

AN ORDINANCE 2008-06-05-0490

APPROVING AN AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND CEVALLOS LOFTS, LTD., ENABLING CEVALLOS TO COMPLETE A BROWNFIELDS REDEVELOPMENT PROGRAM PROJECT AT THE 1400 BLOCK OF SOUTH FLORES STREET, UNDER THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY BROWNFIELDS PROGRAM;

* * * * *

WHEREAS, the City of San Antonio (the "CITY") was awarded a Brownfields Hazardous Assessment Grant by the United States Environmental Protection Agency (the "EPA") to fund environmental assessments of sites in order to encourage the redevelopment of abandoned, vacant, or underutilized sites located within the City; and

WHEREAS, Brownfields are defined as "abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination"; and

WHEREAS, the project site is approximately 13 acres located on the east side of the 1400 block of S. Flores between the Union Pacific railroad track and E. Cevallos Street and currently contains an office/warehouse complex with about ten permanent structures; and

WHEREAS, the CITY previously entered into an Agreement with C.A.N. Industries, Inc in June 2003 in order to conduct environmental studies at the project site; and

WHEREAS, C.A.N. Industries, Inc. sold the subject property to NRP Group L.L.C. ("NRP"), subsequently renamed Cevallos Lofts, Ltd. ("CEVALLOS") and CEVALLOS plans to redevelop the property as a master-planned, mixed-use development referred to as Cevallos Street containing approximately 500 apartments and town homes, and 20,000 square feet of retail space with construction beginning with demolition and site work scheduled for summer 2008; and

WHEREAS, in an effort to expedite the remediation process through the Texas Commission on Environmental Quality (the "TCEQ"), CEVALLOS has requested the CITY enter into a Participation Understanding and Right of Access Agreement through the CITY's Brownfields Program; and

WHEREAS, the Brownfields Hazardous Assessment Grant awarded to the CITY was successfully closed and there is no longer funding available, and as such, the TCEQ's Brownfields program will provide technical review and oversight for CEVALLOS' site development, and the CITY will act only as a conduit and liaison to transmit reports to and from TCEQ; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, or the Director of the Department of Housing and Neighborhood Services, or his designee, is authorized to execute an agreement with Cevallos Lofts, Ltd., to complete a Brownfields Redevelopment Program Project at the 1400 block of South Flores Street under the Texas Commission on Environmental Quality Brownfields Program. A copy of said agreement is attached hereto and incorporated herein for all purposes as Attachment I. The City Manager, or her designee, or the Director of the Department of Housing and Neighborhood Services, or his designee, is further authorized to execute what other documents may be necessary to the project upon review and approval by the City Attorney's Office.

SECTION 2. 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 3. This Ordinance shall become effective on and after June 15, 2008.

PASSED AND APPROVED this 5th day of June, 2008.



M A Y O R

PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 27

Name:	5, 6, 7, 8, 9, 10, 11, 12, 14, 18, 19, 21, 22A, 22B, 23, 24, 25, 27, 31
Date:	06/05/2008
Time:	10:58:08 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving an agreement between the City of San Antonio and Cevallos Lofts, Ltd., enabling Cevallos to complete a Brownfields Redevelopment Program Project at the 1400 block of South Flores Street, under the Texas Commission on Environmental Quality Brownfields Program. [T.C. Broadnax, Assistant City Manager; David D. Garza, Director, Housing and Neighborhood Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5	x					
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				x
Louis E. Rowe	District 9	x					
John G. Clamp	District 10		x				

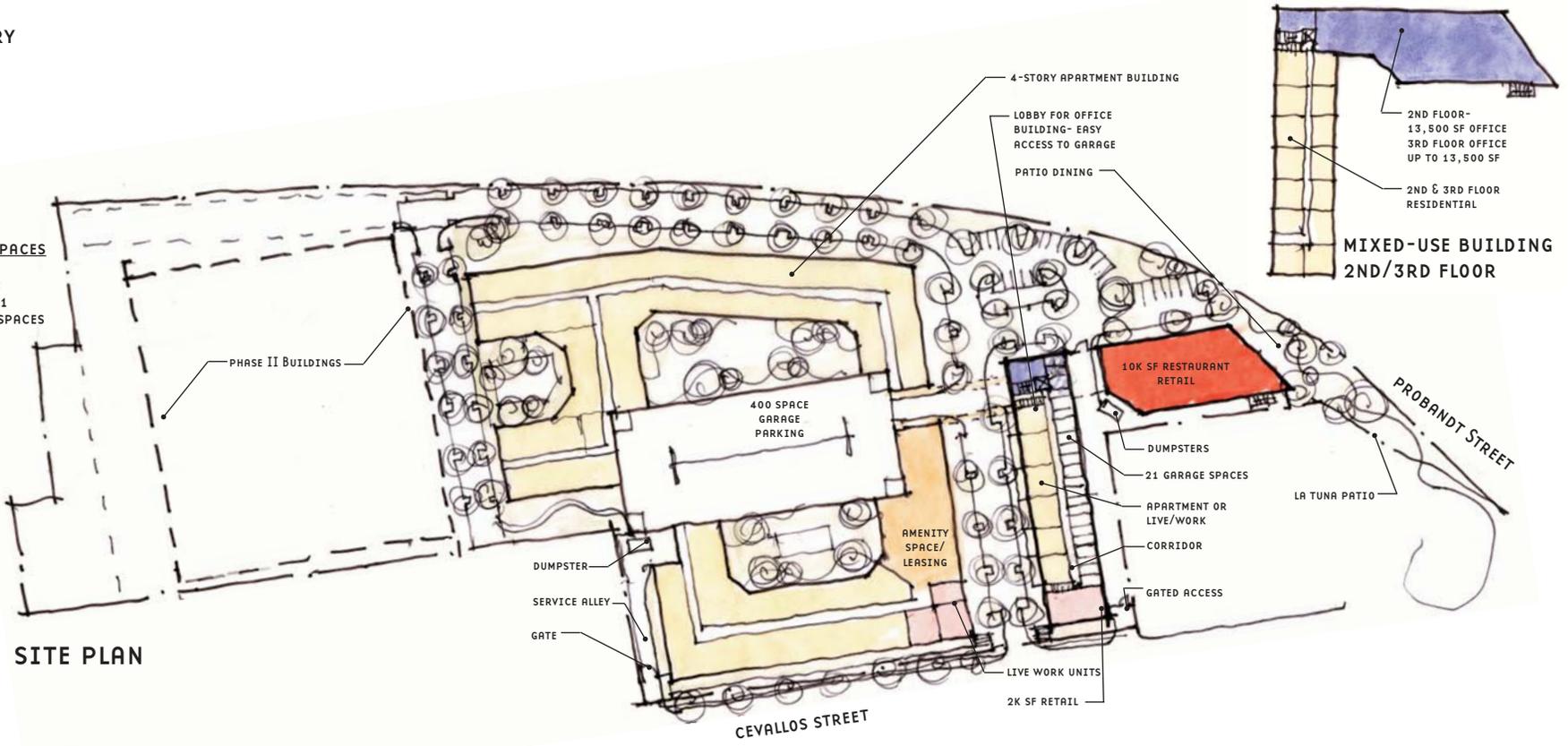
PROJECT SUMMARY

RESIDENTIAL COUNT
270 UNITS

COMMERCIAL
39,000 SF

COMMUNITY CENTER
4,000 SF

PROVIDED PARKING SPACES
GARAGE SPACES: 400
ON STREET PARKING: 112
COMMERCIAL PARKING: 21
TOTAL PARKING 533 SPACES



SITE PLAN



CONCEPTUAL IMAGE

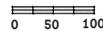


CONCEPTUAL IMAGE



CONCEPTUAL IMAGE

CEVALLOS NEIGHBORHOOD



NOVEMBER 20, 2007

ALAMO ARCHITECTS



**TCEQ BROWNFIELDS
PROGRAM
Participation Understanding
and
Right of Access Agreement
Between the City of San Antonio
and Cevallos Lofts, Ltd.**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Under authority of Ordinance No. _____, Item # _____ passed and approved on, 2008, the City of **San Antonio** ("City") and **Cevallos Lofts, Ltd.**, **Owner** of a property generally described as approximately 10 acres on the east side of the 1400 block of S. Flores Street, between the Union Pacific Railroad track and E. Cevallos Street, and more particularly described in the Reports of Title Search set forth in Exhibits "A" and "B" ("the Property") and the respective Special Warranty Deeds thereto, all attached and incorporated herein verbatim for all purposes, which owner hereafter referred to as "**Participant**," do enter into this TCEQ Brownfields Program Participation Understanding and Right of Access Agreement ("the Agreement"), and for exchange of consideration recited herein, agree as follows:

**I. PROGRAM PARTICIPATION
Background and Program Goal**

Background. Under authority of Ordinance No. 97849, Item # 36A, passed and approved on June 26, 2003, the City and C.A.N. Industries, Inc. (CAN), entered into a United States Environmental Protection Agency (EPA) sponsored Brownfields Hazardous Waste Grant agreement, commonly known as an EPA subtitle A grant. This Agreement provided CAN with Brownfields assessment services, through the City, in the amount of \$34,042.00 for environmental study of the property. The funding under the prior EPA grant has been exhausted and the environmental assessments authorized by the understanding have been successfully performed.

Development of the subject property will further involve the Texas Commission on Environmental Quality (TCEQ) to approve management and disposal of certain soils or other media that may be determined impacted during construction phases as excavation takes place. The goal of TCEQ's involvement, under the agency's Brownfields Program, is to eventually issue a Voluntary Cleanup Program ("VCP") Certificate of Completion as appropriate to Participant's development and as Participant may show itself entitled.

The parties to this agreement understand that TCEQ allows Participant to enjoy Brownfields program assistance from the State of Texas by virtue of the Property's

having previously received EPA subtitle A grant aid. To the extent TCEQ's Brownfield's program will provide technical review and oversight, the City of San Antonio's Solid Waste Management Department (the "Department") will act only as a conduit and liaison to transmit reports to TCEQ. The Department will endeavor to transmit reports to and from TCEQ and Cevallos Lofts, Ltd. as expeditiously as possible. All applicable terms and conditions of the TCEQ's Brownfields Program shall be observed and complied with by the Participant. Participant hereby acknowledges the City's limited role and understands the City is a party at will to this Agreement and may withdraw at its discretion.

Unilateral Termination. Because the State program is discretionary, the City of San Antonio reserves to itself the right to terminate this agreement, without cause, upon thirty (30) days written notice to the Participant.

Participant termination. Participant may terminate this Agreement concurrent with any timeframe permissible under the TCEQ Brownfields Program. If Participant opts to terminate prior to securing a VCP Certificate of Completion, Participant shall notify the City in writing at the same time notice is given to TCEQ.

Anticipatory Termination. Should the City observe any act or omission below that in the City's judgment could reasonably constitute termination for cause, the City shall have discretion to declare the Agreement ended. In such event, the City shall so notify TCEQ and withdraw the site from the City's TCEQ Brownfields Program.

Notice. Notice for purposes of this Agreement shall be effected by certified mail, return receipt requested, to:

Cevallos Lofts, Ltd.
Attn: Mr. Dan Markson
111 Soledad, Suite 1220
San Antonio, Texas 78205

City of San Antonio
David Newman, Manager,
Solid Waste Management
Department
1940 Grandstand
San Antonio, TX 78238

II. Terms and Provisions

Participant does hereby urge and give consent to the City for the following:

Performance Period. This Agreement will commence on or about June 15, 2008, approximately ten (10) days from the date City Council approves the Agreement by means of the enabling Ordinance (identified above) , and shall terminate specifically on June 15, 2010, approximately two (2) years from date of Council action, subject to a single

12-month extension opportunity upon mutual agreement of the parties and with subsequent City Council consent.

Termination for Cause. In addition to the termination right set forth above, the City reserves the right to terminate the agreement in case of Participant's:

- a.) breach;
- b.) lack of substantial progress, during any phase of development, be it design, construction, or remediation;
- c.) failure to comply with environmental laws, rules, or regulations;
- d.) failure to comply with environmental plans;
- e.) failure to comply with direction from TCEQ's Brownfields coordinator or any reasonable request of the City's environmental coordinator, or with any rule or requirement of the TCEQ Brownfields Program;
- f.) act or omission that places the City in a position of regulatory liability;
- g.) transfer of the Property's legal ownership to a person or entity that is not a party to this Agreement;
- h.) failure to timely achieve zoning necessary to the residential or mixed use planned for the site.

Environmental Procedure. Minimally, Participant shall:

- a.) as soon as practicable, but no later than September 15, 2008 make a Site Determination that the property is classified as i.) not contaminated, ii.) potentially contaminated, iii.) assumed contaminated;
- b.) prepare a soils management plan describing the process and timelines for remediation of the soils, in conjunction with the development, to include a schedule of activities and timeline for completion;
- c.) as development occurs, to the extent practicable, direct and use commercially reasonable efforts to ensure that Participant's contractor avoids contaminated areas;
- d.) test all assumed and potentially contaminated areas that are excavated;
- e.) stockpile, using appropriate best management practices on site, and legally dispose of, all confirmed contaminated soils in an authorized landfill;
- f.) complete a Response Action Completion Report for submission to TCEQ at the end of the remediation phase; and
- g.) use commercially reasonable efforts to accomplish the goal of the TCEQ Brownfields Program, the issuance of a VCP Certificate of Completion appropriate to the Participant's development of the site.

Authority. Participant warrants to the City its authority to consent and to enter into this Agreement.

Ratify Application for Brownfields Program. Participant ratifies and incorporates verbatim for all purposes, in all its terms, conditions, and representations the Application filed by the City to the TCEQ in order for the subject property to be considered for the State's Brownfields Program, and Participant does hereby ratify and make the application its own, in its entirety. Said Application is attached hereto as Exhibit "C."

III. ENVIRONMENTAL ASSESSMENT and REMEDIATION COSTS; CONSULTANT

1. All costs of environmental site assessment and remediation shall be paid by the Participant. The City shall incur no expenses in connection with the subject matter of this Agreement. Participant's costs include, but are not limited to, any and all expenses necessary to environmental consultation, design, plan, and remediation action, as well as costs incidental to the City's liaison with TCEQ on behalf of Participant. Participant shall reimburse the City any and all the City's incidental costs, such as copying, postage, and travel to TCEQ offices in Austin, if necessary. By agreement, the parties will establish an incidental City costs budget every six (6) months for the duration of this Agreement.
2. Environmental consultants and any other contractors necessary to comply with the TCEQ Brownfields Program shall be retained by and paid directly by the Participant.
3. No grant funds are involved in this Agreement.
4. Participant grants access to the City, as described below, and will similarly grant access to other governmental entities, as needed, to complete participation in the Brownfields Program.
5. Participant understands that the documentation produced under this Agreement is subject to the Texas Freedom of Information Act and/or other public information disclosure laws. Owners, agents, developers, and others seeking environmental information about the Property may have access to documents as "Open Records"; however, no person shall look to or rely upon the City, its employees, agents or its private consultants to warrant or guarantee the correctness or credibility of ESA (environmental site assessment), remedial design, or any other reports created hereunder. Any person so relying shall do so at his/her own risk.
6. This Agreement does not obligate the City to:
 - a. perform remediation on the property based on the information produced under the Brownfields Program or predicated upon any other source of information;
 - b. assure, enhance, or maintain the subject property's value on account of participation in the Brownfields Program;
 - c. perform any ESA(s) or remedial actions on the subject property; or
 - d. perform this Agreement until it is duly approved by the City Council.
7. Under this Agreement, the City shall not certify, verify, file or in any manner be responsible to either TCEQ or the Participant for the timeliness, truth, veracity, or correctness of any document or report required by TCEQ. Nor shall the City be responsible for filing any notices in the county's real property records or elsewhere

necessary to the Program. All investigations, reports, filings and remedial actions shall be the direct and sole responsibility of the Participant through its consultants and agents. The City is not an agent of or for the Participant. The City is not an agent or contractor of or for TCEQ. The City shall act in the limited and circumscribed administrative capacity, as explained by the TCEQ Brownfields Program manager. The City's role is understood to be limited to the lending of its program status, as a local governmental entity, to provide liaison and conduit of reports from the Participant to TCEQ to the extent that the property in question may be included in TCEQ's Brownfields Program.

IV. RIGHT OF ACCESS City and TCEQ

Participant hereby grants and extends to the City of San Antonio, its agents, employees, and contractors the right of access under, over, and across the Property for the purpose of performing all acts necessary, in the judgment of the City, to fulfilling the City's role as liaison to the TCEQ for this Brownfields Program project.

Participant grants the TCEQ, its agents, employees and contractors right of access under, over, and across the Property for all purposes necessary to the Brownfields Program project.

Similarly, Participant shall extend to its own environmental consultant sufficient right of entry, resources, and authority to carry out assessment and remedial actions required by the TCEQ Brownfields Program as necessary to fulfill the Program's goal to issue a VCP Certificate of Completion for the subject site.

The Property, subject of this Agreement, is generally depicted in Exhibit F, a concept map for the Cevallos Neighborhood, which Exhibit is fully incorporated herein for all purposes.

V. GENERAL PROVISIONS

1. Indemnity. Participant covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to regulatory liability, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to Participant's participation under this AGREEMENT, including any acts or omissions of Participant, any agent, officer, director, representative, employee, consultant or subcontractor of Participant, and its officers, agents, employees, directors and representatives while in performance of this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT, EXCEPT AS SET FORTH BELOW, SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED**

OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, by agreement or otherwise, to any other person or entity. Participant shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or known to Participant related to or arising out of Participant's participation under this AGREEMENT and Participant shall see to the investigation and defense of such claim or demand at Participant's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving Participant of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by Participant to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. Participant further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

2. Insurance. Participant shall comply with the insurance requirements set forth in Exhibit "D." The City shall not perform any task under this Agreement to the benefit of Participant until such insurance is in place. Insurance shall be maintained according to Exhibit "D" during the term(s) of this Agreement.

3. Ethics. Conflicts of Interest. Participant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City Officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Participant is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City's Ethics Code. (Discretionary Contracts Disclosure -See Exhibit E)

4. Local Government Code. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the

date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Please consult your own legal advisor if you have questions regarding the statute or form.

5. Police Powers. No provision of this Agreement, nor cumulative conditions within its four corners, shall preclude the City of San Antonio from exercising any police power within the City's purview for protection of the public health, safety, or welfare.

6. Venue. This Agreement is performable in Bexar County, Texas, wherein venue shall lie.

Executed this _____ day of _____, 2008.

OWNER:

Cevallos Lofts, Ltd.

By: _____

Printed name: _____

Title: _____

CITY OF SAN ANTONIO

By: _____

T.C. Broadnax

Assistant City Manager

Attachments: Exhibits "A" and "B" (Deeds)

Exhibit "C" (TCEQ Brownfields Application)

Exhibit "D" (Insurance Requirements)

Exhibit "E" (Discretionary Contracts Disclosure, the Ethics Form)

Exhibit "F" (Cevallos Neighborhood Concept Map)

Approved as to form:
Office of the City Attorney
Michael Bernard, City Attorney

Shelton & Valadez, P.C.
600 Navarro, Suite 500
San Antonio, Texas 78205

by: _____
Edward F. Guzman,
Assistant City Attorney

by: _____
Robert J. Perez
Attorneys for Cevallos Lofts,
Ltd.

Exhibits "A" and "B" (Deeds)

\$ 32.00

AP# 21327-R.H.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

THAT, **CEVALLOS LOFTS, LTD.**, a Texas limited partnership, (hereinafter referred to as "Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to the undersigned in hand paid by **BROWN FIELD VENTURES, LLC.**, (hereinafter referred to as "Grantee"), whose address is 11122 Gordon Road, San Antonio, Texas, 78216, and further consideration of the execution and delivery by Grantee of that certain Promissory Note dated SEPT. 4, 2007, in the principal amount of **ONE MILLION SEVEN HUNDRED FORTY THOUSAND DOLLARS AND NO/100 DOLLARS (\$1,740,000.00)** ("Note"), payable to the order of **CAPITOL ONE, N.A.** ("Lender"), said Note bearing interest as therein provided, the payment of the Note being secured by a first and superior Vendor's Lien herein retained, said Vendor's Lien having been transferred and assigned to Lender and is additionally secured by a Deed of Trust, Security Agreement and Financing Statement of even date therewith to Sally Brink, Trustee, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto Grantee all of that certain tract or tracts of land (the "Land") described on Exhibit A which is attached hereto and incorporated herein by reference for all purposes, together with all of Grantor's right, title and interest in and to any improvements located thereon and any easements, interests, benefits, privileges, rights and appurtenances pertaining to such Land (said Land, improvements, easements, interest, benefits, privileges, rights and appurtenances being herein collectively referred to as the "Property").

This conveyance is made by Grantor and accepted by Grantee subject to matters of record filed against the Property as of the date to the extent that the same are valid and enforceable and affect the Property as of the date hereof (collectively, the "Permitted Encumbrances").

TO HAVE AND TO HOLD, the Property, subject to the Permitted Encumbrances, unto Grantee and Grantee's successors and assigns forever, and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT and FOREVER DEFEND, all and singular, the Property, subject to the Permitted Encumbrances, unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, and subject, however, to the provisions contained herein.

METES AND BOUNDS DESCRIPTION
1.515 ACRES
NEW CITY BLOCK A-14
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS

Being a 1.515 acre (66,000 square feet) tract of land, New City Block (NCB) A-14, San Antonio, Bexar County, Texas out of an 11.58 acre tract, recorded in Volume 12875, Page 859 of the Official Public Records of Real Property, and said 11.58 acres out of a 34 acre tract, recorded in Volume 40, Page 630 of the Deed and Plat Records, both of Bexar County, Texas, said 1.515 acre tract being more particularly described as follows:

BEGINNING at a found 60d nail on the east right-of-way line (R.O.W.) of South Flores Street (80' R.O.W.) being the northwest corner of a 1.67 acre tract, NCB 2566, as recorded in Volume 11210, Page 81 of the Official Public Records of Real Property, Bexar County, Texas, for the southwest corner of the herein described tract;

Thence N° 16 18' 38" E, a distance of 149.73 feet along said east R.O.W. line to a found ½" iron rod with cap stamped "GRE" at the southwest corner of Lot 1, Block 2, NCB 2563, River City Fellowship Subdivision, recorded in Volume 9575, Page 137 of the Deed and Plat Records of Bexar County, Texas for the northwest corner of the herein described tract;

Thence leaving said east R.O.W. line and along the common line with said Lot 1, S 65° 34' 46" E, a distance of 457.22 feet to a set ½" iron rod with cap stamped "VICKREY PROP. COR." at the northeast corner of the herein described tract;

Thence leaving said common line with Lot 1, S 24° 25' 19" W, a distance of 147.27 feet to a set "x" in concrete curb at the southeast corner of the herein described tract;

Thence N 65° 42' 20" W, at a distance of 31.18 feet passing a found Mag nail at the northeast corner of said 1.67 acre tract, continuing for a total distance of 436.09 feet returning to the POINT OF BEGINNING and containing 1.515 acres (66,000 square feet) of land, more or less.

V&A Job No. 2075-003-104
SH/JD/gm/m&b1.515ac
August 24, 2007

A separate survey plat of even date accompanies this metes and bounds description



Stephen Horvath
Registered Professional Land Surveyor
Texas Registration Number 2811
Vickrey & Associates, Inc.



Doc# 20070237143
Pages 4
10/04/2007 15:30:47 PM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERARD RICKHOFF COUNTY CLERK

Fees 24.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
10/04/2007 15:30:47 PM
COUNTY CLERK, BEXAR COUNTY TEXAS



Gerard Rickhoff

WARRANTY DEED WITH VENDOR'S LIEN

Date: May 15, 2007

Grantor: C.A.N. Industries, Inc.
1325 N. Flores Street
San Antonio, TX 78212

Grantee: Cevallos Lofts, LLC
c/o NRP Investments Corporation
5309 Transportation Blvd.
Cleveland, OH 44125

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration received and a promissory note of even date executed by Grantee payable to the order of Wells Fargo Bank, National Association ("Lender"), which note is secured in part by the vendor's lien retained in favor of Grantor in this deed and also a deed of trust of even date from Grantee to J. Richard White, Trustee, whose address is 200 Public Square, Suite 1200, Cleveland, Ohio 44114.

Property (including any improvements): As described on Exhibit A, which is attached hereto and incorporated herein for all purposes.

Reservations from and Exceptions to Conveyance and Warranty:

1. Conditions, covenants, easements, encroachments and restrictions appearing on, or referenced in, the maps, plats, agreements and documents that are of record in Bexar County, Texas, including, without limitation:

- a. All terms, conditions, and provisions of that certain Easement for Underground Facilities as set out in Volume 4370, Page 490, Real Property Records of Bexar County, Texas,
- b. as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
- c. All terms, conditions, and provisions of that certain Electric Line Right of Way Agreement and Easement as set out in Volume 9995, Page 81, Real Property Records of Bexar County, Texas, as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.

- d. All terms, conditions, and provisions of that certain Easement Agreement for Reciprocal Access as set out in Volume 11101, Page 475, Real Property Records of Bexar County, Texas, as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
 - e. All terms, conditions, and provisions of that certain Easement Agreement for Reciprocal Access and parking as set out in Volume 11210, Page 101, Real Property Records of Bexar County, Texas, as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
 - f. Access Easement for the benefit of a 1.67 acre tract as set forth by Special Warranty Deed in Volume 11210, Page 81, Real Property Records of Bexar County, Texas, as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
 - g. Mineral and/or Royalty Interest as set out in Volume 3907, Page 384, Volume 3907, Page 386 and Volume 4165, Page 207, Deed Records of Bexar County, Texas.
 - h. Mineral and/or Royalty Interest as set out in Volume 1282, Page 552 and Volume 6711, Page 10, Real Property Records of Bexar County, Texas.
 - i. All mineral rights reserved in Deed dated November 28 2000, filed in the Office of the Bexar County Clerk on December 4, 2000 under Clerk's File No. 2000-0204189.in Volume 8662, Page 314, Real Property Records of Bexar County, Texas.
 - j. Storm Drainage manhole located along Probandt Street as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
 - k. Encroachment of concrete slab as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
 - l. Spur track located on subject property as shown on Survey dated May 12, 2007 prepared by Vickrey & Associates Inc. Consulting Engineers, Stephen Horvath Registered Professional Land Surveyor Texas Registration Number 2811.
 - m. Deed restrictions appearing at Volume 8662, Page 314, Real Property Records of Bexar County, Texas.
2. Any discrepancies, conflicts or shortages of area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;

3. All zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect, relating to the herein described property;

4. Any visible or apparent easements on or across the herein described property.

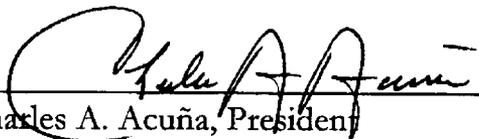
Current ad valorem taxes on the herein described property having been prorated, the payment thereof is assumed by the Grantee.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors or assigns forever. Grantor binds Grantor and Grantor's successors and assignees to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through and under Grantor, but not otherwise, and except as to the reservations from and exceptions to conveyance and warranty.

The vendor's lien against and superior title to the Property are retained until each note described is fully paid according to its terms, at which time this deed shall become absolute. Lender, at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of Lender and are transferred to J. Richard White, Trustee, without recourse on Grantor.

GRANTOR: C.A.N. Industries, Inc.

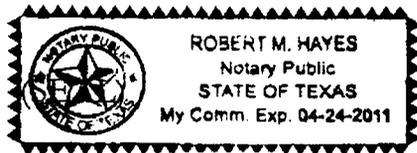
By:

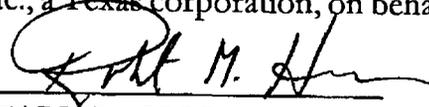


Charles A. Acuña, President

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on the 15th day of May, 2007, by Charles A. Acuña, President of C.A.N. Industries, Inc., a Texas corporation, on behalf of said corporation.





NOTARY PUBLIC

Robert M. Hayes

(Printed Name)

AFTER RECORDING, PLEASE RETURN TO:

Grantee's mailing Address
Cevallos LOFTS, LLC
c/o NRP Investments Corp
5309 Transportation Blvd.
Cleveland OH 44125

Stewart Title
2414 Mossrock
San Antonio, TX 78230

EXHIBIT A

VICKREY & ASSOCIATES, Inc.

CONSULTING ENGINEERS

METES & BOUNDS DESCRIPTION OF AN 11.58 ACRE TRACT OF LAND

Being a 11.58 acre (504,347 square feet), more or less, tract of land out of New City Block A-14, City of San Antonio, Bexar County, Texas and being all of an 11.13 acre tract of land described in conveyance from Union Pacific Railroad Company unto C.A.N. Industries, Inc., recorded in Volume 8662, Page 314, Save and Except a 1.55 acre tract of land recorded in Volume 11101, Page 435 both of the Official Public Records of Real Property of Bexar County, Texas, and all of Lots 11,12,13,24,25,26, Block 3, New City Block 2567 and all of Lots 1-6 and Lots 15-20, Block 4, New City Block 2568, Thad Smith - J. Cassiano and H. Cunningham Subdivision, recorded in Volume 60, Page 606 of the Deed Records of Bexar County, Texas, and being described in conveyance from Bexar Realty Company, Inc., unto C.A.N. Industries, Inc., recorded in Volume 7910, Page 1391 of the Official Public Records of Real Property, Bexar County, Texas, and being a portion of a 1.186 acre tract of land described in conveyance from Monarch Lumber Company, Inc., unto C.A.N. Industries, Inc., recorded in Volume 7116, Page 1266 of the Official Public Records of Real Property of Bexar County, Texas, also being out of a 34 acre tract of land recorded in Volume 40, Page 630 of the Deed and Plat Records of Bexar County, Texas, also being out of a strip of land out of said Thad Smith - J. Cassiano and H. Cunningham Subdivision, said 11.58 acre tract of land being more particularly described by metes and bounds as follows, with all bearings reference for this survey are based on Texas State Plane Coordinate System NAD 83 South Central Zone:

Beginning at a set cotton spindle at the intersection of the West right-of-way line of Probandt Street (86 - foot right-of-way) and the North right-of-way line of East Cevallos Street (55.6 - foot right-of-way) also being the Southeast corner of Lot 14, Block 4, New City Block 2568;

Thence North 30°07'16" West, departing said West right-of-way line of Probandt Street and said North right-of-line of Cevallos Street, along the Northeast line of a 5 - foot strip of land as shown on said Thad Smith - J. Cassiano and H. Cunningham Subdivision, a distance of 201.73 feet to a set 1/2" iron rod with Vickrey & Associates cap for corner and a re-entrant corner of aforementioned 11.13 acre tract of land for corner;

Thence North 78°08'42" West, along the South line of said 11.13 acre tract of land, a distance of 59.18 feet to a found 1/2" iron rod with cap marked "PD" for corner;

Thence North 72°18'40" West, continuing along the South line of said 11.13 acre tract a distance of 138.81 feet to a set 1/2" iron rod with Vickrey & Associates cap for corner and being a re-entrant corner of the herein described tract;

Thence South 19°09'17" West, at 18.95 feet passing the Northeast corner of said Lot 20, Block 4, continuing along the East lot line of said Lots 20 and 6, Block 4, New City Block 2568, for a total distance of 186.57 feet to a set 1/2" iron rod with Vickrey & Associates cap for corner on said North right-of-way line of Cevallos Street;



Thence North 71°04'49" West, along said North right-of-way line of Cevallos Street and the South line of said Lots 1-6, Block 4, New City Block 2568, a distance of 300.00 feet to an "x" set on concrete for corner;

Thence North 19°09'17" East, departing said North right-of-way line of Cevallos Street along the East line of a 25 foot wide strip as recorded in said Thad Smith – J. Cassiano and H. Cunningham Subdivision and the West line of Lots 1 and 15, Block 4, New City Block 2568, at 163.30 feet passing the Northwest corner of said Lot 15, Block 4, continuing for a total distance of 180.12 feet to a set spindle for corner on the South line of said 11.13 acre tract of land;

Thence North 72°18'40" West, along the South line of said 11.13 acre tract of land, a distance of 25.01 feet to a set "x" on concrete for corner;

Thence South 19°09'17" West, at a distance of 16.64 feet passing the Northeast corner of Lot 26, Block 3, along the East line of Lots 26 and 13, Block 3, New City Block 2567, continuing for a total distance of 179.58 feet to a set 1/2" iron rod with Vickrey & Associates cap for corner on said North right-of-way line of Cevallos Street;

Thence North 71°04'49" West, along said North right-of-way line of Cevallos Street and the South line of Lots 11-13, Block 3, New City Block 2567, a distance of 150.00 feet to a set "x" on concrete for corner;

Thence North 18°58'31" East, departing said North right-of-way line of Cevallos Street, along the common line of Lots 10, 11, 23, and 24, Block 3, at 160.77 feet passing the North common corner of Lots 23 and 24, continuing a total distance of 176.34 feet to a found 1/2" iron rod for corner on the South line of said 11.13 acre tract of land;

Thence along the South line of said 11.13 acre tract of land also being the South line of the herein described tract the following four (4) courses and distances:

North 72°26'00" West, a distance of 98.98 feet to a found 1/2" iron rod with cap marked "PD" for corner;

North 70°35'24" West, a distance of 99.11 feet to a found 1/2" iron rod for corner;

North 70°30'35" West, a distance of 147.08 feet to a found 1/2" iron rod with cap marked "GRE" for corner;

North 71°24'26" West, a distance of 172.23 feet to a found 1/2" iron rod with cap marked "GRE" for corner, being the Southeast corner of the aforementioned 1.186 acre tract of land;

Thence North 69°26'44" West, along the South line of said 1.186 acre tract and the South line of the herein described tract of land, a distance of 61.04 feet to a found 1/2" iron rod point with cap marked "GRE" for corner, being the Southeast corner of a 1.67 acre tract of land recorded in Volume 11210, Page 81 of the Official Public Records of Real Property of Bexar County, Texas;



Thence North 24°17'23" East, along the East line of said 1.67 acre tract and the West line of the herein described tract, a distance of 105.16 feet to found "MAG" nail, being the Northeast corner of said 1.67 acre tract of land, also being a re-entrant corner of the herein described tract;

Thence North 65°42'20" West, along the North line of said 1.67 acre tract and the South line of said 11.13 acre tract and also being the South line of the herein described tract of land, a distance of 404.91 feet to a found 60D nail for corner on the East right-of-way line of South Flores Street (80 ~ foot right-of-way), also being the Southwest corner of said 11.13 acre tract of land;

Thence North 16°18'38" East, along the west line of said 11.13 acre tract and the East right-of-way line of South Flores Street, a distance of 149.73 feet to a found 1/2" iron rod with cap marked "GRE" for corner, being the Southwest corner of aforementioned 1.55 acre tract, also being the Northwest corner of the herein described tract of land;

Thence South 65°34'46" East, departing said East right-of-way line of South Flores Street along the South line of said 1.55 acre tract and the North line of the herein described tract, a distance of 482.20 feet to a found 1/2" iron rod with cap marked "GRE" for corner being the Southeast corner of said 1.55 acre tract and a re-entrant corner of the herein described tract;

Thence North 24°25'12" East, along the East line of said 1.55 acre tract and the West line of the herein described tract, a distance of 137.45 feet to a found "MAG" nail on the South right-of-line of Southern Pacific Railroad (variable width right-of-way);

Thence along said South right-of-way line of Southern Pacific Railroad, being 25 feet South and parallel to the centerline of said railroad, also being the North line of aforementioned 11.13 acre tract, also being the North line of the herein described tract of land, the following five (5) courses and distances;

South 65°38'20" East, a distance of 392.56 feet to a found 1/2" iron rod with cap marked "GRE" for corner and to a point of curvature to the right;

along an arc of a curve to the right, having a chord bearing of South 60°17'19" East, a chord distance of 320.37 feet, a radius of 1738.18 feet, a central angle of 10°34'31" and an arc distance of 320.82 feet to a found "MAG" nail;

South 55°08'38" East, a distance of 208.38 feet to a set 1/2" iron rod with Vickrey & Associates cap and to a point of curvature to the right;

along an arc of a curve to the right, having a chord bearing of South 44°06'32" East, a chord distance of 246.96 feet, a radius of 649.69 feet, a central angle of 21°54'44" and an arc distance of 248.47 feet to a set spindle;

South 33°09'10" East, a distance of 51.42 feet to a found 1/2" iron rod on the aforementioned West right-of-way line of Probandt Street for corner;



Thence South 17°15'24" East, along said West right-of-way line of Probandt Street, a distance of 244.36 feet to a point for corner to the Point of Beginning, containing 11.58 acres (504,347 square feet) of land, more or less.

V&A Job No. 2075-002-104
KC/CR/gm m&b11.59ac
May 12, 2007


Stephen Horvath
Registered Professional Land Surveyor
Texas Registration Number 2811
Vickrey & Associates, Inc.



Doc# 20070114587
Pages 9
05/18/2007 11:32:24 AM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK

Fees 44.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
05/18/2007 11:32:24 AM
COUNTY CLERK, BEXAR COUNTY TEXAS



Gerry Rickhoff

Exhibit "C" (TCEQ Brownfields Application)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2004 - 2005 Application for State-Provided Brownfields Site Assessments

Introduction

The Texas Commission on Environmental Quality (TCEQ) will direct the completion of a limited number of federally funded Brownfields Site Assessments (BSAs) for qualifying local governments and non-profit groups in Texas. BSAs are similar to Phase I and Phase II Environmental Site Assessments (ESAs) conducted by the real estate industry for commercial and industrial properties. In addition to performing assessment activities the TCEQ will provide regulatory guidance. Such guidance includes developing cleanup levels, cleanup options, and clarification of environmental regulatory requirements as applicable.

The BSAs will help identify the degree of contamination on Brownfields properties (properties underused or dormant due to real or perceived contamination). The BSAs are designed to discover the real or perceived environmental barriers to redevelopment and provide the environmental information required in real estate and/or financial transactions on Brownfields properties. By assessing the degree of contamination on Brownfields properties, local governments and non-profit groups are more likely to successfully market those properties and facilitate local redevelopment.

Funding is provided through the "**Small Business Liability Relief and Brownfields Revitalization Act**" (Brownfields Law) enacted by the federal government in January 2002. This law defines a Brownfields site and allows greater flexibility in the use of grant funds. In response to this flexibility, the TCEQ can now perform BSAs on a limited number of non-hazardous petroleum contaminated sites and is initiating a Resource Conservation and Recovery Act (RCRA) BSA program. The RCRA BSA program with approval of the EPA, can perform assessment activities on sites that do not meet the federal definition of a Brownfields site (i.e. subject to an order or permit). In addition, the BSA program can provide technical oversight for Brownfields projects that have been awarded EPA Subtitle A Brownfields Grants.

The Brownfields Law while providing greater flexibility on the range of sites also states that funds can not be used at a brownfield site where the recipient is potentially liable under CECLA Section 107. Under this section of CERCLA **a current property owner can be potentially liable even if it did not cause or contribute to contamination.** The Brownfields Law established liability protection for innocent land owners, contiguous property owners, and bona fide prospective purchasers of contaminated land. Applicants that own a contaminated site may qualify for one of these landowner liability protections. For example, applicants that purchased contaminated land on or after the enactment date of the Brownfields Law (January 11, 2002) and meet statutory landowner liability criteria may qualify for a brownfield site assessment.

Petroleum Sites: 25 percent of the EPA grant funds set aside for brownfield site assessments may be utilized on a non-hazardous petroleum site that: 1) is determined to be a "relatively low risk" site; 2) there is no viable responsible party and that the applicant is not a potentially liable party; and 3) the site is not subject to a RCRA 9003(h) order. Sites where Leaking Underground Storage Tank (LUST) Trust Funds were used are not eligible for a BSA without EPA approval.

RCRA Brownfields: The TCEQ has initiated a RCRA BSA program for sites that do not meet the standard Brownfields definition. These are usually sites that are subject to RCRA enforcement or permit. Prior to the TCEQ assisting a RCRA Brownfield it must receive authorization from the EPA under the "site-by-site determination" in the Brownfields Law. The EPA must find that the assistance will protect human health and the environment and either promote economic development or enable the creation, preservation, or addition to park land, greenways, and other recreational non-profit property. The TCEQ may perform two RCRA BSA's per fiscal year.

Brownfields Grant Assistance: The TCEQ can provide technical review and oversight of Brownfields projects which have received EPA Subtitle A grants. This includes the review and comment on Assessment Reports, Response Action Plans, Response Action Completion Reports, and other information as requested. The goal of the assistance will be to issue a Voluntary Cleanup Program Certificate of Completion.

Based on the application, the Brownfields project manager will determine the types of assessments that will be completed by the TCEQ contractor. These assessments can include the following: *Phase I ESA, Phase II ESA which includes Environmental Media Sampling, Analysis of Soils, Groundwater and Surface Water.*

TCEQ Brownfields Application Instructions

Page 2

Each BSA is expected to cost up to \$35,000 and will generally include:

- records review,
- site reconnaissance,
- interviews with past and current owners, operators, neighbors, governmental officials,
- sampling performed under TCEQ contract.

What Sites are Eligible?

For sites to be eligible to receive a TCEQ BSA all of the following items must apply:

1. The applying government or non-profit must not be potentially liable under CERCLA §107.
2. The site must meet one of the following:
 - a. be owned or plan to be owned by the applying local government;
 - b. property taxes must be owed to the local government on the site and foreclosure for failure to pay those taxes is likely; or
 - c. redevelopment will result in ownership and/or long-term beneficial use by the local government or non-profit organization.
3. The site is abandoned.
5. There is no unresolved federal/state enforcement or Superfund action associated with the site.*
6. The site, or portions thereof, is not a RCRA permitted or interim-status facility.*
7. The site is targeted for redevelopment by the local government or non-profit group.
8. The local government agrees to arrange for site access and security for TCEQ personnel and their representatives conducting site assessments. Entry into potentially unsafe buildings will require permission and assistance from the local authorities trained to make such determinations.

* May be eligible for a RCRA BSA.

How Will Sites be Chosen?

The TCEQ would like to provide BSAs for as many eligible sites as possible. However, in the event that the number of eligible sites nominated outnumbers the available resources, sites will be prioritized based on the following criteria (order does not imply importance):

1. Site location
2. Years that the site has been abandoned
3. Site ownership
4. Tax status of site
5. Condition of site
6. Transportation access
7. Contamination concerns
8. Taxable appraised value added after cleanup
9. Timely employment creation
10. Redevelopment plan

TCEQ Brownfields Application Instructions

Page 3

How To Apply

To apply for a BSA on a property, a local government (applicant) must complete and submit the enclosed application, along with a CORE Data Form (TCEQ Form-10400) which can be found at <http://www.tnrce.state.tx.us/permitting/remed/vcp/brownfields.html>. The TCEQ would like to provide BSAs for as many eligible projects as possible as long as resources remain. To increase the chances of your project being funded, submit applications as soon as possible to:

Mr. Mike Frew, Project Manager
Voluntary Cleanup Section, MC-221
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

or hand carried to:

Building D, MC-221, Room 208
12118 Park 35 Circle
Austin, Texas 78753

Application Format

The application is organized in five sections. Fill out all sections completely. Where information is not available or not applicable to a site, a brief explanation should be included. The five sections are as follows:

1. **General Information.** This Section provides general information on the site that the TCEQ will use for determining eligibility and obtaining additional information on the site.
2. **Property Profile.** This section requests factual information from the applicant regarding site location, latitude, longitude, size, access, features, layout, location of utilities and contamination. The BSA relies heavily upon this section during the scoping process.
3. **Brownfields Redevelopment Plan.** This section asks the applicant to summarize redevelopment plans.
4. **Attachments.** Place all maps, supporting documentation and previously prepared Environmental Site Assessment or Investigation documents in this section.

5. **Site Access Agreement.**
6. **CORE Data Form.** Please fill out TCEQ Form No. 10400. This form is used to maintain basic information about regulated entities.

TCEQ Contact Persons

Questions related to the contents of this Request for Applications and the applications requirement should be directed to:

Mike Frew
(512) 239-5872

RCRA Brownfields questions may be directed to:

Allen Posnick
(512) 239-2332

Limitations of TCEQ Brownfields Site Assessments

The following limitations of the TCEQ BSA should be considered prior to completing a BSA application:

1. The BSA process is not appropriate to correct situations where an immediate and substantial endangerment to human health and the environment exists. For the assessment and remediation of such sites, the applicant is directed to contact the nearest regional office of the TCEQ.
2. The BSA process is generally not appropriate for asbestos-containing materials, lead-based paint in/on buildings, lead in drinking water systems, wetlands, or radon gas.
3. The applicant should recognize that environmental site assessments cannot eliminate all uncertainty, are not always exhaustive in their level of inquiry, or warrant being exhaustive in their level of inquiry. Therefore the TCEQ cannot be held liable for any damage arising from contamination not discovered during the TCEQ BSA or from any damages, monetary or otherwise, from contamination discovered during the TCEQ BSA.
4. The BSA process cannot address all of the safety hazards associated with a site.

Application to Receive a TCEQ BSA

The applying local government should fill out the entire application. At the sole discretion of the TCEQ, applications containing unsubstantiated statements will be determined ineligible. For many sections of the application, supporting documentation should be attached to the end of the application. **Please also fill out TCEQ Form No. 10400 - CORE Data Form along with this application.**

Type of Assistance Requested: (Check the appropriate box.)

Brownfields Site Assessment

RCRA Brownfields

Brownfields Grant Assistance

Petroleum Site Assessment

Section 1: General Information

Site Information

Property Site Name C.A.N. Industries, Inc. Site

Property size (in acres) 1.53 Acres

Regulated Entity Reference No. (if issued): CN- _____ N/A _____

If requesting oversight assistance, amount and year of Brownfield grant: \$200,000/1999

Are there any federal or state enforcement or superfund actions associated with this site? If so, please elaborate.

No

Is the site, or portions thereof, a Resource Conservation and Recovery Act permitted or interim-status facility? If so, please elaborate. No

Are you aware of any Leaking Underground Storage Tank (LUST) Trust Funds used on the property?

No

TCEQ BS Application

Page 2

Has there been any prior contact with any state or federal environmental regulatory programs or agencies relating to environmental issues at this site? Yes X No

If yes, please describe all prior contact with any state or federal environmental regulatory programs or agencies which relate to each of these questions. Attach additional sheets as necessary.

U.S. EPA Region 6-Coordination with Brownfields Program and oversight with Environmental Site Assessments

Please provide any and all state and federal identification numbers related to the property in question, including any solid waste registration, leaking petroleum storage tank, CERCLIS, RCRIS, UIC, etc. registration numbers which have been QAPP approved by EPA; Q-track 04-036

Latitude/Longitude

Latitude (degrees, min., sec. N or decimal degrees) unknown

Longitude (degrees, min., sec. W or decimal degrees) unknown

Date of collection 1/23/04 Organization providing collection data DRASH Consulting Engineers

Check the method used to determine latitude and longitude: N/A See attached report

GPS - Real Time Differentially Corrected _____

GPS - Post Processed Differentially Corrected _____

Map Interpolation - Manual _____

Map Interpolation - Digital _____

DOQQ _____

If using GPS, please state professional unit brand name, model number and accuracy tolerances.

If using Map Interpolation, please state which USGS quad map was used for interpolation.

If using DOQQ Interpolation, please state which DOQQ was used for interpolation.

Does the latitude and longitude listed above refer to the

Center of the property? N/A See attached Report

TCEQ BS Application

Page 3

___ Main entrance to the property?

___ Other, please describe _____

Applicant Information

Applicant (Local Government/Non-Profit) City of San Antonio

Contact Person David Dimaline

Title: Sr. Planner

Organization: Neighborhood Services Department

Customer Reference No. (if issued): CN- _____

Interest in Property: Assisting property owner w/ sale of property

If Owned by Applicant, When did you take Ownership of the Property?

___ N/A _____

How did you take Ownership of the Property? (Purchase, Back Taxes)

___ N/A _____

Have you Perform a Phase I ESA and/or Phase II ESA?

___ Yes _____

Did you operate the Property? (If yes, you may not be eligible for a BSA)

___ N/A _____

Financial Incentives Available for Property by Applicant N/A

TCEQ BS Application
Page 4

In-Kind Services Available to Assist the TCEQ with the BSA City of San Antonio Environmental Services Department &

Neighborhood Services

Section 2: Property Profile

Property Name: Acuna Site

Other Common Names:

Current Owner: Mr. Charlie Acuna C.A.N. Industries

Ownership in Dispute? Please explain. No

Legal Description: NCB A-14 PT of TR E ARB E3

Property History

Begin with the current owner and include information regarding the types of business operations as far back as the earliest known industrial/commercial development.

Refer to "Background" page 4

Property Layout

Type and Number of Buildings on the property (include structures such as loading docks, lifts, racks, paved parking areas, etc.): Office/Warehouse complex, three permanent structures, open pavillions, asphalt parking & driveway areas

Condition of Buildings/Structures: Good

Total Floor Space (approximate square footage): 133,697 sq. ft.

TCEQ BS Application
Page 5

Site Zoning: I1 & I2 Industrial

Transportation Access to the Site: Flores St. & Cevallos St.

Assessed Value (include date of last known appraisal and source of appraisal, i.e. bank, county, private, etc.):

2005 BCAD=\$1,666,460 (assessed value)

Are property taxes paid up-to-date on this property? N/A

Please provide the contact name, address, phone number and e-mail address, if possible, for verifying the property tax records:

Please provide the contact name, address, phone number and e-mail address, if possible for any possible lien holders: N/A

Level and Type of Contamination Present

List all environmental investigation reports that have been completed at this site. Attach copies of each listed report to this application. If no investigations have been completed, indicate none.

Please refer to attached Phase II ESA

List the potentially contaminated areas on the property (provide site map indicating all areas of concern):

Exterior: Please refer to attached Phase II ESA

TCEQ BS Application
Page 6

Interior: N/A

Contaminated Media and Contaminants Present

Have contaminants been detected in on-site media? Yes No

Please check the chemicals of concern within each contaminant category and the media which have been affected:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment
*VOCs, SVOCs				
*Heavy Metals				
*Chlorinated Solvents				
Pesticides				
TPH				
Other _____				

*Please describe _____

Utilities and Process Information (provide site maps indicating all present and former, active and inactive utilities, piping, tanks, bays, and machinery): unknown

Describe the locations of any adjacent properties that may have the potential for creating environmental concern: N/A

Location and Ownership

Is the site owned by the applying local governmental entity or are property taxes owed on the site with foreclosure for failure to pay property taxes likely? Please explain. No

Is there any dispute over site ownership? Please explain. No

Is the site inside a current federally-designated Empowerment Zone, Federally-designated Enterprise Community (EZ/EC), Texas Reinvestment Zone, or a state-designated Texas Enterprise Zone (TEZ)? No

Is the site abandoned? If so, how long has it been abandoned? No

Is the applying local government able to arrange for site access and security for TCEQ personnel and their representatives conducting site assessments? Yes

Section 3: Brownfields Redevelopment Plan

Please provide a summary of the redevelopment plan. Discuss any public/private partnerships, other state or federal agency involvement, private industry interest, etc. Discuss the envisioned final product, including increase in taxable appraised value of the property and potential employment creation.

These properties are located by the Southtown Neighborhood Commercial Revitalization District and King William Historic District. Major renovations including the re-hab of warehouse space are occurring in the area

Section 4: Attachments

List all attached maps, supporting documentation, and previously prepared Environmental Site Assessment/Investigation documents here. see attached

Exhibit "D" (Insurance Requirements)

EXHIBIT D
INSURANCE REQUIREMENTS

A) Prior to the commencement of any work under this Agreement, Participant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Solid Waste Management Department, which shall be clearly labeled "TCEO Brownfields Program Participation Understanding and Right of Access Agreement-City of San Antonio and NRP Group, LLC" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Solid Waste Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

C) Participant's financial integrity is of interest to the City; therefore, subject to Participant's right to maintain reasonable deductibles in such amounts as are approved by the City, Participant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Participant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability f. Broad form property damage, to include fire legal liability	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence
5. Consultant's Environmental Liability	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional environmental services.

D) The City shall be entitled, upon request and without expense, to receive true and correct copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Participant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within thirty (30) days of the requested change. Participant shall pay any costs incurred resulting from said changes. If the City requests a copy(ies) of any insurance policy the Participant may prominently mark those portions of the policy it regards as confidential. In the event a third party makes an open records request under the Texas Freedom of Information Act, or other public information law, asking to view or copy the policy, the City shall submit the material to the Texas Attorney General ("AG") for an opinion regarding the release of said policy. Participant and City agree that the City will be bound by the AG opinion. Similarly, the City would respond to provide the material under a court order or a litigation discovery rule which may require or direct disclosure of the information.

City of San Antonio
Attn: Solid Waste Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

E) Participant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Participant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Participant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

G) In addition to any other remedies City may have upon Participant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Participant to stop work hereunder, and/or withhold any payment(s) which become due, to Participant hereunder until Participant demonstrates compliance with the requirements hereof.

H) Nothing herein contained shall be construed as limiting in any way the extent to which Participant may be held responsible for payments of damages to persons or property resulting from Participant's or its subcontractors' performance of the work covered under this Agreement.

I) It is agreed that Participant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

Exhibit "E" (Discretionary Contracts Disclosure,
the Ethics Form)

City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity that is a party to the discretionary contract.

Cevallos Lofts Ltd.

(2) Identify any individual or business entity which is a partner, parent or subsidiary business entity of any individual or business entity identified above in Box (1).

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a subcontractor on the discretionary contract.

No subcontractor(s); or

List subcontractors:

(4) Identify any lobbyist or public relations firm employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

Robert J. Perez

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions
 List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below: *see attached*

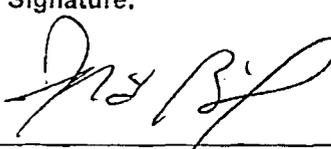
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals
 Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts-of-interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: <i>Principal</i> Company or D/B/A: <i>THE NRP GROUP, LLC</i>	Date: <i>5/30/08</i>
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for Cevallos Lofts Ltd.

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

Cevallos Lofts Ltd

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

N/A

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

[Signature]

Signature of person doing business with the governmental entity

5/30/08

Date

Contributions for 2007

David Heller

Date	Name	Amount
1/15/2007	Roland Gutierrez	\$ 166.66
2/26/2007	Mary Alice Cisneros	\$ 167.00
2/26/2007	Sheila McNeil	\$ 333.00
2/26/2007	Philip Cortez	\$ 167.00
2/26/2007	Delicia Herrera	\$ 167.00
2/26/2007	Elena Guajardo	\$ 334.00
3/15/2007	Roland Gutierrez	\$ 334.00
3/15/2007	Richard Perez	\$ 166.00
5/29/2007	Lourdes Galvan	\$ 167.00
5/29/2007	Diane Cibrian	\$ 167.00
5/29/2007	Justin Rodriguez	\$ 500.00
8/28/2007	Philip Cortez	\$ 166.00
8/29/2007	Ruth Jones McClendor	\$ 333.00
9/21/2007	Justin Rodriguez	\$ 250.00

TOTAL	\$ 3,417.66
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Contributions for 2007

Ted R Bailey

Date	Name	Amount
1/15/2007	Roland Gutierrez	\$ 166.66
2/26/2007	Mary Alice Cisneros	\$ 167.00
2/26/2007	Sheila McNeil	\$ 333.00
2/26/2007	Philip Cortez	\$ 167.00
2/26/2007	Delicia Herrera	\$ 167.00
2/26/2007	Elena Guajardo	\$ 334.00
3/15/2007	Roland Gutierrez	\$ 333.00
3/15/2007	Richard Perez	\$ 166.00
5/29/2007	Lourdes Galvan	\$ 167.00
5/29/2007	Diane Cibrian	\$ 167.00
5/29/2007	Justin Rodriguez	\$ 500.00
8/28/2007	Philip Cortez	\$ 167.00
8/29/2007	Ruth Jones McClendor	\$ 333.00
9/21/2007	Justin Rodriguez	\$ 250.00

TOTAL	\$ 3,417.66
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Contributions for 2007

Alan Scott

Date	Name	Amount
1/15/2007	Roland Gutierrez	\$ 166.66
2/26/2007	Mary Alice Cisneros	\$ 166.00
2/26/2007	Sheila McNeil	\$ 334.00
2/26/2007	Philip Cortez	\$ 166.00
2/26/2007	Delicia Herrera	\$ 167.00
2/26/2007	Elena Guajardo	\$ 334.00
3/15/2007	Roland Gutierrez	\$ 333.00
3/15/2007	Richard Perez	\$ 167.00
5/29/2007	Lourdes Galvan	\$ 167.00
5/29/2007	Diane Cibrian	\$ 167.00
5/29/2007	Justin Rodriguez	\$ 500.00
8/28/2007	Philip Cortez	\$ 166.00
8/29/2007	Ruth Jones McClendor	\$ 333.00
11/12/2007	Justin Rodriguez	\$ 250.00

Total	\$ 3,416.66
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Contributions for 2008

Ted R. Bailey Jr.

Date	Name	Amount
4/7/2008	John Clamp	\$ 150.00
4/7/2008	Roland Gutierrez	\$ 125.00
4/7/2008	Lourdes Galvan	\$ 150.00
5/12/2008	Lourdes Galvan	\$ 350.00

TOTAL	\$ 775.00
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Contributions for 2008

David Heller

Date	Name	Amount
4/7/2008	John Clamp	\$ 150.00
4/7/2008	Roland Gutierrez	\$ 125.00
4/7/2008	Lourdes Galvan	\$ 150.00
5/12/2008	Lourdes Galvan	\$ 350.00

TOTAL	\$ 775.00
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Contributions for 2008

Alan Scott

Date	Name	Amount
4/7/2008	John Clamp	\$ 150.00
4/7/2008	Roland Gutierrez	\$ 125.00
4/7/2008	Lourdes Galvan	\$ 150.00
5/12/2008	Lourdes Galvan	\$ 350.00

TOTAL	\$ 775.00
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Exhibit "F" (Cevallos Neighborhood Concept
Map)

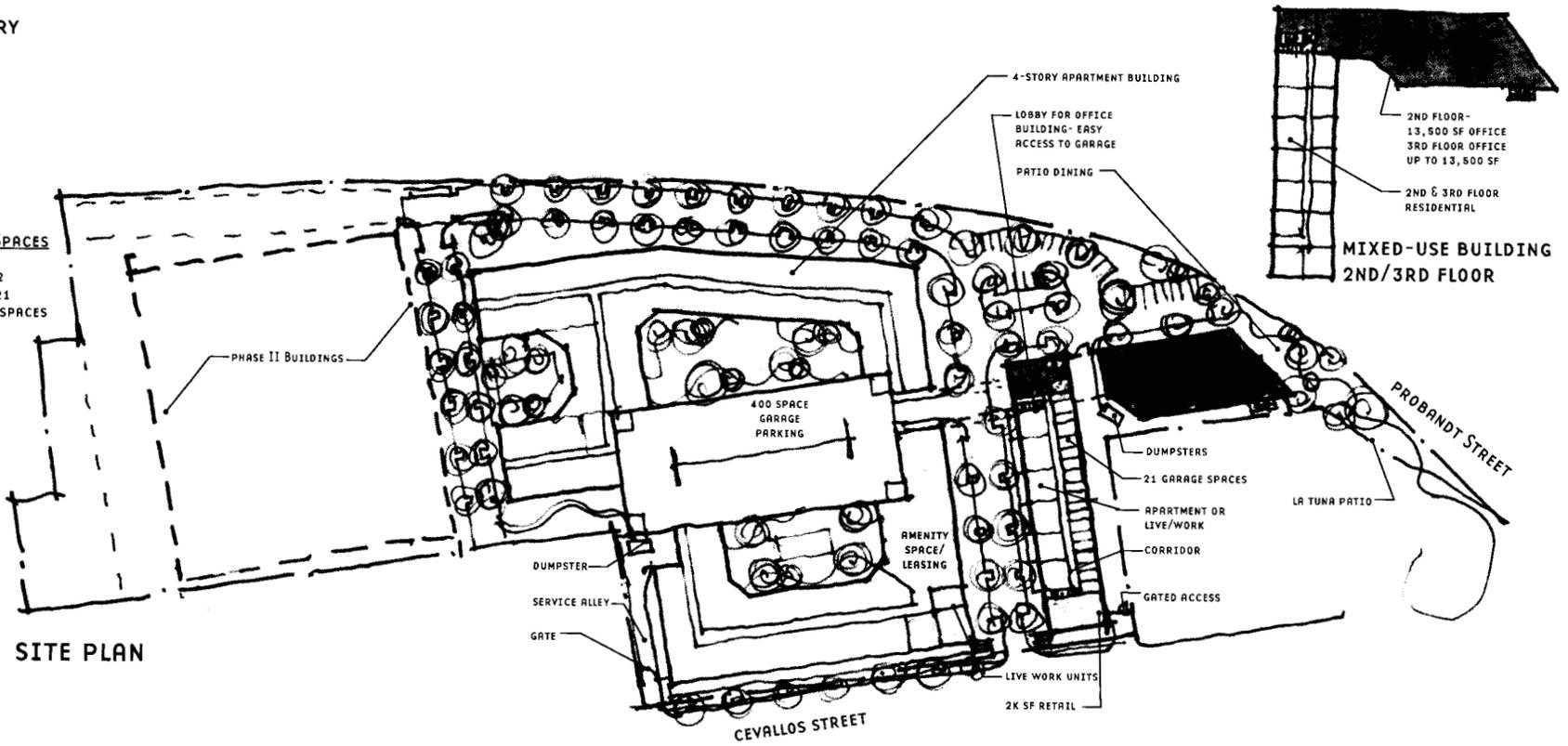
PROJECT SUMMARY

RESIDENTIAL COUNT
270 UNITS

COMMERCIAL
39,000 SF

COMMUNITY CENTER
4,000 SF

PROVIDED PARKING SPACES
GARAGE SPACES: 400
ON STREET PARKING: 112
COMMERCIAL PARKING: 21
TOTAL PARKING 533 SPACES



SITE PLAN



CONCEPTUAL IMAGE



CONCEPTUAL IMAGE



CONCEPTUAL IMAGE

CEVALLOS NEIGHBORHOOD

NOVEMBER 20, 2007



ALAMO ARCHITECTS

the
NRP
group llc.