

**Real Estate Sales Contract**  
**(56.934 Acres NWC of State Highway 151 and Old Highway 90)**

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**Authorizing Ordinance:** \_\_\_\_\_

**Parcel No.:** \_\_\_\_\_

**Seller:** City of San Antonio

**Address:** City of San Antonio, P.O. Box 839966, San Antonio, TX  
78283-3966

**Phone:** 210-207-8994

**Email:** Victoria.Shum@sanantonio.gov

**Type of Entity:** Texas Municipal Corporation

**Seller's**

**Counsel:** Victoria Shum

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

**Buyer:** Brazos De Santos Partners, Ltd.

**Address:** 430 S. Santa Rosa Avenue  
San Antonio, TX 78207-4551

**Phone:** 210-225-4461

**Email:** jimguy@billmillerbbq.com

**Type of Entity:** Texas limited partnership

**Buyer's Counsel:** Richard L. Kerr  
Kerr & Jaeckle, PC

**Address:** 750 E. Mulberry, Suite 305  
San Antonio, Texas 78212

**Phone:** (210) 738-8750

**Fax:** (210) 738-8788

**Email:** rkerr@kjlawpc.com

**Property:** Being an approximate 56.934 acre tract described as Lots 6, 7, 8, 9, 10, and 11, Block 9 Southwest Business & Technology Park Unit-3 according to a plat thereof recorded in Volume 9569, Page 211 of the Deed and Plat Records of Bexar County, Texas and an 8.24 acre variable drainage easement depicted on the aforesaid recorded plat. The Property ("**Property**") is also described in **Exhibit A** by a preliminary survey with accompanying metes and bounds. The description set forth in the final Survey shall replace the description set forth in **Exhibit A** to the extent it changes.

**Title Company:** Presidio Title LLC  
Attention: Don Walker/Danita Sherrill

**Address:** 7373 Broadway, Suite 105, San Antonio, Texas 78209

**Phone:** (210) 757-9600

**Fax:** (210) 757-9660

**Email:** dsherrill@presidiotitle.com

**Purchase Price:** \$3,053,000.00

**Earnest Money:** \$20,000.00

**Surveyor:** Pape-Dawson Engineers, Inc.

**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 Agreement (“**Effective Date**”).

**County for Performance:** Bexar County, Texas

### **1. Deadlines and Other Dates.**

All deadlines in this Real Estate Sales Contract (“this **Agreement**”) 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  | 5 business days from the Effective Date   |
| 1.02.        | Delivery of Title Commitment  | 20 days from the Effective Date   |
| 1.03.        | Delivery Date of Survey   | 20 days from the Effective Date   |
| 1.04.        | Delivery of legible copies of instruments referenced in the Title Commitment and Survey | 35 days from the Effective Date   |
| <b>1.05.</b> | Delivery of Seller’s records as specified in <b>Exhibit B</b>                           | 10 days from the Effective Date   |
| 1.06.        | Buyer’s Objection Deadline  | 14 days after the latter of its receipt of (i) Title Commitment, (ii) legible copies of instruments referenced in the Title Commitment; and (iii) final Survey. |
| 1.07.        | End of Inspection Period  | 30 days from the Effective Date   |
| 1.08.        | Closing Date  | 30 days from the expiration of the Inspection Period, or such earlier time as mutually agreed upon by both parties.   |

The above deadlines may be altered by the mutual agreement of the parties in writing. The Director of the Public Works 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:

Special Warranty Deed (the “**Deed**”) (showing no exceptions of reservations other than those referenced in Section 4 and 6 below, and Permitted Exceptions);

IRS Non-foreign 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 incorporated into this Agreement for all purposes as if fully set forth:

Exhibit A—Property Description

Exhibit B—Representations; Environmental Matters; Notices

Exhibit C—Form of Deed

Exhibit D—Access Conditions

#### 4. Purchase and Sale of Property.

1. Seller, a Texas municipal corporation, 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 Agreement are the consideration for the formation of this Agreement.

2. 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 the land comprising the Property together with (a) all buildings, fixtures, structures and improvements (if any) located thereon; and (b) all of Seller's right, title and interest in and to any and all rights and appurtenances thereto, including, but not limited to: (i) any strips or gores between the Property and abutting properties; (ii) any rights of ingress and egress to any roads, alleys, rights-of-way, easements, streets, and ways adjacent to and serving the Property; (iii) land lying in the bed of any public street or road in the area directly adjacent to and adjoining the Property, to the centerline of such street, road or access way; (iv) all mineral interests of any kind or character pertaining to the Property; and (v) all water rights of any kind or character pertaining to the Property (collectively, the "**Additional Interests**"); except that 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 an owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use, except that Buyer shall have the non-exclusive right and privilege after closing to use such elaborated easements and other interests reserved by Seller to the extent they are appurtenant to and/or benefit the Property.

#### 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.

#### 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 Agreement. "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 and Survey.* Seller must deliver the Title Commitment to Buyer by the deadlines stated in Section 1. Buyer shall be obligated, at its expense, to engage the Surveyor to perform a final a current perimeter survey of the Property (the “Survey”) by the Delivery Date of Survey and to promptly provide a copy thereof to Seller and the Title Company. The parties acknowledge that a copy of the preliminary survey of the Property prepared by the Surveyor is attached hereto as a part of **Exhibit A**.

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 objection 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 that date which is 20-days after Seller’s receipt of Buyer’s Objections (“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 Buyer’s Objections before closing, Buyer may within ten (10) days from the applicable aforesaid event notify Seller that this Agreement is terminated and receive back its Earnest Money. In the 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 in Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, and under Seller after the Effective Date of this Agreement, and cure the Buyer’s Objections that Seller has agreed to cure.

## **7. Inspection Period.**

7.01. *Entry onto the Property.* Buyer may enter the Property to inspect and investigate 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 the Buyer's inspections and Buyer thereafter fails to timely close the purchase of the Property, Buyer must return the Property to its pre-inspection 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 without its permission in providing such reports.
- f. Buyer must abide by any other reasonable entry rules hereinafter imposed by Seller that are communicated to Seller in writing.

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

3. *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 costs or expenses 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 unless arising from the willful negligence of Seller and/or those persons or entities acting on Seller's behalf.

**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. Conditions until Closing; Cooperation.**

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.

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 Agreement 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 Agreement, 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 Agreement if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen (15) days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen (15) days before closing). If Buyer does not terminate this Agreement, (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. *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.

9.05. *Cooperation.* Seller will reasonably cooperate with Buyer (a) before Closing, 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.

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

## **10. Termination.**

### *10.01. Disposition of Earnest Money After Termination.*

- (a) *To Buyer.* If Buyer terminates this Agreement 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 Agreement 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 Agreement, 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 Agreement, except for those obligations that cannot be or were not performed before termination of this Agreement.

## **11. Allocation of Closing Costs.**

11.01. Buyer will pay:

- a) any and all costs and expenses associated with or arising in connection with the preparation of the Survey;
- b) any endorsements to the Owner's policy of title insurance requested by Buyer;
- c) Buyer's expenses and attorney's fees.
- d) the premium for a basic Owner's policy of title insurance.

11.02. Seller will pay:

- a. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense.
- b. the costs to insure around liens against the Property not released at Closing except for any liens arising from Buyer's acts or omissions;
- c. Seller's expenses and attorney's fees
- d. Brokers' commissions as further detailed in Section 18.

11.03. Buyer and Seller will each pay half of:

- a. Escrow fee charged by the Title Company

11.04. *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. Buyer shall promptly notify the Bexar County Appraisal District of its acquisition of the Property so that the Property may be assigned a separate tax parcel.

11.05. *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.

## **12. Closing.**

12.01. *Closing.* This transaction will close at Title Company's offices on the Closing Date. 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 Agreement to the Title Company in good and immediate funds.
- c. *Disbursement of Funds; Recording; Copies.* The Purchase Price will be paid by the Title Company to Seller in accordance with this Agreement and the Title Company will record the Deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.
- e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing. If Buyer does not close for want of indefeasible title, the earnest money shall be returned to Buyer.

### **13. Default and Remedies.**

13.01. *Seller's Default.* If Seller fails to perform any of its obligations under this Agreement 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 Agreement by giving notice to Seller and have the Earnest Money returned to Buyer. If Seller's Default occurs after Buyer has incurred costs to perform its obligations under this Agreement and Buyer terminates this Agreement in accordance with the previous sentence, Seller will reimburse Buyer for Buyer's actual bonafide out-of-pocket expenses incurred with third parties to perform its obligations under this Agreement within ten (10) days of Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses together with reasonable supporting information (i.e. invoices, cancelled checks, etc.).
- b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this Agreement.

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

- a. *Termination.* Seller may terminate this Agreement by giving notice to Buyer on or before the Closing Date and Closing Time. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this Agreement and Seller terminates this Agreement in accordance with the previous sentence, Buyer will reimburse Seller for Seller's actual

bonafide out-of-pocket expenses incurred with third parties to perform its obligations under the Agreement within ten (10) days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses, together with reasonable supporting information (invoices, cancelled checks, etc.).

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

#### **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 Relating to the Conveyance of the Property from Seller to Buyer 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.

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, by hand delivery, or by email addressed to the parties at their

respective addresses set forth in the preamble hereof with a copy delivered or emailed to the applicable party's attorney at the address set forth in the preamble. If sent by certified mail, return receipt requested, the giving of notice is complete three (3) days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent by other permitted means, the notice will be complete upon its receipt. 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 neutral. 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 earlier 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 establishing 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.

14.13. *Assignment.* Buyer may not assign this Agreement without Seller's prior written consent, such consent to be given or withheld in Seller's sole discretion. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

14.14. *Survival.* The obligations of this Agreement that cannot be performed before termination of this Agreement or before closing will survive termination of this Agreement 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 Agreement, the Closing Documents will control.

14.15. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* 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 Agreement.

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 Public Works and the Assistant Director for Public Works 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.

14.19. *Legal Holidays.* Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday or federal legal holiday, then such date shall be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.

14.20 *Recordation.* Buyer shall not record this Agreement or a memorandum or other notice thereof in any public office without the express written consent of Seller. A breach by Buyer of this covenant shall constitute a material default by Buyer under this Agreement.

14.21 *Confidentiality.* The parties will keep confidential this Agreement, this transaction, and all information learn 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.

**14.22 *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.**

14.23 *Single Point-of-Contact with City.* As a post-closing covenant, Seller agrees to provide Buyer with a single point-of-contact at the City of San Antonio Development Services Department to process all City required permits and approvals related to Buyer's relocated headquarters, distribution and warehousing facilities, commissary, and other related improvements to be hereinafter constructed on or about the Property by Buyer on an expedited basis, such single point-of-contact to be implemented by the City through the date of final completion of Buyer's aforesaid relocation project.

## **15. Appropriations.**

All obligations of the City of San Antonio under this Agreement are subject to the discretion of City Council. If the City fails to approve any obligation under this Agreement, the City may terminate this Agreement and have no further liability.

## **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. Dispute Resolution.**

17.01 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.

17.02 Filing suit on a claim that should have been mediated hereunder waives the filer’s rights 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.

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

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

17.05 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.

17.06 Mediator fees must be borne equally.

## **18. Brokers' Commissions.**

Seller must pay a commission to Dan Gostylo of Providence Commercial Real Estate (Seller's broker) and Matt Howard of Roalson Interests, Inc. (Buyer's broker) in the aggregate amount of 6% of the Purchase Price (3% to each broker) only if, as, and when Closing occurs. Each party represents to the other that no other commissions are due in respect of this transaction arising from such party's acts. 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.

## **19. Public Information.**

Seller 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.

## **20. Condition of Property.**

(a) Disclaimer. Except as expressly stated herein, Seller hereby specifically disclaims any warranty, guaranty, or representation; oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, for any and all activities and uses which Buyer may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT AS EXPRESSLY STATED HEREIN, IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR

IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING

HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Buyer agrees to accept the Property at closing with the Property being in its present AS IS condition WITH ALL FAULTS.

(b) Property Condition. BUYER ACKNOWLEDGES AND AGREES THAT EITHER BUYER IS, OR HAS ENGAGED AND IS RELYING ON PERSONS WHO ARE, EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY OR CAUSED THE PROPERTY TO BE INSPECTED TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND EXCEPT FOR THE SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND BUYER ACKNOWLEDGES THAT BUYER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. BUYER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE OF CLOSING. BUYER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT BUYER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY THIS AGREEMENT. ANY REPAIRS PAID FOR BY



SELLER PURSUANT TO THIS AGREEMENT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS. THE PROVISIONS OF THIS SECTION 20 SHALL BE INCLUDED IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

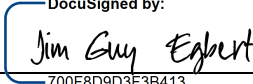
[SIGNATURES ON NEXT PAGE]

Executed as of the dates set forth below to be effective as the Effective Date defined above.

**Buyer:**

**Brazos de Santos Partners, Ltd.,  
a Texas limited partnership**

By: Brazos de Santos, LLC,  
a Texas limited liability company, its  
General Partner

By:   
700F8D9D3F3B413  
Jim Guy Egbert, President

**Seller:**

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

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

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

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

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

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved As To Form:**

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

## **Earnest Money Receipt**

Receipt is acknowledged of the amount of TWENTY THOUSAND 00/100 DOLLARS (\$20,000.00) as the earnest money referred to in the Real Estate Sales Contract dated \_\_\_\_\_. I agree to retain the amount in trust during the consideration of the offer by the Seller described in the offer, and return the earnest money to Purchaser if the offer is not accepted, or otherwise deal with the money if the offer is accepted as provided in the offer.

Dated: \_\_\_\_\_

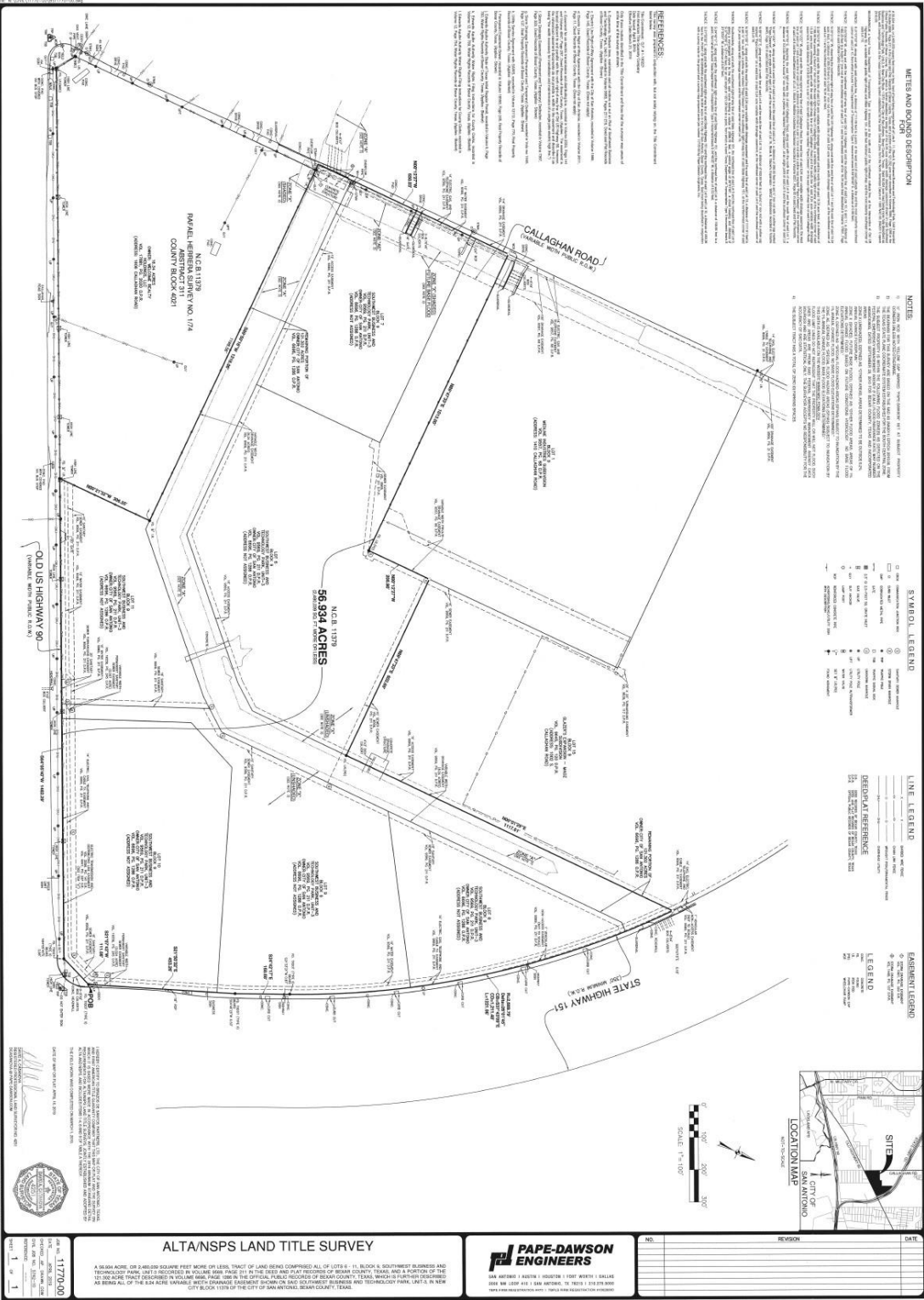
Presidio Title Company

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

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

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

Exhibit A: Property Description/Survey





## METES AND BOUNDS DESCRIPTION FOR

A 56.934 acre, or 2,480,039 square feet more or less, tract of land being comprised all of Lots 6 – 11, Block 9, Southwest Business and Technology Park, Unit-3 recorded in Volume 9569, Page 211 in the Deed and Plat Records of Bexar County, Texas, and a portion of the 121.302 acre tract described in Volume 6696, Page 1286 in the Official Public Records of Bexar County, Texas, which is further described as being all of the 8.24 acre variable width drainage easement shown on said Southwest Business and Technology Park, Unit-3, in New City Block 11379 of the City of San Antonio, Bexar County, Texas. Said 56.934 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At a found Texas Department of Transportation Type II monument at the north end of the northwest cutback line, at the intersection of Old US Highway 90, a variable width public right-of-way and State Highway 151, a 350-foot minimum public right-of-way, and the most easterly southeast corner of said Lot 10;

**THENCE:** S 21°07'43" W, along and with said cutback line, a distance of 111.08 feet to a point, at the west end of said cutback line and the most southerly southeast corner of said Lot 10, from which a found Texas Department of Transportation Type II monument bears N 64°05'40" E, a distance of 0.96 feet;

**THENCE:** S 64°05'40" W, along and with the northwest right-of-way line of said Old US Highway 90 and the southeast line of said Lots 10, 9 and 11, a distance of 1482.29 feet to a found ½" iron rod at the southwest corner of said Lot 11 and the southeast corner of the 16.34 acre tract described in Volume 17881, Page 2020 in said Official Public Records;

**THENCE:** N 00°21'32" W, departing the northwest right-of-way line of said Old US Highway 90, along and with the west line of said Lot 11 and the east line of said 16.34 acre tract, a distance of 306.55 feet to a found ½" iron rod on the south line of said 8.24 acre variable width drainage easement, at the northwest corner of said Lot 11 and the northeast corner of said 16.34 acre tract;

Page 1 of 3

TBPE Firm Registration #470 | TBPLS Firm Registration #10028800

San Antonio | Austin | Houston | Fort Worth | Dallas

Transportation | Water Resources | Land Development | Surveying | Environmental

2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 [www.Pape-Dawson.com](http://www.Pape-Dawson.com)

Job No.: 11770-00  
 56.934 Acres  
 Page 2 of 3

- THENCE: S 89°50'16" W, along and with the south line of said 8.24 acre variable width drainage easement and the north line of said 16.34 acre tract, at a distance of 1198.56 feet passing a found ½" iron rod on the east right-of-way line of Callaghan Road, a variable width public right-of-way, at the northwest corner of said 16.34 acre tract, continuing along and with the east right-of-way line of said Callaghan Road and the south line of said 8.24 acre variable width drainage easement, a total distance of 1218.06 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of said Callaghan Road;
- THENCE: N 00°12'27" W, along and with the east right-of-way line of said Callaghan Road, the west line of said 8.24 acre variable width drainage easement, the west line of said Lot 7 and a west line of said Lot 6, a distance of 650.03 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", at the northwest corner of said Lot 6 and the southwest corner of Lot 1, Block 9, Medline Industries Subdivision recorded in Volume 9557, Page 68 in said Deed and Plat Records;
- THENCE: N 89°47'33" E, departing the east right-of-way line of said Callaghan Road, along and with the north line of said Lot 6 and the south line of said Lot 1, a distance of 1013.00 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson", at an angle point of said Lot 6 and the southeast corner of said Lot 1;
- THENCE: N 00°12'27" W, along and with a west line of said Lot 6 and the east line of said Lot 1, a distance of 206.90 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", at an angle point of said Lot 6 and the southwest corner of Lot 15, Block 9, Glazer's Expansion – MAOZ Subdivision recorded in Volume 9645, Page 120 in said Deed and Plat Records;
- THENCE: N 89°47'33" E, along and with a north line of said Lot 6 and the south line of said Lot 15, a distance of 602.69 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" on a west line of said 8.24 acre variable width drainage easement, at the northeast corner of said Lot 6 and the southeast corner of said Lot 15;
- THENCE: N 00°01'29" E, along and with the west line of said 8.24 acre variable width drainage easement and the east line of said Lot 15, a distance of 1117.61 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the southwest right-of-way line of said State Highway 151, at the northernmost corner of said 8.24 acre variable width drainage easement and the northeast corner of said Lot 15;



Job No.: 11770-00  
56.934 Acres  
Page 3 of 3

THENCE: Southeasterly, along and with the southwest right-of-way line of said State Highway 151, the northeast line of said Lot 8 and the northeast line of said Lot 9, along a non-tangent curve to the right, said curve having a radius of 2689.79 feet, a central angle of  $26^{\circ}01'45''$ , a chord bearing and distance of  $S\ 37^{\circ}43'09''\ E$ , 1211.48 feet, for an arc length of 1221.96 feet to a point, from which a found Texas Department of Transportation Type II monument bears  $S\ 21^{\circ}33'21''\ W$ , a distance of 0.87 feet;

THENCE:  $S\ 24^{\circ}42'17''\ E$ , along and with the southwest right-of-way line of said State Highway 151, and the northeast line of said Lot 9, a distance of 168.68 feet to a point, from which a found Texas Department of Transportation Type II monument bears  $S\ 04^{\circ}46'25''\ W$ , a distance of 0.53 feet;

THENCE:  $S\ 21^{\circ}50'32''\ E$ , along and with the southwest right-of-way line of said State Highway 151 and the northeast line of said Lot 9 and Lot 10, a distance of 453.26 feet to the POINT OF BEGINNING and containing 56.934 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in conjunction with a survey made on the ground and a survey map prepared under job number 11770-00 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: April 16, 2019  
JOB NO. 11770-00  
DOC. ID. N:\CIVIL\11770-00\Word\11770-00 FN 56.934 AC.docx





## **Exhibit B: Representations; Environmental Matters; Notices**

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### **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 Agreement is, and all documents required by this Agreement 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 Agreement.

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 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.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this Agreement 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 and the lien for unpaid property taxes for the year of the closing.

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

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

#### **B. “As Is, Where Is”**

**This Agreement 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 as the time of 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 affect the Property arising as the result of theories of product 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 affect 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. Buyers Representations to the 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 partnership, duly organized, validly existing, and in good standing under the law of the state of Texas with authority to acquire Property from Seller. This Agreement is, and all documents required by this Agreement 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 Agreement.

#### **E. Notices**

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this Agreement:

Abstract or Title Policy. The Texas Real Estate License Act requires a real estate agent to advise Buyer that he should have an attorney examine an abstract of title to the Property being purchased; or a title insurance Policy should be obtained. Notice to that effect is, therefore, hereby given to Buyer.

Notice Regarding Unimproved Property Located in a Certificated Service Area. If the Property is unimproved and is located in a certificated service area of a utility service, then Seller shall give to Buyer a written notice in compliance with §13.257 of the Texas Water Code, and Buyer agrees to acknowledge receipt of the notice in writing. The notice must set forth the correct name of utility service provider authorized by law to provide water or sewer service to the Property, and must comply with all other applicable requirements of the Texas Water Code.

Special Assessment Districts. If the Property is situated within a utility district or flood control district subject to the provisions of §49.452 of the Texas Water Code, then Seller shall give to Buyer the required written notice and Buyer agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code.

Notice Regarding Possible Annexation. If the Property that is the subject of this Agreement is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of the municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

## 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.**

### SPECIAL WARRANTY DEED

**Ordinance Authorizing**

**Acceptance:**

2020- \_\_\_\_\_

**SP No./Parcel:**

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

**Grantor:** City of San Antonio

**Grantor's Mailing Address (including county):**

P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: Director, Public Works) (Bexar County)

**Grantee:** Brazos de Santos Partners, Ltd.,  
a Texas limited partnership

**Grantee's Mailing Address (including county):**

430 S. Santa Rosa Avenue  
San Antonio, TX 78207-4551

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

**Property:** Described, attached, and incorporated hereto as **Exhibit A**, being an approximate 56.934 acre tract described as Lots 6, 7, 8, 9, 10, and 11, Block 9 Southwest Business & Technology Park Unit-3 according to a plat thereof recorded in Volume 9569, Page 211 of the Deed and Plat Records of Bexar County, Texas and an 8.24 acre variable drainage easement depicted on the aforesaid recorded plat.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and warranty, 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. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and warranty.

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 from, Restrictions, Exceptions, and Conditions to Conveyance:**

This conveyance is explicitly subject to the following:

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.

**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.**

THE STATE OF TEXAS §

COUNTY OF BEXAR §

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

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

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:\_\_\_\_\_

**Approved as to Form:**

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

**After recording, please return to:**

Brazos De Santos Partners, Ltd.  
430 S. Santa Rosa Avenue  
San Antonio, Texas 78207-4551  
Attention: Jim Guy Egbert, President

---

This page is intentionally left blank and serves as a  
Continued part of Exhibit C.



## Exhibit D: 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 a limited license (the “**License**”) to access the Property at reasonable times during normal business hours, for the limited purpose of asbestos remediation and otherwise conducting non-intrusive inspections and non-invasive tests of the Property, including surveys of the Property, and conducting geotechnical testing and inspections of the Property all at Buyer’s sole risk, costs and expense. For the purposes herein, the phrase “non-intrusive inspections and non-invasive tests” shall refer to tests and inspections which result in 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 be a non-intrusive test which will not require Seller’s prior written consent, provided that the consultant only engages in a visual assessment of the Property for signs of possible contamination. Any testing or activities associated with a Phase II Environmental Site Assessment shall require Seller’s prior written consent.

(b) Prior to entering the Property at any time, Buyer must contact City of San Antonio, Public Works Department, Attn: Steve Hodges, P.O. Box 839966, San Antonio, TX 78283-3966, 210-207-8234, and notify him/her of Buyer’s desire to enter the Property at least two (2) business days in advance of the date it desires to do so. Such notice shall set forth the proposed time of entry and Seller shall have a right to request an alternate time of entry and 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 third-party inspections and reports at Seller’s request.

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) promptly repair any damage to the Property (including the subsurface thereof) resulting from the entry by Buyer or its agents, employees, contractors and representatives or from any such inspections, tests, investigations or studies and upon completion of any such activity, restore the Property to substantially the condition it 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 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 or liabilities arising out of the entry of Buyer, its agents, contractors, employees, or invitee's 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 to person or property (including, but not limited to, mechanic's and materialmen's liens and Seller's reasonable attorney's fees) 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.

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 or Seller that is furnished to, or obtained through inspection of the Property (the "***Confidential Information***") by, Buyer, its affiliates, lenders, 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 strictly 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 hereof without the prior written consent of the other. The confidentiality provisions of this Section 5 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 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), without any representation or warranty as to their accuracy or completeness, all 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).