

AN ORDINANCE      **2012-08-02-0569**

**AUTHORIZING THE SALE OF 803 N. CHERRY FOR A TOTAL  
PRICE OF \$295,000.00 TO ALAMO BEER COMPANY, L.L.C., IN  
DISTRICT 2.**

\* \* \* \* \*

**WHEREAS**, agreement has been reached with Alamo Beer Company, L.L.C., to purchase the City-owned tract at 803 N. Cherry Street, San Antonio, Texas, in accordance with the Master Economic Incentive Agreement for the sum of \$295,000.00, **NOW THEREFORE:**

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

**SECTION 1.** The City Manager and her designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction described in **Attachment I**, including agreeing to non-material changes to the terms of Attachment I and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

**SECTION 2.** The subject property is described as follows:

A tract of land containing 73,660.0 square feet (1.691 acres), being Arbitrary Tract B, Block 30, N.C.B. 527, City of San Antonio, Bexar County, Texas, commonly known as 803 N. Cherry St., San Antonio, Bexar County, Texas

**SECTION 3.** Property located at 803 North Cherry Street, which was appraised at \$295,000.00, is authorized to be conveyed to Alamo Beer Company, LLC. The disposition of surplus property must be coordinated through the city's Finance Department to assure the removal of these assets into the City's financial records and to record the proper accounting transactions.

**SECTION 4:** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 2<sup>nd</sup> day of August, 2012.

  
**M A Y O R**  
*for* Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
 ACTION

City of San Antonio



## Agenda Voting Results - 30B

<b>Name:</b>	30A, 30B, 30C, 30D						
<b>Date:</b>	08/02/2012						
<b>Time:</b>	12:05:39 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the sale of 803 N. Cherry Street to Alamo Beer Company, LLC for \$295,000.00.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x			x	
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

# **ATTACHMENT I**

# Real Estate Sales Contract

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**Authorizing Ordinance:** 2012-\_\_ - \_\_ - \_\_\_\_\_

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

**Seller:** City of San Antonio

**Address:** P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: Mike Etienne, Ph.D. CIMS)

**Phone:** 210-207-7114

**Fax:** 210-207-7888

**Email:** Mike.Etienne@sanantonio.gov

**Type of Entity:** Texas municipal corporation

**Seller's Counsel:** Nancy H. Reyes

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

**Phone:** 207-6168

**Email:** nancy.h.reyes@sanantonio.gov

**Seller's Broker:** N/A

**Address:** N/A

**Phone:** N/A

**Fax:** N/A

**Email:** N/A

**Buyer:** Alamo Beer Company, L.L.C.,  
a Texas Limited Liability Company

**Address:** 135 Magnolia Drive, San Antonio, TX 78212-3116

**Phone:** 210-872-5589

**Fax:**

**Email:** eugenessimor@hotmail.com

**Type of Entity:** Texas Limited Liability Company

**Buyer's Counsel:** Golden Steves Cohen & Gordon LLP

**Address:** 300 Convent Street, Suite 2600

**Phone:** 210-745-3700

**Fax:** 210-745-3737

**Email:**

**Buyer's Broker:**

**Address:**

**Phone:**

**Fax:**

**Email:**

**Property:** The land commonly known as **803 N. Cherry St.**, San Antonio, Bexar County, Texas and more fully described in Exhibit A (the "Land"), together with any and all improvements situated on the Land (the "**Improvements**"), and all right, title and interest of Seller, if any, in and to any and all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the "**Additional Interests**"); provided, however, that the Additional Interests shall not include, and Seller specifically reserves, any of Seller's right, title and interest in easements, streets, rights-of-way, water rights, appurtenances, or other interests arising or acquired by Seller pursuant to its powers or authorities as a municipal corporation or in relation to the activities of public utilities. The Land, Improvements and any Additional Interests described in the preceding paragraph are hereinafter sometimes collectively called the "**Property.**"

**Title Company:** First American Title Company

**Address:** First American Title Company  
National Commercial Services Division  
1826 N Loop 1604 W, Suite 125  
San Antonio TX 78248  
Attn: Matt Proffitt  
Cell Phone 210-238-1796

**Phone:** 210-390-3593

**Fax:**

**Email:** mproffitt@firstam.com

**Underwriter:**

**Purchase Price:** \$295,000.00

**Earnest Money:** \$10,000.00

**Surveyor:**

**Survey Category:** Category 1A, Condition I

**Independent Consideration:** \$100

**Buyer's Liquidated Damages:** \$10,000.00

**Seller's Additional Liquidated Damages:** N/A

**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

**County for Performance** Bexar County, Texas

**1. Deadlines and Other Dates.**

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

- 1.01. Earnest Money Deadline 14 Days after the Effective Date
- 1.02. Delivery of Title Commitment 30 Days after the Effective Date
- 1.03. Delivery of Survey 60 Days after Effective Date
- 1.04. Delivery of legible copies of instruments referenced in the Title Commitment and Survey 40 Days after the Effective Date
- 1.05. Delivery of Seller's records as specified in Exhibit C 10 Days after the Effective Date

- 1.06 Intentionally deleted
- 1.07. Buyer's Objection Deadline 20 Days after the receipt of Title Commitment and legible copies of instruments referenced in the Title Commitment, Survey, whichever is received later
- 1.08. Seller's Cure Notice Deadline 15 Days after Buyer's Objection Deadline
- 1.09. Intentionally deleted
- 1.10. End of Inspection Period 270 Days after the Effective Date
- 1.11. Closing Date 30 days after the Inspection Period, or such earlier date as Buyer may select upon not less than ten (10) days written notice to Seller.
- 1.12. Closing Time 10:00 A.M.

1.13. The Independent Consideration is in addition to the Earnest Money and is due within three business days of the Effective Date.

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

## **2. Closing Documents.**

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

Deed Without Warranty

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in Exhibit C

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 D**.

### **3. Exhibits.**

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

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C - Notices, Statements, and Certificates

Exhibit D—Form of Deed

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

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

### **5. Earnest Money.**

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

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

Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the purchase price at closing.

## **6. Title and Survey.**

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

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

6.03. *Survey.*

6.03.01. "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 Buyer and Title Company, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.03.02. If Seller does not object to the Survey within 20 days after Buyer delivers it to Seller, the land subject to the Survey automatically becomes the Land subject to this contract, and the field notes and plat of the Survey automatically become Exhibit A to this agreement, whether or not physically attached.

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

6.05. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Buyer's

Objections”). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Buyer’s Objection by the Buyer’s Objection Deadline. The matters that Buyer either approves or is deemed to have approved are “Permitted Exceptions.” Notwithstanding the foregoing, under no circumstances shall Buyer be required to object to any existing liens reflected in the Title Commitment or other matters shown on Schedule C thereto, all of which (except for the lien or liens for taxes not yet due and payable) shall be released or satisfied by Seller at its expense prior to Closing.

6.06. 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”). Any items that Seller does not agree to cure in a Cure Notice shall be deemed Permitted Exceptions, subject to Buyer’s right to terminate this contract at any time prior to the expiration of the Inspection Period.

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

**7. Inspection Period.**

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

- a. Buyer must deliver evidence to Seller that Buyer, or third parties retained by Buyer to inspect the Property, have insurance for its proposed inspection activities, in the following amounts and coverages:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess

<ul style="list-style-type: none"> <li>b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Explosion, Collapse, Underground</li> <li>g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.</li> <li>h. Damage to property rented by you</li> </ul>	<p>Liability Coverage</p>          <p>\$100,000</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	<p><u>C</u>ombined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000 per occurrence</p>

- b. Buyer must notify Seller twenty-four (24) hours in advance of Buyer's plans to conduct tests and Seller has a right to be present during such tests;
- c. If the Property is altered because of Buyer's inspections and Buyer terminates this contract, Buyer must reasonably return the Property to substantially its preinspection condition;
- d. Buyer must deliver to Seller copies of all inspection reports that Buyer receives from third-party consultants or contractors within three days of its receipt thereof; and
- e. Buyer must abide by any other reasonable entry rules imposed by Seller so long as Buyer is informed in writing of such reasonable entry rules.

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

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

- a. *Indemnity.* Buyer will INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS from any loss, attorney's fees, expenses, or claims as a result of death or injuries to persons or damage to property arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.
- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

**8. Representations.**

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

**9. Condition until Closing; No Recording of Contract.**

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

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

9.03. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may

terminate this contract if the condemnation would, in Buyer's sole discretion, affect Buyer's intended use of the Property by giving notice to Seller within 15 days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

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

## **10. Termination.**

10.01. *Disposition of Earnest Money after Buyer Termination.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate hereunder, Seller will, within five (5) days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer.

10.02. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract.

## **11. Closing.**

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

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

- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

11.02. *Transaction Costs.*

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

- ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense;
  - iii. Seller's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10. Seller assumes no responsibility for ad valorem taxes for any period, rollback or otherwise, not otherwise imposed on it by law.
- d. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.
- e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

## **12. Default and Remedies.**

12.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination.* Buyer may terminate this contract by giving notice to Seller on or before the expiration of the Inspection Period whereupon the Earnest Money shall be returned to Buyer and Seller shall pay to Buyer, subject to appropriation of adequate funds by Council, the amount of Buyer's Liquidated Damages as liquidated damages for the expense and opportunity cost incurred by Buyer in investigating the Property after the Effective Date.

- b. *Specific Performance.* Buyer may enforce specific performance of this contract to the extent such remedy is available.

12.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), except due to a default by Seller, Seller shall be entitled to terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller.

12.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and the amounts provided above as liquidated damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

### **13. Prohibited Interests in Contracts.**

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

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

13.02. Buyer warrants and certifies as follows:

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

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

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

#### **14. Dispute Resolution.**

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

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

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

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

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

14.06. Mediator fees must be borne equally.

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

## **15. Miscellaneous Provisions.**

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

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

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

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

15.05. *Modification.*

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

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

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

15.07. *Notices.* Any notice, demands or other communications provided for or permitted hereunder must be in writing and delivered to the person to whom the notice is directed, either in person, by overnight delivery service, facsimile with confirmed receipt, or by mail as a registered or certified item, return receipt requested, at the respective addressed set forth in the preamble hereof. Notices delivered by mail shall be deemed given upon the date when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, and notices delivered by other means shall be effective when received by the party to whom the same is addressed. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

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

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

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

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

15.12. *Assignment.* This Contract is not assignable by either Party without the written consent of the non-assigning Party. Notwithstanding the foregoing, without the consent of Seller, Buyer may assign this Contract to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of Buyer (a "Permitted Assignee"). In either of such cases, Buyer shall give City no less than ten (10) days prior written notice of

the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Other than assignments to a Permitted Assignee, any attempt to assign the Agreement without the notification and subsequent consent of City shall be void.

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

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

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

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

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

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

15.19. *Replatting.* Buyer acknowledges that the Property has been subdivided without replatting. The law requires replatting, and Buyer assumes that obligation.

15.20. *Administrative Agreements.* The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City

all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

**16. Public Information.**

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

**Seller:**

City of San Antonio, a Texas  
municipal corporation

Signature: \_\_\_\_\_

Printed

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

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

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

**Buyer:**

Alamo Beer Company, LLC,  
a Texas Limited Liability Company

Signature: \_\_\_\_\_

G. Eugene Simor

Title: President

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

**Attest:**

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

**Approved as to Form:**

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

## Title Company Acknowledgment and Receipt

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**Seller:** City of San Antonio

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

**Buyer:** Alamo Beer Company, LLC

**Address:** 135 Magnolia Drive, San Antonio, TX 78212-3116

**Property:** A tract of land containing 73,660.0 square feet (1.691 acres),  
being Arbitrary Tract B, Block 30, N.C.B. 527, City of San  
Antonio, Bexar County, Texas, commonly known as 803 N.  
Cherry St., 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 three fully executed counterpart originals of the contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

### First American Title Company

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

Printed

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

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

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

## Title Company Receipt for Earnest Money

---

**Seller:** City of San Antonio

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

**Buyer:** Alamo Beer Company, LLC

**Address:** 135 Magnolia Drive, San Antonio, TX 78212-3116

**Property:** A tract of land containing 73,660.0 square feet (1.691 acres),  
being Arbitrary Tract B, Block 30, N.C.B. 527, City of San  
Antonio, Bexar County, Texas, commonly known as 803 N.  
Cherry St., San Antonio, Bexar County, Texas

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

Amount: \_\_\_\_\_

### First American Title Company

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

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

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

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

## **Exhibit A: Property Description**

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A tract of land containing 73,660.0 square feet (1.691 acres), being Arbitrary Tract B, Block 30, N.C.B. 527, City of San Antonio, Bexar County, Texas, commonly known as 803 N. Cherry St., San Antonio, Bexar County, Texas.

## Exhibit B: Representations

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### Representations; Environmental Matters

#### A. Seller's Representations to Buyer

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

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

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

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

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

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

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's

performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

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

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

#### **B. "As Is, Where Is"**

**This contract is an arms-length agreement between the parties. The purchase price was bargained on the basis of an "as is, where is" transaction and reflects the agreement of the parties that there are no representations, disclosures, or express or implied warranties, except for the warranty of title stated in the closing documents and Seller's representations to Buyer set forth in Section A of this Exhibit B. The property will be conveyed to Buyer in an "as is, where is" condition, with all faults. All warranties are disclaimed.**

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

#### **C. Environmental Matters**

**After Closing, as between Buyer and Seller, the risk of liability or expense for environmental problems, even if arising from events before closing, will be the sole responsibility of Buyer, regardless of whether the environmental problems were known or unknown at Closing. Once Closing has occurred, Buyer INDEMNIFIES, HOLDS HARMLESS, AND RELEASES Seller from liability for any latent defects and from any liability for environmental problems affecting the property, including liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Texas Solid Waste**

**Disposal Act, or the Texas Water Code. Buyer INDEMNIFIES, HOLDS HARMLESS, AND RELEASES Seller from any liability for environmental problems affecting the Property arising as the result of Seller's own negligence or the negligence of Seller's representatives. Buyer INDEMNIFIES, HOLDS HARMLESS, AND RELEASES Seller from any liability for environmental problems affecting the Property arising as the result of theories of products liability and strict liability, or under new laws or changes to existing laws enacted after the effective date that would otherwise impose on Sellers in this type of transaction new liabilities for environmental problems affecting the property.**

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

#### **D. Buyer's Representations to Seller**

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

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

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

## **Exhibit C: Notices**

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### **Notices, Statements, and Certificates**

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 contract:

Notice regarding real property located adjacent to tidally influenced, submerged lands of Texas, described in section 33.135 of the Texas Natural Resources Code

Notice concerning public easements to the public beach, described in section 61.025 of the Texas Natural Resources Code

Seller's disclosure of the location of pipelines under the surface of unimproved property to be used for residential purposes, described in section 5.013 of the Texas Property Code

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Notice concerning the purchaser's three-day right of rescission under a contract to purchase real property if (1) the seller or the seller's agent solicits the sale at a place other than the seller's place of business; (2) the purchaser submits the purchase contract to the seller or the seller's agent at a place other than the seller's place of business; and (3) the consideration payable under the purchase contract exceeds \$100; unless either (1) the purchaser is represented by a licensed attorney; (2) the transaction is negotiated by a licensed real estate broker; or (3) the transaction is negotiated at a place other than the purchaser's residence by the person who owns the property, as described in chapter 39 of the Texas Business and Commerce Code

**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.**

State of Texas        }  
                                  }  
County of Bexar     }

**Deed Without Warranty**

**Authorizing Ordinance:** 2012-\_\_ - \_\_ - \_\_

**Statutory Authority:** Local Government Code § 272.001(a)

**Grantor:** City of San Antonio

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

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

**Grantee:** Alamo Beer Company, LLC

**Grantee's Mailing Address:** 135 Magnolia Drive, San Antonio, TX 78212-3116

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

**Property:** The land commonly known as **803 N. Cherry St.**, San Antonio, Bexar County, Texas and more fully described in Exhibit A attached hereto and incorporated herein verbatim for all purposes (the "**Land**"), together with any and all improvements situated on the Land (the "**Improvements**"), and all right, title and interest of Seller, if any, in and to any and all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights,

licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the “**Additional Interests**”); provided, however, that the Additional Interests shall not include, and Seller specifically reserves, any of Seller’s right, title and interest in easements, streets, rights-of-way, water rights, appurtenances, or other interests arising or acquired by Seller pursuant to its powers or authorities as a municipal corporation or in relation to the activities of public utilities. The Land, Improvements and any Additional Interests described in the preceding paragraph are hereinafter sometimes collectively called the “**Property.**”

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, **Without Any Express Or Implied Warranty Whatsoever, Including But Not Limited to Warranties of Title, Condition, or Character.**

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

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

**Reservations:**

**Restrictive Covenants:** If the Property is used by Grantee as a park, Grantee must name the park “The Berkley V. and Vincent M. Dawson Park” until December 31, 2027. This requirement does not entitle Grantor to a reverter or right of reentry, but Grantor may seek to enjoin a breach in a court of competent jurisdiction. Property is subject to all covenants and restrictions affecting the Property.

**Exceptions to Conveyance and Warranty:** validly existing restrictive easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that

affect the Property; and any and all other valid matters of record affecting title to the Property being conveyed hereby.

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.**

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

**Grantor:**

City of San Antonio, a Texas municipal corporation

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

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

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

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

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

**Approved As To Form:**

By: \_\_\_\_\_  
City Attorney

The State of Texas }

County of Bexar }

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

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

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

My Commission Expires: \_\_\_\_\_

**After Recording, Return To:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
**Assistant City Attorney**