AZJ
11/06/2014
Item No. 13

AN ORDINANCE 2014-11-06-0854

DECLARING AS SURPLUS AN UNIMPROVED 0.17 ACRE TRACT OF CITY OWNED PROPERTY LOCATED ON LOT 10, BLOCK 58, COUNTY BLOCK 4024, ALAMO HEIGHTS SUBDIVISION, IN THE CITY OF ALAMO HEIGHTS AND AUTHORIZING ITS SALE TO LAURA NELL AND JESSE BURTON III FOR $34,750.00

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to sell to the Laura Nell and Jesse Burton III the 0.17 acres, more or less, described in **Exhibit A** for $34,750.00. The City Manager and her designee, severally, are authorized and directed, to execute a contract and deed in substantially the same form shown in **Exhibit B**, which is incorporated herein by reference for all purposes as if it were fully set forth. The City manager and her designee, severally, are further authorized and directed to take all other actions reasonably necessary or convenient to effect the transaction, including delivering ancillary documents and instruments conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000060 and General Ledger 4903101.

SECTION 3. The disposition of surplus property must be coordinated through the City's Finance Department to assure the removal of these assets out of the City's financial records and to record the proper accounting transactions.

SECTION 4. 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 SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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SECTION 5. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 6th day of November, **2014.**

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for **Robert F. Greenblum, City Attorney**

Agenda Item:	**13 (in consent vote: 5, 6, 8, 9, 10A, 10B, 10C, 11, 12, 13, 14, 16, 17, 18, 19)**
Date:	11/06/2014
Time:	10:49:22 AM
Vote Type:	Motion to Approve
Description:	An Ordinance declaring as surplus an approximately 0.17 acre tract of City-owned property located generally at the intersection of Greely Street and Claiborne Way in the City of Alamo Heights and authorizing its sale to Laura Nell and Jesse B. Burton III for a sales price of $34,750.00. [Peter Zanoni, Deputy City Manager; Mike Etienne, Director, Office of EastPoint & Real Estate Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x			x	

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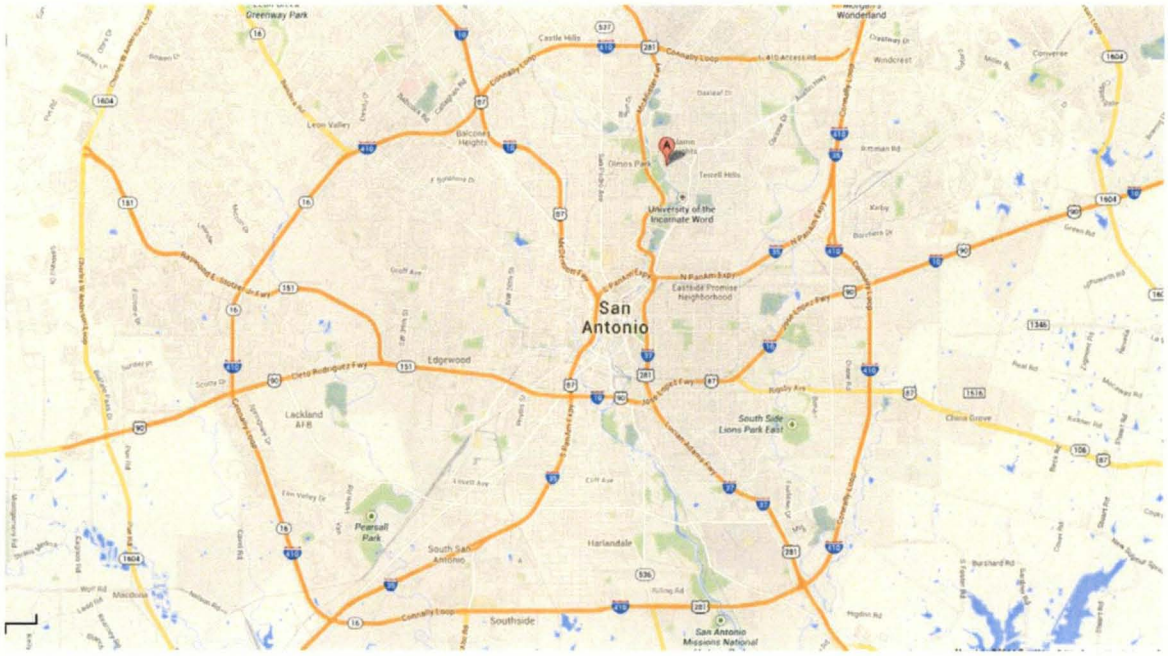
Exhibit A



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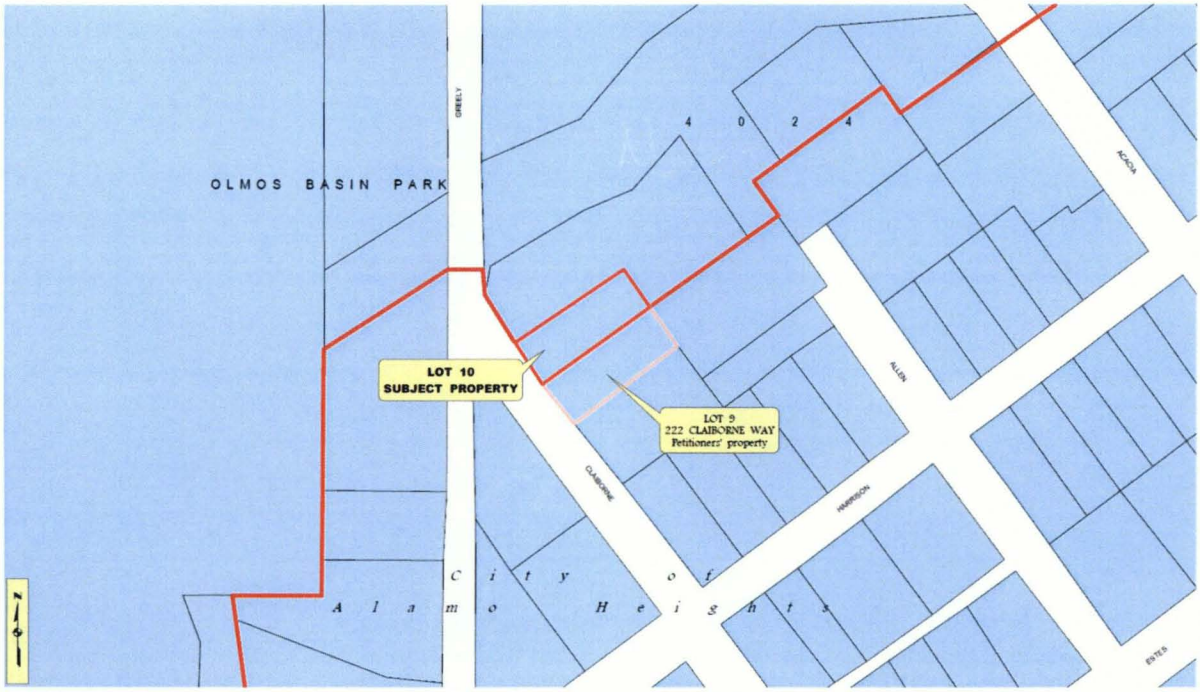

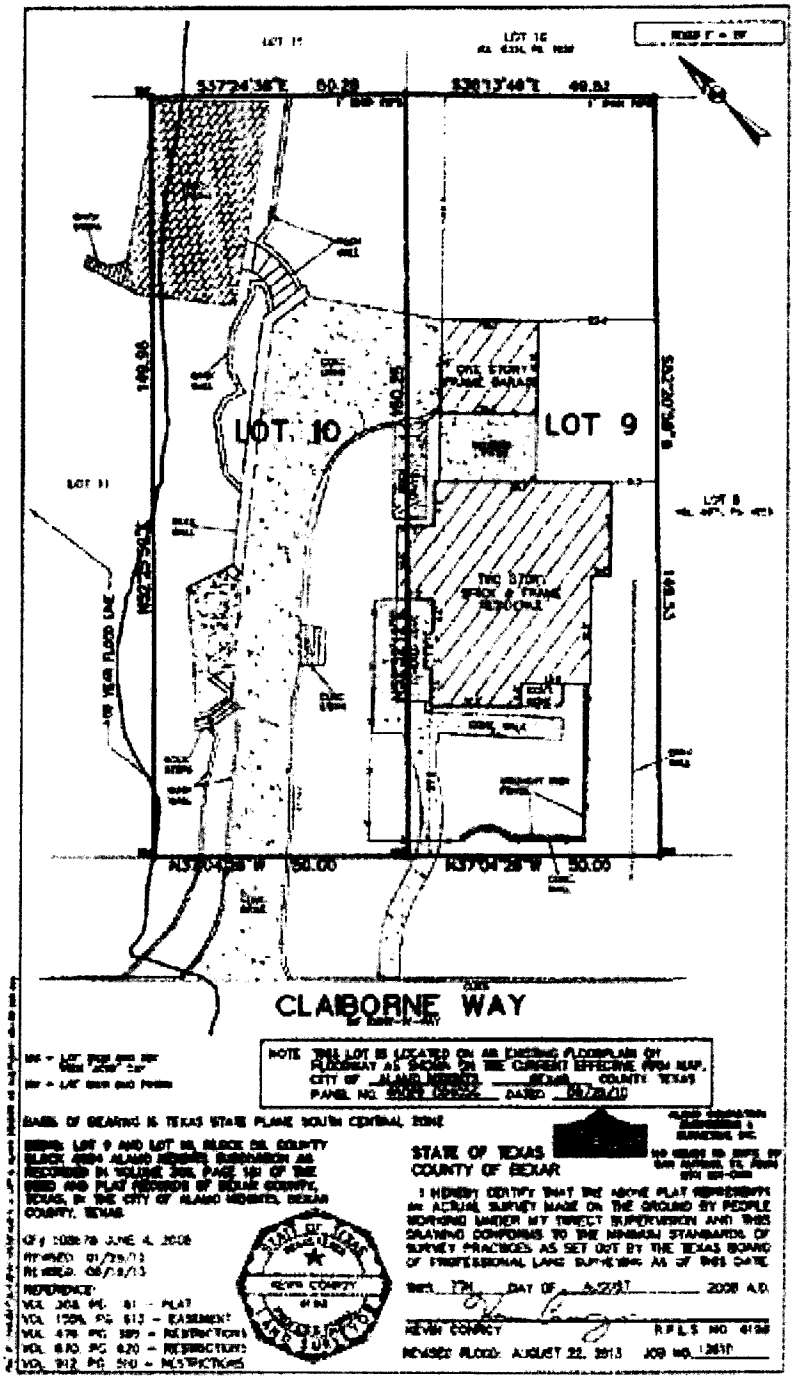
LOT 10
LOT 9
CLAIBORNE WAY
STATE OF TEXAS
COUNTY OF BEXAR

EXHIBIT B

Real Estate Sales Contract

(Claiborne Way Lot 10)

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Authorizing Ordinance:

Authority for Negotiated Sale: Local Government Code § 272.001 (a)

Seller: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Marcia Shelf Orlandi, Office of EastPoint & Real Estate Services)

Phone: (210) 207-7370

Fax: (210) 207-7888

Email: marcia.shelforlandi@sanantonio.gov

Type of Entity: Texas municipal corporation

Seller's Counsel: Audrey Zamora

Address: City Attorney's Office, P.O. Box 839966, San Antonio, Texas 78283-3966

Phone: 210-207-2094

Email: audrey.zamora@sanantonio.gov

Buyer: Laura Nell and Jesse B. Burton III

Address: 222 Claiborne Way, San Antonio, TX 78209

Phone: (210) 219-1930

Fax:

Email: tburton@ufjblaw.com

Type of Entity: Individuals

Buyer's Counsel: James B. Griffin
Brown & Ortiz, P.C.

Address: 112 E. Pecan Street
San Antonio, Texas 78205

Phone: (210) 299-3704

Fax: (210) 299-4731

Email: james@brownortiz.com

Property: Lot 10, Block 58, County Block 4024, Alamo Heights Subdivision, as recorded in volume 368, page 181, of the Deed and Plat records of Bexar County, Texas, in the city of Alamo Heights, Bexar County, Texas and more fully described on **Exhibit A, attached hereto and incorporated herein for all purposes.**

Title Company: Presidio Title

Address: 1202 W. Bitters Road, Bldg. 1
San Antonio, Texas 78216

Phone: 210-757-9500

Fax: 210-630-6236

Email: bdorn@presidiotitle.com

Purchase Price: Thirty-Four Thousand Seven Hundred and Fifty and No/100 Dollars ($34,750.00)

Earnest Money: Five Thousand and no/100 Dollars ($5000.00)

Effective Date: The later of (A) the effective date of the Authorizing Ordinance or (B) the date a representative of the Title Company signs a receipt for this fully executed contract

County for Performance Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

1.01.	Earnest Money Deadline	10	Days after the Effective Date
1.02.	Delivery of Survey		Buyer Acknowledges Receipt
1.03.	Delivery of Seller's records as specified in Exhibit C	2	Days after the Effective Date
1.04.	Buyer's Objection Deadline	2	Days after the receipt of Title Commitment and legible copies of instruments referenced in the Title Commitment
1.05.	Seller's Cure Notice Deadline	2	Days after Buyer's Objection

		Deadline
1.06.	Buyer's Termination Deadline	10 Days after Notice of Cure Deadline
1.07.	End of Inspection Period	2 Days after the Effective Date
1.08.	Closing Date	On or before November 14, 2014
1.09.	Closing Time	10:00 A.M.

1.10. The deadlines may be altered by the mutual agreement of the parties. The Director of the EastPoint and Real Estate Department may consent to such changes on behalf of Seller without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

Deed Without Warranty

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in Exhibit C

2.02. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Deceptive Trade Practices Act waiver

Purchase Price

2.03. The documents listed above are collectively known as the "Closing Documents."

3. Exhibits.

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Notices

Exhibit D—Form of Deed

4. Purchase and Sale of Property.

4.01. Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The contract may be assigned by either party so as long as the other party to the contract approves, and such assignment and approval are in writing. A party may not withhold approval unreasonably.

4.02. The Property includes all improvements situated on it, together with all right, title, and interest of Seller, if any, in and to all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the **"Additional Interests"**); except that the Additional Interests do not include, and Seller specifically reserves, such of the following interests as Seller holds by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use.

4.03. The deed from Seller to Buyer will have the following restriction:

> The Grantor does hereby impress all of the Property with the following deed restriction ("restriction"), to wit:
>
> No building shall be constructed on the Property, nor shall any further expansion of the adjacent single-family home be allowed on the Property, without first obtaining written consent from the City of San Antonio. This restriction shall continue in full force and effect

from the date of execution until amended or terminated in a manner allowed under Texas law. Grantee agrees that these restrictions inure to the benefit of the City of San Antonio (the "City"). Grantee hereby grants the City the right to enforce this restriction by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. For further remedy, Grantee agrees that the City may contact or apply to any necessary city official or department to withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise. Grantee agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this restriction. The provisions of this restriction are hereby declared covenants running with the land and are binding on all successors, heirs, and assigns of Grantee who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

4.04. *Option To Purchase*: Seller, as part of the consideration herein, is hereby granted by Buyer the exclusive first right, option, and privilege of purchasing the Property back for Thirty Thousand and No/100 Dollars ($30,000.00) should Seller attempt to sell or convey (not to include gift, devise or descent) the property in future. In the event Seller exercises the option to purchase the Property from Buyer, Buyer agrees Buyer shall not be entitled to reimbursement for the cost of any repairs, maintenance, or improvements made to the Property. Buyer shall not include any restrictions or conditions on the Property that will affect or prohibit the ability of Seller to utilize the Property in future without Seller's prior written permission.

5. Earnest Money.

5.01. INTENTIONALLY OMITTED

6. Title and Survey.

6.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

6.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

6.03. *Delivery of Title Commitment.* Seller must deliver the Title Commitment to Buyer by the deadlines stated in section 1.

6.04. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Buyer's Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions."

6.05. If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer whether Seller agrees to cure the Buyer's Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, notify Seller that this contract is terminated. In absence of such timely notice, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Buyer's Objections that Seller has agreed to cure in the Cure Notice.

6.06. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Buyer's Objections that Seller has agreed to cure.

7. Inspection Period.

7.01. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;

b. Buyer may not unreasonably interfere with existing operations or occupants of the Property;

c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;

d. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs;

e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt; and

f. Buyer must abide by any other reasonable entry rules imposed by Seller.

7.02. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period.

7.03. *Buyer's Indemnity and Release of Seller*

a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.

b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

8. Representations.

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

9. Condition until Closing; No Recording of Contract.

9.01. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property.

9.02. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within 15 days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will convey the Property to Buyer in its damaged condition.

9.03. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within 15 days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

9.04. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

10. Termination.

10.01. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

11. Closing.

11.01. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company.

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing.

11.02. *Transaction Costs*

a. Buyer will pay all closing costs except Seller's expenses and attorney's fees.

b. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10. Seller assumes no

responsibility for ad valorem taxes for any period, rollback or otherwise, not otherwise imposed on it by law.

c. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.

d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

12. Default and Remedies.

12.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may terminate this contract as its sole and exclusive remedy. Buyer may terminate this contract by giving notice to Seller on or before the expiration of the Inspection Period.

12.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract or if any of Buyer's representations is not true and correct as of the Effective Date or on the Closing Date ("Buyer's Default"), Seller may terminate this contract as its sole and exclusive remedy. Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time.

13. Prohibited Interests in Contracts.

13.01 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02 Buyer warrants and certifies as follows:

(i) Buyer and its officers, employees and agents are neither officers nor employees of the City.

(ii) Buyer has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03 Buyer acknowledges that City's reliance on the above warranties and certifications is reasonable.

14. Dispute Resolution.

14.01 As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

14.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

14.03 Mediation must be conducted in San Antonio, Bexar County, Texas.

14.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

14.05 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

14.06 Mediator fees must be borne equally.

14.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

15. Miscellaneous Provisions.

15.01 *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

15.02 *Severability.* If any portion hereof is determined to be invalid or unenforceable, such determination does not affect the remainder hereof.

15.03 *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

15.04 *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

15.05 *Modification.*

15.05.01. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

15.05.02 The Director of EastPoint and Real Estate Services may, without further action of City Council, agree on behalf of Seller to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

15.06 *Third Party Beneficiaries*. This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

15.07 *Notices*. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

15.08 *Pronouns*. In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

15.09 *Captions*. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

15.10 *Counterparts*. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one

agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

15.11 *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this agreement

15.12. *Assignment.* With Seller's consent, which is not to be unreasonably withheld, Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer can, directly or indirectly, direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise. Any other assignment is void.

15.13. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing survive termination of this contract or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control.

15.14. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

15.15. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

15.16 *Confidentiality.* The parties will keep confidential this contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

15.17 *Waiver of Consumer Rights.* **Buyer Waives Its Rights Under The Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 *et seq.* of The Texas Business and Commerce Code, A Law That Gives Consumers Special Rights and Protections. After Consultation With an Attorney of Its Own Selection, Buyer Voluntarily Consents To This Waiver.**

15.18. *Incorporation by Reference.* All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

15.19. *Administrative Agreements.* The Director of EastPoint and Real Estate and the Assistant Director for EastPoint and Real Estate may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

15.20 *City Process.* Nothing in this Agreement obligates the City to take any particular action(s) or make any particular decision(s) regarding sale of the Property, or regarding any issues raised by the City's consideration of a possible sale of the Property, except as stated above, whether such action(s) or decision(s) would customarily be made by the City Council, the Planning Commission or any department of the City. Nor shall this Agreement be deemed to constitute any prejudgment or predetermination of any matters required or permitted to be considered as part of the City's determination whether to sell the Property, or whether to take any related discretionary action(s), including waiver of any permit requirements or abbreviation of any city procedures. Seller will cooperate with Buyer to the extent allowed by law and as directed by its governing body. Buyer understands that there is no agreement or guarantee related to the outcome or approval of any application that Buyer may submit for the property.

16. Public Information.

Buyer acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

17. Brokers' Commission.

Each party represents to the other that no other commissions are due in respect of this transaction.

In Witness Whereof, the parties have caused their representatives to set their hands.

Seller:

City of San Antonio, a Texas municipal corporation

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Buyers:

Laura Nell and Jesse B. Burton III

Signature: Laura Nell Burton

Printed Name: Laura Nell Burton

Signature:

Printed Name: Jesse B. Burton III

Date: 10/28/2014

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Title Company Acknowledgment and Receipt

Seller: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Buyer: Laura Nell and Jesse B. Burton III

Address: 222 Claiborne Way, San Antonio, TX 78209

Property: Lot 10, Block 58, County Block 4024, Alamo Heights Subdivision, as recorded in volume 368, page 181, of the Deed and Plat records of Bexar County, Texas, in the city of Alamo Heights, Bexar County, Texas.

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

??????????????

By:_____

Printed
Name:_____

Title:_____

Date:_____

Title Company Receipt for Earnest Money

Seller: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Buyer: Laura Nell and Jesse B. Burton III

Address: 222 Claiborne Way, San Antonio, TX 78209

Property: Lot 10, Block 58, County Block 4024, Alamo Heights Subdivision, as recorded in volume 368, page 181, of the Deed and Plat records of Bexar County, Texas, in the city of Alamo Heights, Bexar County, Texas.

Title Company acknowledges receipt from Buyer of earnest money in the amount set forth below:

Amount: _____

????????????

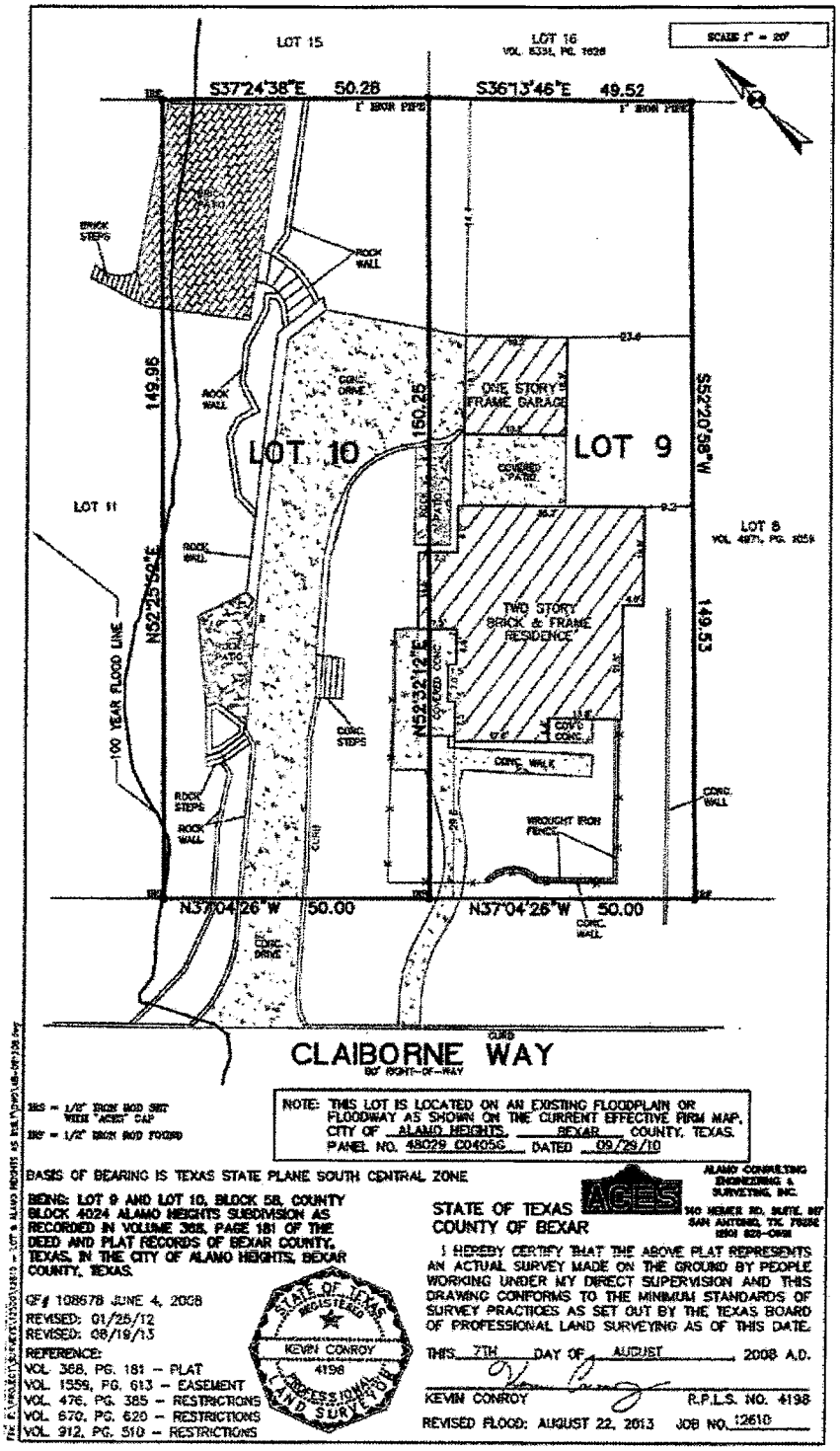
By:_____

Printed
Name:_____

Title:_____

Date:_____

Exhibit A



NOTE: THIS LOT IS LOCATED ON AN EXISTING FLOODPLAIN OR FLOODWAY AS SHOWN ON THE CURRENT EFFECTIVE FIRM MAP, CITY OF ALAMO HEIGHTS, BEXAR COUNTY, TEXAS. PANEL NO. 48029 C0405G DATED 09/29/10

BASIS OF BEARING IS TEXAS STATE PLANE SOUTH CENTRAL ZONE

BEING: LOT 9 AND LOT 10, BLOCK 5B, COUNTY BLOCK 4024 ALAMO HEIGHTS SUBDIVISION AS RECORDED IN VOLUME 368, PAGE 181 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, IN THE CITY OF ALAMO HEIGHTS, BEXAR COUNTY, TEXAS.

GF# 108678 JUNE 4, 2008
REVISED: 01/25/12
REVISED: 08/19/13

REFERENCE:
VOL. 368, PG. 181 – PLAT
VOL. 1559, PG. 613 – EASEMENT
VOL. 476, PG. 385 – RESTRICTIONS
VOL. 670, PG. 628 – RESTRICTIONS
VOL. 912, PG. 510 – RESTRICTIONS

STATE OF TEXAS
REGISTERED
KEVIN CONROY
4198
PROFESSIONAL
LAND SURVEYOR

ALAMO CONSULTING ENGINEERING & SURVEYING, INC.
140 HEIMER RD. SUITE 107
SAN ANTONIO, TX. 78232
(210) 820-0808

STATE OF TEXAS
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT REPRESENTS AN ACTUAL SURVEY MADE ON THE GROUND BY PEOPLE WORKING UNDER MY DIRECT SUPERVISION AND THIS DRAWING CONFORMS TO THE MINIMUM STANDARDS OF SURVEY PRACTICES AS SET OUT BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING AS OF THIS DATE.

THIS 7TH DAY OF AUGUST 2008 A.D.

KEVIN CONROY R.P.L.S. NO. 4198

REVISED FLOOD: AUGUST 22, 2013 JOB NO. 12610

FIELD NOTES
FOR
0.17 ACRES

BEING Lot 10, block 58, County block 4024, Alamo Heights subdivision as recorded in volume 368, page 181 of the deed and plat records of Bexar county, Texas, in the city of Alamo Heights, Bexar county, Texas and being more particularly described as follows:

BEGINNING at a ½" found iron rod with "ACES" cap in north right of way of Claiborne Way. Said point being the most westerly point of this parcel and the most southerly point of Lot 11 as recorded in said plat;

THENCE North 52° 25' 52" East, 149.96 feet to a ½" found iron rod for an angle point, the most northerly point of this parcel and the most easterly point of Lot 11;

THENCE South 37° 24' 38" East, 50.28 feet to a 1" Iron Pipe for an angle point, the most easterly point of this parcel and the most northerly point of Lot 9;

THENCE South 52° 32' 12" West, 150.25 feet to a ½" found iron rod with "ACES" cap for an angle point in north right of way of Claiborne Way. Said point being the most southerly point of this parcel and the most westerly point of Lot 9;

THENCE North 37° 04' 26" West, 50.00 feet with said right of way to the **POINT OF BEGINNING** and containing 0.17 acres of land more or less in Bexar County, Texas.

Plat of survey provided.

ALAMO CONSULTING ENGINEERING
& SURVEYING, INC.

Kevin Conroy, R.P.L.S.
December 17, 2013
Job # 12610.10

STATE OF TEXAS
REGISTERED
KEVIN CONROY
4198
PROFESSIONAL
LAND SURVEYOR

Exhibit B

Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is authorized under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

8. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

B. "As Is, Where Is"

This Contract Is An Arms-Length Agreement Between The Parties. The Purchase Price Was Bargained On The Basis Of An "As Is, Where Is" Transaction And Reflects The Agreement Of The Parties That There Are No Representations, Disclosures, Or Express Or Implied Warranties, Except For The Warranty Of Title Stated In The Closing Documents And Seller's Representations To Buyer Set Forth In Section A Of This Exhibit B.

The Property Will Be Conveyed To Buyer In An "As Is, Where Is" Condition, With All Faults. Seller Makes No Warranty Of Condition, Merchantability, Or Suitability Or Fitness For A Particular Purpose With Respect To The Personal Property. All Warranties, Except The Warranty Of Title In The Closing Documents, Are Disclaimed.

The provisions of this section B regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

C. Environmental Matters

After Closing, As Between Buyer And Seller, The Risk Of Liability Or Expense For Environmental Problems, Even If Arising From Events Before Closing, Will Be The Sole Responsibility Of Buyer, Regardless Of Whether The Environmental Problems Were Known Or Unknown At Closing. Once Closing Has Occurred, Buyer Indemnifies, Holds Harmless, And Releases Seller From Liability For Any Latent Defects And From Any Liability For Environmental Problems Affecting The Property, Including Liability Under The

Comprehensive Environmental Response, Compensation, And Liability Act (Cercla), The Resource Conservation And Recovery Act (Rcra), The Texas Solid Waste Disposal Act, Or The Texas Water Code. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Seller's Own Negligence Or The Negligence Of Seller's Representatives. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Theories Of Products Liability And Strict Liability, Or Under New Laws Or Changes To Existing Laws Enacted After The Effective Date That Would Otherwise Impose On Sellers In This Type Of Transaction New Liabilities For Environmental Problems Affecting The Property.

The provisions of this section C regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

D. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Buyer is authorized under the laws of the state of Texas with authority to acquire the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Buyer that might affect Buyer's ability to perform its obligations under this contract.

Exhibit C

Notices, Statements, and Certificates

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Exhibit D: Form of Deed

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

State of Texas }
}
County of Bexar }

Deed Without Warranty

Authorizing Ordinance:	
Statutory Authority:	Local Government Code § 272.001(a)
SP No./Parcel:	
Grantor:	City of San Antonio
Grantor's Mailing Address:	City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attn: City Clerk)
Grantor's Street Address:	City Hall, 100 Military Plaza, San Antonio, Texas 78205 (Bexar County)
Grantee:	Laura Nell and Jesse B. Burton III
Grantee's Mailing Address:	
Consideration:	$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.
Property:	All of the following real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas, being described as follows: Lot 10, Block 58, County Block 4024, Alamo Heights Subdivision, as recorded in volume 368, page 181, of the

Deed and Plat records of Bexar County, Texas, in the city of Alamo Heights, Bexar County, Texas and more fully described on **Exhibit A, attached hereto and incorporated herein for all purposes**.

Grantor, for the Consideration, Grants, Bargains, and Conveys to Grantee, all of Grantor's right, title, interest, and estate, both at law and in equity, as of the date hereof, in and to the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, To Have and To Hold unto Grantee, Grantee's successors and assigns forever, **Without Any Express Or Implied Warranty Whatsoever, Including But Not Limited to Warranties of Title, Condition, or Character.**

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties herein.

Reservations, Restrictions, Exceptions, And Conditions To Conveyance: This conveyance is explicitly subject to the following:

A. **Reservations:** All conditions affecting the Property.

B. **Easements:** All recorded and unrecorded easements, whether or not open and obvious.

C. **Restrictions:** All covenants and restrictions affecting the Property; The Grantor does hereby impress all of the Property with the following deed restriction ("restriction"), to wit:

> No building shall be constructed on the Property, nor shall any further expansion of the adjacent single-family home be allowed on the Property, without first obtaining written consent from the City of San Antonio. This restriction shall continue in full force and effect from the date of execution until amended or terminated in a manner allowed under Texas law. Grantee agrees that these restrictions inure to the benefit of the City of San Antonio (the "City"). Grantee hereby grants the City the right to enforce this restriction by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. For further remedy, Grantee agrees that the City may contact or apply to any necessary city official or department to withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these

restrictions shall not be waived, expressly or otherwise. Grantee agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this restriction. The provisions of this restriction are hereby declared covenants running with the land and are binding on all successors, heirs, and assigns of Grantee who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

D. Exceptions: All instruments affecting the Property, whether or not recorded.

E. Conditions: All conditions affecting the Property; Grantee has granted to the City of San Antonio the first right and option to purchase the Property in future from Grantee at such time as Grantee sells or conveys, or attempts to sell or convey, the Property in a manner other than gift, devise or descent. The Conditional Option Price for the City of San Antonio shall be Thirty Thousand and No/100 Dollars ($30,000.00). If City of San Antonio files a Notice of Non-Exercise of Option in the Deed and Plat Records of Bexar County, Grantee's title is thereafter secure against any attempted exercise of the option by Grantor. Limitations do not run against Grantor in relation to exercising the option.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.

Setting Out d Disclaimers Does Not I ree Of Other Encumbranc ions. Grantor Specifically

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

In Witness Whereof, Grantor has caused its representative to set its hand:

Grantor:

City of San Antonio, a Texas municipal corporation

By:_____

Printed
Name:_____

Title:_____

Date:_____

Approved As To Form:

By:_____
City Attorney

The State of Texas }

County of Bexar }

Before me, the undersigned authority, this instrument was this day acknowledged by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date:_____

_____
Notary Public, State of Texas

My Commission Expires:_____

After Recording, Return To:

_____

_____

_____