AZJ
02/19/2015
Item No. 8

AN ORDINANCE 2015-02-19-0109

DECLARING AS SURPLUS AND AUTHORIZING THE DISPOSITION OF A 0.56 ACRE IMPROVED TRACT OF LAND IN NCB 11250 OWNED BY THE CITY OF SAN ANTONIO LOCATED AT 915 CASTROVILLE ROAD IN COUNCIL DISTRICT 5 AND AUTHORIZING ITS SALE TO TCP CAPITAL PARTNERS, LLC FOR $150,000.00.

* * * * *

WHEREAS, the property is located at 915 Castroville Road within the parking lot of the Las Palmas Shopping Center and was originally donated to the City in 1967 by Las Palmas, Inc. for use as a public library; and

WHEREAS, the library was relocated in 1994 to 515 Castroville Road and the property has since been occupied by offices related to the Department of Metro Health; and

WHEREAS, the offices related to the Department of Metro Health have been relocated; and

WHEREAS, TCP Capital Partners, LLC, the owner of Las Palmas Shopping Center, has submitted a bid to buy the property for expansion of the existing shopping center; and

WHEREAS, city staff recommends that this property be declared surplus to the needs of the City and the City sell the property for redevelopment to TCP Capital Partners, LLC; **NOW THEREFORE,**

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:

> Being a 0.56 of an acre tract of land out of NCB 11250, Lot 1, Las Palmas Addition Unit No. 2 as recorded in Volume 3850 Page 101 of the Deed and Plats records of Bexar County, Texas and as more fully described on **Attachment I**

SECTION 2. The City Council, finding that the offer of $150,000.00 is fair market value of the property, authorizes and directs the City Manager or her designee, severally, to execute and deliver on behalf of the City a sales contract and/or a deed without warranty conveying the above-described property to TCI Capital Bidders, LLC in substantially the same form as shown on **Attachment II**.

SECTION 3. The City Manager and her designee, severally, should take all actions necessary or convenient to effectuate the transaction, including executing all necessary or convenient instruments and agreements.

SECTION 4. Funds generated by this ordinance will be deposited into Fund 28039000, Internal Order 131000002271 and General Ledger 4502230.

SECTION 5. 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 6. 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 7. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to become immediately effective under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this **19th** day of **February**, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for **Martha G. Sepeda, Acting City Attorney**

Agenda Item:	**8 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21)**
Date:	02/19/2015
Time:	10:27:04 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the disposition and sale of a 0.56 acre improved tract of land located at 915 Castroville Road, in Council District 5, to TCP Capital Partners, LLC for $150,000.00 for economic and commercial development. [Peter Zanoni, Deputy City Manager; Mike Etienne, Director, EastPoint & Real Estate Services Office]
Result:	Passed

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

ATTACHMENT I

GONZALEZ DE LA GARZA

Legal Description

Being a 0.56 of an acre tract of land out of Lot 1, N.C.B. 11250, Las Palmas Addition Unit No. 2, according to the Plat or Map recorded in Volume 3850, Page 101, Deed and Plats Records of Bexar County, Texas; said 0.56 of an acre being more particularly described as follows;

COMMENCING, at an "X" on concrete found, being the Southeast corner of Lot 2, N.C.B. 11250, of said Las Palmas Addition Unit No. 2, and the North right of way of Castroville Road (having 60.0' ROW), for the Southwest corner and POINT OF BEGINNING of the tract herein described;

THENCE, N 06°04'07" E, leaving the North right of way line of said Castroville Road a distance of 175.02 feet to a 3/8 inch Iron Rod found for the Northwest corner of the tract herein described;

THENCE, N 75°01'41" E, a distance of 149.72 feet to a 60 "D" Nail found for the Northeast corner of the tract herein described;

THENCE, S 05°54'39" W, a distance of 174.71 feet to a Mag Nail with washer found at the North right of way line of said Castroville Road for the Southeast corner of the tract herein described;

THENCE, S 74°58'58" W, along the North right of way line of said Castroville Road a distance of 150.28 feet to the POINT OF BEGINNING; CONTAINING 24490 square feet, 0.56 of an acre on land more or less;

BASIS OF BEARINGS ON THIS SURVEY ARE AS PER THE TEXAS STATE PLANE COORDINATE SYSTEM – SOUTH CENTRAL ZONE (4204) NAD83 (03)

Oscar Hernandez, R.P.L.S.
R.P.L.S. Number 5005 1-27-20

STATE OF TEXAS REGISTERED OSCAR HERNANDEZ 5005 PROFESSIONAL LAND SURVEYOR

115 East Travis St. Suite 1120 Milam Building San Antonio, Tx 78205
Off#: 210-208-9400 Fax#: 210-208-9401

ATTACHMENT II

Real Estate Sales Contract

(915 Castroville)

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Authorizing Ordinance:

Authority for Negotiated Sale: Local Government Code § 272.001 (b)(6)

Seller: City of San Antonio

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

Phone: (210) 207-7370

Fax: (210) 207-7888

Email: marcia.shelforlandi@sanantonio.gov

Type of Entity: Texas municipal corporation

Seller's Counsel: Audrey Zamora

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

Phone: 210-207-2094

Email: audrey.zamora@sanantonio.gov

Buyer: TCP Capital Partners, LLC, and or assigns
Robert B. Neely, Chairman

Address: 500 North Akard Street
Suite 3240
Dallas, Texas 75201

Phone: (214) 389-8910

Fax: (214) 389-8901

Email: rneely@tcprealty.com

Type of Entity: Limited Liability Company

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

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

Phone: (210) 299-3704

Fax: (210) 299-4731

Email: james@brownortiz.com

Property: 0.56 of an acre tract out of Lot 1, N.C.B. 11250, Las Palmas Addition Unit No. 2, per Deed conveyed to the City of San Antonio recorded in Volume 5805, Page 742, Deed Records of Bexar County, Texas and more fully described on **Exhibit A**.

Title Company: Alamo Title Company

Address: 18618 Tuscany Stone
Suite 240
San Antonio, Texas 78258

Phone: (210) 490-1313

Fax: (210) 490-1312

Email: chris.varley@alamotitle.com

Underwriter: Chris Varley

Purchase Price: $150,000.00

Earnest Money: $2000.00

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 Deadline	30	Days after the Effective Date
1.02.	Delivery of Title Commitment	10	Days after the Effective Date
1.03.	Buyer's Objection Deadline	20	Days after the receipt of (i) Title Commitment, (ii) legible copies of instruments referenced in the Title Commitment.
1.04.	Seller's Cure Notice Deadline	35	Days after Buyer's Objection Deadline
1.05.	Buyer's Termination Deadline	30	Days after Seller's Cure Notice Deadline
1.06.	End of Inspection Period	30	Days after the Effective Date

1.07.	Closing Date	10 Days after the expiration of the Inspection Period or such earlier time mutually agreed upon by both parties
1.08.	Closing Time	10:00 A.M.

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

For a definition of "Permitted Exceptions" see section 6.04. ("The matters that Buyer either approves or is deemed to have approved ...")

2. Closing Documents.

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

Deed Without Warranty (showing no exceptions or reservations other than those referenced in Sections 4 and 6 below, and Permitted Exceptions)

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

Deceptive Trade Practices Act waiver

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.

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

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

4.03. The deed from Seller to Buyer shall contain the following reservation:

Not later than January 15, 2016, Grantee must apply for all permits required for renovation (which may or may not include partial demolition) of the existing structure on the Property. Not later than 18 months after receipt of the last of the permits Grantee must, other than for ordinary punch-list items, complete such renovations.

If Grantee fails to timely apply for the permits, fails to timely and substantially complete the renovations, or fails to timely have the building occupied on or before July 31, 2016, Grantor may (subject to the limitations contained herein) 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 use commercially reasonable due diligence to pursue obtaining permits that are applied for. Upon Grantor's filing the Notice of Re-Entry, title shall automatically revert back from Grantee to Grantor. After filing the notice, Grantor may, but need not, move into possession of the Property and evict Grantee. Grantor's failure to move into possession or evict Grantee shall not impair the effectiveness of filing the notice.

Force Majeure clause deleted by CoSA

As a condition of its right to file a Notice of Re-Entry, Grantor must tender to Grantee the Purchase Price under this contract at the time of filing the Notice of Re-Entry. A permissible way to tender the Purchase Price is to file a declaratory judgment suit to affirm Grantor's title and to deposit the Purchase Price into the registry of the court.

If Grantor has not filed a Notice of Re-Entry within the earlier of (a) five years after Closing, or (b) the issuance by the City of San Antonio of the first final certificate of occupancy for any new use on the Property, its right to do so shall lapse and be of no further force or effect, and Grantee's title is thereafter secure against any attempted re-entry by Grantor. No delay by Grantor in filing the Notice of Re-Entry short of the five year deadline shall impair its right to file the Notice of Re-Entry.

4.04. The deed from Seller to Buyer will have the following reservation:

This conveyance is made subject to the same covenants and restrictions as described and per Deed conveying the property to the City of San Antonio, recorded in Volume 5805, Page 742, Deed Records of Bexar County, Texas. However, Grantor acknowledges that by conveying the Property to Grantee, any and all benefits created by the covenants and restrictions described above transfer with the Property to the Grantee.

Without the express prior written approval of The City of San Antonio, signed by a the City Manager or her designee, Grantee shall not undertake or permit to be undertaken any of the following actions (the following shall not apply to ordinary repairs of the building or building elements):

- *increase or decrease the height of the building*
- *adversely affect the structural integrity of the building*
- *make any changes or alterations in the outward appearance or condition of the building, including windows or decorative elements, including the alteration, partial removal, construction, remodeling, other physical or structural change, and any change in color or surfacing.*
- *erect anything which would prohibit the façades from being visible from street level, except for a temporary structure during any period of approved alteration or restoration*
- *erect, construct, or move anything that would encroach on the open land area surrounding the building or interfere with a view of the building or be incompatible with the historic or architectural character of the building*

- *subdivide or convey the building and said grounds except together as a unit,*

In the event of a violation of these covenants, in addition to any remedy now or hereafter provided by law, the City of San Antonio may, following reasonable notice to Grantee, institute suit to enjoin said violation and to require, at the expense of Grantee, the restoration of the Property to the condition and appearance required under these covenants. This covenant shall extinguish automatically within five (5) years of the Closing Date or upon designation of the property as a historic landmark or part of a historic district, by the City of San Antonio.

5. Earnest Money.

5.01. Buyer shall deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline. Title Company shall execute and deliver to both Buyer and Seller an earnest money receipt substantially in the form attached at the end of this agreement.

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

6. Title and Survey.

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

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

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

6.04. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and

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

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

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

6.07. *Asbestos Survey*. Seller acknowledges receipt of an asbestos survey from the City.

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. Seller may request copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors but shall be responsible for and accept any cost of preparing such reports for Seller's use or review. Buyer may not unreasonably withhold its permission for providing such reports.

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

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

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

a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation or other cost or expense associated with 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 the Closing Date, 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. Nothing in this paragraph shall prevent the Buyer from applying for and obtaining a demolition permit 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 Buyer's discovery of such casualty or Buyer's 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 discovery by Buyer of such condemnation action or 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 at closing.

e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing. If Buyer does not close for want of indefeasible title, the earnest money shall be returned to Buyer.

11.02. *Transaction Costs.*

a. Buyer will pay:

i. the additional premium for the "survey/area and boundary deletion" in the Title Policy; and

ii. Buyer's expenses and attorney's fees.

b. Seller will pay:

i. the basic charge for the Title Policy;

ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Buyer's expense; and

iii. Seller's expenses and attorney's fees.

c. Buyer and Seller will each pay half of:

i. the escrow fee charged by Title Company;

ii. the costs to prepare the deed;

iii. the costs to record all documents to cure Title Objections agreed to be cured by Seller;

iv. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;

vi. the costs to obtain certificates or reports of ad valorem taxes; and

vii. the costs to deliver copies of the instruments described in article 1;

d. *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.

e. *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.

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

12. Default and Remedies.

12.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may 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 enforce specific performance of Seller's obligations under this contract.

12.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

a. *Termination.* Seller may 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. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will reimburse Seller for Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract within 10 days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.

b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to only the Permitted Exceptions.

13. Prohibited Interests in Contracts.

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

(i) a City officer or employee;

(ii) his parent, child or spouse;

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

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

13.02. Buyer warrants and certifies as follows:

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

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

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

14. Dispute Resolution.

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

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

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

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

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

14.06. Mediator fees must be borne equally.

14.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

15. Miscellaneous Provisions.

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

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

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

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

15.05. *Modification*.

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

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

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

15.07. *Notices*. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses

set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after 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 effective only on 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 and the Assistant Director for EastPoint and Real Estate Services Department may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

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

16. Public Information.

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

18. Brokers' Commission.
Seller must pay a commission according to an agreement between Seller and Seller's Broker. Each party represents to the other that no other commissions are due in respect of this transaction. In case of a dispute over the amount or allocation of the commission, the Title Company may nevertheless close the transaction and deliver the deed to Buyer, holding open only the distribution of proceeds to Seller.

Seller:	**Buyer:**
City of San Antonio, a Texas municipal corporation	TCP Capital Partners, LLC, a Texas Limited Liability Company
By:_____	By:_____
Printed Name:_____	Printed Name: Robert B. Neely
Title:_____	Title: Chairman
Date:_____	Date: 1/14/15

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: TCP Capital Partners, LLC

Address: 500 North Akard Street
Suite 3240
Dallas, Texas 75201

Property: 0.56 of an acre tract out of Lot 1, N.C.B. 11250, Las Palmas Addition Unit No. 2, per Deed conveyed to the City of San Antonio recorded in Volume 5805, Page 742, Deed Records of Bexar County, Texas

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

Alamo 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: TCP Capital Partners, LLC

Address: 500 North Akard Street
Suite 3240
Dallas, Texas 75201

Property: 0.56 of an acre tract out of Lot 1, N.C.B. 11250, Las Palmas Addition Unit No. 2, per Deed conveyed to the City of San Antonio recorded in Volume 5805, Page 742, Deed Records of Bexar County, Texas

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

Amount: $2,000.00

Alamo Title Company

By:_____

Printed
Name:_____

Title:_____

Date:_____

Exhibit A: Property Description

0.56 of an acre tract out of Lot 1, N.C.B. 11250, Las Palmas Addition Unit No. 2, per Deed conveyed to the City of San Antonio recorded in Volume 5805, Page 742, Deed Records of Bexar County, Texas, and more fully described as Lot 5, NCB 11250, Resubdivision Plat of Las Palmas Subdivision, City of San Antonio, Bexar County, Texas as recorded in Volume 5700, Page 234, in the Official Public Records of Bexar County, Texas.

Exhibit B: Representations

Representations; Environmental Matters

A. Seller's Representations to Buyer

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

1. *Authority.* Seller is a Texas 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 or issued any 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 or issued any notices 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 or issued any notices of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

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

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the

Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

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

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

B. "As Is, Where Is"

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

The Property Will Be Conveyed To Buyer In An "As Is, Where Is" Condition, With All Faults. All Warranties Are Disclaimed.

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

C. Environmental Matters

After Closing, As Between Buyer And Seller, The Risk Of Liability Or Expense For Environmental Problems, Even If Arising From Events Before Closing, Will Be The Sole Responsibility Of Buyer, Regardless Of Whether The Environmental Problems Were Known Or Unknown At Closing. Once Closing Has Occurred, Buyer Indemnifies, Holds Harmless, And Releases Seller From Liability For Any Latent Defects And From Any Liability For Environmental Problems Affecting The Property, Including Liability Under The Comprehensive Environmental Response, Compensation, And Liability Act (CERCLA), The Resource Conservation And Recovery Act (RCRA), The Texas Solid Waste Disposal Act, Or The Texas Water Code. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Seller's Own Negligence Or The Negligence Of Seller's Representatives. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Theories Of Products Liability And Strict Liability, Or Under New Laws Or Changes To Existing Laws Enacted After The Effective Date That Would Otherwise Impose On Sellers

In This Type Of Transaction New Liabilities For Environmental Problems Affecting The Property.

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

D. Buyer's Representations to Seller

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

1. *Authority.* Buyer is 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:	TCP Capital Partners, LLC
Grantee's Mailing Address:	500 North Akard Street Suite 3240 Dallas, Texas 75201
Consideration:	$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.
Property:	All of the following real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas, being described as follows: 0.56 of an acre tract out of Lot 1, N.C.B. 11250, Las Palmas Addition Unit No. 2, per Deed conveyed to the City of San Antonio recorded in Volume 5805, Page 742,

Deed Records of Bexar County, Texas.

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:

Not later than January 15, 2016, Grantee must apply for all permits required for renovation (which may or may not include partial demolition) of the existing structure and for new construction (which may or may not include portions of the existing structure) on the Property. Not later than 18 months after receipt of the last of the permits, (a) Grantee must, other than for ordinary punch-list items, complete such.

If Grantee fails to timely apply for the permits, fails to timely and substantially complete the demolition and/or new construction, or fails to timely have the building occupied on or before July 31, 2016, 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. Upon Grantor's filing the Notice of Re-Entry, title automatically passes back from Grantee to Grantor. After filing the notice, Grantor may, but need not, move into possession of the Property and evict Grantee. Grantor's failure to move into possession or evict Grantee does not impair the effectiveness of filing the notice.

As a condition of its right to file a Notice of Re-Entry, Grantor must tender to Grantor the Purchase Price under this contract within 30 days after filing the notice. A permissible way to tender the Purchase Price is to file a declaratory judgment suit to affirm Grantor's title and to deposit the Purchase Price into the registry of the court.

If Grantor has not filed a Notice of Re-Entry within the earlier of (a) five years after Closing, or (b) the issuance by the City of San Antonio of the first final certificate of occupancy for any use on the Property, its right to do so lapses, and Grantee's title is thereafter secure against any attempted re-entry by Grantor. No delay by Grantor in filing the notice short of the five years impairs its right to file the notice.

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

C. Restrictions:

(a) All covenants and restrictions affecting the Property, including the same covenants and restrictions as described and per Deed conveying the property to the City of San Antonio, recorded in Volume 5805, Page 742, Deed Records of Bexar County, Texas. However, Grantor acknowledges that by conveying the Property to Grantee, all benefits created by the covenants and restrictions described above transfer with the Property to the Grantee.

(b) Without the express prior written approval of The City of San Antonio, signed by a fully authorized representative thereof, Grantee shall not undertake or permit to be undertaken any of the following actions(the following shall not apply to ordinary repairs of the building or building elements)::

- *increase or decrease the height of the building*
- *adversely affect the structural integrity of the building*
- *make any changes or alterations in the outward appearance or condition of the building, including windows or decorative elements, including the alteration, partial removal, construction, remodeling, other physical or structural change, and any change in color or surfacing.*
- *erect anything which would prohibit the façades from being visible from street level, except for a temporary structure during any period of approved alteration or restoration*
- *erect, construct, or move anything that would encroach on the open land area surrounding the building or interfere with a view of the building or be incompatible with the historic or architectural character of the building*
- *subdivide or convey the building and said grounds except together as a unit,*

In the event of a violation of these covenants, in addition to any remedy now or hereafter provided by law, the City of San Antonio may, following reasonable notice to Grantee, institute suit to enjoin said violation and to require, at the expense of Grantee, the restoration of the Property to the condition and appearance required under these covenants. This covenant shall extinguish automatically within five (5) years of the

Closing Date or upon designation as a historic landmark or part of a historic district, by the City of San Antonio.

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

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.

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

Grantor:

City of San Antonio, a Texas municipal corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

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

Approved As To Form:

By:_____
City Attorney

The State of Texas }

County of Bexar }

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

Date:_____

_____
Notary Public, State of Texas

My Commission Expires:_____

After Recording, Return To:

_____

_____

_____