



**Lease Agreement/Renewal
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 6
AGENDA DATE: Thu 02/12/2004
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SUBJECT: Authorize the City Manager or her designee to negotiate and execute a Disposition and Development Agreement and related documents with AMLI AUSTIN RETAIL, L.P., a Texas Limited Partnership, Dallas, TX, to assign the Block 2 and Block 4 Retail Subleases with Computer Sciences Corporation, on the terms set forth in the Term Sheet attached hereto as Exhibit "A", and on such additional terms and conditions as are deemed favorable, necessary or required.

AMOUNT & SOURCE OF FUNDING: City will not fund development of the retail spaces. AMLI Austin Retail will provide all funding for the \$5.5 million Development Budget to develop, market, lease and manage the retail spaces. Further, AMLI will reimburse \$362,500 to the City for constructing sanitary sewer lines and five grease traps serving the retail spaces.

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Economic Growth and **DIRECTOR'S**
DEPARTMENT: Redevelopment Services **AUTHORIZATION:**

FOR MORE INFORMATION CONTACT: Jan Stephens, Project Management Manager / 974-7852

PRIOR COUNCIL ACTION: 04/01/99 – Authorized the negotiation and execution of leases with Computer Sciences Corporation (CSC) in accordance with a Statement Concerning Essential Terms for CSC's Downtown Headquarters Facility; 01/27/00 – Approval to reconfigure the CSC Retail Spaces on Blocks 2 and 4, to increase the amount of retail space and improve the shell construction of the ground floor retail tenant spaces; 10/26/00 – Council approved an Exclusive Negotiating Agreement with AMLI for the purpose of negotiating a Development Agreement for the ground floor CSC and City Hall retail spaces; 10/25/01 – Approval to use approximately 3,800 square feet in the New City Hall for a café and City Store concept.

BOARD AND COMMISSION ACTION: Recommended by the Downtown Commission.

Background

In 1998, Computer Sciences Corporation was seeking a new location for its financial services headquarters. At the same time, the City was seeking to revitalize the area now known as the "2nd Street District" with office, municipal and residential uses containing street level retail operations. The 2nd Street District is bounded by W. 3rd Street on the north, Colorado Street on the east, W. Cesar Chavez on the south and San Antonio Street on the west. (A map is attached.) There are six city blocks in the 2nd Street District. On the north, from west to east, there are Blocks 22, 21, and 20 and on the south, from west to east, there are Blocks 2, 3, and 4. The City is the owner of Blocks 2 and 4, and under a long-term ground lease arrangement, has leased them to Computer Sciences Corporation (CSC) for a headquarters complex for CSC's Financial Services Group. The City and CSC have executed Retail Sublease Agreements for Blocks 2 and 4, whereby the City has leased back 58,783 square feet of the ground floor in these office complexes and 4,200 sq. ft. in the historic Schneider Building for retail development. In addition, the new City Hall on Block 3 includes 3,683 square feet of ground floor retail space for a restaurant and City Store concept, and a three level underground parking garage will provide parking for City employees, City visitors, retail customers, retail employees and valet parking for the retail spaces.



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AMLI Residential Properties, as the managing general partner of the owner of Block 20, is constructing 220 apartments with 41,675 square feet of ground floor retail space. The City, as the owner of Block 22, has leased it to AMLI Residential Properties under a long-term ground lease agreement for construction of 220 apartments and a minimum of 30,000 square feet of ground floor retail space. AMLI expects to include almost 42,000 sq. ft. of retail in its Block 22 development. Finally, the City owns Block 21, and anticipates selling or leasing the block for a multi-use development that will include a minimum of 42,000 sq. ft. of ground floor retail. The total amount of ground floor retail anticipated in the 2nd Street District is 188,505 sq. ft.

On October 26, 2000, the City Council authorized the City to enter into an Exclusive Negotiating Agreement with AMLI Residential Properties, L.P. and Bonner Carrington Development, LLC for the purpose of negotiating the terms and conditions of an agreement for the assignment or sublease and development of the CSC Retail Spaces on Blocks 2 and 4 and the development of the retail spaces in the new City Hall. (Bonner Carrington Development is no longer part of the development team.) During the ensuing negotiating period, besides agreeing to the key terms of the development agreement, the City and AMLI worked on these additional issues:

- **Streetscape Design** - AMLI hired ROMA to develop the Great Streets design for 2nd Street (now part of the approved 2nd Street Streetscape design).
- **Changes to Retail Subleases** - Changes to the Retail Subleases were sought from CSC to give the retail developer more latitude in approving signage, storefront designs and other issues expected to arise from tenants. In 2003, CSC indicated that it was not receptive to changing the subleases, but will entertain case-by-case requests. The City and AMLI agreed to finalize the development agreement using the existing subleases.
- **Retail Development Strategy**— In 2003, Urban Partners of Dallas, Texas was hired by AMLI to develop a leasing and marketing strategy for the 2nd Street District.

Benefits Expected from Agreement with AMLI Austin Retail

Based on the leasing and marketing strategy developed for the CSC and City Hall retail spaces, the following benefits are expected:

- Generates \$2 million in sales tax during first 10 years
- Generates an estimated \$3.7 million in property taxes (for all jurisdictions) during first 10 years
- Creates over 400 new jobs
- Brings shoppers to Austin
- Provides opportunities for small, local retailers and restaurant owners
- Provides new marketing opportunities for the Convention Center and Hilton Hotel
- Stimulates the downtown residential market
- Showcases the new City Hall
- Creates a modern day community gathering place

Return of City's Investment

The City has appropriated and spent \$9,091,200 from a Capital Improvements Program (CIP) project to lease and construct the retail shell space covered by this agreement. In the future, we anticipate the subleasehold covering



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the Block 2 and Block 4 retail spaces, to be assembled with the retail spaces on Block 20 and eventually Block 21 and Block 22 for purchase by a single retail development entity. Based on current leasing and income projections, by the fourth year, the sale of the subleasehold interest in the Block 2 and Block 4 retail spaces will generate \$7,028,500 of income to the City. The proceeds from this sale will go to reimburse the CIP appropriation. The balance of the appropriation, \$2,062,700, will be funded by a transfer of excess available funds from the Fiscal Year 2003 ending balance of the City's Support Services Fund. Sales and property tax revenues generated by this project will then repay this transfer in future years.

Development Plan

The near term Development Plan for the 2nd Street District includes the following tenant mix and leasing goals:

Block 20 (AMLI's Multi-Use Development)

Leasing Period: March 2004 – March 2005

Restaurants, day spa-salon, apparel, home furnishings, coffee house, wine or piano bar

Block 4

Leasing Period: April 2004 – March 2005

Women's and men's apparel, including jewelry, eyewear, footwear, and sportswear; food and beverage, and home furnishings

Block 2

Leasing Period: July 2004 – August 2005

Women's and men's apparel, including jewelry, eyewear, footwear, and sportswear; food and beverage, and home furnishings

City Hall

Leasing Period: April 2004 – November 2004

Reasonably priced, fast casual restaurant; City store

Summary of Key Terms of Disposition and Development Agreement

The City would enter into a Disposition and Development Agreement with AMLI Austin Retail, L.P., a Texas limited partnership ("AMLI"), for assignment of the Blocks 2 and 4 CSC Retail Subleases, which has the key terms set out in Exhibit "A" attached hereto, and summarized as follows:

The City will assign its subleasehold interest in the Block 2 and Block Retail Subleases with Computer Sciences Corporation for the remaining 95 years. AMLI, through Urban Partners, will develop, market, lease and manage the CSC spaces and secure tenants for the new City Hall café and store. A Development Budget of \$5.5 million covers development costs expected through June 30, 2006 and will be entirely funded by AMLI. This budget includes costs associated with mechanical, plumbing, electrical and heating and cooling system build-out to the tenant spaces; tenant improvement reimbursements; leasing commissions; legal and marketing services; a reimbursement to the City for construction of grease traps and sanitary sewer service (this reimbursement will be used to add parking control equipment to the new City Hall parking garage and pay tenant finish-out allowances related to the City Hall retail spaces); a reimbursement to AMLI for certain development costs and a contingency. The Development Budget cannot be amended without prior written consent of the City, and annual operating



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budgets will be submitted to the City for approval. Quarterly and annual income statements reflecting the results of the operation and its financial position are also required.

AMLI is encouraged to include businesses that reflect the nature and character of Austin in their décor, merchandise and cuisine, and AMLI has agreed to use diligent, good faith efforts to cause at least 30% of the tenants to be local businesses. A tenant is a "local business" if the:

- a. Tenant's headquarters or first retail or restaurant location is located in the Austin MSA,
- b. Tenant is an individual who resides in or has his or her principal place of business in the Austin MSA,
- c. Tenant is a group of individuals and more than half of the individuals reside in or have their principal place of business in the Austin MSA, or
- d. Tenant is a business organization (such as a corporation, partnership or limited liability company) that is controlled by or at least 51% owned by an individual or resides in or has his or her principal place of business in the Austin MSA, by a group of individuals of which more than half reside in or have their principal places of business in the Austin MSA, or an organization having its principal place of business in the Austin MSA.

To capture businesses that reflect an "Austin identity" but do not qualify as a local business under the definitions found above, we have included the ability for the City to agree that such a business constitutes a local business. In addition, AMLI will work with the City to identify M/WBE firms for its service contracting opportunities.

Cash flow generated from the project will be distributed on a monthly basis as follows:

- i. First, AMLI will receive a cash flow payment equal to 13% per annum, multiplied by the sum of the outstanding balance of all payments made under the Development Budget.
- ii. Second, AMLI will receive payment to retire all payments made under the Development Budget, until paid in full; and
- iii. Third, the remaining income will be split, with the City receiving 80% and AMLI receiving 20%.

To allow for consistent development of the project to 90% occupancy, AMLI is restricted from assigning its interests before three years after the date of the Agreement, and only when 90% of the Block 2 and 4 Retail Space has been leased. After 10 years, however, AMLI may assign its interest with no occupancy restriction.

Terms for use of the City Hall parking garage by retail customers and retail employees will also be part of the agreement with AMLI. In March, the City anticipates issuing a Request for Proposals to hire a parking operator for the garage. Once this process is complete, the City and AMLI will agree to terms including operating hours, the number and location of available retail spaces during the day, at night and on weekends, and a fee structure and validation system for free parking periods.

Finally, the Schneider Store Retail Sublease is not part of this Agreement, as the City is considering an offer for development of this space by a private investor. Should the City not reach agreement with this other party, the City agrees to negotiate with AMLI for the assignment of the Schneider Store Retail Sublease, and bring forward for approval amendments to the Disposition and Development Agreement to include development, marketing and leasing of this space.

EXHIBIT "A"

Term Sheet for Disposition and Development Agreement Between the City of Austin and AMLI Austin Retail, L.P., a Texas limited partnership

Blocks 2 and 4 Retail Project and City Hall Retail Space

January 28, 2004

AMLI Residential Properties, L.P. is forming a Texas limited partnership, AMLI Austin Retail, L.P., a Texas limited partnership (the "Developer") to develop, market, lease and manage the ground floor retail space on Blocks 2 and 4 of the Original City of Austin, and market, and lease the ground floor retail space in the new City Hall for high quality, commercial retail purposes. This development will attract shoppers to downtown, increase sales and property taxes, create jobs, stimulate the downtown residential market and provide opportunities for small, local retailers and restaurant owners. The "Block 2 and 4 Retail Project" consists of approximately 58,783 square feet of ground floor retail space, subleased by the City of Austin (the "City") from Computer Sciences Corporation ("CSC"). The "City Hall Retail Space" consists of 3,683 square feet of ground floor retail space on Block 3. In order to assign the subleases for and commence development of the Block 2 and 4 Retail Project, the City and Developer will enter into a Disposition and Development Agreement (the "Agreement"), which addresses the following key terms and provisions that will be included in the agreement:

1. Owner
The City owns a subleasehold estate in the Block 2 and 4 Retail Project under the terms of two retail subleases from CSC (the "Retail Subleases"). The City owns fee simple title to Block 3.
2. Developer
AMLI Austin Retail, L.P., a Texas limited partnership.
3. Property Interests Subject to the Agreement
The City will assign its subleasehold estate in the Block 2 and 4 Retail Project to the Developer. The City will not transfer any property interest in Block 3 to the Developer. Rather, the Developer will perform services in connection with the City Hall Retail Space. Both of these properties are part of a larger development located on Blocks 2, 3, 4, 20, and 22 and referred to as the "Retail Project."
4. Term of Subleasehold Estate
The remaining term of the subleasehold estate is approximately 95 years. If CSC elects to extend its Master Lease with the City, Developer can elect to extend the assigned Retail Subleases with CSC.
5. "As Is"
The current improvements on the Block 2 and 4 Retail Project are being transferred in "As Is" condition.

6. Compliance with Retail Subleases Developer must fully and completely perform all of the City's obligations under and refrain from violating the terms of the Retail Subleases. However, the City remains liable to CSC for violations of the Retail Subleases.
7. Development Plan Before assigning the subleasehold estate for the Block 2 and 4 Retail Project to Developer, the City must review and approve a Development Plan for the entire Retail Project, including Blocks 2, 3, 4, 20, 21 and 22. The plan will show the types of tenants expected to lease specific retail spaces and by when.
8. Development Budget Before assigning the subleasehold estate for the Block 2 and 4 Retail Project to Developer, the City must review and approve a Development Budget to implement the Development Plan for the Block 2 and 4 Retail Project and the City Hall Retail Space. The Development Budget shall govern development costs expected during the "Start-up Period", which includes the period from the date of closing through and including June 30, 2006, and cannot be amended without prior written consent of the City, which may be granted or withheld in the City's sole and absolute discretion. Developer must act in accordance with the Development Budget and may make any and all payments that are described in the Development Budget (shown in Attachment "A" to this Term Sheet.)
9. Development, Marketing, Leasing and Management of Blocks 2 and 4 Developer must in good faith and with due diligence prosecute to completion the development of the Block 2 and 4 Retail Project in accordance with a Development Plan and Development Budget. This obligation includes the obligation to market the Block 2 and 4 Retail Project in conjunction with the entire Retail Project.). No fees or expenses will be paid to the Developer for its work under this Agreement, as it is understood and agreed to that the Developer's right to receive any payments in the distribution of cash flow is Developer's compensation for this work.
10. Marketing and Leasing the City Hall Retail Space Developer must in good faith and with due diligence market and lease the City Hall Retail Space as part of the entire Retail Project. This obligation applies to both the initial marketing and leasing activities and any subsequent marketing and leasing activities that

the City believes is advisable to undertake while the Agreement is in effect. The City will make final decisions concerning the leases for the City Hall Retail Space and pay any tenant finish out allowances. The City, not the Developer, will perform all management functions after the lease is signed.

11. Contract with HSM Urban Partners, Inc.

Developer has previously entered into a contract concerning marketing and leasing of the Retail Project with Urban Partners (the "Development Consultant"). Developer must cause Development Consultant to perform all the same activities and services for the Block 2 and 4 Retail Project and the City Hall Retail Space that it performs for the Retail Project and with the same diligence. Developer must retain the Development Consultant in at least its current capacity through the Restriction Date. The "Restriction Date" is the earlier of (i) 3 years after the date of the Agreement and when 90% of the Block 2 and 4 Retail Project has been leased, or (ii) 10 years after the date of the Agreement.

12. Local Tenants

The City encourages the Developer to include businesses that reflect the nature and character of Austin in their décor, merchandise and cuisine. Developer agrees to use diligent, good faith efforts to cause at least 30% of the tenants of the Property to be local businesses. Developer's compliance with the local tenant requirement is measured by Developer's diligent, good faith efforts.

A tenant is a "local business" if one of the following is true: (i) that Tenant's headquarters or first retail or restaurant location is located in the Austin MSA, or (ii) that Tenant is an individual who resides in or has his or her principal place of business in the Austin MSA, or (iii) that Tenant is a group of individuals and more than half of the individuals reside in or have their principal place of business in the Austin MSA, or (iv) that Tenant is a business organization (such as a corporation, partnership or limited liability company) that is controlled by or at least 51% owned by an individual who resides in or has his or her principal place of business in the Austin MSA, by a group of individuals of which more than half reside in or have their principal places of business in the Austin MSA, or an organization having its principal place of business in the Austin MSA. The term "local

business” also includes any business that the City agrees, in writing, constitutes a local business even if it does not qualify as a local business under the definitions found above.

13. Diversity

When service-contracting opportunities arise, Developer agrees to employ an open and non-discriminatory process to select its contractors and consultants, consistent with the intent and spirit of the City of Austin Minority and Disadvantaged Business Ordinance. Efforts to seek participation by minority and women-owned firms, as well as the results of those efforts will be incorporated into the Developer’s Annual Report. The following contracting opportunities do not fall under this requirement: legal; accounting; marketing, leasing and development consulting services; and consultants and contractors hired directly by the Retail Tenants.

14. Funding of Development Budget

Developer will fund 100 percent of the approved Development Budget.

15. Guaranty of Payments and Performance

AMLI Residential Properties, L.P., a Delaware limited partnership, will unconditionally guaranty full payment of all amounts due and full performance of development and other duties under the Agreement.

16. Mechanical, Electrical, Plumbing and HVAC Build-out to Retail Spaces

The Development Budget will include \$400,000 to extend mechanical, electrical, plumbing and heating and ventilation (chilled water) systems into the retail spaces, to make the spaces ready for tenant finish-out. The Developer will use crews that are currently performing construction work on the Developer’s Block 20 development, due to the economies of scale and the efficiencies of time achieved.

17. Reimbursement to City for Construction of Grease Traps and Sewer Service using Deposit

In 2001, the City authorized CSC to install five grease traps and sewer lines to serve the Block 2 and 4 Retail Project. The total cost of that work was \$362,500. Developer will reimburse the City for this amount at closing. The City is currently holding, in an interest bearing account, a \$250,000 deposit from the Developer. This deposit with all accrued interest will be provided to the City as part of its reimbursement for the grease traps and sewer service.

18. Annual Budgets

Beginning for the period between July 1, 2006 and

December 31, 2006 and continuing for every calendar year afterwards, Developer will prepare and submit to the City for the City's approval an annual budget for the Block 2 and 4 Retail Project for each fiscal year (before July 1, 2006, the Development Budget governs). The City cannot unreasonably withhold or condition its approval of any proposed annual budget, and must respond to any proposed budget within 30 days after it is submitted by the Developer.

19. Reports

Developer will prepare quarterly and annual income statements reflecting the results of operation and a balance sheet reflecting the financial position of the Block 2 and 4 Retail Project.

20. Books and Records

Developer must keep accurate and appropriate books and records of the business and transactions related to the project. The City and its representatives may have access to those books and records at all reasonable times to inspect, examine, audit and make copies.

21. Distribution of Cash Flow

"Cash Flow" means all cash receipts and funds received from the Block 2 and 4 Retail Project (including, without limitation, the proceeds of any sale or financing) less all cash expenditures made incident to the normal operation of the project and authorized under the Development Budget or any applicable Annual Budget.

Developer will distribute Cash Flow monthly as follows:

- (a) First, Developer will distribute the Cash Flow to Developer in an amount equal to Developer's Preferred Return that is accrued and unpaid as of the date of each payment until Developer's Preferred Return has been paid in full. The Developer's Preferred Return means an amount equal to 13% per annum, multiplied by the sum of the outstanding balance of the Developer's Budgeted Investment. The Developer's Budgeted Investment means all payments made by the Developer for the benefit of the Block 2 and 4 Retail Project and City Hall Retail Space that are authorized under the Development Budget.
- (b) Second, Developer will distribute any unpaid Cash Flow to Developer in an amount equal to Developer's Budgeted Investment until Developer's Budgeted Investment has been paid

in full.

- (c) Third, Developer will distribute any unpaid Cash Flow so that the City receives 80% of the unpaid Cash Flow and Developer receives 20% of the unpaid Cash Flow.

22. Restrictions on Assignment of Subleasehold

Developer agrees that it will not assign its interest in the Property or sublease the entire Block 2 and 4 Retail Project before the Restriction Date.

23. Default Provisions;
Liquidated Damages

It is a default if the Developer terminates its contract with the Development Consultant (Urban Partners) before the Restriction Date. The City is entitled to receive \$250,000 in liquidated damages.

It is a default if the Developer assigns the Property before the Restriction Date. The City is entitled to receive \$500,000 in liquidated damages.

Upon the occurrence of any other post-closing Developer Default, the City will have all rights and remedies at law or in equity, except that the only remedy for the specific defaults described above is the liquidated damages described above.

24. Parking for Retail Customers and Retail Employees in the City Hall Garage

Terms for use of the City Hall parking garage by retail customers and retail employees will also be part of this agreement. In March 2004, the City anticipates issuing a Request for Proposals to hire a parking operator for the garage. Once this process is complete, the City and AMLI will agree to terms including operating hours, the number and location of available retail spaces during the day, at night and on weekends, and a fee structure and validation system for free parking periods.

25. Schneider Store Retail Sublease

The City's Retail Sublease with CSC for the Schneider Store is not part of this Agreement, as the City is considering an offer for development of this space by a private investor. Should the City not reach agreement with this private investor, the City agrees to negotiate with AMLI for the assignment of the Schneider Store Retail Sublease to AMLI Austin Retail, L.P., and bring forward for approval amendments to the Disposition and Development Agreement to include development, marketing and leasing of this space.

Attachment "A"
Term Sheet for Disposition and Development Agreement
Between the City of Austin and AMLI Austin Retail, L.P., a Texas limited partnership

Development Budget

Implementation of Development Plan for Blocks 2, 3, and 4

| | |
|--|--------------------|
| Tenant Improvement Reimbursements (\$65 per sq. ft.) | \$3,586,765 |
| Leasing Commissions (5%) | \$ 582,745 |
| Legal Services for Tenant Leasing | \$ 200,000 |
| Marketing | \$ 94,990 |
| Mechanical, Plumbing, Electrical and HVAC Build-Out | \$ 400,000 |
| Reimbursement to City for construction of grease traps and sanitary sewer service <i>(Remaining amount after AMLI's negotiation deposit is applied.)</i> | \$ 5,500 |
| Reimbursement to AMLI for certain development costs | \$ 350,000 |
| <u>Contingency</u> | <u>\$ 200,000</u> |
| TOTAL | \$5,500,000 |

2ND STREET DISTRICT, AUSTIN, TX
STREET LEVEL PLAN
 RETAIL SPACE - 108,505 SF

Urban Partners

ADILL
 RESIDENTIAL



Legend

- Single-family
- Multi-family
- Medium-density
- High-density
- Other

