

AN ORDINANCE 2011-01-20-0044

**AUTHORIZING AN OPTION CONTRACT BETWEEN THE CITY OF
SAN ANTONIO AND FRIEDRICH LOFTS, LTD. FOR AN OPTION TO
ACQUIRE THE FRIEDRICH PROPERTY.**

* * * * *

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

SECTION 1. The city manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the city an instrument with Friedrich Lofts, Ltd. in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The city manager and her designee, severally, should consummate the transaction contemplated by the attached instrument according to its terms. They should further take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

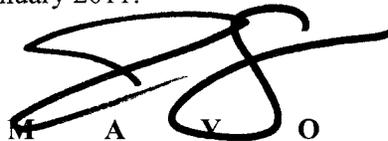
SECTION 2. Fund 29086007 entitled Special Revenue, TIRZ – Inner City was previously established to record revenue as well as record payments using cost center 703290001 in accordance with the agreement.

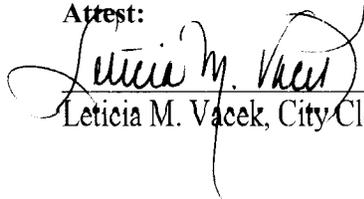
SECTION 3. Payment not to exceed \$100,000 is authorized and should be encumbered with a purchase order.

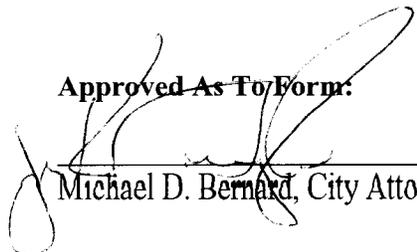
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

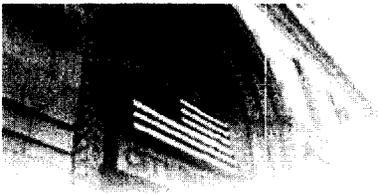
SECTION 5. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 20th day of January 2011.

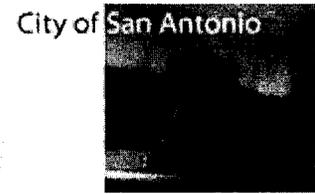

M A Y O R
Julián Castro

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION



Agenda Voting Results - 24

Name:	24						
Date:	01/20/2011						
Time:	11:30:25 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an option contract between the City of San Antonio and Friedrich Lofts, Ltd. for an option to acquire the Friedrich property. [Pat DiGiovanni, Deputy City Manager / Interim Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x			x	
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8			x			
Elisa Chan	District 9		x				
John G. Clamp	District 10			x			

Attachment I

Real Estate Option Contract

(Friedrich Lofts/City of San Antonio)

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Authorizing Ordinance:

Seller: Friedrich Lofts, Ltd

1920 Abrams Parkway, #311, Dallas, Texas 75214
(Attention: John Miller)

Address: And to
Ed Miller
P.O. Box 15406
Del City, OK 73155-5406

John Miller 972-974-2500
Phone: Ed Miller 405-812-3467

Email: Ed Miller amsco555@aol.com;
John Miller john@planbdevelopment.com

Type of Entity: A Texas limited partnership

Seller's Counsel: Tuggey Rosenthal Pauerstein Sandoloski Agather LLP

Address: 755 E. Mulberry, Suite 200, San Antonio, TX 78212
Attn: Robert A. Rosenthal

Phone: 210-244-8860

Email: broseenthal@trpsalaw.com

Seller's Broker: Cambridge Realty Group, Inc.

Address: 4040 Broadway, Suite 520, San Antonio TX 78209
ATTN: Gardner Peavy & Patrick Shearer

Phone: 210-299-1172 x222

Fax: 210-299-1243

Email: gpeavy@cambridgerealty.com;
pshearer@cambridgerealty.com

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: David McGowen)

Phone: 210-207-4081

Email: david.mcgowen@sanantonio.gov

Type of Entity: A Texas municipal corporation

Buyer's Counsel: Kenneth L. Bennight, Jr.

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

Phone: 210-207-6168

Email: kenneth.bennight@sanantonio.gov

Property: Parcels 1, 2, 3, and 4, all of which are located in San Antonio, Bexar County, Texas and both of which are described below:

Parcel 1: A 5.731 acre tract, more or less, being part of Lots 1 and 2 and all of Lots 3 through 18, Block 1, New City Block 595, and all of Lots 1 through 18, Block A, New City Block 593, and all the portion of Paso Hondo Street between New City Block 593 and 595, as more particularly described on **Exhibit A-1**.

Parcel 2: A 0.467 acre tract, more or less, being a portion of Lots 8 and 9 and all of Lots 10 and 11, Block 5, New City Block 594, as more particularly described on **Exhibit A-2**.

Parcel 3: A 0.1546 acre tract, more or less, being a portion of Lots 1 and 2, Block 1, New City Block 595, as more particularly described on **Exhibit A-3**,

Parcel 4: A 0.167 acre tract, more or less, being a portion of the N. Olive St R.O.W. and a portion of Gibbs St. R.O.W., as more particularly described on **Exhibit A-4**

Title Company: Chicago Title Company

Address: 270 N Loop 1604 E, San Antonio, Texas 78232
(Attention: Todd Rasco)

Phone: 210-590-3574

Email: rascot@ctt.com

Purchase Price: \$5,680,000

Earnest Money: \$100,000

Option Fee: \$50,000

Option Expiration Date: 120 days after Effective Date, unless Buyer chooses to extend the Option Expiration Date as further described herein

Option Extension Right Buyer has the right to extend the Option Expiration Date for two periods of 30 days each, in exchange for a non-refundable payment of \$25,000 per extension, to be paid by the Buyer directly to the Seller. These additional payments apply to the Purchase Price if Buyer exercises the Option.

Effective Date: The date the Title Company acknowledges

receipt of a fully executed copy of this Agreement and the full payment of the Option Fee.

County for Performance Bexar County, Texas

1. Deadlines and Other Dates.

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

1.01.	Earnest Money Deadline	10	Days after Option Exercise
1.02.	Delivery of Title Commitment	20	Days after Effective Date
1.03.	Delivery of Survey	30	Days after Effective Date
1.04.	Delivery of Title and Survey Objections	20	Days after Delivery of both Survey and Title Commitment
1.05.	Closing Date	45	Days after Exercise of Option
1.06.	Closing Time	10:00 A.M. Central Time	

The deadlines may be altered by the mutual agreement of the parties. The Director or Assistant Director for Real Estate of the Capital Improvements Management Services Department may consent to such changes on behalf of Buyer without further authorization of City Council.

2. Closing Documents.

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

Special Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in Exhibit C

Other instruments reasonably requested by Title Company that do not alter Seller's obligations under this Agreement.

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

Evidence of Buyer's authority to consummate this transaction

Deceptive Trade Practices Act waiver

Purchase Price

Other instruments reasonably requested by Title Company that do not alter Buyer's obligations under this Agreement.

2.03. The documents listed above are collectively known as the "Closing Documents."

3. Exhibits.

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

Exhibit A-1—Description of the Parcel 1

Exhibit A-2—Description of the Parcel 2

Exhibit A-3—Description of the Parcel 3

Exhibit A-4—Description of the Parcel 4

Exhibit B—Representations; Environmental Matters

Exhibit C—Notices, Statements, and Certificates

Exhibit D—Form of Deed

Exhibit E—Form of Recordable Memorandum of Option

4. Grant of Option and Purchase and Sale of Property.

4.01. Seller grants Buyer an option to purchase the Property. Buyer must deposit the Option Fee with the Title Company no later than the Effective Date. The Title Company shall immediately release the Option Fee to Seller without any further action from Buyer. The Option Fee is nonrefundable and shall not be applied to the Purchase Price. Title Company must execute and deliver to both Buyer and Seller an option fee receipt substantially in the form attached at the end of this Agreement.

4.02. If Buyer timely exercises the option according to the terms of this Agreement, Seller will sell the Property to Buyer, and Buyer will buy the Property from Seller, and the purchase and sale is governed by this Agreement.

4.03. If Buyer does not timely exercise the Option, Buyer need not buy the Property and Seller need not sell it. In that case, the following paragraphs of this Agreement have no effect: 2, 5, 8, 9, 10, 11, 12, and 13 except those warranties made by Buyer, which shall survive Closing.

4.04. Immediately on the Effective Date, both Buyer and Seller must execute and record a Memorandum of Option in the Real Property Records of Bexar County, Texas; provided, however, that Seller shall be authorized to unilaterally release such Memorandum of Option in the event that Buyer does not timely exercise the Option or this Agreement is terminated.

5. Earnest Money.

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

5.02. Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the purchase price at closing.

6. Title and Survey.

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

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

6.03. *Survey.*

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

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

6.04. *Delivery of Title Commitment, Survey.* Seller must deliver the Title Commitment to the Buyer by the deadline stated in Section 1. Buyer shall obtain and deliver the Survey to the Seller by the deadline stated in Section 1.

6.05. *Title Objections.* Buyer has until the Title Objection Deadline (Section 1) to review the Survey and Title Commitment and notify Seller of Buyer’s objections, if any (“Title Objections”). Buyer approves all matters reflected by the Survey and Title Commitment to which it makes no Title Objection by the Title Objection Deadline. The matters that Buyer approves are “Permitted Exceptions.” If Buyer notifies Seller of any Title Objections, Seller has ten days from receipt of Buyer’s notice to notify Buyer whether Seller agrees to cure the Title Objections before closing (“Cure Notice”). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within 15 days after the deadline for the giving of Seller’s Cure Notice, notify Seller that this Agreement is terminated. In the absence of such timely notice, Buyer must proceed to close, waiving its objections. At or before closing, Seller must cure the Title Objections it has agreed to cure.

7. Option Period.

7.01. *Entry onto the Property.* During the Option Period, at Buyer's expense, Buyer may enter the Property after the Effective Date to inspect it, subject to the following:

- a. Buyer may not unreasonably interfere with existing operations or occupants of the Property;
- b. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- c. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs;
- d. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt, including any draft or interim reports;
- e. Buyer must abide by any other reasonable entry rules imposed by Seller;
- f. Buyer must employ only trained and qualified inspectors and assessors with adequate liability insurance coverage, except Buyer may use its own employees for so long as Buyer's formal self-insurance program is in effect;
- g. Buyer shall not permit any liens to be attached to the Property by reason of its exercise of its right of inspection; and
- h. Prior to entering the Property, Buyer shall confirm that all parties acting for the benefit of Buyer (other than employees of Buyer) agree to indemnify both Buyer and Seller against and hold Buyer and Seller harmless from any claims, liens, causes of action, or obligations that arise out of such party's inspections of or activities on the Property prior to closing. This subparagraph shall survive closing and the termination of this Agreement.

7.02. *Buyer's Right to Terminate.* Buyer may terminate this Agreement for any reason by notifying Seller before the end of the Option Period. If Buyer does not notify Seller prior to the end of the Option Period of its intention to exercise the option contained in this Agreement, the option lapses, Buyer has no further contractual claim to buy the property, and the Property will be free of the option created by this

Agreement. The Option Fee compensates Seller for the option and is not refundable under any circumstance.

8. Representations.

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

9. Condition until Closing.

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

9.02. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller has no obligation to repair or replace the Property if it is damaged before closing. Buyer may terminate this Agreement if the damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within 15 days after receipt of Seller's notice of the damage (or before closing if Seller's notice of damage is received less than 15 days before closing), unless Seller repairs such damage or agrees to compensate Buyer for the cost of such repair at closing. If Buyer does not terminate this Agreement, Seller will convey the Property to Buyer in its damaged condition.

9.03. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority, other than Buyer or Seller. Buyer may terminate this Agreement if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within 15 days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than 15 days before closing). If Buyer does not terminate this Agreement, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

10. Termination.

10.01. *Disposition of Earnest Money after Termination.*

- a *To Buyer.* If Buyer terminates this Agreement in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer.

- b. *To Seller.* If Seller terminates this Agreement in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

10.02. *Duties after Termination.* If this Agreement is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this Agreement, except for those obligations that cannot be or were not performed before termination of this Agreement. Additionally, if Buyer does not exercise the option and close the purchase, Buyer shall provide Seller with copies of any studies, reports, design drawing, etc., that Buyer or Buyer's agents produced related to the subject Property.

11. Allocation of Closing Costs.

11.01. Seller will pay:

- a. the basic charge for the Title Policy;
- b. one-half of the escrow fee charged by Title Company;
- c. the costs to prepare the deed;
- d. the costs to obtain, deliver, and record releases of all liens incurred other than by Buyer on the Property to be released at closing;
- e. the costs to record all documents to cure Title Objections agreed to be cured by Seller;
- f. the costs to deliver copies of the instruments described in article 1; and
- h. Seller's expenses and attorney's fees.

11.02. Buyer will pay:

- a. one-half of the escrow fee charged by Title Company;
- b. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense;
- c. the costs of the Survey; and

d. Buyer's expenses and attorney's fees.

11.03. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date according to Section 26.11 of the Texas Tax Code. In no event is Buyer liable for any roll back taxes.

11.04. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.

11.05. *Prepaid Rent.* Buyer gets a credit at closing for all rent previously paid to Seller allocable to the period after closing.

11.06. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within 90 days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within 15 days of receipt of notice of the errors.

11.07. *Brokers' Commissions.* Each party represents to the other that no other commissions are due in respect of this transaction, except for Cambridge Realty Group, Inc., who is the sole representative of the Seller, and will be paid a commission at closing, at Seller's expense, per a separate written agreement.

11.08. *Contract Assignable.* Buyer may, by providing written notification to Seller, freely assign this Agreement, but if Buyer assigns the Agreement before Closing, Buyer shall remain liable to Seller for all performance required of Buyer at closing and for any provisions that survive closing.

12. Closing.

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

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this Agreement to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.

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

12.02. *Issuance of Title Policy.* Seller will, at its expense, cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

13. Default and Remedies.

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

- a. *Termination; Liquidated Damages.* Buyer may terminate this Agreement by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money returned to Buyer. Seller retains the Independent Consideration.
- b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this Agreement. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.
- c. *Close.* Buyer may waive any unmet requirements and proceed to closing.

13.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this Agreement ("Buyer's Default"), Seller may, as its sole and exclusive remedy, terminate this Agreement by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller.

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

14. Prohibited Interests in Contracts.

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

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

14.02. Seller warrants and certifies as follows:

- (i) Seller and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Seller has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

14.03. Seller acknowledges that City’s reliance on the above warranties and certifications is reasonable.

15. Dispute Resolution.

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

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

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

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

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

15.06. Mediator fees must be borne equally.

15.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

16. Miscellaneous Provisions.

16.01. *Applicable Law.* **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** Texas conflicts of law rules must not be used to apply the laws of another jurisdiction. The obligations performable by both parties are performable in San Antonio, Bexar County, Texas.

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

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

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

16.05. *Modification.*

16.05.01. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification

is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

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

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

16.07. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice. Any notice sent will also have a courtesy copy of the notice sent via email on the same day the notice is placed in the mail. The parties agree, on a case by case basis, that notice sent by email and acknowledged as received by the receiving party will suffice for notice and eliminate the need to send written notice by certified mail. In this case, notice will be effective at the date and time that the recipient acknowledges notice and waives and states that the sender need not send by certified mail.

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

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

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

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

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

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

16.14 BUYER AGREES THAT IN RESPECT TO THE CONDITION OF THE PROPERTY IT IS RELYING SOLELY ON ITS OWN INSPECTIONS, EXAMINATIONS AND INVESTIGATIONS IN MAKING THE DECISION TO PURCHASE THE PROPERTY. EXCEPT FOR ANY WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (i) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY AND (iii) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT OF SELLER. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS IN PURCHASING THE PROPERTY. BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS

THEREOF, AND SHALL RELY UPON SAME. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND SHALL BE INCORPORATED INTO THE DEED. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN.

16.15 1031 Exchange. Buyer and Seller agree to mutually cooperate with the other regarding either party's desire to complete a 1031 Exchange and the requirements thereof.

17. Public Information.

Buyer acknowledges that after closing this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure. Buyer will assert and present to the Texas Attorney General such exceptions to disclosure as it reasonably deems applicable, but it makes no representation to Seller about the outcome.

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Approved as to Form:

City Attorney

Friedrich Lofts, Ltd., a Texas limited
partnership, by and through its sole
general partner

Millennium Urban Village, Inc., a
Texas corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Title Company Acknowledgment and Receipt of Contract and Option Fee

Buyer: City of San Antonio

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

Seller: Friedrich Lofts, Ltd.

Address: 1920 Abrams Parkway, #311, Dallas, Texas 75214

Property: Four parcels of land located in or near NCBs 593, 594, and 595,
San Antonio, Bexar County, Texas

Title Company agrees to act as escrow agent according to the terms of this Agreement. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Agreement on the same date, with one fully executed original Agreement being returned to each of Seller and Buyer.

Title Company acknowledges receipt from Buyer of an option fee in the amount of \$50,000.00

Chicago Title Company

By: _____

Printed
Name: _____

Title: _____

Date: _____

Title Company Receipt for Earnest Money

Buyer: City of San Antonio

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

Seller: Friedrich Lofts, Ltd.

Address: 1920 Abrams Parkway, #311, Dallas, Texas 75214

Property: Four parcels of land located in or near NCBs 593, 594, and 595,
San Antonio, Bexar County, Texas

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

Amount: \$100,000.00

Chicago Title Company

By: _____

Printed

Name: _____

Title: _____

Date: _____

Exhibit A-1: Property Description Tract 1

FIELD NOTES
FOR A
5.731 ACRE TRACT

THIS CERTAIN 5.731 ACRE TRACT OF LAND, BEING A PORTION OF LOTS 1 AND 2, AND ALL OF LOTS 3 THROUGH 18, BLOCK 1, NEW CITY BLOCK 595, AND ALL OF LOTS 1 THROUGH 18, BLOCK "A", NEW CITY BLOCK 593, AND ALL THAT PORTION OF PASO HONDO STREET BETWEEN NEW CITY BLOCK 593 AND 595 (CITY ORDINANCE NO 5697, APRIL 14, 1947) SAN ANTONIO, BEXAR COUNTY, TEXAS, AS RECORDED IN VOLUME 7547, AT PAGES 523-525, AND VOLUME 3892 AT PAGES 1341-1346, DEED RECORDS OF BEXAR COUNTY TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT AN "X" AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF EAST COMMERCE STREET AND THE EAST RIGHT OF WAY LINE OF NORTH OLIVE STREET FOR THE SOUTHWEST CORNER OF LOT 8, BLOCK 1, NEW CITY BLOCK 595, AS THE POINT OF BEGINNING;

THENCE: NORTH 00 DEGREES 00 MINUTES 37 SECONDS EAST, ALONG THE EAST RIGHT OF WAY LINE OF NORTH OLIVE STREET, 543.60 FEET TO AN IRON PIN FOUND, BEING THE NORTHWEST CORNER OF LOT 10, BLOCK "A", NEW CITY BLOCK 593, OF THIS 5.731 ACRE TRACT;

THENCE: NORTH 89 DEGREES 59 MINUTES 39 SECONDS EAST, ALONG THE SOUTH RIGHT OF WAY LINE OF GIBBS STREET, 428.01 FEET, TO AN IRON PIN FOUND, BEING THE NORTHEAST CORNER OF LOT 18, BLOCK "A", NEW CITY BLOCK 593, OF THIS TRACT;

THENCE: SOUTH 00 DEGREES 03 MINUTES 33 SECONDS EAST, ALONG THE WEST RIGHT OF WAY LINE OF PINE STREET, 600.73 FEET TO AN IRON PIN FOUND, BEING THE SOUTHEAST CORNER OF THIS TRACT;

THENCE: WITH THE SOUTHERLY LINE OF SAID PROPERTY AS FOLLOWS;

1. NORTH 75 DEGREES 43 MINUTES 14 SECONDS WEST, 129.50 FEET TO AN IRON PIN FOUND, BEING AN ANGLE POINT ;
2. SOUTH 00 DEGREES 04 MINUTES 14 SECONDS EAST, 52.00 FEET TO AN "X" FOUND IN CONCRETE, BEING AN ANGLE POINT;
3. NORTH 75 DEGREES 43 MINUTES 14 SECONDS WEST, ALONG THE NORTH RIGHT OF WAY LINE OF EAST COMMERCE STREET, 312.76 FEET, TO THE BEGINNING AND CONTAINING 5.731 ACRES (249,647 SQ. FT.) OF LAND.

THIS DESCRIPTION IS BASED ON A LAND TITLE SURVEY AND PLAT MADE UNDER MY SUPERVISION IN MARCH 1999(NOTE: ALL PIN HEREIN DESCRIBED ARE ½ INCH IRON REBAR)



NEIL F. FISHER
REGISTERED PROFESSIONAL LAND SURVEYOR
FISHER ENGINEERING, INC.
PROJECT#990362A
04/05/99

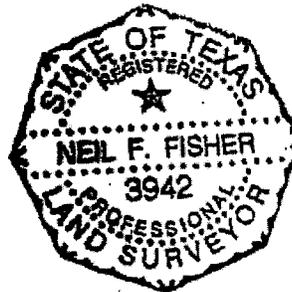


Exhibit A-2: Property Description Tract 2

FIELD NOTES
FOR A
0.467 ACRE TRACT

THIS CERTAIN 0.467 ACRE TRACT OF LAND, BEING A PORTION OF LOTS 8 AND 9 AND ALL OF LOTS 10 AND 11 BLOCK 5, NEW CITY BLOCK 594, SAN ANTONIO BEXAR COUNTY TEXAS AS RECORDED IN VOLUME 7547, AT PAGES 522-523, AND VOLUME 3892, AT PAGES 1341-1346, OF THE DEED RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT AN IRON PIN FOUND, BEING THE INTERSECTION OF THE NORTHEAST RIGHT OF WAY LINE OF EAST COMMERCE STREET AND THE WEST RIGHT OF WAY LINE OF NORTH OLIVE STREET FOR THE POINT OF BEGINNING;

THENCE: NORTH 75 DEGREES 25 MINUTES 56 SECONDS WEST, ALONG THE NORTHEAST RIGHT OF WAY LINE OF EAST COMMERCE STREET, 33.64 FEET TO AN IRON PIN FOUND, BEING THE SOUTH WEST CORNER OF THIS TRACT;

THENCE: ALONG THE WEST LINE OF SAID PROPERTY AS FOLLOWS;

1. NORTH 00 DEGREES 12 MINUTES 15 SECONDS EAST, 77.62 FEET TO AN IRON PIN FOUND, BEING AN ANGLE POINT;
2. NORTH 83 DEGREES 19 MINUTES 11 SECONDS WEST, 13.75 FEET TO AN IRON PIN FOUND, BEING AN ANGLE POINT;
3. NORTH 01 DEGREES 29 MINUTES 14 SECONDS EAST, 8.98 FEET TO AN IRON PIN FOUND, BEING AN ANGLE POINT;
4. NORTH 82 DEGREES 28 MINUTES 25 SECONDS WEST, 46.86 FEET TO AN IRON PIN FOUND, BEING THE SOUTHWEST CORNER OF THIS TRACT;

THENCE: NORTH 00 DEGREES 00 MINUTES 04 SECONDS EAST, ALONG THE WEST PROPERTY LINE FOR A DISTANCE OF 181.90 FEET TO AN IRON PIN FOUND, BEING THE NORTHWEST CORNER OF THIS TRACT;

THENCE: SOUTH 89 DEGREES 59 MINUTES 56 SECONDS EAST, ALONG THE NORTH LINE OF LOTS 10 AND 11, 92.65 FEET TO AN IRON PIN FOUND, BEING THE NORTHEAST CORNER OF THIS TRACT;

THENCE: SOUTH 00 DEGREES 00 MINUTES 04 SECONDS WEST, ALONG THE WEST RIGHT OF WAY LINE OF NORTH OLIVE STREET, 283.53 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.467 ACRES (20,348 SQ.FT.) OF LAND.

THIS DESCRIPTION IS BASED ON A LAND TITLE SURVEY AND PLAT MADE UNDER MY SUPERVISION IN MARCH 1999(NOTE: ALL PIN HEREIN DESCRIBED ARE ½ INCH IRON REBAR)



NEIL F. FISHER
REGISTERED PROFESSIONAL LAND SURVEYOR
FISHER ENGINEERING, INC.
PROJECT#990362B
04/05/99



Exhibit A-3: Property Description Tract 3

The South 52 feet of Lots 1 and 2, Block 1, New City Block 595, in the City of San Antonio, Bexar County, Texas

Exhibit A-4: Property Description Tract 4

Metes and bounds description for 0.167 acres (7,281 sq. ft.) of land consisting of a portion of N. Olive St. R.O.W. and a portion of Gibbs St. R.O.W. situated in San Antonio, Bexar County, Texas, and more particularly described by metes and bounds as follows:

- COMMENCING: At the point of intersection of the north R.O.W. line of Paso Hondo St. and the west R.O.W. line of N. Olive St. for the southeast corner of Block B, NCB 592, San Antonio, Bexar County, Texas;
- THENCE: N89°44'34"E, 40.6 feet along the north R.O.W. of Paso Hondo to a point across N. Olive St. to a point in the R.O.W. of same for a corner and POINT OF BEGINNING of the herein described tract;
- THENCE: N00°15'26"W, 199.94 feet north along N. Olive St. and with the west line of the herein described tract to a point for a corner of same;
- THENCE: N89°44'34"E, 442.49 feet east along Gibbs St. with the north line of the herein described tract to a point on the west line of N. Pine St. for a corner of the same;
- THENCE: S01°19'30"E, 10.00 feet along the west line of N. Pine St. and with the east line of the herein described tract to a point for a corner of same;
- THENCE: S89°44'34"W, 429.87 feet along the south line of Gibbs St. to a point on the east line of N. Olive for a corner of the same;
- THENCE: S00°15'26"E, 189.94 along the east line of N. Olive St. to a point on the north line of Paso Hondo St. for a corner of the same;
- THENCE: S89°44'34"W, 15.00 feet along the north line of Paso Hondo St. to the POINT OF BEGINNING, containing 0.167 acres (7,281 sq. ft.) of land.

VOL 8680 PG 1533

A Survey Plat of even date herewith accompanies this Metes and Bounds.

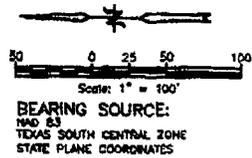
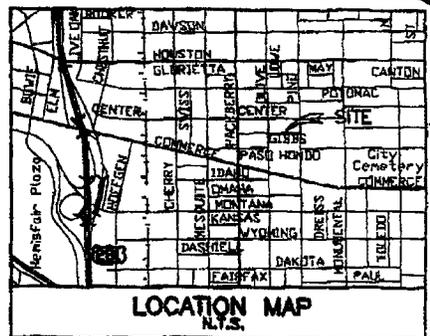
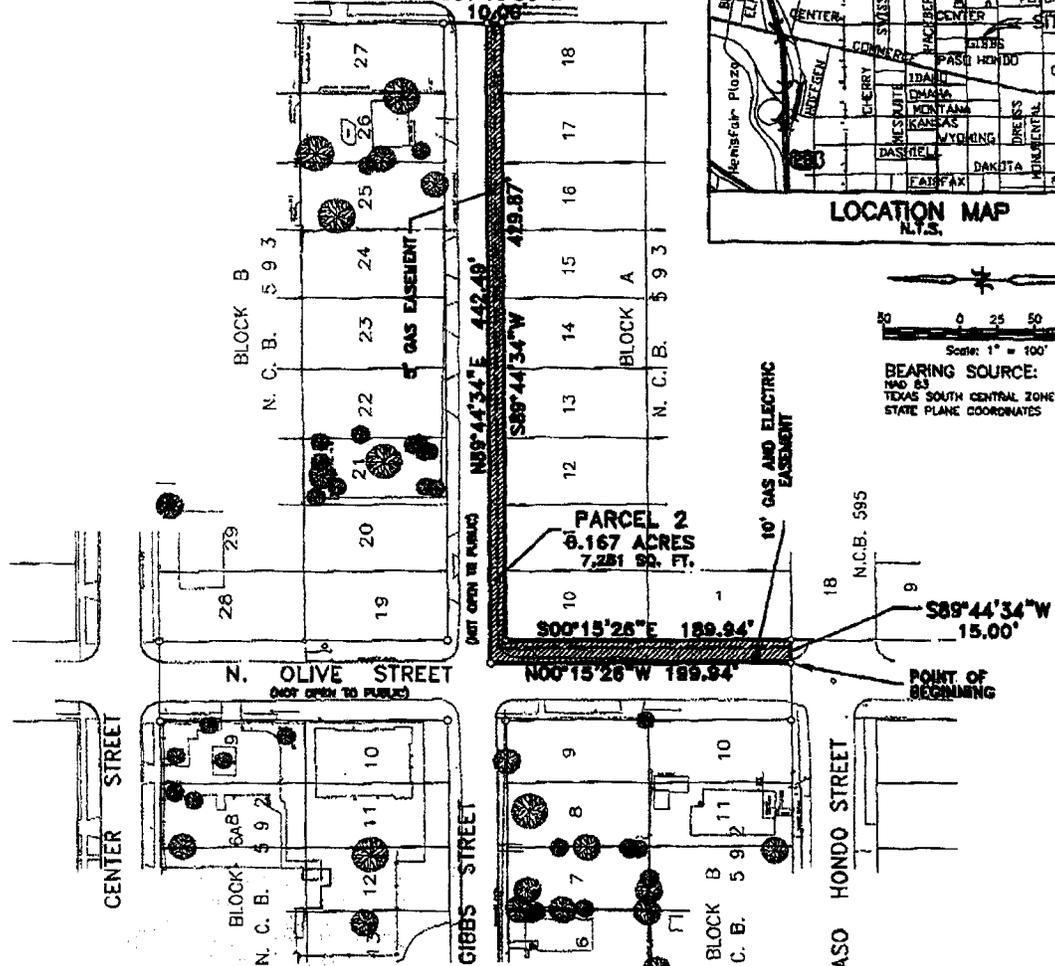
Prepared By: Bain Medina Bain, Inc.
Engineers and Surveyors
Date: September 8, 2000
BMB Job #: C-0852C



G:\work\c-0852 (Carver)\m&b\PARCEL-2-090600.wpd

09/08/00 FRI 16:56 [TX/RX NO 59271] 005

N. PINE STREET S01°19'30"E
10.06'



VOL 8680 P 1534

SURVEY PLAT SHOWING:
A PORTION OF N. OLIVE STREET AND A PORTION OF GIBBS STREET BEING
0.167 ACRES (7,281 SQ') OF LAND BEING SITUATED IN SAN ANTONIO,
BEXAR COUNTY, TEXAS.

A METES AND BOUNDS DESCRIPTION OF EVEN DATE HERewith ACCOMPANIES THIS SURVEY PLAT.



STATE OF TEXAS
COUNTY
THIS SURVEY PLAT WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION, AND THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE PROFESSIONAL AND TECHNICAL STANDARDS ADOPTED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS.

BAIN MEDINA BAIN, INC.
ENGINEERS & SURVEYORS
1026 Central Parkway South
San Antonio, Texas 78232
210/494-7223

THIS 8TH DAY OF SEPTEMBER, 2000 A.D.
[Signature]
REGISTERED PROFESSIONAL LAND SURVEYOR

DATE: 09-08-2000
DRAWN BY: RYG

SHEET 2 OF 5

JOB NO.: C-0852

G:\C-0852\PLAT\MARCELS\CARPLAT-EM.DWG

Exhibit B: Representations

Representations

A. Seller's Representations to Buyer.

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

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

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

3. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property, other than those described in environmental testing reports, which have previously been provided to Buyer.

4. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this Agreement will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

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

6. *Wells.* There are no water or other wells on the property, capped or uncapped, registered or unregistered.

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

D. Buyer's Representations to Seller

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

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

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

Exhibit C: Notices

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

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

Exhibit D: Form of Deed

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

**SPECIAL WARRANTY DEED
(AND ASSIGNMENT OF CLAIMS)**

Authorizing Ordinance:

Grantor:

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

Grantee: City of San Antonio

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

P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvement
Management Services) (Bexar County)

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

Property:

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, **grants, sells, and conveys the Property to Grantee**, together with all and singular the rights and appurtenances thereto in anywise belonging;

To Have and To Hold the above described Property to Grantee, and Grantee's heirs and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereto, by, through, or under Grantor, but not otherwise, except to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural and plural ones include the singular.

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

Date: _____

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me by _____ of Millenium Urban Village, Inc., this date in the capacity therein stated and on behalf of that entity in its capacity as sole general partner of Friedrich Lofts, Inc.

Date: _____

Notary Public, State of Texas

My commission expires: _____

Approved as to Form:

City Attorney

After recording, please return to:

City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvements Management Services)

Exhibit E: Form of Recordable Memorandum of Option

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All of the Following Information from this Instrument Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's Lease Number.

Option Memorandum—For Recordation
(Friedrich Building)

This Option Memorandum is entered into between Owner and Option Holder.

Authorizing Ordinance:

Owner: Friedrich Lofts, Ltd

Owner's Address: 1920 Abrams Parkway, #311, Dallas, Texas 75214
(Attention: John Miller) (Bexar County)

Option Holder: City of San Antonio

Option Holder: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: David McGowen) (Bexar County)

Property: Parcels 1, 2, 3, and 4, all of which are located in San Antonio, Bexar County, Texas and both of which are described below:

Parcel 1: A 5.731 acre tract, more or less, being part of Lots 1 and 2 and all of Lots 3 through 18, Block 1, New City Block 595, and all of Lots 1 through 18, Block A, New City Block 593, and all the portion of Paso Hondo Street between New City Block 593 and 595, as more particularly described on **Exhibit A-1**.

Parcel 2: A 0.467 acre tract, more or less, being a portion of Lots 8 and 9 and all of Lots 10 and 11, Block 5, New City Block 594, as more particularly described on **Exhibit A-2**.

Parcel 3: A 0.1546 acre tract, more or less, being a portion of Lots 1 and 2, Block 1, New City Block 595, as more particularly described on **Exhibit A-3**,

Parcel 4: A 0.167 acre tract, more or less, being a portion of the N. Olive St R.O.W. and a portion of Gibbs St. R.O.W., as more particularly described on **Exhibit A-4**

Effective Date: The date the Title Company acknowledges receipt of a fully executed copy of this Agreement and the full payment of the Option Fee.

Option Holder has an option to buy the Property on the terms and conditions set out in an option agreement between Owner and Option Holder. For more detailed terms, refer to the option agreement, a copy of which may be procured from the City of San Antonio.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands:

Option Holder:

Owner:

City of San Antonio,
a Texas municipal corporation

Friedrich Lofts, Ltd, a Texas limited partnership

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me by _____ of the City of San Antonio, a Texas municipal corporation, on behalf of that municipal corporation in the capacity stated.

Dated: _____

Notary Public, in and for State of Texas

My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me by _____ of Millennium Urban Village, Inc. on behalf of that entity in the capacity stated and in that entity's capacity as sole general partner of Friedrich Lofts, Ltd.

Dated: _____

Notary Public, in and for State of Texas

My Commission Expires: _____

After Recording Return to:

City of San Antonio
Department of Capital Improvements Management Services
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Director
(Bexar County)

Option Contract

City of San Antonio and Friedrich Lofts, Ltd.



City Council Presentation

January 20, 2011

Agenda Item # 24

Center City Development Office (CCDO)

SAISD – COSA MOU

Background

- To establish a due diligence period to explore the adaptive reuse of the Friedrich Building in CD2 for the potential use by SAISD as a Central Administrative Office Complex
- Serve as the basis for a future agreement that would involve the exchange of SAISD surplus properties for the City's financial commitment of the Friedrich Building renovation

MOU

History/Background

- Friedrich Building has been studied by the City for adaptive reuse potential since 2008
- SAISD and City began discussions on District's administrative consolidation in 2009
- Over the past year, SAISD and City have been discussing terms for a multi-property exchange between the parties along with the renovation of the Friedrich
- In September 2010, City and SAISD staffs finalized terms on a draft MOU
- City Council approved the MOU with SAISD on December 9, 2010

Option Contract

Purpose

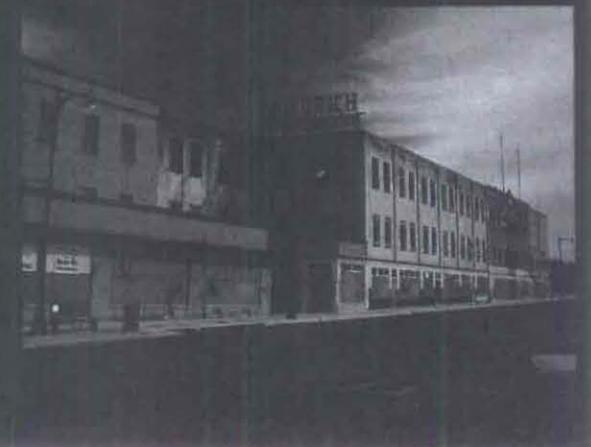
- To take the Friedrich property off the market and secure the City's position as the primary buyer
- Provide flexibility if the City or SAISD opts not to proceed to closing on the transaction
- Allow time to explore the transaction and determine the usability of Friedrich for SAISD's needs

Option Contract History/Background

- Current owner acquired property in 1999
- Property has been listed for over two years with an original asking price of \$8,000,000
- With SAISD on board for a potential multi-property exchange, City pressed owner for a lower price starting in May 2010:
 - May 25: City offered \$4,450,000
 - June 16: Seller countered with \$6,700,000
 - June 17: City countered with \$5,335,000
 - June 18: Seller countered with \$6,250,000
 - July 1: City sent final offer of \$5,680,000; **Seller accepted**
- After City and Seller agreed to the price, the parties began to finalize the terms of the Option Contract
- On December 18, all terms were finalized

Friedrich Building

- Located in the near east side on East Commerce Street
- Construction on the campus started in 1924 and continued into the 1950's
- Home for more than 50 years to the Friedrich Refrigeration Company
- Consists of 533,000 square feet in several structures
- Comprised of 4 parcels totaling 6.52 acres of land
- Property is in the Inner City TIRZ #11 and is located within the Empowerment Zone
- The property has been on the market for an extended period of time



Concept/Strategy/Benefits

- SAISD's administrative functions in multiple facilities around the inner city
- Consolidation of SAISD functions adds value for the District
- Friedrich identified as a catalytic project at the Eastside Summit
 - Infusion of SAISD jobs to the east side
- Potential economic development spin off
- Revitalization of the inner city benefits SAISD, the City and the taxpayers
- In exchange for the renovated Friedrich, the City would receive SAISD real estate assets, allowing additional redevelopment in the inner city

HemisFair Area (CD1)

Bowie Center (CD5)

South Presa Area (CD3)

Jupiter Road Area (CD5)

Lord Road Area (CD 2)

Broadway Corridor/Fort Sam Houston Area (CD1 & 2)

Option Contract Summary

- Terms:
 - Acquisition price: \$5,680,000
 - Option timeframe: 120 days (\$50,000)
 - Option extension: 60 additional days (\$50,000)
- If City exercises the option to acquire the property:
 - Earnest money (\$100,000) becomes payable 10 days after option exercise
 - Closing will occur 45 days after exercise

Financial Commitments

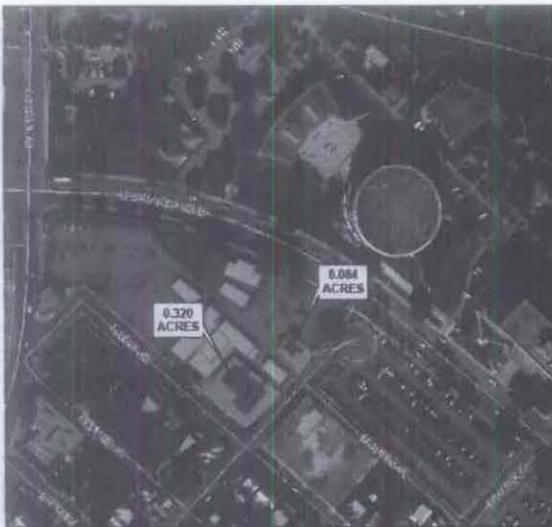
- Secure an option contract for the Friedrich property
- Due diligence analysis:
 - Financial proforma
 - Environmental site assessment (Phase I & II)
 - Space programming review
 - Historic review
 - Other consulting services as needed
- Funding source for the City's portion: Inner City TIRZ #11

Status

- Inner City TIRZ #11 approved \$100,000 in funding for the MOU/Option Contract on 1/14
- Friedrich Lofts, Ltd. has executed their portion of the Option Contract
- MOU between the City and SAISD was executed in December 2010
- City is gathering due diligence information on the property

MOU Summary

- Nonbinding agreement-
 - Framework for future negotiations between the parties
 - Allows City and SAISD to jointly commence an analysis and due diligence of the Friedrich Building
 - Commits the parties to a total of \$200,000 or 50% each not to exceed \$100,000
 - Parties will mutually select consultants/project managers and determine the level of due diligence
 - Identifies certain SAISD surplus properties for potential value exchange for the renovation and acquisition of the Friedrich Building
 - It is **not** a contract for the acquisition or exchange of properties



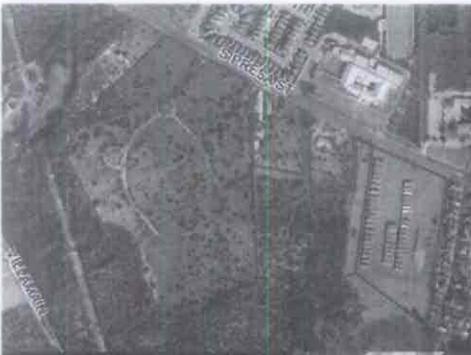
HemisFair Area CD1

4.72 acres

Broadway Corridor/
Fort Sam Houston
Area (CD 1&2)

14.25 acres





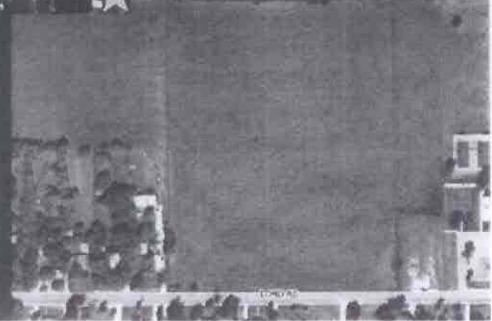
South Presa Area (CD3)

73 acres



Jupiter Road Area (CD5)

4.59 acres



Lord Road Area (CD 2)

12.78 acres