

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ASSET MANAGEMENT DEPARTMENT**

TO: Mayor and City Council

FROM: Rebecca Waldman, Director, Department of Asset Management

THROUGH: Terry M. Brechtel, City Manager

COPIES: Erik J. Walsh, Assistant to the City Manager; Tom Wendorf, Director, Public Works Department; Malcolm Matthews, Director, Parks and Recreation Department; File

SUBJECT: Purchase of approximately 58.9 acres of land in contiguous parcels, with 2 primary buildings and excess land, located on Highway 90 West in District 6 for use by the Departments of Public Works and Parks and Recreation.

DATE: June 10, 2004

SUMMARY AND RECOMMENDATIONS

This Ordinance authorizes the execution of a Purchase and Sale Agreement with Levi Strauss & Co. in an amount not to exceed \$4,850,000.00 for approximately 58.9 acres containing 2 primary buildings with a combined square footage totaling approximately 333,000 square feet, located on Highway 90 West, in City Council District 6, as shown on the attached Exhibit "A", for use by the Departments of Public Works and Parks and Recreation; and authorizes payment of \$50,000.00 to Chicago Title Insurance Company as a deposit to be applied toward the purchase price upon closing of the transaction, and an amount not to exceed \$150,000.00 for costs associated with property due diligence/inspections and fees due from the City prior to and at the time of such closing.

Staff recommends approval.

BACKGROUND

Over the past several years, in conjunction with the City's Real Estate Brokers, City staff has researched numerous properties in an effort to identify a site or sites that would accommodate the consolidation/relocation of various operational functions for the Departments of Public Works and Parks and Recreation. One property that recently became available and meets the criteria for each department, as well as provides for future growth and expansion, is the Levi Strauss property. Additionally, the City already

owns adjacent property surrounding the Levi's site – Wolff Stadium and Levi Strauss Park.

The Parks and Recreation Department anticipates utilizing the building on the northern section of the property (Building II) and surrounding acreage for the consolidation of Recreation Services, Public Information, Horticultural Services, Park Maintenance, Volunteer Services, and Park Police administrative functions. These functions are currently located in Brackenridge Park, HemisFair Park, and the Catholic Life Building. The relocation of Horticultural Services (Park Nursery) is a 1999 Bond Project. Relocation of the Recreation Services division from the Catholic Life Building will result in rent savings and the relocation of the functions from HemisFair Park will allow for the redevelopment of various buildings in accordance with the HemisFair Park Area Master Plan.

The Public Works Department is evaluating the larger of the two main buildings (Building I) and surrounding acreage for the consolidation of its Storm Water Operations. Storm Water Operations has outgrown the existing facilities and this transaction would allow for a more efficient use of storm water resources. Staff is in the process of conducting further due diligence regarding this option. As such, the City has a 30-day period in which to exercise an option to purchase only Building II and the excess land.

FISCAL IMPACT

Under the terms of the Purchase and Sale Agreement, the negotiated price for the property and buildings is \$4,850,000.00. If the option to purchase only Building II and the excess land is exercised, then the purchase price is reduced to \$3,300,000.00. In addition to the acquisition price, the City will pay an estimated \$150,000.00 for services to be accomplished during the due diligence/inspection period and fees due from the City at the closing of this transaction. These services/fees may include re-platting the property into three separate parcels at a cost not to exceed \$50,000.00 (only in the event the City exercises the option to purchase only Building II and the excess land or cancels the entire contract after 30 days yet prior to the end of the 90 day due diligence period), environmental and facility assessments, an appraisal of the property, and the cost of the Title Policy of Insurance.

Funding for the purchase of the building is available through 1999 Park Bonds and Certificates of Obligation for Building II and the excess land (Parks portion), and Storm Water Revenues for Building I (Public Works portion).

If acquisition of the property is approved, the redevelopment process for the Parks and Recreation Service Center (Building II and excess land) will commence. Funding for the design and site improvements, estimated at approximately \$3,500,000.00, will be secured through new Certificates of Obligation and the redirection of existing allocations associated with the current multiple sites to be consolidated. It is anticipated that in late summer, staff will present to City Council a detailed redevelopment plan for the service

center with finalized project costs. Further due diligence is required to evaluate options and costs regarding the redevelopment of Building I for use by Public Works.

POLICY ANALYSIS

The purchase of this property will facilitate the long-range goals of the Departments of Public Works and Parks and Recreation, providing for improved operational efficiencies, thereby improving the services provided to the citizens of San Antonio.

COORDINATION

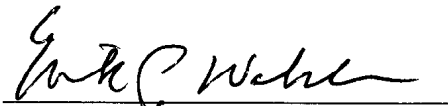
The agenda item has been coordinated with the Departments of Public Works, Parks and Recreation, and the City Attorney's Office.

SUPPLEMENTARY COMMENTS

The required Discretionary Contracts Disclosure form is attached. The planning Commission has recommended the sale to the City Council at its regular meeting of May 26, 2004.




Rebecca Waldman, Director
Department of Asset Management



Erik J. Walsh
Assistant to the City Manager

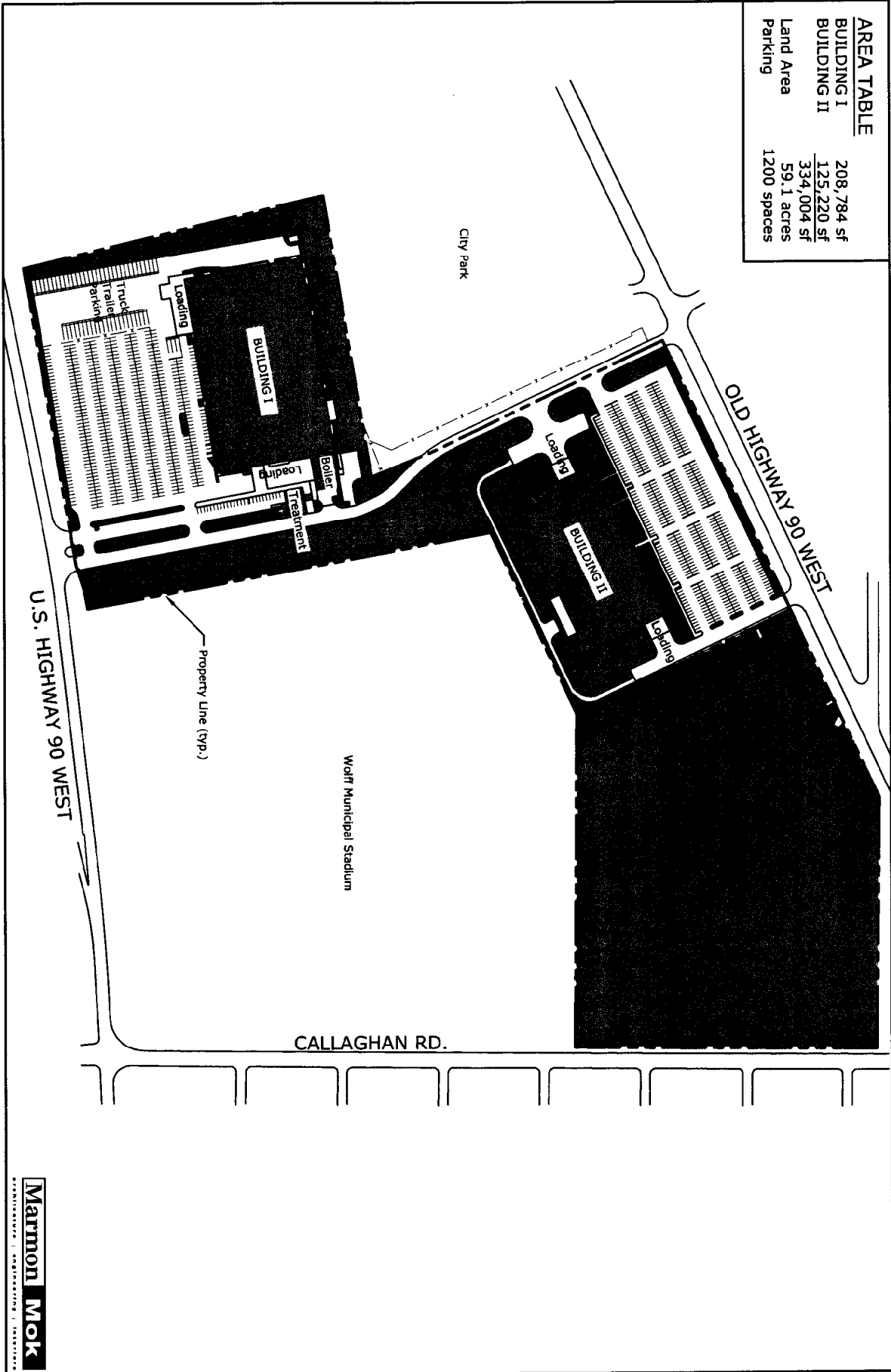
Approved:



Terry M. Brechtel
City Manager

EXHIBIT "A"

AREA TABLE	
BUILDING I	208,784 sf
BUILDING II	125,220 sf
Land Area	334,004 sf
Parking	59.1 acres
	1200 spaces



Levi Strauss & Co.
San Antonio, TX

SITE PLAN
EXISTING CONDITIONS

Caner Associates /
Trammell Crow



Marmori Mok
ARCHITECTS • ENGINEERS • LANDSCAPERS

City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

NONE

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

LEVI STRAUSS & CO.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

NONE

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

NONE

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NONE


Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A	N/A	N/A

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

NONE		
Signature: 	Title: Real Estate Manager Company: Levi Strauss & Co	Date: 5/24/04

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

PURCHASE AND SALE AGREEMENT

THIS IS A PURCHASE AND SALE AGREEMENT (hereafter "Agreement") dated as of June ___, 2004 between Levi Strauss & Co., a Delaware corporation ("Seller"), and The City of San Antonio, a Texas home-rule municipal corporation ("Buyer"), acting by and through its City Manager or her designee, pursuant to City of San Antonio Ordinance No. ___ passed and approved on June ___, 2004. The "Effective Date" of this Agreement is the later of the following: (A) the date of Seller's execution and delivery of this Agreement (which is the date appearing in the Seller's signature block at the end of this Agreement), and (B) the date of Buyer's execution and delivery of this Agreement (which is the date appearing in the Buyer's signature block at the end of this Agreement).

RECITALS

A. Seller owns certain real property consisting of approximately fifty-eight and nine tenths (58.9) acres of land located in San Antonio, Bexar County, Texas, which real property is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Real Property"). The Real Property consists of the following three portions: (i) the "Finishing Plant Property" consisting of approximately twenty-one and five tenths (21.5) acres of land commonly known as 5827 Highway 90 West and improved by a building of approximately 208,000 square feet (the "Finishing Plant Building"); (ii) the "Sewing Plant Property" consisting of approximately fifteen and four tenths (15.4) acres of land commonly known as 5800 Old Highway 90 West and improved by a building of approximately 125,000 square feet (the "Sewing Plant Building"); and (iii) the "Excess Land Property" consisting of approximately twenty-two (22) acres of land. The three above-described portions of land may each be individually referred to herein, at times, as a "Portion." The approximate boundaries of the three Portions are shown on Exhibits B-1, B-2 and B-3 attached hereto and incorporated herein by this reference (collectively, the "Portion Maps"). The Finishing Plant Building and the Sewing Plant Building are collectively referred to herein, at times, as the "Buildings".

B. Buyer and Seller acknowledge that the Finishing Plant Property, the Sewing Plant Property and the Excess Land Property are not currently separate legal parcels and that this Agreement contemplates, under certain circumstances set forth in Paragraph 5 below, the subdivision of the Real Property into three (3) separate legal parcels.

C. Buyer desires to purchase and Seller desires to sell the Property, as described herein, upon the terms and conditions set forth herein.

IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, on and subject to the terms and conditions set forth herein, all of Seller's right, title and interest in the Real Property, together with the Buildings located thereon, and all rights, privileges and easements appurtenant to the Real Property (the "Appurtenances"). The Real Property, Buildings and Appurtenances are collectively referred to herein as the "Property." The parties acknowledge and agree that the equipment, furniture, and personal property located within the Buildings shall be and remain Seller's property, and Seller shall have the right to remove such equipment, furniture and personal property at any time prior to Closing.

2. Purchase Price.

(a) If Buyer purchases the entire Property (consisting of all three Portions), the purchase price shall be Four Million Eight Hundred Fifty Thousand Dollars (\$4,850,000). If, pursuant to the terms of this Agreement, Buyer elects to purchase only the Sewing Plant Property and the Excess Land Property, the purchase price shall be Three Million Three Hundred Thousand Dollars (\$3,300,000). The applicable amount shall be referred to herein as the "Purchase Price," to be increased or decreased by prorations and closing cost allocations as provided herein.

(b) The Purchase Price shall be paid as follows:

(i) Concurrently with its delivery of this Agreement, Buyer shall deliver to the Title Company (as defined in Paragraph 3), as escrow holder, a deposit in the amount of Fifty Thousand Dollars (\$50,000) (the "Deposit"). The Title Company will invest the Deposit in an interest-bearing account. If Buyer does not terminate this Agreement on or before the end of the Due Diligence Period in accordance with Paragraph 4 hereof, the Deposit shall become non-refundable and shall be disbursed to Seller (subject to return to Buyer pursuant to Paragraph 10 in the event of a default hereunder by Seller) and, if the transaction contemplated hereby closes, applied to the Purchase Price at Closing.

(ii) The balance of the Purchase Price shall be paid to Seller in immediately available funds at the closing of the purchase and sale contemplated hereunder (the "Closing").

3. Title to the Property. At Closing, Seller shall execute and deliver a special warranty deed to Buyer (the "Deed"). Evidence of delivery of acceptable title shall be the issuance by Chicago Title Insurance Company (the "Title Company") to Buyer of an owner's policy of title insurance in the amount of the Purchase Price, insuring fee simple title subject only to property taxes not yet due and payable and such other exceptions as Buyer shall approve, or be deemed to have approved, pursuant to Subparagraph 6(a) below (the "Permitted Exceptions") (such policy, the "Title Policy"). Escrow shall be at the Title Company's office at 700 N. St. Mary's Street, Suite 125, San Antonio, TX 78205, Attention: Mike Guerra.

4. Due Diligence Period and Termination Rights.

(a) Due Diligence Period for Property. The due diligence period during which Buyer may inspect the Property (except as otherwise provided in Paragraph 4(b)(i) below) shall expire at Noon, Central Daylight Time, on the date which is ninety (90) days after the Effective Date (the "Due Diligence Period").

(b) Termination Rights.

(i) Finishing Plant Period. Until Noon, Central Daylight Time, on the date which is thirty (30) days after the Effective Date (the "Finishing Plant Period"), Buyer shall have the right to terminate this Agreement with respect to either (A) the entirety of the Property, by giving a written notice of termination to Seller that is received before the expiration of the Finishing Plant Period, in which event the Deposit posted by Buyer hereunder (and all interest accrued thereon) shall be returned to Buyer, or (B) the Finishing Plant Property only, separate and apart from the Sewing Plant Property and the Excess Land Property, by giving a written notice of termination to Seller that is received before the expiration of the Finishing Plant Period. If Buyer terminates this Agreement with respect to the Finishing Plant Property only within the Finishing Plant Period pursuant to clause (B) above, (x) this Agreement shall continue in full force and effect with respect to the other two Portions, and the Deposit shall remain with the Title Company, (y) Buyer shall have no further right to purchase or to conduct inspections on the Finishing Plant Property, and (z) all references in this Agreement to the "Property" shall thereafter be deemed references to the Sewing Plant Property and Excess Land Property only. If Buyer fails to terminate this Agreement with respect to the Finishing Plant Property prior to the end of the Finishing Plant Period, Buyer shall have no further right to terminate this Agreement as to the Finishing Plant Property only.

(ii) Remaining Period. At any time from and after the end of the Finishing Plant Period until the end of the Due Diligence Period (the "Remaining Period"), Buyer shall have the right to terminate this Agreement with respect to the entirety of the Property then subject to this Agreement only, by giving a written notice of termination to Seller that is received before the expiration of the Due Diligence Period, in which event the Deposit posted by Buyer hereunder (and all interest accrued thereon) shall be returned to Buyer.

(c) Consideration. Buyer hereby pays to Seller the amount of One Hundred Dollars (\$100) as independent consideration for such rights to terminate this Agreement under this Paragraph; such independent consideration is not refundable to Buyer under any circumstances.

5. Additional Obligations of Buyer.

(a) Subdivision.

(i) Buyer's Obligation. If Buyer elects to terminate this Agreement with respect to (A) the Finishing Plant Property only within the Finishing Plant Period, as set forth in Paragraph 4(b)(i)(B) above (a "Partial Termination"), or (B)

the entire Property then subject to this Agreement at any time during the Remaining Period pursuant to Paragraph 4(b)(ii) above (a "Total Termination") (each a Partial Termination and a Total Termination shall be a "Triggering Event"), Buyer shall immediately, after such Triggering Event, undertake to complete, at Buyer's sole cost and expense, the subdivision of the Real Property in accordance with Section 35-430 of the City of San Antonio Unified Development Code (the "Subdivision"), and in accordance with the provisions of this Paragraph. Buyer agrees that it shall use a qualified engineer to prepare the drawings, legal descriptions and other documents necessary to complete the Subdivision. The Subdivision shall create three (3) legal parcels corresponding to the Finishing Plant Property, the Sewing Plant Property and the Excess Land Property. Buyer shall be solely responsible for obtaining from the City of San Antonio Development Services Department, the City of San Antonio Planning Commission and any other pertinent Departments or other governmental authorities with jurisdiction (the "Governing Authorities"), all the necessary permits for, and the full approval and acceptance of, the Subdivision by the Governing Authorities. If Buyer elects to terminate this Agreement with respect to the entire Property prior to the end of the Finishing Plant Period, Buyer shall have no obligation to undertake to complete the Subdivision. Upon the termination at any time of Buyer's obligation to complete the Subdivision pursuant to the provisions of this Agreement (including, without limitation, Sections 5(a)(iii) and 11 below), Buyer shall deliver to Seller, and assign to Seller all of Buyer's right, title and interest in and to, all drawings, legal descriptions, surveys and other documentation relating to the Subdivision, if any.

(ii) Subdivision Timeline. Buyer shall use its best efforts to process and obtain all applicable governmental approvals from the Governing Authorities for the Subdivision of the Property and to complete the same within one hundred (100) days after a Triggering Event, and in any event within two hundred (200) days after a Triggering Event. The Subdivision will be deemed complete after receipt of the Certificate of Approval of the Planning Commission of the City of San Antonio and of a certified copy of the Final Parcel Plan (as defined below) as recorded in the Deed and Plat Records of Bexar County, Texas. Notwithstanding anything to the contrary contained herein, any conditions or fees (other than standard filing fees) imposed or required by Governing Authorities in connection with the approval and recordation of the Subdivision shall be subject to Seller's prior, written approval, which approval shall not be unreasonably withheld or delayed. Without limiting the generality of the foregoing, by the date that is thirty (30) days after a Triggering Event, (A) Buyer shall submit its request for a Certificate of Determination, in accordance with Section 35-430(d) of the Unified Development Code, and (B) prior to Buyer's submission of any application, plat or plan for the Subdivision to the Governing Authorities, Buyer shall submit to Seller for Seller's approval, which approval shall not be unreasonably withheld or delayed, a tentative parcel plan for the Subdivision (the "Parcel Plan"), which shall set forth the proposed location of the boundaries of each of the parcels to be effectuated by the Subdivision. Each Portion shall have its own legal description, which Buyer shall deliver to Seller together with the Parcel Plan, within thirty (30) days after a Triggering Event, for Seller's approval, which approval shall not be unreasonably withheld or delayed. If Seller objects to such legal descriptions or the Parcel Plan, Buyer shall revise the same within twenty (20) days to address Seller's objections, and resubmit them to Seller for

approval. Upon Seller's final approval of the legal descriptions and the Parcel Plan, the parties shall execute an amendment to this Agreement setting forth the legal descriptions of each of the Portions. Seller agrees to reasonably cooperate in Buyer's efforts to complete the Subdivision, including executing any documents reasonably necessary in connection with such efforts. The Parcel Plan, as approved by the Governing Authorities, shall be referred to herein as the "Final Parcel Plan," provided that the Final Parcel Plan shall not vary from the Parcel Plan approved by Seller without the prior written consent of Seller. Buyer agrees to diligently respond to any comments from the Governing Authorities regarding the Subdivision within ten (10) business days following Buyer's receipt thereof from the Governing Authorities. Buyer shall provide written notice to Seller of all hearings with the Governing Authorities concerning the Subdivision not later than five (5) business days prior thereto and Buyer shall use its commercially reasonable, good faith efforts to provide prior written notice to Seller of all meetings with the Governing Authorities concerning the Subdivision. Seller, at its option, may participate in any or all of such hearings and meetings.

(iii) Costs. Buyer shall be solely responsible for all costs and expenses associated with completing the Subdivision, provided that under no circumstances shall Buyer be required to expend out-of-pocket costs to unaffiliated third parties in excess of Fifty Thousand Dollars (\$50,000) (the "Cap"), in the aggregate, for the same. Buyer shall provide written notice to Seller when the costs incurred for the Subdivision total Forty Thousand Dollars (\$40,000) and at that time, Buyer shall consult with Seller as to the expected future costs to complete the Subdivision. In the event that the out-of-pocket, third party costs to complete the Subdivision and platting of the Property exceed the Cap, Seller shall have the option to either (A) pay any additional reasonable out-of-pocket, third party costs above the Cap, subject to the limitations set forth below ("Excess Costs"), for Buyer to complete the Subdivision, or (B) direct Buyer to stop work on the Subdivision. Seller shall advise Buyer in writing of its selected option within ten (10) days after such decision ("Seller's Advice"). In the event Seller fails to provide Seller's Advice within the ten-day period, Seller shall be deemed to have elected option (B) above. Seller shall only be responsible to pay the Excess Costs that have been previously approved in writing by Seller and that are actually expended by Buyer in connection with the Subdivision after Seller's receipt from Buyer of an invoice for the same, together with (x) copies of paid invoices from all consultants engaged by Buyer in connection with such Subdivision, and (y) properly executed mechanics lien releases from all such consultants in compliance with applicable law. Upon Buyer's receipt of Seller's Advice electing option (B) above or Seller's deemed election of option (B), Buyer will have no further obligation to complete the Subdivision.

(iv) Completion Not a Closing Condition. Buyer acknowledges that the completion of the Subdivision shall not be a condition to Closing and that Seller may convey title to the Property to Buyer based on the legal description attached hereto as Exhibit A or if Buyer is purchasing only the Sewing Plant Property and the Excess Land Property, based on the legal descriptions approved by Seller pursuant to Paragraph 5(a)(ii) above (or such other legal descriptions as reasonably prepared by Seller if Buyer fails to complete the legal descriptions as required by Paragraph 5(a)(ii)).

(b) Easement Agreements. If due to Buyer's purchase of only the Sewing Plant Property and Excess Land Property, either Buyer or Seller reasonably determines that certain easement or reciprocal easement rights are reasonably necessary or required over the Real Property for the continued use of any of the Portions of the Real Property by either party consistent with such Portion's prior use, then Buyer and Seller shall negotiate in good faith to enter into any easement or reciprocal easement agreements ("Easement Agreements") as reasonably necessary or required for easements for ingress and egress, emergency access or utilities ("Easements"). On or before that date which is thirty (30) days after a Partial Termination, Buyer shall provide Seller with a draft of the Easement Agreements, subject, however, to Seller's approval of the location and other specifications of the Easements, which approval shall not be unreasonably withheld or delayed. Upon the occurrence of a Total Termination, Seller shall have the right to determine, in its sole discretion, the Easements that are necessary or required and the location of the Easements in the Subdivision. On or before that date which is thirty (30) days after the Total Termination and after Seller's designation to Buyer of Seller's required Easements and the locations for the same, Buyer shall provide Seller with the Parcel Plan depicting the Easements. If possible, the Easement Agreements shall be executed and acknowledged by Buyer and Seller and recorded concurrently with the recording of the Deed, or if not, as soon thereafter as possible. Notwithstanding anything to the contrary contained herein, Seller or Buyer shall, upon the request of the other party, grant to the requesting party such easement(s) over the existing road across the Finishing Plant Property and the Sewing Plant Property (as the same is more particularly shown on Exhibit D and Exhibit E attached hereto and incorporated herein by this reference) as may be required (i) by the Governing Authorities as a condition of approval of the Final Parcel Plan for emergency access, ingress and egress by the City of San Antonio, or (ii) for alternative access, ingress and egress to and from the Finishing Plant Property during flooding conditions due to the existing 100 year floodplain in the parking lot area located thereon.

(c) Survival. Buyer's obligations under this Paragraph 5 shall survive Closing or any termination of this Agreement.

6. Conditions to Closing. The following conditions are conditions precedent to Buyer's obligation to purchase the Property:

(a) Title. Buyer's review and approval, within the Due Diligence Period, of title to the Property and the survey referenced in Section 6(b) below, as follows: Buyer heretofore has obtained from Title Company, and Buyer acknowledges receipt of a copy of, a preliminary report dated March 3, 2004, numbered 44-905-80-200314626 respecting the Real Property issued by Title Company, accompanied by copies of all documents referred to in the report (the "Title Report"). Buyer shall advise Seller in writing, no later than ten (10) days after the Effective Date, what exceptions to title, if any, are objectionable to Buyer. If Buyer shall fail to give such notice within such period, Buyer shall be deemed to have accepted the Title Report and to have approved all matters relating to title, including the condition of title as shown in the Title Report. If Buyer does provide such notice, Buyer shall be deemed to have accepted those

exceptions to title to which Buyer has not made objection. Seller shall have ten (10) days after receipt of Buyer's title objection notice to give Buyer: (i) written notice that Seller will remove such objectionable exceptions on or before the Closing Date; or (ii) written notice that Seller elects not to cause such exceptions to be removed. Seller's failure to give notice to Buyer within this ten (10) day period shall be deemed to be Seller's election not to cause such exceptions to be removed. If Seller gives Buyer notice or is otherwise deemed to have elected not to cause such exceptions to be removed, Buyer shall have ten (10) days from receipt of Seller's notice or from the expiration of Seller's ten (10) day period described above, as applicable, within which to give Seller written notice of Buyer's election to proceed with the purchase or terminate this Agreement. Should Buyer terminate, then neither party shall have any further obligations under this Agreement, save and except liability for any costs incurred by either party prior to a termination and each party's respective obligations under Paragraphs 5, 6(c), 7, 8, 12(b) and 12(f) of this Agreement, which expressly survive termination of this Agreement (collectively, the "Surviving Obligations"). If Buyer shall fail to give Seller notice of its election on or before said tenth day, Buyer shall be deemed to have elected to proceed with the purchase and to have accepted the condition of title. If Seller shall give notice pursuant to clause (i) above and shall fail to remove any objectionable exceptions it has agreed to remove from title prior to the Closing Date, and Buyer is unwilling to take title subject thereto, Seller shall be in default and Buyer shall have the rights and remedies set forth in Paragraph 10(b). Notwithstanding anything to the contrary set forth herein or in any document or instrument delivered or provided in connection herewith, Buyer shall rely exclusively on its own review of title concerning the Property, and upon the Title Policy (if the transaction closes) and survey (if any) obtained by Buyer with regard to any and all title matters concerning the Property. From and after the Closing Date, Buyer shall be responsible for performing any and all obligations of Seller under or in connection with all covenants, conditions and restrictions of record and all governmental requirements now in force or hereafter in effect affecting the Property, and Buyer shall have no recourse against, and shall not look to Seller or any agent, contractor, or employee of Seller with respect thereto. The provisions hereof shall survive Closing.

(b) Survey. Seller has provided to Buyer, at Seller's expense, an ALTA survey prepared by Pape-Dawson, dated February 6, 2004. If Buyer shall elect to obtain any additional survey of the Property, Buyer shall obtain such survey at its sole cost. Buyer shall review and approve the Pape-Dawson survey and any additional survey obtained by Buyer within the Due Diligence Period.

(c) Inspections. Buyer's inspection, review and approval, within the Due Diligence Period, of all matters pertaining to the Property, including the physical characteristics and condition of the Property, the presence or absence of Hazardous Substances, any and all governmental requirements, permits and approvals relating to the construction, operation, use or occupancy of the Property, and all zoning, land use, subdivision, environmental, building and construction laws and regulations restricting, regulating or otherwise affecting the use, occupancy or enjoyment of the Property. Buyer shall have the right during the Due Diligence Period, at Buyer's sole expense, to make such physical inspections of the Property, subject to the terms hereof, on its own

or acting by and through consultants, contractors and subcontractors, as Buyer reasonably determines necessary in connection with its review and contemplated purchase of the Property. Buyer understands and agrees that any on-site inspections of the Property shall be conducted upon prior advance notice (at least one (1) business day) to Seller describing the scope of the intended inspection and in the presence of an authorized representative of Seller. Prior to Buyer entering the Property to conduct the inspections described above, Buyer shall present to Seller evidence of Buyer's self-insurance for liability and worker's compensation and evidence that Buyer has endorsed its excess liability policy to add Seller as additional insured. If Buyer hires consultants, contractors or subcontractors to perform such inspections, then Buyer shall cause each of its consultants, contractors and subcontractors to obtain and maintain, at each consultant's, contractor's and subcontractor's sole cost and expense, commercial general liability insurance with a limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death and property damage, and Two Million Dollars (\$2,000,000) in the aggregate, such policies to name Seller as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by said contractor, subcontractor or consultant or its agents or employees in connection with such inspections (and Buyer shall deliver to Seller evidence thereof prior to any entry upon the Property by any consultant, contractor or subcontractor). All inspections shall occur during normal business hours or such other times as agreed upon by Buyer and Seller and shall be conducted so as not to interfere unreasonably with use of the Property by Seller. Buyer shall at its expense repair promptly any damage caused by any inspections pursuant to this Paragraph 6(c), bringing the Property to its condition existing prior to Buyer's, or its consultant's, contractor's or subcontractor's, first entry thereon.

(d) Seller's representations contained in or made pursuant to this Agreement shall have been true and correct in all material respects when made and shall be true and correct in all material respects on the Closing Date.

(e) Seller shall have performed all of its covenants and obligations provided herein with respect to the Property as of the Closing Date of this transaction.

The following conditions are conditions precedent to Seller's obligation to sell the Property:

(f) Buyer's representations contained in or made pursuant to this Agreement shall have been true and correct in all material respects when made and shall be true and correct in all material respects on the Closing Date; and

(g) Buyer shall have performed all of its covenants and obligations provided herein with respect to the Property and the Closing of this transaction.

7. Representations.

(a) Buyer's Representations. Buyer hereby represents to Seller as follows: This Agreement and all documents executed by Buyer which are to be

delivered to Seller at the Closing are and at the Closing Date will be duly authorized, executed and delivered by Buyer, and are and at the Closing Date will be legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, and do not and at the Closing Date will not violate any provisions of any instrument, agreement or judicial order to which Buyer is subject.

(b) Seller's Representations. Seller hereby represents to Buyer as follows:

(i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The execution, delivery and performance of this Agreement by Seller and all of the documents to be signed by Seller in connection herewith have been duly and validly authorized and approved by all necessary action on the part of, and this Agreement and all of the documents signed by Seller in connection herewith, have been duly and validly executed and delivered by, Seller, and are and at the Closing Date will be legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, and do not, and at the Closing Date will not, violate any provisions of any instrument, agreement or judicial order to which Seller is subject.

(ii) Seller's uses of the Property may have included manufacturing, office, warehouse, and industrial uses. In the conduct of its business, Seller may have used and stored at the Property materials and substances such as solvents, motor oil, cleaning products and other operations, maintenance and landscape materials and substances that may meet the definition of Hazardous Substances as described herein. However, except as may be disclosed in any reports or other documents delivered to or made available to Buyer (including, without limitation, the Environmental Reports, as defined below) to Seller's knowledge, there is no litigation or other proceeding pending against Seller by any governmental authority or any private party alleging that Seller is in violation of any Environmental Laws with respect to the presence of Hazardous Substances on the Property which violation, litigation or proceeding would materially and detrimentally affect the use or operation of the Property as it is currently being used or operated, or the ability of Seller to perform its obligations under this Agreement.

(iii) For purposes hereof, the "knowledge" of Seller means the actual knowledge of Kathleen Dunlap, Real Estate Manager, Cristina Dobleman, Director of Risk Management, and Reza Hosseini, Consultant, Environmental Site and Compliance Assessment, Risk Management, of Seller, and shall not be construed, by imputation or otherwise, to refer to the knowledge of Seller or to any other officer, agent, representative or employee of Seller or to impose upon Seller, Ms. Dunlap, Ms. Dobleman or Mr. Hosseini any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains.

8. Disclaimers; Limited Representations by Seller; Release; No Reliance on Documents.

(a) Disclaimers; Limited Representations by Seller. Buyer represents to Seller, and hereby agrees, that Buyer has conducted, or will conduct prior to expiration of the Due Diligence Period, such investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary to satisfy itself in all respects as to the condition of the Property, including, but not limited to, the existence or nonexistence or curative action to be taken with respect to any Hazardous Substances in, on, under or in the vicinity of or discharged from the Property. It is understood and agreed that, except as set forth in Paragraph 7(b) hereof, Seller is not making and has not at any time made any warranties or representations of any kind or character, expressed or implied, with respect to the Property, including, but not limited to, any warranties or representations as to habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, latent or patent physical or environmental condition, utilities, operating history or projections, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any documents or any other information provided by or on behalf of Seller to Buyer (except for Seller's representations set forth in Paragraph 7(b) hereof), or any other matter or thing regarding the Property. Buyer acknowledges and agrees that upon Closing, except for Seller's representations set forth in Paragraph 7(b) hereof, Seller shall sell and convey to Buyer and Buyer shall accept the Property "as is, where is, with all faults." Except for Seller's representations set forth in Paragraph 7(b) hereof, Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any expressed or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller or any of Seller's officers, employees, agents or contractors, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing.

(b) Release. Upon Closing, and except in the event of a breach by Seller of Seller's representations set forth in Paragraph 7(b) hereof, Buyer shall assume the risk that adverse matters, including, but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Buyer's investigations, and Buyer, upon Closing, shall be deemed to have waived, relinquished and released Seller (and Seller's officers, directors, shareholders, employees, agents and contractors) from any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which Buyer might have, assert or allege against Seller (and/or Seller's officers, directors, shareholders, employees, agents and contractors) at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws) and any and all other acts, omissions, events, conditions, circumstances or matters regarding the Property. Buyer acknowledges that Seller will make available to Buyer for inspection a copy of the reports and other documents listed on Exhibit C, attached hereto (the

"Environmental Reports"). Buyer will review the reports and documents and has caused, or shall during the Due Diligence Period cause, its own consultants to perform such inspections and investigations of the Property as Buyer has determined to be appropriate.

(c) No Reliance on Documents. Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, files, data or information delivered by Seller to Buyer or otherwise made available to, reviewed or received by Buyer in connection with the Property. Buyer acknowledges and agrees that all materials, data and information delivered by Seller to Buyer or otherwise delivered or made available to or received by Buyer for its review in connection with the transaction contemplated hereby are provided to Buyer at the sole risk of Buyer. Without limiting the generality of the foregoing provisions, Buyer acknowledges and agrees that (i) any environmental or other report, document, or other information with respect to the Property which is delivered, or made available, by Seller to Buyer shall be for general informational purposes only, (ii) Buyer shall rely on its own inspections and investigations of the Property and any reports commissioned by Buyer with respect thereto, and (iii) neither Seller nor the person or entity which prepared any such report delivered by Seller to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any such report, document or other information.

(d) Confidentiality. All information (collectively, "Inspection Material") acquired by Buyer or any of its Representatives (as hereinafter defined) with respect to the Property, whether delivered by Seller or any of its representatives or obtained by Buyer as a result of its inspections of the Property, or otherwise, shall be used solely for the purpose of determining whether or not the Property is suitable for Buyer's purpose. Buyer shall receive and keep the Inspection Material in confidence at all times, except as may be required of Buyer under the Texas Public Information Act, as a Texas home-rule municipal corporation, provided that in all events Buyer shall (i) take all reasonable precautions to protect the confidentiality of the Inspection Material, including, without limitation, those precautions it takes with respect to its own confidential information, (ii) prior to the disclosure by Buyer of any Inspection Material under the Texas Public Information Act, deliver to Seller five (5) business days advance written notice of the same, and (iii) use its best efforts to prevent or contest any such disclosure. Inspection Material shall not be disclosed to any individual or entity, except as may be required of Buyer under the Texas Public Information Act, as a Texas home-rule municipal corporation (subject to Buyer's obligations set forth in clauses (i) through (iii) above), and other than to those Representatives of Buyer who need to know the information for the purpose of assisting Buyer in making such determination, such as Buyer's inspection consultants. As used herein, "Representative" shall mean Buyer's legal counsel and any employee or agent responsible for reviewing the Property on behalf of Buyer for purposes of the transaction contemplated by this Agreement. If Buyer shall elect to terminate this Agreement pursuant to Paragraph 4 or if the Closing shall fail to take place for any other reason whatsoever, Buyer will promptly return to Seller all Inspection Material in the possession of Buyer or any of its Representatives and destroy all copies, notes or extracts thereof as well as all copies of any analyses, compilations, studies or other documents prepared by Buyer or for its use (whether in written form or

contained in database or other similar form) containing or reflecting any Inspection Material. With respect to any provision of this Agreement which refers to the termination of this Agreement and the return of the Deposit to Buyer, such Deposit shall not be returned to Buyer unless and until Buyer has fulfilled its obligation to return to Seller the Inspection Material.

(e) Definitions. As used herein, "Hazardous Substances" means any chemical, compound, material, mixture, living organism or substance that is now or hereafter becomes defined or listed in, or otherwise classified pursuant to any Environmental Law as a hazardous substance, hazardous material, hazardous waste, extremely hazardous waste, infectious waste, toxic substance, toxic pollutant or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, and shall include, without limitation, any polychlorinated biphenyls (PCBs), asbestos, lead-based paint or building materials, radon, petroleum, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). "Environmental Laws" shall mean any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued pursuant to these laws, and other requirements of governmental authorities relating to the environment, to any Hazardous Substance or to any activity involving Hazardous Substances, and shall include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 *et seq.*), the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*), and all other applicable provisions of federal, state and local laws related to the environment.

9. Closing and Escrow.

(a) Upon mutual execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Title Company and this Agreement shall serve as instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional escrow instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

(b) Subject to satisfaction of the conditions to Closing described in Paragraph 5, the parties shall conduct the Closing pursuant to Subparagraph (a) above on the date that is ten (10) days after expiration of the Due Diligence Period (the "Closing Date"), unless otherwise agreed by Seller and Buyer in writing; provided, however, that if the scheduled Closing Date is a Saturday, Sunday or holiday, the Closing Date shall be the next business day. If the Closing does not occur on or before the Closing Date, other than because of a default by either Buyer or Seller, the escrow holder shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof all items which were deposited hereunder with the escrow holder pursuant to Sections 9(c) through (e) below, save and

except the return of the Deposit, which shall be governed as otherwise provided herein. Any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to close.

(c) At or before Closing, Seller shall deliver to Buyer the following:

- (i) a duly executed and acknowledged Deed;
- (ii) if possible pursuant to Paragraph 5 above, (a) duly executed and acknowledged Easement Agreement(s) granting to Buyer the Easements;
- (iii) all documents necessary for Buyer to effectuate the Subdivision;
- (iv) a FIRPTA affidavit pursuant to Section 1445(b)(2) of the Internal Revenue Code of 1986 (the "Code"), that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code; and
- (v) a signed closing statement in form and content reasonably satisfactory to Seller.

Buyer may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

(d) At or before the Closing, Buyer shall deliver to Seller the following:

- (i) if possible pursuant to Paragraph 5 above, duly executed and acknowledged Easement Agreement(s) granting to Seller the Easements;
- (ii) if possible pursuant to Paragraph 5 above and not previously delivered by Buyer to Seller, Exhibits B-1 through B-3, and such other documents as Seller may reasonably request in connection with the Subdivision;
- (iii) a signed closing statement in form and content reasonably satisfactory to Buyer; and
- (iv) the balance of the Purchase Price (after crediting the Deposit against the Purchase Price).

(e) Seller and Buyer shall each execute and deposit such other instruments as are reasonably required by the escrow holder or otherwise required to close or to consummate the purchase of the Property in accordance with the terms hereof. Seller and Buyer hereby designate the Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder.

(f) The following are to be paid and/or apportioned as of the Closing Date, as follows:

(i) Costs and Charges. Buyer shall pay for all closing costs, including, without limitation, transfer taxes and recording fees applicable to recordation of the Deed and the Easement Agreement(s), if any, indebtedness taxes and recording fees for any mortgage, deed of trust or other financing documents in connection with Buyer's financing, the premiums and other costs related to issuance of the Title Policy, Buyer's counsel fees, any other costs associated with Buyer's financing (if any), and the Title Company's closing and escrow fees. Seller shall pay the cost of the title commitment dated March 3, 2004 and the survey dated February 6, 2004, as both are referenced herein.

(ii) Prorations. The following shall be apportioned with respect to the Property as of 12:01 a.m. Central Daylight Time on the Closing Date as if Seller were vested with title to the Property during the entire day upon which Closing occurs: (A) taxes and assessments levied against the Property; (B) gas, electricity and other utility charges applicable to the Property; and (C) any other operating expenses theretofore payable by Seller pertaining to the Property.

(iii) Survival. The provisions of this Subparagraph (f) shall survive the Closing.

10. Default.

(a) Default by Buyer. THE PARTIES ARE AWARE THAT SUBSTANTIAL DAMAGES WILL BE SUFFERED BY SELLER IN THE EVENT THAT THE CLOSING DOES NOT OCCUR ON OR BEFORE THE AGREED CLOSING DATE DUE TO BUYER'S DEFAULT. WITH THE FLUCTUATION IN REAL ESTATE VALUES, THE UNPREDICTABLE STATE OF THE ECONOMY AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF REAL PROPERTY, THE PARTIES REALIZE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY PRIOR TO SIGNING THIS AGREEMENT THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER IN THE EVENT THAT THE CLOSING DID NOT OCCUR AS AFORESAID. ACCORDINGLY, THE PARTIES HEREBY AGREE THAT, TAKING INTO ACCOUNT THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, A REASONABLE ESTIMATE OF THE DAMAGES THAT WOULD BE SUFFERED BY SELLER IN SUCH EVENT IS THE SUM OF THE DEPOSIT (THE "AGREED AMOUNT"). THE PARTIES HEREBY AGREE THAT IF THE CLOSING DOES NOT OCCUR ON OR BEFORE THE AGREED CLOSING DATE DUE TO BUYER'S DEFAULT, SELLER SHALL BE ENTITLED TO THE AGREED AMOUNT AS LIQUIDATED DAMAGES. UPON PAYMENT OF THE AGREED AMOUNT, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER. THE PARTIES AGREE THAT PAYMENT TO SELLER OF THE AGREED AMOUNT, AS THE LIQUIDATED DAMAGES, SHALL BE SELLER'S EXCLUSIVE REMEDY AND SHALL BE IN LIEU OF ANY OTHER MONETARY DAMAGES AND/OR EQUITABLE RELIEF TO WHICH SELLER MIGHT OTHERWISE BE ENTITLED BY VIRTUE OF THIS AGREEMENT OR BY OPERATION OF LAW AND/OR EQUITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING,

BUYER SHALL IN ALL EVENTS REMAIN LIABLE FOR ANY BREACH BY BUYER OF ANY OF ITS SURVIVING OBLIGATIONS.

INITIALS: Seller AS Buyer _____

(b) Default by Seller. IN THE EVENT THAT SELLER FAILS TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT FOR ANY REASON OTHER THAN BUYER'S DEFAULT OR THE PERMITTED TERMINATION OF THIS AGREEMENT BY SELLER OR BUYER AS HEREIN EXPRESSLY PROVIDED, BUYER SHALL BE ENTITLED, AS ITS SOLE REMEDY, EITHER (A) TO RECEIVE THE RETURN OF THE DEPOSIT, WHICH RETURN SHALL OPERATE TO TERMINATE THIS AGREEMENT AND RELEASE SELLER FROM ANY AND ALL LIABILITY HEREUNDER, OR (B) TO ENFORCE SPECIFIC PERFORMANCE OF SELLER'S OBLIGATION TO CONVEY THE PROPERTY TO BUYER, IT BEING UNDERSTOOD AND AGREED THAT THE REMEDY OF SPECIFIC PERFORMANCE SHALL NOT BE AVAILABLE TO ENFORCE ANY OTHER OBLIGATION OF SELLER HEREUNDER. BUYER EXPRESSLY WAIVES ITS RIGHTS TO SEEK DAMAGES IN THE EVENT OF SELLER'S DEFAULT HEREUNDER. BUYER SHALL BE DEEMED TO HAVE ELECTED TO TERMINATE THIS AGREEMENT AND RECEIVE BACK THE DEPOSIT IF BUYER FAILS TO FILE SUIT FOR SPECIFIC PERFORMANCE AGAINST SELLER IN A COURT HAVING JURISDICTION IN THE COUNTY AND STATE IN WHICH THE PROPERTY IS LOCATED, AND SERVE SELLER THEREWITH, ON OR BEFORE ONE HUNDRED TWENTY (120) DAYS FOLLOWING THE DATE UPON WHICH CLOSING WAS TO HAVE OCCURRED. IN THE EVENT BUYER ELECTS TO TERMINATE THIS AGREEMENT PURSUANT TO THIS SECTION 10(b), IN ADDITION TO RECEIVING THE RETURN OF THE DEPOSIT, SELLER SHALL REIMBURSE BUYER ALL OF THE THIRD-PARTY OUT-OF-POCKET EXPENSES INCURRED BY BUYER (TO THE EXTENT BUYER PROVIDES SELLER WITH DETAILED INVOICES AND OTHER REASONABLE EVIDENCE OF THE SAME) IN CONNECTION WITH THE SUBDIVISION, UP TO A MAXIMUM AMOUNT EQUAL TO THE CAP (\$50,000).

INITIALS: Seller AS Buyer _____

11. Risk of Loss.

If any of the Property is damaged or destroyed prior to the Closing Date, and such damage or destruction (a) is fully covered by Seller's insurance, except for the deductible amounts thereunder, and (b) would cost less than Five Hundred Thousand Dollars (\$500,000) to repair or restore, then this Agreement shall remain in full force and effect and Buyer shall acquire the Property upon the terms and conditions set forth herein. In such event, Buyer shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to Buyer all of Seller's right, title and interest in and to all proceeds of insurance attributable to such damage or destruction (provided that in no event shall Buyer receive a Purchase Price credit or insurance proceeds that, in the aggregate, exceed the cost of repairing such damage or destruction, nor shall Buyer be entitled to a credit or proceeds in connection with any loss of or damage to any of Seller's equipment, fixtures, furniture or personal property).

If any of the Property is damaged or destroyed prior to the Closing Date, and such damage or destruction (c) is not fully covered by Seller's insurance, other than the deductible amounts, and (d) would cost less than Five Hundred Thousand Dollars (\$500,000) to repair or restore, then this Agreement shall remain in full force and effect and Buyer shall acquire the Property upon the terms and conditions set forth herein. In such event, Buyer shall receive a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller's architect, as such architect shall be reasonably approved by Buyer, to be the cost of repairing such damage or destruction, and Seller shall assign to Buyer all of Seller's right, title and interest in and to all proceeds of insurance, if any, payable on account of such damage or destruction (provided that in no event shall Buyer receive a Purchase Price credit or insurance proceeds that, in the aggregate, exceed the cost of repairing such damage or destruction, nor shall Buyer be entitled to a credit or proceeds in connection with any loss of or damage to any of Seller's equipment, fixtures, furniture or personal property).

If (e) any of the Property is damaged or destroyed prior to the Closing Date, and the cost of repair would exceed Five Hundred Thousand Dollars (\$500,000), or (f) a material portion of the Property is taken by condemnation or eminent domain, then, notwithstanding anything to the contrary set forth in this Paragraph 11, Buyer shall have the right, at its election, either to terminate this Agreement (and receive a refund of the Deposit), or to not terminate this Agreement and purchase the Property. Buyer shall have thirty (30) days after Seller notifies Buyer in writing that an event described in clause (e) or (f) has occurred to make such election by delivery to Seller of an election notice (the "Election Notice"). Buyer's failure to deliver the Election Notice within such thirty (30) day period shall be deemed an election to terminate this Agreement. If this Agreement is terminated pursuant to this paragraph, then the Deposit will be returned to Buyer within ten (10) days after the termination and Buyer and Seller shall each be released from all obligations hereunder, except for each party's respective Surviving Obligations, provided that, notwithstanding the foregoing, Buyer shall also be released from Buyer's obligation to complete the Subdivision under Paragraph 5. If Buyer continues this Agreement, Buyer shall receive a credit against the Purchase Price equal to any deductible amount that would be payable with respect to damage insured by Seller, and Seller shall assign to Buyer all of Seller's right, title and interest in and to all insurance proceeds on account of such damage or destruction (provided that in no event shall Buyer receive a Purchase Price credit or insurance or other proceeds that, in the aggregate, exceed the cost of repairing such damage or destruction, nor shall Buyer be entitled to a credit or proceeds in connection with any loss of or damage to any of Seller's equipment, fixtures, furniture or personal property), and Buyer shall accept the Property as damaged or destroyed, as the case may be, and the Closing shall occur on the terms and conditions contained in this Agreement. If an event described in clause (f) occurs prior to Closing and if Buyer does not so terminate this Agreement, Buyer shall accept title to the Property subject to such taking, and, at the Closing, the Seller's interest, if any, in proceeds from the taking of the Property condemned shall be assigned by Seller to Buyer. For purposes of this Paragraph, "material portion" shall mean a portion of the Property having a value in excess of Five Hundred Thousand Dollars (\$500,000).

Notwithstanding anything to the contrary in the foregoing, in all events, if any of the Property is damaged or destroyed prior to the Closing Date, and the cost of repair would exceed Five Hundred Thousand Dollars (\$500,000), then Seller shall have the right to elect, and will notify Buyer in writing, within thirty (30) days after the occurrence of such damage or destruction, to either (i) terminate this Agreement, in which event the Deposit shall be returned to Buyer and Buyer and Seller shall each be released from all obligations hereunder, except for each party's respective Surviving Obligations, provided that, notwithstanding the foregoing, Buyer shall also be released from Buyer's obligation to complete the Subdivision under Paragraph 5; or (ii) repair the casualty damage and restore the Property to its condition prior to the casualty, extend the Closing Date by an amount of time reasonably necessary for such repairs, and proceed to Closing within five (5) business days following the substantial completion of such repairs. If a casualty as described in this paragraph occurs between the end of the Due Diligence Period and the Closing Date, then the Closing Date shall be extended as necessary until Seller makes election (i) or (ii) above.

12. Miscellaneous.

(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) delivery if deposited with Federal Express or another reliable overnight courier service, (iii) receipt if transmitted by facsimile telecopy (as evidenced by a printed confirmation slip), or (iv) delivery or refused delivery if deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required (as evidenced by the return receipt), and addressed as follows:

If to Seller:	Levi Strauss & Co. Corporate Real Estate Department Levi's Plaza 1155 Battery Street / KO-1 San Francisco, CA 94111 Attention: Kathleen Dunlap Facsimile: (415) 501-3960
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With a copy to:	Farella Braun + Martel Russ Building, 18 th Floor 235 Montgomery Street San Francisco, CA 94104 Attention: Gregory B. Shean Facsimile: (415) 954-4480
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If to Buyer:	The City of San Antonio City Hall 100 Military Plaza 2 nd Floor San Antonio, TX 78205 Attention: City Clerk
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With a copy to:

The City of San Antonio
Department of Asset Management
114 W. Commerce
2nd Floor
San Antonio, TX 78205
Attention: Mark H. Webb
Facsimile: (210) 207-7888

or such other address as either party may from time to time specify in writing to the other pursuant to this section.

(b) Brokers and Finders. Each party represents to the other that except for TCCT Real Estate, Inc. (the "Seller's Broker"), and Providence Commercial Real Estate Services, Inc./The Weitzman Group Joint Venture (the "Buyer's Broker"), it has not had any contact or dealings regarding the sale of the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission, finder's fee or other compensation in connection with the sale contemplated herein. In the event that any person makes a claim for a commission, finder's fee or other compensation based upon any contacts, dealings or communications, the party whose conduct is the basis for the person making its claim shall be responsible for any commission, fee or other compensation and all costs and expenses (including attorneys' fees) related thereto, but in the instance of Buyer, if and only if a prior appropriation of funds has been made by the City Council of the City of San Antonio to pay such amounts, following the rendering of a final judgment against Buyer and the exhaustion of all appeals. In the event the transaction contemplated by this Agreement is consummated as evidenced by the Closing, payment of the Purchase Price and recordation of the Deed pursuant to Paragraph 9 above, but not otherwise, Seller shall pay a brokerage commission to Seller's Broker pursuant to a separate written agreement between Seller and the Seller's Broker, which commission shall be divided equally between Seller's Broker and Buyer's Broker.

(c) Continuing Right to Market Property. Buyer agrees that, until the expiration of the Due Diligence Period, Seller may continue to market the Property to, and negotiate the sale of the Property with, other potential purchasers. In addition, Seller shall have the right to enter into purchase and sale agreements for the Property with any potential purchasers, so long as the right of the purchaser to purchase the Property (or portion thereof) is contingent on Buyer's written termination of this Agreement in whole or in part, i.e., by termination of Buyer's rights to purchase one or more of the three Portions constituting the Real Property pursuant to Section 4(b) above.

(d) Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, administrators and assigns; provided, however, that Buyer shall not assign this

Agreement, directly or indirectly, by operation of law or otherwise, without the prior written consent of Seller, which Seller shall not unreasonably withhold, provided that such assignment is to an affiliated entity of Buyer or an entity created by Buyer for the sole purpose of acquiring title to the Property, and provided further that (i) Buyer shall provide Seller and Title Company with written notice of the identity of the proposed assignee at least ten (10) days prior to the Closing Date, which notice shall include a description of the assignee, its ownership and its business, all corporate resolutions and other documentation reasonably requested by Seller and/or the Title Company in connection with evidencing due authorization of this transaction and completion of all other matters required to close the transaction, and documentation reasonably acceptable to Seller demonstrating that the assignee possesses requisite financial ability to perform its obligations under this Agreement, (ii) Buyer shall not then be in default of any of its obligations under this Agreement, (iii) Seller shall have approved the form of assignment instrument, and (iv) the assignee shall have expressly assumed and agreed to perform the obligations of Buyer hereunder. Notwithstanding anything to the contrary set forth herein, Buyer shall remain primarily liable for performance of Buyer's obligations, and no assignment shall relieve Buyer of its obligations under this Agreement, unless Buyer is released in writing by Seller. Seller shall have the right to assign all of its rights under this Agreement to a third party, including, without limitation, all of Seller's rights under Paragraph 5 above. Seller shall notify Buyer in writing of such an assignment by Seller within ten (10) days after the effective date of the same.

(e) Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

(f) Continuation and Survival of Representations. All representations by Buyer and Seller contained herein or made in writing pursuant to this Agreement are intended to and shall remain true and correct as of the Closing Date, shall be deemed to be material, and, together with all conditions and covenants made by Buyer and Seller contained herein or pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or any termination of this Agreement, but in the instance of Buyer, any actionable or payable claim, as detailed below, made by Seller or any third party deriving any rights under this Agreement shall not be payable unless the City Council of the City of San Antonio first appropriates funds for payment thereof, following the rendering of a final judgment against Buyer and the exhaustion of all appeals. No claim for a breach of any representation of Buyer or Seller shall be actionable or payable (A) if the breach in question results from or is based on a condition, state of facts or other matter which was known to the non-breaching party at or prior to the Closing Date, (B) unless the valid claims for all such breaches collectively aggregate more than Fifty Thousand Dollars (\$50,000), in which event the full amount of such claims shall be actionable, and (C) unless (i) written notice containing a description of the specific nature of such breach shall have been given by the non-breaching party to the other party within nine (9) months following the Closing Date, and (ii) an action shall have been commenced by the non-breaching party against the other party with respect to such breach prior to thirty (30) days following the expiration of said nine (9) month period. Unless each of the foregoing conditions have been satisfied, any claim

based on a breach of any such representation shall be deemed to have been waived, and such representations shall be of no further force or effect.

(g) Governing Law. This Agreement shall be governed by the laws of the State of Texas.

(h) Merger of Prior Agreements. This Agreement and the Exhibits hereto, which are incorporated herein by this reference, constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

(i) Enforcement. If either party hereto fails to perform any of its obligations under this Agreement or if a dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, and an action is filed, the prevailing party in any such action shall be entitled to recover from the other party, in addition to any other relief that may be granted, its court costs and reasonable attorneys' fees and disbursements, but only in the case of Buyer, if such amounts for payment have been appropriated in advance by the City Council of the City of San Antonio following the rendering of a final judgment against Buyer and the exhaustion of all appeals. Any such reasonable attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, but only in the case of Buyer, if such amounts for payment have been appropriated in advance by the City Council of the City of San Antonio following the rendering of a final judgment against Buyer for such reasonable attorneys' fees and other expenses incurred by Seller and the exhaustion of all appeals.

(j) Time of the Essence. Time is of the essence of this Agreement.

(k) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(l) Counterparts. This Agreement may be signed in counterparts and all counterparts so executed shall constitute one contract, binding on all parties hereto, even though all parties are not signatories to the same counterpart.

(m) Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to consummate the transaction intended by this Agreement.

(n) Drafting Party. This Agreement was drafted by Seller for convenience purposes only, and shall not be construed against Seller on such basis.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of

the dates appearing below.

BUYER:

Buyer to initial Subparagraph 10(a) and
10(b)

THE CITY OF SAN ANTONIO,
a Texas home-rule municipal corporation

Dated: _____

By: _____
Name: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

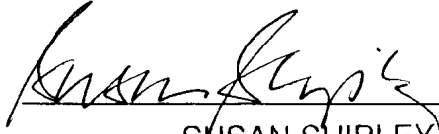
City Attorney

SELLER:

Seller to initial Subparagraph 10(a) and
10(b)

LEVI STRAUSS & CO.,
a Delaware corporation

Dated: 5/21/04

By: 
SUSAN SHIPLEY
Its: VICE PRESIDENT, CORPORATE SERVICES

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to act as the Reporting Person (as defined in this Agreement). Further, Title Company acknowledges receipt of the Deposit by Buyer of \$50,000 in the form of _____ on the ____ day of _____ 2004, along with three fully executed

[SIGNATURES CONTINUE ON NEXT PAGE]

counterpart originals of the Agreement on the same date, with at least one (1) fully executed original Agreement being returned to each Seller and Buyer.

CHICAGO TITLE INSURANCE
COMPANY

Dated: _____

By: _____

Its: _____

Exhibit A
Real Property Legal Description

A 58.94 acre, or 2,567,256 square feet more or less tract of land being out of Lot 1, Block 1, Farah Subdivision recorded in Volume 6400, Page 79 of the Deed and Plat Records of Bexar County, Texas, in New City Block (N.C.B.) 13951 of the City of San Antonio, Bexar County, Texas. Said 58.94 acre tract being more particularly described as follows, with the Basis of Bearings being the North American Datum of 1983, from the Texas State Plane Coordinates of the South Central Zone:

BEGINNING: At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson", the southwest corner of a 43.000 acre tract described in Volume 5640, Pages 1892-1896 of the Official Public Records of Real Property of Bexar County, Texas, on the south line of said Lot 1, the north right-of-way line of U.S. Highway 90, a variable width right-of-way;

THENCE: Along and with the south line of said Lot 1 and the north right-of-way line of said U.S. Highway 90, the following calls and distances:

S 78° 01' 31" W, a distance of 53.53 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

S 71° 16' 09" W, a distance of 79.16 feet to a set 1/2" nail in asphalt;

S 79° 27' 55" W, a distance of 860.54 feet to set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

S 77° 52' 13" W, a distance of 9.40 feet to an "x" cut in concrete, the southeast corner of a 19.76 acre tract of land recorded in Volume 2278, Pages 268-272 of the Official Public Records of Real Property of Bexar County, Texas, the southeast corner of a Drainage Easement dedicated in said Farah Subdivision and the southwest corner of the tract herein described;

THENCE: N 13° 53' 07" W, departing said south line of said Lot 1, and the north right-of-way line of said U.S. Highway 90, along and with an east line of said 19.76 acre tract, the east line of said Drainage Easement, a distance of 913.80 feet (by deed 914.55 feet) to found 1/2" iron rod, an angle point of said 19.76 acre tract;

THENCE: N 79° 43' 57" E, departing said Drainage Easement, along and with a south line of said 19.76 acre tract, a distance of 832.86 feet (by deed 832.91 feet) to found 1/2" iron rod, for a point of curvature of a non-tangent curve to the left;

THENCE: Along and with the curve to the left and the east line of said 19.76 acre tract having a radial bearing of S 71° 16' 42" W, a radius of 1542.02 feet, a central angle of 7° 11' 02", a chord bearing and distance of N 22° 18' 49" W, 193.21 feet, an arc distance of 193.34 feet (by deed 193.48 feet) to a found 1/2" iron rod;

THENCE: N 26° 02' 52" W, along and with the east line of said 19.76 acre tract, a distance of 751.83 feet (by deed 752.38 feet) to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the northwest line of said Lot 1, the southeast right-of-way line of Old Highway 90 West, a 120-foot right-of-way for the northwest corner of the herein described tract;

THENCE: N 64° 02' 24" E, along and with the northwest line of said Lot 1 and the southeast right-of-way Line of said Old Highway 90 West, a distance of 1468.88 feet to a found 1/2" iron rod, a north corner of said Lot 1, the southwest corner of Lot 36 of J.A. McDavitt Subdivision recorded in Volume 5700, Page 241 of the Deed Records of Bexar County, Texas;

THENCE: N 89° 47' 58" E, departing the southeast right-of-way line of Old Highway 90, along and with the north line of said Lot 1, the south line of said J. A. McDavitt Subdivision, a distance of 723.41 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson", the southeast corner of Lot 38 of said J.A. McDavitt Subdivision, on the west right-of-way line of Callaghan Road, a variable right-of-way;

THENCE: S 00° 21' 54" E, along and with the east line of said Lot 1, the west right-of-way line of said Callaghan Road, a distance of 887.82 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson", the northeast corner of said 43.000 acre tract;

THENCE: S 89° 45' 08" W, departing the east line of said Lot 1, the west right-of-way line of said Callaghan Road, along and with the north line of said 43.000 acre tract, a distance of 962.90 feet (by deed 965.95 feet) to a fence corner, for the northwest corner of said 43.000 acre tract;

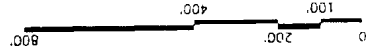
THENCE: S 64° 06' 28" W, continuing along and with the north line of said 43.000 acre tract, a distance of 582.65 feet (by deed 582.24 feet) to a found "+" in concrete; an angle point of said 43.000 acre tract;

THENCE: S 10° 35' 40" E, along and with the west line of said 43.000 acre tract, a distance of 1213.74 feet (by deed 1209.72 feet) to the POINT OF BEGINNING, and containing 58.94 acres in the City of San Antonio, Bexar County, Texas, said 58.94 acre tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

Exhibit B-1
Finishing Plant Property Portion Map
[attached]

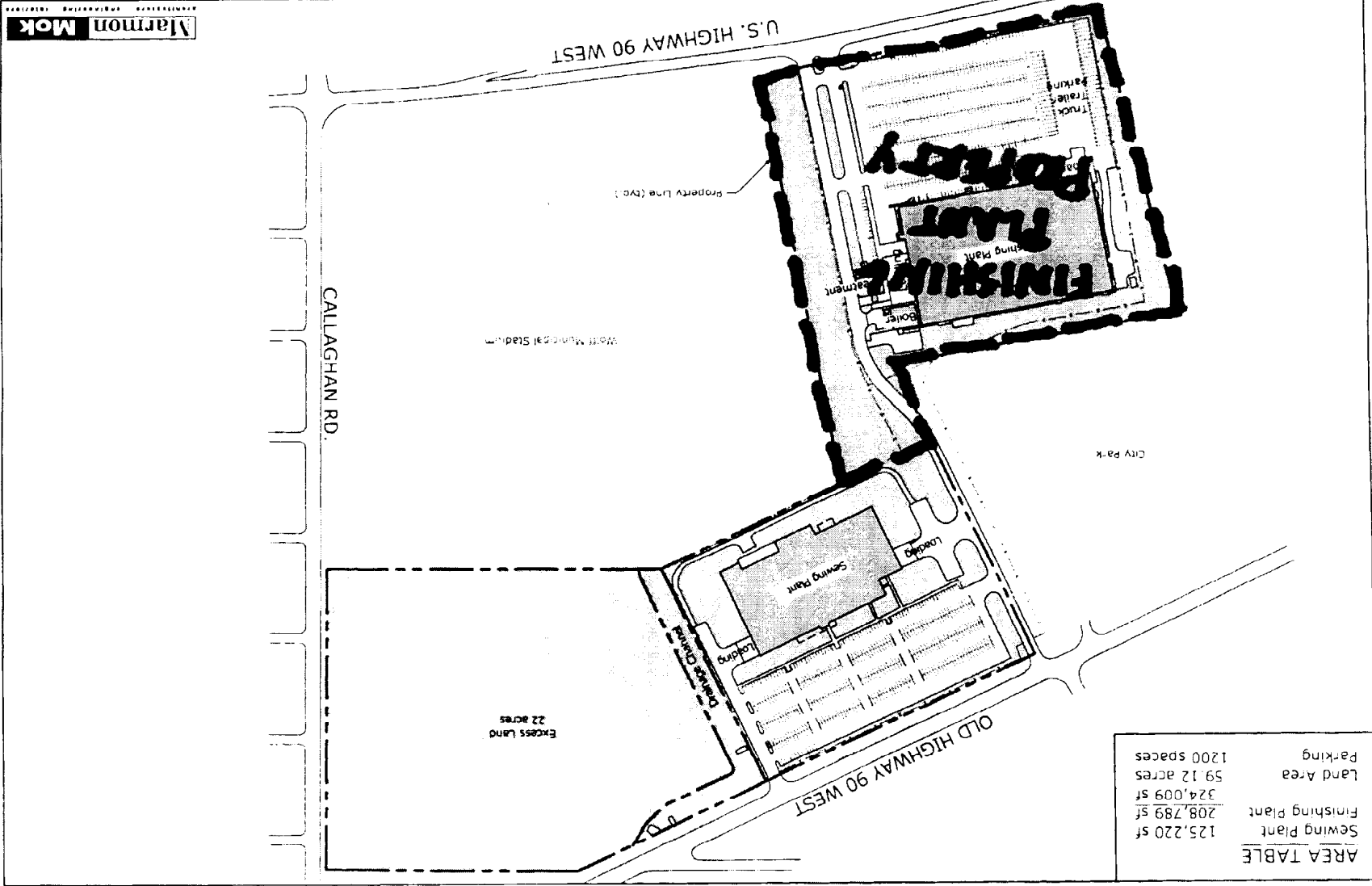
EXHIBIT B-1

Levi Strauss & Co. Plant
San Antonio, TX



SITE PLAN EXISTING CONDITIONS

Trammell Crow Co.
San Antonio, TX

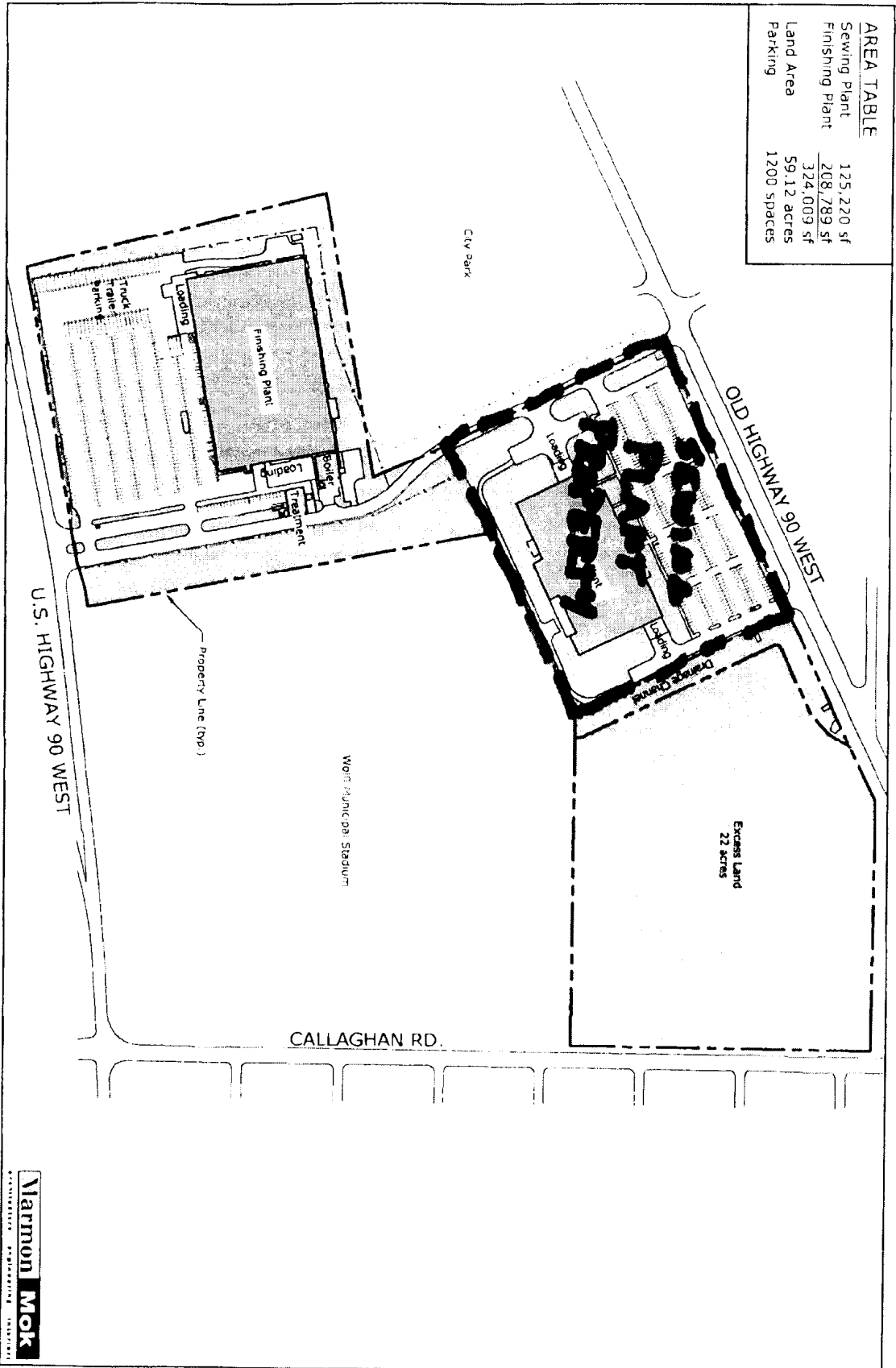


Harmon Mok

Exhibit B-2
Sewing Plant Property Portion Map
[attached]

EXHIBIT B-2

AREA TABLE	
Sewing Plant	125,220 sf
Finishing Plant	208,789 sf
Land Area	324,009 sf
Parking	59,12 acres
	1200 spaces



Levi Strauss & Co. Plant
San Antonio, TX

SITE PLAN
EXISTING CONDITIONS

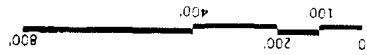
Trammell Crow Co.
San Antonio, TX

Marmori Mok
ARCHITECTS ENGINEERS INTERIORS

Exhibit B-3
Excess Land Property Portion Map
[attached]

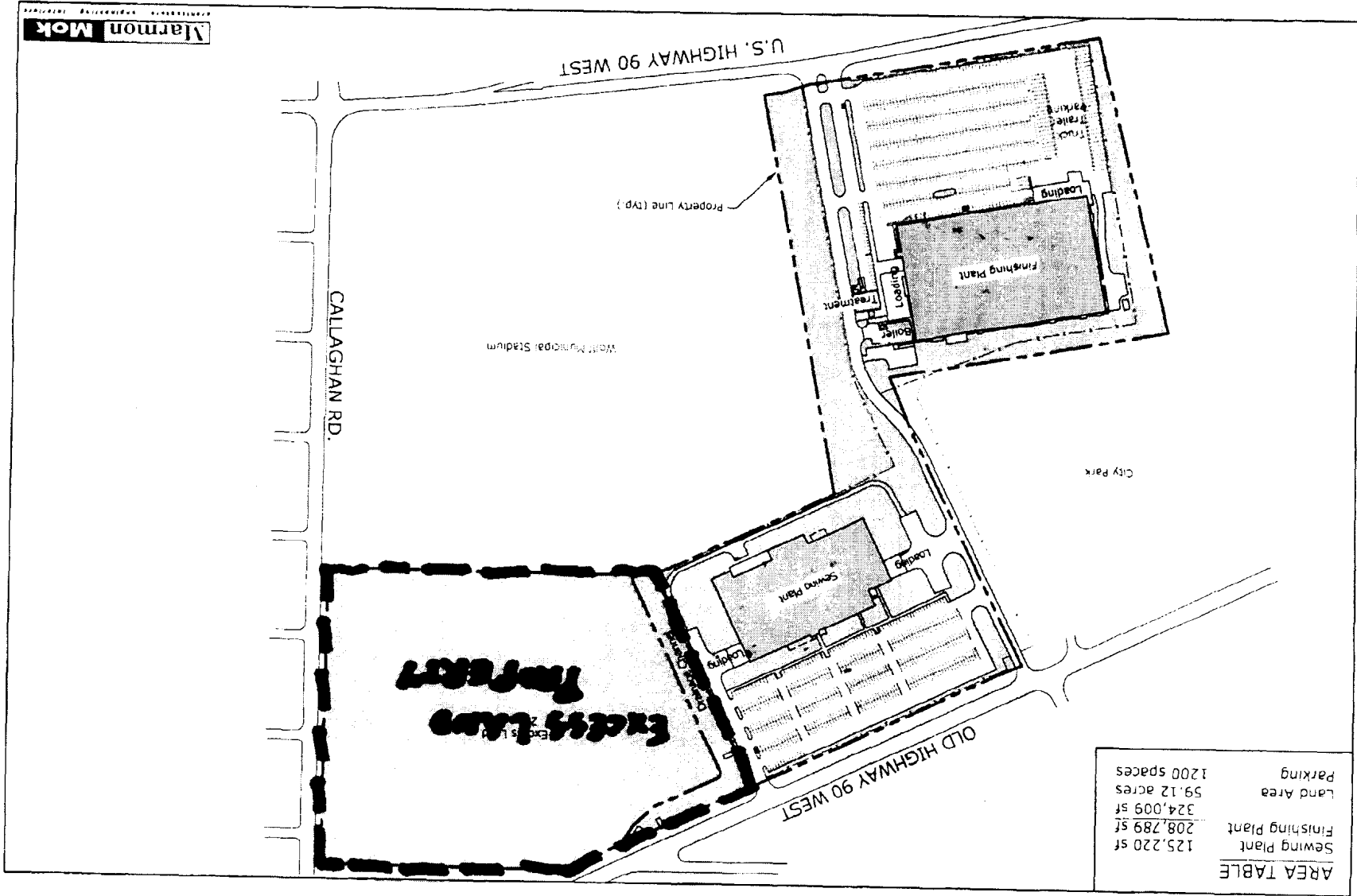
EXHIBIT B-3

Levi Strauss & Co. Plant
San Antonio, TX



SITE PLAN EXISTING CONDITIONS

Trammell Crow Co.
San Antonio, TX



Marmon Mok

Exhibit C List of Delivered Items

5827 Highway 90 West:

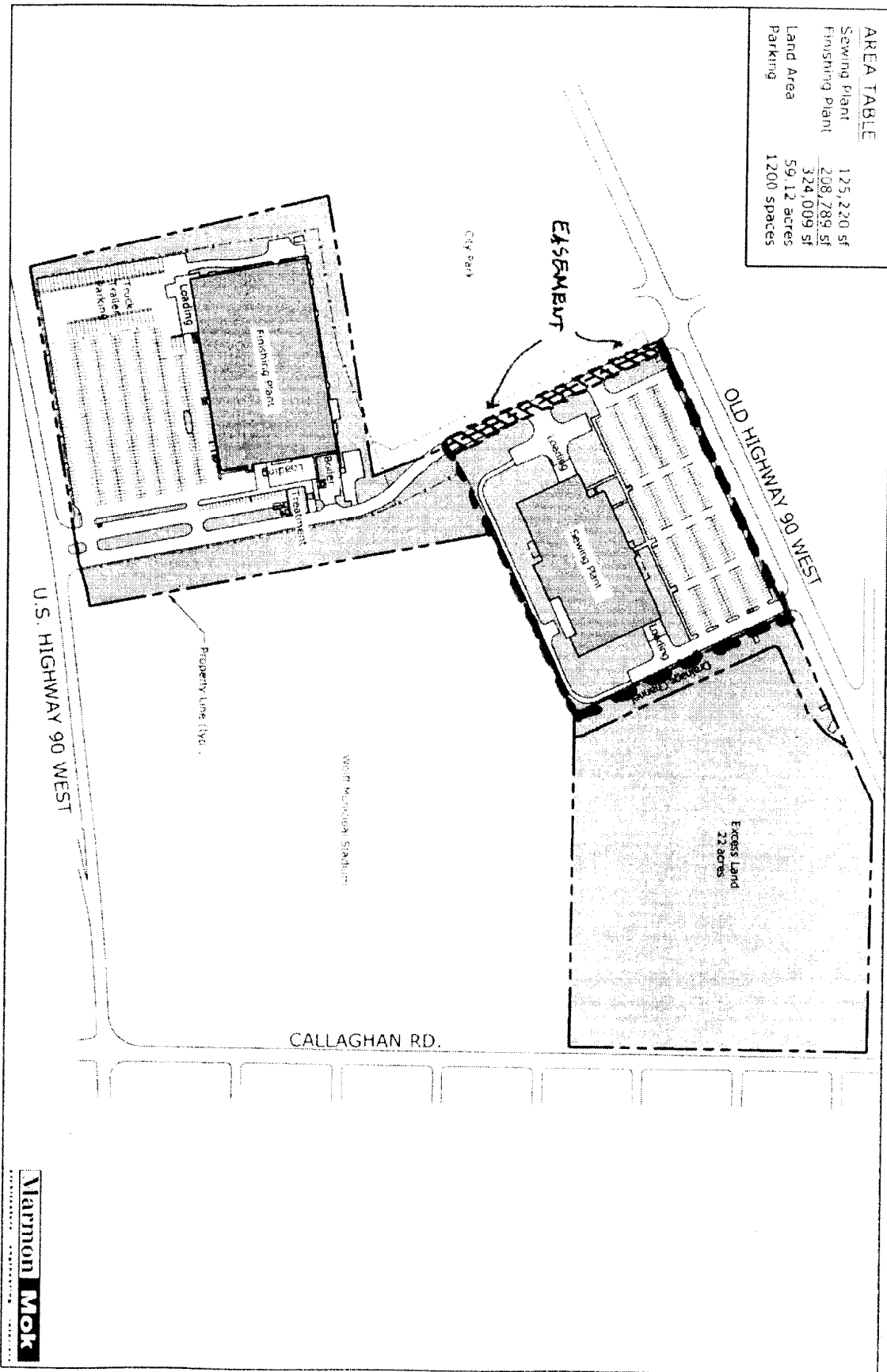
- *Report of Preliminary Environmental Liability Assessment and Limited Asbestos Survey, Law Engineering and Environmental Services, October 1994.*
- *Operation and Maintenance Program ("OMP"), Law Engineering and Environmental Services, September 1997.*
- *OMP Recordkeeping Manual, Law Engineering and Environmental Services, September 1997.*
- *Report of Asbestos Survey, LAWGIBB Group Member, June 1998.*
- *Report of Abatement Observations and Air Monitoring, LAWGIBB Group Member, May 1999.*
- *Project Manual for Removal of Asbestos-Containing Floor Tile and Mastic Materials, LAWGIBB Group Member, December 1998.*
- *Report of Surface Release of Non-Hazardous Industrial Process Wastewater, Geomatrix Consultants, November 12, 2002.*
- *Certificate of Completion, Texas Commission on Environmental Quality, February 12, 2003.*
- *Affected Property Assessment Report for 614F, Geomatrix Consultants, July 2002.*
- *Certificate of Completion, Texas Commission on Environmental Quality, January 14, 2003.*

5800 Old Highway 90 West:

- *Phase I Environmental Site Assessment, Eagle Environmental Health, Inc. November 10, 1993.*
- *Report of Asbestos Survey, LAWGIBB Group Member, March, 1999.*
- *Operations and Maintenance Program Flooring Material Supplement ("FMS"), LAWGIBB Group Member, September, 1997.*
- *OMP Recordkeeping Manual, LAWGIBB Group Member, September, 1997.*
- *Project Manual for Removal of Asbestos-Containing Materials, Law Engineering, November, 1998.*
- *Report of Abatement Observations and Air Monitoring, Law Engineering, May, 1999.*
- *Project Manual for Removal of Asbestos-Containing Floor Tile and Mastic Materials, Law Engineering, November 17, 2000.*
- *Report of Abatement Observations and Air Monitoring, Law Engineering, January 12, 2001.*
- *Report of Abatement Observations and Air Monitoring, Law Engineering, February 15, 2002.*
- *Project Manual for Removal of Asbestos-Containing Materials, Law Engineering, June 2002.*
- *Report of Abatement Observations and Air Monitoring, Law Engineering, February 2003.*
- *Transmittal Analytical Results by Visual Area Estimation, MACTEC Letter Report, February 3, 2003.*

Exhibit D
Easement Over Sewing Plant Property
[attached]

AREA TABLE			
Sewing Plant	125,220 sf		
Finishing Plant	208,789 sf		
Land Area	324,009 sf		
	59.12 acres		
Parking	1200 spaces		



Levi Strauss & Co. Plant
San Antonio, TX

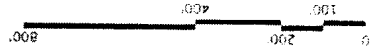
SITE PLAN EXISTING CONDITIONS

Trammell Crow Co.
San Antonio, TX



Exhibit E
Easement Over Finishing Plant Property
[attached]

Levi Strauss & Co. Plant
San Antonio, TX

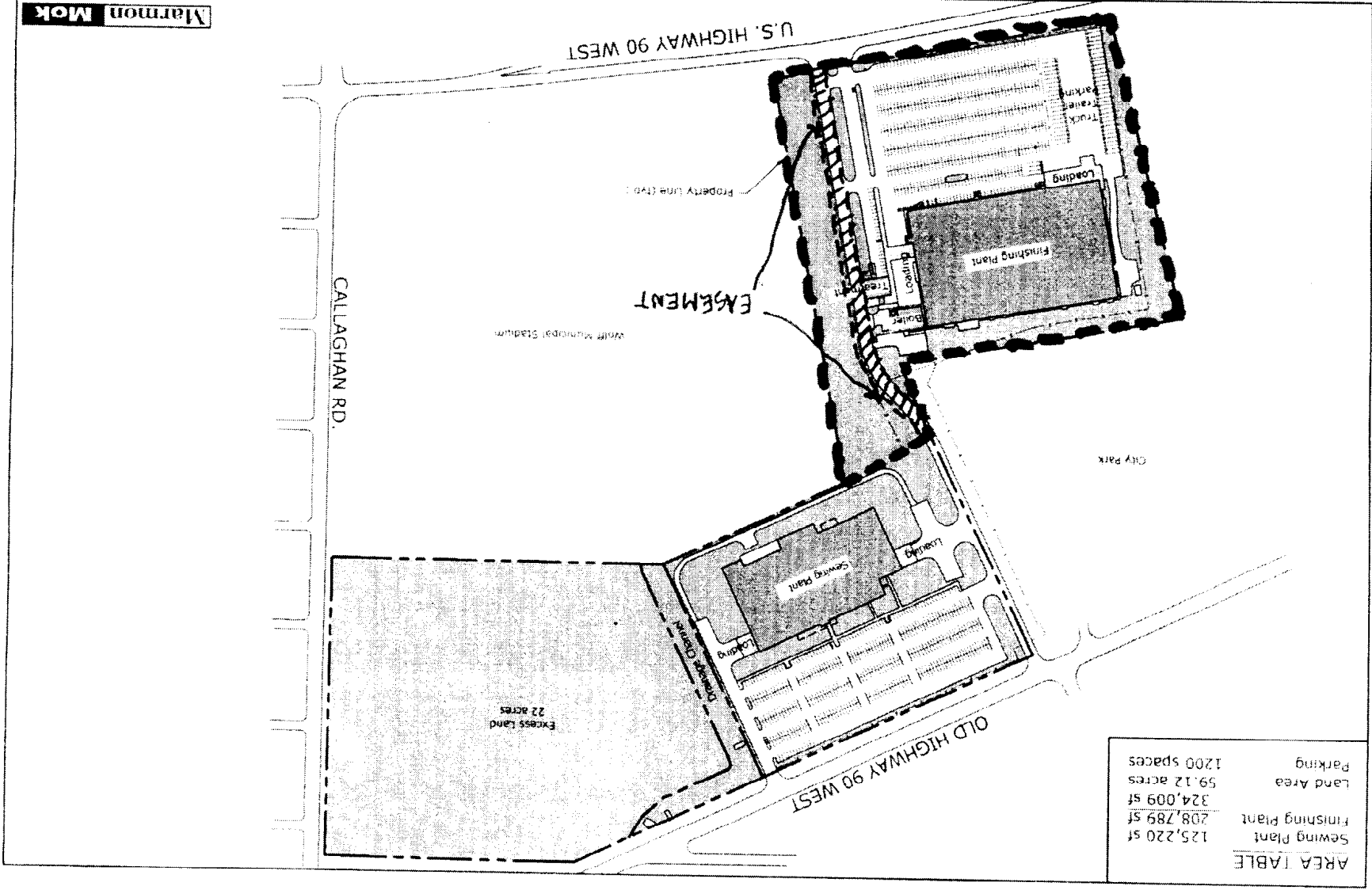


SITE PLAN EXISTING CONDITIONS

Trammell Crow Co.
San Antonio, TX



Marmion Mok



AREA TABLE	
Sewing Plant	125,220 sf
Finishing Plant	208,789 sf
Land Area	59.12 acres
Parking	1200 spaces

