

Control Number: 43572



Item Number: 83

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014

43572

SOAH DOCKET NO. 582-03-3725  
TCEQ DOCKET NO. 2003-0664-UCR

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PUBLIC UTILITY COMMISSION  
REG. CLERK

IN RE: APPLICATION OF §  
BEXAR METROPOLITAN §  
WATER DISTRICT TO AMEND §  
WATER CCN NO 10675 §  
IN BEXAR COUNTY §

BEFORE THE  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

**RESPONSE TO BEXAR METROPOLITAN WATER DISTRICT'S MOTION TO DISMISS BSR WATER CO. AND BITTERBLUE, INC., AS PARTIES**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Comes now Bitterblue, Inc., Intervenor in the above-referenced proceeding, and submits this its "Response to Bexar Metropolitan Water District's Motion to Dismiss BSR Water co. and Bitterblue, Inc., as Parties" (the "Response"), and in support thereof would respectfully show as follows:

**I.**

This Motion is in response to Bexar Met's Motion to Dismiss BSR Water Co., and Bitterblue, Inc., as parties in the referenced cause. That motion follows Bexar Met's attorney's letter of July 26, 2006, forwarding to the Executive Director a proposed amendment to Bexar Met's application in the above referenced Docket. Bitterblue respectfully submits that Bexar Met's attempt to carve Bitterblue out of this Docket comes too late. Bitterblue again reiterates its request that its Motion for Summary Disposition be granted dismissing the entire Bexar Met application for the reasons previously set forth.

**II.**

In furtherance of that request, Bitterblue would show as follows:

**A. General.** As Mr. Gene Powell, Chief Executive Officer of Bitterblue, Inc., testified before you on Bitterblue's Motion to Intervene, Bitterblue has been actively working with many landowners in the requested 5,400 acre CCN area of Bexar Met, not just the Kinder and Bass I, Bass II and Bass III Tracts previously described. Bitterblue's efforts have been ongoing for many, many years. For much of that time, Bitterblue sought to work with Bexar Met to get service for some of its tracts. However, because of Bexar Met's unresponsiveness to Bitterblue's requests and because of Bexar Met's unproven water supply, Bitterblue began working with SAWS in the summer of 2005, shortly before it intervened in this Docket, and has entered into utility service agreements with SAWS for the Kinder and Bass I, II and III Tracts as previously provided to the ALJ in this Docket.

**B. Additional Tract Under Contract.** In addition to the Kinder and Bass I, II and III Tracts, Bitterblue has now also entered into a contract to purchase an additional tract known as the "Lux Tract." Attached please find the affidavit of Mr. Gene Powell, C.E.O. of Bitterblue, Inc. (the "Affidavit") verifying that Bitterblue now has a contract to purchase this additional approximately 100 acre tract. A copy of that contract is attached to Mr. Powell's Affidavit and the location of the Lux Tract is shown on the map attached to Mr. Powell's Affidavit. The Lux Tract also lies within the Bexar Met requested area in the pending Docket.

**C. Additional Authorizations to Represent Landowners.** Bitterblue has now also been officially authorized to represent the interests of the additional Solomon Abdo Tract (38 acres) and an additional Bass Properties, L. L. P. Tract (105 acres). As further stated in Mr. Powell's Affidavit, these two tracts also lie within the Bexar Met requested area in the pending Docket and Bitterblue and the owners of the Solomon Aldo Tract and the Bass Properties, L. L. P. Tract desire to obtain water from SAWS for the property, not Bexar Met.

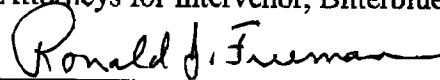
**D. Future Development.** In addition, as further described in Mr. Powell's Affidavit, Bitterblue is actively working to enter into contracts to purchase three additional properties (Roy Adell and Camilla Ritchey [200 acres]; Valerio Family [150 acres]; and Fox [15 acres]. All of these tracts also lie within Bexar Met's requested CCN area.

**E. Summary.** As you can see, Bitterblue remains an active developer of property in the area which Bexar Met is still requesting be added to its CCN area and has the additional Lux Tract already under contract which is included within the area requested by Bexar Met. In addition, Bitterblue is authorized to represent the interests of the Solomon Aldo Tract and the Bass Properties, L. L. P. Tract who also desire water service from SAWS, not Bexar Met. Hence, Bitterblue retains standing in this preceding and again requests that you dismiss the entire application because the logic of your previous Order No. 22 requires dismissal of the entire application since the entire requested area lies outside of Bexar Met's boundaries.

Wherefore, Bitterblue respectfully requests that the ALJ enter an order dismissing this entire application or for such other relief to which it may be entitled.

Respectfully submitted,

Freeman & Corbett, L.L.P.  
Attorneys for Intervenor, Bitterblue, Inc.




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By: Ronald J. Freeman  
State Bar No. 0070431  
8500 Bluffstone Cove, Ste. B-104  
Austin, Texas 78759  
Phone (512) 451-6689  
Fax (512) 453-0865

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 1<sup>st</sup> day of August 2006, a true and correct copy of Bitterblue's Supplement to Motion for Dismissal by Summary Disposition was served on the parties of record by facsimile transmission and First Class Mail.

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

Cassandra J. Church  
Presiding Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, TX 78711-3025  
Fax: (512) 936-0730

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
MC-105  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-3311

Todd Galiga  
Attorney  
Texas Commission on Environmental Quality  
MC-175  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-0606

OFFICE OF PUBLIC INTEREST COUNSEL  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Scott Humphrey  
Office of the Public Interest Council  
Texas Commission on Environmental Quality  
MC-103  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-6377

BEXAR METROPOLITAN WATER  
DISTRICT

Robert Wilson III  
R. L. Wilson, P.C.  
P.O. Box 831583  
San Antonio, TX 78283  
Fax: (210) 223-4200

Adolfo Ruiz  
Bexar Metropolitan Water District  
2047 W. Malone  
San Antonio, TX 78225  
Fax: (210) 922-5152

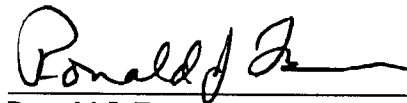
BSR WATER COMPANY  
(SNECKNER PARTNERS, LTD.)

Janessa Glenn  
Jenkins & Gilchrist  
A Professional Corporation  
401 Congress Avenue, Suite 2500  
Austin, TX 78701-3799  
Fax: (512) 499-3810

Seagal V. Wheatly  
Jenkins & Gilchrist  
A Professional Corporation  
Weston Centre, Suite 900  
112 E. Pecan Street  
San Antonio, TX 78205  
Fax: (210) 246-5999

SAN ANTONIO WATER SYSTEM

Jim Mathews  
MATHEWS & FREELAND, L.L.P.  
P.O. Box 1568  
Austin, Texas 78768-1568  
Fax: (512) 703-2785



Ronald J. Freeman

**SOAH DOCKET NO. 582-03-3725  
TCEQ DOCKET NO. 2003-0664-UCR**

**IN RE: APPLICATION OF  
BEXAR METROPOLITAN  
WATER DISTRICT TO AMEND  
WATER CCN NO 10675  
IN BEXAR COUNTY**

§  
§  
§  
§  
§

**BEFORE THE  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS**

**AFFIDAVIT OF GENE POWELL**

STATE OF TEXAS

§  
§  
§

COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared Gene Powell, known to me to be the person whose name is subscribed below, and being by me first duly sworn did depose and say as follows:

“My name is Gene Powell. I am more than 21 years of age, of sound mind, and in all ways qualified to make this affidavit. I have personal knowledge of all facts stated herein.

I am the Chief Executive Officer of Bitterblue, Inc. (“Bitterblue”). For many years, Bitterblue tried to work with Bexar Met to obtain water service for the Kinder Tract and the Bass I, Bass II and Bass III Tracts, in addition to several other properties in the area being requested by Bexar Met in this Docket. Bitterblue’s efforts were unsuccessful as Bexar Met would never propose the terms for a utility service agreement for any of these properties. As a result, beginning last summer, 2005, Bitterblue began working with SAWS to serve its properties and has now obtained utility service agreements with SAWS for the Kinder Tract and the Bass I, Bass II and Bass III Tracts as previously provided in this Docket.

In addition to the Kinder Tract and the Bass I, Bass II and Bass III Tracts, Bitterblue has now placed under contract an additional property known as the Lux Tract of approximately 100 acres. A true and correct copy (with redactions to not disclose sensitive proprietary information) of the contract to purchase the Lux Tract is attached hereto as **Exhibit A**.

In addition, Bitterblue has been now been authorized to represent the interest of the owners of the Solomon Abdo Tract (38 acres) and the Bass Properties, L. L. P. Tract (105 acres), as indicated in the authorizations from those two landowners attached as **Exhibit B** hereto.

Bitterblue and the owners of the Lux Tract, the Solomon Abdo Tract and the Bass Properties, L. L. P. Tract desire to obtain water from SAWS for the property, not Bexar Met.

In addition, Bitterblue continues efforts to acquire other tracts, including the Roy Adell and Camilla Ritchey tract (200 acres); Valerio Family tract (150 acres); and the Fox tract (15 acres). All of these tracts are also in the area sought to be certificated by Bexar Met in this Docket. Although Bitterblue does not have these tracts under contract yet, Bitterblue continues its efforts to secure these tracts for purchase and development by Bitterblue.

At my request, I have had Bitterblue's consulting engineers, Pate Dawson Engineers, Inc., prepare a map showing the location of the Lux Tract, the Solomon Abdo Tract and the Bass Properties, L. L. P. Tract. A true and correct copy of that map showing the location of those tracts is attached hereto as **Exhibit C**. I am personally familiar with the location of those tracts, with the Bexar Met proposed CCN area in this Docket and with the northwest San Antonio vicinity depicted on the map and the map accurately shows the location of these tracts and their relationship to Bexar Met's pending application. All of these tracts are also in the area sought to be certificated by Bexar Met in this Docket.

Bitterblue continues to object to Bexar Met's application for all of these additional tracts and Bitterblue and the owners of the Lux Tract, the Solomon Abdo Tract and the Bass Properties, L. L. P. Tract intend to request retail water and wastewater service for the from San Antonio Water Systems for these tracts.

Further, Affiant sayeth not."

Gene Powell  
Gene Powell

SWORN TO AND SUBSCRIBED before me this 31 day of July, 2006.



Sarah E. Carrington  
Notary Public, State of Texas

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

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

(SEAL)



EXHIBIT A

PURCHASE AND SALE CONTRACT

**THIS PURCHASE AND SALE CONTRACT** ("Contract") is made and entered into as of the Effective Date (as hereinafter defined) by and between **Rennie R. and Joyce M. Lux** (collectively, the "Seller"), and **Bitterblue, Inc.**, a Texas corporation ("Buyer").

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms, conditions and provisions set forth herein, the real property substantially in its present condition, described as follows (collectively, the "Property"):

(a) Approximately 104.597 acres of land in Bexar County, Texas, being described on Exhibit A attached hereto and incorporated herein and to be more particularly described in the Survey approved by Seller and Buyer pursuant to Section 3 herein ("Land").

(b) All improvements situated on the Land, including, without limitation, all out buildings and fences situated thereon.

(c) All rights, titles and interests appurtenant to the Land, including all right, title and interest of Seller in and to adjacent roads, rights-of-way, alleys, drainage facilities, easements, utility facilities, permits, authorities, licenses, and utility commitments and allocations, pertaining to the Land, including, without limitation, the two (2) access easements described in the Warranty Deed, dated September 26, 1991, from Arthur Hauffer et ux to Rennie R. Lux et ux, recorded in Volume 5183, Page 148, Deed Records of Bexar County, Texas.

2. Consideration. The total sales price ("Total Sales Price") for the Property shall be the sum of:

(i) the product of \_\_\_\_\_ Dollars (\$) multiplied times the total number of Usable Acres (as defined in Section 4(d) herein) comprising the Land and as shown on the Survey approved by Seller and Buyer pursuant to Section 3 herein, and as adjusted in accordance with Section 3(b) herein, if applicable, and

(ii) the product of \_\_\_\_\_ Dollars (\$) multiplied times the total number of Flood Plain Acres (as defined in Section 4(d) herein) comprising the Land and as shown on the Survey approved by Seller and Buyer pursuant to Section 3 herein.

The Total Sales Price shall be payable as follows:

(a) Independent Consideration and Earnest Money. Upon execution of this Contract by Buyer and Seller, Buyer shall deposit with Ameripoint Title Company, 376 Landa St., New Braunfels, Texas 78130 ("Title Company"), the following:

(i) the sum of \_\_\_\_\_ Dollars (\$) as independent consideration ("Independent Consideration") for the option and right to terminate this Contract

granted to Buyer in Section 4 herein, which independent Consideration shall be non-refundable to Buyer, but shall be applied to the Total Sales Price at Closing; and

(ii) the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_ ) as initial earnest money ("Initial Earnest Money"). Unless this Contract is sooner terminated, within five (5) days after expiration of the Review Period specified in Section 4(c) herein, Buyer shall deposit with the Title Company the additional sum of \_\_\_\_\_ Dollars (\_\_\_\_\_ ) as additional earnest money ("Additional Earnest Money"). The Initial Earnest Money and the Additional Earnest Money are herein collectively referred to as the Earnest Money. The Earnest Money shall be deposited by the Title Company into an interest-bearing account at a federally-insured financial institution in Bexar County, Texas. All interest earned thereon shall constitute a part of the Earnest Money. The Earnest Money shall be applied to the Total Sales Price payable at Closing or, in the event of termination of this Contract, the Earnest Money shall be disbursed as provided herein.

(b) Cash. The Total Sales Price for the Property (as adjusted for prorations and closing costs in accordance with Section 8 herein) shall be paid by Buyer to Seller in immediately available funds at Closing, with the Earnest Money being credited and applied thereto.

3. Title Commitment and Survey.

(a) Title Commitment. Within fifteen (15) days after the Effective Date hereof, Title Company shall cause to be prepared and shall furnish to Seller and Buyer a current Commitment for Title Insurance issued by the Title Company and dated on or after the Effective Date of this Contract, binding the Title Company to issue an Owner's Policy of Title Insurance ("Owner's Title Policy") to Buyer at Closing in the amount of the Total Sales Price, and setting forth all matters affecting title to the Property, together with legible copies of all recorded documents referenced in or constituting exceptions under the Title Commitment (collectively, the "Title Commitment").

(b) Survey. Within ten (10) days after the Effective Date, Seller shall deliver to Buyer copies of all existing plats, surveys, and site plans of the Property in Seller's possession. Within thirty (30) days after the delivery to Buyer of the drainage study referenced in Section 4(d) herein, Buyer shall cause to be prepared and shall furnish to Seller and the Title Company, a survey ("Survey") of the Property certified as to a date after the Effective Date of this Contract prepared by Pape Dawson Engineers, Inc. or other surveyor designated by Seller ("Surveyor"). The Survey shall be certified to the Title Company, Seller and Buyer and shall include a Surveyor's certificate in form and substance reasonably satisfactory to Seller, Buyer and the Title Company. The Survey shall reflect (i) the total number of acres comprising the Land; and (ii) the total number of Useable Acres and the total number of Flood Plain Acres, as defined and determined in the drainage study referenced in Section 4(d) herein, for purposes of calculating the Total Sales Price pursuant to Section 2 herein.

If the Survey reflects that the Usable Acres comprising the Land are less than forty (40) acres, Buyer may, at its option by written notice to Seller within fifteen (15) days after Buyer's receipt of the Survey, either (i) terminate this Contract and receive back the Earnest Money, or (ii) elect to continue this Contract, provided that the Total Sales Price for the Land shall be adjusted to the sum of (i) \_\_\_\_\_ for the Usable

Acres, plus (ii) multiplied times the total number of Flood Plain Acres comprising the Land. Failure by Buyer to terminate this Contract in the time and manner specified herein shall constitute Buyer's election to proceed to Closing at the adjusted sales price. The metes and bounds description of the Land reflected in the Survey approved by Seller and Buyer in accordance herewith shall be substituted for the description of the Property set forth on Exhibit A hereto and shall be included in the Deed to be executed by Seller and Buyer at Closing.

(c) Approval. Buyer shall provide Seller with written notice of any objections to matters set forth in the Title Commitment and/or Survey within fifteen (15) days after receipt of the Title Commitment (including all documents referenced as exceptions therein) and Survey, whichever is last. If Buyer objects to any matter in the time and manner provided herein, Seller shall use reasonable efforts to cure such objections within fifteen (15) days after receipt of such notice ("Cure Period"). If Seller fails to cure such objections to Buyer's satisfaction within the Cure Period, Buyer may terminate this Contract by written notice to Seller within ten (10) days after expiration of the Cure Period, and the Earnest Money shall be returned to Buyer. Seller shall furnish to Buyer an updated Title Commitment within ten (10) days prior to the Closing Date. If the updated Title Commitment reflects any additional matters not shown in the Title Commitment previously approved by Buyer and to which Buyer objects and Seller fails to cure any such objections to Buyer's satisfaction, Buyer may either terminate this Contract by written notice to Seller on or before the Closing Date, and receive back the Earnest Money, or waive such objection and proceed to Closing.

Seller shall discharge all monetary liens and mechanic's and materialmen's liens against the Property and shall satisfy all other matters or conditions set forth in Schedule C of the Title Commitment at or prior to Closing. All matters set forth in the Title Commitment and Survey approved or deemed approved by Buyer in accordance herewith, except those matters set forth on Schedule C of the Title Commitment which Seller shall be required to satisfy at or prior to Closing, shall constitute permitted exceptions ("Permitted Exceptions") affecting the Property.

#### 4. Review Period and Other Matters.

(a) Access to Property. From the Effective Date of this Contract to the date of Closing or earlier termination of this Contract, Buyer and its authorized representatives and professional consultants shall be entitled to enter upon the Property to investigate all aspects of the Property as Buyer may desire, including, without limitation, environmental assessments, soils, drainage or other engineering studies deemed necessary or desirable by Buyer. **BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, CLAIMS, LIABILITIES, LIENS, AND DAMAGES TO PERSON OR PROPERTY RESULTING FROM BUYER'S INVESTIGATION OF THE PROPERTY, EXCEPT AS AND TO THE EXTENT CAUSED BY THE NEGLIGENCE OF SELLER.** If Buyer's inspections or investigations cause any damage to the Property, and if the sale of the Property is not consummated pursuant hereto, Buyer shall, to the extent practicable, restore or cause

to be restored the Land damaged by Buyer to as near the condition thereof existing prior to any entry by Buyer.

(b) Seller's Submittals. Within ten (10) days after the Effective Date hereof, Seller shall furnish to Buyer, at Seller's expense, copies of all documents pertaining to the Property, including, without limitation, the following documents to the extent same are in Seller's possession: plats, surveys and site plans; tax bills, receipts, notices of appraised value, notice of protest or other contested proceedings for the years 2004-2006; flood plain and drainage information; and zoning information.

(c) Review Period. Buyer shall have until 5:00 p.m., San Antonio time, on the date which is one hundred twenty (120) days after the Effective Date ("Review Period"), in which to determine whether the Property is suitable for Buyer's purposes. If Buyer determines in its sole discretion that the Property is not suitable for Buyer's purposes, Buyer may, at its option, terminate this Contract by written notice to Seller on or prior to the expiration of the Review Period and the Earnest Money shall be returned to Buyer.

(d) Drainage Study. Within forty-five (45) days after the Effective Date, Buyer shall, at its expense, cause Pape Dawson Engineers, Inc. or other engineer selected by Buyer ("Engineer") to prepare and submit to Seller and Buyer, a drainage study for the Property reflecting that portion of the Land lying outside of the 100 year flood plain ("Usable Acres") and that portion of the Land lying within the 100 year flood plain ("Flood Plain Acres"). Seller and Buyer shall have ten (10) days after receipt of the drainage study to review same and provide the other party with any written objections thereto. If Seller and Buyer are unable to agree on the drainage study, either Seller or Buyer may terminate this Contract by written notice to the other party prior to the expiration of the Review Period, and the Earnest Money shall be disbursed to Buyer. If either party fails to timely provide written objections as provided herein, the drainage study as submitted shall be deemed approved by such party. The Usable Acres and Flood Plain Acres as shown on the drainage study approved or deemed approved by Seller and Buyer in accordance herewith shall be reflected on the Survey delivered pursuant to Section 3(b) herein.

(e) Governmental Approvals. Buyer may at its option and expense, prepare and submit an application for, and seek to obtain final approval by applicable governmental authority of the following (collectively, the "Governmental Approvals"): (i) a master development plan accommodating the proposed uses for the Property ("MDP"); (ii) water pollution abatement plan for the Property from the Texas Commission on Environmental Quality (TCEQ); (iii) a traffic impact analysis (TIA) for the Property if required by the City of San Antonio in connection with the MDP; and (iv) a utility services agreement (USA) from the San Antonio Water System (SAWS) for water and sanitary sewer service to the Property. Buyer shall be responsible for all engineering, legal and other fees in connection with the preparation, submission and approval of the Governmental Approvals. Seller shall cooperate with Buyer in connection with the application and approval of the Governmental Approvals, including, without limitation, the timely execution and delivery of all applications, documents and

instruments required by the City of San Antonio and other applicable governmental authority. If final approval of the Governmental Approvals in form satisfactory to Buyer is not obtained, Buyer may, at its option, terminate this Contract by written notice to Seller on or before the expiration of the Review Period and the Earnest Money shall be returned to Buyer.

(f) Leases. The Property is subject to one (1) oral month-to-month tenancy for grazing purposes ("Lease"). At Buyer's option, the Lease shall be terminated by Seller effective as of the Closing Date, or Seller shall assign to Buyer all of Seller's rights, title and interest in and to the Lease and all agreements granting a right to occupy or use the Property or any part thereof, in form reasonably acceptable to Seller and Buyer. SELLER SHALL INDEMNIFY AND HOLD BUYER HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, CLAIMS, LIABILITIES, LIENS AND DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LEASE OR ANY OCCUPANCY OF THE PROPERTY THROUGH THE CLOSING DATE.

(g) Survival. The terms, conditions and indemnities set forth in this Section 4 shall survive the Closing or termination, as applicable, of this Contract, except as otherwise expressly limited herein.

5. Closing.

(a) Closing Date. The sale of the Property shall be closed ("Closing") at the Title Company or such other place mutually acceptable to Seller and Buyer, on the date specified by Seller to Buyer in writing, which date shall be on or after January 1, 2007, but not later than February 16, 2007 ("Closing Date").

(b) Documents to be Delivered at Closing. The following documents shall be executed and delivered by the designated parties at Closing in form acceptable to Seller and Buyer ("Closing Documents"):

(i) Deed. A deed executed by Seller ("Deed") containing a special warranty of title, conveying the Property to Buyer, subject only to the Permitted Exceptions.

(ii) Affidavit of Non-Foreign Status. A sworn affidavit executed by Seller stating that Seller is not a foreign person or entity within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder ("Code").

(iii) Owner's Title Policy. The Owner's Title Policy issued by Title Company in favor of Buyer in the amount of the Total Sales Price. The Owner's Title Policy shall insure indefeasible fee simple title to the Property in Buyer, subject only to the Permitted Exceptions and the standard printed exceptions, except that Seller shall cause to be deleted, at Seller's expense, any exceptions as to (i) taxes, except for standby fees, taxes and assessments for the year of Closing and

subsequent years not yet due and payable; (ii) any discrepancies, conflicts or shortages in area or boundary lines, except for any shortages in area; (iii) rights of parties in possession; and (iv) visible or apparent roadways, easements or other matters not shown on the Survey. Buyer shall be responsible for any fees or charges for any other endorsements or deletions requested by Buyer.

(iv) Authority. Appropriate authorizations for the execution, delivery and performance of this Contract and the Closing Documents by Buyer and Seller.

(v) Other Documents. Such other documents reasonably required by Seller, Buyer or the Title Company in connection with the sale of the Property.

(vi) Tax Certificates. Seller shall furnish to Buyer tax certificates showing that there are no delinquent taxes or assessments affecting the Property as of the Closing Date.

(vii) Keys and Records. Seller shall deliver to Buyer, to the extent such items are in Seller's possession, keys to all locks on the Property, and the original (or copies if the original is not in Seller's possession) of all permits and certificates issued by applicable governmental authority pertaining to the Property.

(c) Possession. Possession of the Property shall be delivered to Buyer at Closing, subject only to the Permitted Exceptions.

6. Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer the following as of the Effective Date and the Closing Date:

(a) Authority. Seller has all requisite power and authority to enter into and perform this Contract. Each person executing this Contract on behalf of Seller warrants that he/she has all requisite authority to do so.

(b) Title. Seller owns fee simple title to the Property, and no person other than Seller is in possession of the Property, or any portion thereof. There are no outstanding written or oral leases or agreements permitting the use or possession of the Property by any other person, except for the oral Lease referenced in Section 4(f) herein.

(c) Other Agreements. From the Effective Date to the Closing Date, Seller will not enter into any agreements which might be or become binding upon the Property or Buyer, or record any restrictions or other encumbrances affecting the Property, without the prior written consent of Buyer.

(d) Litigation. There is no pending litigation or to the best of Seller's knowledge, threatened litigation affecting Seller or the Property which would constitute a lien, claim or obligation against the Property or which could prevent Seller from performing its obligations under this Contract.

(e) No Proceedings. There are no pending condemnation or similar proceedings or assessments affecting the Property, nor to the best of Seller's knowledge is any such proceeding or assessment threatened or contemplated by any governmental authority.

(f) Compliance with Regulations. To the best of Seller's knowledge, there is no condition existing with respect to the Property or the operation of the Property that violates any restrictive covenant or any applicable law, including applicable environmental laws and regulations.

(g) Unpaid Charges. To the best of Seller's knowledge, there are no unpaid charges, debts, liabilities, claims or obligations arising from the development, occupancy, ownership, use or operation of the Property by Seller. No charges or assessments for public improvements or otherwise which may be made against the Property will remain unpaid at Closing, unless such charges or assessments arise from actions of Buyer.

(h) Change in Representations. If, at any time before Closing, either party becomes aware that any of Seller's representations or warranties is no longer true and accurate, that party shall so notify the other party. If the change therein adversely affects Buyer's intended use of the Property, Buyer shall so notify Seller, either concurrently with Buyer's notice to Seller that a representation or warranty is not true and accurate, or within ten (10) days after Buyer receives a notice from Seller to such effect. If Seller is unable to cause the representation or warranty to again become true and correct within thirty (30) days after the date of such notice, Buyer may elect within ten (10) days after expiration of said thirty-day period (i) to terminate this Contract and receive a refund of all Earnest Money, or (ii) to waive such matter and proceed to Closing.

(i) Survival. The provisions contained in this Section 6 shall survive the Closing or the termination of this Contract.

7. Condemnation. If, prior to the Closing Date, any material portion of the Property is taken by eminent domain or condemnation proceedings are commenced against any material portion of the Property, Buyer may, at its option, either (a) terminate this Contract by written notice to Seller upon the earlier of (i) twenty (20) days after Buyer is advised of such proceedings, or (ii) on the Closing Date, in which event the Earnest Money shall be returned to Buyer, or (b) appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to (i) Seller, and the Total Sales Price will be reduced by the same amount or (ii) Buyer, and the Total Sales Price will not be reduced. For purposes of this Contract, "material portion of the Property" shall mean five percent (5%) or more of the total land area of the Property.

8. Proration and Costs. All normal and customarily proratable items, including, without limitation, utility service charges, rental payments, real estate and personal property taxes for the year of Closing and special assessments shall be prorated as of

the Closing Date. At Closing, Seller shall pay to Buyer the amount of any security or other deposits paid under the Lease. If the actual amounts to be prorated are not known as of the Closing Date, the prorations shall be made on the basis of the best evidence or estimates then available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Buyer. Buyer shall be responsible for future imposed rollback taxes on the Land, if any, attributable to any period of time prior to Closing, resulting from this Sale or any change in use after Closing, as and when such rollback taxes are assessed.

At the Closing, closing costs shall be allocated as follows: (a) to Seller, the premium for the Owner's Title Policy in accordance with Section 5(b) herein; all charges for Seller's own attorneys' fees; and one-half (1/2) of any escrow fee charged by the Title Company; and (b) to Buyer, the cost of recording (where appropriate) the instruments of conveyance contemplated by this Contract; the charges for any other endorsements or deletions in the Owner's Title Policy requested by Buyer; the cost of the Survey; the cost of the drainage study pursuant to Section 4(d) herein; Buyer's own attorneys' fees; and one-half (1/2) of any escrow fee charged by the Title Company. Except as otherwise expressly provided herein, all other closing costs not allocated to a party pursuant to the terms of this Contract shall be paid by the party incurring same. The provisions of this Section 8 shall survive the Closing.

9. **Default.** If Buyer fails or refuses to consummate the purchase of the Property pursuant to this Contract at the Closing for any reason other than termination of this Contract by Buyer pursuant to a right to so terminate expressly set forth in this Contract or Seller's failure to perform Seller's obligations under this Contract, then Seller, as Seller's sole and exclusive remedy, shall have the right to terminate this Contract, and Seller shall retain the Earnest Money which shall constitute liquidated damages hereunder, free of any claims by Buyer or any other person with respect thereto. It is agreed that the Earnest Money to which Seller may be entitled hereunder is a reasonable forecast of just compensation for the harm that would be caused by Buyer's breach, and that the harm that would be caused by such breach is one that is incapable or very difficult of accurate estimation, and that retention of the Earnest Money by Seller upon such breach shall constitute the full satisfaction of Buyer's obligations hereunder. Seller expressly waives any other remedies to which it may otherwise be entitled at law or in equity, including the right to seek or recover monetary damages from Buyer and to enforce specific performance of Buyer's obligations hereunder.

If Seller fails or refuses to consummate the sale of the Property pursuant to this Contract at the Closing or fails to perform any of Seller's obligations hereunder either prior to or at the Closing for any reason other than a termination of this Contract by Seller pursuant to a right so to terminate expressly set forth in the Contract or Buyer's default under this Contract, then Buyer shall, as Buyer's sole and exclusive remedy hereunder, have the right to (i) terminate this Contract and receive back the Earnest Money, or (ii) enforce specific performance of this Contract.

In the event of any lawsuit between the parties pertaining to this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court and



other costs. In the event either Seller or Buyer becomes entitled to the Earnest Money upon cancellation of this Contract in accordance with its terms, Buyer and Seller covenant and agree to deliver a letter of instruction to the Title Company directing disbursement of the Earnest Money to the party entitled thereto. In the event either party hereto fails or refuses to sign or deliver such an instruction letter when the other party is entitled to disbursement of the Earnest Money, such failing or refusing party shall pay, upon the final order of a court with appropriate jurisdiction, all reasonable attorneys' fees and court and other costs incurred by the party so entitled to the Earnest Money in connection with the recovery thereof.

10. Real Estate Commissions. If and when the sale of the Property is closed in accordance herewith, Buyer shall pay to McCulloch Ranch and Land Company, Inc. (Ritchie McCulloch) ("Broker") a real estate commission in the amount equal to three percent (3%) of the Total Sales Price ("Commission"). Each party hereto represents and warrants to the other party that except for the Commission payable by Buyer to Broker as provided herein, it has not employed any broker or finder in connection with the transaction contemplated by this Contract. The parties shall indemnify and hold each other harmless against and from any claims, costs, fees, expenses and liabilities in connection with claims to fees, commissions or other compensation by any broker or finder allegedly employed by such party. The provisions of this Section shall survive the Closing or termination of this Contract.

11. Disclosures.

(a) Title. Buyer should have an Abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy.

(b) District. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 50 of the Texas Water Code requires Seller to deliver and the Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this Contract.

(c) Coastal Area. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, Section 33.135 of the Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the Contract.

(d) Annexation. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of a 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.

(e) Pipelines. If a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquified petroleum gas, petroleum or a petroleum product or hazardous substance, is located on or within the Property, Seller shall give Buyer statutory notice regarding such pipeline(s) as required by Section 5.010 of the Texas Property Code.

(f) Brokers. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairman is the responsibility of Buyer and not Brokers.

## 12. Miscellaneous.

(a) Notices. Any notices to be given hereunder shall be given by placing the notice in the United States mail, certified or registered, properly stamped and addressed to the address shown below each party's signature hereon or such other address as the respective party may direct in writing to the other, or by personal or receipted delivery to such address, or by facsimile transmission to such address, and such notice shall be deemed to be received upon such placing in the mails or upon such personal or receipted delivery or upon the date of confirmed facsimile transmission and receipt.

(b) Entire Agreement. This Contract contains all agreements between the parties hereto, and no agreement not contained herein shall be recognized by the parties. This Contract may be modified only by agreement in writing signed by Seller and Buyer. The captions used in connection with the Sections of this Contract are for convenience only and shall not affect the meaning of the language contained in this Contract.

(c) Effective Date. For purposes of this Contract, "Effective Date" shall mean the date when a fully executed copy of this Contract, together with the Independent Consideration and Earnest Money required pursuant to Section 2(a) above is received by the Title Company, as evidenced by the date beneath the Title Company's receipt attached to this Contract. For purposes of determining the time for performance of any obligations hereunder, any such date falling on a Saturday, Sunday or designated legal holiday shall be deemed to be effective as of the next business day following such date. Time is of the essence in this Contract.

(d) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Bexar County, Texas.

(e) Assignments; Binding Effect. Buyer may assign this Contract or any interest therein without the prior written approval of Seller, provided that such assignee assumes all obligations of Buyer under this Contract pursuant to a written agreement. From and after such assignment, Bitterblue, Inc. shall be released from and have no

further liabilities or obligations hereunder. This Contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

(f) Tax-Deferred Exchange. In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that the non-exchanging party shall not assume any additional expense or liability with respect to such tax-deferred exchange and the Closing Date shall not be affected. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

(g) Acceptance. Unless Seller accepts this Contract by delivering an executed counterpart of this Contract to the Title Company and Buyer by 5:00 o'clock p.m., San Antonio Time, on June 2, 2006, this offer shall terminate and be of no further force and effect.

(h) Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**[COUNTERPART SIGNATURE PAGES TO FOLLOW]**

**EXHIBITS:**


Exhibit A - Property

C:\Documents and Settings\Ronald Friesenhahn\Local Settings\Temp\contract.2.doc

**COUNTERPART SIGNATURE PAGES TO  
PURCHASE AND SALE CONTRACT**

**SELLER:**

  
\_\_\_\_\_  
RENNIE R. LUX

  
\_\_\_\_\_  
JOYCE M. LUX

**Notice Address:**

236 Windsor Lane  
New Braunfels, Texas 78213  
Telephone: 830-625-5341  
Facsimile: \_\_\_\_\_

**With Copy To:**

Ronald J. Friesenhahn  
Pecan Plaza Law Offices  
376 Landa Street  
New Braunfels, Texas 78130  
Telephone: 830-625-6511  
Facsimile: 830-606-4148

**COUNTERPART SIGNATURE PAGES TO  
PURCHASE AND SALE CONTRACT**

**BUYER:**

**BITTERBLUE, INC., a Texas corporation**

By: 

Lloyd A. Denton, Jr., President

**Notice Address:**

Bitterblue, Inc.  
11 Lynn Batts Lane, Suite 100  
San Antonio, Texas 78218  
Attn: Lloyd A. Denton, Jr.  
Telephone: 210-828-6131  
Facsimile: 210-828-6137

**RECEIPT OF CONTRACT,  
INDEPENDENT CONSIDERATION AND INITIAL EARNEST MONEY**

The undersigned hereby acknowledges receipt of a fully executed copy of this Contract, together with the Independent Consideration in the amount of \_\_\_\_\_ and the Initial Earnest Money in the amount of \_\_\_\_\_. The Title Company shall promptly disburse the Independent Consideration to Seller and shall hold and disburse the Earnest Money in accordance with the terms of this Contract.

**TITLE COMPANY:**

**AMERIPOINT TITLE COMPANY**

RECEIPT OF CONTRACT AND  
THE FORM OF CLK# 009111

EARNEST MONEY UL

By: ZENIA GWERPEPO FOR CONNIE DIVUL

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

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

Date: JUNE 2, 2006 (the "Effective Date" for purposes of this Contract)

3106 LONDA ST.

NEW BRUNSWICK, TX

78130

830-022-7117

830-000-4148

**EXHIBIT A**

**PROPERTY**

Approximately 104.597 acres in Bexar County, Texas, being the same property conveyed and described in the Warranty Deed, dated September 26, 1991, from Arthur Haufier et ux to Rennie R. Lux et ux, recorded in Volume 5183, Page 148, Deed Records of Bexar County, Texas.

**EXHIBIT B**


**AUTHORIZATION**

Solomon Abdo, et. al. ("Owner"), the owner of approximately 38 acres of land in Bexar County, Texas, described on Exhibit A hereto ("Property"), hereby authorizes and directs Bitterbluc, Inc., a Texas corporation, as the future developer of the Property, to represent the interests of and appear for and on behalf of the Owner, at all hearings, proceedings and other matters relating to or in connection with the following:

Application of Bexar Metropolitan  
Water District to Amend Water CCN  
No. 10675 in Bexar County  
Before the State Office of Administrative Hearings  
SOAH Docket No. 582-03-3725  
TCEQ Docket No. 2003-0664-UCR

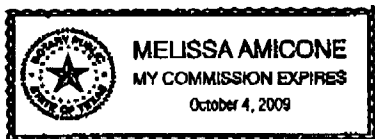
Effective as of July 28, 2006.


**SOLOMON ABDO, et. al.**

By:   
Name: Solomon Abdo  
Title: Owner

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

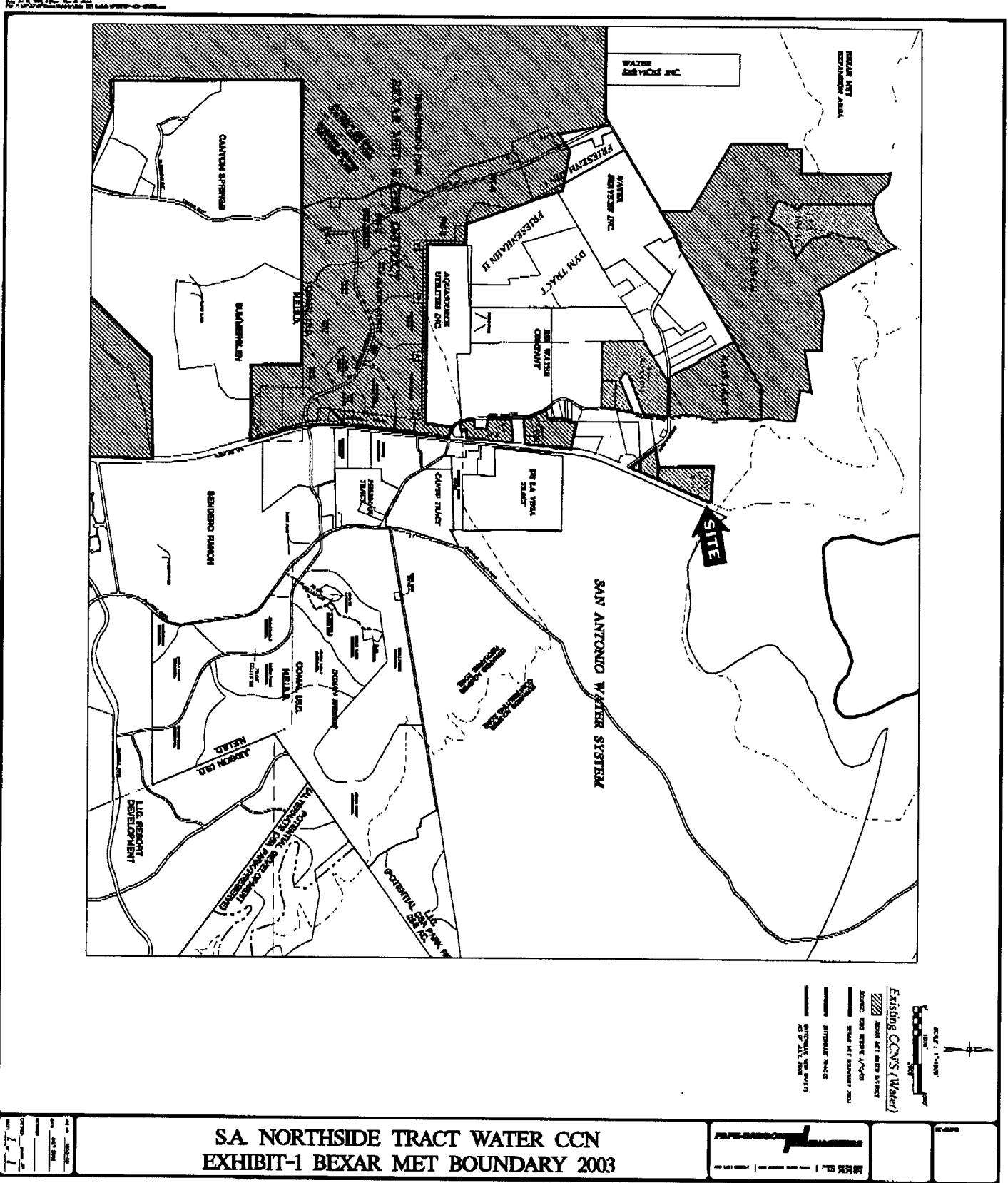
This instrument was acknowledged before me on July 28, 2006, by Solomon Abdo.



  
Notary Public, State of Texas

**EXHIBITS:**  
Exhibit A -- Property Description





**EXHIBIT B, CONTINUED**

**AUTHORIZATION**

Bass Properties, L.P., a Texas limited partnership ("Partnership"), the owner of approximately 106 acres of land in Bexar County, Texas, described on **Exhibit A** hereto ("Property"), hereby authorizes and directs Bitterblue, Inc., a Texas corporation, as the future developer of the Property, to represent the interests of and appear for and on behalf of the Partnership, at all hearings, proceedings and other matters relating to or in connection with the following:

Application of Bexar Metropolitan  
Water District to Amend Water CCN  
No. 10675 in Bexar County  
Before the State Office Of Administrative Hearings  
SOAH Docket No. 582-03-3725  
TCEQ Docket No. 2003-0664-UCR

Effective as of July 28, 2006.

**BASS PROPERTIES, L.P.**, a Texas  
limited partnership

By Its General Partner:  
Bass Properties Management, L.L.C., a  
Texas limited liability company

By: *Alan Bass*  
Name: Alan Bass  
Title: Partner

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on July 28, 2006,  
by Alan Bass, Partner of Bass Properties  
Management, L.L.C., a Texas limited liability company, as the sole general  
partner of Bass Properties, L.P., a Texas limited partnership, on behalf of said  
limited partnership.



*Sarah E. Carrington*  
Notary Public, State of Texas

**EXHIBITS:**

Exhibit A – Property Description

M:\BB\Bass\BxMetauthorization.doc

**EXHIBIT A**

**PROPERTY DESCRIPTION**

Approximately 106.14 acres of land, more or less, in Bexar County, Texas, being the 126.14 acre tract described in the Warranty Deed from Daisy E. Willis to Bass Properties, recorded in Volume 6227, Page 1386, Real Property Records of Bexar County, Texas, **SAVE AND EXCEPT** the 10.00 acre tract described in the Special Warranty Deed, from Bass Properties Partnership to Alan Bass, recorded in Volume 7811, Page 1062, Real Property Records of Bexar County, Texas, and the 10.00 acre tract described in the Special Warranty Deed from Bass Properties, L.P. to Brenda Worsham, recorded in Volume 9105, Page 5, Real Property Records of Bexar County, Texas.

**EXHIBIT C**

**S.A. NORTHSIDE TRACT WATER CCN  
BEXAR MET BOUNDARY 2003**

**(Map Attached to Mailed Copy)**

**FREEMAN & CORBETT, LLP**

PHONE (512) 451-6689

8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

FAX (512) 453-0865

**FAX COVER SHEET**

**From:** Ronald J. Freeman  
**Client/Matter:** Application of Bexar Metropolitan Water District to Amend Water CCN No. 10675 in Bexar County, TCEQ Docket No. 2003-0664-UCR, SOAH Docket No. 582-03-3725  
**Date:** August 1, 2006 (4:16pm)

To:	FAX NUMBER TRANSMITTED TO:
Cassandra J. Church, SOAH	(512) 936-0730
LaDonna Castanuela, Chief Clerk, TCEQ	(512) 239-3311
Todd Galiga, TCEQ	(512) 239-0606
Scoty Humphrey, Office of Public Interest Counsel, TCEQ	(512) 239-6377
Robert Wilson III	(210) 223-4200
Adolfo Ruiz, Bexar Metropolitan Water District	(210) 922-5152
Janessa Glenn	(512) 499-3810
Seagal V. Wheatly	(210) 246-5999
Jim Mathews	(512) 703-2785

DOCUMENTS	NUMBER OF PAGES*
1	29

**COMMENTS:**  
Originals will follow by mail.

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\* INCLUDING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT 512 451-6689.

**FREEMAN & CORBETT, LLP**

PHONE (512) 451-6689

8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

FAX (512) 453-0865

August 1, 2006

Hon. Cassandra J. Church  
Presiding Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

RE: State Office of Administrative Hearings Docket No. 582-03-3725  
Texas Commission on Environmental Quality Docket No. 2003-0664-UCR  
*In Re: The Application of Bexar Metropolitan Water District to Amend Water  
CCN No. 10675 in Bexar County*

Dear Judge Church:

Enclosed please find the Response of Bitterblue, Inc., to Bexar Metropolitan Water District's Motion to Dismiss BSR Water Company and Bitterblue, Inc., as Parties in the referenced case. We would appreciate a prompt ruling on Bexar Met's motion, and on Bitterblue's pending Motion to Revise and Clarify Order No. 22 to dismiss Bexar Met's entire application. The reason we would like a prompt ruling is that we have a deadline of August 11, 2006, to respond to Bexar Met's discovery request, and we believe, but are not certain, that that is now moot. A ruling on our pending motion for clarifying Order No. 22 would clarify whether or not we would need to respond by August 11 to Bexar Met's pending discovery request against Bitterblue.

Thank you for your attention to this matter.

Very truly yours,



Ronald J. Freeman

RJF/gmm

CC: All Parties of Record per Attached Certificate of Service  
Gene Powell

Ronald J. Freeman  
rfreeman@freemanandcorbett.com

Anthony S. Corbett  
tcorbett@freemanandcorbett.com

CC

**FREEMAN & CORBETT, LLP**

PHONE (512) 451-6689

8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

FAX (512) 453-0865

August 1, 2006

Hon. Cassandra J. Church  
Presiding Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

RE: State Office of Administrative Hearings Docket No. 582-03-3725  
Texas Commission on Environmental Quality Docket No. 2003-0664-UCR  
*In Re: The Application of Bexar Metropolitan Water District to Amend Water  
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Dear Judge Church:

Enclosed please find the Response of Bitterblue, Inc., to Bexar Metropolitan Water District's Motion to Dismiss BSR Water Company and Bitterblue, Inc., as Parties in the referenced case. We would appreciate a prompt ruling on Bexar Met's motion, and on Bitterblue's pending Motion to Revise and Clarify Order No. 22 to dismiss Bexar Met's entire application. The reason we would like a prompt ruling is that we have a deadline of August 11, 2006, to respond to Bexar Met's discovery request, and we believe, but are not certain, that that is now moot. A ruling on our pending motion for clarifying Order No. 22 would clarify whether or not we would need to respond by August 11 to Bexar Met's pending discovery request against Bitterblue.

Thank you for your attention to this matter.

Very truly yours,



Ronald J. Freeman

RJF/gmm

CC: All Parties of Record per Attached Certificate of Service  
Gene Powell

Ronald J. Freeman  
rfreeman@freemanandcorbett.com

12 AUG 2006 10:23 AM  
RECEIVED  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Anthony S. Corbett  
tcorbett@freemanandcorbett.com

**SOAH DOCKET NO. 582-03-3725  
TCEQ DOCKET NO. 2003-0664-UCR**

<b>IN RE: APPLICATION OF</b>	§	
<b>BEXAR METROPOLITAN</b>	§	<b>BEFORE THE</b>
<b>WATER DISTRICT TO AMEND</b>	§	
<b>WATER CCN NO 10675</b>	§	<b>STATE OFFICE OF</b>
<b>IN BEXAR COUNTY</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**RESPONSE TO BEXAR METROPOLITAN WATER DISTRICT'S MOTION TO  
DISMISS BSR WATER CO. AND BITTERBLUE, INC., AS PARTIES**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Comes now Bitterblue, Inc., Intervenor in the above-referenced proceeding, and submits this its "Response to Bexar Metropolitan Water District's Motion to Dismiss BSR Water co. and Bitterblue, Inc., as Parties" (the "Response"), and in support thereof would respectfully show as follows:

**I.**

This Motion is in response to Bexar Met's Motion to Dismiss BSR Water Co., and Bitterblue, Inc., as parties in the referenced cause. That motion follows Bexar Met's attorney's letter of July 26, 2006, forwarding to the Executive Director a proposed amendment to Bexar Met's application in the above referenced Docket. Bitterblue respectfully submits that Bexar Met's attempt to carve Bitterblue out of this Docket comes too late. Bitterblue again reiterates its request that its Motion for Summary Disposition be granted dismissing the entire Bexar Met application for the reasons previously set forth.

**II.**

In furtherance of that request, Bitterblue would show as follows:

**A. General.** As Mr. Gene Powell, Chief Executive Officer of Bitterblue, Inc., testified before you on Bitterblue's Motion to Intervene, Bitterblue has been actively working with many landowners in the requested 5,400 acre CCN area of Bexar Met, not just the Kinder and Bass I, Bass II and Bass III Tracts previously described. Bitterblue's efforts have been ongoing for many, many years. For much of that time, Bitterblue sought to work with Bexar Met to get service for some of its tracts. However, because of Bexar Met's unresponsiveness to Bitterblue's requests and because of Bexar Met's unproven water supply, Bitterblue began working with SAWS in the summer of 2005, shortly before it intervened in this Docket, and has entered into utility service agreements with SAWS for the Kinder and Bass I, II and III Tracts as previously provided to the ALJ in this Docket.



**B. Additional Tract Under Contract.** In addition to the Kinder and Bass I, II and III Tracts, Bitterblue has now also entered into a contract to purchase an additional tract known as the "Lux Tract." Attached please find the affidavit of Mr. Gene Powell, C.E.O. of Bitterblue, Inc. (the "Affidavit") verifying that Bitterblue now has a contract to purchase this additional approximately 100 acre tract. A copy of that contract is attached to Mr. Powell's Affidavit and the location of the Lux Tract is shown on the map attached to Mr. Powell's Affidavit. The Lux Tract also lies within the Bexar Met requested area in the pending Docket.

**C. Additional Authorizations to Represent Landowners.** Bitterblue has now also been officially authorized to represent the interests of the additional Solomon Abdo Tract (38 acres) and an additional Bass Properties, L. L. P. Tract (105 acres). As further stated in Mr. Powell's Affidavit, these two tracts also lie within the Bexar Met requested area in the pending Docket and Bitterblue and the owners of the Solomon Aldo Tract and the Bass Properties, L. L. P. Tract desire to obtain water from SAWS for the property, not Bexar Met.

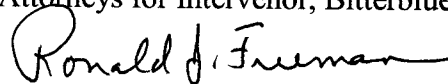
**D. Future Development.** In addition, as further described in Mr. Powell's Affidavit, Bitterblue is actively working to enter into contracts to purchase three additional properties (Roy Adell and Camilla Ritchey [200 acres]; Valerio Family [150 acres]; and Fox [15 acres]. All of these tracts also lie within Bexar Met's requested CCN area.

**E. Summary.** As you can see, Bitterblue remains an active developer of property in the area which Bexar Met is still requesting be added to its CCN area and has the additional Lux Tract already under contract which is included within the area requested by Bexar Met. In addition, Bitterblue is authorized to represent the interests of the Solomon Aldo Tract and the Bass Properties, L. L. P. Tract who also desire water service from SAWS, not Bexar Met. Hence, Bitterblue retains standing in this preceding and again requests that you dismiss the entire application because the logic of your previous Order No. 22 requires dismissal of the entire application since the entire requested area lies outside of Bexar Met's boundaries.

Wherefore, Bitterblue respectfully requests that the ALJ enter an order dismissing this entire application or for such other relief to which it may be entitled.

Respectfully submitted,

Freeman & Corbett, L.L.P.  
Attorneys for Intervenor, Bitterblue, Inc.



---

By: Ronald J. Freeman  
State Bar No. 0070431  
8500 Bluffstone Cove, Ste. B-104  
Austin, Texas 78759  
Phone (512) 451-6689  
Fax (512) 453-0865

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 1<sup>st</sup> day of August 2006, a true and correct copy of Bitterblue's Supplement to Motion for Dismissal by Summary Disposition was served on the parties of record by facsimile transmission and First Class Mail.

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

Cassandra J. Church  
Presiding Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, TX 78711-3025  
Fax: (512) 936-0730

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
MC-105  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-3311

Todd Galiga  
Attorney  
Texas Commission on Environmental Quality  
MC-175  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-0606

OFFICE OF PUBLIC INTEREST COUNSEL  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Scott Humphrey  
Office of the Public Interest Council  
Texas Commission on Environmental Quality  
MC-103  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-6377

BEXAR METROPOLITAN WATER  
DISTRICT

Robert Wilson III  
R. L. Wilson, P.C.  
P.O. Box 831583  
San Antonio, TX 78283  
Fax: (210) 223-4200

Adolfo Ruiz  
Bexar Metropolitan Water District  
2047 W. Malone  
San Antonio, TX 78225  
Fax: (210) 922-5152

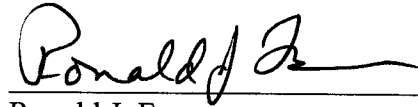
BSR WATER COMPANY  
(SNECKNER PARTNERS, LTD.)

Janessa Glenn  
Jenkins & Gilchrist  
A Professional Corporation  
401 Congress Avenue, Suite 2500  
Austin, TX 78701-3799  
Fax: (512) 499-3810

Seagal V. Wheatly  
Jenkins & Gilchrist  
A Professional Corporation  
Weston Centre, Suite 900  
112 E. Pecan Street  
San Antonio, TX 78205  
Fax: (210) 246-5999

SAN ANTONIO WATER SYSTEM

Jim Mathews  
MATHEWS & FREELAND, L.L.P.  
P.O. Box 1568  
Austin, Texas 78768-1568  
Fax: (512) 703-2785



---

Ronald J. Freeman

**SOAH DOCKET NO. 582-03-3725  
TCEQ DOCKET NO. 2003-0664-UCR**

<b>IN RE: APPLICATION OF</b>	§	<b>BEFORE THE</b>
<b>BEXAR METROPOLITAN</b>	§	
<b>WATER DISTRICT TO AMEND</b>	§	<b>STATE OFFICE OF</b>
<b>WATER CCN NO 10675</b>	§	
<b>IN BEXAR COUNTY</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**AFFIDAVIT OF GENE POWELL**

STATE OF TEXAS	§
	§
COUNTY OF BEXAR	§

Before me, the undersigned authority, on this day personally appeared Gene Powell, known to me to be the person whose name is subscribed below, and being by me first duly sworn did depose and say as follows:

“My name is Gene Powell. I am more than 21 years of age, of sound mind, and in all ways qualified to make this affidavit. I have personal knowledge of all facts stated herein.

I am the Chief Executive Officer of Bitterblue, Inc. (“Bitterblue”). For many years, Bitterblue tried to work with Bexar Met to obtain water service for the Kinder Tract and the Bass I, Bass II and Bass III Tracts, in addition to several other properties in the area being requested by Bexar Met in this Docket. Bitterblue’s efforts were unsuccessful as Bexar Met would never propose the terms for a utility service agreement for any of these properties. As a result, beginning last summer, 2005, Bitterblue began working with SAWS to serve its properties and has now obtained utility service agreements with SAWS for the Kinder Tract and the Bass I, Bass II and Bass III Tracts as previously provided in this Docket.

In addition to the Kinder Tract and the Bass I, Bass II and Bass III Tracts, Bitterblue has now placed under contract an additional property known as the Lux Tract of approximately 100 acres. A true and correct copy (with redactions to not disclose sensitive proprietary information) of the contract to purchase the Lux Tract is attached hereto as **Exhibit A**.

In addition, Bitterblue has been now been authorized to represent the interest of the owners of the Solomon Abdo Tract (38 acres) and the Bass Properties, L. L. P. Tract (105 acres), as indicated in the authorizations from those two landowners attached as **Exhibit B** hereto.

Bitterblue and the owners of the Lux Tract, the Solomon Abdo Tract and the Bass Properties, L. L. P. Tract desire to obtain water from SAWS for the property, not Bexar Met.

In addition, Bitterblue continues efforts to acquire other tracts, including the Roy Adell and Camilla Ritchey tract (200 acres); Valerio Family tract (150 acres); and the Fox tract (15 acres). All of these tracts are also in the area sought to be certificated by Bexar Met in this Docket. Although Bitterblue does not have these tracts under contract yet, Bitterblue continues its efforts to secure these tracts for purchase and development by Bitterblue.

At my request, I have had Bitterblue's consulting engineers, Pate Dawson Engineers, Inc., prepare a map showing the location of the Lux Tract, the Solomon Abdo Tract and the Bass Properties, L. L. P. Tract. A true and correct copy of that map showing the location of those tracts is attached hereto as **Exhibit C**. I am personally familiar with the location of those tracts, with the Bexar Met proposed CCN area in this Docket and with the northwest San Antonio vicinity depicted on the map and the map accurately shows the location of these tracts and their relationship to Bexar Met's pending application. All of these tracts are also in the area sought to be certificated by Bexar Met in this Docket.

Bitterblue continues to object to Bexar Met's application for all of these additional tracts and Bitterblue and the owners of the Lux Tract, the Solomon Abdo Tract and the Bass Properties, L. L. P. Tract intend to request retail water and wastewater service for the from San Antonio Water Systems for these tracts.

Further, Affiant sayeth not."

Gene Powell  
Gene Powell

SWORN TO AND SUBSCRIBED before me this 31 day of July, 2006.



Sarah E. Carrington  
Notary Public, State of Texas

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

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

(SEAL)

## EXHIBIT A

### PURCHASE AND SALE CONTRACT

**THIS PURCHASE AND SALE CONTRACT** ("Contract") is made and entered into as of the Effective Date (as hereinafter defined) by and between **Rennie R. and Joyce M. Lux** (collectively, the "Seller"), and **Bitterblue, Inc.**, a Texas corporation ("Buyer").

1. **Property.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms, conditions and provisions set forth herein, the real property substantially in its present condition, described as follows (collectively, the "Property"):

(a) Approximately 104.597 acres of land in Bexar County, Texas, being described on **Exhibit A** attached hereto and incorporated herein and to be more particularly described in the Survey approved by Seller and Buyer pursuant to **Section 3** herein ("Land").

(b) All improvements situated on the Land, including, without limitation, all out buildings and fences situated thereon.

(c) All rights, titles and interests appurtenant to the Land, including all right, title and interest of Seller in and to adjacent roads, rights-of-way, alleys, drainage facilities, easements, utility facilities, permits, authorities, licenses, and utility commitments and allocations, pertaining to the Land, including, without limitation, the two (2) access easements described in the Warranty Deed, dated September 26, 1991, from Arthur Haufler et ux to Rennie R. Lux et ux, recorded in Volume 5183, Page 148, Deed Records of Bexar County, Texas.

2. **Consideration.** The total sales price ("Total Sales Price") for the Property shall be the sum of:

(i) the product of \_\_\_\_\_ Dollars ( ) multiplied times the total number of Usable Acres (as defined in **Section 4(d)** herein) comprising the Land and as shown on the Survey approved by Seller and Buyer pursuant to **Section 3** herein, and as adjusted in accordance with **Section 3(b)** herein, if applicable, and

(ii) the product of \_\_\_\_\_ Dollars ( ) multiplied times the total number of Flood Plain Acres (as defined in **Section 4(d)** herein) comprising the Land and as shown on the Survey approved by Seller and Buyer pursuant to **Section 3** herein.

The Total Sales Price shall be payable as follows:

(a) **Independent Consideration and Earnest Money.** Upon execution of this Contract by Buyer and Seller, Buyer shall deposit with Ameripoint Title Company, 376 Landa St., New Braunfels, Texas 78130 ("Title Company"), the following:

(i) the sum of \_\_\_\_\_ Dollars ( ) as independent consideration ("Independent Consideration") for the option and right to terminate this Contract

granted to Buyer in **Section 4** herein, which Independent Consideration shall be non-refundable to Buyer, but shall be applied to the Total Sales Price at Closing; and

(ii) the sum of \_\_\_\_\_ Dollars ( \_\_\_\_\_ ), as initial earnest money ("Initial Earnest Money"). Unless this Contract is sooner terminated, within five (5) days after expiration of the Review Period specified in **Section 4(c)** herein, Buyer shall deposit with the Title Company the additional sum of \_\_\_\_\_ Dollars ( \_\_\_\_\_ ) as additional earnest money ("Additional Earnest Money"). The Initial Earnest Money and the Additional Earnest Money are herein collectively referred to as the Earnest Money. The Earnest Money shall be deposited by the Title Company into an interest-bearing account at a federally-insured financial institution in Bexar County, Texas. All interest earned thereon shall constitute a part of the Earnest Money. The Earnest Money shall be applied to the Total Sales Price payable at Closing or, in the event of termination of this Contract, the Earnest Money shall be disbursed as provided herein.

(b) Cash. The Total Sales Price for the Property (as adjusted for prorations and closing costs in accordance with **Section 8** herein) shall be paid by Buyer to Seller in immediately available funds at Closing, with the Earnest Money being credited and applied thereto.

3. Title Commitment and Survey.

(a) Title Commitment. Within fifteen (15) days after the Effective Date hereof, Title Company shall cause to be prepared and shall furnish to Seller and Buyer a current Commitment for Title Insurance issued by the Title Company and dated on or after the Effective Date of this Contract, binding the Title Company to issue an Owner's Policy of Title Insurance ("Owner's Title Policy") to Buyer at Closing in the amount of the Total Sales Price, and setting forth all matters affecting title to the Property, together with legible copies of all recorded documents referenced in or constituting exceptions under the Title Commitment (collectively, the "Title Commitment").

(b) Survey. Within ten (10) days after the Effective Date, Seller shall deliver to Buyer copies of all existing plats, surveys, and site plans of the Property in Seller's possession. Within thirty (30) days after the delivery to Buyer of the drainage study referenced in **Section 4(d)** herein, Buyer shall cause to be prepared and shall furnish to Seller and the Title Company, a survey ("Survey") of the Property certified as to a date after the Effective Date of this Contract prepared by Pape Dawson Engineers, Inc. or other surveyor designated by Seller ("Surveyor"). The Survey shall be certified to the Title Company, Seller and Buyer and shall include a Surveyor's certificate in form and substance reasonably satisfactory to Seller, Buyer and the Title Company. The Survey shall reflect (i) the total number of acres comprising the Land; and (ii) the total number of Useable Acres and the total number of Flood Plain Acres, as defined and determined in the drainage study referenced in **Section 4(d)** herein, for purposes of calculating the Total Sales Price pursuant to **Section 2** herein.

If the Survey reflects that the Usable Acres comprising the Land are less than forty (40) acres, Buyer may, at its option by written notice to Seller within fifteen (15) days after Buyer's receipt of the Survey, either (i) terminate this Contract and receive back the Earnest Money, or (ii) elect to continue this Contract, provided that the Total Sales Price for the Land shall be adjusted to the sum of (i) \_\_\_\_\_ for the Usable



Acres, plus (ii) multiplied times the total number of Flood Plain Acres comprising the Land. Failure by Buyer to terminate this Contract in the time and manner specified herein shall constitute Buyer's election to proceed to Closing at the adjusted sales price. The metes and bounds description of the Land reflected in the Survey approved by Seller and Buyer in accordance herewith shall be substituted for the description of the Property set forth on Exhibit A hereto and shall be included in the Deed to be executed by Seller and Buyer at Closing.

(c) Approval. Buyer shall provide Seller with written notice of any objections to matters set forth in the Title Commitment and/or Survey within fifteen (15) days after receipt of the Title Commitment (including all documents referenced as exceptions therein) and Survey, whichever is last. If Buyer objects to any matter in the time and manner provided herein, Seller shall use reasonable efforts to cure such objections within fifteen (15) days after receipt of such notice ("Cure Period"). If Seller fails to cure such objections to Buyer's satisfaction within the Cure Period, Buyer may terminate this Contract by written notice to Seller within ten (10) days after expiration of the Cure Period, and the Earnest Money shall be returned to Buyer. Seller shall furnish to Buyer an updated Title Commitment within ten (10) days prior to the Closing Date. If the updated Title Commitment reflects any additional matters not shown in the Title Commitment previously approved by Buyer and to which Buyer objects and Seller fails to cure any such objections to Buyer's satisfaction, Buyer may either terminate this Contract by written notice to Seller on or before the Closing Date, and receive back the Earnest Money, or waive such objection and proceed to Closing.

Seller shall discharge all monetary liens and mechanic's and materialmen's liens against the Property and shall satisfy all other matters or conditions set forth in Schedule C of the Title Commitment at or prior to Closing. All matters set forth in the Title Commitment and Survey approved or deemed approved by Buyer in accordance herewith, except those matters set forth on Schedule C of the Title Commitment which Seller shall be required to satisfy at or prior to Closing, shall constitute permitted exceptions ("Permitted Exceptions") affecting the Property.

#### 4. Review Period and Other Matters.

(a) Access to Property. From the Effective Date of this Contract to the date of Closing or earlier termination of this Contract, Buyer and its authorized representatives and professional consultants shall be entitled to enter upon the Property to investigate all aspects of the Property as Buyer may desire, including, without limitation, environmental assessments, soils, drainage or other engineering studies deemed necessary or desirable by Buyer. **BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, CLAIMS, LIABILITIES, LIENS, AND DAMAGES TO PERSON OR PROPERTY RESULTING FROM BUYER'S INVESTIGATION OF THE PROPERTY, EXCEPT AS AND TO THE EXTENT CAUSED BY THE NEGLIGENCE OF SELLER.** If Buyer's inspections or investigations cause any damage to the Property, and if the sale of the Property is not consummated pursuant hereto, Buyer shall, to the extent practicable, restore or cause

to be restored the Land damaged by Buyer to as near the condition thereof existing prior to any entry by Buyer.

(b) Seller's Submittals. Within ten (10) days after the Effective Date hereof, Seller shall furnish to Buyer, at Seller's expense, copies of all documents pertaining to the Property, including, without limitation, the following documents to the extent same are in Seller's possession: plats, surveys and site plans; tax bills, receipts, notices of appraised value, notice of protest or other contested proceedings for the years 2004-2006; flood plain and drainage information; and zoning information.

(c) Review Period. Buyer shall have until 5:00 p.m., San Antonio time, on the date which is one hundred twenty (120) days after the Effective Date ("Review Period"), in which to determine whether the Property is suitable for Buyer's purposes. If Buyer determines in its sole discretion that the Property is not suitable for Buyer's purposes, Buyer may, at its option, terminate this Contract by written notice to Seller on or prior to the expiration of the Review Period and the Earnest Money shall be returned to Buyer.

(d) Drainage Study. Within forty-five (45) days after the Effective Date, Buyer shall, at its expense, cause Pape Dawson Engineers, Inc. or other engineer selected by Buyer ("Engineer") to prepare and submit to Seller and Buyer, a drainage study for the Property reflecting that portion of the Land lying outside of the 100 year flood plain ("Usable Acres") and that portion of the Land lying within the 100 year flood plain ("Flood Plain Acres"). Seller and Buyer shall have ten (10) days after receipt of the drainage study to review same and provide the other party with any written objections thereto. If Seller and Buyer are unable to agree on the drainage study, either Seller or Buyer may terminate this Contract by written notice to the other party prior to the expiration of the Review Period, and the Earnest Money shall be disbursed to Buyer. If either party fails to timely provide written objections as provided herein, the drainage study as submitted shall be deemed approved by such party. The Usable Acres and Flood Plain Acres as shown on the drainage study approved or deemed approved by Seller and Buyer in accordance herewith shall be reflected on the Survey delivered pursuant to **Section 3(b)** herein.

(e) Governmental Approvals. Buyer may at its option and expense, prepare and submit an application for, and seek to obtain final approval by applicable governmental authority of the following (collectively, the "Governmental Approvals"): (i) a master development plan accommodating the proposed uses for the Property ("MDP"); (ii) water pollution abatement plan for the Property from the Texas Commission on Environmental Quality (TCEQ); (iii) a traffic impact analysis (TIA) for the Property if required by the City of San Antonio in connection with the MDP; and (iv) a utility services agreement (USA) from the San Antonio Water System (SAWS) for water and sanitary sewer service to the Property. Buyer shall be responsible for all engineering, legal and other fees in connection with the preparation, submission and approval of the Governmental Approvals. Seller shall cooperate with Buyer in connection with the application and approval of the Governmental Approvals, including, without limitation, the timely execution and delivery of all applications, documents and

instruments required by the City of San Antonio and other applicable governmental authority. If final approval of the Governmental Approvals in form satisfactory to Buyer is not obtained, Buyer may, at its option, terminate this Contract by written notice to Seller on or before the expiration of the Review Period and the Earnest Money shall be returned to Buyer.

(f) Leases. The Property is subject to one (1) oral month-to-month tenancy for grazing purposes ("Lease"). At Buyer's option, the Lease shall be terminated by Seller effective as of the Closing Date, or Seller shall assign to Buyer all of Seller's rights, title and interest in and to the Lease and all agreements granting a right to occupy or use the Property or any part thereof, in form reasonably acceptable to Seller and Buyer. SELLER SHALL INDEMNIFY AND HOLD BUYER HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, CLAIMS, LIABILITIES, LIENS AND DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LEASE OR ANY OCCUPANCY OF THE PROPERTY THROUGH THE CLOSING DATE.

(g) Survival. The terms, conditions and indemnities set forth in this Section 4 shall survive the Closing or termination, as applicable, of this Contract, except as otherwise expressly limited herein.

5. Closing.

(a) Closing Date. The sale of the Property shall be closed ("Closing") at the Title Company or such other place mutually acceptable to Seller and Buyer, on the date specified by Seller to Buyer in writing, which date shall be on or after January 1, 2007, but not later than February 16, 2007 ("Closing Date").

(b) Documents to be Delivered at Closing. The following documents shall be executed and delivered by the designated parties at Closing in form acceptable to Seller and Buyer ("Closing Documents"):

(i) Deed. A deed executed by Seller ("Deed") containing a special warranty of title, conveying the Property to Buyer, subject only to the Permitted Exceptions.

(ii) Affidavit of Non-Foreign Status. A sworn affidavit executed by Seller stating that Seller is not a foreign person or entity within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder ("Code").

(iii) Owner's Title Policy. The Owner's Title Policy issued by Title Company in favor of Buyer in the amount of the Total Sales Price. The Owner's Title Policy shall insure indefeasible fee simple title to the Property in Buyer, subject only to the Permitted Exceptions and the standard printed exceptions, except that Seller shall cause to be deleted, at Seller's expense, any exceptions as to (i) taxes, except for standby fees, taxes and assessments for the year of Closing and

subsequent years not yet due and payable; (ii) any discrepancies, conflicts or shortages in area or boundary lines, except for any shortages in area; (iii) rights of parties in possession; and (iv) visible or apparent roadways, easements or other matters not shown on the Survey. Buyer shall be responsible for any fees or charges for any other endorsements or deletions requested by Buyer.

(iv) Authority. Appropriate authorizations for the execution, delivery and performance of this Contract and the Closing Documents by Buyer and Seller.

(v) Other Documents. Such other documents reasonably required by Seller, Buyer or the Title Company in connection with the sale of the Property.

(vi) Tax Certificates. Seller shall furnish to Buyer tax certificates showing that there are no delinquent taxes or assessments affecting the Property as of the Closing Date.

(vii) Keys and Records. Seller shall deliver to Buyer, to the extent such items are in Seller's possession, keys to all locks on the Property, and the original (or copies if the original is not in Seller's possession) of all permits and certificates issued by applicable governmental authority pertaining to the Property.

(c) Possession. Possession of the Property shall be delivered to Buyer at Closing, subject only to the Permitted Exceptions.

6. Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer the following as of the Effective Date and the Closing Date:

(a) Authority. Seller has all requisite power and authority to enter into and perform this Contract. Each person executing this Contract on behalf of Seller warrants that he/she has all requisite authority to do so.

(b) Title. Seller owns fee simple title to the Property, and no person other than Seller is in possession of the Property, or any portion thereof. There are no outstanding written or oral leases or agreements permitting the use or possession of the Property by any other person, except for the oral Lease referenced in **Section 4(f)** herein.

(c) Other Agreements. From the Effective Date to the Closing Date, Seller will not enter into any agreements which might be or become binding upon the Property or Buyer, or record any restrictions or other encumbrances affecting the Property, without the prior written consent of Buyer.

(d) Litigation. There is no pending litigation or to the best of Seller's knowledge, threatened litigation affecting Seller or the Property which would constitute a lien, claim or obligation against the Property or which could prevent Seller from performing its obligations under this Contract.

(e) No Proceedings. There are no pending condemnation or similar proceedings or assessments affecting the Property, nor to the best of Seller's knowledge is any such proceeding or assessment threatened or contemplated by any governmental authority.

(f) Compliance with Regulations. To the best of Seller's knowledge, there is no condition existing with respect to the Property or the operation of the Property that violates any restrictive covenant or any applicable law, including applicable environmental laws and regulations.

(g) Unpaid Charges. To the best of Seller's knowledge, there are no unpaid charges, debts, liabilities, claims or obligations arising from the development, occupancy, ownership, use or operation of the Property by Seller. No charges or assessments for public improvements or otherwise which may be made against the Property will remain unpaid at Closing, unless such charges or assessments arise from actions of Buyer.

(h) Change in Representations. If, at any time before Closing, either party becomes aware that any of Seller's representations or warranties is no longer true and accurate, that party shall so notify the other party. If the change therein adversely affects Buyer's intended use of the Property, Buyer shall so notify Seller, either concurrently with Buyer's notice to Seller that a representation or warranty is not true and accurate, or within ten (10) days after Buyer receives a notice from Seller to such effect. If Seller is unable to cause the representation or warranty to again become true and correct within thirty (30) days after the date of such notice, Buyer may elect within ten (10) days after expiration of said thirty-day period (i) to terminate this Contract and receive a refund of all Earnest Money, or (ii) to waive such matter and proceed to Closing.

(i) Survival. The provisions contained in this Section 6 shall survive the Closing or the termination of this Contract.

7. Condemnation. If, prior to the Closing Date, any material portion of the Property is taken by eminent domain or condemnation proceedings are commenced against any material portion of the Property, Buyer may, at its option, either (a) terminate this Contract by written notice to Seller upon the earlier of (i) twenty (20) days after Buyer is advised of such proceedings, or (ii) on the Closing Date, in which event the Earnest Money shall be returned to Buyer, or (b) appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to (i) Seller, and the Total Sales Price will be reduced by the same amount or (ii) Buyer, and the Total Sales Price will not be reduced. For purposes of this Contract, "material portion of the Property" shall mean five percent (5%) or more of the total land area of the Property.

8. Proration and Costs. All normal and customarily proratable items, including, without limitation, utility service charges, rental payments, real estate and personal property taxes for the year of Closing and special assessments shall be prorated as of

the Closing Date. At Closing, Seller shall pay to Buyer the amount of any security or other deposits paid under the Lease. If the actual amounts to be prorated are not known as of the Closing Date, the prorations shall be made on the basis of the best evidence or estimates then available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Buyer. Buyer shall be responsible for future imposed rollback taxes on the Land, if any, attributable to any period of time prior to Closing, resulting from this Sale or any change in use after Closing, as and when such rollback taxes are assessed.

At the Closing, closing costs shall be allocated as follows: (a) to Seller, the premium for the Owner's Title Policy in accordance with **Section 5(b)** herein; all charges for Seller's own attorneys' fees; and one-half (1/2) of any escrow fee charged by the Title Company; and (b) to Buyer, the cost of recording (where appropriate) the instruments of conveyance contemplated by this Contract; the charges for any other endorsements or deletions in the Owner's Title Policy requested by Buyer; the cost of the Survey; the cost of the drainage study pursuant to **Section 4(d)** herein; Buyer's own attorneys' fees; and one-half (1/2) of any escrow fee charged by the Title Company. Except as otherwise expressly provided herein, all other closing costs not allocated to a party pursuant to the terms of this Contract shall be paid by the party incurring same. The provisions of this **Section 8** shall survive the Closing.

9. Default. If Buyer fails or refuses to consummate the purchase of the Property pursuant to this Contract at the Closing for any reason other than termination of this Contract by Buyer pursuant to a right to so terminate expressly set forth in this Contract or Seller's failure to perform Seller's obligations under this Contract, then Seller, as Seller's sole and exclusive remedy, shall have the right to terminate this Contract, and Seller shall retain the Earnest Money which shall constitute liquidated damages hereunder, free of any claims by Buyer or any other person with respect thereto. It is agreed that the Earnest Money to which Seller may be entitled hereunder is a reasonable forecast of just compensation for the harm that would be caused by Buyer's breach, and that the harm that would be caused by such breach is one that is incapable or very difficult of accurate estimation, and that retention of the Earnest Money by Seller upon such breach shall constitute the full satisfaction of Buyer's obligations hereunder. Seller expressly waives any other remedies to which it may otherwise be entitled at law or in equity, including the right to seek or recover monetary damages from Buyer and to enforce specific performance of Buyer's obligations hereunder.

If Seller fails or refuses to consummate the sale of the Property pursuant to this Contract at the Closing or fails to perform any of Seller's obligations hereunder either prior to or at the Closing for any reason other than a termination of this Contract by Seller pursuant to a right so to terminate expressly set forth in the Contract or Buyer's default under this Contract, then Buyer shall, as Buyer's sole and exclusive remedy hereunder, have the right to (i) terminate this Contract and receive back the Earnest Money, or (ii) enforce specific performance of this Contract.

In the event of any lawsuit between the parties pertaining to this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court and

other costs. In the event either Seller or Buyer becomes entitled to the Earnest Money upon cancellation of this Contract in accordance with its terms, Buyer and Seller covenant and agree to deliver a letter of instruction to the Title Company directing disbursement of the Earnest Money to the party entitled thereto. In the event either party hereto fails or refuses to sign or deliver such an instruction letter when the other party is entitled to disbursement of the Earnest Money, such failing or refusing party shall pay, upon the final order of a court with appropriate jurisdiction, all reasonable attorneys' fees and court and other costs incurred by the party so entitled to the Earnest Money in connection with the recovery thereof.

10. Real Estate Commissions. If and when the sale of the Property is closed in accordance herewith, Buyer shall pay to McCulloch Ranch and Land Company, Inc. (Ritchie McCulloch) ("Broker") a real estate commission in the amount equal to three percent (3%) of the Total Sales Price ("Commission"). Each party hereto represents and warrants to the other party that except for the Commission payable by Buyer to Broker as provided herein, it has not employed any broker or finder in connection with the transaction contemplated by this Contract. The parties shall indemnify and hold each other harmless against and from any claims, costs, fees, expenses and liabilities in connection with claims to fees, commissions or other compensation by any broker or finder allegedly employed by such party. The provisions of this Section shall survive the Closing or termination of this Contract.

11. Disclosures.

(a) Title. Buyer should have an Abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy.

(b) District. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 50 of the Texas Water Code requires Seller to deliver and the Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this Contract.

(c) Coastal Area. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, Section 33.135 of the Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the Contract.

(d) Annexation. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of a 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.

(e) Pipelines. If a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquified petroleum gas, petroleum or a petroleum product or hazardous substance, is located on or within the Property, Seller shall give Buyer statutory notice regarding such pipeline(s) as required by Section 5.010 of the Texas Property Code.

(f) Brokers. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairman is the responsibility of Buyer and not Brokers.

12. Miscellaneous.

(a) Notices. Any notices to be given hereunder shall be given by placing the notice in the United States mail, certified or registered, properly stamped and addressed to the address shown below each party's signature hereon or such other address as the respective party may direct in writing to the other, or by personal or receipted delivery to such address, or by facsimile transmission to such address, and such notice shall be deemed to be received upon such placing in the mails or upon such personal or receipted delivery or upon the date of confirmed facsimile transmission and receipt.

(b) Entire Agreement. This Contract contains all agreements between the parties hereto, and no agreement not contained herein shall be recognized by the parties. This Contract may be modified only by agreement in writing signed by Seller and Buyer. The captions used in connection with the Sections of this Contract are for convenience only and shall not affect the meaning of the language contained in this Contract.

(c) Effective Date. For purposes of this Contract, "Effective Date" shall mean the date when a fully executed copy of this Contract, together with the Independent Consideration and Earnest Money required pursuant to **Section 2(a)** above is received by the Title Company, as evidenced by the date beneath the Title Company's receipt attached to this Contract. For purposes of determining the time for performance of any obligations hereunder, any such date falling on a Saturday, Sunday or designated legal holiday shall be deemed to be effective as of the next business day following such date. Time is of the essence in this Contract.

(d) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Bexar County, Texas.

(e) Assignments: Binding Effect. Buyer may assign this Contract or any interest therein without the prior written approval of Seller, provided that such assignee assumes all obligations of Buyer under this Contract pursuant to a written agreement. From and after such assignment, Bitterblue, Inc. shall be released from and have no



further liabilities or obligations hereunder. This Contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

(f) Tax-Deferred Exchange. In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that the non-exchanging party shall not assume any additional expense or liability with respect to such tax-deferred exchange and the Closing Date shall not be affected. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

(g) Acceptance. Unless Seller accepts this Contract by delivering an executed counterpart of this Contract to the Title Company and Buyer by 5:00 o'clock p.m., San Antonio Time, on June 2, 2006, this offer shall terminate and be of no further force and effect.

(h) Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**[COUNTERPART SIGNATURE PAGES TO FOLLOW]**

**EXHIBITS:**


Exhibit A - Property

C:\Documents and Settings\Ronald Friesenhahn\Local Settings\Temp\contract.2.doc

**COUNTERPART SIGNATURE PAGES TO  
PURCHASE AND SALE CONTRACT**

**SELLER:**

  
\_\_\_\_\_  
RENNIE R. LUX

  
\_\_\_\_\_  
JOYCE M. LUX

**Notice Address:**

236 Windsor Lane  
New Braunfels, Texas 78213  
Telephone: 830-625-5341  
Facsimile: \_\_\_\_\_

**With Copy To:**

Ronald J. Friesenhahn  
Pecan Plaza Law Offices  
376 Landa Street  
New Braunfels, Texas 78130  
Telephone: 830-625-6511  
Facsimile: 830-606-4148