

AN ORDINANCE      2012 - 06 - 14 - 0440

**APPROVING AN ECONOMIC DEVELOPMENT PROGRAM GRANT FOR UP TO \$2,911,645.00 WITH EMBREY PARTNERS, LTD. AND THE MIDTOWN TIRZ BOARD FOR THE RESIDENCES AT BRACKENRIDGE HILL PROJECT LOCATED IN CITY COUNCIL DISTRICT 2.**

\* \* \* \* \*

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (“City”) is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, the City of San Antonio created an Economic Development Program (the “Program”) for the purpose of making grants and loans available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, Embrey Partners, Ltd. (“Developer”) is engaged in economic development by investing \$32,727,319.00 in a 280-unit multifamily development project, including approximately \$783,126 in public improvements at the intersection of E. Mulberry and Brackenridge Avenue located near Fort Sam Houston and within the boundaries of the Midtown TIRZ (“Project”); and

**WHEREAS**, Developer is seeking an economic development grant for the purpose of defraying costs associated with undertaking the Project which will improve housing availability in the area, streets, drainage, and other infrastructure in the Midtown TIRZ in accordance with the Midtown Master Plan; and

**WHEREAS**, the Board is authorized to designate TIRZ funds consistent with its Project Plan and Finance Plan through an Economic Development Program Grant Agreement (“Agreement”) and is authorized to direct the City to pay for such projects from the TIRZ’s tax increment funds; and

**WHEREAS**, the City has identified \$350,000 from the City’s Inner City Incentive Fund and \$350,000 from the Fort Sam Houston Incentive Fund Grant, to assist with demolition and asbestos abatement of structures on the property on which the Project is to be located; and

**WHEREAS**, subject to Midtown TIRZ #31 Board of Directors (“Board”) approval, the City has identified up to \$2,211,645.00 in available tax increment funds, approximately \$100,000 in City Fees waivers and up to \$400,000 in SAWS Impact Fee Waiver consistent with the Inner City Reinvestment/Infill Policy Target Area for the Project; and

**WHEREAS**, City Council finds that the Residences at Brackenridge Hill Project will promote local economic development, and stimulate business and commercial activity, within the Midtown TIRZ and subject to approval of the Board of the Agreement and the Midtown TIRZ Project Plan and Finance Plan, the City, the Board, and the Developer desire to enter into the Agreement; **NOW THEREFORE**:

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

**SECTION 1.** The City Council approves an Economic Development Program Grant Agreement for up to \$2,911,645.00 with Developer and the Board for the Residences at Brackenridge Hill Project. City Council approval of the Agreement is subject to and contingent upon approval of the Agreement by the Board. The City Manager or her designee is authorized to execute the Agreement, a copy of which is attached in substantially final form as **Attachment I** consistent with an approved Project Plan and Finance Plan.

**SECTION 2.** The City Manager or her designee is authorized to execute such other documents as are necessary to carry out the intent of this ordinance as approved and recommended by the City Attorney.

**SECTION 3.** Funding in the amount of \$350,000.00 for this Ordinance is available in Fund 11001000 Cost Center 7001990059 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

**SECTION 4.** Funding in the amount of \$350,000.00 for this Ordinance is available in Fund 11001000, Cost Center 8002380001 and General Ledger 5201040, as part of the Fiscal Year 2013 Budget and is contingent upon City Council approval of the City's operating budget and the availability of the funds.

**SECTION 5.** Payment in the amount not to exceed \$700,000.00 is authorized to Embrey Partners, Ltd. and shall be encumbered with a purchase order. Payment for future fiscal years are contingent upon City Council approval of the City's operating budget and the availability of funds.

**SECTION 6.** Payment not to exceed the amount of \$2,211,645.00 which will be broken out in annual payments up to 15 years is authorized to Embrey Partners, Ltd. through Fund 29086018 with Cost Center and General Ledger to be determined by the Office of Budget and Management. Annual payments to Developer shall not exceed the amount equal to the previous year's ad valorem taxes remitted to the City for a period not to exceed 15 years and at such time funds are authorized to be encumbered.

**SECTION 7.** 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 8.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 14<sup>th</sup> day of June, 2012.



**M A Y O R**  
Julián Castro

**ATTEST:**



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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



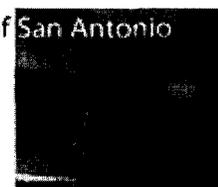
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Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 27

<b>Name:</b>	4, 5, 6, 8, 11, 12, 13, 15, 16, 17, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37A, 38A, 38B, 39A, 39B, 39C, 39D, 39E, 40A, 40B, 40C, 40D, 40E, 40F						
<b>Date:</b>	06/14/2012						
<b>Time:</b>	09:27:40 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance approving an Economic Development Program Grant Agreement for up to \$2,911,645.00 with Embrey Partners, LTD and the Midtown Tax Increment Reinvestment Zone Board and a SAWS impact fee waiver for up to \$400,000.00 for the Residences at Brackenridge Hill, a \$32,727,319.00 multi-family project located in Council District 2. [Pat DiGiovanni, Deputy City Manager; Mark Brodeur, Director, Center City Development Office]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		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**

**ECONOMIC DEVELOPMENT GRANT AGREEMENT OF  
THE CITY OF SAN ANTONIO, MIDTOWN TAX INCREMENT REINVESTMENT  
ZONE #31, AND EMBREY PARTNERS, LTD FOR THE RESIDENCES AT  
BRACKENRIDGE HILL PROJECT.**

This Economic Development Grant Agreement (the "Agreement") is made and entered into by and among the City of San Antonio (the "City"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, Tax Increment Reinvestment Zone #31, acting by and through its Board of Directors, (the "TIRZ") and Embrey Partners, LTD., a Texas limited partnership (the "GRANTEE") and whom together may be referred to as the "Parties."

**WHEREAS**, the GRANTEE is under contract to purchase approximately 9.9 acres of real property located south of E. Mulberry and north of Brackenridge Avenue, as more particularly described on "Attachment A" attached hereto (the "Property"); and

**WHEREAS**, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio that will consist of a multi-family housing development consisting of approximately 280 market-rate rental housing units to be located at the intersection of E. Mulberry and Brackenridge Avenue (the "Project"); and

**WHEREAS**, the City's governing body is recommending to the TIRZ that the Project be reimbursed for certain costs associated with the Project and incurred by GRANTEE; and

**WHEREAS**, GRANTEE is seeking an additional economic development grant from the City and the TIRZ for the purpose of defraying costs associated with the Project as further described in this Agreement; and

**WHEREAS**, the City and the TIRZ have identified grant funds to be made available to GRANTEE for use in completing the Project; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010(b) and Section 311.010(h) of the Texas Tax Code, the City and the TIRZ are authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the City and the TIRZ; and

**WHEREAS**, the City Council has: (i) authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2012-0\_ - \_\_\_\_ - \_\_\_\_, passed and approved on \_\_\_\_\_, 2012 (the "Ordinance Date") to grant funds; and (ii) in accordance with the City's Inner-City Reinvestment Infill Policy, approved a waiver of certain impact fees otherwise charged by the San Antonio Water System to the Project (the "SAWS Impact Fee Waiver") and further, the Board of Directors of the TIRZ has authorized the TIRZ to enter into this Agreement with City and GRANTEE in accordance with the Resolution, dated \_\_\_\_\_, 2012, attached as "Attachment B";

**NOW THEREFORE:**

The Parties severally and collectively agree, and by the execution hereof are bound for the consideration stated, to the mutual obligations and performance and accomplishment of the tasks herein:

## **SECTION 1. AGREEMENT PURPOSE**

GRANTEE shall undertake the development of a housing development that GRANTEE currently contemplates will consist of approximately 280 market-rate, multi-family rental units divided into approximately nine structures and approximately \$783,126.00 in public improvements. GRANTEE shall also complete the purchase of the Property for the Project. The Project also includes \$1,418,550.00 in demolition costs for the existing apartment buildings, which contain significant amounts of asbestos materials and have been the subject of several crimes and code violations. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio and Reinvestment Zone #31. The City and TIRZ are supporting the Project through this Economic Development Program Grant to provide funds to be used to defer costs associated with the Project.

## **SECTION 2. PROJECT REQUIREMENTS**

A. GRANTEE currently contemplates that GRANTEE will make an Investment of approximately \$32,727,319.00 in the Project, which will include approximately \$783,126.00 of Public Improvements and the purchase of the Property described in Attachment A. For the purposes of this Agreement, “Public Improvements” shall include, without limitation, exterior building and site improvements pertaining to development of the Property in the nature of public infrastructure such as streets, sidewalks, curbs, gutters, lighting, drainage facilities, utility lines and related equipment, telecommunication facilities, and landscaping. For purposes of this Agreement, “Investment” shall mean all expenditures made by GRANTEE directly or indirectly, to develop the Project including, without limitation: costs associated with the Public Improvements, architectural, engineering and surveying expenses, financing costs and fees, property acquisition, closing and settlement expenses, demolition, construction, site preparation, paving, landscaping, utilities, project marketing, legal expenses, and reasonable fees paid to consultants, contractors and developer. GRANTEE shall not be in default hereunder solely by virtue of the fact that either: (i) the amount of the total Investment actually expended by GRANTEE for the construction of the Project is ultimately greater or less than the estimate set out above; or (ii) the amount of Investment actually expended by GRANTEE for Public Improvements, is ultimately greater or less than the estimates set out above; or (iii) the completed Project ultimately contains greater or less than 280 rental units, so long as the Project contains at least 238 rental units (representing an approximate 15.0% allowed variance).

B. GRANTEE shall commence demolition of existing buildings and construction of Project on or before March 1, 2013 (“Commencement of Demolition Construction”) and shall use reasonable good faith efforts to complete construction of the Project within 24 months following the Commencement of Demolition Construction, subject to Force Majeure. The commencement date shall be determined by the issuance of all necessary City permits for the Commencement of Demolition Construction for the Project and City’s receipt of correspondence from the general contractor for Project confirming that demolition has commenced. GRANTEE and/or

GRANTEE's contractors and subcontractors shall also be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any asbestos containing materials (ACM) and Hazardous Substance present on the Property and shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the ACM and Hazardous Substance. The completion date for construction of the Project shall be determined by the issuance of a Certificate of Occupancy for the Project by City, which shall not be unreasonably withheld.

C. City may request in writing no more than once per quarter a progress report on the Project from GRANTEE. GRANTEE shall provide such a report within 20 business days of the City's written request.

D. GRANTEE shall comply with all applicable Federal, State, and local laws and regulations, including federal Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS) and Texas Commission on Environmental Quality (TCEQ) rules and regulations and all other regulations and laws relating to the environment, ACM, Hazardous Substances or exposure to ACM and Hazardous Substances and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

E. No Public Improvements with a lien still attached may be offered to the City for dedication. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") is filed against GRANTEE regarding the Public Improvements on the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by, or on behalf of, GRANTEE, or any of its agents or Contractors, GRANTEE shall cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure against the Project's Public Improvements by injunction, payment, deposit, bond, court order or otherwise.

F. GRANTEE is responsible for complying with all applicable City Code provisions, including provisions of the Unified Development Code, enforced pursuant to the CITY's subdivision platting authority, and as amended including, but not limited to, those provisions related to drainage, utilities, and substandard public street rights-of-ways for development and construction of the Project including the Public Improvements. In addition, GRANTEE shall exercise commercially reasonable efforts to follow the Urban Neighborhood recommendations of the Midtown Brackenridge Master Plan as adopted by City and shall consider incorporating low impact development strategies for water quality, storm water and drainage where appropriate for the Project. This Agreement in no way obligates the City to approve any subsequent permits or requests for the Project as GRANTEE is still responsible for acquiring all necessary permits and/or approvals as needed for the Project.

### **SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT**

A. **Economic Development Program Grant.** City and TIRZ are providing GRANTEE with Economic Development Program Grants subject to GRANTEE's performance of its obligations under this Agreement. Such grants shall be apportioned as follows:

1. The City will provide \$350,000 from the City's Inner City Incentive Fund and \$350,000 from the Fort Sam Houston Incentive Fund Grant to assist with demolition and asbestos abatement efforts for the Project.
2. The TIRZ will provide up to \$2,211,645 in real property tax increment reimbursements from the Tax Increment Fund for up to 15 years in accordance with Section 3.B.2, administered by the City on behalf of the TIRZ.
3. The total cumulative amount of the combined grant shall not exceed \$2,911,645 (the "Maximum Disbursement Amount"). The grant funds shall be used for the purpose of reimbursing GRANTEE for Investments in costs for the Project.

B. **Grant Disbursement.** The grant funds will be distributed over the Term of this Agreement, subject to the terms and conditions herein, as follows:

1. **Initial Disbursement (\$700,000).** The City shall pay to GRANTEE an Economic Development Program Grant from the Inner City Incentive Fund and the Fort Sam Houston Incentive Fund in the total amount of \$700,000 ("Initial Disbursement"), to be advanced to GRANTEE in one disbursement within 30 business days following approval of this Agreement by a duly-authorized City Ordinance and the occurrence of all of the following:
  - (a) Execution of the Agreement by all Parties; and
  - (b) Receipt of evidence of the issuance of all necessary permits from the City of San Antonio for Commencement of Demolition Construction associated with the Project; and
  - (c) GRANTEE providing to City the following: (i) a letter from a qualified financial institution confirming GRANTEE has funds available on deposit or under an existing credit facility sufficient to complete the Project; and (ii) written confirmation from GRANTEE that it has received the necessary building permits to cause the Commencement of Construction of the Project; and (iii) a letter from GRANTEE's general contractor (or other reasonably satisfactory evidence) that Commencement of Demolition Construction has occurred on or prior to March 1, 2013 City shall make a reasonable determination as to whether the evidence provided by GRANTEE is sufficient to satisfy the foregoing conditions and shall immediately notify GRANTEE if City deems the evidence provided insufficient.
  - (d) The Inner City Incentive Fund Grant of \$350,000 is further contingent upon approval of the Fiscal Year 2013 Budget by City Council and the availability of the funds.
2. **Property Tax Increment Reimbursement (Up to \$2,211,645).** Subject to the terms and conditions of this Agreement and the Payment Conditions defined herein, the TIRZ directs the City to administer this Agreement and to act as fiscal agent on behalf of the TIRZ and its Tax Increment Fund, and for each tax year commencing with the first tax year following the tax year in which a Certificate of Occupancy is issued for the Project and then annually throughout the remainder of the Term, the City, on behalf of the

TIRZ, shall pay to GRANTEE no later than 45 business days following submission of a tax invoice by GRANTEE indicating full payment of all taxes by GRANTEE on the Project, an amount equal to: (a) the actual amount of real property taxes paid by GRANTEE to the City with respect to the Property (including land and improvements) for the immediately preceding tax year, *less* (b) the amount of real property taxes payable by GRANTEE to City with respect to the Property (including land and improvements) for the 2012 tax year (the difference between (a) and (b) being referred to herein as "Annual Property Tax Increment Reimbursement"). In the event a tax invoice is timely submitted to the City by GRANTEE for the Annual Property Tax Increment Reimbursement, and the Term of this Agreement subsequently expires, not due to default of the GRANTEE or disbursement of the Maximum Disbursement Amount, the requested Annual Property Tax Increment Reimbursement shall still be paid to GRANTEE in accordance with this Agreement. Payment of the Annual Property Tax Increment Reimbursement to GRANTEE shall occur in accordance with the Project Requirements in Section 2 of this Agreement and with the following conditions (collectively, the "Payment Conditions"):

- (a) Upon receipt by the City of taxes paid by GRANTEE to the City related to the Project for a tax year, the City shall, in a reasonably prompt manner and in its capacity as fiscal agent for the TIRZ, deposit an amount of not less than the Annual Property Tax Increment Reimbursement for such tax year into the Tax Increment Fund. For purposes of this Agreement, "Tax Increment Fund" means the fund established by the City for the TIRZ, pursuant to Section 311.004, Texas Tax Code.
- (b) Beginning with the tax year in which a Certificate of Occupancy is issued for each structure within the Project, and for each subsequent tax year during the Term of this Agreement, the City, acting as fiscal agent for the TIRZ, shall pay the Annual Property Tax Increment Reimbursement to GRANTEE. Payment of the Annual Property Tax Increment Reimbursement shall come solely from City real property taxes attributable to the Project. During the Term of this Agreement, the taxes paid by Grantee and deposited in the Tax Increment Fund shall be earmarked for the purpose of paying the Annual Property Tax Increment to Grantee.
- (c) For any particular tax year during the Term of this Agreement, if insufficient tax increment is realized within the TIRZ to permit the full payment of the Annual Property Tax Increment Reimbursement due to GRANTEE under this Section, the TIRZ shall pay as much of the Annual Property Tax Increment Reimbursement to GRANTEE, as possible, and the TIRZ shall defer payment of any unpaid balance of the Annual Property Tax Increment Reimbursement due to GRANTEE under this Section during that tax year.
- (d) It is expressly agreed that all deferred Annual Property Tax Increment Reimbursements (the "Deferred Amounts Due") shall accrue without interest and be payable at the earliest reasonable opportunity to GRANTEE by TIRZ upon the

availability of sufficient funds attributable to the Project in the Tax Increment Fund.

- (e) At any time during the Term of this Agreement and provided that GRANTEE has no Deferred Amounts Due and there exist unallocated amounts in the Tax Increment Fund, the TIRZ shall consider any reasonable request made by GRANTEE to pay amounts in addition to the Annual Property Tax Increment Reimbursement up to the Maximum Disbursement Amount. It is expressly understood that the TIRZ has no obligation to pay additional amounts. GRANTEE understands and agrees that any expenditure made by the GRANTEE in anticipation of Annual Property Tax Increment Reimbursement shall not be, nor construed to be, financial obligations of the City.
  - (f) The GRANTEE understands and agrees that any expenditure made by the GRANTEE in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, or the TIRZ. The GRANTEE shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and/or unanticipated effects covered under legal doctrine of force majeure.
  - (g) GRANTEE acknowledges that the TIRZ terminates on December 31, 2028 and unless the TIRZ is extended, payments will cease upon termination of the TIRZ and reconciliation of all accounts after which City and TIRZ will have no further liability or obligation regarding the Annual Property Tax Increment Reimbursement for the Project.
3. **Obligation to Pay Taxes.** It is understood that GRANTEE shall continue to pay all taxes owed on the Property as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District. Prior to TIRZ disbursing funds under Section 3.B.(2), GRANTEE must provide to City evidence indicating that all taxes owed by GRANTEE on the Property have been paid in full for the tax year for which payment of the Annual Property Tax Increment Reimbursement is sought, subject to GRANTEE's right to protest taxes as permitted by law. If, during the Term of this Agreement, GRANTEE allows its ad valorem taxes due on the Property to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then the City's and TIRZ's remedies under this Agreement shall apply. This Agreement shall not limit GRANTEE'S right to protest appraisals of the Property, real or personal, or any portion thereof, over and above the 2012 tax year value.
4. **Property Tax Reconciliation.** In no case shall disbursements made to GRANTEE under this Agreement exceed the Maximum Disbursement Amount. Should such disbursements exceed the Maximum Disbursement Amount, no further disbursements

shall be due to GRANTEE and any excess funds disbursed shall be due and payable by GRANTEE to City or TIRZ within 60 days following written notice from City to GRANTEE, provided such written notice is given within one year following the expiration of the Term.

- C. **Recapture of Initial Disbursement.** Should GRANTEE receive the Initial Disbursement pursuant to Section 3B(1) and fail to comply with its obligations under Section 2.A. and 2.B. hereof, then City and TIRZ shall have the right to terminate this Agreement and recapture all or a portion of the Initial Disbursement in accordance with this Section.

#### **SECTION 4. AGREEMENT PERIOD**

This Agreement shall commence upon \_\_\_\_\_, 2012 and terminate upon the earlier of: (a) the payment of grant funds by City and/or TIRZ to GRANTEE in the amount of the Maximum Disbursement Amount; (b) December 31, 2029; or (c) termination of this Agreement as otherwise provided herein (the "Term").

#### **SECTION 5. CITY AND TIRZ OBLIGATIONS**

- A. In consideration of full and satisfactory performance of activities required by Section 2 or Section 3 of this Agreement, as applicable, City and TIRZ will pay GRANTEE in accordance with Section 3 above.
- B. Neither City nor TIRZ will be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.
- C. The City agrees to act as the fiscal agent on behalf of the TIRZ by making disbursements from the Tax Increment Fund for the Project pursuant to this Agreement. Additionally, the City shall monitor GRANTEE's compliance with the terms and conditions of this Agreement and provide updated information to the TIRZ regarding the progress of the Project.
- D. Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ Tax Increment Fund, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or the City.
- E. Additionally as the Project is located within the Inner City Reinvestment/Infill Policy Target Area, the Project is eligible for certain City fee waivers and up to \$400,000.00 in SAWS impact fees.

#### **SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS**

- A. GRANTEE shall maintain all material records related to the construction of the Project including fiscal records and supporting documentation for the greater of: (1) five years from the end of the Term; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following five business days written notice from the City, give the City, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the construction of the Project (the "Records"). City shall not request access to GRANTEE's Records more than once per quarter unless deemed necessary by City for compliance issues with this Agreement. City's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the City. GRANTEE shall not be required to disclose to the City or TIRZ any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized City representatives shall give the City and TIRZ the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of five years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. The obligations of this Section 6 shall survive Termination of the Agreement.

## **SECTION 7. MONITORING**

A. The City reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. The City will provide GRANTEE and TIRZ with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

## **SECTION 8. CONFLICT OF INTEREST & GIFTS**

GRANTEE shall use good faith efforts to ensure that no employee, officer, or individual agent of City shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City's Code of Ethics.

B. City may terminate this Agreement immediately if the GRANTEE has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting. Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the City may obtain reimbursement for any expenditure made to the GRANTEE resulting from the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

## **SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. As a condition of entering into this agreement, GRANTEE represents and warrants that it will comply with the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance 2010-06-17-0531. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's relevant marketplace. Grantee understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of GRANTEE from participating in City contracts, or other sanctions as provided by applicable law. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

## **SECTION 10. LEGAL AUTHORITY**

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.

C. City and TIRZ will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to City and TIRZ for any money it has received from City or TIRZ for performance of the provisions of this Agreement if City or TIRZ suspends or terminates this Agreement for reasons enumerated in this Section.

## **SECTION 11. LITIGATION AND CLAIMS**

A. GRANTEE shall give City notice in writing within 30 calendar days following the date GRANTEE is served with citation or other required notice of commencement thereof, of any action or claim initiated in a court of law, before an arbitrator, or before an administrative agency, filed against GRANTEE or GRANTEE's general contractor arising out of the construction of the Project. Except as otherwise directed by City, GRANTEE shall furnish to City within 30 calendar days following GRANTEE's receipt thereof copies of all pertinent pleadings or other similar filings received by GRANTEE with respect to such action or claim. GRANTEE shall notify the City: (i) within 30 calendar days following GRANTEE's receipt of written notice thereof of any legal action, known to GRANTEE, filed against GRANTEE's general contractor for the Project and that relates to the Project; and (ii) within 30 calendar days following the date that GRANTEE initiates any known proceeding filed under the federal bankruptcy code or receives written notice of the initiation of an involuntary bankruptcy proceeding with respect to GRANTEE. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. Without limiting the generality of the foregoing, GRANTEE is not required to notify City of claim or litigation which arises out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. The TIRZ and GRANTEE acknowledge that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. **Applicable Law and Venue.** This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Performance under this Agreement lies in Bexar County, Texas and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## **SECTION 12. ATTORNEY'S FEES**

A. In the event that GRANTEE should default under any of the provisions of this Agreement, and that default is not cured, and the City should employ attorneys (other than attorneys who are employees of the City) or incur other reasonable and necessary expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay the reasonable fees of such attorneys and such other expenses so incurred by the City.

B. In the event City or TIRZ should default under any of the provisions of this Agreement and the GRANTEE should employ attorneys (other than attorneys who are employees of GRANTEE) or incur other reasonable and necessary expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of City or TIRZ herein contained, City and TIRZ agree to pay to the GRANTEE reasonable fees of such attorneys and such other expenses so incurred by the GRANTEE.

## **SECTION 13. CHANGES AND AMENDMENTS**

A. Except as provided below, any alterations, additions or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. It is understood and agreed by the Parties that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions or deletions to the terms of this Agreement (other than those terms in Section 2 or Section 3) required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## **SECTION 14. SUSPENSION**

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, City shall provide GRANTEE with written notification as to the nature of the non-compliance and provide GRANTEE a 60 day period following the date of the GRANTEE's receipt of City's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the City may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended. Parties agree that any such Suspension shall not

delay, preclude or alter the payment of Deferred Amounts Due accrued prior to the date of non-compliance hereunder.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such 60 day period, the City may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) within 30 calendar days of receipt of Notice of Suspension, advise City of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section may be lifted only by City upon a showing of full compliance with or written waiver by City of the term(s) in question and shall not be unreasonably withheld.

D. Neither City nor TIRZ shall be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

## **SECTION 15. TERMINATION**

A. Should GRANTEE fail the timely Commencement of Demolition Construction associated with the Project in accordance with Section 2(b) above, this Agreement shall terminate automatically and any and all incentives offered to GRANTEE by City and TIRZ shall extinguish. City and TIRZ shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that GRANTEE has failed to comply with any term of any Agreement with the City and TIRZ. City will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a 60 day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should GRANTEE fail to cure any default within this period of time, City and/or TIRZ may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement, withhold further payments to GRANTEE and seek repayment of any and all funds disbursed by City and/or TIRZ.

B. In the case of default for causes that cannot with due diligence be cured within such 60-day period, the 60-day cure period shall be extended for such additional time as may be reasonable under the circumstances, provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise City and/or TIRZ of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Repayment of Initial Disbursement. Provided that the City has disbursed the Initial Disbursement to GRANTEE pursuant to the terms and conditions of this Agreement, if GRANTEE does not complete the Project in accordance with this Agreement and the City terminates this Agreement as provided in this Section 15, then GRANTEE shall refund the Initial Disbursement to the City within 60 calendar days after the date of termination. Notwithstanding any other provision of this Agreement to the contrary, following completion of the Term of this

Agreement, GRANTEE shall not be obligated to repay or refund any disbursements received from City and/or TIRZ under this Agreement except as provided in Section 3.C above.

D. Other Remedies Available. The City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above. However, such termination and repayment shall be subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which GRANTEE may be entitled.

## **SECTION 16. SPECIAL CONDITIONS AND TERMS**

A. **Employment.** GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement. If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay the City or TIRZ the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by the City of such violation. The City, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to City or TIRZ at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid.

## **SECTION 17. SUBCONTRACTING**

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by GRANTEE for the construction of the Project complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE. For purposes of this Agreement, the term "subcontract" shall include a contract entered into by GRANTEE and a general contractor for the construction of the Project.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, neither City nor TIRZ is liable to GRANTEE's subcontractor(s).

## **SECTION 18. DEBARMENT**

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the City.

## **SECTION 19. RIGHTS UPON DEFAULT**

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and the City or TIRZ or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## **SECTION 20. ASSIGNMENT**

A. This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Each transfer or assignment, to which there has been consent, shall be by instrument in writing, in form reasonably satisfactory to the City and the TIRZ and shall be executed by the transferee or assignee who shall agree in writing to be bound by and to perform the terms, covenants and conditions of this Agreement. Failure to first obtain, in writing, the City or TIRZ's consent, or failure to comply with the provisions herein shall prevent any such transfer or assignment from becoming effective. In the event the City and TIRZ approves the assignment or transfer of this Agreement, as provided above, the GRANTEE shall be released from the duties and obligations of the Agreement.

B. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly-created entity resulting from a merger, acquisition or other corporate restructure or reorganization of GRANTEE, or to any entity owned or controlled, or under common control, directly or indirectly by GRANTEE, without the written consent of the non-assigning Parties. Following completion of construction of the Project, GRANTEE shall also have the right to assign this Agreement to any party that acquires the Project, subject to the prior written consent of the City Manager or her designee, which shall not be unreasonably withheld. In either of such cases, GRANTEE shall give City no less than 30 days prior written notice of the proposed assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of City and TIRZ shall release City and TIRZ from performing any of the terms, covenants and conditions herein. However, provided that a permitted assignment of this Agreement by GRANTEE following completion of construction of the Project shall relieve GRANTEE of any liability hereunder arising following the assignment provided that the assignee has expressly assumed all obligations and liabilities of GRANTEE under this Agreement attributable to the period following the date of such assignment. Any assignment of this Agreement in violation of this Section shall enable City and/or TIRZ to terminate this Agreement and exercise its rights under Section 15 of this Agreement.

C. Also notwithstanding the language in this Section, the City authorizes the TIRZ to assign this Agreement to any other Tax Increment Reinvestment Zone ("Zone") should this Project be included in the boundaries of said Zone and the Board of said Zone agrees to the assignment of and assumption of all the duties, rights and obligations of the TIRZ as evidenced by a Board

resolution. City staff and/or TIRZ shall be responsible for providing GRANTEE written notice within no less than 30 days of the proposed assignment.

D. Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, shall the City be obligated in any way to said financial institution or other provider of capital. The City shall only issue a check or any other form of payment made payable only to the GRANTEE.

## **SECTION 21. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

## **SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

The City may grant temporary relief from any deadline for performance of any term of this Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. It also includes an explosion or other casualty or accident, which is not the result of negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain an extension based upon Force Majeure, GRANTEE must provide written notice to City of the occurrence of the Force Majeure event within 10 days following the date that GRANTEE becomes aware of the event and the fact that it will delay GRANTEE's performance of its obligations under this Agreement. City will not unreasonably withhold its consent. Consent from TIRZ shall not be required under this Section.

## **SECTION 23. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two business days following its deposit into the custody of the United States Postal Service or one business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than 10 calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO CITY and TIRZ:

TO GRANTEE:

(If mailed):

Center City Development Office  
Attn: Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Embrey Partners, Ltd.  
Attn.: Robert Hunt  
1020 NE Loop 410, Suite 700  
San Antonio, Texas 78209

(If by personal or overnight delivery):

(with copies to)

Center City Development Office  
Attn: Director  
19th Floor  
100 Houston St.  
San Antonio, Texas 78205

Embrey Partners, Ltd.  
Attn.: Brett Goodwin  
1020 NE Loop 410, Suite 700  
San Antonio, Texas 78209

(for mail & personal or overnight delivery)

Kaufman & Killen, Inc.  
Attn.: Bill Kaufman  
100 West Houston Street, Suite 1250  
San Antonio, Texas 78205

Planning and Community Development Dept.  
Cliff Morton Development & Business Service  
Center  
Attn: Tax Increment Finance Unit  
1901 S. Alamo  
San Antonio, TX 78204

## **SECTION 24. ESTOPPEL CERTIFICATE**

Subject to the provisions of Section 20, any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of GRANTEE or other party designated by GRANTEE which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the Certificate.

## **SECTION 25. PUBLIC INFORMATION**

GRANTEE 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.

**SECTION 26. INCORPORATION OF ATTACHMENTS**

Each of the Attachments listed below are an essential part of the Agreement and are incorporated herein for all purposes.

ATTACHMENTS: Attachment A – Property  
Attachment B – TIRZ Resolution

**EXECUTED** and agreed to by the Parties in four duplicate originals, by the Deputy City Manager on behalf of the City of San Antonio pursuant to Ordinance Number 2012-\_\_\_\_-\_\_\_\_-\_\_\_\_\_, dated \_\_\_\_\_, 2012, and \_\_\_\_\_ (Grantee) pursuant to the authority of its \_\_\_\_\_.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**GRANTEE:** Embrey Partners, Ltd.,  
a Texas limited partnership

\_\_\_\_\_  
Pat DiGiovanni  
DEPUTY CITY MANAGER

By: EPL-GP, L.L.C. a Texas limited liability company

  
\_\_\_\_\_

ATTEST:

Name: DOUGLAS H. KEEL  
\_\_\_\_\_

Title: SENIOR VP  
\_\_\_\_\_

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

ATTEST:  
  
\_\_\_\_\_

Name: BRENT GOODWIN  
Title: VP

**MIDTOWN TAX INCREMENT  
REINVESTMENT ZONE #31:**

\_\_\_\_\_  
Name:  
BOARD CHAIRPERSON

APPROVED AS TO FORM:

\_\_\_\_\_  
Xochil Rodriguez  
ASSISTANT CITY ATTORNEY

**ATTACHMENT A**

**Subject Property**

[Metes and bounds description is attached.

Upon platting of the Subject

Property the as-platted legal description of the Subject

Property shall be substituted for the metes and bounds description

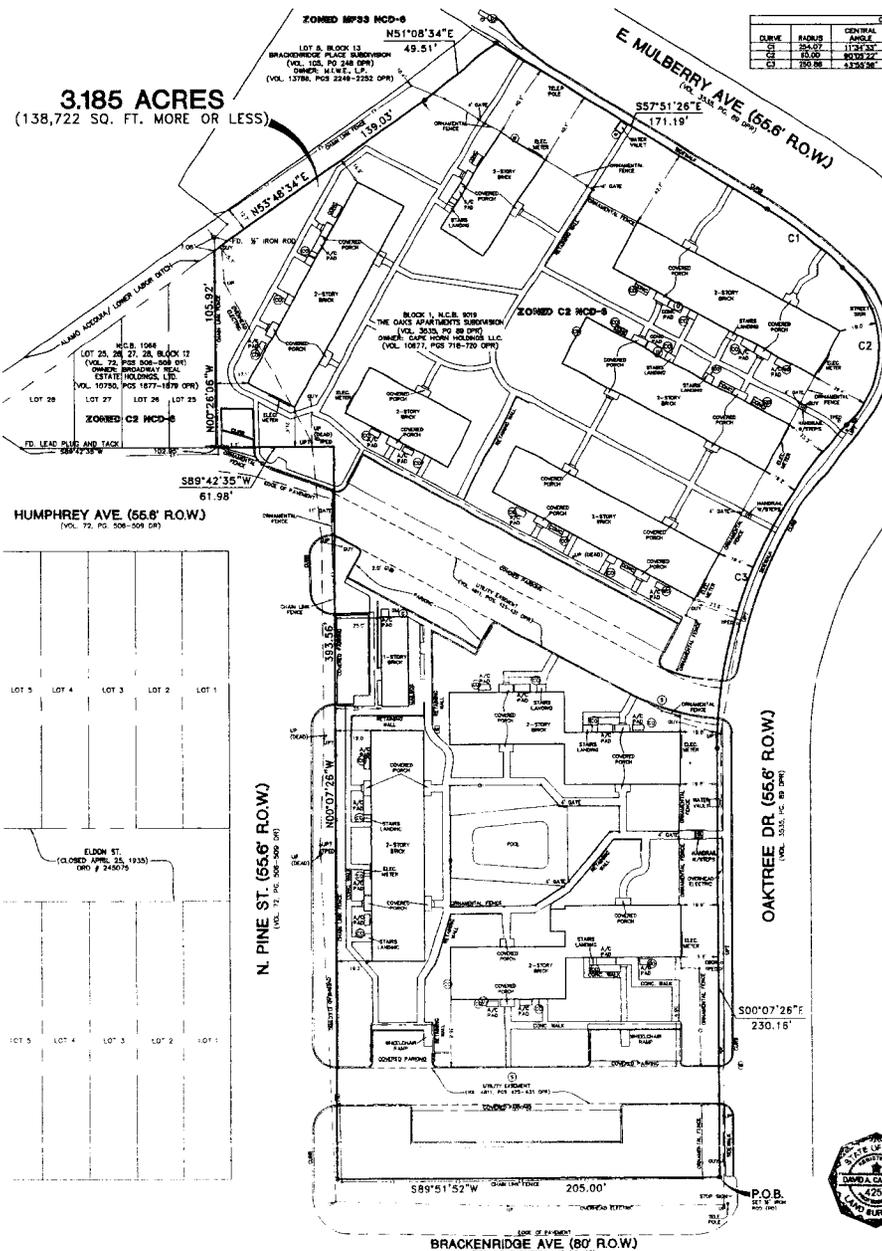
and shall be incorporated herein for all purposes.]

DEED/PLAT REFERENCES
D.R. DEED RECORDS OF BEAR COUNTY, TEXAS
D.P.R. DEED AND PLAT RECORDS OF BEAR COUNTY, TEXAS
O.P.R. OFFICIAL PUBLIC RECORDS/OFFICIAL PLAT RECORDS
OF REAL PROPERTY OF BEAR COUNTY, TEXAS

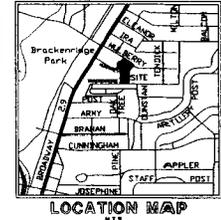
- NOTES
1) 1/2" IRON ROD WITH YELLOW CAP MARKED "PAGE DOWN" SET AT ALL SUBJECT PROPERTY CORNERS UNLESS NOTED OTHERWISE
2) THE BOUNDARIES FOR THIS SURVEY ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (NAD 83) FROM THE TEXAS COORDINATE SYSTEM (TSP) FOR THE SUBJECT ZONE.

FURTHER INFORMATION CONCERNING ZONING RESTRICTIONS CAN BE FOUND BY CONSULTING THE CITY OF SAN ANTONIO DEVELOPMENT SERVICES DEPARTMENT AT (214) 201-1111 OR ON THE WEBSITE WWW.SANANTONIO.GOV/DEVELOPMENT

SYMBOL LEGEND, TREE LEGEND, LINE LEGEND tables with various symbols and descriptions for survey markers and features.



CURVE TABLE with columns for CURVE, RADIUS, CHORD BEARING, CHORD DISTANCE, CURVE LENGTH.



FIELD NOTES
A 1/2" IRON ROD IN 138,722 square feet area, west end of road, being all of Block 1, New City Block 8011...

- THENCE Along the north right-of-way of East Mulberry Avenue, the north line of said Block 1, 138,722 square feet area, west end of road, being all of Block 1, New City Block 8011...

REFERENCES
This survey was prepared in accordance with the provisions of the Texas Commission on Land Surveying...
DATE: June 2011
DRAWN BY: [Name]
CHECKED BY: [Name]



Project Name: N. Survey 1511
Date: JUNE 2011
Sheet: 1 of 1

Pape-Dawson Engineers logo and contact information: 555 EAST HAMPTON, SAN ANTONIO, TEXAS 78216

LAND TITLE SURVEY OF title block with reference to the official public records of Bear County, Texas.

Professional Engineer information and project details: License No. 261, State of Texas, Project No. 9156-11

**FIELD NOTES  
FOR**

A 3.185 acre, or 138,722 square feet more or less, tract of land, being all of Block 1, New City Block 9019, The Oaks Apartments Subdivision in the City of San Antonio, Bexar County, Texas, recorded in Volume 3535, Page 89 of the Deed and Plat Records of Bexar County, Texas, and all of that certain 20 foot alley formerly known as Chinaberry Court and all of that certain 20 foot alley formerly known as Ashwood Court both Quitclaimed by document recorded in Volume 4811, Pages 425-431 of the Official Public Records of Real Property of Bexar County, Texas. Said 3.185 acre tract also being all of that certain land described as Tract Number 1, Tract Number 2 and Tract Number 3 in a Deed recorded in Volume 10677, Pages 718-720 of the Official Public Records of Real Property of Bexar County, Texas. Said 3.185 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone;

**BEGINNING:** At a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at the northwest corner of the intersection of Brackenridge Avenue, an 80 foot right-of-way, and Oaktree Drive, a 55.6 foot right-of-way, the southeast corner of said Block 1;

**THENCE:** Along the north right-of-way line of Brackenridge Avenue, the south line of said Block 1, S 89°51'52" W, a distance of 205.00 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at the northeast corner of the intersection of Brackenridge Avenue and Pine Street for the southwest corner of said Block 1;

**THENCE:** Along the east right-of-way of Pine Street, a 55.6 foot right-of-way, the west line of said Block 1, N 00°07'26" W, a distance of 393.56 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at the intersection of the east right-of-way line of Pine Street and the north right-of-way line of Humphrey Street, a reentrant corner of said Block 1;

**THENCE:** Along the north right-of-way line of Humphrey Street, a 55.6 foot right-of-way, a south line of said Block 1, S 89°42'35" W, a distance of 61.98 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at a corner of said Block 1, from which a found lead plug and tack bears S 89°42'35" W, 102.95 feet;

**THENCE:** Departing said north right-of-way line and along the west line of said Block 1, the east line of Lot 25, Block 12, Oakland Terrace Subdivision recorded in Volume 72, Pages 506-509 of the Deed Records of Bexar County, Texas, N 00°26'06" W, a distance of 105.92 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at the north corner of said Lot 25, a west corner

of said Block 1, from which a found ½ inch iron rod bears N 00°26'06" W, 7.06 feet;

THENCE: Along the northwest line of said Block 1, the southeast line of the Alamo Acequia/Lower Labor Ditch, the following bearings and distances:

N 53°48'34" E, a distance of 139.03 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson", and

N 51°08'34" E, a distance of 49.51 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" on the southwest right-of-way line of East Mulberry Avenue, a 55.6 foot right-of-way, the north most corner of said Block 1;

THENCE: Along the southwest right-of-way line of East Mulberry Avenue, the northeast line of said Block 1, S 57°51'26" E, a distance of 171.19 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at a point of curvature;

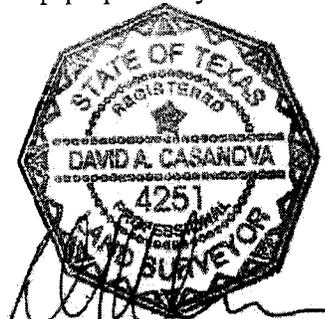
THENCE: Continuing along said right-of-way line and along a tangent curve to the right, said curve having a radius of 254.07 feet, a central angle of 11°34'33", a chord bearing and distance of S 52°04'09" E, 51.24 feet, and an arc length of 51.33 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" at a point of compound curvature;

THENCE: Along a compound curve to the right, said curve having a radius of 60.00 feet, a central angle of 90°05'22", a chord bearing and distance of S 01°14'12" E, 84.92 feet, and an arc length of 94.34 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson" on the west right-of-way line of Oak Tree Drive at a point of reverse curvature;

THENCE: Along the west right-of-way line of Oak Tree Drive and a reverse curve to the left, said curve having a radius of 250.86 feet, a central angle of 43°55'56", a chord bearing and distance of S 21°50'32" W, 187.67 feet, and an arc length of 192.35 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson";

THENCE: Continuing along said west right-of-way line, S 00°07'26" E, a distance of 230.16 feet to the POINT OF BEGINNING, and containing 3.185 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape Dawson Engineers, Inc.  
DATE: June 9, 2011  
REVISED: June 16, 2011  
JOB NO. 9156-11  
DOC. ID. N:\Survey11\11-9100\9156-11\WORD\FN9156-11.doc





FIELD NOTES  
FOR

A 6.008 acre, or 261,692 square feet more or less, tract of land, being all of Lots 5, 6 and 7, Block 3, of The Oaks Apartments Subdivision recorded in Volume 8200, Page 144 of the Deed and Plat Records of Bexar County, Texas, in New City Block (N.C.B.) 9021 of the City of San Antonio, Bexar County, Texas. Said 6.008 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone:

**BEGINNING:** At a set "x" in concrete on the north right-of-way line of Brackenridge Avenue, a 60-foot right-of-way, the southeast end of a cutback line at the northeast corner of the intersection of Brackenridge Avenue and Oaktree Drive, a southwest corner of said Lot 5;

**THENCE:** Departing the north right-of-way of said Brackenridge Avenue, along and with said cutback line, the west line of said Lot 5, the following bearings and distances:

N 45°07'24" W, a distance of 31.32 feet to a set "x" in concrete;

N 00°07'26" W, a distance of 228.00 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson";

Along a tangent curve to the right, said curve having a radius of 195.86 feet, a central angle of 38°36'30", a chord bearing and distance of N 19°10'49" E, 129.50 feet, for an arc length of 131.98 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson";

Along a compound curve to the right, said curve having a radius of 55.00 feet, a central angle of 85°34'34", a chord bearing and distance of N 81°16'21" E, 74.72 feet, for an arc length of 82.15 feet to a set "x" in concrete on the south right-of-way line of East Mulberry Avenue, a 60-foot right-of-way on the north line of said Lot 5;

**THENCE:** Along and with the south right-of-way line of said East Mulberry Avenue, the north line of said Lot 5, along a reverse curve to the left, said curve having a radius of 160.37 feet, a central angle of 34°11'04", a chord bearing and distance of S 73°01'54" E, 94.27 feet, for an arc length of 95.68 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson";

THENCE: N 89°52'34" E, continuing along and with the south right-of-way line of said East Mulberry Avenue, the north line of said Lots 5, 6 and 7, a distance of 508.43 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson" at a point of curvature of a curve at the southwest corner of the intersection of East Mulberry Avenue and Tendick Street;

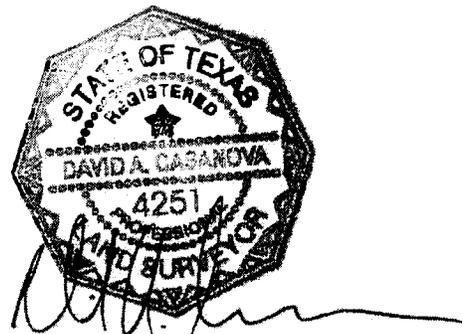
THENCE: Southeasterly, along and with said curve to the right having a radius of 15.00 feet, a central angle of 89°59'18", a chord bearing and distance of S 45°07'47" E, 21.21 feet, for an arc length of 23.56 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson" on the west right-of-way line of Tendick Street, a 57.8-foot right-of-way;

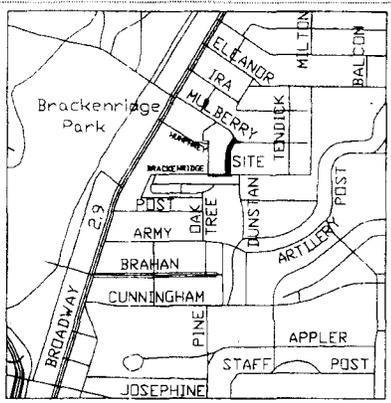
THENCE: S 00°08'08" E, continuing along and with the west right-of-way line of said Tendick Street, the east line of said Lot 7, a distance of 325.69 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson" at a point of curvature of a curve at the northwest corner of the intersection of Tendick Street and Brackenridge Avenue;

THENCE: Southwesterly, along and with said curve having a radius of 15.00 feet, a central angle of 90°00'00", a chord bearing and distance of S 44°51'52" W, 21.21 feet, for an arc length of 23.56 feet to a set ½" iron rod with a yellow cap stamped "Pape-Dawson" on the north right-of-way line of Brackenridge Avenue;

THENCE: S 89°51'52" W, along and with the north right-of-way line of said Brackenridge Avenue, the south line of said Lots 5, 6 and 7, a distance of 693.15 feet to the POINT OF BEGINNING, and containing 6.008 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground on March 27, 2012 and a survey description and map prepared under job no. 9156-11 by Pape-Dawson Engineers, Inc.

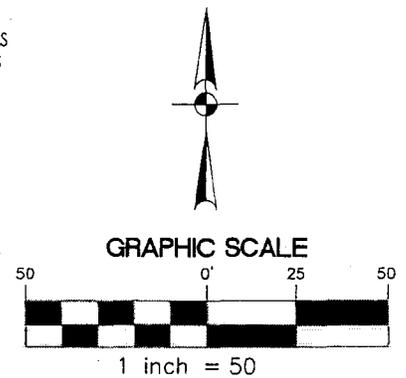
PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: May 2, 2012  
Job No.: 9156-11  
N:\Survey11\11-9100\9156-11\WORD\9156-11 FN 6.008 AC.doc  
TBPE Firm Registration #470  
TBPLS Firm Registration #100288-00





**LEGEND:**  
 OPR OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS  
 DPR DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS  
 FIR FOUND 1/2" IRON ROD (P.D.)  
 SXC SET "X" IN CONCRETE

**NOTES:**  
 1. THE PROFESSIONAL SERVICES PROVIDED HERewith INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.  
 2. THE BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (CORS 1996), FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE.



**LOCATION MAP**

617 B1  
 NOT-TO-SCALE

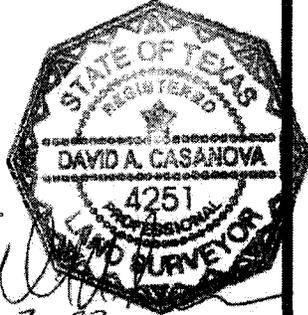
**SYMBOL LEGEND**

8	TPED	COMMUNICATION, TELEPHONE, CABLE PEDESTAL
EBOX	ELECTRIC BOX	
FP	FIRE HYDRANT	
+	FLAGPOLE	
+	GATE	
+	GUY ANCHOR	
+	ADVERTISING/ROAD/UTILITY SIGN WITH DESCRIPTION	
SPV	SPRINKLER VALVE	
SS	SANITARY SEWER MANHOLE	
TRP	TRAFFIC SIGNAL POLE	
JKP	UNKNOWN PIPE	
JP	UTILITY POLE	
JPT	UTILITY POLE W/TRANSFORMER	
W	WATER VALVE	

55.6' R.O.W.

**LINE EASMENT**  
 --- POTABLE WATER LINE  
 --- SS --- SANITARY SEWER LINE

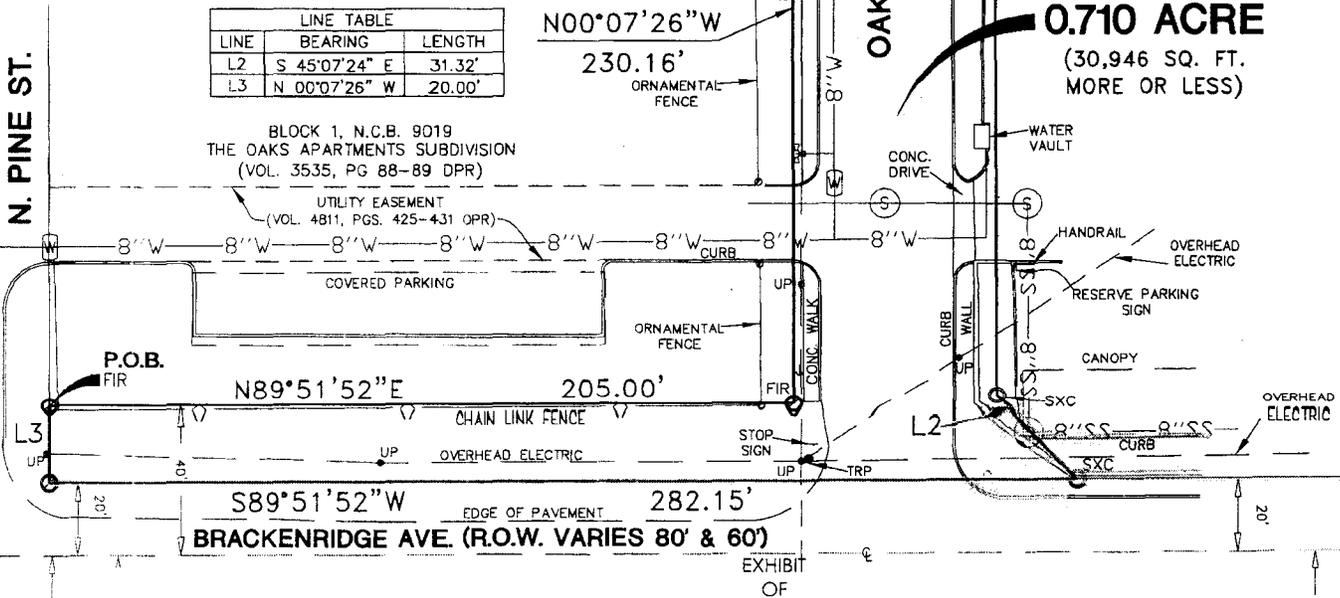
**MATCHLINE SEE SHEET 2**



LOT 5, BLOCK 3, N.C.B. 9021  
 THE OAKS APARTMENTS SUBDIVISION  
 (VOL. 8200, PG 144 DPR)

CURVE	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD DISTANCE	CURVE LENGTH
C1	250.86	43°55'56"	N 21°50'32" E	187.67'	192.35'
C6	195.86	38°36'30"	S 19°10'49" W	129.50'	131.98'

LINE	BEARING	LENGTH
L2	S 45°07'24" E	31.32'
L3	N 00°07'26" W	20.00'



**0.710 ACRE**  
 (30,946 SQ. FT. MORE OR LESS)

A 0.710 OF AN ACRE, OR 30,946 SQUARE FEET MORE OR LESS, TRACT OF LAND, BEING ALL OF OAKTREE DRIVE, BETWEEN BRACKENRIDGE AVENUE AND EAST MULBERRY AVENUE AND A PORTION OF BRACKENRIDGE AVENUE BETWEEN OAKTREE DRIVE AND NORTH PINE STREET IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS.

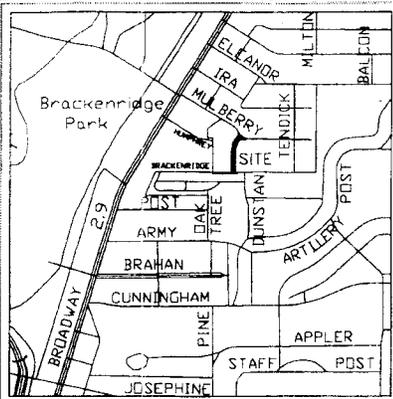


555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.9000  
 FAX 210.375.9010  
 TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470  
 TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 100288-00  
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MARCH 22, 2012

JOB No.: 9156-11

SHEET 1 OF 2



**LEGEND:**

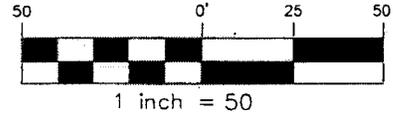
- OPR OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS
- DPR DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS
- FIR FOUND 1/2" IRON ROD (P.D.)
- SMAGW SET MAG NAIL AND WASHER
- SXC SET "X" IN CONCRETE

**NOTES:**

1. THE PROFESSIONAL SERVICES PROVIDED HERewith INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. THE BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (CORS 1996), FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE.



**GRAPHIC SCALE**



**LOCATION MAP**

617 B1  
NOT-TO-SCALE

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 37°07'26" E	70.19'

CURVE TABLE					
CURVE	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD DISTANCE	CURVE LENGTH
C1	250.86	43°55'56"	N 21°50'32" E	187.67'	192.35'
C2	60.00	63°12'44"	N 12°12'08" E	62.89'	66.20'
C3	249.07	2°54'19"	S 38°34'35" E	12.63'	12.63'
C4	160.37	18°48'56"	S 46°31'54" E	52.43'	52.66'
C5	55.00	85°34'34"	S 81°16'21" W	74.72'	82.15'
C6	195.86	38°36'30"	S 19°10'49" W	129.50'	131.98'

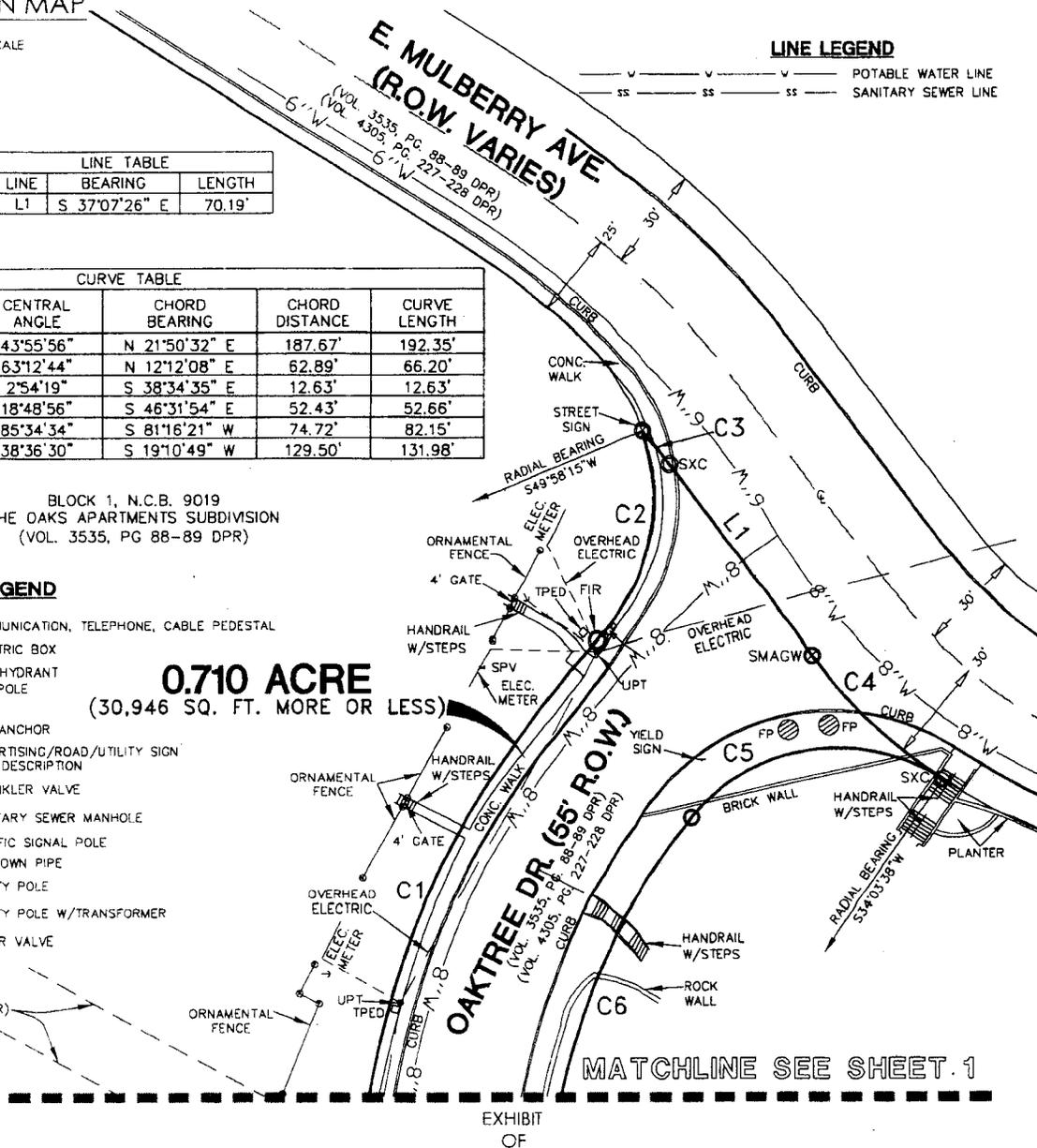
BLOCK 1, N.C.B. 9019  
THE OAKS APARTMENTS SUBDIVISION  
(VOL. 3535, PG 88-89 DPR)

**SYMBOL LEGEND**

- TPED COMMUNICATION, TELEPHONE, CABLE PEDESTAL
- EBOX ELECTRIC BOX
- FP FIRE HYDRANT FLAGPOLE
- GATE GATE
- GUY ANCHOR GUY ANCHOR
- ADVERTISING/ROAD/UTILITY SIGN WITH DESCRIPTION ADVERTISING/ROAD/UTILITY SIGN WITH DESCRIPTION
- SPV SPRINKLER VALVE
- SANITARY SEWER MANHOLE SANITARY SEWER MANHOLE
- TRP TRAFFIC SIGNAL POLE
- UKP UNKNOWN PIPE
- UP UTILITY POLE
- UPT UTILITY POLE W/TRANSFORMER
- WATER VALVE WATER VALVE

UTILITY EASEMENT  
(VOL. 4811, PGS. 425-431 OPR)

**0.710 ACRE**  
(30,946 SQ. FT. MORE OR LESS)



MATCHLINE SEE SHEET . 1

EXHIBIT OF



555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9000  
FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470  
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 100288-00

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A 0.710 OF AN ACRE, OR 30,946 SQUARE FEET MORE OR LESS, TRACT OF LAND, BEING ALL OF OAKTREE DRIVE, BETWEEN BRACKENRIDGE AVENUE AND EAST MULBERRY AVENUE AND A PORTION OF BRACKENRIDGE AVENUE BETWEEN OAKTREE DRIVE AND NORTH PINE STREET IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS.

MARCH 22, 2012

JOB No.:

SHEET 2 OF 2-

9156-11



LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES  
FOR

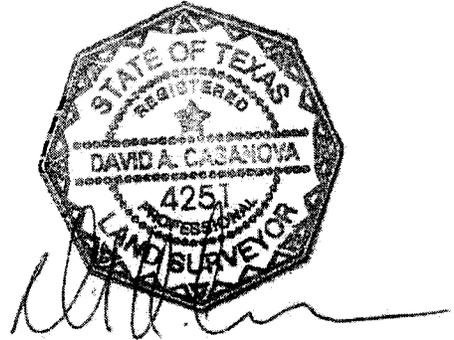
A 0.710 of an acre, or 30,946 square feet more or less, tract of land, being all of Oaktree Drive, between Brackenridge Avenue and East Mulberry Avenue and a portion of Brackenridge Avenue between Oaktree Drive and North Pine Street in the City of San Antonio, Bexar County, Texas. Said 0.710 of an acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone;

- BEGINNING: At a found ½ inch iron rod with a yellow cap stamped "Pape Dawson" at the northeast corner of the intersection of Brackenridge Avenue, an 80 foot right-of-way, and North Pine Street, a 55.6 foot right-of-way, the southwest corner of Block 1, New City Block 9019, The Oaks Apartments Subdivision recorded in Volume 3535, Page 88-89 of the Deed and Plat Records of Bexar County, Texas;
- THENCE: N 89°51'52" E, along the north right-of-way line of said Brackenridge Avenue, the south line of said Block 1, a distance of 205.00 feet to a found ½ inch iron rod with a yellow cap stamped "Pape Dawson" at the northwest corner of the intersection said Brackenridge Avenue and Oaktree Drive, a 55 foot right-of-way;
- THENCE: N 00°07'26" W, along the west right-of-way line of said Oaktree Drive, the east line of said Block 1, a distance of 230.16 feet to a found ½ inch iron rod with a yellow cap stamped "Pape Dawson";
- THENCE: Continuing along the west right-of-way line of said Oaktree Drive, the east line of said Block 1, along a tangent curve to the right, said curve having a radius of 250.86 feet, a central angle of 43°55'56", a chord bearing and distance of N 21°50'32" E, 187.67 feet and an arc length of 192.35 feet to a found ½ inch iron rod with a yellow cap stamped "Pape Dawson";
- THENCE: Continuing along the west right-of-way line of said Oaktree Drive, the east line of said Block 1, along a reverse curve to the left, said curve having a radius of 60.00 feet, a central angle of 63°12'44", a chord bearing and distance of N 12°12'08" E, 62.89 feet and an arc length of 66.20 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson";

- THENCE: Departing the west right-of-way line of said Oaktree Drive, the east line of said Block 1, over and across said Oaktree Drive, along a non-tangent curve concave to the southwest, said curve having a radial bearing of S 49°58'15" W, a radius of 249.07 feet, a central angle of 02°54'19", a chord bearing and distance of S 38°34'35" E, 12.63 feet and an arc length of 12.63 feet to a set "X" in concrete;
- THENCE: Continuing over and across said Oaktree Drive, S 37°07'26" E, a distance of 70.19 feet to a set Mag Nail and washer stamped "Pape Dawson";
- THENCE: Continuing over and across said Oaktree Drive, along a tangent curve to the left, said curve having a radius of 160.37 feet, a central angle of 18°48'56", a chord bearing and distance of S 46°31'54" E, 52.43 feet and an arc length of 52.66 feet to a set "X" in concrete on the north line of Lot 5, Block 3, New City Block 9021, The Oak Apartments Subdivision recorded in Volume 8200, Page 144 of the Deed and Plat Records of Bexar County Texas. Said set "X" being at the east end of a curve at the south corner of the intersection of East Mulberry Drive and said Oaktree Drive;
- THENCE: Along the east right-of-way line of Oaktree Drive, the west line of said Lot 5, along a curve concave to the south, said curve having radial bearing of S 34°03'38" W, a radius of 55.00 feet, a central angle of 85°34'34", a chord bearing and distance of S 81°16'21" W, 74.72 feet and an arc length of 82.15 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson";
- THENCE: Continuing along the east right-of-way line of Oaktree Drive, the west line of said Lot 5, along a compound curve to the left, said curve having a radius of 195.86 feet, a central angle of 38°36'30", a chord bearing and distance of S 19°10'49" W, 129.50 feet and an arc length of 131.98 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson";
- THENCE: Continuing along the east right-of-way line of Oaktree Drive, the west line of said Lot 5, S 00°07'26" E, a distance of 228.00 feet to a set "X" in concrete;
- THENCE: Continuing along the east right-of-way line of Oaktree Drive, the west line of said Lot 5, S 45°07'24" E, a distance of 31.32 feet to a set "X" in concrete at the south most southwest corner of said Lot 5 on the north right-of-way line of Brackenridge Avenue, a 60 foot right-of-way;
- THENCE: Departing the south most southwest corner of said Lot 5, over and across Brackenridge Avenue, an 80 foot right-of-way, S 89°51'52" W, a distance of 282.15 feet to a set ½ inch iron rod with a yellow cap stamped "Pape Dawson";

THENCE: N 00°07'26" W, a distance of 20.00 feet to the POINT OF BEGINNING, and containing 0.710 of an acre in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape Dawson Engineers, Inc.  
DATE: March 22, 2012  
JOB NO. 9156-11  
DOC. ID. N:\Survey11\11-9100\9156-11\WORD\FN 0.710 AC.doc



**ATTACHMENT B**  
TIRZ Resolution