

AN ORDINANCE 2012-06-21-0479

**DECLARING AS SURPLUS THE CITY'S FORMER FIRE STATION NO. 27
LOCATED AT 1518 HILLCREST DRIVE WITHIN NCB 8394 IN COUNCIL
DISTRICT 7 AND AUTHORIZING ITS SALE TO CUNNINGHAM
WALTERS PROPERTIES, LLC, FOR A FEE OF \$451,500.00.**

* * * * *

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

SECTION 1. The following property is declared surplus to the needs of the City of San Antonio:

An approximate 0.8413 acre tract out of Lots 21 and 22, Block G, NCB 8394, Woodlawn Hills Country Estates, as recorded in Volume 642, Page 149 of the Deed Records of Bexar County and being out of that same tract of land as described in Volume 4769, Page 339 of the Deed Records of Bexar County and being more particularly described in **Attachment I**.

SECTION 2. The City having advertised the property for sale according to law and Cunningham Walters Properties, LLC being the successful bidder, the City Manager and her designee, severally, are authorized and directed to execute and deliver a deed in favor of Cunningham Walters Properties, LLC or their assignee and otherwise to do all things necessary or convenient to effectuate transfer of the City's title to the properties.

SECTION 3. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000060 and General Ledger 4903101.

SECTION 4. The disposition of surplus property must be coordinated through the city's Finance Department to assure the removal of these assets into the City's financial records and to record the proper accounting transactions.

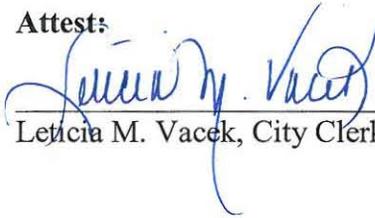
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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.

SECTION 6. 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 21st day of June 2012.

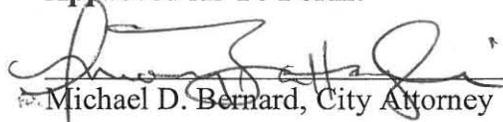

M A Y O R
Julián Castro

Attest:



Leticia M. Vacek, City Clerk

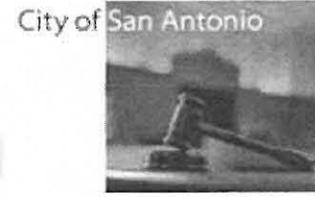
Approved As To Form:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 27

Name:	5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25A, 25B, 26, 27, 28, 30, 31, 32A, 32B, 32C, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 65A, 65B						
Date:	06/21/2012						
Time:	10:01:34 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance declaring as surplus the City's former Fire Station No. 27 located at 1518 Hillcrest Drive within NCB 8394 in Council District 7 and authorizing its sale to Cunningham Walters Properties, LLC (Walgreens), for a fee of \$451,500.00. [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			x	
Leticia Ozuna	District 3	x					
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made between the CITY OF SAN ANTONIO, TEXAS, a municipal corporation (the "**Seller**"), and Cunningham Walters Properties, LLC (the "**Buyer**") and is effective as of the Effective Date (as hereinafter defined).

In consideration of the mutual covenants and representations herein contained, the Seller and the Buyer agree as follows:

1. PURCHASE AND SALE

1.1. Purchase and Sale. Subject to the terms and conditions of this Agreement, the Seller hereby agrees to sell and convey to the Buyer and the Buyer hereby agrees to purchase from the Seller the property located at or adjacent to the Northeast corner of Bandera Road and Hillcrest Drive, San Antonio, Bexar County, Texas, and consisting of the following (the "**Property**"):

(a) **Land.** That certain 0.8413 acre tract of land (the "**Land**") in Bexar County, Texas, being more particularly described in **Exhibit A** attached hereto and made a part hereof for all purposes.

(b) **Easements.** All easements and rights of ingress or egress and any other similar rights, if any, benefiting the Land (the "**Easements**").

(c) **Rights and Appurtenances.** All rights and appurtenances pertaining to the foregoing, including, but not limited to, (i) any right, title and interest of the Seller in and to adjacent streets, roadways, alleys or rights-of-way, (ii) any sewer, water or other utility rights or capacity, (iii) any oil, gas or other minerals in, on or under or that may be produced from the Land, and (iv) any reversionary rights or rights by limitation or prescription (the "**Rights and Appurtenances**").

(d) **Improvements.** All improvements in and on the Land, if any (the "**Improvements**").

1.2. Form of Deed. Unless otherwise agreed by the parties in writing before closing, the deed conveying the Property will be substantially in the form attached as **Exhibit B**.

2. PURCHASE PRICE

2.1. **Purchase Price.** The purchase price (the "**Purchase Price**") for the Property shall be \$451,500, in collected funds, and shall be paid by the Buyer to the Seller at the Closing (as hereinafter defined).

3. EARNEST MONEY

3.1. **Earnest Money.** Within ten (10) business days following the Effective Date, the Buyer shall deliver to FIDELITY NATIONAL TITLE INSURANCE COMPANY, 1900 West Loop South, Suite 200, Houston, Texas 77027, Attention: Ms. Erika Norris (the "**Title Company**") the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) (the "**Earnest Money**"). The Earnest Money shall be deposited into an interest bearing account with a bank or thrift institution satisfactory to the Buyer. If the sale of the Property is consummated pursuant to the terms of this Agreement, the Earnest Money and all interest accrued thereon shall, at the option of the Buyer, be paid to the Seller and applied to the payment of the Purchase Price or returned to the Buyer upon Closing. If the Buyer terminates this Agreement in accordance with any right to terminate granted by this Agreement, the Earnest Money and all interest accrued thereon shall be immediately returned to the Buyer and no party hereto shall have any further obligations under this Agreement. On the Effective Date, the Buyer shall deliver to the Seller the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) (the "**Independent Consideration**") which Independent Consideration is payable to the Seller in consideration of the option on the part of the Buyer to terminate this Agreement as hereinafter provided and shall be retained by the Seller under all circumstances. If the Buyer shall close this transaction, the Independent Consideration will be a credit against the Purchase Price.

4. CONDITIONS TO CLOSING

4.1. **Title Commitment.** The Title Company shall provide, within twenty (20) days after the Effective Date, a Commitment for Owner's Policy of Title Insurance (the "**Commitment**"), in the amount of the Purchase Price, issued by the Title Company and legible copies of any restrictive covenants, easements and other items listed as title exceptions therein. In the event the Land is out of a larger tract of land, the Commitment shall not be deemed received by the Buyer until the description of the Land has been provided with the Survey (as hereinafter defined) and the Commitment has been issued, describing only the Land as so described.

4.2. **Survey.** The Buyer shall procure (at the Buyer's expense), an ALTA/ACSM on the ground Land Title Survey of the Land (the "**Survey**"), prepared by a licensed surveyor, dated subsequent to the date of this Agreement, in the form acceptable to the Buyer and the Title Company. In the event of any discrepancy in the description of the Land provided in this Agreement and the description provided with the Survey, the description provided with the Survey shall be used in the Deed (as hereinafter defined) in lieu of the description contained in this Agreement.

4.3. Objections. The Buyer shall have until the expiration of the Contingency Date or the Extended Contingency Date, if applicable (the "**Objection Date**"), within which to approve or disapprove all such items evidenced by the Title Commitment and/or the Survey, including the information reflected therein, such approvals or disapprovals to be within the Buyer's sole discretion. If the Buyer fails to disapprove any such item by written notice to the Seller within such period, the Buyer shall be deemed to have accepted such item in its then current form. If the Buyer disapproves any such item by written notice to the Seller during such period, the Buyer may terminate this Agreement, unless the Seller cures such objection to the satisfaction of the Buyer. All Schedule C exceptions, including any lien or encumbrance, will be deemed objected to by the Buyer, and the Seller shall be obligated to cause the release of any such lien or encumbrance and to otherwise satisfy the obligations of Schedule C at Closing. The title exceptions to be listed in Schedule B of the Commitment, if and when approved by the Buyer or deemed to be approved pursuant to this Section, are hereinafter called the "**Permitted Exceptions.**"

4.4. Contingency Date. The obligations of the Buyer hereunder are conditioned upon the Buyer having procured such inspections, studies, tests and reports related to toxic or hazardous substances, including asbestos containing materials on the Property and the Improvements; the condition of the Improvements; the condition of the soils of the Land, including core drilling tests; the feasibility of the Property and Improvements for the Buyer's intended use; and such other matters as the Buyer, in its sole and unimpaired discretion, may determine (collectively, the "**Buyer's Inspection**"). Within ten (10) days after the Effective Date the Seller shall deliver to the Buyer originals or true, correct and legible copies of any and all documents, instruments, contracts, agreements or other information of whatever kind or nature in the Seller's possession or of which the Seller is aware affecting the Property in any material respect, including but not limited to soil tests, environmental studies, engineering reports, and plans and specifications for the Improvements (collectively, the "Documents and Information"). It is expressly understood and agreed by the Buyer that the Seller has not made, and is not making, any representations or warranties as to the accuracy of the Documents and Information prepared by third parties. The Buyer and its designated agents, employees and independent contractors shall have the right to enter upon the Property and the Improvements to facilitate the Buyer's Inspection and to perform such inspections, studies, and tests as the Buyer may deem fit. No agents, employees or independent contractors of the Buyer shall enter the Property to perform the Buyer's Inspections until the Buyer or the independent contractors shall have provided to the Seller liability insurance coverage satisfactory to the Seller's Risk Management department. The Buyer shall indemnify and hold the Seller harmless from and against any damages to the Property or any person arising from or as a result of the entry on the Property by the Buyer or its agents, employees and/or independent contractors. On or before the date which is one hundred twenty (120) days after the Effective Date (the "**Contingency Date**"), the Buyer may notify the Seller, in writing that the Buyer's Inspection is not satisfactory to the Buyer in its sole and unimpaired discretion and may terminate this Agreement without penalty or expense. If the Buyer shall terminate this Agreement, the Earnest Money shall be at once returned to the Buyer and the Seller shall retain the Independent Consideration.

The Buyer agrees that, unless required to do so by law or regulation, the results of the Buyer's Inspection will be held confidential and not revealed by the Buyer other than to its agents, representatives, employees, attorneys, lenders, investors, or assigns, or if required by applicable law or by judicial authority.

4.5. Extended Contingency Date. The Buyer shall have the right to extend the Contingency Date for up to four (4) additional periods of thirty (30) days per extension (each, an "**Extended Contingency Date**") by depositing with the Title Company the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) per extension (each, an "**Extension Deposit**"). The Title Company is authorized and directed to deliver each Extension Deposit to the Seller following receipt from the Buyer. Each Extension Deposit shall be "at risk" and non-refundable if the Buyer shall fail to close this transaction other than due to a default by the Seller, but shall be applicable to the Purchase Price at Closing. The extension of the Contingency Date shall extend the Closing Date for a like period.

4.6. Service Contracts. In the event the Buyer shall not elect to terminate this Agreement as provided above, then prior to Closing, the Seller (at its expense) shall terminate all contracts, maintenance agreements and other agreements related to the ownership, operation or use of the Property, the Improvements or any part thereof (the "**Service Contracts**"), effective no later than the date of the Closing. During the period of Buyer's Inspection provided for in Section 4.4, Seller shall provide the Buyer with a list of all Service Contracts affecting the Property, if any, and complete and legible copies of such Service Contracts. At Closing Seller shall provide the Buyer with evidence of the termination of all Service Contracts.

4.7. Leases. In the event the Buyer shall not elect to terminate this Agreement as provided above, then prior to Closing, the Seller (at its expense) shall terminate all tenant leases (the "Leases") effective no later than the date of the Closing. The Seller shall provide the Buyer with evidence of the termination of all Leases. If the Seller or an affiliate of Seller is in possession of the Property, the Seller and any affiliate of the Seller shall remove all personal property not a part of the Property, and shall quit the Property, on or before Closing.

4.8. Required Approvals and Plat.

(a) **Required Approvals.** The obligations of the Buyer hereunder are conditioned upon the Buyer's receipt of, or evidence of the issuance of, or satisfaction with, the following (the "**Required Approvals**"):

- (i) The approval of plans for building, signs, access, and the site plan for the Property by required governmental authorities; and
- (ii) The issuance of building and other necessary permits by required governmental authorities.

(b) **Plat.** The obligations of the Buyer hereunder are conditioned upon the approval of a plat or replat of the Land and other land to be

purchased by the Buyer situated adjacent to the Land (the "**Plat**") into a separate single, legal lot in accordance with applicable law. The Buyer agrees to use commercially reasonable efforts to prosecute the approval of the Plat and procure all approvals of the Plat by the applicable governmental authorities up to the point of but not including Planning Commission approval before the Closing.

(c) **Diligence.** The Buyer agrees to make a good faith and diligent effort to pursue and obtain the Required Approvals and the approval of the Plat and satisfy any condition attached thereto. The Seller agrees to cooperate with the Buyer's efforts to obtain the Required Approvals and to procure the approval of the Plat.

(d) **Lack of Required Approvals and Approval of Plat.** If the Buyer is not in receipt of or satisfied with any Required Approvals or the approval of the Plat on or before Closing, the Buyer may either (i) waive the contingency, or (ii) terminate this Agreement, in which event the Earnest Money shall be returned to the Buyer, and thereafter this Agreement shall be null, void and of no further force and effect.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1. Representations and Warranties. The Seller represents to the Buyer as follows:

(a) The Seller has the right, power and authority to enter into this Agreement and to perform this Agreement.

(b) The Seller has or shall fully perform and observe all requirements of all contracts and agreements affecting the Property, including the Permitted Exceptions, and no third party shall have any claim which shall survive the Closing which shall in any manner relate to the Property other than the Permitted Exceptions.

(c) Other than this Agreement and the Permitted Exceptions, there will be no Leases (other than those which shall be terminated prior to Closing), Service Contracts (other than those which shall be terminated prior to Closing), or other agreements or instruments (including Service Contracts) which will be in force or effect on the Closing Date that grant to any person whomsoever or any entity whatsoever, any right, title, interest or benefit in or to all or any part of the Property or any right relating to the use, operation, management, maintenance or repair of all or any part of the Property or the Improvements.

(d) The execution of this Agreement, the consummation of the transactions herein contemplated and the performance and observance of the obligations of the Seller hereunder and under any and all other agreements and instruments herein mentioned to which the Seller is a party will not conflict with or result in the breach of any law or regulation, order, writ,

injunction or decree of any court or governmental instrumentality or of any agreement or instrument to which the Seller is now a party or to which it is subject, or constitute a default thereunder, and does not require the Seller to obtain any consents or approvals from, or the taking of any other actions with respect to any third parties.

(e) The Seller has good and indefeasible title to the Property, free and clear of all liens and encumbrances except those exceptions the Seller is obligated to cause to be released at or prior to Closing.

(f) There are no lawsuits or administrative actions pending or threatened against the Property, the Improvements, or the business conducted thereon, or against the Seller which if decided adversely to the Seller would have any effect upon the Property or Seller's ability to consummate this transaction.

6. CLOSING

6.1. Closing. The Closing ("**Closing**") shall be held at the office of the Title Company, at 9 a.m., sixty (60) days following the expiration of the Contingency Date or Extended Contingency Date (the "**Closing Date**").

6.2. The Seller's Obligations at Closing. At Closing, the Seller shall deliver to the Buyer the following, each of which must be satisfactory in form and substance to the Buyer and must reveal no material adverse change in the information previously furnished to the Buyer by the Seller:

(a) **Deed.** A Deed without Warranty (the "**Deed**") executed by the Seller conveying the Land, the Easements, the Rights and Appurtenances and the Improvements to the Buyer, subject to no exceptions other than the Permitted Exceptions and to be substantially in the form attached hereto as **Exhibit B**.

(b) **Title Policy.** An Owner's Title Policy in Texas standard form (the "**Owner's Policy**"), naming the Buyer as insured, in the amount of the Purchase Price, insuring that the Buyer owns good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions, with the basic premium paid by the Seller and all endorsements and the survey exception amended to read, "any shortages in area" at the Buyer's expense (if the Buyer so elects such amendment).

(c) **Foreign Person.** An affidavit of the Seller certifying that the Seller is not a "foreign person," as defined in the federal Foreign Investment in Real Property Tax Act of 1980, and the 1984 Tax Reform Act, as amended.

(d) **Evidence of Authority.** A copy of such consents, court orders and other matters required by the Title Company or the Buyer to

evidence the authority and the power of the Seller to convey the Property to the Buyer in accordance with this Agreement.

(e) **Terminations.** If not sooner provided, evidence of the termination of all Service Contracts and all Leases. If the Seller or any affiliate of the Seller is in possession of the Property, the Seller and any such affiliate as of the Closing Date shall (i) remove all personal property not a part of the Property, and (ii) quit the Property.

(f) **Other Matters.** Such other matters as may be required herein or as may be reasonably required by the Title Company.

6.3. The Buyer's Obligation at Closing. At Closing, the Buyer shall deliver to the Seller the following:

(a) **Purchase Price.** The Purchase Price, reduced by any Earnest Money paid to the Seller, if the Buyer shall elect to apply the Earnest Money to the Purchase Price; the Independent Consideration; the Extension Deposits (if any) paid to the Seller; and any prorations provided for herein, by cashier's check or wire transfer of available funds.

(b) **Other Matters.** Such other matters as may be required herein or as may be reasonably required by the Title Company.

6.4. Proration. Ad valorem taxes, rental, utilities, and all other sums customarily prorated in closing of similar properties in the County where the Property is located shall be prorated as of 12 midnight on the Closing Date. Ad valorem taxes relating to the Property for the calendar year in which the Closing shall occur shall be prorated in accordance with Texas Tax Code Section 26.10, as applicable, based upon the best available estimates of the amount of taxes that will be due and payable and the Buyer shall be entitled to a credit against the Purchase Price at the Closing in the amount of the Seller's pro rata portion of such taxes and assessments through the Closing Date. As soon as the amount of taxes and assessments on the Property for such year is known, the Seller and the Buyer shall readjust the amount of taxes and assessments to be paid by each party, if any, with the result that the Seller shall be responsible for taxes and assessments attributable to the period of time prior to the date of Closing and the Buyer shall pay for those taxes and assessments attributable to the period of time from and after the Closing Date.

If applicable, the following notice is given to the Buyer as required by Section 5.010 of the Texas Property Code:

If for the current ad valorem tax year, the taxable value of the land that is the subject of this Agreement is determined by special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special

appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax, plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

The provisions of Section 6.4 shall survive Closing.

6.5. Possession. Possession of the Property shall be delivered to the Buyer at Closing, subject to the Permitted Exceptions.

6.6. Closing Costs. Except as otherwise expressly provided herein, the Seller shall pay, on the Closing Date, the title insurance premium for the Owner's Policy, one-half of any escrow fees, all recording costs for any title curative document, and other customary charges of the Title Company paid by a seller and the legal fees of the Seller's counsel in negotiating, preparing and closing this transaction. The Seller shall reimburse the Buyer at Closing for the cost of the Survey. The Seller authorizes the use of the title insurance premiums paid by Seller to be utilized as a pass through if the Buyer elects to purchase an Owner's Policy in an amount greater than the Purchase Price and shall cooperate with the Buyer in delivery of any consent necessary for this purpose. The Buyer shall pay, on the Closing Date, all recording costs for the Deed, one-half of any escrow fees and other customary charges of the Title Company paid by a buyer and the legal fees of the Buyer's counsel in negotiating, preparing and closing this transaction.

7. RISK OF LOSS

7.1. Condemnation. If, prior to the Closing, action is initiated or threatened to take any of the Property by eminent domain proceedings or by deed in lieu thereof, the Seller shall give written notice thereof to the Buyer and the Buyer may either (a) terminate this Agreement, and in such event the Earnest Money, together with any accrued interest thereon, and the Extension Deposits, if any, shall be returned to the Buyer and neither Seller nor Buyer shall have any further rights, duties or obligations hereunder except those which expressly survive any termination of this Agreement or (b) consummate the Closing, in which event the award of the condemning authority shall be assigned to the Buyer at the Closing. If any award had been previously paid to the Seller, the Purchase Price shall be reduced by the amount of such award.

7.2. **Casualty.** The Seller shall have and shall continue to have all risks and liability for damage to or injury occurring to the Property, by fire, storm, accident, or any other casualty or cause, until the Closing has been consummated. If the Property, or any part thereof, suffers any damage prior to the Closing from fire, storm or any other casualty or cause, the Seller shall give written notice thereof to the Buyer and the Buyer may at its sole election either (i) terminate this Agreement, and in such event the Earnest Money, together with any accrued interest thereon, and the Extension Deposits, if any, shall be returned to the Buyer and neither the Seller nor the Buyer shall have any further rights, duties or obligations hereunder except those which expressly survive any termination of this Agreement or (ii) elect to consummate the Closing, in which event the Purchase Price shall be reduced by the amount of the insurance proceeds paid or to be paid to the Seller.

8. DEFAULT

8.1. **Breach by the Seller.** If the Seller breaches this Agreement, (a) the Buyer may terminate this Agreement and thereupon shall be entitled to the immediate return of the Earnest Money, together with all accrued interest thereon, and the Extension Deposits, if any, previously paid to Seller or (b) the Buyer may enforce specific performance of this Agreement.

8.2. **Breach by the Buyer.** If the Buyer breaches this Agreement, the Seller, as its sole and exclusive remedy, shall be entitled to the Earnest Money, together with all interest accrued thereon, and all Extension Deposits, if any, previously paid to the Seller as liquidated damages (and not as a penalty) and as the Seller's sole remedy and relief hereunder. The Seller and the Buyer have made this provision for liquidated damages because it would be difficult to calculate, on the date hereof, the amount of actual damages for such breach, and that these sums represent reasonable compensation to the Seller.

9. OPERATION OF THE PROPERTY

9.1. **Maintenance.** The Seller (a) shall keep and maintain the Property in the same manner and with the same services provided by the Seller prior to the date of this Agreement for the term of this Agreement, (b) shall keep and maintain the Property in the current condition of the Property as of the date of this Agreement, reasonable wear and tear excepted, and (c) shall promptly advise the Buyer in writing of any change in the condition of the Property.

9.2. **Leases and Service Contracts.** Prior to the Closing, without the consent of the Buyer, the Seller (a) shall not enter into any Leases of the Property or any part thereof or Service Contracts and (b) shall not enter into any amendments or modifications of any Lease or Service Contracts. At Closing the Seller shall provide evidence of the termination of all Leases or Service Contracts as provided above.

9.3. **Other Matters.** The Seller shall provide to the Buyer written notice of (and copies of the documents evidencing) any litigation, arbitration, administrative hearing or other event which concerns the Property, arising or threatened after the date of this Agreement, and copies of any information which

occurs after the date of this Agreement which causes any representation or warranty of the Seller not to be true and correct as of the Closing Date.

10. MISCELLANEOUS

10.1. Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when personally delivered to the address of the party to receive such notice set forth below, or three days (whether actually received or not by the addressee) after deposit in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, addressed as set forth on the Signature Pages attached hereto and made a part hereof for all purposes, or such other place as the Seller or the Buyer, respectively, may from time-to-time designate by written notice to the other given at least ten days prior to the effectiveness of such new address.

10.2. Real Estate Commissions. Neither the Seller nor the Buyer has contacted any real estate broker, finder or similar person in connection with the transaction contemplated hereby except as provided below. The Seller has agreed to pay a real estate commission, in an amount equal to three percent of the Purchase Price, if, as and when this transaction shall close, payable to Bradfield Properties (the "**Broker**"). The Broker represents the Buyer in this transaction. To the actual knowledge of the Seller and the Buyer, no real estate commissions or fees have been paid or are due and owing to any other person or entity in connection with this transaction other than to the Broker as provided above. The following disclosure is provided in accordance with applicable law. The Buyer should have an abstract covering the Property examined by an attorney of the Buyer's selection or the Buyer should be furnished with or obtain a title policy.

10.3. Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

10.4. Survival. The representations and warranties contained herein shall survive the Closing of this transaction and shall not be merged into the Deed to be delivered at Closing.

10.5. Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

10.6. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify or otherwise modify the provisions of this Agreement.

10.7. Time of Essence. Time is of the essence of this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the law of the United

States or the State of Texas, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

10.8. Governing Law. This Agreement shall be governed by the laws of the State of Texas and the laws of the United States pertaining to transactions in Texas, and shall be performable in Bexar County, Texas.

10.9. Successors and Assigns. This Agreement shall bind and inure to the benefit of the Seller and the Buyer and their respective successors and assigns.

10.10. Assignment. The Buyer shall have the right, at any time upon notice to the Seller, to assign all or a part of this Agreement and its rights hereunder.

10.11. Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

10.12. Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as herein provided, reasonable attorneys' fees incurred in such suit.

10.13. Cooperation. The parties shall cooperate with one another, execute such additional documents as are necessary and reasonable to consummate the transaction set forth herein, any assemblage, the determination of the feasibility of the Property for the Buyer's intended use, and take such other necessary and reasonable actions as may be required to facilitate the Closing and assist the Buyer.

10.14. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

10.15. Date of This Agreement. Upon receipt of an executed Agreement, the Title Company is directed to acknowledge the receipt of same in the place provided and deliver an original to the Seller and to the Buyer. As used in this Agreement, the terms "date of this Agreement" or "date hereof" shall mean and refer to the date of execution of this Agreement by the Title Company evidencing its receipt of this Agreement fully executed by the Seller and the Buyer (the "**Effective Date**"). The Title Company shall give notice to the Seller of receipt of the Earnest Money promptly upon its receipt of such Earnest Money.

10.16. Exhibits. Any exhibits attached to this Agreement are incorporated into this Agreement and made a part hereof.

10.17. Notice to the Seller and the Buyer. If the Property is situated in a utility or statutorily created district providing water, sewer, drainage or flood control facilities and services, or if the Property is located in a certificated service area of a utility service provider, or a Texas Agricultural Development District, Texas law requires the Seller to deliver and the Buyer to sign statutory notices relating thereto. Accordingly, in such event, the parties agree to execute notices in the form required by applicable law, contemporaneously with the Closing.

10.18. Administrative Agreements. For the purposes of the following provisions, Seller shall be referred to as the "**City**" and the Buyer shall be referred to as the "**Contractor**." The Director of Capital Improvements Management Services ("**CIMS**") and the Assistant Director for Real Estate of CIMS 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.

11. PUBLIC INFORMATION.

11.1. The 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.

12. PROHIBITED INTERESTS IN CONTRACTS.

12.1. 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:

- (a) a City officer or employee;
- (b) his parent, child or spouse;
- (c) 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;

(d) 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.

12.2. Contractor warrants and certifies as follows:

(a) Contractor and its officers, employees and agents are neither officers nor employees of the City.

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

12.3. Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

13. SELLER'S RIGHT OF RE-ENTRY.

13.1 Not later than 12 months after recording the Deed, Buyer must apply for all permits required for building and completing its Walgreens Drug Store on the Property. Not later than 24 months after receipt of the permits, that Walgreens Drug Store must be open and operational.

13.2 If Buyer fails to timely procure the permits or open and operate a Walgreens Drug Store, Seller may at any time re-enter the Property and retake title to it by filing in the Bexar County real property records a Notice of Re-Entry. Seller may also file the Notice of Re-Entry if Buyer fails to diligently pursue getting permits that are applied for. As a condition of its right to file a Notice of Re-Entry, Seller must tender to Buyer the fair market value of the Property within 30 days after determination of value. If Seller and Buyer cannot agree on a negotiated fair market value, then the fair market value will be determined by an independent appraisal, which should consider the condition of the Property at the time of the determination. Seller picks the appraiser and pays the fee for the appraisal.

13.3 Seller's right of re-entry remains in effect until released by Seller. When Buyer believes it has complied with the conditions of re-entry, it may ask Seller to release its right of re-entry, by delivering notice to Seller. If Seller agrees, it shall release the right of re-entry on the signature of any Assistant City Manager or above with no further action of council. If Seller does not promptly release the re-entry right, Buyer may seek a declaratory judgment that the condition is satisfied

EXECUTED on the dates set forth below.

[The balance of this page is intentionally left blank. Signatures appear on the Signature Pages attached hereto and made a part hereof.]

SIGNATURE PAGE TO
PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, SELLER
AND CUNNINGHAM WALTERS PROPERTIES, LLC, BUYER

SELLER:

THE CITY OF SAN ANTONIO

Name

Signature

Title

Date

Address for Seller:

c/o Capital Improvements Management Services (CIMS) Disposition
Attention Marcia Shelf Orlandi
P.O. Box 839966
San Antonio, Texas 78283-3966
Phone Number: (210) 207-7370
Fax Number: (210) 207-7888

Approved as to Form:

City Attorney

SIGNATURE PAGE TO
PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, SELLER
AND CUNNINGHAM WALTERS PROPERTIES, LLC, BUYER

BUYER:

Cunningham Walters Properties, LLC

By: _____

Printed Name

Its: _____

Date

Address for Buyer:
Attn: Charles W. Walters
6565 West Loop South, Suite 760, Bellaire, Texas 77401
Phone Number: (713) 667-3800
Fax Number: (713) 667-7755

SIGNATURE PAGE TO
PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, SELLER
AND CUNNINGHAM WALTERS PROPERTIES, LLC, BUYER

INITIAL RECEIPT

The undersigned Title Company hereby acknowledges receipt of this Agreement.

TITLE COMPANY:

Fidelity National Title Insurance Company

Name

Signature

Title

Date

Address for Title Company:

Attention: Ms. Erika Norris
1900 West Loop South, Suite 200
Houston, Texas 77027
Phone Number: (713) 986-0714
Facsimile Number: (713) 966-4059

SIGNATURE PAGE TO
PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, SELLER
AND CUNNINGHAM WALTERS PROPERTIES, LLC, BUYER

EARNEST MONEY RECEIPT

The undersigned Title Company hereby acknowledges receipt of the Earnest Money and agrees to hold and dispose of the Earnest Money deliverable hereunder in accordance with the provisions of this Agreement.

TITLE COMPANY:

Fidelity National Title Insurance Company

Name

Signature

Title

Date

EXHIBIT "A"
TO PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, SELLER
AND CUNNINGHAM WALTERS PROPERTIES, LLC, BUYER

Metes and Bounds

Remaining Portion of Lots 21 & 22
Block G
N.C.B. 8394
Woodlawn Hills Country Estates
November 30, 2009

Being 0.8413 acres out of Lots 21 and 22, Block G, New City Block 8394, Woodlawn Hills Country Estates, as recorded in Volume 642, Page 149 of the Deed and Plat Records of Bexar County, Texas, and being out of that same tract of land as described in Volume 4769, Page 339 of the Real Property Records of Bexar County, Texas, and being more particularly described as follows;

Beginning: at a found ¼" iron rod on the southeast right-of-way line of Hillcrest Drive (variable width R.O.W.), being 75.26 feet in a northeasterly direction from a found cut cross in concrete at the northeast R.O.W. line of Bandera Road (variable width R.O.W.), being the north corner of the southwest portion of said Lot 21, as recorded in Volume 10718, Page 181 of the Real Property Records of Bexar County, Texas, for the west corner of this tract described herein;

Thence: North 42°06'43" East, 89.81 feet along the southeast R.O.W. line of said Hillcrest Drive to a set cross cut in concrete for an angle point and continuing North 40°20'27" East, 183.73 feet to a found ½" iron rod, being a northern corner of Lot 52, Block G, N.C.B. 8394, Mewhinney Property, as recorded in Volume 6500, Page 145 of the Deed and Plat Records of Bexar County, Texas, for the north corner of this tract described herein;

Thence: South 48°14'31" East, 139.90 feet, departing said R.O.W. line and with the west line of said Lot 52 to a set ½" iron rod for the east corner of this tract described herein;

Thence: South 43°16'44" West, 186.61 feet, along said common line, to a found ¾" iron rod being the west corner of said Lot 52 and the north corner of Lot 48, Block G, N.C.B. 8394, Mewhinney Subdivision, as recorded in Volume 5140, Page 40 of the Deed and Plat Records of Bexar County, Texas, for an angle point of this tract described herein;

Thence: South 42°38'34" West, 89.11 feet, along the northwest line of Lot 48, to a found 80d Nail being the east corner of said southwest portion of Lot 21, for the south corner of this tract described herein;

Thence: North 47°17'08" West, 129.60 feet, along the northeast line of said southwest portion of Lot 21, to the **POINT OF BEGINNING** as surveyed on the ground by GE Reaves Engineering, Inc. on November 25, 2009.

EXHIBIT "B"
TO PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO, SELLER
AND CUNNINGHAM WALTERS PROPERTIES, LLC, BUYER

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: Texas Local Government Code Sec. 253.011

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

Grantee: Cunningham Walters Properties, LLC

Grantee's Mailing Address: 6565 West Loop South, Suite 760, Bellaire, Texas 77401

Consideration: \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: That certain 0.8413 acre tract of land (the "**Land**") in Bexar County, Texas, being more particularly described in **Exhibit A** attached hereto and made a part hereof for all purposes, and all improvements in and on the Land, if any.

Grantor, for the Consideration, Grants, Bargains, and Conveys the Property to Grantee, together with all appurtenant easements and rights of ingress or egress and

any other similar rights, if any, benefiting the Land, and all and singular the rights and appurtenances thereto in anywise belonging as a result of Grantor's ownership of the Property as a landowner but not as a result of Grantor's interest in the Property as a municipality or utility agency, including but not limited to (i) any right, title and interest of Grantor in and to adjacent streets, roadways, alleys or rights-of-way, (ii) any sewer, water or other utility rights or capacity, (iii) any oil, gas or other minerals in, on or under or that may be produced from the Land, and (iv) any reversionary rights or rights by limitation or prescription. To Have and To Hold the Property and such easements, rights and appurtenances as aforesaid 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. Notwithstanding the foregoing, Grantor does warrant that it holds title to the Property.**

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 expressly reserved unto other parties herein.

Reservations, Restrictions, Exceptions, And Conditions To Conveyance: This conveyance is explicitly subject to the following matters set forth below, to the extent that same are valid, in force, and affect the Property:

A. Reservations: Grantor reserves the following Right of Re-entry:

Right of Re-entry.

(a). Not later than 12 months after recording this deed, Grantee must apply for all permits required for building and completing its Walgreens Drug Store on the Property. Not later than 24 months after receipt of the permits, the Walgreens Drug Store must be open and operational.

(b). If Grantee fails to timely procure the permits or open and operate a Walgreens Drug Store, Grantor may at any time re-enter the Property and retake title to it by filing in the Bexar County real property records a Notice of Re-Entry. Grantor may also file the Notice of Re-Entry if Grantee fails to diligently pursue getting permits that are applied for. As a condition of its right to file a Notice of Re-Entry, Grantor must tender to Grantee the fair market value of the Property within 30 days after determination of value. If Grantor and Grantee cannot agree on a negotiated fair market value, then the fair market value will be determined by an independent appraisal, which should consider the condition of the Property at the time of the determination. Grantor picks the appraiser and pays the fee for the appraisal.

(c). Grantor's right of re-entry remains in effect until released by Grantor. When Grantee believes it has complied with the conditions of re-entry, it may ask Grantor to release its right of re-entry, by delivering notice to Grantor at the address for Grantor on the first page of this document. If Grantor agrees, it shall release the right of re-entry on the signature of any Assistant City Manager or above with no further action of council. If Grantor does not promptly release the re-entry right, Grantee may seek a declaratory judgment that the condition is satisfied.

B. Exceptions. [list specific title exceptions.]

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

This conveyance does not relieve Grantee of any building, zoning, or other city-imposed requirements, or other land use restrictions applicable to the Property or the obligation to pay any real estate taxes that may otherwise be due.

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.

In purchasing the Property, Grantee is not relying upon any representation, statement, or other assertion from or chargeable to Grantor other than those representations set forth in the Purchase and Sale Agreement providing for the sale and purchase of the Property and the related interests described therein. Grantee, on behalf of itself and anyone claiming by, through, or under Grantee, by acceptance of this deed, releases Grantor from any and all claims that Grantee or anyone claiming by, through, or under Grantee, may now have or hereafter acquires against Grantor arising out of or related to this acquisition. This release applies according to its express terms and provisions, including, but not limited to unknown and unsuspected claims, damages, and causes of action.

Setting Out The Specific Reservations And Disclaimers Does Not Imply That The Property Is Free Of Other Encumbrances Or Adverse Claims Or Conditions. Grantor Specifically Disclaims Any Such Implication.

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

Exhibit A

Metes and Bounds
Remaining Portion of Lots 21 & 22
Block G
N.C.B. 8394
Woodlawn Hills Country Estates
November 30, 2009

Being 0.8413 acres out of Lots 21 and 22, Block G, New City Block 8394, Woodlawn Hills Country Estates, as recorded in Volume 642, Page 149 of the Deed and Plat Records of Bexar County, Texas, and being out of that same tract of land as described in Volume 4769, Page 339 of the Real Property Records of Bexar County, Texas, and being more particularly described as follows;

Beginning: at a found $\frac{3}{4}$ " iron rod on the southeast right-of-way line of Hillcrest Drive (variable width R.O.W.), being 75.26 feet in a northeasterly direction from a found cut cross in concrete at the northeast R.O.W. line of Bandera Road (variable width R.O.W.), being the north corner of the southwest portion of said Lot 21, as recorded in Volume 10718, Page 181 of the Real Property Records of Bexar County, Texas, for the west corner of this tract described herein;

Thence: North $42^{\circ}06'43''$ East, 89.81 feet along the southeast R.O.W. line of said Hillcrest Drive to a set cross cut in concrete for an angle point and continuing North $40^{\circ}20'27''$ East, 183.73 feet to a found $\frac{1}{2}$ " iron rod, being a northern corner of Lot 52, Block G, N.C.B. 8394, Mewhinney Property, as recorded in Volume 6500, Page 145 of the Deed and Plat Records of Bexar County, Texas, for the north corner of this tract described herein;

Thence: South $48^{\circ}14'31''$ East, 139.90 feet, departing said R.O.W. line and with the west line of said Lot 52 to a set $\frac{1}{2}$ " iron rod for the east corner of this tract described herein;

Thence: South $43^{\circ}16'44''$ West, 186.61 feet, along said common line, to a found $\frac{3}{4}$ " iron rod being the west corner of said Lot 52 and the north corner of Lot 48, Block G, N.C.B. 8394, Mewhinney Subdivision, as recorded in Volume 5140, Page 40 of the Deed and Plat Records of Bexar County, Texas, for an angle point of this tract described herein;

Thence: South $42^{\circ}38'34''$ West, 89.11 feet, along the northwest line of Lot 48, to a found 80d Nail being the east corner of said southwest portion of Lot 21, for the south corner of this tract described herein,

Thence: North $47^{\circ}17'08''$ West, 129.60 feet, along the northeast line of said southwest portion of Lot 21, to the **POINT OF BEGINNING** as surveyed on the ground by GE Reaves Engineering, Inc. on November 25, 2009.

Attachment II
