

AN ORDINANCE 2007-10-11-1077

AUTHORIZING EXECUTION AND DELIVERY OF A CONTRACT WITH MID-LOOP, INC., UNDER WHICH THE CITY IS TO ACQUIRE THE MISSION DRIVE-IN PROPERTY, 3100 ROOSEVELT AVENUE, DISTRICT 3, FOR APPROXIMATELY \$3,200,830

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the city an instrument with Mid Loop, Inc., in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth, and to consummate the transaction contemplated therein. The City Manager and her designee, severally, should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

SECTION 2. This ordinance is also a declaration of the City's official intent to reimburse itself from the proceeds derived from the sale of the City of San Antonio, Combination Tax and Revenue Certificates of Obligation, Series 2007 and General Obligation issuance for any authorized expenditures from any lawfully available funds of the City.

SECTION 3. The following appropriations are contingent upon the sale of the City of San Antonio, Combination Tax and Revenue Certificates/General of Obligations, Series 2007 for SAP Project Definition 24-00016, Mission Drive-In Theater.

SECTION 4. The amount of \$3,311,000.00 is appropriated in SAP Fund 11001000, General Fund, Internal Order # 390000000349, GL account 6102100 – Interfund Transfer out entitled Transfer to 24-00016-90-01. The amount of \$3,311,000.00 is authorized to be transferred to SAP Fund 43099000.

SECTION 5. The budget in SAP Fund 43099000, SAP Project Definition 24-00016 Mission Drive-In Theater, shall be revised by increasing WBS element 24-00016-90-01 entitled Trf Fr I/O# 390000000349, GL account 6101100 – Interfund Transfer In, by the amount \$3,311,000.00.

SECTION 6. The amount of \$3,200,000.00 is appropriated in SAP Fund 43099000, Certificates Of Obligation Capital Project, SAP Project Definition 24-00016 Mission Drive-In Theater, WBS element 24-00016-03-02-04 entitled Acquisition, G/L Account 5209010, and is authorized to be encumbered and made payable to, for purchase of land.

SECTION 7. The amount of \$30,000.00 is appropriated in SAP Fund 43099000, Certificates Of Obligation Capital Project, SAP Project Definition 24-00016 Mission Drive-In Theater, WBS element 24-00016-03-02-01 entitled Title, G/L Account 5201110, and is authorized to be encumbered and made payable to, for title company fees.

SECTION 8. The amount of \$75,000.00 is appropriated in SAP Fund 43099000, Certificates Of Obligation Capital Project, SAP Project Definition 24-00016 Mission Drive-In Theater, WBS element 24-00016-04-02 entitled Environmental Costs, G/L Account 5201180, and is

authorized to be encumbered and made payable to, for environmental assessments and due diligence.

SECTION 9. The amount of \$6,000 is appropriated in SAP Fund 43099000, Certificates Of Obligation Capital Project, SAP Project Definition 24-00016 Mission Drive-In Theater, WBS element 24-00016-03-02-05 entitled Miscellaneous, G/L Account 5201160, and is authorized to be encumbered and made payable to, for survey.

SECTION 10. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 11. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 11th day of October 2007.



M A Y O R

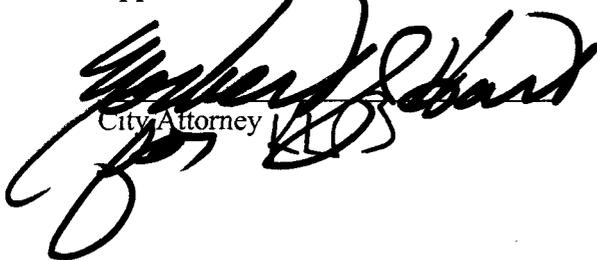
PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Attachment I

Real Estate Sales Contract

3100 Roosevelt Ave. (Mission Four Drive-In Theater); Parcel No. 18192

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") Title Company acknowledges receipt of a signed copy of this contract. If the Earnest Money is paid by check and payment on presentation is refused, this contract automatically terminates.

Table of Contents

1. Deadlines and Other Dates	3
2. Closing Documents	3
3. Exhibits.....	4
4. Purchase and Sale of Property	4
5. Interest on Earnest Money.....	5
6. Title and Survey	5
7. Inspection Period	6
8. Independent Consideration.....	7
9. Representations.....	8
10. Condition until Closing; Cooperation.....	8
11. Termination.....	8
12. Closing.	9
13. Default and Remedies.....	10
14. Miscellaneous Provisions.....	11
15. Prohibited Interest in Contracts.....	12
16. Public Information.....	13
Title Company Acknowledgment and Receipt of Contract.....	15
Exhibit A.....	17
Exhibit B.....	18
Exhibit C.....	20
Exhibit D.....	21
Exhibit E.....	24

Authorizing
Ordinance:

Seller: Mid-Loop, Inc., a Texas corporation

Address: 606 Embassy Oaks, Suite 350, San Antonio, Texas
78216

Phone: (210) 496-1300 Contact: Mr. Sean Nasis, CFO

Fax: (210) 496-2720

Email: snasis@santikos.com

Type of
Entity: A Texas corporation

Seller's Counsel: Pulman, Bresnahan, Pullen & Cappuccio, LLP

Address: 2161 NW Military Hwy., Suite 400,
San Antonio, Texas 78213

Phone:(210) 222-9494 Contact: Mr. Brad Jones

Fax:(210) 892-1610

Email:bjones@pulmanlaw.com

Buyer: City of San Antonio

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

Phone:(210) 207-8234(Steve Hodges)/207-4039 (Kevin Sadler)

Fax:(210) 207-4034

Email:ksadler@sanantonio.gov

Type of Entity: A Texas municipal corporation

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

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

Phone:210-207-6168

Email:kenneth.bennight@sanantonio.gov

Property: 25.965 acres of land, more or less, out of NCB 7675, City of San Antonio, Bexar County, Texas, known as Santikos Mission Four Drive-In Theatre located at 3100 Roosevelt Avenue and more fully described in **Exhibit A** ("Land"), together with improvements to the Land ("Improvements"), but expressly excluding those items removed by Seller during the Removal Period (as defined herein).

Title Company:Chicago Title Insurance Company

Address: 270 N. Loop 1604 E, #110 San Antonio, Tx 78232

Phone:(210) 482-3753 Contact: Mr. Todd Rasco

Fax:(210) 482-3758

Email:rascot@ctt.com

Independent Consideration: \$100.00

Purchase Price:\$2.83 per square foot of total area of Land as shown on the Survey to be prepared as set forth herein.

Earnest Money:\$50,000.00

Surveyor:Stephen G. Cook Engineering, Inc.

Survey Category:Category 1A Texas Land Title Survey

County for Performance Bexar

1. Deadlines and Other Dates

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

1.01	Earnest Money Deadline	Five (5) Business days after Effective Date
1.02	Delivery of Title Commitment	30 <u>days</u> after the Effective Date
1.03	Delivery of Survey	30 <u>days</u> after Effective Date
1.04	Title and Survey Objection Deadline	20 <u>days</u> after the receipt of Title Commitment
1.05	End of Inspection Period	60 <u>days</u> after the Effective Date

1.06 Closing Date 20 days after the Inspection Period
1.07 Closing Time 10:00 a.m. on the Closing Date

The deadlines may be altered by the mutual agreement of the parties in writing. Buyer's consent may be made by the Director of Asset Management without further authorization of City Council.

2. Closing Documents

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

Special Warranty Deed in the form attached hereto as Exhibit D

IRS Nonforeign Person Affidavit in the form attached hereto as Exhibit E, but if Title Company is, for any reason, unsatisfied with the form, Seller will accept back-up withholding

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in **Exhibit C**

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

Evidence of Buyer's authority to consummate this transaction

Purchase Price

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

2.04. The deed may except from warranty (not from conveyance) items items reflected in Schedule B of the latest effective title commitment. It may not except rights of parties in possession, survey-related matters_(except to the extent reflected on the latest effective title commitment), or other rights not arising out of a recorded instrument.

3. Exhibits.

The following are attached to and are a part of this contract:

Exhibit A—Description of the Land

Exhibit B—Representations; Environmental Matters

Exhibit C—Notices, Statements, and Certificates

Exhibit D—Special Warranty Deed

Exhibit E—FIRPTA Affidavit

4. Purchase and Sale of Property

Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property. For a period of thirty (30) days after Closing (the "Removal Period"),

Seller shall have the right, but not the obligation, to remove from the Property any of the improvements, any components or parts of the improvements (including structural items), any furniture, equipment, trade fixtures, any other fixtures, any personal property including, without limitation, all of the movie screens, projectors, and concessions, whether located on the Land or affixed to the improvements situated thereon or part of the electrical, plumbing and/or heating, ventilating and air condition system; including, without limitation, any materials, supplies, inventory or other items associated with or incorporated into the Property including, without limitation, pylon signs, sign cabinets and sign faces. Upon the expiration of the Removal Period, Seller shall deliver the Property to Buyer in its then condition AS IS WHERE IS and WITH ALL FAULTS, as more fully described in this Agreement. Seller shall have no obligation to demolish or raze any improvements situated on the property or to remove any remaining portion of the improvements or any of the furniture, fixtures, equipment and personal property described above, and Seller and Buyer agree that after the expiration of the Removal Period, all improvements, fixtures, equipment and personalty remaining on the Land shall be deemed abandoned by Seller, shall become the property of the Buyer, and that Seller shall have no claim, interest, obligation, duty, responsibility or liability with respect to such property whatsoever.

5. Interest on Earnest Money

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

6. Title and Survey

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

6.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract.

6.03. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land showing the square footage of total area of Land sufficient for calculation of the Purchase Price, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.05. *Delivery of Title Commitment, Survey.* Seller must deliver the Title Commitment and the Survey by the deadline stated in section 1.

6.06. *Title Objections.*

(a) Buyer has until the Title and Survey Objection Deadline to review the Survey and Title Commitment and notify Seller in writing of Buyer's objections to any of them ("Title Objections").

(b) If Buyer notifies Seller of any Title Objections as provided for herein, Seller has five (5) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that this contract is terminated.

(c) Buyer is deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title and Survey Objection Deadline. Buyer is further deemed to have approved Title Objections that Seller does not elect to cure, if Buyer does not terminate the contract as provided for herein. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." and shall appear in the deed delivered at Closing.

(d) In absence of timely notice of termination, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

7. Inspection Period

7.01. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer may not unreasonably interfere with existing operations or occupants of the Property;
- b. if the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs; and
- c. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt.

 7.02. *Extension of Inspection Period.* Upon written notice to Seller prior to expiration of the Inspection Period which notice shall include a letter from a reputable licensed engineer clearly stating that the results of the Phase I Environmental Assessment completed with respect to the Property require the completion of a Phase II Environmental Assessment, Buyer may extend the Inspection Period for a period of not

more than forty-five (45) days for the sole purpose of completing a Phase II Environmental Survey (the "Phase II"). As a condition to such notice, Buyer must waive all title, property condition and all other due diligence objections to the Property other than the Phase II.

7.03. Inspection Period. Except for those matters that arise from the negligence of Seller or Seller's agents or employees, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense caused by Buyer's inspections, studies or assessments, including any property damage or personal injury.

7.04. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller in writing before the end of the Inspection Period, provided however, in the event Buyer exercises its right to extend the Inspection Period as provided for in Section 7.02, Buyer will have waived all title, property condition and all other diligence objections to the Property and may only terminate this contract due to unsatisfactory results of the Phase II.

7.05 BUYER ACKNOWLEDGES AND AGREES, THAT EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN, SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, OR CONCERNING (a) THE NATURE AND CONDITION OF THE PROPERTY AND IMPROVEMENTS OR OTHER ITEMS CONVEYED HEREUNDER, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, THE SUITABILITY THEREOF AND OF THE PROPERTY OR OTHER ITEMS CONVEYED HEREUNDER FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY ELECT TO CONDUCT THEREON, THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (b) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHERWISE; AND (c) THE COMPLIANCE OF THE PROPERTY OR OTHER ITEMS CONVEYED HEREUNDER OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY. BUYER ACKNOWLEDGES THAT AS OF THE EXPIRATION OF THE FEASIBILITY PERIOD AND CLOSING DATE, IT WILL HAVE INSPECTED THE PROPERTY OR OTHER ITEMS CONVEYED HEREUNDER AND THAT BUYER IS RELYING SOLELY ON BUYER'S OWN INVESTIGATION OF THE SAME AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER. THE CONVEYANCE IS MADE ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND BUYER EXPRESSLY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFIED HEREIN, SELLER HAS MADE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY, ANY OTHER ITEM TO BE CONVEYED OR ANY PORTION THEREOF, ALL SUCH REPRESENTATIONS

AND WARRANTIES, AS WELL AS ANY IMPLIED WARRANTIES BEING
HEREBY EXPRESSLY DISCLAIMED.

8. Independent Consideration.

As independent consideration for this agreement, Seller acknowledges receipt from Buyer of \$100. This sum is not a credit against the Purchase Price and is not refundable under any circumstance.

9. Representations.

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and shall be true and correct in all material respects on the Closing Date.

10. Condition until Closing; Cooperation.

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

10.02. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

10.03. *Cooperation.* Seller will use commercially reasonable efforts to cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

11. Termination.

11.01. If Buyer terminates this contract in accordance with any of Buyer's rights to terminate expressly set forth herein, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract.

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

12. Closing.

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

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will have caused to be timely delivered to the Title Company a City check such that the Purchase Price and other amounts that Buyer is obligated to pay under this contract will be available in immediately certifiable funds. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

12.02. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; certificates or reports of ad valorem taxes; and Seller's expenses and attorney's fees.
- b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the additional premium for removing the survey and encroachment exception, the costs to obtain the Survey; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; and Buyer's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date in accordance with § 26.11 of the Texas Tax Code. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing.
- ed. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.