

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Fred Smith via Clay Holstine, City Manager

DATE: Meeting of September 13, 2010

SUBJECT: Consider approval of Resolution No. 2010-37 ratifying and approving the agreement for purchase of real property identified as Assessor's Parcel Number 007-313-110 and authorizing execution of closing documents on behalf of the City and approval of a supplemental appropriation in the amount of \$16,000 from the Open Space Fund.

CITY COUNCIL GOALS:

- Goal #7. To develop plans and pursue opportunities to enhance Open Space.
- Goal #8. To develop plans and pursue opportunities to protect natural resources.
- Goal #16 To preserve the unique current character of Brisbane.

PURPOSE: To acquire a potentially developable lot at 55 Lassen St. to prevent the upper Bicentennial Walkway from being converted to vehicular access.

RECOMMENDATION:

1. Approve resolution No. 2010-37
2. Approve a supplemental appropriation in the amount of \$16,000 from the Open Space Fund.

BACKGROUND:

In March of this year, the City was contacted by the owners of a vacant lot at 55 Lassen St. to enquire whether the City was interested in purchasing this property for preservation as open space. Lassen Street is a City owned street right of way that connects the intersection of Sierra Point Rd. and Klamath St. with Humboldt Road. In the early 1980s, the City developed this right of way as a pedestrian walkway and linear park known as the upper Bicentennial Walkway.

There are several undeveloped parcels that front on Lassen Street, including 55 Lassen, that would be legally entitled to use that right of way for vehicular access even though this use would dramatically change the character of the upper Bicentennial Walkway.

In 1989, the City acquired the vacant lot at 77 Lassen St. to prevent its development after the owner proposed the construction of a single family home on the site. The vacant lot at 50 Lassen has been purchased by the adjacent property owners on Sierra Pt. and Humboldt Roads and split between those properties in order to prevent a home from being developed there. This leaves 55 Lassen St. as the only remaining potentially developable lot on Lassen Street.

DISCUSSION:


Pursuant to City Council direction, staff has negotiated a bargain sale purchase with the property owner for the price of \$15,000, payable over two years. \$10,000 would be paid upon close of escrow and \$5,000 would be paid one year thereafter. The City has obtained an appraisal of the property in the amount of \$80,000 so the property owner will be able to take a tax deduction in the amount of \$65,000, the difference between the fair market value and the sale price.

FISCAL IMPACT/FINANCING ISSUES:

There is currently a fund balance of approximately \$112,450 in the Open Space Fund. Staff is recommending that the City Council approve a supplemental appropriation from the Open Space Fund in the amount of \$16,000 to fund the purchase price and closing costs.

MEASURE OF SUCCESS:

Preservation of Lassen Street right of way as a linear park and pedestrian walkway.



Department Head



City Manager

ATTACHMENTS:

- Proposed Resolution No. 2010-37
- Proposed Purchase Agreement for 55 Lassen St.
- Map showing location of 55 Lassen St.

RESOLUTION NO. 2010-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE RATIFYING AND APPROVING THE AGREEMENT FOR PURCHASE OF REAL PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER 007-313-110, AND AUTHORIZING EXECUTION OF CLOSING DOCUMENTS ON BEHALF OF THE CITY

WHEREAS, a proposed purchase agreement between the City of Brisbane and Christine McClure ("Seller") has been presented to the City Council providing for the acquisition by the City of certain real property identified as Assessor's Parcel Number 007-313-110 ("the Property"), subject to various conditions having been satisfied; and

WHEREAS, the City Council has reviewed and considered the terms and conditions of the proposed purchase agreement, a true copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Purchase Agreement"), and has determined that it would be in the best interest of the City to proceed with the acquisition of the Property pursuant to the Purchase Agreement,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. The Purchase Agreement attached hereto as Exhibit "A" is hereby ratified and approved in all respects.

2. The City Manager is hereby authorized and directed to execute, for and on behalf and in the name of the City of Brisbane, any and all escrow instructions, closing statements, certificates, acknowledgments, and other instruments and documents as may be necessary or appropriate in order to close escrow and complete the purchase of the Property by the City in accordance with the terms of the Purchase Agreement.

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the 13th day of September, 2010, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

W. Clarke Conway, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

**OFFER TO PURCHASE
REAL PROPERTY**

THE CITY OF BRISBANE, a municipal corporation ("City") hereby offers to purchase the real property hereinafter described from CRISTINE McCLURE ("Seller"), on the terms and conditions set forth in this agreement (the "Agreement"):

1. Property.

The real property that is the subject of this Agreement consists of the undeveloped parcel of land located at 55 Lassen Street, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-313-110 (the "Property").

2. Consideration for Transfer of Property.

The total consideration for the Property shall be the sum of eighty thousand dollars (\$80,000.00), of which fifteen thousand dollars (\$15,000.00) shall be paid in cash by City to Seller and sixty-five thousand dollars (\$65,000.00) shall be in the form of a tax-deductible gift from Seller to City, as follows:

(a) **Cash Payments:** A cash payment in the amount of ten thousand dollars (\$10,000.00) shall be paid to Seller at close of escrow. City shall also execute and deliver to Seller at close of escrow a non-interest bearing promissory note in the face amount of five thousand dollars (\$5,000.00), payable in full on the first anniversary of the closing date. At the request of Seller, such note may be secured by a first deed of trust against the Property.

(b) **Gift Transfer:** Upon the execution of this Agreement, City shall furnish to Seller an appraisal of the Property showing a current market value of eighty thousand dollars (\$80,000.00). City shall also provide to Seller a certified copy of the resolution to be adopted by the Brisbane City Council approving this Agreement and specifically acknowledging that Seller is making a gift to City of an interest in the Property having a market value of sixty-five thousand dollars (\$65,000.00). Seller shall have a period of fifteen (15) days to approve such appraisal and resolution and satisfy herself that upon transfer of the Property to City, Seller will be entitled to claim a tax deduction of sixty-five thousand dollars (\$65,000.00). Seller's approval shall be indicated by written notice to City. Seller may obtain additional valuations of the Property at her own expense if deemed necessary to support her claimed tax deduction. City agrees to provide any additional certifications or documents concerning the market value of the Property as may reasonably be requested by Seller or her tax preparer, as long as City is not required to incur any further costs or expenses beyond the cost of the appraisal furnished to Seller.

3. Escrow.

The parties shall establish an escrow with First American Title Company ("Escrow Agent"), at its office located in San Francisco, California, or such other title company as may be agreed upon by the parties. Each party shall execute instructions to the Escrow Agent as are consistent with the terms and provisions of this Agreement at least five (5) days prior to the Closing Date.

4. Legal Title; Title Insurance.

(a) Upon the Effective Date of this Agreement, City shall order a preliminary title report on the Property issued by First American Title Company (the "Title Report"), together with copies of all documents identified in Schedule B of the Title Report as evidencing or relating to the title exceptions described therein.

(b) Within fifteen (15) days after receipt of the Title Report and related documents, City shall notify Seller in writing of any objections to the matters disclosed by the Report or otherwise relating to the status of legal title to the Property. City shall also indicate those items described on the Report which City has approved as exceptions to legal title (the "Permitted Exceptions").

(c) If any objections to title are made by City, within thirty (30) days after receipt of City's notice of such objections, Seller shall, at Seller's own expense, either take such action as may be necessary to cure the title defect which is the subject of each objection, or confirm in writing to City that such item will be cured and eliminated as an exception to legal title at the Closing Date. In the event Seller is unable to remove the unpermitted exception, City may elect to either (i) waive the objection and proceed with the closing, accepting legal title to the Property subject to such exception, or (ii) terminate this Agreement by written notice to Seller, in which event both parties shall thereupon be released and discharged from any further obligation or liability hereunder..

(d) At the Closing Date, legal title to the Property shall be conveyed to City by Grant Deed, free and clear of any and all liens, claims, and encumbrances, except for real estate taxes that may be a lien but are not yet due and payable and the Permitted Exceptions. Seller shall furnish to City a standard coverage CLTA owners policy of title insurance issued by Escrow Agent and effective as of the Closing Date, insuring legal title to the Property vested in City, subject only to the Permitted Exceptions and any additional items that may have been approved by City in writing prior to close of escrow.

5. Physical Condition of the Property.

The Property will be acquired by the City in its "as is" condition and Seller shall have no obligation to make any alterations or improvements to the Property prior to closing. City shall have a period of fifteen (15) days from the Effective Date to conduct any inspections, studies, or other investigations City deems appropriate to satisfy itself that the Property is suitable for City's intended use. The City may terminate this purchase agreement at any time during this inspection period, in which event both parties shall thereupon be released and discharged from any further obligation or liability hereunder.

6. **Hazardous Substances.**

(a) As used in this Section and elsewhere in this Agreement:

- (1) "Environmental Laws" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (defined below), as may now or hereafter be in effect, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Clean Water Act, the Toxic Substances Control Act, the California Underground Storage of Hazardous Substances Act, the California Hazardous Waste Control Act, and the Porter-Cologne Water Quality Act
- (2) "Hazardous Substances" means and includes, without limitation:
 - (i) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," "pollutant or contaminant" under any Environmental Law;
 - (ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302);
 - (iii) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
 - (iv) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317, or is a flammable explosive or a radioactive material.

(b) Seller represents and warrants to City that as of the Effective Date of this Agreement and as of the Closing Date:

- (1) To the best of Seller's knowledge, the Property is free from Hazardous Substances and is not in violation of any Environmental Laws.
- (2) There are no buried or partially buried storage tanks located on the Property.

- (3) Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property presently are in violation of any Environmental Law, or potentially violate any Environmental Law.
- (4) There are no continuing obligations to be performed by the owner of the Property under any remediation, monitoring, or other plan or governmental requirement relating to Hazardous Substances on the Property.
- (5) Seller has disclosed to City all information, records, and studies, if any, maintained by Seller in connection with the Property concerning Hazardous Substances.

7. Seller Warranties.

Seller represents and warrants to City that as of the Effective Date of this Agreement and as of the Closing Date:

(a) Seller has no knowledge or notice of any condition on the Property which violates any health, safety, fire, environmental, building, or other code, ordinance, or regulation.

(b) To the best of Seller's knowledge, there are no encroachments on the Property from any adjacent properties, and the Property does not encroach upon any adjacent properties, easements, or streets.

(c) Seller has no knowledge of any pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property.

(d) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code, and Seller shall furnish such affidavit as may be required at close of escrow to confirm such fact.

(e) This Agreement has been, and all documents to be delivered by Seller prior to or at the Closing Date shall be, duly authorized, executed, and delivered on behalf of Seller, and are or shall be legal and binding obligations of Seller, and shall be sufficient to convey marketable legal title to the Property to City. The execution of this Agreement does not violate any other contract or agreement to which Seller is a party or by which Seller may be bound.

8. Accuracy of Seller's Representations and Warranties.

The continued accuracy in all respects of the representations and warranties made by Seller in this Agreement shall be a condition precedent to City's obligation to close the sale transaction. All such representations and warranties shall survive the Closing Date. In the event any such representation or warranty is found by City to be incorrect at the time made or as of the Closing Date, City may terminate this Agreement by written notice

to Seller, in which event both parties shall thereupon be released and discharged from any further obligation or liability hereunder.

9. Mutual Indemnification.

(a) Seller shall indemnify, defend, and hold City harmless from and against any and all losses, damages, liabilities, costs, or expenses, including attorney's fees, resulting from any inaccuracy in, or breach of, any representation or warranty of Seller contained in this Agreement. Seller further agrees to indemnify, defend, and hold City harmless from and against any and all third party claims, demands, causes of action, or liabilities pertaining to the ownership and use of the Property which accrue prior to the Closing Date.

(b) City agrees to indemnify, defend, and hold Seller harmless from and against any and all third party claims, demands, causes of action, or liabilities pertaining to the ownership and use of the Property which accrue from and after the Closing Date.

10. Conditions to City's Performance.

(a) City's obligation to close escrow is subject to all of the following conditions having been fully satisfied:

- (1) City shall have approved the Property, in accordance with Section 5 of this Agreement.
- (2) Escrow Agent is prepared to issue the policy of title insurance to City following close of escrow, in accordance with Section 4(d) of this Agreement.
- (3) Each of the representations and warranties made by Seller in this Agreement shall be true and correct as of the Closing Date.
- (4) Seller shall have delivered all documents and performed all of its obligations under this Agreement.
- (5) There shall have been no Material Change with respect to the Property. As used herein, the term "Material Change" means a change in the status of the use or physical condition of the Property as reasonably expected by City, that occurs subsequent to the Effective Date of this Agreement.

(b) All of the conditions set forth in Paragraph (a) above are for the benefit of City and any of such conditions may be waived in whole or in part by City giving written notice of such waiver to Seller prior to the Closing Date.

11. Close of Escrow.

The sale escrow shall be closed within fifteen (15) days after City's approval of the legal title and physical condition of the Property in accordance with Sections 4 and 5 of this Agreement (the "Closing Date").

12. Prorations and Closing Costs.

(a) Real estate taxes levied against the Property shall be prorated between the parties as of the Closing Date.

(b) The premium for the title insurance policy to be provided to City pursuant to Section 4(d) shall be paid by City.

(c) All other closing costs and expenses related to this sale transaction shall be paid by City.

13. Possession.

Possession of the Property shall be delivered to City on the Closing Date.

14. Broker.

Seller and City each represent and warrant to the other that no real estate broker has been involved in this transaction and no brokerage commission is payable to any party.

15. Notices.

Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered to the other party or sent by certified mail, return receipt requested, addressed to the other party as follows:

TO SELLER: Christine McClure
P.O. Box 788
Grand Marais, MN 55604

TO CITY City of Brisbane
Attn: Fred Smith
Brisbane City Hall
50 Park Place
Brisbane, CA 94005

16. Attorneys Fees.

In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorneys fees.

17. Further Assurances.

Whenever requested by the other party or by Escrow Agent, each party shall execute, acknowledge, and deliver such further conveyances, assignments, confirmations,

approvals, consents, and other instruments and documents as may be necessary to consummate the sale transaction in accordance with the terms and conditions of this Agreement and to otherwise carry out the intent and purpose of this Agreement.

18. Miscellaneous Provisions.

(a) **Waivers.** A waiver of any breach, covenant, or provision of this Agreement shall not be deemed a waiver of any other breach, covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any other obligation or act.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal. This Agreement can only be amended by a written amendment hereto duly executed on behalf of both parties.

(c) **Merger.** All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the close of escrow and shall not be merged in the Grant Deed or other documents.

(d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all, taken together, shall constitute one and the same document.

(e) **Time of Essence.** Time is of the essence in this Agreement.

(f) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

(g) **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.

19. Effective Date of Agreement.

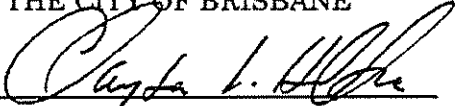
Seller acknowledges that this Offer must be ratified and approved by the City Council of the City of Brisbane, and until such ratification and approval is granted, this Offer is not legally binding upon City. Seller further acknowledges that the next regular meeting of the City Council will not occur until September 13, 2010, and this contract cannot be presented to the City Council for ratification until that time. If Seller indicates by signing this document that the terms and conditions of the offer set forth herein are acceptable, this Agreement shall become effective upon the adoption by the Brisbane City Council of a Resolution ratifying and approving this Agreement and declaring the same to be a binding contractual obligation of the City of Brisbane. The date of adoption of such Council Resolution shall be deemed to be the Effective Date of this Agreement.

20 Offer and Acceptance.

This Agreement constitutes an offer to purchase the Property on the terms and conditions contained herein, subject to ratification and approval by the City Council of the City of Brisbane. If Seller fails to execute this Agreement and return it to City by the close of business on July 30, 2010, the offer shall be deemed to have been automatically withdrawn.

CITY:
THE CITY OF BRISBANE

Dated: July 21, 2010

By: 
Clay Holstine, City Manager

The undersigned Seller hereby accepts the foregoing offer and acknowledges that this Agreement is not legally binding upon City until the offer has been ratified and approved by Resolution of the City Council of the City of Brisbane.

SELLER:

Dated: 7/23, 2010


CHRISTINE McCLURE

**OFFER TO PURCHASE
REAL PROPERTY**

THE CITY OF BRISBANE, a municipal corporation ("City") hereby offers to purchase the real property hereinafter described from CRISTINE McCLURE ("Seller"), on the terms and conditions set forth in this agreement (the "Agreement"):

1. Property.

The real property that is the subject of this Agreement consists of the undeveloped parcel of land located at 55 Lassen Street, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-313-110 (the "Property").

2. Consideration for Transfer of Property.

The total consideration for the Property shall be the sum of eighty thousand dollars (\$80,000.00), of which fifteen thousand dollars (\$15,000.00) shall be paid in cash by City to Seller and sixty-five thousand dollars (\$65,000.00) shall be in the form of a tax-deductible gift from Seller to City, as follows:

(a) **Cash Payments:** A cash payment in the amount of ten thousand dollars (\$10,000.00) shall be paid to Seller at close of escrow. City shall also execute and deliver to Seller at close of escrow a non-interest bearing promissory note in the face amount of five thousand dollars (\$5,000.00), payable in full on the first anniversary of the closing date. At the request of Seller, such note may be secured by a first deed of trust against the Property.

(b) **Gift Transfer:** Upon the execution of this Agreement, City shall furnish to Seller an appraisal of the Property showing a current market value of eighty thousand dollars (\$80,000.00). City shall also provide to Seller a certified copy of the resolution to be adopted by the Brisbane City Council approving this Agreement and specifically acknowledging that Seller is making a gift to City of an interest in the Property having a market value of sixty-five thousand dollars (\$65,000.00). Seller shall have a period of fifteen (15) days to approve such appraisal and resolution and satisfy herself that upon transfer of the Property to City, Seller will be entitled to claim a tax deduction of sixty-five thousand dollars (\$65,000.00). Seller's approval shall be indicated by written notice to City. Seller may obtain additional valuations of the Property at her own expense if deemed necessary to support her claimed tax deduction. City agrees to provide any additional certifications or documents concerning the market value of the Property as may reasonably be requested by Seller or her tax preparer, as long as City is not required to incur any further costs or expenses beyond the cost of the appraisal furnished to Seller.

3. **Escrow.**

The parties shall establish an escrow with First American Title Company ("Escrow Agent"), at its office located in San Francisco, California, or such other title company as may be agreed upon by the parties. Each party shall execute instructions to the Escrow Agent as are consistent with the terms and provisions of this Agreement at least five (5) days prior to the Closing Date.

4. **Legal Title; Title Insurance.**

(a) Upon the Effective Date of this Agreement, City shall order a preliminary title report on the Property issued by First American Title Company (the "Title Report"), together with copies of all documents identified in Schedule B of the Title Report as evidencing or relating to the title exceptions described therein.

(b) Within fifteen (15) days after receipt of the Title Report and related documents, City shall notify Seller in writing of any objections to the matters disclosed by the Report or otherwise relating to the status of legal title to the Property. City shall also indicate those items described on the Report which City has approved as exceptions to legal title (the "Permitted Exceptions").

(c) If any objections to title are made by City, within thirty (30) days after receipt of City's notice of such objections, Seller shall, at Seller's own expense, either take such action as may be necessary to cure the title defect which is the subject of each objection, or confirm in writing to City that such item will be cured and eliminated as an exception to legal title at the Closing Date. In the event Seller is unable to remove the unpermitted exception, City may elect to either (i) waive the objection and proceed with the closing, accepting legal title to the Property subject to such exception, or (ii) terminate this Agreement by written notice to Seller, in which event both parties shall thereupon be released and discharged from any further obligation or liability hereunder..

(d) At the Closing Date, legal title to the Property shall be conveyed to City by Grant Deed, free and clear of any and all liens, claims, and encumbrances, except for real estate taxes that may be a lien but are not yet due and payable and the Permitted Exceptions. Seller shall furnish to City a standard coverage CLTA owners policy of title insurance issued by Escrow Agent and effective as of the Closing Date, insuring legal title to the Property vested in City, subject only to the Permitted Exceptions and any additional items that may have been approved by City in writing prior to close of escrow.

5. **Physical Condition of the Property.**

The Property will be acquired by the City in its "as is" condition and Seller shall have no obligation to make any alterations or improvements to the Property prior to closing. City shall have a period of fifteen (15) days from the Effective Date to conduct any inspections, studies, or other investigations City deems appropriate to satisfy itself that the Property is suitable for City's intended use. The City may terminate this purchase agreement at any time during this inspection period, in which event both parties shall thereupon be released and discharged from any further obligation or liability hereunder.

6. **Hazardous Substances.**

(a) As used in this Section and elsewhere in this Agreement:

(1) "Environmental Laws" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (defined below), as may now or hereafter be in effect, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Clean Water Act, the Toxic Substances Control Act, the California Underground Storage of Hazardous Substances Act, the California Hazardous Waste Control Act, and the Porter-Cologne Water Quality Act

(2) "Hazardous Substances" means and includes, without limitation:

- (i) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," "pollutant or contaminant" under any Environmental Law;
- (ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302);
- (iii) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (iv) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317, or is a flammable explosive or a radioactive material.

(b) Seller represents and warrants to City that as of the Effective Date of this Agreement and as of the Closing Date:

- (1) To the best of Seller's knowledge, the Property is free from Hazardous Substances and is not in violation of any Environmental Laws.
- (2) There are no buried or partially buried storage tanks located on the Property.

- (3) Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property presently are in violation of any Environmental Law, or potentially violate any Environmental Law.
- (4) There are no continuing obligations to be performed by the owner of the Property under any remediation, monitoring, or other plan or governmental requirement relating to Hazardous Substances on the Property.
- (5) Seller has disclosed to City all information, records, and studies, if any, maintained by Seller in connection with the Property concerning Hazardous Substances.

7. Seller Warranties.

Seller represents and warrants to City that as of the Effective Date of this Agreement and as of the Closing Date:

(a) Seller has no knowledge or notice of any condition on the Property which violates any health, safety, fire, environmental, building, or other code, ordinance, or regulation.

(b) To the best of Seller's knowledge, there are no encroachments on the Property from any adjacent properties, and the Property does not encroach upon any adjacent properties, easements, or streets.

(c) Seller has no knowledge of any pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property.

(d) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code, and Seller shall furnish such affidavit as may be required at close of escrow to confirm such fact.

(e) This Agreement has been, and all documents to be delivered by Seller prior to or at the Closing Date shall be, duly authorized, executed, and delivered on behalf of Seller, and are or shall be legal and binding obligations of Seller, and shall be sufficient to convey marketable legal title to the Property to City. The execution of this Agreement does not violate any other contract or agreement to which Seller is a party or by which Seller may be bound.

8. Accuracy of Seller's Representations and Warranties.

The continued accuracy in all respects of the representations and warranties made by Seller in this Agreement shall be a condition precedent to City's obligation to close the sale transaction. All such representations and warranties shall survive the Closing Date. In the event any such representation or warranty is found by City to be incorrect at the time made or as of the Closing Date, City may terminate this Agreement by written notice

to Seller, in which event both parties shall thereupon be released and discharged from any further obligation or liability hereunder.

9. Mutual Indemnification.

(a) Seller shall indemnify, defend, and hold City harmless from and against any and all losses, damages, liabilities, costs, or expenses, including attorney's fees, resulting from any inaccuracy in, or breach of, any representation or warranty of Seller contained in this Agreement. Seller further agrees to indemnify, defend, and hold City harmless from and against any and all third party claims, demands, causes of action, or liabilities pertaining to the ownership and use of the Property which accrue prior to the Closing Date.

(b) City agrees to indemnify, defend, and hold Seller harmless from and against any and all third party claims, demands, causes of action, or liabilities pertaining to the ownership and use of the Property which accrue from and after the Closing Date.

10. Conditions to City's Performance.

(a) City's obligation to close escrow is subject to all of the following conditions having been fully satisfied:

- (1) City shall have approved the Property, in accordance with Section 5 of this Agreement.
- (2) Escrow Agent is prepared to issue the policy of title insurance to City following close of escrow, in accordance with Section 4(d) of this Agreement.
- (3) Each of the representations and warranties made by Seller in this Agreement shall be true and correct as of the Closing Date.
- (4) Seller shall have delivered all documents and performed all of its obligations under this Agreement.
- (5) There shall have been no Material Change with respect to the Property. As used herein, the term "Material Change" means a change in the status of the use or physical condition of the Property as reasonably expected by City, that occurs subsequent to the Effective Date of this Agreement.

(b) All of the conditions set forth in Paragraph (a) above are for the benefit of City and any of such conditions may be waived in whole or in part by City giving written notice of such waiver to Seller prior to the Closing Date.

11. Close of Escrow.

The sale escrow shall be closed within fifteen (15) days after City's approval of the legal title and physical condition of the Property in accordance with Sections 4 and 5 of this Agreement (the "Closing Date").

12. Prorations and Closing Costs.

(a) Real estate taxes levied against the Property shall be prorated between the parties as of the Closing Date.

(b) The premium for the title insurance policy to be provided to City pursuant to Section 4(d) shall be paid by City.

(c) All other closing costs and expenses related to this sale transaction shall be paid by City.

13. Possession.

Possession of the Property shall be delivered to City on the Closing Date.

14. Broker.

Seller and City each represent and warrant to the other that no real estate broker has been involved in this transaction and no brokerage commission is payable to any party.

15. Notices.

Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered to the other party or sent by certified mail, return receipt requested, addressed to the other party as follows:

TO SELLER:

Christine McClure
P.O. Box 788
Grand Marais, MN 55604

TO CITY

City of Brisbane
Attn: Fred Smith
Brisbane City Hall
50 Park Place
Brisbane, CA 94005

16. Attorneys Fees.

In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorneys fees.

17. Further Assurances.

Whenever requested by the other party or by Escrow Agent, each party shall execute, acknowledge, and deliver such further conveyances, assignments, confirmations,

approvals, consents, and other instruments and documents as may be necessary to consummate the sale transaction in accordance with the terms and conditions of this Agreement and to otherwise carry out the intent and purpose of this Agreement.

18. Miscellaneous Provisions.

(a) **Waivers.** A waiver of any breach, covenant, or provision of this Agreement shall not be deemed a waiver of any other breach, covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any other obligation or act.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal. This Agreement can only be amended by a written amendment hereto duly executed on behalf of both parties.

(c) **Merger.** All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the close of escrow and shall not be merged in the Grant Deed or other documents.

(d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all, taken together, shall constitute one and the same document.

(e) **Time of Essence.** Time is of the essence in this Agreement.

(f) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

(g) **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.

19. Effective Date of Agreement.

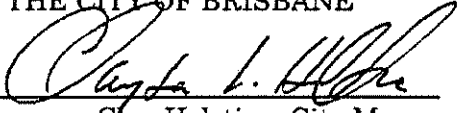
Seller acknowledges that this Offer must be ratified and approved by the City Council of the City of Brisbane, and until such ratification and approval is granted, this Offer is not legally binding upon City. Seller further acknowledges that the next regular meeting of the City Council will not occur until September 13, 2010, and this contract cannot be presented to the City Council for ratification until that time. If Seller indicates by signing this document that the terms and conditions of the offer set forth herein are acceptable, this Agreement shall become effective upon the adoption by the Brisbane City Council of a Resolution ratifying and approving this Agreement and declaring the same to be a binding contractual obligation of the City of Brisbane. The date of adoption of such Council Resolution shall be deemed to be the Effective Date of this Agreement.

20 Offer and Acceptance.

This Agreement constitutes an offer to purchase the Property on the terms and conditions contained herein, subject to ratification and approval by the City Council of the City of Brisbane. If Seller fails to execute this Agreement and return it to City by the close of business on July 30, 2010, the offer shall be deemed to have been automatically withdrawn.

CITY:
THE CITY OF BRISBANE

Dated: July 21, 2010

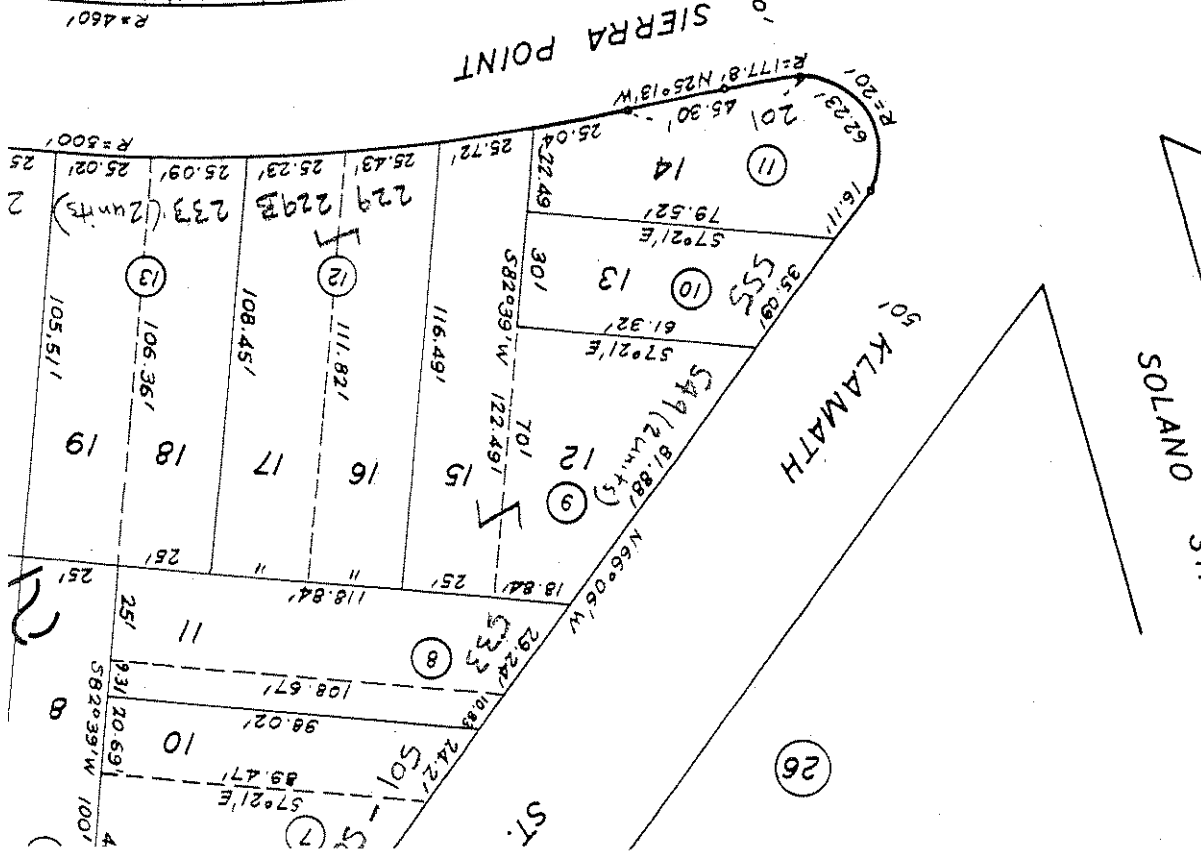
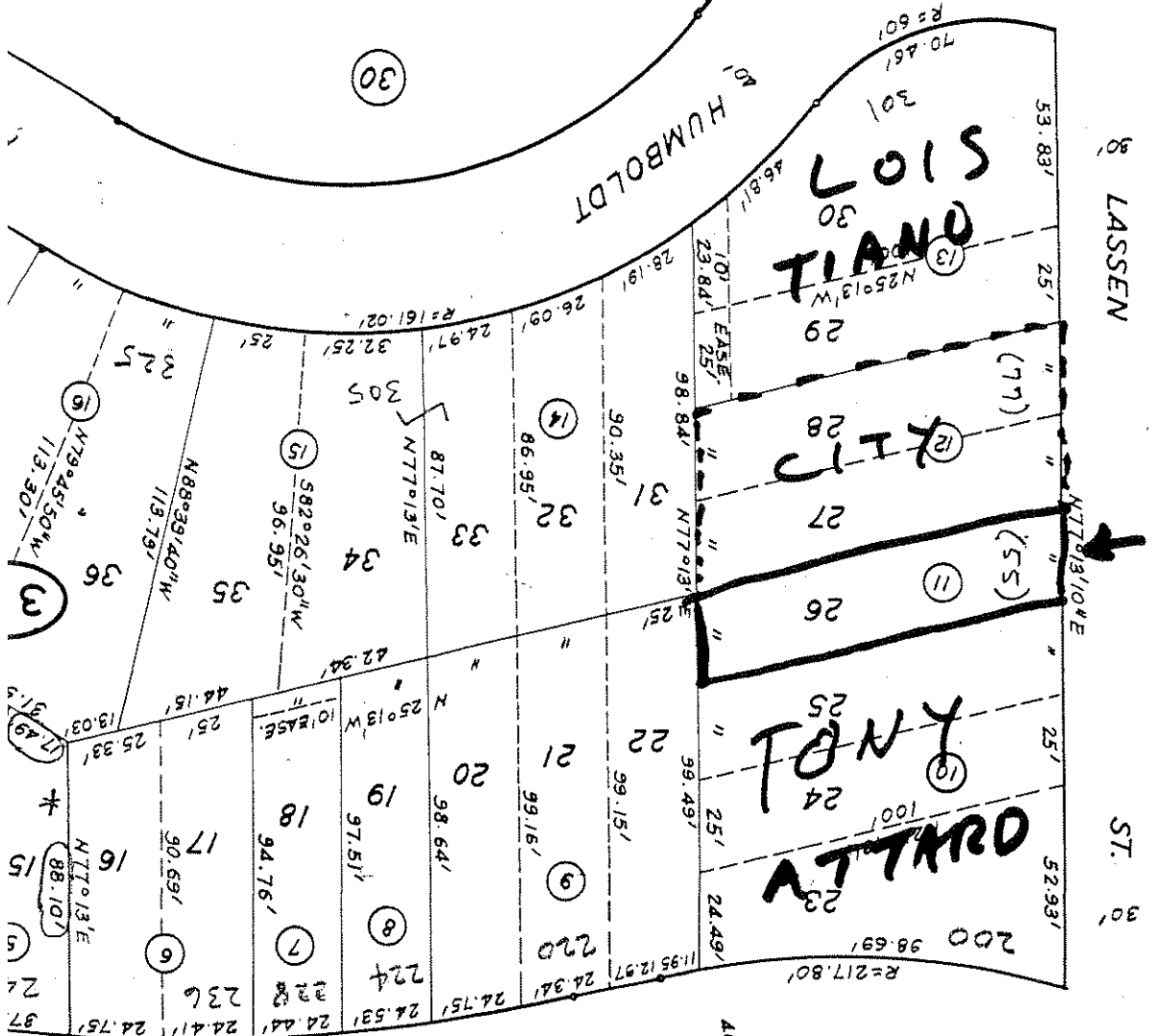
By: 
Clay Holstine, City Manager

The undersigned Seller hereby accepts the foregoing offer and acknowledges that this Agreement is not legally binding upon City until the offer has been ratified and approved by Resolution of the City Council of the City of Brisbane.

SELLER:

Dated: 7/23, 2010


CHRISTINE McCLURE



19

26