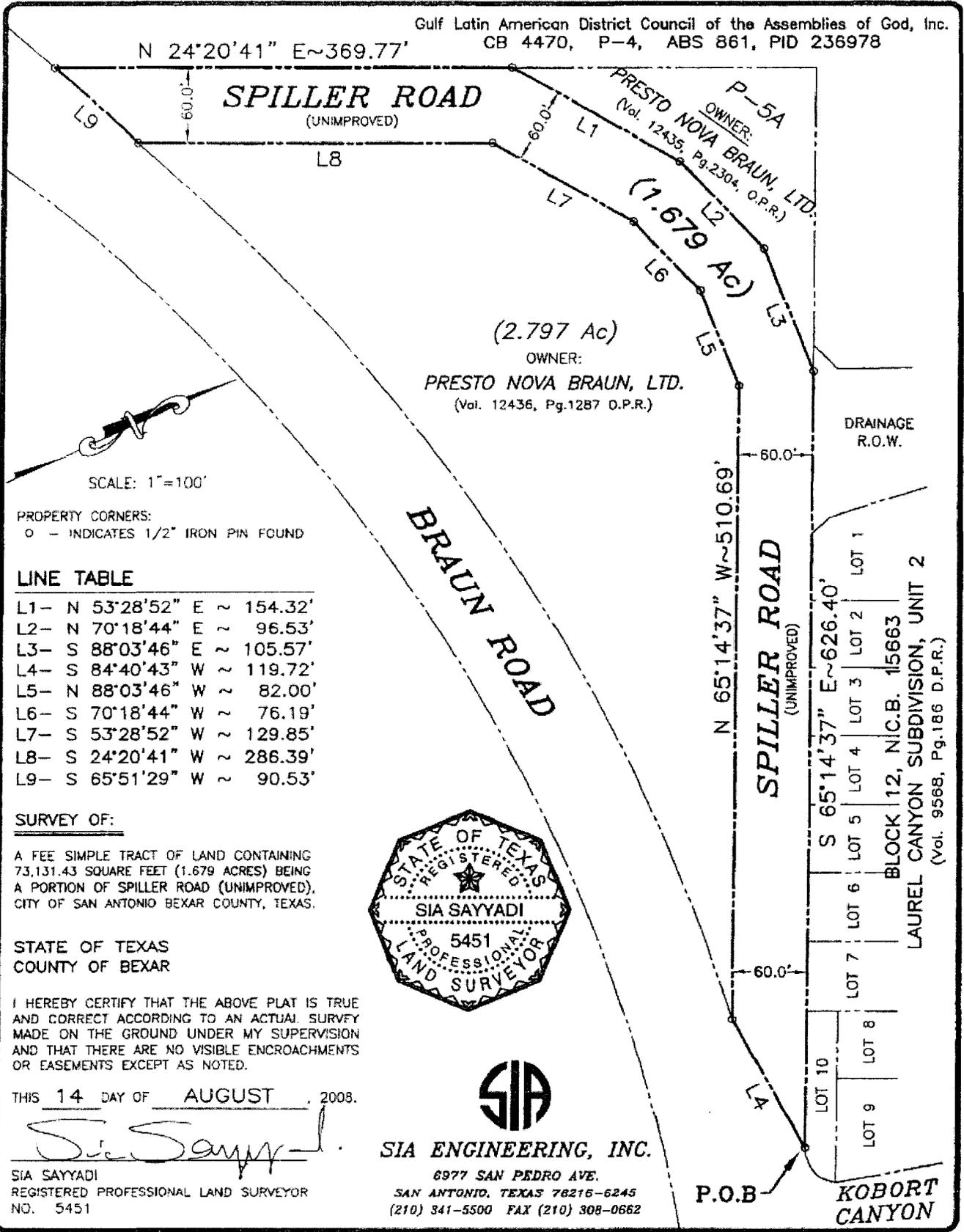
By: _____

Printed
Name: _____

Title: _____

Exhibit A

Gulf Latin American District Council of the Assemblies of God, Inc.
 CB 4470, P-4, ABS 861, PID 236978



SCALE: 1"=100'

PROPERTY CORNERS:
 O - INDICATES 1/2" IRON PIN FOUND

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THIS 14 DAY OF AUGUST, 2008.

Sia Sayyadi

SIA SAYYADI
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 5451



SIA ENGINEERING, INC.

8977 SAN PEDRO AVE.
 SAN ANTONIO, TEXAS 78216-6245
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THENCE: S 65°51'29" W, along the North Right of Way Line of said Braun Road, and the South Line of said Spiller Road, a distance of 90.53 feet to a ½" iron pin found for the Southeast corner of parcel P-4 (Bexar Appraisal PID 236978), owned by Gulf Latin American District Council of the Assemblies of God, Inc., for the Southwest corner of this tract;

THENCE: N 24°20'41" E, along the East line of the said parcel P-4 and the West Right of Way Line of said Spiller Road, a distance of 369.77 feet to a ½" iron pin found for the Southwest corner of parcel P-5A, recorded in Volume 12435, Page 2304, of the said Official Public Records of Bexar County, Texas, for an angle point;

THENCE: along the South line of said parcel P-5A and the North Right of Way Line of said Spiller Road, the following courses:

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Sia Sayyadi

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RPLS No. 5451

August 14, 2008