



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

**AGENDA ITEM NO.: 13  
AGENDA DATE: Thu 06/23/2005  
PAGE: 1 of 2**

**SUBJECT:** Authorize the negotiation and execution of a Disposition and Development Agreement with U P SCHNEIDER, LP, a Texas Limited Partnership ("Urban Partners"), for assignment of the Schneider Building Sublease (generally located at the southwest corner of Guadalupe Street and 2<sup>nd</sup> Street) from Computer Sciences Corporation to U P Schneider, LP.

**AMOUNT & SOURCE OF FUNDING:** No funding required by the City to complete development of the Schneider Building. Urban Partners will provide all funding for the Development Budget of \$696,000 necessary to develop, market, lease and manage the space.

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

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

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

**PRIOR COUNCIL ACTION:** 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 on 04/01/1999; Authorized the negotiation and execution of a Disposition and Development Agreement with AMLI Austin Retail, L.P., for assignment of the Block 2 and 4 CSC Retail Subleases on 02/12/2004.

**BOARD AND COMMISSION ACTION:** N/A

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**Background**

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). The City and CSC further executed Retail Sublease Agreements for Blocks 2 and 4 and the Schneider Building, whereby the City leased back 58,783 square feet of the ground floor in the office complexes and 4,200 sq. ft. in the historic Schneider Building for retail development. In addition, CSC completed renovations to the Schneider Building, which were reimbursed by the City, during construction of its Block 2 building. In February, 2004, Council authorized the assignment of the Blocks 2 and 4 CSC Retail Subleases to AMLI Austin Retail, L.P. ("AMLI"), under certain terms for development, leasing and management of the retail spaces. The assignment became effective in October, 2004.

The Schneider Building was not part of this initial agreement with AMLI, as additional time was needed to determine the cost of certain interior improvements, such as adding an elevator and second stair, completing lead paint abatement of interior walls, and meeting the mechanical, plumbing and electrical needs of the future tenant. Urban Partners, the Development Consultant hired by AMLI to develop, market, lease and manage the Blocks 2 and 3 Retail Project, has formed U P Schneider, LP, a Texas limited partnership, to assume the Schneider Building sublease and develop it for high quality, commercial retail purposes.

**City's Investment**

Using available funds, the City spent \$762,774 to lease and restore the exterior of the Schneider Building. The exterior renovation completed in 2001 was the first major maintenance expense by the City in 25 years. In the



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future, we anticipate the subleasehold covering the Schneider Building and the Blocks 2 and Block 4 retail spaces to be assembled with the retail spaces on Blocks 20 and 22 and potentially Block 21 for purchase by a single retail development entity. Based on current leasing and income projections, in four years, the sale of the subleasehold interest in the Schneider Building would generate \$302,094 of income to the City. In addition, it is estimated that over the next 10 years, \$211,000 in sales and property taxes will accrue to the City from the retail operations in the historic Schneider Building.

**Summary of Key Terms of Disposition and Development Agreement with Urban Partners**

The City would enter into a Disposition and Development Agreement with Urban Partners for the assignment of the Schneider Building CSC Sublease, under the key terms set out in Exhibit "A" attached hereto, and summarized as follows:

- § Urban Partners will develop, market, lease and manage the Schneider Building.
- § Permitted tenants include local businesses, regional retailers, or a national retailer or restaurant (so long as it has its headquarters or had its first location in Austin) although the name under which they operate in Austin must be different than any other location.
- § The Schneider Building is designated as a City Historic Landmark, a State Archeological Landmark (SAL) and listed in the National Register of Historic Places; therefore, Urban Partners will comply with all state and City rules and regulations in the development of the retail space.
- § A Development Budget of \$696,000 covers development costs expected through December 31, 2006 and will be entirely funded by Urban Partners. This budget includes costs associated with designing and constructing an elevator and second stair; mechanical, plumbing, electrical and heating and cooling system build-out; tenant improvement reimbursements; leasing commissions; legal and marketing services; and a contingency. The Development Budget cannot be amended without prior written consent of the City, and annual operating budgets will be submitted to the City for approval. Quarterly and annual income operating 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.
- § Cash flow generated from the Schneider Building will be distributed on a monthly basis as follows:
  - i. First, Urban Partners 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, Urban Partners 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 66% and Urban Partners receiving 34%.
- § To allow for consistent development of the Schneider Building within the larger 2nd Street Retail Project, Urban Partners is restricted from assigning its interests before four years after the date of the Agreement, and only when 100% of the Schneider Building has been leased. After 10 years, however, Urban Partners may assign its interest with no occupancy restriction.

## **EXHIBIT "A"**

### **Term Sheet for Disposition and Development Agreement Between the City of Austin and U P Schneider, LP for Assignment of the Schneider Building CSC Sublease**

**June 8, 2005**

The Schneider Building, consisting of approximately 4,200 square feet of retail space, is owned by the City. The City leased it (and the property around it) to Computer Sciences Corporation ("**CSC**") in 2000 and then immediately subleased it back under a 99-year ground lease for inclusion in the 2<sup>nd</sup> Street Retail District Project. HSM Urban Partners, Inc., the Development Consultant hired by AMLI to develop, market, lease and manage the Blocks 2 and 4 Retail Spaces, has formed a Texas limited partnership, U P Schneider, LP, (the "**Developer**"), to develop, market, lease and manage the retail space in the Schneider Building for high quality, commercial retail purposes. In order to assign the Schneider Building Sublease and commence development of the Schneider Building, the City and Developer will enter into a Disposition and Development Agreement, based on the following key terms and provisions:

#### **PARTIES:**

1. Owner  
The City owns a subleasehold estate in the Schneider Building under the terms of a sublease from CSC (the "**Sublease**").
2. Developer  
U P Schneider, LP
3. Property Interests Subject to the Agreement  
The City and Developer will enter into a Disposition and Development Agreement that will contain the requirements set forth below. As part of the closing of the Disposition and Development Agreement, the City will assign its subleasehold estate in the Schneider Building to the Developer. This property is located on Lot 5 of Block 2 of the Original City of Austin and is 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 94 years. If CSC elects to extend its Master Lease with the City, Developer can elect to extend the assigned Sublease with CSC.

#### **PROPERTY (INCLUDING HISTORIC MATTERS):**

5. "As Is"  
The current improvements are being transferred in "As Is" condition.

**6. Historic Designation; Compliance  
with State Requirements**

Developer understands that the Schneider Building is designated as a State Archeological Landmark (SAL) and listed in the National Register of Historic Places. Because of the SAL designation, all state regulations regarding exterior and interior alterations to the building apply. These requirements include giving notice to the Texas Historical Commission (THC) prior to commencement of any work. Developer will comply with all state rules and regulations in the development of the retail space.

**7. Historic Designation; Compliance  
With City Requirements**

Developer understands that the Schneider Building is designated as a City Historic Landmark. Current City regulations require that all exterior changes to the building, including exterior and window signage, obtain prior review and approval from the City Historic Landmark Commission via the "Certificate of Appropriateness" process. Developer will comply with all City rules and regulations in the development of the retail space.

**8. Compliance with Heritage  
Preservation Agreement with Austin  
Convention and Visitors Bureau (ACVB)**

Developer agrees to the conditions of the Heritage Preservation Agreement previously entered into by the City and ACVB as part of receiving \$37,000 in grant funding for the completed exterior restoration of the building. As part of this agreement, for the first two years following initial tenant occupancy, Developer shall report every six months to the ACVB the number of retail transactions conducted inside the space.

**FINANCIAL MATTERS:**

**9. Development Plan and Budget**

The City has reviewed and approved a Development Plan for the building. The City has also reviewed and approved a Development Budget to implement the Development Plan. 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 December 31, 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.)

**10. Funding of Development Budget**

Developer will fund 100 percent of the approved Development Budget.

**11. Mechanical, Electrical, Plumbing,  
HVAC and Elevator Build-out**

The Development Budget includes adding mechanical, electrical, plumbing, heating and ventilation systems, an elevator and second stair into the retail space, to make the space ready for tenant finish-out. Developer may select all contractors and subcontractors involved in this work, as Developer is funding 100 percent of the improvements.

**12. Payment of Taxes**

Developer must assume the obligation to pay all of the 2005 taxes, which will not be pro-rated at closing.

**13. Distribution of Cash Flow**

"Cash Flow" means all cash receipts and funds received from the Schneider Building (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 Schneider Building 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 66% of the unpaid Cash Flow and Developer receives 34% of the unpaid Cash Flow.

## **AFFIRMATIVE AND NEGATIVE AGREEMENTS BY DEVELOPER:**

### **14. Required Actions by Developer**

Developer must develop, market, lease, and manage the Schneider store (without separate fees); must comply with the Schneider retail sublease with CSC; must develop annual budgets beginning in 2007, which are subject to the City's reasonable approval, and make its books and records available to the City to review and audit; must prepare annual and quarterly income statements; must comply with all requirements concerning hazardous materials; and must execute and, if required, record the documents required by the City at closing.

### **15. Prohibited Actions by the Developer**

Developer cannot assign or sublet its interest in the Schneider Building or undergo a change in control before the "Restriction Date," which is defined as the earlier of (i) 4 years after the date of the Agreement and when 100% of the Schneider Building has been leased, unless the City waives this requirement, or (ii) 10 years after the date of the Agreement; cannot mortgage its interest in the Schneider Building; cannot enter into any service contracts or other agreements encumbering the Schneider Building without the City's consent, which the City can grant or withhold in its sole discretion; cannot engage in any self-dealing or other actions prohibited by the City of Austin; cannot change the insurance that Developer carries from that required by the Disposition and Development Agreement without the City's consent; cannot use the Schneider Building for any office or service uses, including any quasi-retail, service retail, or service offices; and cannot violate any laws relating to hazardous materials.

### **16. Limitations on Use**

Because of the historic significance of the Schneider Building and its proximity to Austin's City Hall, the City wants Developer to lease the Schneider Building to a unique retailer or restaurant. Developer will not be permitted to lease the Schneider Building to a national retailer or restaurant unless that retailer or restaurant has its headquarters or has or had its first location in Austin and so long as the name under which it operates is different than in any other location. Developer will be permitted to lease the Schneider Building to a regional retailer or restaurant as long as the name under which it operates is different in Austin than in any other location. Finally, Developer will be permitted to lease to a local business so long as the name under which it operates is different than in any other Austin location. The restrictions set forth in the preceding sentences will continue for the remaining term of the sublease. If Developer is unable to obtain a tenant that meets these restrictions, there will be a process for Developer to discuss changes with the City, but the City's decision will be final.

## **MISCELLANEOUS TERMS OF THE DISPOSITION AND DEVELOPMENT AGREEMENT:**

### **17. Parking for Retail Customers and Retail Employees in the City Hall Garage**

The Schneider Building Store tenant or tenants will receive five employee parking spaces and the same validation privileges as the tenants in the Block 2 and 4 Retail Project have in the City Hall Garage.

### **18. Indemnification**

The Disposition and Development Agreement will contain a full indemnification of the City by the Developer, which indemnification will include indemnification of the City for all types of the City's own negligence as well as strict liability. The only exceptions will be for the City's gross negligence or willful misconduct.

### **19. Default Provisions; Liquidated Damages**

The Disposition and Development Agreement will have three categories of default: monetary defaults, defaults under the retail sublease with CSC, and non-monetary defaults. If any of them occurs, the City will have all rights and remedies at law or in equity. The only exceptions are that if the City has a claim for liquidated damages, then as long as it receives the liquidated damages, it will not have a claim for other damages and the City will not have any termination rights. If the default is one that arises because of a violation of the retail sublease, then Developer must reimburse the City for any amounts it is required to pay and will have self-help rights and the right to be reimbursed and to decrease the Developer's rights to receive cash flow under 13(c) above. If Developer assigns or sublets its interest in the Schneider Building or has a change in control before the Restriction Date, or selects a tenant that is not permitted, then the City is entitled to receive \$500,000 in liquidated damages.

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**Attachment "A"**  
**Development Budget for the Schneider Building**

Design and Build Out - Mechanical, Plumbing, Electrical, and HVAC Improvements; Elevator and Second Stair Added; Lead Paint Abatement and Tenant Improvement Reimbursements	\$610,000
Leasing Commissions, Legal Services and Marketing	\$ 75,480
<u>Contingency</u>	<u>\$ 10,520</u>
<b>TOTAL</b>	<b>\$696,000</b>