

ORDINANCE 2020-10-29-0759

**AUTHORIZING A SALE OF 3.115 ACRES OF 12.39 ACRES OF CITY-OWNED DECOMMISSIONED SOUTHEAST SERVICE PROPERTY IN CITY COUNCIL DISTRICT 3 AND APPROVING A DEVELOPMENT AGREEMENT WITH ESPADA REAL ESTATE SERVICES, LLC FOR A FEE OF \$1,763,962.**

\* \* \* \* \*

**WHEREAS**, the City of San Antonio ("City") currently owns approximately three acres of the surplus property located at 7402 S. New Braunfels, formerly the decommissioned Southeast Service Center site, that contained a Solid Waste administration building in Council District 3 as shown in the attached and incorporated **Exhibit A**; and

**WHEREAS**, in October 2019 through Ordinance #2019-10-03-0806, City Council declared the entire 12.39 acres land as surplus and approved the sale and redevelopment of approximately 9.38 acres of the land to Franklin Development Properties, Ltd. who is constructing a 292-unit multi-family rental housing development to provide affordable and Workforce Housing as part of the 2017 Neighborhood Improvements Bond Program; and

**WHEREAS**, on September 11, 2019, Planning Commission approved the disposition of the 12.39 acre decommissioned Southeast Service Center as surplus property through Resolution No. 19-6364 and Neighborhood & Housing Services Department utilized broker services under the Texas Local Government Code Chapter 253 to advertise the subject site for sale; the approximate 3.115 acre was advertised for at least 30 days on a multiple-listing service and Espada Real Estate Services, LLC ("Espada Real Estate") submitted the best use for the property that will complement the adjacent affordable housing development; and

**WHEREAS**, if the request is approved, Espada Real Estate is proposing to build a Medical/Office Building on the site pursuant to a development agreement attached the real estate contract, both attached hereto and incorporated as **Exhibit B**; and

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

**SECTION 1.** The City Manager and designee is hereby authorized to sell approximately 3.115 acres of land located 7402 S. New Braunfels at the corner of S.E. Military and S. New Braunfels in Council District 3 to Espada Real Estate Services, LLC for a sales price of \$1,763,962 payable to the City and deposited into the City's Affordable Housing Fund pursuant to a real estate contract and development agreement attached hereto and incorporated as **Exhibit B**.

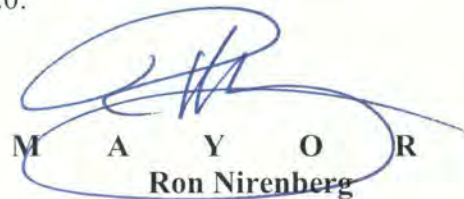
**SECTION 2.** The City Manager and/or designee(s), severally, are authorized to do all things necessary or convenient to sell the property according to the requirements of law.

**SECTION 3.** Funds generated by this ordinance will be deposited in Fund 29623000, Internal Order 257000000004, and General Ledger Account 4502280.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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 5.** 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 29<sup>th</sup> day of October, 2020.

  
M A Y O R  
Ron Nirenberg

**Attest:**

  
Tina J. Flores, City Clerk

**Approved As To Form:**

  
Andrew Segovia, City Attorney





## City of San Antonio

### City Council

October 29, 2020

**Item: 19**

**Enactment Number:**

**File Number: 20-5972**

**2020-10-29-0759**

Ordinance approving a Contract for Sale of Land for 3 acres of the decommissioned Southeast Service Center at 7402 S. New Braunfels to Espada Real Estate Services, LLC for \$1,763,962. [Lori Houston, Assistant City Manager; Verónica R. Soto, Director Neighborhood and Housing Services]

Councilmember John Courage made a motion to approve. Councilmember Jada Andrews-Sullivan seconded the motion. The motion passed by the following vote:

**Aye:** 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

VS  
10/29/20  
Item No. 19

## **EXHIBIT A**

EXHIBIT A

3 acres, 7902 S. New Braunfels Ave, San Antonio, TX (SE corner of SE Military and S. New Braunfels Ave), NCB 10934 Blk Lot 45



VS  
10/29/20  
Item No. 19

## **EXHIBIT B**

## Exhibit B

### Real Estate Option and Sales Contract

(3 acres - 7402 S. New Braunfels Ave. - formerly SE Service Center)

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**Authorizing** 2020- \_\_\_\_\_

**Ordinance:**

**Authority for Sale:** Texas Local Government Code 253.014;  
272.001

**Seller:** City of San Antonio

**Address:** 1400 S. Flores, San Antonio, Texas  
78204 (Attention: Deborah Bell, Sr.  
Real Estate Specialist, NHSD)

**Phone:** 210-207-5460



## Exhibit B

**Email:** deborah.bell@sanantonio.gov

**Seller's Counsel:** Victoria Shum

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

**Phone:** 210-207-8994

**Email:** victoria.shum@sanantonio.gov

**Buyer:** Espada Real Estate, LLC and/or its assignee

**Address:** 1160 E. Commerce St., Suite 200  
San Antonio, TX 78205

**Phone:** 210-905-0509

**Email:** bconlin@esparadarealestate.com

**Property:** Being 3.115+/- acre tract of land out of a 12.499 acre tract called Lot 46,  
New City Block 10934, Southeast Service Center, in the City of San  
Antonio, Bexar County, Texas

**Title Company:** Chicago Title Company

**Address:** Attention: Doug Becker  
15727 Anthem Parkway, Suite 210  
San Antonio, Texas 78249

**Phone:** 210-482-3600

**Email:** Doug.becker@ctt.com

**Seller's Broker:** Providence Commercial Real Estate Services Inc. (210) 601-1919  
Dan Gostylo, dan@pcres.com

**Purchase Price:** One Million Seven Hundred Sixty Three Thousand Nine Hundred Fifty  
Seven 00/100 Dollars (\$1,763,957)

**Earnest Money:** Twenty-Five Thousand 00/100 Dollars (\$25,000.00)

**Option to Extend Fee:** Five Thousand 00/100 Dollars (\$5,000.00) per extension

**Independent  
Consideration:** Five Hundred 00/100 Dollars (\$500.00)



## Exhibit B

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

**Survey Category:** n/a

**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 national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1.01.	Earnest Money Deadline	3	Business days after the Effective Date
1.02.	Option Extension Deadline	7	Days prior to the expiration of the Inspection Period
1.03.	Delivery of Title Commitment	15	Days after the Effective Date
1.04.	Delivery of Survey	5	Days after the Effective Date
1.05.	Delivery of legible copies of instruments referenced in the Title Commitment	10	Days after the delivery of Title Commitment
1.06.	Delivery of Seller's records as specified in <b>Exhibit C</b>	10	Days following request by Buyer
1.07.	Buyer's Objection Deadline	10	Days after the receipt of Title Commitment and legible copies of instruments referenced in the Title Commitment
1.08.	Seller's Cure Notice Deadline	20	Days after Buyer's Objection Deadline
1.09.	Buyer's Termination Deadline	10	Days after Notice of Cure Deadline

## Exhibit B

- |                         |  |
|-------------------------|--|
| 1.10. Inspection Period | The period of time commencing on the Effective Date and ending at 5:00 PM on the date that is 150 days after the Earnest Money Deposit deadline, subject to any valid extension. |
| 1.11 Closing Date       | 30 Days after the expiration of the Inspection Period or such time mutually agreed upon in writing by both parties.  |

The above deadlines may be altered by the mutual agreement of the parties in writing. The Director of Neighborhood & Housing 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
- The Title Policy
- Such other documents as the Title Company may reasonably require to consummate this transaction

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

- Evidence of Buyer's authority to consummate this transaction
- Purchase Price
- Executed Development Agreement, attached hereto and incorporated as **Exhibit F**

## Exhibit B

Such other documents as the Title Company may reasonably require to consummate this transaction

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 D**.

### 3. Exhibits.

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

Exhibit A—Property Description

Exhibit B—Representations

Exhibit C—Notices

Exhibit D—Form of Deed

Exhibit E—Access Conditions

Exhibit F—Development Agreement

### 4. Purchase and Sale of Property.

Subject to the terms and provisions of this Agreement, Seller will convey the Property to Buyer, and Buyer will purchase the Property from Seller. The purchase and sale includes (a)(i) all buildings, fixtures, structures and improvements thereon; (ii) any strips or gores between the Property and all abutting properties; (ii) all roads, alleys, rights-of-way, easements, streets, and ways adjacent to or serving the Property and rights of ingress and egress thereto, whether surface, subsurface or otherwise; (iii) and land lying in the bed of any street, road, or access way, opened or proposed in front of, at a side of or adjoining the Property, to the centerline of such street, road or access way; and (b) all of Seller's rights, titles, and interests, if any, in and to (i) all mineral interests of any kind or character pertaining to the Property; (ii) all water rights of any kind or character pertaining to the Property; (iii) all governmental or quasi-governmental permits, approvals, authorities, licenses, consents and bonds, if any, of any kind or character pertaining to the Property, including, without limitation, development rights, grandfathered or vested rights, and other governmental permits or approvals regarding the development and improvement of the Property; (iv) all permits, contracts, drainage easements, and rights of any kind or character to receive utilities services for the Property; and (v) all other transferable rights, privileges and appurtenances belonging or in any way pertaining to the Property.



## Exhibit B

Buyer and Seller shall enter into a Development Agreement, attached hereto and incorporated as **Exhibit F**, which shall survive Closing.

The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. Purchase Price is calculated on the basis of \$13 per square foot of total area and price may be adjusted based on the latest survey obtained under Section 6.

### **5. Earnest Money and Option to Extend.**

5.01 *Earnest Money.* 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. The entire Earnest Money shall be applied towards the Purchase Price at closing, or shall be otherwise held and disbursed by the Title Company as herein provided.

5.02 *Investment Option.* 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.

5.03 *Option to Extend.* Seller grants Buyer the unrestricted right to extend the Inspection Period for 30 days up to three times by (i) providing Seller written notice of its intent to exercise its Option to Extend on or before the Option Extension Deadline and (ii) delivering to the Title Company the Option to Extend Fee on or before the Option Extension Deadline, parts (i) and (ii) referred herein as the "Option Conditions". If Buyer fails to comply with the Option Conditions within the time prescribed, the Inspection Period will not be extended. The Option to Extend Fee will not be refundable to Buyer (except in the event of a default by Seller or as otherwise provided in this Agreement), but shall be applied against the Purchase Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

### **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.



## Exhibit B

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. The Title Commitment must show Seller as the record title owner of the Land. "Title Policy" means an standard form of Texas Owner's Policy of Title Insurance issued by Title Company, as agent for Underwriter, in the amount of the Purchase Price and in conformity with the last Title Commitment delivered to and approved by Buyer, insuring Buyer's fee simple title to the Land as good and indefeasible subject to the terms of the Title Policy and the exceptions specified in it.

6.03. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.04. *Delivery of Title Commitment; Survey.* Seller must deliver the Title Commitment by the deadline stated in section 1. If the Property is out of a larger tract, the Commitment is not considered received by the Buyer for the purposes of this contract until the description of the Property has been provided by the Survey and the Commitment has been issued pertaining only to the Property as so described. At any time during the Inspection Period (as the same may be extended), Buyer may obtain, at Buyer's expense, a current survey of the Land, in a form that substantially complies with the Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey or such other form as Buyer may elect (the "Survey") prepared by a surveyor selected by Buyer. The Survey shall be certified to Seller, Buyer and Title Company.

6.05. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the 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 Title Commitment to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline (other than the Mandatory Cure Items). The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions."

6.06. *Seller's Timely Notice.* 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 and the Option to Extend Fee (if any) shall be returned

## Exhibit B

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.

6.07. *Mandatory Cure Items.* Despite any other provision of this agreement, all liquidated liens disclosed in the Title Commitment (or any subsequent commitment); (ii) all other exceptions disclosed in the Title Commitment (or any subsequent commitment) arising on or after the Effective Date of this Agreement and are not attributable to actions by Buyer; and (iii) all Buyer Objections that Seller agrees in writing to cure at or prior to Closing (collectively, the "Mandatory Cure Items"), must be satisfied, cured, or removed by Seller, at Seller's sole cost and expense, at or before Closing.

6.08. *Cross-Collateralization.* If the Property is subject to liens securing indebtedness that is also secured by liens on land other than the Property, and if the amount of the indebtedness exceeds the Purchase Price less Seller's reasonably estimated closing costs, then the following provisions shall apply: During the Inspection Period, Seller must obtain from the lienholder a binding written agreement ("Release Agreement") for the benefit of Seller and Buyer under which the lienholder agrees to provide a partial release of liens in conjunction with the Closing upon receipt of an amount that is equal or less than the Purchase Price less Seller's reasonably estimated closing costs. The Inspection Period will be extended for not more than 90 days if necessary to obtain a Release Agreement. If the Release Agreement is not obtained within the 90 days, Buyer may terminate this Agreement and recover the Earnest Money by giving notice to Seller at any time thereafter before receiving the Release Agreement.

### 7. Inspection Period.

7.01. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to compliance with the provision of **Exhibit E** attached hereto.

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.

### 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.



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### 9. Condition until Closing; Cooperation.

9.01. *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 Agreement if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen 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.

9.02. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

9.03. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

### 10. Termination.

10.01. 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. Seller retains independent consideration, except in the event of a Seller Default.

10.02. 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. Seller retains the independent consideration.

### 11. Allocation of Closing Costs.

11.01. Buyer will pay:

- i. one-half of the escrow fee charged by Title Company;
- ii. the costs to obtain a new survey and the additional premium for the "survey/area and boundary deletion" in the Title Policy

## Exhibit B

- iii. the costs to deliver copies of the instruments described in Section 2; and
- iv. Buyer's expenses and attorney's fees.
- a. Seller will pay:
  - i. the basic charge for the Title Policy;
  - ii. one-half of the escrow fee charged by Title Company;
  - iii. certificates or reports of ad valorem taxes;
  - iv. the costs to record the documents required for the Title Objections to be cured by Seller;
  - v. Seller's expenses and attorney's fees.

11.02. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date according to Section 26.11 of the Texas Tax Code.

11.03. *Income and Expenses.* Seller represents to Buyer that there is no income, nor any expenses, pertaining to operation of the Property, nor will there be any prior to the Closing Date.

11.04. *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.

11.05. *Brokers' Commissions.* Seller must pay the Commission to: a) Area Real Estate a commission of 3% of the Purchase Price and to b) Providence Commercial Real Estate Services, Inc. a commission of 3% of the purchase price. Each party represents to the other that no other commissions are due in respect of this transaction.

## 12. Closing.

12.01. *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.



## Exhibit B

- 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 and any Option to Extend Fees 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. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.
- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any lien and security interest in favor of Seller, if the sale is seller-financed.
- f. 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 is returned to Buyer.
- g. Buyer will receive at closing the basic title policy plus endorsements removing the survey exception and the exception for rights of parties in possession.

### 13. Default and Remedies.

13.01. *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 has the following remedies as Buyer's sole remedies:

- a. *Termination.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money returned to Buyer.
- b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

## Exhibit B

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

13.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by Buyer's default cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money is a reasonable forecast of just compensation to Seller for the harm that would be caused by Buyer's default.

### 14. Miscellaneous Provisions.

14.01. *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 Shall Be Governed By The Laws Of The State Of Texas.** Provided, however, the Texas conflicts of law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

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

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

14.04. *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.**

14.05. *Modification.* 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.



## Exhibit B

14.06. *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.

14.07. *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 conform to the requirement that mailings be done by 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.

14.08. *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.

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

14.10. *Mediation.* As a condition precedent to bringing any action to enforce or interpret this agreement or any aspect thereof, including an action for declaratory relief, the disputants must first submit in good faith to mediation by a mediator qualified under § 154.052, Texas Civil Practice and Remedies Code. Suit may be filed only after the sooner to occur of (i) a full day of mediation by a mediator qualified as provided above or (ii) certification by the mediator that further attempts to mediate would be fruitless. Laches, waiver, and estoppel based upon any reasonable delay relating to attempts to mediate as herein provided may not be asserted by either party hereto.

14.11. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be 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, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

14.12. *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, may alter the rights or obligations of the parties as contained in this agreement.

## Exhibit B

14.13. *Assignment.* Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer possesses, directly or indirectly, the power to direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise, and any other assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

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

14.15. *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.

14.16. *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.

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

14.18. *Administrative Agreements.* The Director of Neighborhood and Housing Service Department ("NHSD") or 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. 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



## Exhibit B

guarantee related to the outcome or approval of any application that Buyer may submit for the Property.

### 16. Prohibited Interest in Contracts.

16.01. 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.

16.02 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.

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

### 17. Public Information.

Buyer acknowledges that this instrument and all documents ancillary to it are 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.

**Seller:**  
**City of San Antonio,**  
a Texas municipal corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Buyer:**  
**Espada Real Estate, LLC**

By:  \_\_\_\_\_

Printed Name: Brent Conlin

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Title: \_\_\_\_\_

Title: Managing Partner

Date: \_\_\_\_\_

Date: 10/21/2020

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

## Exhibit B

### Title Company Acceptance of Escrow and Receipt for Contract

**Buyer:** Espada Real Estate, LLC.

**Address:** 1160 E. Commerce St, Suite 200, San Antonio, TX 78205

**Seller:** City of San Antonio

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

**Property:** Being 3.115+/- acre tract of land out of a 12.499 acre tract called Lot 46, New City Block 10934, Southeast Service Center, in the City of San Antonio, 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 a fully executed 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: \_\_\_\_\_

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### Title Company Receipt for Earnest Money

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

Amount: Twenty-Five Thousand 00/100 Dollars (\$25,000.00)

#### Chicago Title Company

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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## Exhibit B

### Exhibit A: Property Description

Being 3.115+/- acre tract of land out of a 12.499 acre tract called Lot 46, New City Block 10934, Southeast Service Center, in the City of San Antonio, Bexar County, Texas

## Exhibit B

### Exhibit B: Representations

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. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning (other than those related to the Buyer agreed rezoning), 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.

5. *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.

6. *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.

7. *Environmental.* Except for as provided in **Exhibit C, Notices**, Seller is not aware of any storage, production, transportation, disposal, treatment or release of any solid waste, hazardous waste, toxic substance, or any other pollutants or contaminants on or in the Property, and Seller has complied with all applicable local, state or federal environmental laws and regulations.

Exhibit B

Except for the Representations set forth above, Seller hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (a) the nature and condition of the property, including, without limitation, the water, soil and geology, the suitability thereof and of the property for any and all activities and uses which Buyer may elect to conduct, the existence of any environmental hazards or conditions (including but not limited to the presence of hazardous materials) or compliance with applicable environmental laws, rules or regulations; and (b) the compliance of the Property or its operation with any laws, ordinances or regulations of any governmental entity or body. Buyer acknowledges that it will inspect the Property and Buyer will rely solely on its own investigation of the Property and not on any information provided or to be provided by or on behalf of Seller. Buyer further acknowledges that the information provided and to be provided with respect to the Property was obtained from a variety of sources and Seller (1) has not made any independent investigation or verification of such information; and (2) does not make any representations as to the accuracy or completeness of such information. The sale of the Property is made on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis, and Buyer expressly acknowledges that, in consideration of the agreements of Seller, Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, title (other than the Special Warranty of Title with respect to the land) habitability, merchantability or fitness for a particular purpose with respect to the Property or any portion thereof. This disclaimer shall survive closing for a period of one (1) year.



## Exhibit B

### Exhibit C: Notices

The following reports, notices, statements, and certificates are available for delivery to Buyer within 10 days following Buyer's request:

- Raba Kistner September 2018 Phase I Report
- Aleo Environmental August 2016 Asbestos Survey

## Exhibit B

### Exhibit D: 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.**

#### DEED WITHOUT WARRANTY

**Ordinance Authorizing  
Acceptance:**

**SP No./Parcel:**

**Grantor:** City of San Antonio

**Grantor's Mailing  
Address (including  
county):** 1400 S. Flores, San Antonio, Texas 78204 (Attention:  
Director, Neighborhood & Housing Services  
Department, Neighborhood Improvement Bond (Bexar  
County)

**Grantee:**

**Grantee's Mailing  
Address (including  
county):** [To be provided]

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

**Property:** 3.115+/- acre out of 12.499 acre tract of land called Lot  
46, New City Block 10934, Southeast Service Center  
known as 7402 S. New Braunfels Avenue, San Antonio,  
Bexar County, Texas

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

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 **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 to other parties herein.

## Exhibit B

Reservations, Restrictions, Exceptions, and Conditions for Conveyance:

**A. Reservations**

None.

**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 [ ] of the Deed Records, 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.

**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 deed is neither ready nor suitable to be signed.**



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THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me 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: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

**After recording, please return to:**

City of San Antonio  
1400 S. Flores  
San Antonio, Texas 78204  
(Attention: Director, Neighborhood & Housing Services Department, Neighborhood Improvement Bond)

## Exhibit B

### Exhibit E: Access Conditions

#### 1. Feasibility Studies and Inspections.

(a) Commencing on the Effective Date of the Agreement and continuing until the earlier to occur of (i) termination of the Agreement, or (ii) the Closing under the Agreement (the "**Access Period**"), Buyer, subject to the limitations below, and its representatives and agents shall have right to access the Property at reasonable times in order to conduct engineering studies, environmental studies, soil tests, and any other inspections and non-invasive tests that Buyer may deem necessary or advisable, all at Buyer's sole risk, costs and expense. Buyer will not conduct any intrusive inspections or invasive tests without obtaining Seller's prior written consent, which will not be unreasonably withheld, conditioned or delayed. For the purposes herein, the phrases "intrusive inspections" and "invasive tests" shall refer to tests and inspections which result in more than de minimus levels of damage to or immaterial disturbance of the surface of the real property or any portion of the improvements located thereon. For purposes hereof, Buyer and Seller agree that a "Phase I Environmental Site Assessment" shall not be an intrusive test that will require Seller's prior written consent, provided that the consultant only engages in a visual assessment of the Property for signs of possible contamination, and that geotechnical studies or inspections will not require Seller's prior written consent. Any testing or activities associated with a Phase II Environmental Site Assessment shall require Seller's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

(b) Prior to entering the Property at any time, Buyer must provide Seller with at least 24 hours prior notice (which may be given via telephone or electronic mail). Seller shall have a right to have one of its agents accompany Buyer during any activities performed by Buyer on the Property.

(c) If Buyer's activities discover any preexisting environmental contamination on the Property not covered by **Exhibit B**, Buyer shall not disclose same to Seller or any third party unless Buyer is required to do so by a court of competent jurisdiction, subpoena or other legal obligation, except that the foregoing obligation of non-disclosure and confidentiality shall not apply to matters discovered that constitute an imminent threat of death or severe bodily injury. Buyer shall provide Seller with copies of all non-confidential third-party inspections and reports at Seller's request, provided that such inspections and reports shall be delivered to Seller on an AS-IS, WITH ALL FAULTS basis, and Buyer makes no representations or warranties whatsoever (express or implied) as to the content or accuracy of same.

2. Buyer's Responsibilities. In conducting any inspections, tests, investigations or studies of the Property, Buyer and its agents and representatives shall (i) not injure or otherwise cause bodily harm to Seller, or its agents, guests, invitees, contractors and employees; (ii) comply with all applicable laws; (iii) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (iv) if closing does not occur, promptly repair any damage to the Property (including the subsurface thereof) resulting solely and directly from the entry by Buyer or its agents, employees, contractors and representatives or from any such inspections, tests, investigations or studies by Buyer or its agents, and upon completion of any such activity, restore the Property to substantially the condition, or better than the condition, it



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was in prior to Buyer undertaking the activity. Buyer shall keep the Property free from any mechanics' liens, vendors liens or any other liens arising out of any work performed, materials furnished or obligations incurred by Buyer, and Buyer agrees to defend, indemnify and hold Seller harmless from and against all actual damages incurred by Seller in connection with any such lien or claim or action for liens, together with costs of suit and reasonable attorneys' fees incurred by Seller in connection therewith, SUBJECT TO ANY LIMITATIONS UNDER THE CONSTITUTION OF THE STATE OF TEXAS, BUT TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### 3. Release and Indemnity.

(a) Buyer hereby releases Seller from all claims by Buyer or its agents, contractors, employees, or invitees arising out of the entry of Buyer, its agents, contractors, employees, or invitees entry upon the Property or any inspection and/or test performed by Buyer on the Property.

(b) SUBJECT TO ANY LIMITATIONS UNDER THE CONSTITUTION OF THE STATE OF TEXAS, BUT TO THE MAXIMUM EXTENT PERMITTED BY LAW and except for matters caused solely by Seller's (and/or its agents' and representatives') gross negligence or willful misconduct, Buyer hereby indemnifies, defends and holds Seller and its shareholders, officers, directors, agents, employees and representatives harmless from and against any and all claims, causes of action, losses, costs, liabilities and/or damages (including, but not limited to, Seller's reasonable attorney's fees) related to (i) injury to person or damage to property or (ii) mechanic's and materialmen's liens, in each event arising solely out of the entry of Buyer, its agents, contractors, employees, or invitees entry upon the Property or any inspection and/or test performed by Buyer on the Property.

4. Confidentiality. Subject to the requirements of Chapter 552 of the Texas Government Code, all information (other than matters of public record or matters generally known to the public) relating to the Property that is furnished to Buyer by Seller, or obtained through inspection of the Property (the "**Confidential Information**") by Buyer, its affiliates, lenders, partners, investors, employees, tenants, partners, attorneys, accountants and other professionals or agents (Buyer and such other parties referred to herein as the "**Buyer Parties**"), will be treated by the Buyer Parties as confidential, and will not be disclosed to anyone except to Buyer Parties who agree to maintain the confidentiality of such information, and will be returned to Seller by Buyer in accordance with Section 5 below. The parties agree that the Confidential Information shall not include any information that (i) is already known to Buyer or a Buyer Party without obligation of confidentiality; (ii) is or becomes publicly known through no wrongful act by Buyer or a Buyer Party; (iii) is approved for release by Seller by written authorization from Seller; or (iv) is required to be disclosed by law or by regulatory or judicial process. Each of Seller and Buyer agree not to make any public announcements or public disclosures or communicate with any media with respect to the subject matter or terms of this Agreement, without the prior written consent of the other. The confidentiality provisions of this Section 54 shall not apply to any disclosures made by Seller or any of its affiliates or the Buyer Parties as and to the extent required by law, by court order, or in connection with any subpoena served upon such person; provided Buyer or Seller, as applicable, shall provide the other with written



## Exhibit B

notice before making any such disclosure. The terms and provisions of this Section 4 shall survive the termination of this Agreement for a period of two (2) years.

5. Return and Disclosure of Materials. In the event of a termination of this Agreement, Buyer shall promptly return all materials and information, if any, given to it by Seller or Seller's consultants during pendency of this Agreement, in the same condition as delivered to Buyer. In addition, save and except the disclosure of items related to preexisting environmental conditions discussed in Section 1 above, in the event of a termination of this Agreement, at Seller's request, Buyer shall promptly deliver to Seller (at no cost to Seller), on an AS-IS, WITH ALL FAULTS BASIS and without any representation or warranty whatsoever (express or implied) as to their accuracy or completeness, all non-confidential reports, appraisals, plans, studies, documents, written information and the like related to the physical condition of the Property which has been generated by Buyer's third party consultants, whether prior to the Effective Date or during the pendency of this Agreement in connection with Buyer's inspection of the Property.

6. Buyer Insurance Requirements. Before any entry onto the Property, Buyer or Buyer's agent performing such inspections shall provide Seller with a certificate of insurance naming Seller as an additional insured evidencing that Buyer has in place commercial general liability insurance (with policy limits of at least \$2,000,000), auto liability insurance (owned and hired) (with policy limits of at least \$1,000,000), workers' compensation insurance (with policy limits required by applicable statute) and employers liability insurance (accident and disease) (with policy limits of at least \$1,000,000).

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EXHIBIT F

DEVELOPMENT AGREEMENT

BETWEEN THE CITY OF SAN ANTONIO AND ESPADA REAL ESTATE, LLC

\_\_\_\_\_ 2020

## Exhibit B

### DEVELOPMENT AGREEMENT

#### BETWEEN THE CITY OF SAN ANTONIO AND ESPADA REAL ESTATE LLC

This Development Agreement (hereinafter referred to as this "Agreement") is made and entered into by and between the CITY of San Antonio (the "CITY"), a municipal corporation of the State of Texas, acting by and through its CITY Manager or her designee, and Espada Real Estate, LLC (hereinafter referred to as "DEVELOPER") and whom together may sometimes be referred to as the "Parties."

#### RECITALS

**WHEREAS**, pursuant to Texas Local Government Code Section 272 and Section 253.014, the City contracted with a licensed broker to sell City-owned real property described as roughly 3.115+/- acres tract of land out of a 12.499 acre tract called Lot 46, New City Block 10934, Southeast Service Center, in the City of San Antonio, Bexar County, Texas Bexar County, Texas (the "Property"); and

**WHEREAS**, as part of the consideration for the negotiated purchase price, DEVELOPER has agreed to certain conditions in developing the Property for a certain term and other considerations and obligations as further described in this Agreement;

**NOW THEREFORE**: the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

#### ARTICLE 1. AGREEMENT PERIOD

This Agreement shall commence upon the closing of the Property sale authorized by the Authorizing Ordinance and terminate upon the earlier of: (A) two (2) years from the execution date; B) termination of this Agreement as otherwise provided herein (the "Term").

#### ARTICLE 2. DEVELOPER OBLIGATIONS

- A. In consideration for the negotiated purchase price, the DEVELOPER shall during the term of this agreement:
- i. Own, hold an interest in or otherwise control the Property for the Term of this Agreement;
  - ii. Within one (1) year of the Effective Date and complete within two (2) years of the Effective Date, invest in certain real property improvements conforming to City of San Antonio-approved Brooks City Base Signage Master Plan ([https://livebrooks.com/wp-content/uploads/2017/07/BrooksDesignGuidelines\\_DevelopmentStandards\\_OPA\\_FINAL-optimized](https://livebrooks.com/wp-content/uploads/2017/07/BrooksDesignGuidelines_DevelopmentStandards_OPA_FINAL-optimized)). A standard sign template will be issued to owners upon request. Multi-tenant buildings are allowed but monument signs may not have multiple tenants listed (a single name will be used).



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- iii. During the Inspection Period, the Developer's should submit for the City's approval, a site plan and conceptual drawing for a medical office building, building signage and peripheral landscape design.
- iv. Prohibit the following businesses as tenants:
  - a) hair salons or barber shops;
  - b) gas station;
  - c) car wash;
  - d) storage units;
  - e) convenience stores;
  - f) big box store;
  - g) liquor store;
  - h) adult/sexually explicit entertainment establishments; and/or
  - i) Bar or alcohol establishment unless at least 50% of their business is in food service, etc.
- v. Make reasonable efforts to develop and obtain the following types of business as tenants:
  - a) medical office building;
  - b) medical/dental/surgery center;
  - c) coffee-shop;
  - d) health-oriented grocery stores;
  - e) boutiques;
  - f) sit-down restaurants (fast food establishments excluded); and/or
  - g) title company.

### ARTICLE 3. INTENTIONLLY LEFT BLANK

### ARTICLE 4. MONITORING

- A. On or before January 31st of each year during the Term of this Agreement DEVELOPER shall provide City's Director of Neighborhood & Housing services Department with a certification (the "Annual Certification") from an officer of DEVELOPER attesting to the following information as of the preceding December 31<sup>st</sup>:
  - i. the current tenants,
  - ii. a written certification of compliance with the terms and conditions of

## Exhibit B

the Agreement signed by an officer of DEVELOPER

- B. DEVELOPER acknowledges City is subject to the Public Information Act, which applies to information of every "governmental body" as set forth in section 552.003(1)(A) of the Texas Government Code. Public Information means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Public Information Act requires a governmental body to promptly produce public information for inspection, duplication, or both upon receipt of a written request for information from the public. City shall provide DEVELOPER notice of any third party requests for information made pursuant to the Public Information Act prior to disclosure to allow DEVELOPER to submit and argument to the Texas Attorney General for withholding such information. To that end, DEVELOPER will endeavor to submit only such limited information as is required per the agreement with City to allow City to verify DEVELOPER is meeting its requirements and obligations under this Agreement.
- C. In its efforts to comply with requests for public information under the Public Information Act, GRANTEE shall remain immune from liability under both the State of Texas and federal doctrines of sovereign immunity.

### ARTICLE 5. DEFAULT/CURE PERIOD/SUSPENSION

A. In the event DEVELOPER fails to comply with its obligations herein, such non-compliance shall be deemed a default. The CITY shall provide DEVELOPER with written notice as to the nature of the default (the "Notice of Default") and grant DEVELOPER a sixty (60) day period from the receipt of Notice of Default to cure such default (the "Cure Period"). Should DEVELOPER fail to cure the default within the Cure Period, CITY is entitled to liquidated damages equal to Four Hundred Thousand 00/100 Dollars (\$400,000.00).

In the case of default for causes beyond DEVELOPER's reasonable control, which cannot with due diligence be cured within the Cure Period, the CITY may extend the Cure Period provided that DEVELOPER shall: (1) immediately upon receipt of Notice of Default advise the CITY of DEVELOPER's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

B. If CITY is in default under this Agreement, DEVELOPER may (i) terminate this Agreement by written notice delivered to CITY, as appropriate, (ii) enforce specific performance of this Agreement, and/or (iii) enforce any other remedy available at law or in equity for such default.



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### ARTICLE 6. TERMINATION

A. The CITY shall have the right to terminate this Agreement in whole or in part should DEVELOPER fail to perform under the terms and conditions herein and fails to cure a default in accordance with Article 5 above. Such Termination may occur at any time prior to the end of the Term of this Agreement. CITY may, upon issuance to DEVELOPER of written notice (the "Notice of Termination"), terminate this Agreement and pursue any available remedies. A Notice of Termination shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In addition to the above, this Agreement may be terminated in whole or in part by the CITY with the consent of DEVELOPER in the case where the two parties shall agree upon the termination conditions, the effective date and in the case of partial termination, and the portion to be terminated.

### ARTICLE 7. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified (a "Notice"). Any Notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

If intended for CITY, to:

CITY of San Antonio, Attn: NHSD Director  
Neighborhood Improvement Bond  
1400 S. Flores  
San Antonio, TX 78204

If intended for DEVELOPER, to:

Brent Conlin, Managing Partner  
Espada Real Estate  
1160 E. Commerce St., Suite 200  
San Antonio, TX 78205



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### ARTICLE 8. CONFLICT OF INTEREST

A. DEVELOPER shall use reasonable business efforts to ensure that no person shall participate in the selection, award or administration of a Project contract when: (1) the Project contract calls for payments to be made to such contractor on terms that are greater than those which are customary in the industry for similar services on similar terms, and (2) any of the following have a financial interest in the firm or person selected to perform the Project contract:

- (1) that person
- (2) any immediate family member of that person;
- (3) any business partner of that person;
- (4) any organization which employs, or is about to employ, any of the above.

B. To the extent DEVELOPER hires any former or current official or employee of CITY who would be subject to the CITY's Code of Ethics, as same exists from time to time, DEVELOPER shall take reasonable efforts to ensure that such person complies with all applicable requirements of the said Code of Ethics in dealings between CITY and DEVELOPER.

### ARTICLE 9. LEGAL AUTHORITY

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

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

C. CITY will have the right to suspend or terminate this Agreement in accordance with the terms of the Agreement if there is a dispute as to the legal authority, of either DEVELOPER or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

### ARTICLE 10. LITIGATION AND CLAIMS

A. DEVELOPER and CITY shall give the other Party prompt notice in writing of any formal legal action, including any proceeding before an administrative agency, filed against such Party directly arising out of this Agreement during the Term of this Agreement. DEVELOPER shall notify the CITY promptly of any legal action or of any proceeding filed under the federal bankruptcy code by DEVELOPER. DEVELOPER shall submit a copy of such notice to CITY within thirty (30) calendar days after receipt. No funds or land provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. Notwithstanding the above notice requirements, it is expressly agreed by the Parties

## Exhibit B

that DEVELOPER is not required to notify CITY of any claim or litigation that may arise out of DEVELOPER's business operations including without limitation personal injury actions (slip and fall claims), employer-employee disputes, product-related claims or other operational activities or relationships.

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

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas.

### ARTICLE 11. ATTORNEY'S FEES

Neither party shall be responsible for the other party's court costs, costs of suit, or attorney's fees, except as otherwise expressly provided by statute.

### ARTICLE 12. CHANGES AND AMENDMENTS

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

B. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the conveyance of public land including those of Texas Local Government Code Chapter 272 and the terms and conditions of this Agreement.

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

### ARTICLE 13. RIGHTS UPON DEFAULT

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

### ARTICLE 14. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning party. Should either party seek to assign this Agreement, the party seeking assignment shall provide no less than sixty (60) days prior written request



## Exhibit B

for the consent to assign to the other party. Should either party consent to assign this Agreement, any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign this Agreement without the notification and subsequent consent of the non-assigning party shall release the non-assigning party from performing any of the terms, covenants and conditions herein. Any assignment of this Agreement in violation of this Article shall constitute a default and permit the non-assigning party to pursue its rights under this Agreement.

### ARTICLE 15. ORAL AND WRITTEN AGREEMENTS

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

### ARTICLE 16. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

DEVELOPER is granted temporary relief from any deadline for performance of any term of this Agreement if DEVELOPER is prevented from compliance and performance by any cause beyond the reasonable control of DEVELOPER, including without limitation: acts of God, shortages of labor or materials, war, civil disturbances, action or order of legal authority, or regulatory delay.



Exhibit B

WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_  
\_\_\_\_\_, 2020 (the "Effective Date"):

Accepted and executed in triplicate originals on behalf of the CITY of San Antonio  
pursuant to Ordinance Number 2\_\_\_\_-\_\_\_\_-\_\_\_\_, dated \_\_\_\_\_, and  
Espada Real Estate, LLC. pursuant to the authority of its  
\_\_\_\_\_.

**CITY of San Antonio,**  
a Texas municipal corporation

**Espada Real Estate LLC,**  
a Limited Liability Corporation

By: \_\_\_\_\_

By: Brent Conlin

Printed Name:

Printed Name: Brent Conlin

Title:

Title: Managing Partner

Date: \_\_\_\_\_

Date: 10/21/2020

Approved as to Form:

\_\_\_\_\_  
CITY Attorney