

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

TO: Mayor and City Council

FROM: Rebecca Waldman, Director, Department of Asset Management;
Robert Ojeda, Fire Chief, San Antonio Fire Department

THROUGH: J. Rolando Bono, Interim City Manager

COPIES: Erik J. Walsh; Christopher J. Brady; Rodney Hitzfelder; Mark H. Webb; File

SUBJECT: Purchase and lease of 502 Burnet Street, commonly known as the BudCo Warehouse Building, containing approximately 29,725 rentable square feet for use by the San Antonio Fire Department

DATE: October 14, 2004

SUMMARY AND RECOMMENDATIONS

This Ordinance authorizes the execution of a Purchase Contract and Lease Agreement with BudCo., Ltd. in an amount not to exceed \$891,150.00 for approximately 1.24 acres containing one primary building with approximately 29,725 square feet, located at 502 Burnet Street, in City Council District 2, as shown on the attached Exhibit "A", for use by the San Antonio Fire Department; and authorizes payment of 1) \$25,000.00 to Alamo Title Company as a deposit to be applied toward the purchase price upon closing of the transaction, 2) an amount not to exceed \$50,000.00 for costs associated with property due diligence/inspections and fees due from the City prior to and at the time of such closing, and 3) an estimated total amount of \$68,722.40 for the payment of rent, taxes and insurance, due only in the event that the closing of the sale of the property occurs after December 31, 2004.

Staff recommends approval.

BACKGROUND

As a result of an increase in funding by the Department of Homeland Security, the San Antonio Fire Department has an immediate need for a facility in which to receive, store,

stage, track, and distribute equipment purchased through the Homeland Security Grant, to Fire Companies, Emergency Medical Services (EMS), the Departments of Public Works, Environmental Services and the Police and Health Departments. Additionally, the facility will be utilized by the Fire Department for the storage and distribution of other equipment, trailers and vehicles and for the storage of additional supplies needed by EMS and area hospitals.

Due to the immediate need for the storage of incoming equipment, and the intent of the Fire Department to diligently pursue the purchase of the property, the owner agreed to allow the Fire Department to lease and take possession of the property effective August 1, 2004, with the payment of rent, taxes and insurance being due only in the event that the closing of the sale of the property occurs after December 31, 2004.

FISCAL IMPACT

Under the terms of the Purchase Contract, the negotiated price for the property and building is \$891,150.00. In addition to the acquisition price, the City could pay an estimated \$50,000.00 for costs associated with property due diligence inspections and fees due, prior to and at the time of such closing of this transaction. These inspections and fees may include environmental studies and the cost of the Title Policy of Insurance. This is a one-time capital expenditure within budget and included in the Capital Improvement Program Budget. Funds in the amount of \$941,150.00 are available from Fire Department Certificates of Obligation.

Under the terms of the Lease Agreement, in the event that the closing of the sale of the property does not take place on or before December 31, 2004, the City will be responsible for the payment of: 1) rent in the amount of \$59,450.00 (\$11,890.00 monthly) 2) estimated taxes in the amount of \$8,715.75 (\$1743.15 monthly) and 3) an estimated amount for insurance, in the amount of \$556.65 (\$111.33 monthly), for an estimated total amount of \$68,722.40. If required, funds will be utilized from the Fire Department Operating Budget.

POLICY ANALYSIS

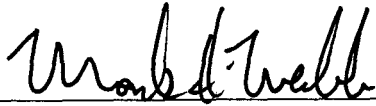
The purchase of this property will assist in meeting the long-range goals of the Fire Department by facilitating the requirements of the Homeland Security grant and enabling the consolidation of various functions, thereby improving operational efficiencies and the services provided to the citizens of San Antonio.

COORDINATION

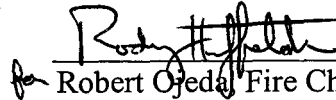
This item has been coordinated with the City Attorney's Office and the Office of Management and Budget.

SUPPLEMENTARY COMMENTS

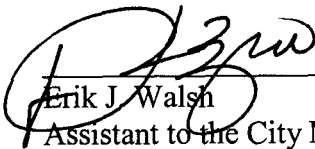
The required Discretionary Contracts Disclosure form is attached. The planning Commission has recommended the purchase to the City Council at its regular meeting of September 22, 2004.



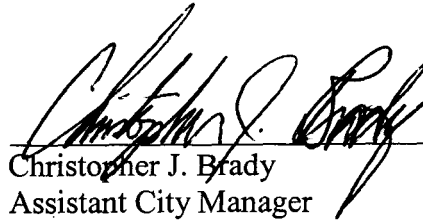
for Rebecca Waldman, Director
Department of Asset Management



for Robert Ojeda, Fire Chief,
San Antonio Fire Department

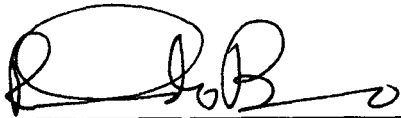


Erik J. Walsh
Assistant to the City Manager



Christopher J. Brady
Assistant City Manager

Approved:



J. Rolando Bono
Interim City Manager

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Lot 19, New City Block 546, CRAIN DIST. CO. SUBDIVISION, situated within the corporate limits of the City of San Antonio, Bexar County, Texas according to the map or plat thereof recorded in Volume 9513, Page 74, Deed and Plat Records of Bexar County, Texas.

EXHIBIT B

LIST OF DELIVERED ITEMS

None.

EXHIBIT C
LEASE AGREEMENT

PURCHASE CONTRACT

This Purchase Contract (hereafter "Contract") dated as of _____, 2004 is between BUDCO, Ltd., a Texas Limited Partnership ("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 September _____, 2004. The "Effective Date" of this Contract is the later of the following: (A) the date of Seller's execution and delivery of this Contract (which is the date appearing in the Seller's signature block at the end of this Contract), and (B) the date of Buyer's execution and delivery of this Contract (which is the date appearing in the Buyer's signature block at the end of this Contract).

RECITALS

A. Seller owns certain real property commonly known as 502 Burnet Street, including the BUDCO warehouse building ("Building"), containing approximately 29,725 rentable square feet, situated on 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").

B. 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 Contracts 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 Building located thereon, and all rights, privileges and easements appurtenant to the Real Property (the "Appurtenances"). The Real Property, Building 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 Building have been placed therein by Buyer, pursuant to the terms of a Lease Contract between Seller, as Landlord, and Buyer, as Tenant, which became effective August 1, 2004 and are and shall be and remain Buyer's property, even if the sale fails to close, and Buyer shall have the right to remove such equipment, furniture and personal property at any time, if Closing does not occur by December 31, 2004 and the Lease Contract does not continue in effect after December 31, 2004. The sale includes all improvements located on the Property and any trade fixtures placed thereon by Buyer, as Tenant.

2. Purchase Price. The purchase price shall be Eight Hundred Ninety-one Thousand One Hundred Fifty Dollars (\$891,150.00). The Purchase Price shall be increased or decreased by prorations and closing cost allocations as provided herein.

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

(i) Concurrently with its delivery of this Contract, Buyer shall deliver to the Title Company (as defined in Paragraph 3), as escrow holder, a deposit in the amount of

twenty five thousand Dollars (\$25,000.00) (the "Deposit"). The Title Company will invest the Deposit in an interest-bearing account. If Buyer does not terminate this Contract 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 Stewart Title 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 5(a) below (the "Permitted Exceptions") (such policy, the "Title Policy"). Escrow shall be at the Title Company's office at 2961 Mossrock, San Antonio, Texas 78230, ATTN: Will Jones.

4. Due Diligence Period and Termination Rights.

(a) Due Diligence Period for Property. The due diligence period during which Buyer may inspect the Property and conduct any feasibility studies it may desire to undertake, shall expire at 5:00 p.m. Central Time, on the date which is thirty (30) days after the Effective Date (the "Due Diligence Period").

(b) Termination Rights. Until 5:00 p.m. Central Time, on the date which is sixty (60) days after the Effective Date, Buyer shall have the right to terminate this Contract with respect to the Property by giving a written notice of termination to Seller that is mailed by Buyer on or before the expiration of the Due Diligence Period. If Buyer elects to terminate this Contract with respect to the Property prior to the end of the Due Diligence Period, Buyer shall have no further obligations under this Contract. In such event the Deposit posted by Buyer hereunder (and all interest accrued thereon) shall be returned to Buyer.

(c) If Buyer fails to terminate this Contract with respect to the Property prior to the end of the Due Diligence Period, Buyer shall have no further right to terminate this Contract as to the Property.

(d) Consideration. Buyer hereby pays to Seller the amount of One Hundred Dollars (\$100.00) as independent consideration for such rights to terminate this Contract under this paragraph; such independent consideration is not refundable to Buyer under any circumstances.

5. 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 Subparagraph 5(b) below, as follows: Within five (5) days after the Effective Date of this Contract, Seller, at Seller's sole cost and expense, agrees to provide Buyer, through the Title Company, a Title Commitment, covering the Property, 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 date of receipt of the Title Report 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 Contract. Should Buyer terminate, then neither party shall have any further obligations under this Contract, save and except liability for any costs incurred by either party prior to a termination and each party's respective obligations which may be set forth in this Contract, which expressly survive termination of this Contract (collectively, the "Surviving Obligations"), if any. 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 Subparagraph 9(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) provided by Seller or 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. Within ten (10) days after the Effective Date of this Contract, Seller, at Seller's sole cost and expense, agrees to provide Buyer, an ALTA survey of the Property. 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 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. 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 Subparagraph 5(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 Contract 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 Contract 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.

6. Representations.

(a) Buyer's Representations. Buyer hereby represents to Seller as follows: This Contract 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, Contract or judicial order to which Buyer is subject.

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

(i) Seller is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas. The execution, delivery and performance of this Contract 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 Contract 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, Contract or judicial order to which Seller is subject.

(ii) Seller's uses of the Property may have included office, warehouse, and industrial uses. In the conduct of its business, Seller 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, or the ability of Seller to perform its obligations under this Contract.

(iii) For purposes hereof, the "knowledge" of Seller means the actual knowledge of Charles A. Walters, 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 any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains.

7. 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, having been afforded the opportunity to inspect the Property, 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 Subparagraph 6(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 Subparagraph 6(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 Subparagraph 6(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 Subparagraph 6(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 Subparagraph 6(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 or brought to Seller's attention. Buyer acknowledges that Seller will make available to Buyer for inspection a copy of the reports and other documents listed on Exhibit B, 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 Contract. If Buyer shall elect to terminate this Contract 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 Contract which refers to the termination of this Contract 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.

8. Closing and Escrow.

(a) Upon mutual execution of this Contract, the parties hereto shall deposit an executed counterpart of this Contract with the Title Company and, conditioned upon the delivery to the Title Company of the Deposit, this Contract 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 Contract; provided, however, that in the event of any conflict between the provisions of this Contract and any supplementary escrow instructions, the terms of this Contract shall control.

(b) Subject to satisfaction of the conditions to Closing described in Paragraph 5, the parties shall conduct the Closing pursuant to Subparagraph 8(a) above on or before December 31, 2004 (the "Closing Date"), unless extended in writing by mutual agreement of Seller and Buyer; 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 Subparagraphs 8(c) through 8(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) 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
- (iii) 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) a signed closing statement in form and content reasonably satisfactory to Buyer; and
- (ii) 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 transfer taxes, if any, and recording fees applicable to recordation of the Deed, Buyer's attorney fees, any other costs associated with Buyer's financing (if any), one-half (1/2) of the Title Company's closing and escrow fees. Seller shall pay the cost of the title commitment, the premiums and other costs

related to issuance of the Title Policy, the cost of the survey, and one-half (1/2) of the Title Company's closing and escrow fees.

(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, except those already due and owing by Buyer, as Tenant, under the Lease Agreement referenced herein; and (C) any other operating expenses theretofore payable by Seller pertaining to the Property, if not otherwise due and owing by Buyer pursuant to said Lease Agreement.

(iii) Survival. The provisions of this Subparagraph 8(f) shall survive the Closing.

9. 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 CONTRACT 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 SOLE AND 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 CONTRACT 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 BD Buyer _____

(b) Default by Seller. IN THE EVENT THAT SELLER FAILS TO

PERFORM ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT FOR ANY REASON OTHER THAN BUYER'S DEFAULT OR THE PERMITTED TERMINATION OF THIS CONTRACT BY SELLER OR BUYER AS HEREIN EXPRESSLY PROVIDED, BUYER SHALL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY, EITHER (A) TO RECEIVE THE RETURN OF THE DEPOSIT, WHICH RETURN SHALL OPERATE TO TERMINATE THIS CONTRACT 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 CONTRACT 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.

INITIALS: Seller BD Buyer _____

10. Risk of Loss.

(a) If any of the Property is damaged or destroyed prior to the Closing Date, other than Buyer's property located on the Property in connection with the Lease Agreement, and such damage or destruction (i) is fully covered by Seller's insurance, except for the deductible amounts thereunder, and (ii) would cost less than Five Hundred Thousand Dollars (\$500,000) to repair or restore, then this Contract 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).

(b) If any of the Property is damaged or destroyed prior to the Closing Date, other than Buyer's property located on the Property in connection with the Lease Agreement, and such damage or destruction (i) is not fully covered by Seller's insurance, other than the deductible amounts, and (ii) would cost less than Five Hundred Thousand Dollars (\$500,000) to repair or restore, then this Contract 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).

(c) If (i) any of the Property is damaged or destroyed prior to the Closing Date, excluding the cost of Buyer's property located on the Property in connection with the Lease Agreement, and the cost of repair would exceed Five Hundred Thousand Dollars (\$500,000), or (ii) a material portion of the Property is taken by eminent domain, then, notwithstanding anything to the contrary set forth in this Paragraph 10, Buyer shall have the right, at its election, either to terminate this Contract (and receive a refund of the Deposit), with all interest accrued thereon), or to not terminate this Contract and purchase the Property. Buyer shall have thirty (30) days after Seller notifies Buyer in writing that an event described in Subparagraph 10 (c) (i) or 10 (c) (ii) 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 Contract. If this Contract 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 Obligation, if any.. If Buyer continues this Contract, 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 Contract. If an event of taking by eminent domain described in Subparagraph 10 (c) (ii) occurs prior to Closing and if Buyer does not so terminate this Contract, 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. The term "material portion" herein shall mean taking by eminent domain of such portion of the Property which results in a reduction of the Property's fair market 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, excluding the cost of Buyer's property located on the Property in connection with the Lease Agreement, 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 Contract, 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, if any; 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.

11. Miscellaneous.

(a) Notices. Any notice, consent or approval required or permitted to be given under this Contract 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: BUDCO, LTD.
c/o Los Hermanos, its general partner
4609 New Highway 90 West
San Antonio, Texas 78237

With a copy to: James M. McDonough, Attorney at Law
Cox Smith Matthews Incorporated
112 East Pecan, Suite 1800
San Antonio, TX 78205
Facsimile: (210) 226-8395

If to Buyer: The City of San Antonio
City Hall
100 Military Plaza
2nd Floor
San Antonio, TX 78205
Attention: City Clerk

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 Cavender-Hill (the "Seller'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. If the transaction contemplated by this Contract 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.

(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, subject to Buyer's leasehold rights to continue in possession of the Property as "Premises." under that certain Lease Agreement referenced herein. In addition, Seller shall have the right to enter into Sale Contracts 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 Contract in whole or in part, i.e., by termination of Buyer's rights to purchase the Property pursuant to Paragraph 4 above, and subject to Buyer's leasehold rights to continue in possession of the Property as "Premises."

(d) Successors and Assigns. This Contract 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 Contract, 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 Contract, (ii) Buyer shall not then be in default of any of its obligations under this Contract, (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 Contract, unless Buyer is released in writing by Seller. Seller shall have the right to assign all of its rights under this Contract to a third party, including, without limitation, all of Seller's rights, if any, 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 Contract 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 Contract 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 Contract (except as otherwise expressly limited or expanded by the terms of this Contract), shall survive the execution and delivery of this Contract and the Closing, or any termination of this Contract, 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 Contract 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 limited not to exceed a recovery of more than Two Hundred Fifty Thousand Dollars (\$250,000.00) by the party claiming the breach, 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 Contract shall be governed by the laws of the State of Texas.

(h) Merger of Prior Contracts. This Contract and the Exhibits hereto, which are incorporated herein by this reference, constitute the entire Contract between the parties and supersede all prior Contracts 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 Contract or if a dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Contract, 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 Contract 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 Contract.

(k) Severability. If any provision of this Contract, 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 Contract and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(l) Counterparts. This Contract 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 Contract.

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

(o) Lease Agreement. If the Closing does not occur by December 31, 2004, unless extended in writing by mutual agreement of Seller and Buyer, then Seller, in its capacity as Landlord, agrees to allow Buyer, as Tenant, to continue in possession of the leased Premises, subject to the terms and conditions of that certain Lease Agreement effective August 1, 2004 by and between the parties hereto.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates appearing below.

Buyer to initial Subparagraphs 9(a) and 9(b)

Dated: _____

BUYER:

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

By:

Name: _____

Its: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SELLER:

Seller to initial Subparagraphs 9(a) and 9(b)

Dated: 9/21/04

BUDCO, Ltd., a Texas Limited Partnership,

By: Mis Hermanos, L.L.C., a Texas limited
liability company, its general partner

By: MIS HERMANOS, L.L.C.

Name: Bert O. V. Davis

Title: President

Date: 9/21/04

Title Company agrees to act as escrow holder in accordance with the terms of this Contract and to act as the Reporting Person (as defined in this Contract). Further, Title Company acknowledges receipt of the Deposit by Buyer of \$25,000.00 in the form of a check, on the _____ day of _____ 2004, along with three fully executed counterpart originals of the Contract on the same date, with one (1) fully executed original Contract being returned to each Seller and Buyer.

Dated: _____

STEWART TITLE COMPANY

By: _____

Its: _____

EXHIBIT A
REAL PROPERTY LEGAL DESCRIPTION

EXHIBIT B
LIST OF DELIVERED ITEMS

EXHIBIT C
LEASE AGREEMENT

LEASE AGREEMENT WITH OPTION TO PURCHASE
502 Burnet Street
San Antonio, Texas 78202

Re: 502 Burnet Street, (being a warehouse building), located in San Antonio, Texas.

This Lease Agreement ("Agreement") evidences the agreement and understanding of BUDCO, Ltd., a Texas Limited Partnership, ("Landlord"), and City of San Antonio, a Texas municipal corporation, ("Tenant"), acting by and through its City Manager or designee, pursuant to Ordinance No. _____ dated _____, 2004, with respect to the use and occupancy of 502 Burnet Street, containing approximately 29,725 rentable square feet (rsf) ("Premises"), in the BUDCO warehouse building ("Building"), on Land located in San Antonio, Texas and which Premises is designated by cross-hatching on Exhibit "A" attached hereto and made a part hereof for all purposes. Landlord agrees that Tenant may use and occupy the Premises for general warehousing purposes and for no other purpose upon and subject to the following terms and conditions:

1. **TERM.** The term of Tenant's use and occupancy of the Premises under this Agreement shall commence on August 1, 2004 ("Commencement Date") and shall terminate on December 31, 2004 ("Expiration Date"), if not earlier terminated, as provided herein, to include Tenant's exercising the option to purchase the Premises.
2. **RENT, SECURITY DEPOSIT, ETC.**
 - A. **RENT/DUE DATE.** As consideration for Landlord's leasing the Premises to Tenant, Tenant agrees to pay to Landlord Rent for the Premises in advance, without demand, deduction or set off, at the rate of 40¢ psf per month, for a total of Eleven Thousand Eight Hundred Ninety and 00/100 DOLLARS (\$11,890.00) per month during the initial term and each renewal term hereof, subject to the appropriation provisions of Paragraph 21 hereafter. Monthly rent installments will not be due and payable on the Commencement Date hereof or for the following successive months through December 31, 2004, provided however, if on or before December 31, 2004, Tenant fails to close the purchase of the Premises, under the Option to Purchase provisions set forth in Paragraph 20, then on December 31, 2004, Tenant agrees to pay to Landlord in a lump sum the rent due for the period from August 1, 2004 through December 31, 2004. In the event that Purchaser closes its purchase of the Premises pursuant to the Option to Purchase provisions set forth in Paragraph 20 on or before December 31, 2004, no rental payments shall be owed to Seller for Purchaser's occupancy of the Premises during the term.
 - B. **SECURITY DEPOSIT.** Tenant shall pay to Landlord a security deposit of \$-0-.
 - C. **TAXES.** Tenant agrees to pay all taxes, assessments and/or governmental charges of any kind and nature (collectively referred to herein as "Taxes") that accrue against the Premises, the Land and/or the Building during the term. If at any time during the term of this Agreement, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a levy or charge measured by or based, in whole or in part upon such rents from the Premises, the Land and/or the Building, then all such taxes, assessments, levies or charges, or the part, thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Landlord shall have the right to employ a tax consulting firm to attempt to assure a fair tax burden on the building and grounds within the applicable taxing jurisdiction. Landlord shall invoice Tenant for its respective share of the Taxes on or before, December 22, 2004. Tenant's payment for Taxes shall be due and payable on or before January 15, 2005, or fifteen (15) days after Tenant's receipt of an invoice for Taxes if Landlord fails to deliver such invoice prior to December 22, 2004. The foregoing obligation to pay Taxes associated with the term shall survive the closing of Tenant's purchase of the Premises or termination of this Agreement. In the event

that Purchaser closes its purchase of the Premises pursuant to the Option to Purchase provisions set forth in Paragraph 20 on or before December 31, 2004, no Taxes shall be owed to Seller for Purchaser's occupancy of the Premises during the term.

- D. **OPERATING EXPENSES.** Tenant agrees to perform such actions as are necessary in, and pay the cost of (1) operating and maintaining the Building and Land, which costs shall include, without limitation, janitorial fees, maintenance and repair costs, sewer, landscaping, if any, trash and security (if and only if security is furnished by Landlord, then Tenant agrees to reimburse Landlord the cost associated therewith), amounts paid to contractors or subcontractors for work or services performed solely in connection with the operation and maintenance of the Building.
- E. **UTILITIES.** Tenant shall pay for all water, gas, heat, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or at the Premises pertaining to the Tenant's use of the Premises. Landlord shall not be liable for any interruption or failure of utility service on the Premises, unless caused by Landlord's negligence or acts of omission.
3. Tenant shall not make any improvements, alterations or modifications, of whatever nature or type, to the Premises without the prior written consent of Landlord, which may be granted or denied in Landlord's sole and absolute discretion.
 4. Tenant acknowledges that during Tenant's occupancy of the Premises Landlord shall furnish no Building standard services. Failure by Landlord to any extent to furnish any services to Tenant or the Premises, or any cessation (whether whole or partial) thereof, shall not render Landlord liable in any respect for damages to person, property or otherwise, nor be construed as an eviction of Tenant, nor work an abatement of Rent, nor relieve Tenant from fulfillment of any covenant or agreement herein.
 5. Tenant shall keep the Premises, including the exterior of the Premises (and, specifically, including removal of or repainting over any graffiti on the Premises) and all leasehold improvements in a good and presentable condition, at least similar to the condition as of the Commencement Date of this Agreement, normal wear and tear excepted and shall maintain the Premises in such condition as may be required by, and shall perform all repairs and improvements required by, any statute, law, ordinance, rule or regulation applicable to the Premises. If Tenant fails to do such, Landlord, at its option, may perform such item or make such repair or replacement deemed necessary by Landlord and Tenant shall pay to Landlord, on demand, Landlord's cost thereof plus a charge equal to fifteen percent (15%) of such costs for administrative cost recovery.
 6. Upon expiration or termination of this Agreement, Tenant shall deliver the Premises to Landlord in as good a condition as such Premises existed on the date of this Agreement, ordinary wear and tear excepted.
 7. Tenant's rights under this Agreement, including Tenant's right to use and occupy the Premises, may not be assigned or sublet by Tenant without the prior written consent of Landlord, which may be granted or denied in Landlord's sole and absolute discretion.
 8. In the event of any default by Tenant under the terms of this Agreement, Landlord, without notice to Tenant, shall have the right and option but without obligation to do so, to terminate this Agreement, or exercise any other rights or remedies, at law or in equity, which may be available to Landlord from time to time.
 9. Landlord agrees to maintain adequate Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises. Tenant shall provide for and maintain commercial general liability coverage, either through self-insurance or any combination of self-insurance and commercial insurance on the Premises for the full term of this

Agreement and any renewal or permissible holdover or non-permissible holdover terms, with coverage for bodily injury and property damage in the amount of \$500,000.

- 10 Subject to reimbursement by Tenant, Landlord shall maintain fire and extended coverage insurance on the Premises and Building in the amount of 80% of the actual cash value of said Premises and Building during the full term of this Agreement and any renewal or permissible holdover or non-permissible holdover terms. Landlord shall invoice Tenant for its respective share of the insurance premiums (the "Premiums") for such coverage on or before, January 15, 2005. Tenant's payment of the Premiums shall be due and payable on or before January 30, 2005 or fifteen (15) days after Tenant's receipt of an invoice for Premiums if Landlord fails to deliver such invoice prior to January 15, 2005. The foregoing obligation to pay Premiums associated with the fire and extended coverage insurance for the term shall survive the closing of Tenant's purchase of the Premises or termination of this Agreement. In the event that Purchaser closes its purchase of the Premises pursuant to the Option to Purchase provisions set forth in Paragraph 20 on or before December 31, 2004, no Premiums shall be owed to Seller for Purchaser's occupancy of the Premises during the term. Tenant shall provide such self-insurance as it deems advisable to insure against loss of any of its property in the Premises. Landlord and Tenant acknowledge that the Tenant is a political subdivision of the State of Texas and that the Tenant is subject to and shall comply with the applicable provision of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.
11. **Tenant shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or any other loss or claim except as results from Tenant's sole active negligence, as determined by a court of competent jurisdiction and upon final adjudication or settlement and then not in excess of the limits of liability under the Texas Tort Claims Act.**
12. **Landlord shall, and hereby agrees to, Indemnify and hold Tenant harmless from any damages in connection with loss of life, bodily or personal injury or property damage arising from the use or occupancy of any portion of the Building by Landlord, its agents, employees, representatives, contractors, successors or assigns, licensees or invitees, (collectively "parties") except to the extent the same is solely the result of the sole negligence or willful misconduct of Tenant, but expressly including damages to the extent not covered by the types of self insurance Tenant is to maintain pursuant to Paragraphs 9 and 10 above.**
13. Anything in this Agreement to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause-of-action, against the other, its agents (including partners, both general and limited), officers, directors, shareholders, customers, invitees, or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or the Building of which the Premises are a part, or any improvement thereon, or any personal property of such party therein, by reason of fire, the elements or any other cause which is or is required to be insured against under the insurance policies referred to in Paragraph 10 hereof, regardless of cause or origin, including negligence of the other party hereto, its agents partners, shareholders, officers, directors, customers, invitees or employees, and covenants that no insurer shall hold any right of subrogation against such other party. Tenant shall advise insurers of the foregoing waiver and such waiver shall be part of each policy maintained by Tenant.
14. Tenant acknowledges that it has satisfied itself with regard to the requirements of an Asbestos Survey of the Premises, as required pursuant to City of San Antonio Ordinance No. 89710. Further, if Tenant suspects the presence of mold within the Premises, Landlord will send a representative to make an inspection within 3 business days from the date of receiving notice from Tenant. Landlord's representative will report the findings to Tenant within 3 business days from the date of the inspection. If mold is present, Landlord may, at its election, remediate the Premises. If

Landlord elects not to remediate, then Tenant may elect to terminate this Agreement with 3 calendar days' written notice. Landlord will notify Tenant of Landlord's election to remediate or not at the same time as Landlord reports its findings to Tenant.

15. If termination occurs at the instance of Tenant, or upon expiration or termination of the term then Landlord agrees to allow Tenant, at Tenant's sole cost and expense, to remove from the Premises any and all of Tenant's furniture, fixtures, equipment, trade fixtures, furnishings, and other personal property, including, but not limited to, any partitions, any alarm/security system or other items placed on the Premises by Tenant, which are not the property of Landlord.
16. **Maintenance.** Tenant will be responsible for the maintenance and repair of the interior of the Premises, while Landlord will be responsible for maintenance and repair of the structural components of the exterior roof, walls and foundations. Tenant, however shall be responsible for the removal of any graffiti on exterior walls.
17. **Hazardous Materials/Activities.** Landlord represents that, to the best of Landlord's current actual knowledge without inquiry, there are no hazardous materials on the Premises. Tenant agrees that it shall not permit any activity in or about the Premises that would increase Landlord's insurance premiums or that violates any applicable federal, state, or local law, including, but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters or the permanent or temporary storage of any hazardous materials. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state or local environmental law, regulation, ordinance, or rule existing as of the date of this Agreement or later enacted. Fire fighting equipment stored in the Premises for Tenant's use shall not constitute "hazard materials." Tenant acknowledges that Landlord has heretofore disclosed and hereby discloses that a portion of the Premises was previously used as a vehicle maintenance facility in which oil was changed, an oil trap exists and a paint spray booth once existed.
18. **Mediation.** If a dispute arises out of this Agreement and if such dispute cannot be settled through direct negotiations between the parties, the parties agree to endeavor to resolve the dispute through mediation. If the parties cannot agree upon the selection of a mediator, the parties shall jointly request that a local State District Judge appoint a mediator qualified under Section 154.052 of the Texas Alternative Dispute Resolution Act.
19. **Conflict of Interest.** Landlord acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Landlord warrants and certifies, and this Agreement is made in reliance thereon, that it, its partners, employees and agents are neither officers nor employees of the City. Landlord further warrants and certifies that it has tendered to the City, as Tenant herein, a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
20. **Option to Purchase.** For and in consideration of the tender by Tenant to Landlord of the sum of \$100.00, as separate and distinct consideration from the Rent set forth herein, Landlord grants to Tenant a right and option to purchase the Premises on the following terms and conditions:

Purchase Price: \$891,150.00

Closing Date: On or before December 31, 2004

Conditions: Subject to the negotiation of such other terms and conditions as mutually agreed to by Landlord, as Seller, and Tenant, as Purchaser, to be negotiated and set forth in a Purchase Contract, to be submitted for approval by the Seller's General Partner, Mis Hermanos, L.L.C., a Texas limited liability company, its general partner, and the City Council of the City of San Antonio, Texas.

21. **Appropriations.** Landlord agrees and understands that Tenant has projected costs for this Agreement and Tenant expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of Tenant are subject to annual appropriation by the City Council in future years, after September 30, 2004. Accordingly, the above provisions notwithstanding, in the event Tenant shall fail to appropriate sums to pay any of Tenants obligations under this Agreement Tenant shall have the right to terminate this Agreement by giving Landlord a minimum of thirty (30) days written notice if Tenant must terminate the Agreement because of any non-appropriation. In such case, Landlord's sole option shall be to terminate Tenants right under this Agreement and Tenant shall have no further obligations hereunder, Landlord agrees and understands that the Texas Constitution (Article II, Section 5) prohibits the creation of an unfunded debt by a local government. The prohibition includes indemnity clauses in various types of contracts, thus making any indemnity clause enforceable on its face against the Tenant in this Agreement void ab initio.
22. **Subordination.** This Agreement and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
 - A. any lien or encumbrance now or hereafter placed on the Premises or Building;
 - B. all advances made under any such lien or encumbrance;
 - C. the interest payable on any such lien or encumbrance;
 - D. any and all renewals and extensions of any such lien or encumbrance;
 - E. any restrictive covenants affecting the Premises or the Building; and
 - F. the rights of any owners' association affecting the Premises or Building.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

23. **Applicable Law.** This Agreement shall be construed under and in accordance with the Constitution and laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

EXECUTED as of the dates set forth below to be effective as of August 1, 2004.

LANDLORD:

BUDCO, Ltd., a Texas Limited Partnership,

By: Mis Hermanos, L.L.C., a Texas limited liability company,
its general partner

By: MIS HERMANO
Name: Bert Dey V. Dey
Title: President
Date: 9/21/04

AGREED AND ACCEPTED:

TENANT:

City of San Antonio, a Texas Municipal Corporation

By: _____
Name: _____
Title: _____ City Manager
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

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 entity**¹ that would be a party to the discretionary contract:

BUDCO, LTD.

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;

SISCO, LLP. - LIMITED PARTNER
MIS HERMANOS, LLC. - GENERAL PARTNER

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

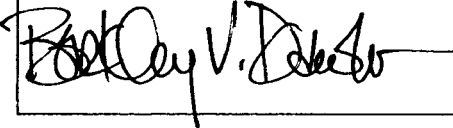
Political Contributions

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:
SEE ADDENDUM		

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.

Signature:	Title: President	Date:
	Company: MIS Hermanos, LLC	9/22/04

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.

**Addendum To City of San Antonio
Discretionary Contracts Disclosure**

To Whom Made	Amount	Date Of Contribution
Nelson Wolff	\$ 500.00	3/11/03
Roger Flores	\$ 500.00	3/17/03
Toni Moorehouse	\$ 500.00	4/30/03
Roger Flores	\$ 500.00	5/16/03
Lyle Larson	\$ 500.00	10/17/03
Ron Segovia	\$ 250.00	1/15/04
Ruth Jones McClendon	\$ 500.00	2/17/04
Nelson Wolff	\$ 1,000.00	2/25/04
Lyle Larson	\$ 1,000.00	4/29/04
Ruth Jones McClendon	\$ 500.00	7/27/04
Ruth Jones McClendon	\$ 500.00	8/11/04