

AN ORDINANCE 2013 - 02 - 07 - 0094

DECLARING AS SURPLUS AN IRREGULAR 0.287 ACRE VACANT TRACT OF LAND IN NCB 8704, LOCATED WITHIN COUNCIL DISTRICT 1 AND AUTHORIZING ITS SALE TO WHATABURGER REAL ESTATE, LLC FOR \$57,000.

* * * * *

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

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

An irregular 0.287 acre tract out of Old City Lot 41, Range 3 District 3, NCB 8704 and more fully described on **Attachment I**.

SECTION 2. The City having advertised the property for sale according to law and Whataburger Real Estate LLC having made the highest offer, the City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the city a purchase and sale agreement substantially in the form attached as **Attachment II**, which is incorporated for all purposes as if fully set forth, and to consummate the transaction contemplated therein. The city manager and her designee, severally, should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

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

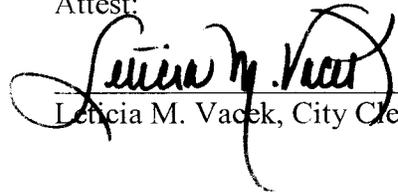
SECTION 4. The disposition of surplus property must be coordinated through the city's Finance Department to assure the removal of these assets into the City's financial records and to record the proper accounting transactions.

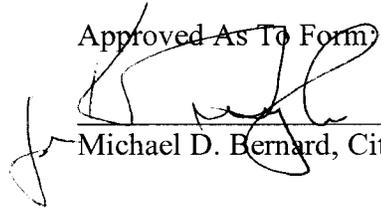
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 7th day of February 2013.


M A Y O R
Julián Castro

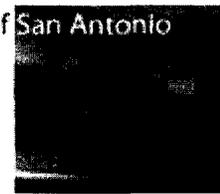
Attest:

Leticia M. Vacek, City Clerk

Approved As To Form

Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 8A

Name:	5, 6A, 6B, 7A, 7B, 7C, 7D, 7E, 7F, 7G, 8A, 8B, 9, 11A, 11B, 12, 13, 14						
Date:	02/07/2013						
Time:	02:22:54 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance declaring as surplus an irregular 0.287 acre vacant tract of land in NCB 8704, located within Council District 1 and authorizing its sale to Whataburger Real Estate, LLC for \$57,000.00.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
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			x	
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

BEING an irregular 0.287 acre tract of land, more or less out of an original 44.9 acre tract recorded in Volume 831, Page 49, Deed and Plat Records, Bexar County, Texas, and out of Old City Lot 41, Range 3, District 3, New City Block 8704, int the City of San Antonio, Bexar County, Texas, being more particularly described as follows:

Beginning at a ½” iron rod found at the east Right-of-Way line of San Pedro Ave. for the northwest corner of 1.050 acres tract recorded in Volume 6659, page 1012 of Deed Records of Bexar County, Texas for the west corner of the herein described tract;

THENCE departing said San Pedro Ave. Right-of-Way, S 89° 55' 50" E 321.84 feet to a ½” iron rod found for the northeast corner of this tract;

THENCE S 00° 42' 45" W 63.05 feet to a ½” iron rod found for the aforementioned 1.050 acre tract and the southeast most corner of this tract:

THENCE N 82° 28' 52" W, 225.09 feet to a ½” iron rod found for an angle point;

THENCE N 70° 50' 00" W 103.86 feet to the POINT OF BEGINNING, containing 0.287 acres of land more or less

Attachment II

Real Estate Sales Contract

Table of Contents

1.	Deadlines and Other Dates.....	5
2.	Closing Documents.....	5
3.	Exhibits.....	6
4.	Purchase and Sale of Property.....	6
5.	Earnest Money.....	6
6.	Title and Survey.....	7
7.	Inspection Period.....	8
8.	Representations.....	9
9.	Condition until Closing; No Recording of Contract.....	9
10.	Termination.....	10
11.	Closing.....	10
12.	Default and Remedies.....	12
13.	Prohibited Interests in Contracts.....	13
14.	Dispute Resolution.....	14
15.	Miscellaneous Provisions.....	14
16.	Public Information.....	17
	Title Company Acknowledgment and Receipt.....	19
	Title Company Receipt for Earnest Money.....	20
	Exhibit A: Property Description.....	21
	Exhibit B: Representations.....	23
	Exhibit C: Form of Deed.....	25

Authorizing Ordinance:

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

Seller: City of San Antonio

Address: CIMS Department, P.O. Box 839966, San Antonio, Texas
78283-3966 (Attention: Marcia Shelf Orlandi)

Buyer: Whataburger Real Estate LLC

Address: 300 Concorde Plaza, San Antonio, Texas 78216

Property: An irregular 0.287 acre tract out of Old City Lot 41, Range 3
District 3, NCB 8704 and more fully described in Exhibit A
("Land") together with improvements to the Land

(“Improvements”)

Title Company: Chicago Title Company

Address: 270 N. Loop 1604, Suite 115, San Antonio, Texas 78232

Purchase Price: \$57,000

Earnest Money: \$5,000

Independent Consideration: \$1,500

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

County for Performance Bexar County, Texas

1. Deadlines and Other Dates.

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

1.01.	Earnest Money and Independent Consideration Deadline	5	Days after the Effective Date
1.02.	Updated Title Commitment	15	Days after the Effective Date
1.03.	Delivery of Title and Survey Objections	15	Days after Delivery of both Survey and Title Commitment
1.04.	End of Inspection Period	60	Days after the Effective Date
1.05.	Closing Date	15	Day after end of Inspection Period
1.06.	Closing Time		10:00 AM

The deadlines may be altered by the mutual agreement of the parties. The Assistant Director for Real Estate of the Capital Improvements Management Services Department may consent to such changes on behalf of Seller without further authorization of City Council.

2. Closing Documents.

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

Deed Without Warranty

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

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

Evidence of Buyer's authority to consummate this transaction

Purchase Price

2.03. The documents listed above are collectively known as the "Closing Documents." Unless otherwise agreed by the parties in writing before closing, the deed will be substantially in the form attached as **Exhibit C**.

3. Exhibits.

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

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Form of Deed

4. Purchase and Sale of Property.

Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

5. Earnest Money.

5.01. Buyer must deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline.

5.02. Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest

Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the purchase price at closing.

5.03. Buyer must deliver the Earnest Money in immediately available funds to Title Company and obtain Title Company's signature before the Earnest Money Deadline for this contract to be effective. Immediately available funds are those available for use immediately upon receipt and do not include funds represented by a check or similar instrument that must clear the institution on which it is drawn.

6. Title and Survey.

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

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

6.03. *Survey.* Buyer acknowledges receipt from Seller of a survey of the property in the bid-solicitation packet.

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

6.06. *Title Objections.* Buyer has until the deadline stated in section 1. ("Title Objection Deadline") to review the Survey, Title Commitment, and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the

giving of Seller's Cure Notice, notify Seller that this contract is terminated. In the absence of such timely notice, Buyer must proceed to close, waiving its objections. At or before closing, Seller must cure the Title Objections that Seller has agreed to cure.

6.07. *Asbestos Survey.* Seller must deliver to Buyer an asbestos survey of the Property not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas. (*applicable only if there are buildings on the property*)

7. Inspection Period.

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

- a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;
- b. Buyer may not unreasonably interfere with existing operations or occupants of the Property;
- c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- d. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs;
- e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt; and
- f. Buyer must abide by any other reasonable entry rules imposed by Seller.

7.02. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. The Independent Consideration is compensation to Seller for Buyer's right of cancellation. It is not a part of the Earnest Money and is not refundable under any circumstance.

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

- a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.
- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

8. Representations.

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

9. Condition until Closing; No Recording of Contract.

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

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

9.03. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within 15 days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will

each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

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

10. Termination.

10.01. *Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

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

11. Closing.

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

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.

- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.
- e. Buyer need not close if Seller cannot or does not deliver marketable title at closing. If Buyer does not close for want of marketable title, the earnest money is returned to Buyer.

11.02. *Transaction Costs*

- a. Buyer will pay:
 - i. the basic charge for the Title Policy;
 - ii. one-half of the escrow fee charged by Title Company;
 - iii. the costs to prepare the deed;
 - iv. the costs to record all documents to cure Title Objections agreed to be cured by Seller;
 - v. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
 - vi. the additional premium for the "survey/area and boundary deletion" in the Title Policy
 - vii. the costs to obtain the Survey and certificates or reports of ad valorem taxes;
 - viii. the costs to deliver copies of the instruments described in article 1; and
 - ix. Buyer's expenses and attorney's fees.

- b. Seller will pay:
 - i. one-half of the escrow fee charged by Title Company;
 - ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense;
 - iii. Seller's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10. Seller assumes no responsibility for ad valorem taxes for any period, rollback or otherwise, not otherwise imposed on it by law.
- d. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.
- e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- f. *Brokers' Commissions.* Buyer and Seller each represent to the other that they have not acted or omitted to act in any way that could give rise to an entitlement to a commission for the transaction to which this agreement relates except as noted at the beginning. At closing, each party will provide the other party with a release of broker's or appraiser's liens from all brokers or appraisers for which each party was responsible.

12. **Default and Remedies.**

12.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the

Effective Date or on the Closing Date (“Seller’s Default”), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination.* Buyer may terminate this contract by giving notice to Seller on or before the expiration of the Inspection Period and have the Earnest Money returned to Buyer.
- b. *Specific Performance.* Buyer may sue to enforce specific performance.

12.02. *Buyer’s Default.* If Buyer fails to perform any of its obligations under this contract (“Buyer’s Default”), Seller may elect to terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller.

13. Prohibited Interests in Contracts.

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

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02 Buyer warrants and certifies as follows:

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

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

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

14. Dispute Resolution.

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

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

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

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

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

14.06 Mediator fees must be borne equally.

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

15. Miscellaneous Provisions.

15.01 *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING**

THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

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

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

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

15.05 *Modification.*

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

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

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

15.07 *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving

of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

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

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

15.10 *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

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

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

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

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

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

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

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

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

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

[Remainder of page intentionally left blank.]

16. Public Information.

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

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

Seller:

Buyer:

City of San Antonio, a Texas
municipal corporation

Whataburger Real Estate, LLC,
a Texas limited liability company

Signature: _____

Signature: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

City Attorney

Title Company Acknowledgment and Receipt

Seller: City of San Antonio

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

Buyer: Whataburger Real Estate, LLC

Address: 300 Concorde Plaza, San Antonio, Texas 78216

Property: An irregular 0.287 acre tract out of Old City Lot 41, Range 3 District 3, NCB 8704 and more fully described in Exhibit A ("Land") together with improvements to the Land ("Improvements").

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

Chicago Title Company

By: _____

Printed
Name: _____

Title: _____

Date: _____

Title Company Receipt for Earnest Money

Seller: City of San Antonio

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

Buyer: Whataburger Real Estate, LLC

Address: 300 Concorde Plaza, San Antonio, Texas 78216

Property: An irregular 0.287 acre tract out of Old City Lot 41, Range 3 District 3, NCB 8704 and more fully described in Exhibit A ("Land") together with improvements to the Land ("Improvements")

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

Amount: _____

Chicago Title Company

By: _____

Printed
Name: _____

Title: _____

Date: _____

Exhibit A: Property Description

METES AND BOUNDS DESCRIPTION

July 5, 2012

0.287 Acres

BEING an irregular 0.287 acre tract of land, more or less out of an original 44.9 acre tract recorded in Volume 831, Page 49, Deed and Plat Records, Bexar County, Texas, and out of Old City Lot 41, Range 3, District 3, New City Block 8704, int the City of San Antonio, Bexar County, Texas, being more particularly described as follows:

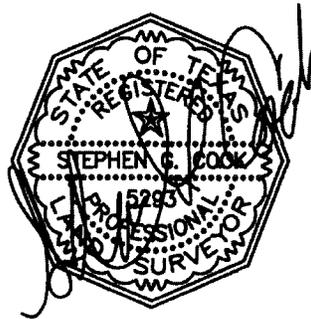
Beginning at a ½” iron rod found at the east Right-of-Way line of San Pedro Ave. for the northwest corner of 1.050 acres tract recorded in Volume 6659, page 1012 of Deed Records of Bexar County, Texas for the west corner of the herein described tract;

THENCE departing said San Pedro Ave. Right-of-Way, S 89° 55’ 50” E 321.84 feet to a ½” iron rod found for the northeast corner of this tract;

THENCE S 00° 42’ 45” W 63.05 feet to a ½” iron rod found for the aforementioned 1.050 acre tract and the southeast most corner of this tract:

THENCE N 82° 28’ 52” W, 225.09 feet to a ½” iron rod found for an angle point;

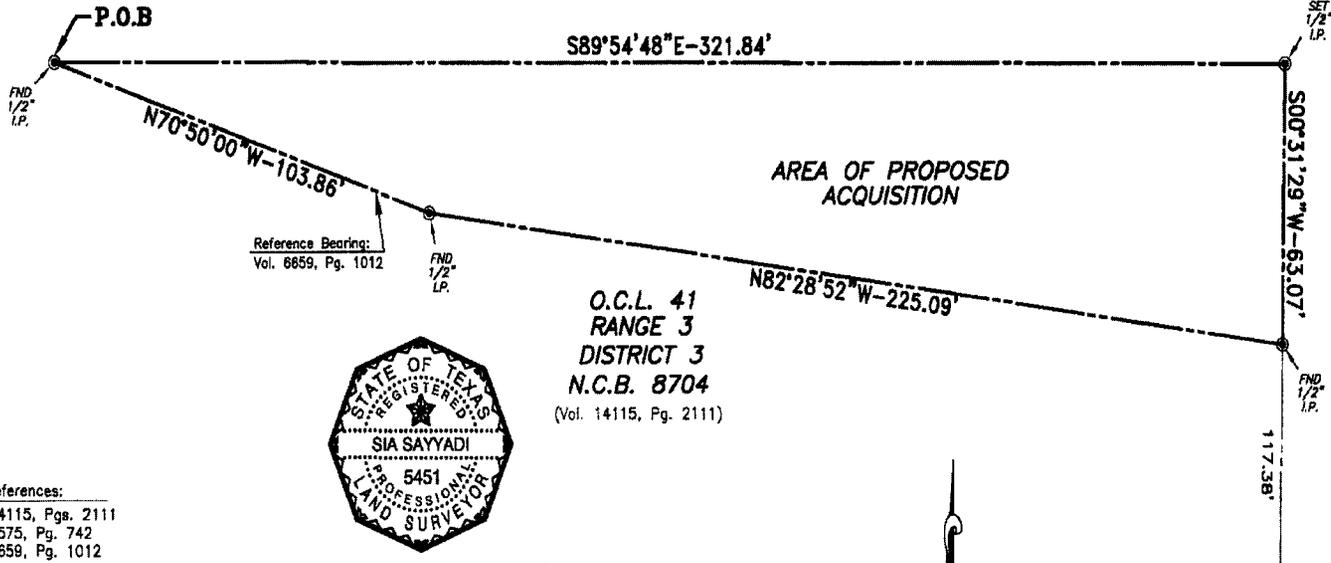
THENCE N 70° 50’ 00” W 103.86 feet to the POINT OF BEGINNING, containing 0.287 acres of land more or less.



SGCE # 999-888-534A

SAN PEDRO AVENUE

OLMOS BASIN



Reference Bearing:
Vol. 6659, Pg. 1012

O.C.L. 41
RANGE 3
DISTRICT 3
N.C.B. 8704
(Vol. 14115, Pg. 2111)



References:

- Vol. 14115, Pgs. 2111
- Vol. 2575, Pg. 742
- Vol. 6659, Pg. 1012

SCALE	1"=30'
J.O.	10007
TITLE CO.	N/A
G.F. #	N/A
DATE OF COMMITMENT	N/A

	DATE	BY
ANALYSIS	02/30/10	<A.F.>
DRAFTING	02/30/10	<A.F.>
FINAL CHECK	03/19/11	S.S.
LIP DATE		
REVISED		

S. Sayyadi

I hereby certify that the above plat has been prepared according to an actual survey made on the ground under my supervision.



SCALE: 1"=30'



SIA ENGINEERING, INC.

6977 SAN PEDRO AVE.
SAN ANTONIO, TEXAS 78218-6245
(210) 341-6600 FAX (210) 308-0882

DESCRIPTION: An irregular 0.287 acre tract of land, more or less out an original 44.9 acre tract recorded in Volume 831, Page 49, of the Deed and Plat Records of Bexar County, Texas, out of Old City Lot 41, Range 3, District 3, New City Block 8704, in the City of San Antonio, Bexar County, Texas and being more particularly described in attached METES and BOUNDS.

Exhibit B: Representations

A. Seller's Representations to Buyer

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

1. *Authority.* Seller is a municipal corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

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

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

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

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

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

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

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

B. “As Is, Where Is”

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

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

C. Buyer’s Representations to Seller

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

1. *Authority.* Buyer is a Texas limited liability company, duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to acquire the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

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

Exhibit C: Form of Deed

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

State of Texas }
 }
County of Bexar }

Deed Without Warranty

Authorizing Ordinance:

Statutory Authority: Local Government Code § 272.001(a)

SP No./Parcel:

Grantor: City of San Antonio

Grantor's Mailing Address: City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attn: City Clerk)

Grantor's Street Address: City Hall, 100 Military Plaza, San Antonio, Texas 78205 (Bexar County)

Grantee: Whataburger Real Estate, LLC

Grantee's Mailing Address: 300 Concorde Plaza, San Antonio, Texas 78216

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

Property: An irregular 0.287 acre tract out of Old City Lot 41, Range 3 District 3, NCB 8704 and more fully described in Exhibit A ("Land"), together with improvements to the Land ("Improvements"), more particularly described by metes and bounds and shown by survey on **Exhibit "A"** attached hereto and incorporated herein verbatim for all purposes.

Grantor, for the Consideration, Grants, Bargains, and Conveys to Grantee, all of Grantor's right, title, interest, and estate, both at law and in equity, as of the date

hereof, in and to the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, To Have and To Hold unto Grantee, Grantee's successors and assigns forever, **Without Any Express Or Implied Warranty whatsoever, Including But Not Limited to Warranties of Title, Condition, or Character.**

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

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

A. Reservations:

1. Right of Re-entry.

(a). Not later than 6 months after Closing, Grantee must apply for all permits required for renovating the Property. Once the Property is renovated, it will be presumed this permit-related requirement is satisfied. Not later than 18 months after receipt of the permits, the Property must be occupied and operational.

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

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

2. Grantor reserves from this conveyance, for the use, benefit and control of the SAN ANTONIO WATER SYSTEM, a municipal utility and agency of the Grantor, a perpetual easement to construct, reconstruct, realign, inspect, patrol, maintain, operate, repair, add, remove and replace sewer lines, facilities and appurtenances thereto, in, on, over and through an approximate 0.036 acre portion of the Property more particularly described and depicted in Exhibit B attached hereto and made a part hereof (the "Easement Area"), together with the right of ingress and egress over the Easement Area and, as reasonably necessary Grantee's adjacent lands, for the purpose of constructing, reconstructing, realigning inspecting, patrolling, maintaining, operating, repairing, adding and removing said lines and appurtenances; the right to relocate said lines within said Easement Area; the right to remove from the Easement Area all trees and parts thereof, or other obstructions, which may interfere with the exercise of the rights reserved herein; and by acceptance of this deed, Grantee expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that no building or structure of any kind will be placed on the Easement Area.

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

C. Restrictions: All covenants and restrictions affecting the Property.

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

E. Conditions: All conditions affecting the Property.

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

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

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

City of San Antonio, a Texas municipal corporation

By: _____

Printed

Name: _____

Title: _____

Date: _____

Attest:

By: _____
City Clerk

Approved As To Form:

By: _____
City Attorney

The State of Texas }

County of Bexar }

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

Date: _____

Notary Public, State of Texas

Exhibit A: Property Description

METES AND BOUNDS DESCRIPTION

July 5, 2012

0.287 Acres

BEING an irregular 0.287 acre tract of land, more or less out of an original 44.9 acre tract recorded in Volume 831, Page 49, Deed and Plat Records, Bexar County, Texas, and out of Old City Lot 41, Range 3, District 3, New City Block 8704, int the City of San Antonio, Bexar County, Texas, being more particularly described as follows:

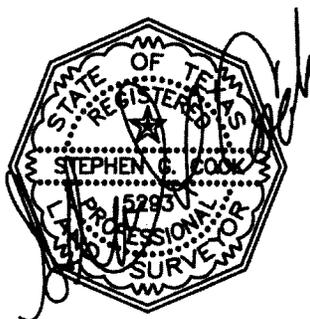
Beginning at a ½” iron rod found at the east Right-of-Way line of San Pedro Ave. for the northwest corner of 1.050 acres tract recorded in Volume 6659, page 1012 of Deed Records of Bexar County, Texas for the west corner of the herein described tract;

THENCE departing said San Pedro Ave. Right-of-Way, S 89° 55' 50" E 321.84 feet to a ½” iron rod found for the northeast corner of this tract;

THENCE S 00° 42' 45" W 63.05 feet to a ½” iron rod found for the aforementioned 1.050 acre tract and the southeast most corner of this tract:

THENCE N 82° 28' 52" W, 225.09 feet to a ½” iron rod found for an angle point;

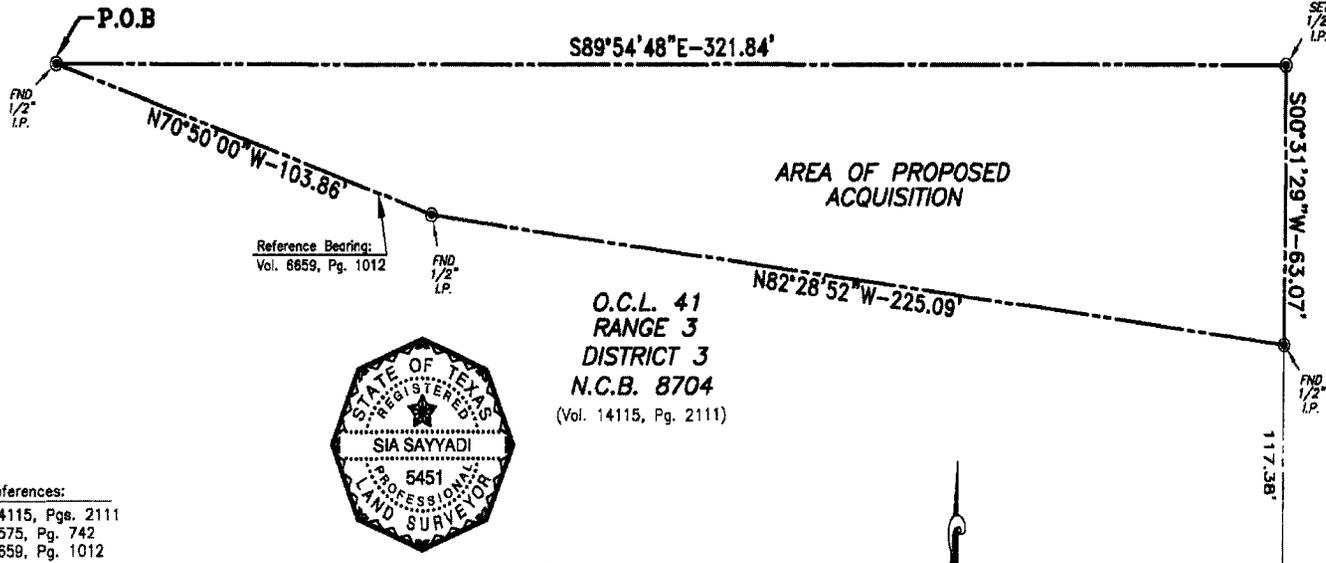
THENCE N 70° 50' 00" W 103.86 feet to the POINT OF BEGINNING, containing 0.287 acres of land more or less.



SGCE # 999-888-534A

SAN PEDRO AVENUE

OLMOS BASIN



Reference Bearing:
Vol. 6659, Pg. 1012

O.C.L. 41
RANGE 3
DISTRICT 3
N.C.B. 8704
(Vol. 14115, Pg. 2111)



References:

Vol. 14115, Pgs. 2111
Vol. 2575, Pg. 742
Vol. 6659, Pg. 1012

SCALE	1"=30'
J.O.	10007
TITLE CO.	N/A
G.F. #	N/A
DATE OF COMMITMENT	N/A

DATE	BY
ANALYSIS 02/30/10	<A.F.>
DRAFTING 02/30/10	<A.F.>
FINAL CHECK 03/19/11	S.S.
UP DATE	
REVISED	

Sia Sayyadi

I hereby certify that the above plat has been prepared according to an actual survey made on the ground under my supervision.



SCALE: 1"=30'



SIA ENGINEERING, INC.

8977 SAN PEDRO AVE.
SAN ANTONIO, TEXAS 78218-6245
(210) 341-6500 FAX (210) 308-0682

DESCRIPTION: An irregular 0.287 acre tract of land, more or less out an original 44.9 acre tract recorded in Volume 831, Page 49, of the Deed and Plat Records of Bexar County, Texas, out of Old City Lot 41, Range 3, District 3, New City Block B704, in the City of San Antonio, Bexar County, Texas and being more particularly described in attached METES and BOUNDS.

Exhibit B: Easement Area

PROJECT: 17-648 WB San Pedro
SAWS PARCEL NO: P12-179

0.036 ACRES
(1,576 SQ. FT.)
103993-50035ex2.DWG

FN NO.103993-50035-2
SEPTEMBER 14, 2012
JOB NO. 103993-50035

FIELD NOTES

FOR A 0.036 ACRES (1,576 SQUARE FOOT)
VARIABLE WIDTH WATER, SEWER AND RECYCLED WATER EASEMENT

0.036 ACRES OF LAND SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 44.9 ACRE TRACT RECORDED IN VOLUME 831, PAGE 49, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND OUT OF OLD CITY LOT 41, RANGE 3, DISTRICT 3, NCB 8704 IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS; SAID 0.036 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH ALL BEARINGS BEING REFERENCED TO THE NORTH AMERICAN DATUM OF 1983, TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE:

BEGINNING, AT A FOUND PK NAIL IN THE WESTERLY RIGHT-OF-WAY LINE OF SAN PEDRO AVENUE (120' R.O.W.), BEING THE NORTHWESTERLY CORNER OF THAT CERTAIN 1.050 ACRE TRACT CONVEYED TO MIDTOWN RESTORATIONS, LLC BY DEED OF RECORD IN VOLUME 14115, PAGE 2111 OF THE REAL PROPERTY RECORDS OF BEXAR COUNTY, TEXAS, SAME BEING THE SOUTHWESTERLY CORNER OF SAID 44.9 ACRE TRACT;

THENCE, LEAVING THE WESTERLY RIGHT-OF-WAY LINE OF SAN PEDRO AVENUE, INTO AND ACROSS SAID 44.9 ACRE TRACT, THE FOLLOWING COURSES:

N 89° 28' 30" E, A DISTANCE OF 321.84 FEET TO AN ANGLE POINT;

S 00° 07' 05" W, A DISTANCE OF 5.00 FEET TO AN ANGLE POINT;

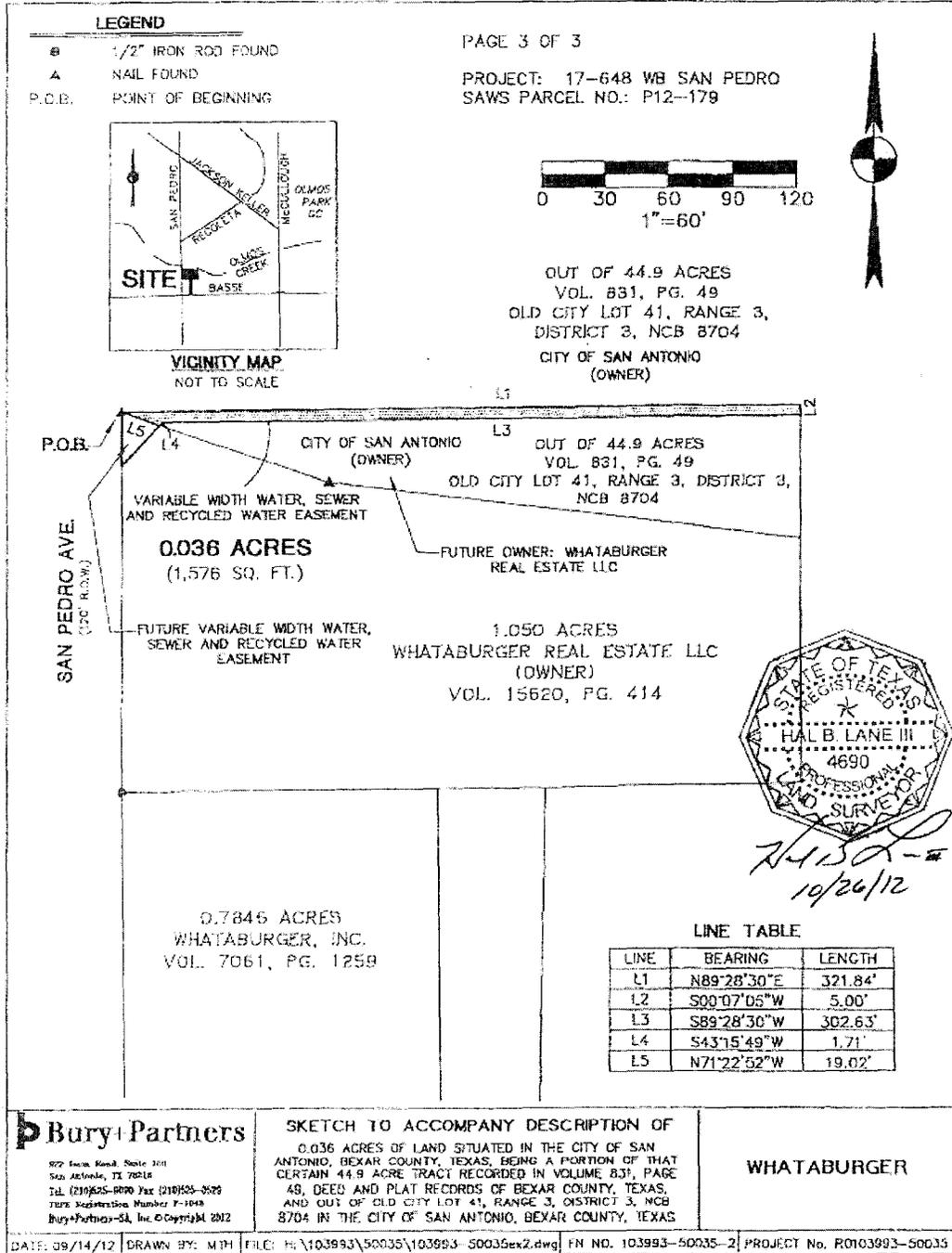
S 83° 28' 30" W, A DISTANCE OF 302.63 FEET TO AN ANGLE POINT;

S 43° 15' 49" W, A DISTANCE OF 1.71 FEET TO A POINT IN THE NORTHERLY LINE OF SAID 1.050 ACRE TRACT, BEING THE SOUTHERLY LINE OF SAID 44.9 ACRE TRACT;

THENCE, N 71° 22' 52" W, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 1.050 ACRE TRACT AND SAID 44.9 ACRE TRACT, A DISTANCE OF 19.92 FEET TO THE **POINT OF BEGINNING**, CONTAINING AN AREA OF 0.036 ACRES (1,576 SQ. FT.) OF LAND, MORE OR LESS.


10/24/12
HAL B. LANE III
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 4690
BURY & PARTNERS, INC.
ENGINEERS AND SURVEYORS
922 ISOM ROAD, SUITE #100
SAN ANTONIO, TEXAS 78216





Bury Partners

877 Texas Road, Suite 301
5601 Alvin, TX 78016
Tel. (214) 655-8970 Fax (214) 655-3529
TREC Registration Number T-1048
BuryPartners-SL, Inc. © Copyright 2012

SKETCH TO ACCOMPANY DESCRIPTION OF

0.036 ACRES OF LAND SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 44.9 ACRE TRACT RECORDED IN VOLUME 831, PAGE 49, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND OUT OF OLD CITY LOT 41, RANGE 3, DISTRICT 3, NCB 8704 IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS

WHATABURGER

DATE: 09/14/12 DRAWN BY: MTH FILE: H:\103993\50035\103993-50035ex2.dwg FN NO. 103993-50035-2 PROJECT No. R0103993-50035

Attachment II
