

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ECONOMIC DEVELOPMENT DEPARTMENT**

TO: Mayor and City Council

FROM: Ramiro A. Cavazos, Director, Economic Development Department
Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: J. Rolando Bono, Melissa Byrne Vossmer, Erik Walsh, Tom Wendorf, Rebecca Waldman, Andrew Martin, Veronica Zertuche, Trey Jacobson, Manuel Longoria, Warner Fassnidge, Gilbert Hernandez, John Friebele, Dianne Quaglia, Cris Young, File

SUBJECT: AGREEMENTS TO FACILITATE DEVELOPMENT OF RIVERWALK SUITES HOTEL

DATE: March 11, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance would approve revised agreements to facilitate the development of a suites-type hotel along the River Walk. These agreements, between the City and Riverton Suites, Ltd. (Riverton), include (1) a construction agreement governing development of the hotel and related public improvements, and (2) a lease agreement for patio space along the River Walk. This item will also reauthorize the limited waiver of right-of-way closure fees, as provided under the Construction Agreement. These agreements were previously approved by City Council on June 8, 2000, but the project was delayed by litigation.

Staff recommends approval.

BACKGROUND

In July 1999, Riverton, an affiliate of Hixon Properties, announced plans to develop a \$30 million, 240-room suites hotel along the River Walk, located on Market Street, between Navarro and Presa streets. That month, Riverton received conceptual approval from the Historic & Design Review Commission. The developer requested a waiver of City temporary right-of-way (ROW) closure fees and expedited property transactions. A six-signature memo regarding this request was supported by City Council in November 1999.

In addition to the temporary ROW closure, a number of issues related to the hotel's development needed resolution. Staff drafted a set of agreements to address all City concerns and facilitate the development of the proposed hotel by providing a framework for real property transactions, resolution of a property boundary dispute, conditions for the use of City ROW during hotel construction, and construction of related public improvements.

On June 8, 2000, City Council approved:

1. Construction Agreement
2. River Walk lease
3. Limited waiver and modification of temporary right-of-way closure fees
4. Settlement Agreement and Mutual Release, re: property boundary dispute
5. License Agreement
6. Escrow Agreement

Just prior to construction, Hilton Hotels Corporation purchased Promus Hotel Corporation, which included the Embassy Suites brand. A local hotel owner holds the exclusive right to the Hilton Hotel brand and operations in San Antonio. That company filed suit to block the development of a Hilton-brand hotel (i.e. Embassy Suites) without their consent. Construction of the hotel was halted. Hixon filed suit against Hilton for misrepresentation within the executed hotel operating agreement.

In anticipation of a timely resolution to these suits, City Council granted extensions of the Construction Agreement on April 26, 2001, December 13, 2001, and again on June 20, 2002. When it became apparent that the legal and development issues were not going to be resolved before another extension would be needed, the Construction Agreement was allowed to lapse June 30, 2003.

Today, the lawsuits have been arbitrated and the Embassy Suites brand is no longer being associated with the project. Riverton is eager to move forward with the same project as proposed in 2000. They have requested that the Construction Agreement, Riverwalk Lease and the License Agreement (which will be addressed in the future) be revised and approved. The other agreements approved by City Council in 2000 remain in effect.

POLICY ANALYSIS

As part of the construction activities associated with the hotel, Riverton will need to temporarily close certain public ROW adjacent to the project, including portions of the River Walk, Navarro Street, Market Street, and Presa Street. The developer estimates construction of the hotel will be completed within 18 months following commencement.

During this 18-month construction period, Riverton will pay the City \$2,000 monthly for use of its ROW. This amount will cover associated administrative, engineering, inspection, and police coordination costs. Beyond 18 months, Riverton will pay escalating fees that encourage the developer to vacate City ROW as quickly as possible following anticipated construction completion. Additionally, the developer will agree to 26 conditions associated with use of City ROW designed to ensure safety and minimize the impacts to the public during construction.

Riverton has agreed to provide the City a number of public improvements, at no cost to the City. These include landscaping improvements, an irrigation system, a drainage water containment system, painting of new chilled water pipelines under the Presa Street Bridge, temporary relocation and permanent reconstruction of a bus stop, and installation of Tri-Party approved streetscaping. In addition, Riverton will preserve and protect the Ethel Wilson Harris tile mural, three plaster Hugman benches, and other Hugman features located along the River Walk adjacent to the project.

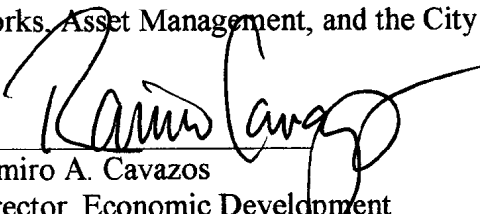
FISCAL IMPACT

The City has already received \$10,899 from the sale of limited air rights, \$27,650 from the sale of limited subsurface rights, and will receive at least \$36,000 in ROW closure fees. The City will forego approximately \$133,000 in ROW closure fees during the 18-month construction period. However, if construction exceeds 18 months, the amount of City ROW closures fees due will significantly increase, according to the schedule attached as Exhibit A.

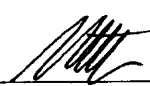
There is no tax abatement or other incentives associated with this hotel or this action. Annual City property tax revenues from this project following completion are estimated at \$294,000. This project is located in "Tax Increment Reinvestment Zone, Number 11" (also known as the "Inner City TIRZ"), and real property taxes generated by the hotel will support improvements in the zone through 2012. The City will also receive hotel occupancy tax and sales tax revenues from this project following completion.

COORDINATION


This item has been coordinated among Economic Development, Parks & Recreation, Public Works, Asset Management, and the City Attorney's Office.



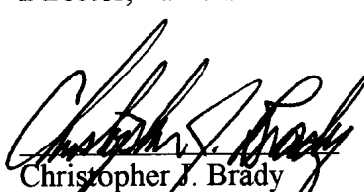
Ramiro A. Cavazos
Director, Economic Development



Malcolm Matthews
Director, Parks and Recreation



J. Rolando Bono
Deputy City Manager



Christopher J. Brady
Assistant City Manager



Terry M. Brechtel
City Manager

Attachments

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:

Not Applicable

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Riverton Suites, Ltd.

and the name of:

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

Not Applicable

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;

HPI Suites, Inc. (General Partner)

HPI Investors, Ltd. (Limited 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.

Not Applicable

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:
No contributions have been made by Riverton Suites, Ltd. Several of the officers of HPI Suites, Inc. (the general partner of Riverton Suites, Ltd.) have made contributions. These contributions are described on the attached Schedules 1-4.		

Disclosures in Proposals

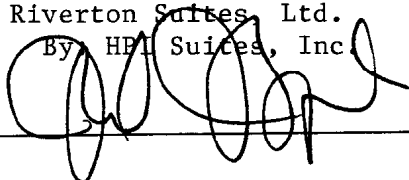
Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action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

Not Applicable

Signature:

Riverton Suites, Ltd.

By: HPI Suites, Inc.



Title: President

Company: HPI Suites, Inc.

Date:

February 13, 2004

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.

SCHEDULE 1

Political Contributions made by Jack J. Spector

David Carpenter Campaign	\$100	3/10/2002
Enrique Berrera Campaign	\$100	6/5/2002
Roger Flores Campaign 2003	\$100	10/22/2002
Carroll Schubert Campaign	\$100	3/11/2003
Roger Flores Campaign 2003	\$100	11/19/2003

SCHEDULE 2

Political Contributions made by George C. Hixon

Ed Garza	\$1,000	2/13/2002
Ed Garza	\$2,500	4/29/2002
Carroll Schubert	\$1,000	7/29/2002
Roger Flores	\$1,000	8/21/2002
Roger Flores Campaign Party	\$2,036.59	12/18/2002
Ed Garza	\$500	2/04/2003
Roger Flores	\$500	5/28/2003
Toni Moorhouse	\$500	4/17/2003

SCHEDULE 3

Political Contributions made by William G. Shown

David Carpenter Campaign	\$100	3/10/2002
Enrique Berrera Campaign	\$100	6/5/2002
Roger Flores Campaign 2003	\$100	10/22/2002
Carroll Schubert Campaign	\$100	3/11/2003
Roger Flores Campaign 2003	\$100	11/19/2003

SCHEDULE 4

Political Contributions made by Stephen D. Seidel

Ed Garza Campaign	\$250	3/31/2003
Carroll Schubert	\$250	4/16/2003

**AMENDED AND RESTATED
CONSTRUCTION AGREEMENT BETWEEN
CITY OF SAN ANTONIO AND RIVERTON SUITES, LTD.**

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS**
COUNTY OF BEXAR §

This Amended and Restated Construction Agreement ("Agreement") is entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereafter "CITY"), acting by and through its City Manager, or her designee, pursuant to City of San Antonio Ordinance No. _____ passed and approved on _____, 2004 and RIVERTON SUITES, LTD., a Texas limited partnership (hereafter "DEVELOPER"), acting by and through its General Partner, HPI SUITES, INC., a Delaware corporation, for the purpose of amending and restating that certain Construction Agreement between said parties executed by City on August 14, 2000, pursuant to Ordinance No. 91935, as amended by that Amendment to Construction Agreement executed to be effective on June 1, 2001, pursuant to Ordinance No. 93838, by that Second Amendment to Construction Agreement executed to be effective on December 31, 2001, pursuant to Ordinance No. 95005, by that Third Amendment to Construction Agreement executed to be effective on June 30, 2002, pursuant to Ordinance No. 95955, and by that Fourth Amendment to Construction Agreement executed to be effective on December 31, 2002, also pursuant to Ordinance No. 95955; and further this Agreement is entered into by and between the parties hereto in accordance with the provisions and conditions of a certain Mutual Release and Settlement Agreement between them, also approved by the June 8, 2000 Ordinance, and which has already taken effect. The parties agree that this Agreement may be substituted for the original Construction Agreement as an exhibit to the Mutual Release and Settlement Agreement.

ARTICLE 1. PURPOSE/CONSIDERATION

1.1 DEVELOPER is planning to construct a project known as the RIVERWALK SUITES HOTEL PROJECT (hereafter "Project"), located on West Market Street, between Navarro and Presa Streets, in San Antonio, Bexar County, Texas on that certain .6390 acre tract of real property on Lot 4, New City Block 157, Southport One Subdivision and the remaining portion of Lot 2 and Lot A-3, New City Block 157, Southport One Subdivision, legally described and shown in Exhibit "A" attached hereto.

1.2 As part of the construction activities associated with development of the Project, DEVELOPER will need to temporarily close off and barricade to pedestrians and vehicular traffic certain public rights-of-way owned by CITY (hereafter the "Premises"), such areas being more specifically shown on Exhibit "B" attached hereto:

- (A) The north bank of the San Antonio River between the Presa and Navarro Street bridges subject to Section 4.7(K) below;
- (B) The east sidewalk of Navarro Street between West Market Street and the northeast edge of the Navarro Street Bridge over the San Antonio River;
- (C) The west sidewalk of Presa Street between West Market Street and the northwest edge of the Presa Street Bridge over the San Antonio River;
- (D) The south sidewalk of West Market Street between Navarro and Presa Streets;
- (E) The eastern most vehicular traffic lane of Navarro Street between West Market Street and the northeast edge of the Navarro Street Bridge over the San Antonio River; and
- (F) If and when closure is allowed pursuant to Section 4.7(P) below, the western most vehicular traffic lane of Presa Street between West Market Street and the north edge of the Presa Street Bridge over the San Antonio River.

1.3 CITY, for and in consideration of the agreements contained herein and the improvements and enhancements set forth in ARTICLE 4 to be made by DEVELOPER, at DEVELOPER's sole cost and expense, for the benefit and use of the general public, agrees and grants permission to DEVELOPER to enter upon the Premises for the sole purpose of constructing the Project and associated public improvements, subject to all terms and conditions contained herein.

1.4 **ROW Closure Fees.** For and in further consideration of CITY's grant to DEVELOPER of the use of the Premises, DEVELOPER shall pay CITY, within ten (10) days after the first of each month following term commencement of this Agreement, according to the following right-of-way closure fee schedule:

<i>Months Following Term Commencement</i>	<i>ROW Closure Fee Paid to CITY by DEVELOPER for Each Month</i>
Term Commencement - Month 18	\$ 2,000.00
Month 19	\$ 10,000.00
Month 20	\$ 12,500.00
Month 21	\$ 15,000.00
Month 22	\$ 18,500.00
Month 23	\$ 21,000.00
Month 24	\$ 23,000.00

The ROW Closure Fee for any month after Month 24 shall be increased each month by an additional \$5,000 per month, i.e. Month 25 will be \$28,000, Month 26 will be \$33,000, Month 27 will be \$38,000, etc., unless otherwise agreed to by CITY, pursuant to the passage of a CITY ordinance.

ARTICLE 2. TERM AND EXTENSIONS

2.1 **Term.** Parties agree that the Term of this Agreement and temporary closure of the Premises to pedestrian/vehicular traffic for construction by DEVELOPER of the Project and associated public improvements, shall be for a period of up to eighteen (18) months after commencement of construction, commencing at 6:00 a.m. local time on the date provided to CITY by DEVELOPER for Construction Commencement (being the date that DEVELOPER

first barricades and uses the Premises) and ending upon the earlier of (i) substantial completion of the Project and conveyance to CITY of the associated public improvements described in ARTICLE 4 below, or (ii) 10:00 p.m. local time on the date which is eighteen (18) months following Construction Commencement, at which time DEVELOPER must reopen the Premises, subject to extensions allowed at Section 2.2 below. DEVELOPER shall provide CITY at least ten (10) days advanced written notice prior to the date of Construction Commencement ("Notice of Intent") and such notice, along with a "Memorandum of Term Commencement Date" executed by both parties, will be attached hereto as Exhibit "C" and will set forth the actual date of Construction Commencement. Under no circumstances can Construction Commencement occur earlier than ten (10) days following the Notice of Intent to CITY. If DEVELOPER does not commence the construction of the Improvements on the date set forth in the Notice of Intent, then DEVELOPER shall reimburse CITY for all expenses actually incurred by CITY for such delay. The phrases "Construction Commencement", "Term Commencement", and "Term Commencement Date" shall be synonymous herein.

2.2 Extensions. Parties agree that the Term of this Agreement may be extended for as many as six (6) consecutive thirty (30) day periods each upon written request by DEVELOPER and subject to written approval of each period by the City Manager or her designee, for the consideration set forth in Section 1.4. DEVELOPER understands and agrees that force majeure is the only acceptable reason for which CITY will agree to extend the term for a period beyond 24 months (that is the original 18 months + six (6) consecutive thirty (30)-day extension periods). "Force majeure," as used herein, shall mean labor disputes, casualties (which are not the result of negligence or misconduct of DEVELOPER or its contractors, subcontractors, agents, employees or others for whose acts DEVELOPER is responsible), acts of God [including more than ten (10) consecutive days of rainy weather] or public enemy, governmental embargo restrictions, strikes, material shortages, action or non-action of public utilities, or other causes beyond DEVELOPER's reasonable control.

2.3 Failure To Commence Project Construction. If the "Notice of Intent" has not been delivered to CITY by June 1, 2004, then DEVELOPER shall deliver to CITY (by June 1, 2004) a statement that it intends to commence construction by December 1, 2004. If DEVELOPER does not deliver such statement to CITY by June 1, 2004, or if DEVELOPER fails to commence construction by December 1, 2004, then this Agreement may be terminated by either party hereto by written notice thereof to the other, whereupon the obligations of the parties which have their inception date subsequent to the date of Construction Commencement shall similarly terminate; however, the conveyances under the Settlement Agreement and Mutual Release between CITY and RIVERTON will not be affected, i.e., CITY will hold fee simple title to the River Walk Property described in said Mutual Release and Settlement. The City Manager, or her designee, has been authorized to terminate this Agreement on behalf of CITY, pursuant to this section, without the prior approval by a subsequent vote of the City Council.

ARTICLE 3. CITY'S SUPERIOR INTEREST

3.1 DEVELOPER acknowledges that this Agreement is personal in nature and vests no right, title or interest in any of the Premises, in any public rights-of-way on, over, under or proximate

to the Project site, or in any of the publicly-owned surface, subsurface or air rights on which the Project and related improvements are to be constructed. Parties agree that the use of any such land, subsurface and/or air rights ("Publicly-owned Property") by DEVELOPER under this Agreement shall never be construed as abandonment by CITY of such Publicly-owned Property.

3.2 CITY grants DEVELOPER the right to use the Premises, subject to the purposes, terms and conditions contained in this Agreement, but reserves the right at any time to enter upon the Premises for asserting CITY's superior fee title or for any emergency which may occur. DEVELOPER agrees to let CITY enter said Premises for the exercise of CITY's superior rights and for said emergency purposes. DEVELOPER, its agents, employees, contractors, and subcontractors shall not impede or hinder Fire Department, Police Department or any emergency vehicle access or egress to the Project site.

ARTICLE 4. WORK TO BE PERFORMED

4.1 **Developer's Work.** Upon and by undertaking Construction Commencement, DEVELOPER agrees to design, develop, construct, complete, and convey to CITY, by Deed Without Warranty or Bill of Sale (as applicable) and prior to termination of this Agreement, the following public improvements (hereafter "Improvements") on the Premises, some of which are more particularly described in Exhibit "D" of this Agreement:

(A) River Level

- (1) Landscaping improvements to existing landscaped areas;
- (2) An irrigation system for existing and to be built landscaped beds, as mutually approved by DEVELOPER and CITY;
- (3) Removal of a walkway that is currently in disrepair due to growth of a Cypress tree and replacement of said walkway with a landscaped area, as identified and approved by CITY;
- (4) Removal, storage and re-installation of all successfully salvaged sidewalk panels (to be determined by CITY) currently located in the River Walk area, and installation of like panels for all unsuccessfully salvaged sidewalk panels;
- (5) Protection of the Hugman Features, as detailed in Section 4.6; and
- (6) Painting of new chilled water pipelines to be installed under the Presa Street Bridge over the San Antonio River, as detailed in Section 4.7(Z);
- (7) Provision of a drainage water containment system for the patio, so that rain and other liquids will be disposed of in a manner that does not drain off the River front portion and does not cause spillage onto patrons seated on the benches or standing under the patio.

(B) Street Level

- (1) Temporary relocation and permanent reconstruction of a bus stop and shelter located on Market Street at Presa Street, in accordance the

- agreement between VIA Metropolitan Transit Authority and DEVELOPER, a copy of which is attached hereto as Exhibit "E"; and
- (2) Installation of Tri-Party approved sidewalks, lights, and trees, and other streetscaping along Market, Presa, and Navarro Streets adjacent to the Project as shown in DEVELOPER's plans for the Project approved by CITY.

4.2 Prior Approvals. Prior to commencing construction of the Improvements, DEVELOPER shall receive all necessary public approvals and/or recommendations from federal, state, and local authorities, including, but not limited to, the Historic Preservation Officer of the City Planning Department, the CITY Historic and Design Review Commission, the Texas Historic Commission, the CITY Development Services Department, and approvals as to removal of any hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act ("SUPRA"), as each may be amended from time to time, and any other applicable environmental laws.

Prior to installing chilled water lines under the Presa Street Bridge, DEVELOPER shall obtain a letter certification acceptable to the City Engineer, from a state registered structural engineer that: (i) the Presa Street Bridge can support the chilled water lines without a material reduction of the load bearing capacity of the bridge, and (ii) the installation of the chilled water lines will not impact the clearance under the bridge.

4.3 Plans and Specifications. DEVELOPER agrees that construction of the Improvements shall be subject to the terms and conditions set forth herein and shall be in accordance with plans and specifications approved in advance and in writing by the City Manager or her designee. Any change orders to construction plans and/or specifications relating to construction of the Improvements must also be approved in writing by the City Manager or her designee.

4.4 Taxes and Fees. DEVELOPER shall pay, on or before the respective due dates, to the appropriate collecting authority, all federal, state and local taxes, license fees, permit fees, debts, and obligations, which are now or may hereafter be levied upon the Project, Improvements and other associated improvements, during the Term of this Agreement, or incurred by DEVELOPER related to its improvements, operations, and activities hereunder, or upon any of DEVELOPER's property used in connection therewith, and shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by DEVELOPER.

4.5 Right-of-way Permits. Permits for use of the Premises and all other necessary street and other right-of-way closures must be issued by CITY Public Works Department, Engineering and Traffic Division and such permits shall be issued in increments of ninety (90) days or less.

4.6 Hugman Features. DEVELOPER agrees to the following conditions associated with Hugman features on the Premises (more particularly described in Exhibit "D") and construction of the Project and related Improvements:

- (A) To preserve and protect two plaster Hugman benches and the Ethel Wilson Harris tile mural;
- (B) To reconstruct (to the extent not salvageable) a third plaster Hugman bench to be placed at a location reasonably determined by CITY, such as an atrium or a lobby of the hotel at the River Walk level;
- (C) To salvage, under CITY's supervision and approval, through the Director of Parks and Recreation, any other Hugman River Walk improvements which may exist on the Premises and Project site (to the extent possible, if not completely salvageable), as mutually agreed upon by the parties, as shown by Architect's plan for the Improvements and Hugman Features shown on Exhibit "D", incorporating a plan submitted by DEVELOPER's contractor to salvage such improvements prior to demolition. If any of the Hugman Riverwalk Improvements to be salvaged under this section are damaged during demolition and/or during construction of the Project, DEVELOPER's contractor will immediately cease construction in the immediate vicinity and contact CITY before proceeding with activity that would further such damage;
- (D) To construct new lighting and utilities for the two plaster Hugman benches and the Ethel Wilson Harris tile mural; and
- (E) To provide to CITY, through DEVELOPER's contractor, Performance Bonds for restoration of the three (3) Hugman Benches, in a form satisfactory to CITY, in an amount equal to the cost of such restoration, as reasonably determined by CITY's Historic Preservation Officer, showing the "CITY OF SAN ANTONIO" as obligee. Copies of said bonds will be attached hereto as Exhibit "F", but DEVELOPER need not provide such bonds to CITY until at least ten (10) days prior to Construction Commencement.

4.7 Other Conditions. DEVELOPER agrees to the following conditions associated with use of the Premises and construction of the Project and related Improvements:

- (A) To close off and barricade the Premises, in accordance with CITY closing procedures for public thoroughfares and in a reasonably safe manner, for the duration of construction on or adjacent to the Premises in order to prevent unauthorized pedestrian and vehicular access;
- (B) To designate pedestrian and vehicular detours and to install, fabricate and maintain signage to denote the pedestrian and vehicular detour routes around the closed and barricaded areas of the Premises, at DEVELOPER's sole expense, as approved by City Manager or her designee;
- (C) To make reasonable efforts to minimize noise and dust pollution during construction, to limit construction time to those times which comply with City Code provisions and to respond to CITY's requests in order to

minimize noise and dust pollution during construction, particularly during demolition and excavation periods;

- (D) To halt all construction for periods of limited duration for the Fiesta River Parade in April, as well as the Holiday River Parade in November , and other similar public events as so directed in writing by CITY with at least thirty (30) days prior notice;
- (E) To provide to CITY, through DEVELOPER's contractor, Payment and Performance Bonds, in a form satisfactory to CITY, in an amount equal to the total cost of the Improvements, including the cost of all labor and materials related thereto, showing the "CITY OF SAN ANTONIO" as obligee for the purpose of assuring the completion of the work described in this ARTICLE 4 and payment of all laborers and suppliers of materials; copies of said bonds will be attached hereto as Exhibit "F", but DEVELOPER need not provide such bonds to CITY until at least ten (10) days prior to Construction Commencement.
- (F) To provide to CITY (from the date of conveyance and rededication to CITY of the completed Improvements, per Section 4.8 below); a one (1) year product and performance Warranty on equipment and materials used; as well as, any warranties or guarantees provided by said DEVELOPER's contractor, subcontractors, and manufacturers, which provision may include assignments;
- (G) To allow CITY entry to the Premises and Project site at all times to provide electrical and other inspections required as part of CITY's governmental functions;
- (H) To secure a final inspection and approval in writing from CITY of the Improvements;
- (I) To provide to CITY five (5) sets of "as-built" plans of record for all Improvements and any other improvements made on CITY property;
- (J) To submit an impact and pavement restoration proposal to the City Public Works Department for any DEVELOPER-funded street resurfacing required to accommodate utility relocation(s);
- (K) To construct a temporary covered walkway during construction along the River Walk to allow uninterrupted pedestrian travel along the north bank of the San Antonio River and to the "wedding island," and to remove said walkway upon construction completion;

- (L) Vehicular traffic lanes of Market Street shall not be closed for the purposes of construction between 6:00 a.m. and 9:00 p.m., Monday through Saturday, inclusive;
- (M) Only the eastern most northbound traffic lane of Navarro Street and the westernmost southward traffic lane of Presa Street (subject to provisions of Section 4.7(P) below) may be utilized for site entry and materials handling, and ingress-egress plans for such use shall be approved in and in writing by the City Public Works Department, Engineering and Traffic Division;
- (N) Any additional lane closure(s) of Navarro Street, other than as provided in Section 1.2(E), may be allowed only between the hours of 9:00 p.m. and 6:00 a.m., Monday through Thursday, inclusive, with the prior written approval of the City Traffic Engineer or his designee, and adjacent property and business owners (in the event of a total closure);
- (O) No deliveries to the construction site shall be made from Market Street and no deliveries to the construction site shall be made from Presa Street unless conversion occurs pursuant to Section 4.7(P) below.
- (P) The westernmost vehicular traffic lane of Presa Street may be closed for the purpose of construction of the Project if:
 - (1) Presa Street between Market and Nueva Streets is converted to northbound one-way operation during such closure(s),
 - (2) DEVELOPER attempts to obtain written concurrence or objection from all property and business owners adjacent to the proposed street conversion at least forty five (45) days in advance of the street conversion;
 - (3) All costs associated with such lane closure(s) and conversion(s) shall be borne by DEVELOPER;
 - (4) Such lane closure(s) shall receive fifteen (15) days prior written approval by the City Traffic Engineer or his designee; and
 - (5) Any conversion of Presa Street shall require forty-five (45) days' advanced notification of the City Council. Such conversion shall also receive fifteen (15) days' prior written approval by the City Council.
- (Q) Special allowances for other temporary, short-term traffic lane closures may be permitted in writing by the City Traffic Engineer or his designee, and are limited to the hours between 9:00 p.m. and 6:00 a.m. with special provisions and cost to the Contractor;
- (R) Other than the Navarro Street closure described at Section 1.2(E) above, and the Presa Street closure described at Section 1.2(F) above and Section 4.7 (S) below, all other temporarily closed traffic lanes shall be restored to normal vehicle operation and the City Traffic Engineer shall have the

authority to suspend any right-of-way permit for special events as follows:
(1) Fiesta, (2) the period from Thanksgiving Day to New Years' Day, and
(3) other special events as provided in writing by the City Traffic Engineer
or his designee, with at least thirty (30) days prior notice;

- (S) Except as described in Section 4.7(T) below, all fencing, walls and other such barriers shall be located at least one (1') foot behind the curb, and all construction fencing (other than gates providing access to the site at locations specified under the approved ingress-egress plan described at Section 4.7(M) above) shall be continuous, with no gates or breaks; DEVELOPER shall install an open chain-link fence for thirty (30') feet in either direction from the corner of West Market and Navarro streets to allow adequate corner sight distance;
- (T) Fencing, walls and other such barriers shall be located at least one (1') foot outside and to the east of the easternmost open vehicular traffic lane on Navarro Street and at least one (1') foot outside and to the west of the westernmost open vehicular traffic lane on Presa Street;
- (U) There shall be no breaks in the construction wall, which wall shall be placed by DEVELOPER at least one (1') foot behind the curb for the length of the construction area along Market Street and at least one (1') foot outside and to the west of the westernmost open vehicular traffic lane on Presa Street;
- (V) DEVELOPER shall not close the northern Market Street sidewalk unless the southern sidewalk remains open to pedestrian traffic during such closure period;
- (W) No closure of the western sidewalk of Navarro or the eastern sidewalk of Presa shall be allowed;
- (X) Uniformed off-duty law enforcement officers shall be posted by DEVELOPER on a daily basis to ensure vehicular and pedestrian safety beginning from the day the lane closures go into effect during construction operations; one officer shall be posted at the corner of Market and Presa Streets and another at the corner of Market and Navarro Streets; and the officers must be present at any time that the temporary gates are open;
- (Y) DEVELOPER shall use and provide CITY a copy of a written safety plan for review by the City Risk Management Division of the City Office of Management and Budget, and a safety supervisor shall be provided by DEVELOPER or DEVELOPER's contractor, who shall be available on-site during normal working hours and shall be identified at the time of permit issuance to include a 24-hour telephone number or numbers for contacting this person; and

- (Z) Following installation by DEVELOPER of two conduits under the west side of the Presa Street Bridge to provide chilled water service to the Project, DEVELOPER shall repaint said new chilled water lines and any other utility/transmission infrastructure (pipes, conduits, etc.) attached to said bridge by DEVELOPER prior to termination of this Agreement, as approved by CITY in advance and in writing and at DEVELOPER's sole cost and expense.

4.8 **Conveyance and Rededication to CITY.** DEVELOPER agrees to convey, and as required by the City Attorney, rededicate to CITY all Improvements within the Premises with CITY agreeing to accept such conveyance and rededication by Ordinance, and thereby assume the obligation for the subsequent upkeep and maintenance of such Improvements upon completion thereof by DEVELOPER in accordance with this Agreement, but subject to the obligations and liabilities of DEVELOPER and its successors under any easements between the parties hereto. CITY agrees to allow DEVELOPER's contractor and subcontractors to enter the area covered herein to perform any necessary warranty work following completion and dedication of the Improvements.

4.9 **Disclaimer of City's Liability.** CITY shall assume no liability and no expense by reason of this Agreement or any activities by DEVELOPER and CITY shall not be liable for any damages caused to the Premises or to the property of DEVELOPER by reason of construction, installation or maintenance performed, authorized or permitted by CITY in the areas covered by this Agreement during the term hereof. Any such damages to the Premises caused by DEVELOPER will be promptly repaired by DEVELOPER.

4.10 **Compliance with Laws.** DEVELOPER at all times shall observe and comply with all federal and state laws, local laws, ordinances, orders and regulations of the federal, state, county or local governments, including the Americans with Disabilities Act and CITY Tri-Party Ordinance No. 69219, as amended. The federal, state and local laws, ordinances and regulations which affect those engaged or employed in the work or equipment used in the work, or which in any way affects the conduct of the work, shall be observed, and no pleas of misunderstanding will be considered on account of ignorance thereof.

ARTICLE 5. LIENS PROHIBITED / SIGNAGE

5.1 **No Liens.** DEVELOPER covenants that it will not bind, nor will DEVELOPER's contractor or subcontractors bind, or attempt to bind, CITY for the payment of any money in connection with any construction, repair, maintenance, alterations, additions, improvements, adjustments, relocation, or reconstruction work in, on, or about the Premises and any other public rights-of way being improved, whether authorized or unauthorized hereunder.

5.2 **Payment.** DEVELOPER hereby agrees to promptly pay all persons supplying labor, services, and materials in the performance of any and all construction work, including any current work during the Term hereof or any future construction, repair, maintenance, alterations, additions, adjustments, relocation or reconstruction that may hereafter be made after the end of

the Term as to any improvements not dedicated to CITY, but which may be encroaching on CITY-owned property, and **DEVELOPER will require DEVELOPER's contractor and subcontractors TO FULLY INDEMNIFY AND HOLD HARMLESS the CITY against any and all claims, liens, suits, or actions asserted by any person, persons, firms or corporation on account of the acts or omissions of said contractors or subcontractors during the performance of any said construction and against any claim for injury or death to persons or damage to property.**

5.3 **Signage.** DEVELOPER will have DEVELOPER's contractor and subcontractors agree to install all signs, including location, direction and warning signs, as required by applicable CITY and Bexar County ordinances, as well as, state and federal laws, in case construction, maintenance, or operations of the improvements warrant same.

ARTICLE 6. BREACH OF CONTRACT

6.1 All terms, conditions and specifications of this Agreement shall be considered material, and failure to perform any part of this Agreement shall be considered a breach of contract. Should a Party in default fail to remedy any breach of contract within thirty (30) days after written notification from the other party ("Non-defaulting Party") to the Party of the violation ("Defaulting Party"), the Non-defaulting Party may terminate this Agreement at its option. The rights to terminate herein are in addition to any other remedies available to it at law or in equity, whether or not stated herein. This Agreement shall not be terminated, however, if the Defaulting Party has commenced to cure the breach within said thirty (30) day period, and thereafter pursues such cure with reasonable diligence and in good faith, but not later than sixty (60) days after written notification from the Non-defaulting Party, subject to force majeure.

6.2 Notwithstanding Section 6.1 above, if DEVELOPER breaches this Agreement in such a fashion that an ongoing activity, or failure to act, would constitute a threat to city property, CITY may terminate this Agreement if: (i) CITY gives oral notice of such activity, or failure to act, directly to Bill Shown or John Beauchamp, followed by written notice to Bill Shown or John Beauchamp (such notice to be sent by fax to 225-5910); and (ii) DEVELOPER does not cease such activity or take remedial action within one business day of such notice. Notwithstanding the preceding, if such breach cannot reasonably be cured within one business day of notice from CITY, CITY may not terminate this Agreement so long as: (i) DEVELOPER meets with representatives of the CITY within one (1) business day of receiving notice of the breach to organize a reasonable strategy for curing the breach, and (ii) DEVELOPER diligently pursues an agreed upon strategy for curing for the breach. Because of the severe nature of this paragraph, the oral notice to be provided hereunder by CITY must be delivered directly, either in person or by phone (225-3053). A voice-mail message will not suffice. Also, in connection such notice, CITY agrees to make a good faith effort to contact a representative of DEVELOPER'S contractor and notify such representative of the breach.

ARTICLE 7. INDEMNITY

7.1 **DEVELOPER will be solely responsible for all materials, equipment and work connected with the construction, repair, and maintenance of the Improvements during the**

Term of this Agreement and any extensions. Further, DEVELOPER covenants and agrees to FULLY REIMBURSE, INDEMNIFY, and HOLD HARMLESS, CITY and the elected officials, agents, employees, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants and representatives of CITY individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury, death and property damage, (the "Damages") made upon CITY, directly or indirectly arising out of, resulting from or related to DEVELOPER's activities or CITY's activities under this Agreement, including any acts or omissions of DEVELOPER, any agent, officer, director, representative, employee, consultant, subconsultant, licensee, sublicensee, contractor or subcontractor of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise of the performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DEVELOPER shall promptly advise CITY in writing of any claim or demand against CITY or DEVELOPER known to DEVELOPER and related to or arising out of DEVELOPER's activities or CITY's activities under this Agreement, and shall see to the investigation and defense of such claim or demand at DEVELOPER's cost. Notwithstanding any condition imposed by a policy of insurance to which DEVELOPER and CITY are named, CITY shall retain the right, at its option and at its own expense, to participate in such defense provided by any insurance or self-insurance of DEVELOPER under this ARTICLE without relieving DEVELOPER of any of its obligations under this ARTICLE.

7.2 It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this Article, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS CITY from the consequences of CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant personal injury, death or property damage, and shall have no application when the negligent act of CITY is the sole cause of said resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against CITY and its representatives elected officials, agents, employees, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

ARTICLE 8. INSURANCE

8.1. Prior to the commencement of any work under this Agreement, DEVELOPER shall furnish an original completed Certificate(s) of Insurance or CITY's Standard Certificate(s) of Insurance form to CITY's Parks and Recreation Department and CITY Clerk's Office, which shall be

completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to CITY's Parks and Recreation Department and the CITY Clerk's Office, and no officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.

8.2 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed reasonably necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will CITY allow modification whereupon CITY may incur increased risk.

8.3 DEVELOPER's financial integrity is of interest to CITY, therefore, subject to DEVELOPER's right to maintain reasonable deductibles in such amounts as are approved by CITY, in advance, DEVELOPER shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at DEVELOPER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

TYPE	AMOUNT
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of CITY
Employers' Liability	\$500,000/\$500,000/\$500,000, with a waiver of subrogation in favor of CITY
2. Commercial General (public) Liability Insurance to include coverage for the following:	For Bodily Injury, Death and Property Damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate or in combination with an Excess Liability Policy to provide such Personal injury limit.
<ul style="list-style-type: none"> • Premises / operations • Independent contractors • Products/completed operations • Contractual liability • Explosion, collapse, underground • Broad form property damage, to include fire legal liability 	
3. Business Automobile Liability	Combined Single Limit for Bodily Injury and Property
<ul style="list-style-type: none"> • Owned/leased vehicles 	

<ul style="list-style-type: none"> • Non-owned vehicles • Hired vehicles 	Damage of \$1,000,000 per occurrence or its equivalent.
4. Professional Liability (Claims made form) (to be maintained by Architects, Engineers or other construction related professionals)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
5. Builders' Risk (all risk physical loss)	Replacement cost coverage in an amount sufficient to cover the improvements under construction
6. Contractor's Pollution Liability* Coverage (including cleanup costs) (to be maintained by DEVELOPER's contractor)	\$1,000,000
7. Motor Cargo Pollution Liability* (collectively with Contractor's Pollution Liability Coverage also known as "Environmental coverage insurance") to be maintained by DEVELOPER's subcontractor	\$5,000,000

*As deemed applicable by CITY

8.4. CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, DEVELOPER shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

8.5 DEVELOPER agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name CITY and its elected officials, employees, agents, officers, directors, and any CITY volunteers, contractors, subcontractors, consultants, subconsultants and representatives who work on the Project and Improvements as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the Workers' Compensation and Employers' Liability Policies;

- DEVELOPER's insurance shall be deemed primary with respect to any insurance or self-insurance carried by CITY for liability arising out of operations under the Agreement with CITY; and

8.6 DEVELOPER shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

City of San Antonio
Parks & Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

8.7 If DEVELOPER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of DEVELOPER to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon DEVELOPER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order DEVELOPER to stop work on the Improvements hereunder, and/or withhold any payment(s) which become due, to DEVELOPER hereunder until DEVELOPER demonstrates compliance with the requirements hereof.

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which DEVELOPER may be held responsible for payments of damages to persons or property resulting from DEVELOPER's or its contractor's or subcontractors' performance of the work covered under this Agreement.

8.9 Also, DEVELOPER agrees to cause its contractor to provide to CITY, at least ten (10) days prior to the start of any construction, endorsements to the above-required policies, which add to these policies the applicable clauses referenced above in Section 8.5. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by CITY, it shall be DEVELOPER's responsibility to see that CITY receives documentation acceptable to CITY which confirms that the individual signing said endorsements is authorized to do so by the insurance company.

8.10 All personal property placed in or on the Premises by DEVELOPER or its officers, employees, agents, contractor, subcontractors, consultants, subconsultants or representatives during the Term of this Agreement shall be at the sole risk of such parties. CITY shall not be liable and DEVELOPER, on behalf of such parties, waives all claims for any damage either to

the person or property of such parties or to other persons due to the happening of any accident in or about said Premises or damages resulting from the bursting or leaking of any water, gas, waste pipes, or defective wiring or excessing or deficient electric currency or from any act or omission of any parties who may come on the Premises during the term hereof, unless caused by CITY's sole active negligence. **DEVELOPER agrees to save and hold harmless CITY from any claims arising out of damages to DEVELOPER's property or damage to DEVELOPER's business, during the Term of this Agreement including subrogation claims by DEVELOPER's insurers, unless such damage is caused by CITY's sole active negligence.**

8.11 If it is necessary for DEVELOPER or its contractor and/or subcontractors to return to the Premises to make repairs, maintenance, alterations, additions, or other improvements or to perform warranty work in the future, after the end of the Term hereof, then the insurance provisions herein will apply.

ARTICLE 9. FIRE AND OTHER CASUALTY

9.1 In the event that any improvements being constructed on the Premises shall be damaged during the Term hereof by fire, the elements, civil disorder, or other casualty, the improvements shall be repaired at the sole cost and expense of DEVELOPER without unreasonable delay.

ARTICLE 10. ASSIGNMENT

10.1 This Agreement is personal to DEVELOPER and shall not be assigned, other than to DEVELOPER's parent corporation or subsidiary, or to the lender providing funds for construction of the Improvements, without the prior written consent of CITY, as evidenced by passage of a future CITY Ordinance.

ARTICLE 11. CONDEMNATION

11.1 It is understood and agreed that in the event that the Premises are taken, in whole or in part, by any governmental authority other than CITY, this Agreement and all rights or permission to use hereunder shall, at the option of CITY, cease on the date title to such land so taken or transferred vests in the condemning authority. DEVELOPER hereby waives all rights to any proceeds of such condemnation. Nothing herein shall preclude CITY from exercising its inherent right of eminent domain.

ARTICLE 12. SEVERABILITY

12.1 The parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or ordinances of CITY, effective during the Term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision

as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

ARTICLE 13. AMENDMENT

13.1 No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed and agreed to by the parties hereto.

ARTICLE 14. GOVERNMENTAL RULES

14.1 Nothing contained herein shall relieve or release DEVELOPER or CITY from any governmental rules relating to the design, construction, development or operation of the Project or the Improvements (including governmental rules that are procedural, as well as or rather than, substantive in nature). DEVELOPER acknowledges that CITY is a municipal corporation operating pursuant to a home-rule charter which exercises certain police powers, taxation powers and other governmental functions of general application which affect the Project and the Improvements. This Agreement shall not in any way affect the good faith exercise of CITY's powers, duties and authorities. The approval or consent by CITY of any matter submitted to CITY pursuant to this Agreement, which matter is specifically provided herein to be approved or consented to by CITY in its capacity as a party to this Agreement, shall not constitute a replacement or substitute for, or otherwise excuse the DEVELOPER from, such permitting, licensing or approval processes under the City Codes, including the Unified Development Code, as amended, or any other governmental rules; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse DEVELOPER from, any requirement hereunder for the approval or consent of CITY under this Agreement. Nothing contained or set forth in this Article or elsewhere in this Agreement is intended or shall operate to limit the obligation of CITY under this Agreement to work and cooperate with DEVELOPER, and actively assist DEVELOPER, in good faith and to the fullest extent possible without conflicting with CITY's performance of its governmental functions, in the exercise of DEVELOPER's rights and the accomplishment of DEVELOPER's duties and obligations hereunder.

ARTICLE 15. NONDISCRIMINATION

15.1 DEVELOPER covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Improvements which said discrimination DEVELOPER acknowledges is prohibited.

ARTICLE 16. WAGES

16.1 DEVELOPER shall pay wages that are not less than the minimum wages if and as required by federal and state statutes and City ordinances, to persons employed in the construction of the Improvements.

ARTICLE 17. CONFLICT OF INTEREST

17.1. DEVELOPER acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit CITY or a CITY officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, from having a financial interest in any contract with CITY or any CITY agency such as CITY- owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to 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 or her parent, child or spouse; a business entity in which the officer or employee, or his or her 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.

17.2 DEVELOPER warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. DEVELOPER further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

ARTICLE 18. NOTICES

18.1 Notices to CITY required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed registered or certified mail, postage prepaid, addressed to City of San Antonio ATTN: City Clerk, P.O. Box 839966, San Antonio, Texas 78283-3996 (with a copy to the Director of CITY Parks and Recreation Department at the same address) or to such other address as may have been designated in writing by the City Manager of the City of San Antonio, from time to time. Notices to DEVELOPER (other than notice required under Section 6.2) shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to Riverton Suites, Ltd., 315 E. Commerce, Suite 300, San Antonio, Texas 78205, Attn: Jack J. Spector, or to such other address on file with the City Clerk. All notices will be deemed received by the fifth (5th) day after the date of mailing.

ARTICLE 19. APPROVAL OF THE CITY

19.1 Whenever this Agreement calls for approval by CITY, unless otherwise explained herein, or unless otherwise required by the CITY Charter, such approval shall be evidenced by the written approval of, as applicable, the City Manager, or her designee, including any Assistant City Manager, an Assistant to the City Manager, the Director of the Parks & Recreation Department of the CITY the Director of the Public Works Department of the CITY or any of their respective designees.

ARTICLE 20. RELATIONSHIP OF PARTIES

20.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

ARTICLE 21. TEXAS LAW TO APPLY

21.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Further, the privileges granted hereunder shall be construed to be only those authorized by pertinent Texas Statutes and the City Charter of the City of San Antonio, Texas and not to include anything inconsistent with the rights of the public in the aforementioned right-of-way. DEVELOPER, in connection with construction of the Improvements, agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations.

21.2 Should any action, whether real or asserted, at law or in equity, arise out of the execution of this Agreement, venue for said action shall lie in Bexar County, Texas.

ARTICLE 22. GENDER

22.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

ARTICLE 23. CAPTIONS

23.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

ARTICLE 24. COVENANTS

24.1 The covenants and obligations of DEVELOPER contained herein shall be binding upon its successors, legal representatives and assigns.

ARTICLE 25. ENTIRE AGREEMENT

25.1 This Agreement, with its attachments and the authorizing ordinance (a copy of which is attached hereto as Exhibit "G"), in writing, constitute the entire agreement between the parties with respect to the subject matter hereof, with any other written or parol agreement with DEVELOPER being expressly waived by DEVELOPER. It is understood that the CITY Charter requires that all contracts with CITY be in writing and adopted by ordinance.

ARTICLE 26. AUTHORITY

26.1 The signer of this Agreement for DEVELOPER hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of DEVELOPER in accordance with the terms and conditions stated herein. The signer of this Agreement for CITY hereby represents that he or she has full authority to execute this Agreement on behalf of CITY in accordance with the terms and conditions stated herein. The City Council of CITY, by the Ordinance referenced on Page 1, authorized the City Manager or her designated representative to negotiate and execute this Agreement. DEVELOPER further represents and warrants that he has fully read and understands this Agreement and has been provided the benefit of legal counsel for such purposes.

Executed on the dates below each signature to be effective ten (10) days after the date of passage of the 2004 Ordinance set forth on Page 1 of this Agreement ("Effective Date").

CITY:


CITY OF SAN ANTONIO,
a Texas Municipal Corporation

By: _____
Name: _____
Title: _____
Date: _____

DEVELOPER:

RIVERTON SUITES, LTD.
a Texas Limited Partnership, acting by
and through its General
Partner
HPI SUITES, INC., a Delaware Corporation

JSB
2/16/04

By: 
Name: William G. Shoen
Title: Vice President
Date: Feb 19, 2004

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS TO AGREEMENT

EXHIBIT A	Description of the Project Site and Premises
EXHIBIT B	Public Rights-of-Way to be temporarily closed
EXHIBIT C	Notice of Intent and Memorandum of Term Commencement Date
EXHIBIT D	Improvements and Hugman Features
EXHIBIT E	VIA Bus Shelter Agreement
EXHIBIT F	Copies of Payment and Performance Bonds
EXHIBIT G	Copy of 2004 Authorizing Ordinance



FIELD NOTES
FOR

A 0.6418 acre (27,955 square foot) tract of land being all of Lot 4, New City Block 157, Southport One Subdivision as recorded in Volume 9504, Page 188, Deed and Plat Records of Bexar County, Texas, and the remaining portion of Lot 2, and Lot A-3, New City Block 157, San Antonio, Bexar County, Texas, as recorded in Volume 2324, Page 988, Deed Records of Bexar County, Texas, and being more particularly described as follows:

- BEGINNING:** At a found $\frac{1}{4}$ " iron rod at the intersection of the east right-of-way line of Navarro Street and the southwest right-of-way line of W. Market Street, the north corner of the above referenced Lot 4, the north corner of the herein described tract;
- THENCE:** S $76^{\circ}56'34''$ E, (bearings are based on the Subdivision Plat of Westin Riverwalk recorded in Volume 9538, Page 224, Deed and Plat Records of Bexar County, Texas), with the southwest right-of-way line of W. Market Street, at 139.05 feet pass a found nail, the east corner of the referenced Lot 4, the north corner of the remaining portion of the referenced Lot 2, and continuing a total distance of 184.00 feet to a set "+" in concrete at the intersection of the southwest right-of-way line of W. Market Street and the west right-of-way line of South Presa Street, the east corner of the herein described tract;
- THENCE:** S $21^{\circ}59'37''$ W, with the west right-of-way line of South Presa Street, at 105.90 feet pass the south corner of the remaining portion of Lot 2, the east corner of the remaining portion of Lot A-3, and continuing a total distance of 189.58 feet to a set "+" in concrete, a point on the north line of the San Antonio River, the south corner of the herein described tract;
- THENCE:** With the north line of the San Antonio River, the following:
- N $66^{\circ}52'45''$ W, 46.16 feet to a found "+" on a concrete wall, an angle;
- N $67^{\circ}36'18''$ W, 24.54 feet to a found "+" on a concrete wall, an angle;
- N $33^{\circ}03'02''$ W, 32.68 feet to a found "+" on a concrete wall, an angle;

N 53°40'13" W, 69.67 feet to a found "+" on a concrete bridge rail, a point on the east right-of-way line of Navarro Street, the west corner of the herein described tract;

THENCE: N 14°16'34" E, 125.08 feet with the east right-of-way line of Navarro Street to the POINT OF BEGINNING, containing 0.6418 acres. Said tract of land being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

SAVE AND EXCEPT THE 0.0028 ACRE TRACT DESCRIBED
AS FOLLOWS:

Prepared by: Pape-Dawson Engineers, Inc.
Job No.: 9186-99
Date: March 22, 1999
Revised: April 2, 1999, July 12, 2000
Doc. Id.: 4661\00\WORD\FIELD NOTES\000712A1.DOC

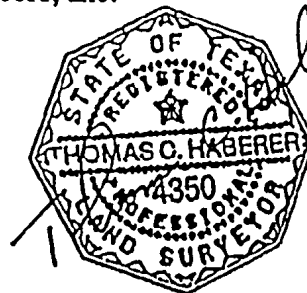


FIELD NOTES
FOR

A 0.0028 acre (120 square foot) tract of land, situated within Lot 4, New City Block (N.C.B.) 157, Southport One Subdivision, in the City of San Antonio, Bexar County, Texas, as recorded in Volume 9504, Page 188, Deed and Plat Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

- BEGINNING: At a found "X" in concrete bridge rail at the intersection of the east right-of-way line of Navarro Street (a 60-foot right-of-way) with the north line of the San Antonio River, said point being the southwest corner of the referenced Lot 4;
- THENCE: S 53°40'13" E, (bearings are based on the subdivision plat of Westin Riverwalk as recorded in Volume 9538, Page 224, Deed and Plat Records of Bexar County, Texas) a distance of 0.33 feet, coincident with the north line of the San Antonio River, the south line of Lot 4, to the POINT OF BEGINNING and the north corner of the herein described tract;
- THENCE: S 75°43'21" E, departing from the north line of the San Antonio River and entering Lot 4, a distance of 8.51 feet to the northeast corner of the herein described tract;
- THENCE: S 51°39'14" E, a distance of 45.74 feet to the southeast corner of the herein described tract;
- THENCE: S 14°16'39" W, a distance of 1.71 feet to the southwest corner of the herein described tract on the said north line of the San Antonio River;
- THENCE: N 53°40'13" W, a distance of 54.25 feet, coincident with the north line of the San Antonio River, the south line of Lot 4, to the POINT OF BEGINNING, containing 0.0028 of an acre in accordance with a survey made on the ground by Pape-Dawson Engineers, Inc.

Prepared by: Pape-Dawson Engineers, Inc.
Job No: 4661-00
Date: July 12, 2000
Doc Id: 466100\WORD\FIELD NOTES\000510A1.DOC

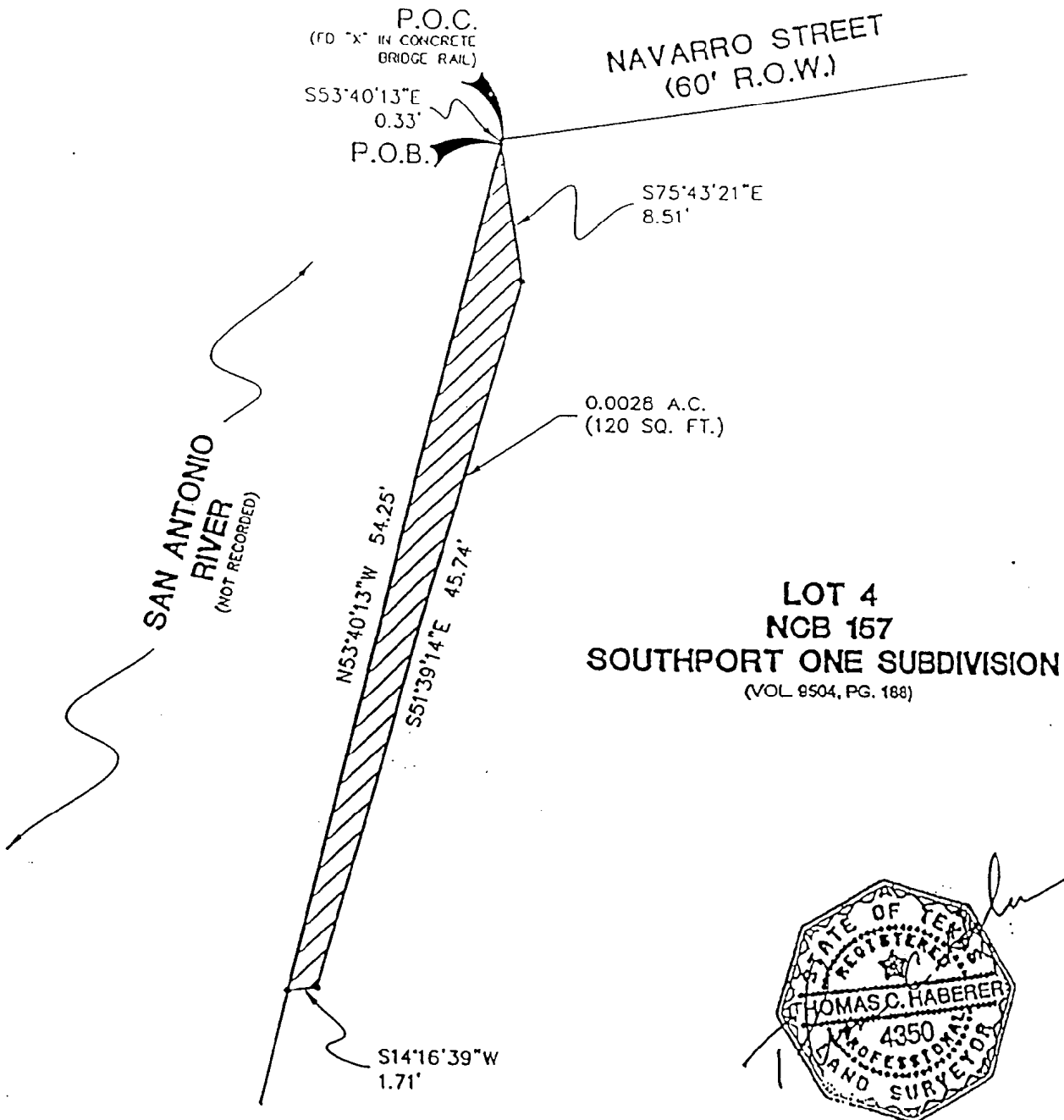
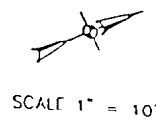


PAPE-DAWSON ENGINEERS, INC.

555 East Ramsey | San Antonio, Texas 78216 | Phone: 210.375.9000 | Fax: 210.375.9010 | Info@pape-dawson.com

A SURVEY OF

A 0.0028 ACRE (120 SQUARE FOOT) TRACT OF LAND,
SITUATED WITHIN LOT 4, NEW CITY BLOCK (N.C.B.) 157,
SOUTHPORT ONE SUBDIVISION, IN THE CITY OF SAN ANTONIO,
BEXAR COUNTY, TEXAS, AS RECORDED IN VOLUME 9504,
PAGE 188, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.



**LOT 4
NCB 157
SOUTHPORT ONE SUBDIVISION**
(VOL. 9504, PG. 188)

NOTES:

BEARINGS ARE BASED ON THE SUBDIVISION PLAT OF WESTIN RIVERWALK AS RECORDED IN VOLUME 9538, PAGE 224, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

THE PROFESSIONAL SERVICES PROVIDED HERewith INCLUDE PREPARATION OF A FIELD NOTE DESCRIPTION.

PAPE-DAWSON **ENGINEERS**
CIVIL & ENVIRONMENTAL

SAN ANTONIO TEXAS 78216

635 E. RAMSEY

210-375-8000

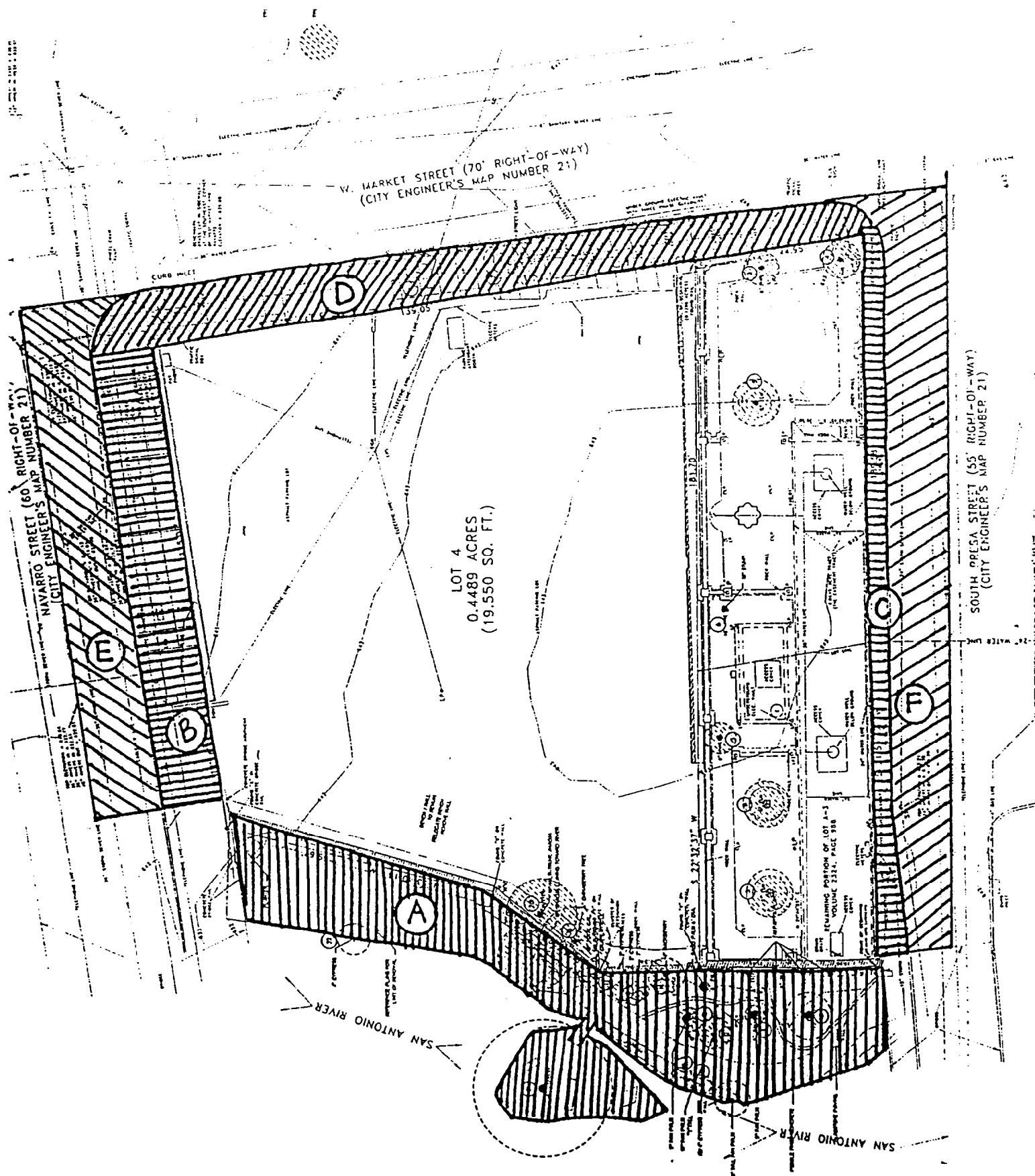


EXHIBIT "C"

**NOTICE OF INTENT and
MEMORANDUM OF TERM COMMENCEMENT DATE
(BOTH DOCUMENTS TO BE ATTACHED AT A LATER DATE)**

RIVERWALK SUITES
HUGMAN FEATURES

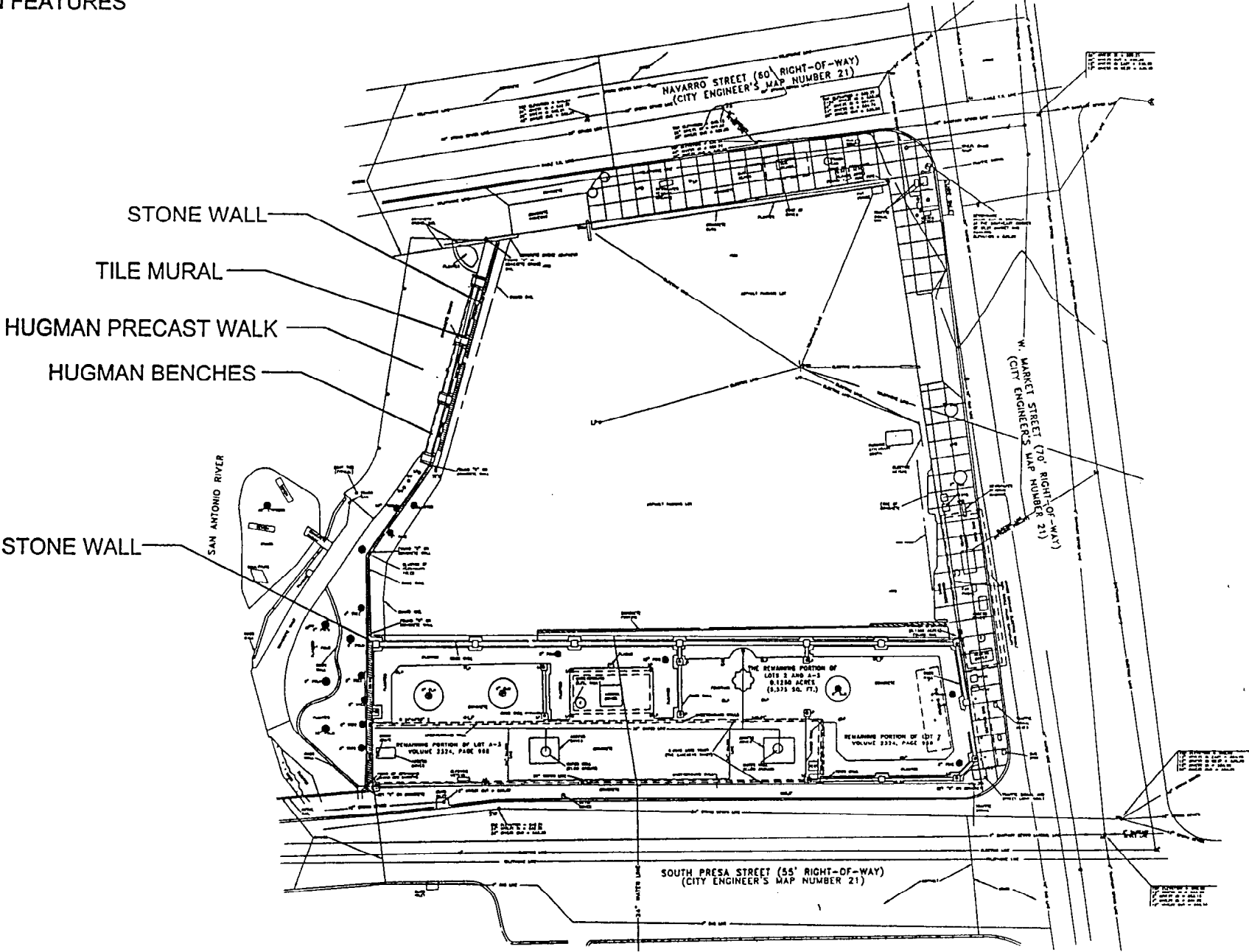


EXHIBIT "D"

EXHIBIT "E"

BUS SHELTER AGREEMENT

THIS AGREEMENT is entered into by and among VIA Metropolitan Transit ("VIA") and Riverton Suites, Ltd. ("Riverton").

WHEREAS, Riverton has entered into a contract to acquire that certain property at the southwest corner of Market and Presa Streets in San Antonio, Texas, as more particularly described on the attached Exhibit "A" (the "Property");

WHEREAS, VIA maintains a bus stop on the Property to service Market Street routes, and in connection with proposed development on the Property VIA has agreed to allow the temporary relocation of the bus stop facility on the Property to an area in the Market Street right-of-way adjacent to the Museum Property (as shown in Exhibit "A") to accommodate construction; and

WHEREAS, the parties to this Agreement have agreed with respect to the relocation and reconstruction of the VIA bus shelter and desire to evidence their agreements as set forth below;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Subject to the rights of Riverton to relocate and reconfigure the same as provided below, Riverton grants to VIA the right and license to continue to use and maintain the transit facilities, including the existing bus shelter (the "Existing Facilities") on part of the Property fronting on Market Street, as such facilities and property are shown on Exhibit "B". Upon completion of the New Shelter (defined below), the license granted under this paragraph will apply to VIA's use and maintenance of the New Shelter in accordance with the terms herein.
2. Riverton proposes to construct a multi-level hotel on the Property and other adjacent property (the "Project"). The Existing Facilities will interfere with construction of the Project. Therefore, Riverton and VIA agree that Riverton will have the right to remove the Existing Facilities from the Property and VIA will redirect its patrons to, among other stops, the temporary bus stop ("Temporary Stop") adjacent to the Museum Property in the location and in accordance with the drawings more particularly described in Exhibit "C". In addition, Riverton will remove the bus shelter and signage currently existing on Navarro Street just south of Market Street ("Navarro Street Stop") no more than fifteen (15) days prior to commencement of construction of the Project. Upon removal of the Existing Facilities and the Navarro Street Stop, Riverton will (at its sole cost and expense) transport and install two of the bus shelters, in their pre-existing condition, at a location in the downtown area to be determined by VIA (such determination to be made by the date on which the Existing Facilities and the Navarro Street Stop are removed). The two shelters to be transported and reinstalled are: (i) the shelter at the Navarro Street Stop; and (ii) the smaller of the two shelters at the Existing Facilities (designated on Exhibit "B" by an asterisk). The remaining shelter will be delivered to VIA by Riverton, at Riverton's sole cost and expense.
3. As part of the construction of the Project, Riverton will construct a new bus shelter ("New Shelter") on approximately 225 square feet of the Property at the location and in accordance with the drawings attached hereto as Exhibit "D" or as otherwise agreed upon in writing between Riverton and VIA. VIA will, at its expense, supply and own the benches for the New Shelter. The New Shelter will be completed and operational upon the earlier of: (i) the last day of the twenty-seventh month from the date on which the Existing Facilities are removed; or (ii) the ninetieth day after substantial completion of the Project. If Riverton requests an extension of the date for completion of the New Shelter, such extension will not be unreasonably denied. Riverton will pay all costs and expenses related to the construction of the New Shelter on the Property. Riverton covenants and agrees to fully indemnify and hold harmless VIA and its elected officials, employees, officers, directors and representatives (the "Indemnified Parties") from and against any and all costs, claims, liens, damages, lawsuits, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action and liabilities for personal injury or death and property damage (including damage to the VIA shelters), made upon the Indemnified Parties, arising out of or resulting from the removal of the Existing Shelter or the construction of the New Shelter by Riverton in

accordance with this Agreement, including any acts or omissions of Riverton and any agent, officer, director, representative, employee, consultant or subcontractor of Riverton, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights, duties or obligations under this Agreement. This indemnity does not cover any liability connected with or arising out of the design of any bus shelter or the operations or use thereof. The provisions of this indemnity are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. It is the express intent of the Parties to this Agreement that the indemnity provided for in this Section is an indemnity extended by Riverton to INDEMNIFY, PROTECT AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THE INDEMNIFIED PARTIES' OWN NEGLIGENCE, provided however, that the indemnity provided for in this Section shall apply only when the negligent act of the Indemnified Party is a contributory cause of the resultant injury, death or damage, and shall have no application when the negligent act of the Indemnified Party is deemed to be the sole cause of the resultant injury, death or damage. In connection with the indemnity under this paragraph, Riverton will maintain a commercial general liability insurance policy in the amount of, at least, \$1,000,000, and shall provide VIA with a certificate of such policy, naming VIA as an additional insured party.

4. The following provisions shall apply to all of the rights and easements granted to VIA hereunder:
 - a. All rights and licenses provided to VIA under this Agreement are given for the benefit of VIA and its transit patrons. The rights and licenses granted to VIA are personal in nature to VIA, and VIA shall not assign its rights under this Agreement or any interest therein, without the prior written consent of the Parties granting such rights and licenses. The general public acquires no rights to the Property under this agreement.
 - b. The transit facilities provided for in this Agreement shall be limited to those related to transit vehicle loading, unloading and waiting and to amenities associated with transit patron waiting areas.
 - c. VIA shall, at its expense, keep and maintain the New Shelter in good and safe physical condition, and good appearance, free and clean of debris. Included in VIA's scope of responsibility is the maintenance of all transit facilities installed by VIA on the Property, as well as the repair of damage to the New Shelter caused by vandalism by VIA patrons. In the event that VIA has not caused repair within 5 working days of written notification provided to VIA, Riverton may perform the repair and VIA shall reimburse Riverton for its reasonable cost. VIA will, at its cost, change light bulbs as necessary, in the lighting fixtures provided by Riverton.
 - d. Riverton shall, at its expense, keep and maintain the structural elements and integrity of the New Shelter in good and safe physical condition. Riverton shall provide sufficient lighting over the New Shelter (including power and fixtures) during nighttime hours.
 - e. The rights granted to VIA shall continue until the first to occur of the following: (i) VIA advises Riverton in writing of the intent to surrender use of the specific property or other right; (ii) VIA abandons the use of the improvements upon the Property for a period of six (6) months; or (iii) thirty (30) days after notification to VIA of its default of any term or condition of this Agreement, but only if VIA has failed to cure the default within such thirty (30) day period.
5. Any notice under this Agreement shall be sufficiently provided, if in writing and delivered by either (i) hand delivery, (ii) mailing of said notice by certified mail, return receipt requested, or (iii) overnight delivery by overnight courier service, to the following addresses, or as otherwise designated in writing from time to time by the parties:

VIA Metropolitan Transit
800 West Myrtle
San Antonio, Texas 78212
ATTN: John M. Milam, General Manager

Riverton Suites, Ltd.
315 E. Commerce St., Suite 300
San Antonio, Texas 78205
ATTN: William G. Shown

6. This Agreement embodies the entire agreement and understanding between the parties as to the matters set forth herein and (in partial consideration for this agreement) only upon becoming effective as provided below, supercedes all prior negotiations, agreements and understandings, including, without limitation, that certain Agreement between VIA and SAWS dated November 21, 1997 and recorded in Volume 7282, Page 536 of the Real Property Records of Bexar County, Texas. This Agreement will become effective only if, as and when Riverton acquires fee title to the Property, upon and after which time a memorandum of this Agreement may be filed of record in the Real Property Records of Bexar County, Texas. Any provision of this Agreement may be modified, waived or discharged only by an instrument in writing signed by the party against which enforcement of such modification, waiver or discharge is sought.
7. The laws of the State of Texas shall govern the validity, performance and enforcement of this Agreement. This Agreement is performable in Bexar County, Texas. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.
8. Time is of the essence with respect to each provision, term and covenant of this Agreement.
9. Neither this Agreement nor any memorandum thereof shall be recorded in the Real Estate Records of Bexar County, Texas, or elsewhere except as otherwise expressly permitted by the terms hereof.
10. All rights, licenses, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that nothing in this paragraph shall be deemed to permit any assignment or use contrary to the provisions of this Agreement.
11. If not sooner terminated, this Agreement shall terminate on December 31, 2016, unless renewed and extended by a written instrument signed by all the parties.

Executed as of the 2nd day of JUNE, 2000

VIA METROPOLITAN TRANSIT

By: _____


John M. Milam
General Manager

RIVERTON SUITES, LTD.

By: _____


HPT Suites, Inc.
General Partner

By: _____

Printed Name: JACK J. SPECTOR
Title: PRESIDENT

Exhibits:

Exhibit "A" – Property
Exhibit "B" - Existing Facilities
Exhibit "C" – Temporary Stop
Exhibit "D" – New Shelter

EXHIBIT "A"

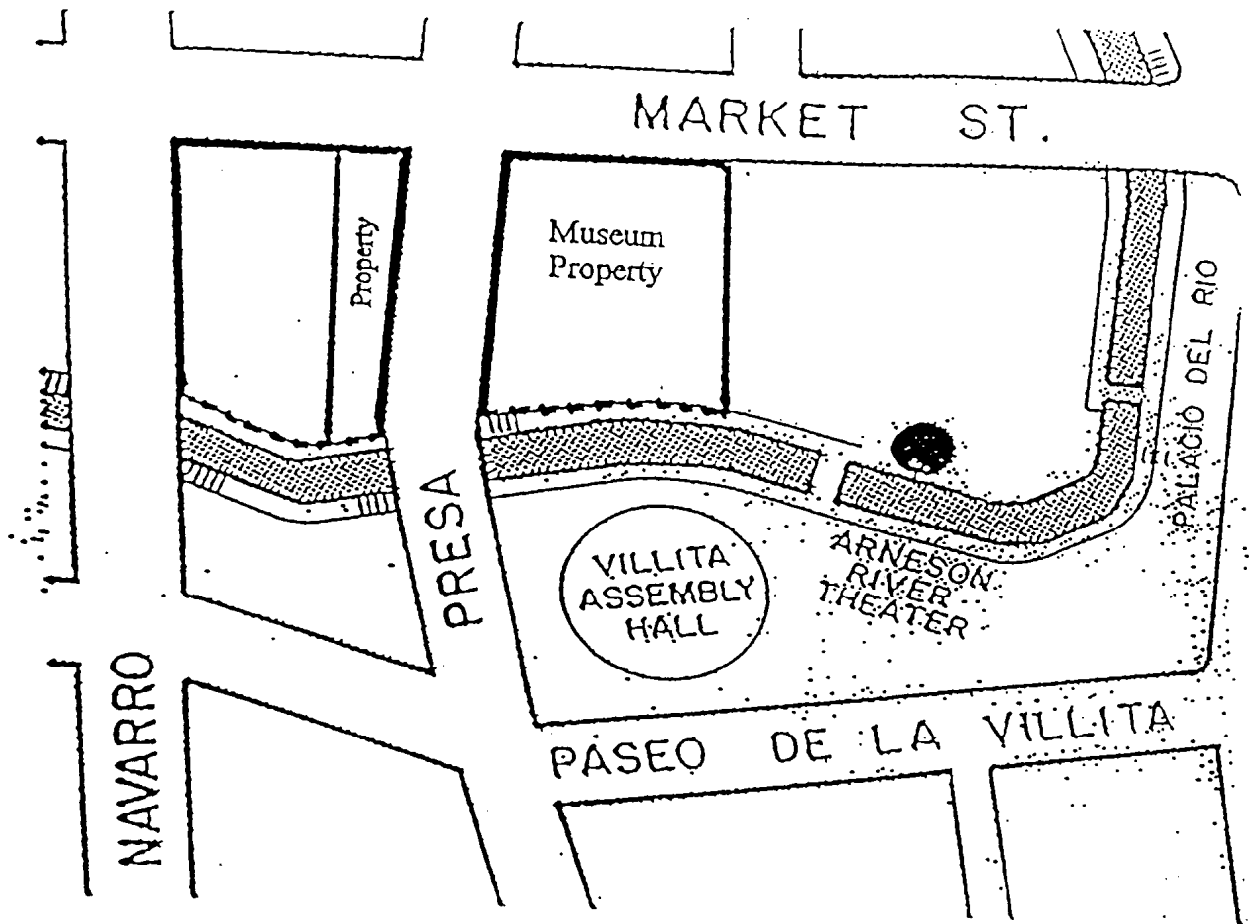
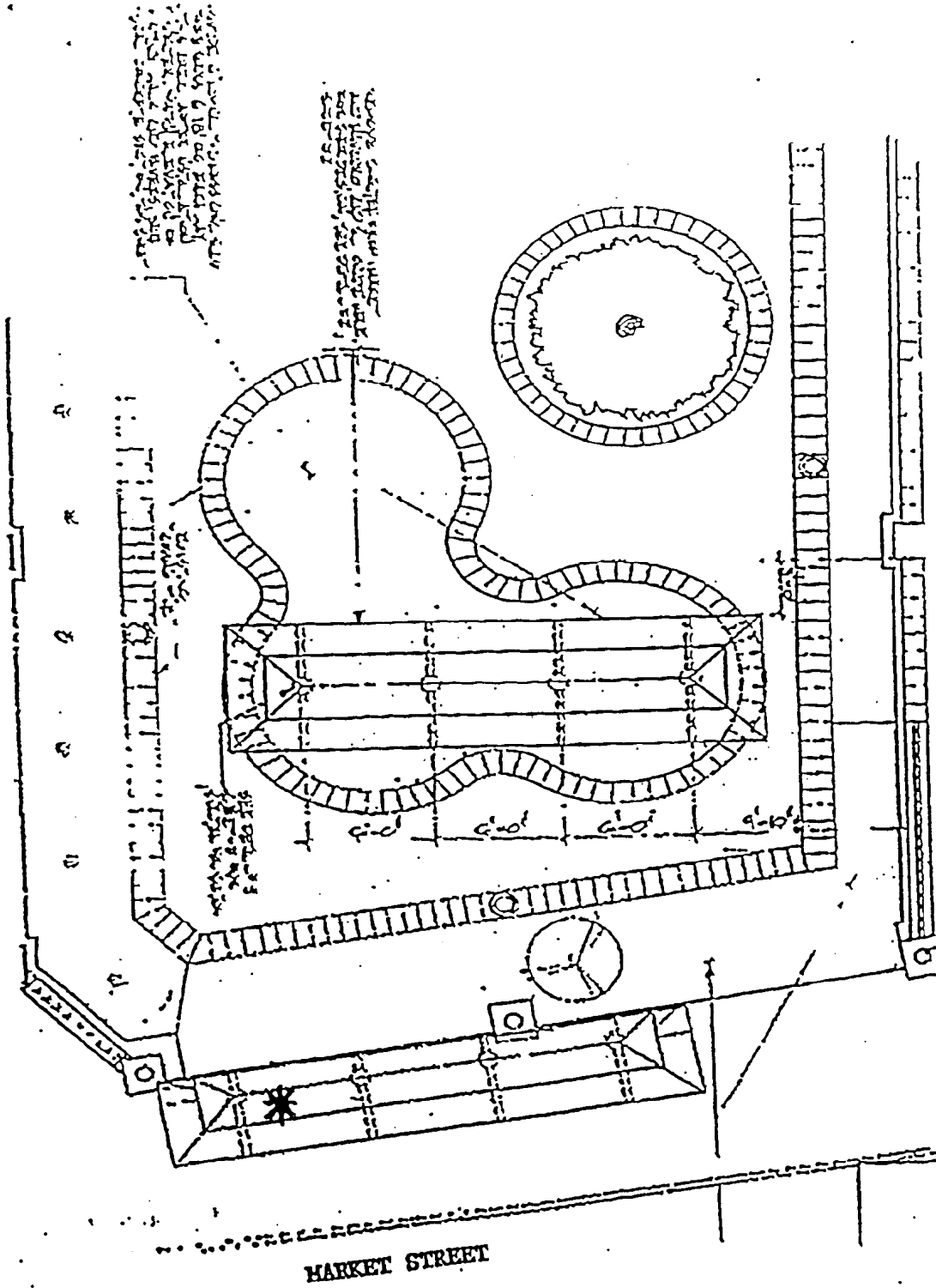


EXHIBIT B

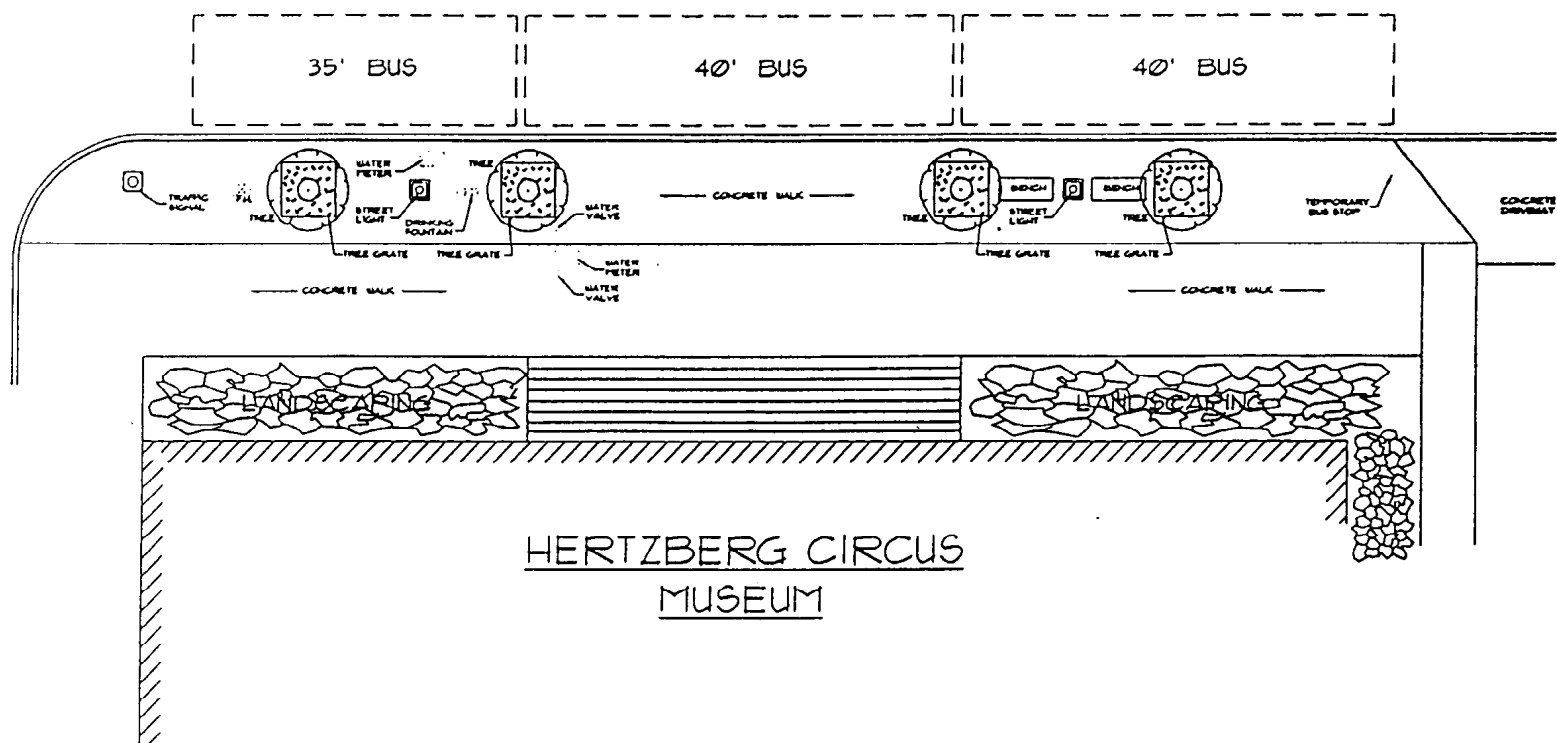
SOUTH PRESA STREET



S. PRESA ST.



MARKET ST.



HERTZBERG CIRCUS
MUSEUM

EXHIBIT-C

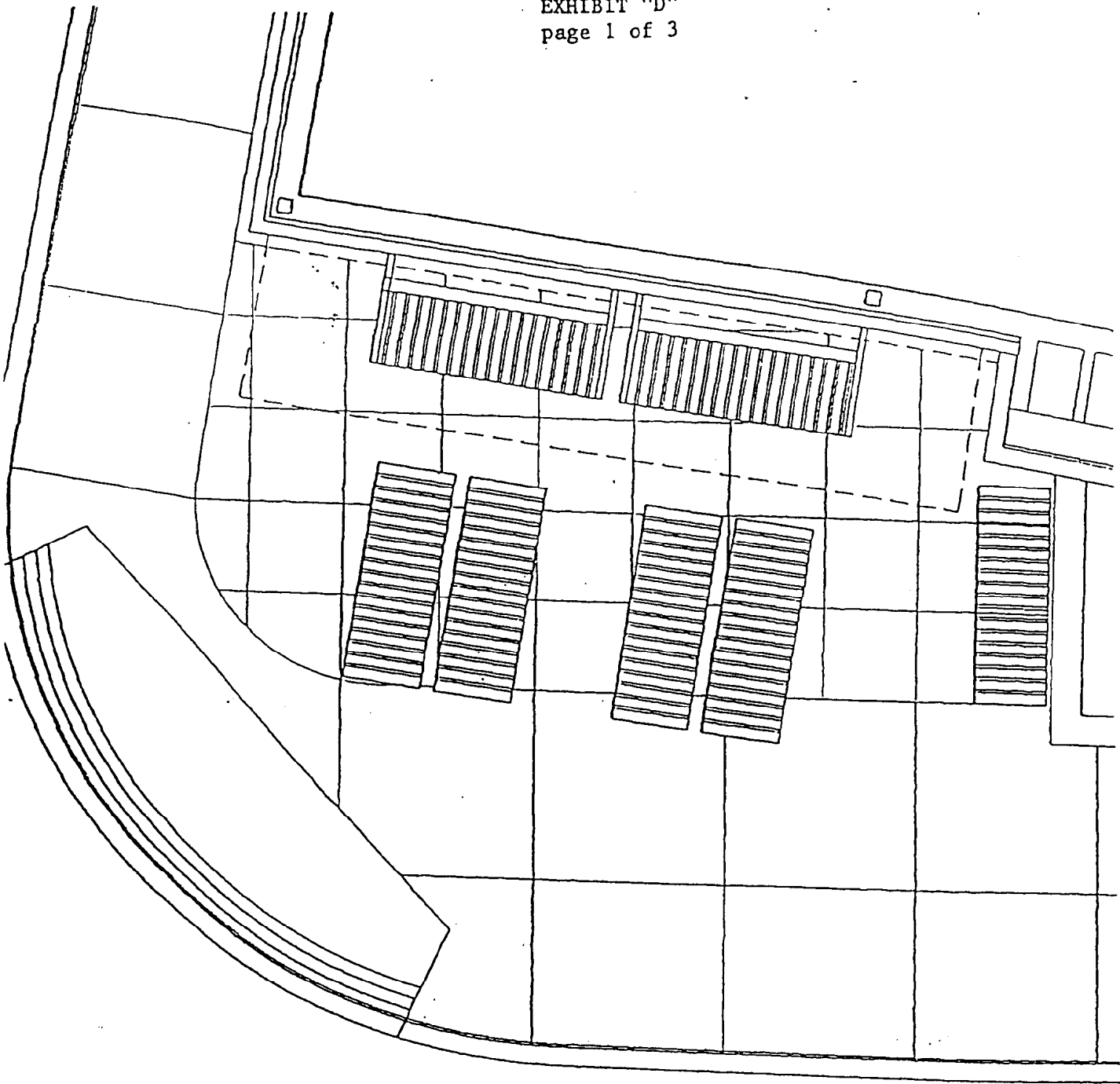


METROPOLITAN TRANSIT
P.O. BOX 5485, 500 WEST MYRTLE
SAN ANTONIO, TEXAS 78212

HERTZBERG CIRCUS MUSEUM
MARKET ST. • S. PRESA ST.
TEMPORARY BUS STOP RELOCATION
(MID BLOCK)

DATE: 10/00/00
DRAWN BY: PM
SCALE: 1/8" = 1'-0"
SHEET: 1 of 1

N.T.S.

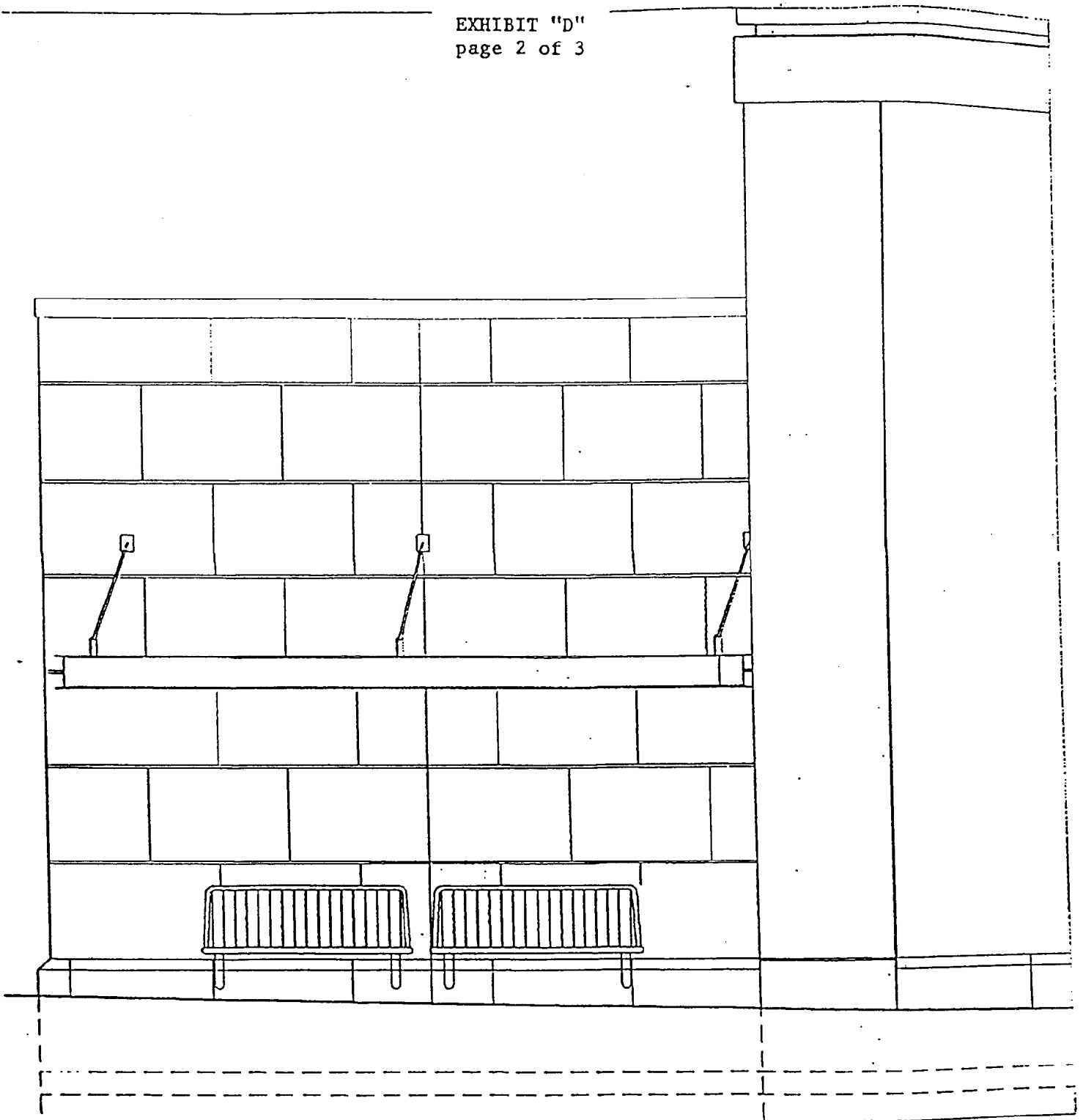


D GROUND LEVEL FLOOR PLAN
SCALE : 1/4"=1'-0"

EMBASSY SUITES RIVERWALK, SAN ANTONIO, TX
BUTLER, ROSENBURY & PARTNERS, INC.

ADDENDUM #ONE
REVISION TO SHEET A1.2

6



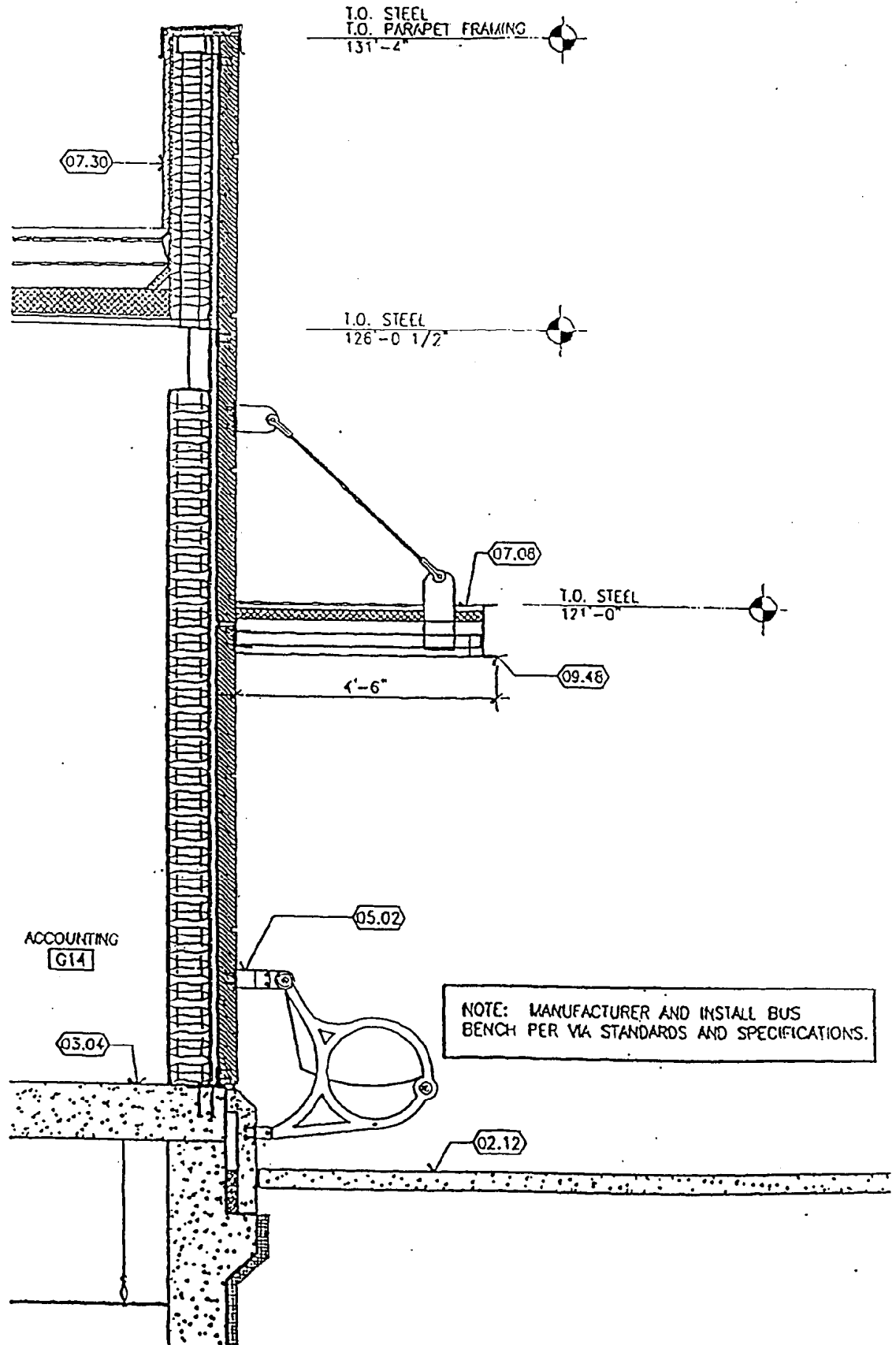
1 NORTH ELEVATION (W. MARKET STREET)
SCALE : 1/4" = 1'-0"

EMBASSY SUITES RIVERWALK, SAN ANTONIO, TX
BUTLER, ROSENBURY & PARTNERS, INC.

ADDENDUM #ONE
REVISION TO SHEET A2.2

5

EXHIBIT "D"
page 3 of 3



2 SECTION @ BUS STOP CANOPY
SCALE: 3/8"=1'-0"
Butler, Rosenbury & Partners, Inc.

EXHIBIT "F"

COPIES OF PAYMENT AND PERFORMANCE BONDS
(TO BE ATTACHED AT A LATER DATE)

EXHIBIT "G"

COPY OF THE 2004 AUTHORIZING ORDINANCE
(TO BE ATTACHED AT A LATER DATE)

**AMENDED AND RESTATED
LEASE AGREEMENT
RIVER WALK**

This Amended and Restated Lease Agreement ("Lease") is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its **City Manager**, or her designee, pursuant to Ordinance No. _____ passed and approved on _____, 2004, as lessor, ("**CITY**"), and **RIVERTON SUITES, LTD.**, a Texas Limited Partnership, acting by and through its General Partner, **HPI SUITES, INC.**, a Delaware Corporation ("**LESSEE**"), for the purpose of amending and restating that certain Lease Agreement by and between said parties, approved by Ordinance No. 91936 on June 8, 2000, and further this Lease is entered into by and between the parties hereto in accordance with the provisions and conditions of a certain Settlement Agreement and Mutual Release between them, with this Lease being as follows:

ARTICLE 1. DEMISE OF PREMISES

1.1 **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby rent and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** in the San Antonio River Walk area as outlined on the drawing which is attached hereto as **Exhibit A** and incorporated by reference herein for the purposes of this Lease. Said real property and improvements ("the Leased Premises") are further described as follows:

An area containing a total of 562.00 square feet; being located on the north side of the San Antonio River Walk and South of property legally described in **Exhibit A-1** attached (the "Hotel Property").

ARTICLE 2. USE OF PREMISES

2.1 **CITY** hereby agrees to permit **LESSEE's** use of above described Leased Premises for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.

2.2 **CITY's Reservation of Rights.** In addition to the **CITY's** Reservations set out in **ARTICLE 15** and other sections of the Lease, **CITY** reserves the right to a public right-of-way along the River Walk area to follow a path designated by the **CITY** for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as **EXHIBIT B** (the "Path"). **LESSEE** shall keep said right-of-way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into **LESSEE'S** business establishment, in said public right-of-way. **LESSEE** shall comply with the **CITY's** ordinances pertaining to queuing along the River Walk area and in addition to the right-of-way restrictions described above, shall not use any public space along the River Walk area for the queuing or waiting of patrons without first obtaining the consent of **CITY**. Failure to comply with this section will constitute a default under this Lease and, pursuant to the provisions of **ARTICLE 11**, **CITY** may terminate this Lease and all of **LESSEE'S** rights hereunder.

ARTICLE 3. TERM AND TERMINATION

3.1 The term of this Lease is for a five (5) year period ("Original Term") beginning on the earlier of (1) December 1, 2005 or (2) upon the date of issuance of a Certificate of Occupancy for the Hotel Project whichever date comes first, and ending on the last day of Month 60 thereafter, unless earlier termination occurs. The parties agree to execute a Commencement of Term memo to establish the specific Term Commencement Date, in the form attached hereto as **EXHIBIT C**. In the event **LESSEE** has not commenced construction of a hotel on the Hotel Property by December 1, 2005, this Lease will automatically terminate.

3.2 In addition to the provisions set forth under **ARTICLE 11** for termination, the right is expressly reserved to the **CITY**, acting through the City Council, to terminate this Lease and all of **LESSEE'S** rights hereunder for the following.

3.2.1 In the event this Lease is deemed to be inconsistent with the public use of the property or a nuisance by a court of competent jurisdiction.

3.2.2 In the event of termination by **CITY** Council in relation to 3.2.1 above, the **CITY** shall give **LESSEE** notice in writing at least thirty (30) days prior to the termination date.

3.3 Renewal Options. If (1) **LESSEE** is not in default hereunder AND (2) subject, in each instance, to the prior approval of the San Antonio City Council, as evidenced by passage of a **CITY** Ordinance, **LESSEE** may renew and extend the Original Term of this Lease for up to and including three (3) additional consecutive terms ("Options") of five (5) years each (each being an "Extended Term"), under the same terms and conditions of this Lease, if still in effect, except rent and insurance which may be adjusted as provided herein, and provided however, that **LESSEE** shall notify **CITY** in writing at least ninety (90) days before the date of expiration of the Original Term or any Extended Term, of its intent to exercise an Option as herein provided. Additionally, the adjustment of rent shall be at the time of each Option period, using the process of determination as outlined in **ARTICLE 4. RENTAL** hereinafter.

ARTICLE 4. RENTAL

4.1 **LESSEE** shall pay rental in either one annual sum in advance each year during the Original Term and each Extended Term or in monthly installments in advance on the first day of each month beginning on the Term Commencement Date of this Lease, as shown on **EXHIBIT C**, in accordance with the following payment schedule:

4.1.1 First 12 months, of the Original Term: (\$1.21 per square foot per month):
\$8,160.24 payable in one annual lump sum in advance or \$680.02 per month.

4.1.2 Years six (6), eleven (11), and sixteen (16) of future Extended Terms: rent ("Adjusted Base Rent") will be negotiated and mutually agreed upon by **CITY** and **LESSEE** no later than sixty (60) days prior to the Commencement Date of any Extended Term, provided that such increase shall not exceed fifteen percent (15%) of the Adjusted Rental, as defined below, in effect during the preceding Twelve (12) month term of the Lease. Furthermore, **CITY** agrees that it will not request any increase unless it is supported by a then current rental study of other comparable leases of **CITY** property on the San Antonio River Walk.

4.1.3 For years: two (2) through five (5) of the Original Term, and years seven (7) through ten (10), twelve (12) through fifteen (15), and seventeen (17) through twenty (20) of the Extended Terms, if any, the monthly rent shall be calculated by means of the following formula:

$$\text{Adjusted Rent} = (\text{Base Rent}) \times (\text{CPI-2}/\text{CPI-1})$$

4.1.4 In applying the above formula for rent adjustment, the following definitions shall apply:

“Base Rent” shall mean the monthly rental rate, per square foot per month, for the first twelve (12) month period of the Original Term and years six (6), eleven (11) and sixteen (16) of Extended Terms, if any, and as applicable;

“CPI-1” shall mean the Consumer Price Index (CPI herein) for the Calendar Month two (2) months prior to the Commencement Date of the year in which rent adjustment is scheduled to be made during the Original Term and the start of years six (6), eleven (11) and sixteen (16) of Extended Terms, if any, and as applicable;

“CPI-2” shall mean the CPI for the Calendar Month two (2) months prior to the year for which the Adjusted Rent is to be calculated;

“Bureau” shall mean the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue the indexes or data referred to in Section 4.2;

4.1.5 Adjusted Rent Calculation: The CPI Adjustment shall be a fraction, the numerator of which is CPI-2 and the denominator, CPI-1. As an example, assume the CPI-1 is 149.70 and the CPI-2 is 153.50. The Adjusted Rent rate per month per square foot for the next 12-month period beginning with the first month of said next period would therefore be the monthly rental rate prior to adjustment multiplied by the calculation of 153.50 divided by 149.70. Adjustments would increase the rent every year but never below the Base Rental established in Sections 4.1.1. and 4.1.2.

$$\text{Adjusted Rental} = (\$1.21) \times (153.50/149.70)$$

$$\text{Adjusted Rental} = (\$1.21) \times (1.03)$$

$$\text{Adjusted Rental} = \$1.25 \text{ p.s.f./mo.}$$

4.1.6 The CPI as used herein shall mean the National Consumer Price Index-U.S. City Average for all items (All Urban Consumers 1982-84 average equals 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If such price index should, in the future, be compiled upon a different basis, appropriate adjustment will be made therein, for the purpose of this Section, to reflect the change in the cost of living that has occurred since the date of execution of the Lease based upon the 1982-1984 average of 100. If at the time of any such computation the U.S. Department of Labor should no longer compile and publish such price indexes, the index for "All items" compiled and published by any other branch or department of the federal government shall be used for the purposes of this Section; and if no such index is compiled and published by any branch of department of the federal government, the statistics reflected in the cost of living increases as compiled by any institutional organization or individual generally recognized as an authority by financial and insurance institutions shall be used as a basis for such adjustments.

4.2 Payment shall be submitted to:

Treasury Supervisor
City Hall Annex
P.O. Box 839975
San Antonio, Texas 78283-3975

ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE ORIGINAL TERM AND EACH EXTENDED TERM OF THIS LEASE. RENT PAID ANNUALLY IS DUE ON OR BEFORE EACH ANNIVERSARY OF THIS LEASE.

ARTICLE 5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 LESSEE has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LESSEE'S taking possession of the Leased Premises shall be conclusive

evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LESSEE'S** intended commercial purposes.

5.2 **LESSEE** agrees that no representations respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LESSEE** unless the same are contained herein or made a part hereof by specific reference herein.

ARTICLE 6. UTILITIES

6.1 **LESSEE** shall furnish and pay for all gas, water, electricity, sewer, cable, satellite dish or other TV or other utilities, if any, that may be necessary for its operations as authorized herein on the Leased Premises, including the cost of extending any lines, conduits, fiber optic cable, or other paraphernalia in connection therewith. **LESSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LESSEE** agrees to pay any expenses therefor.

ARTICLE 7. IMPROVEMENTS

7.1 Following completion of the initial improvements made pursuant to the Construction Agreement previously referenced herein, **LESSEE** shall not construct, or allow to be constructed, any improvements or structures, including fixtures or **LESSEE'S** trade fixtures, on the Leased Premises nor shall **LESSEE** make, or allow to be made, any alterations, renovations, rehabilitation, additions, reconstruction, or repairs, other than non-structural repairs of a "maintenance nature", not exceeding \$500,000 in costs to the Leased Premises without the prior written approval of the **CITY** through the Director of Parks and Recreation and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission.

7.2 **LESSEE** covenants that it shall not bind, nor shall its assignees, subtenants, licensees, permittees, concessionaires, or subcontractors or attempt to bind, **CITY** for the payment of any money in connection with the construction, alteration, renovations, rehabilitation, addition, reconstruction or repair of improvements, or structures, including fixtures, and **LESSEE'S** trade fixtures in, on or about the Leased Premises. Further, **LESSEE** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens or other liens of any nature whatsoever filed against the Leased Premises and **TO INDEMNIFY CITY IN CONNECTION WITH SUCH LIENS TO THE EXTENT OF ANY DAMAGES, EXPENSES, ATTORNEY'S FEES, OR COURT COSTS INCURRED BY CITY.**

ARTICLE 8. MAINTENANCE OF PROPERTY

8.1 **LESSEE** shall, at all times, keep the Path at the width shown on **EXHIBIT B**, but not any narrower, free from obstructions of any kind, including tables or other property placed by **LESSEE**. Any assignees, subtenants, licensees, permittees, concessionaires, or subcontractors on such Leased Premises, and **LESSEE** shall not use the Path, except to pass to and from the Leased Premises. However, **LESSEE'S** use may at no time obstruct public access to the Path.

8.2 **LESSEE** shall, at all times, keep or cause to be kept the Leased Premises adjacent sidewalks, and River Walk public right-of-way abutting the Lease Premises free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**.

8.3 Other than as provided herein, **LESSEE** shall be responsible for the condition of the Leased Premises. **LESSEE** shall repair any damage to the Leased Premises caused by **LESSEE**, and shall maintain, or caused to be maintained, the Leased Premises in a clean, neat, attractive and sanitary condition.

8.4 **CITY** shall be responsible for sidewalk repairs other than those necessitated by the actions of **LESSEE**, as required to conform with safety and aesthetic standards.

8.5 **LESSEE** will, at the termination of this Lease, return the Leased Premises to **CITY** in as good condition as at the commencement of the Original Term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.

8.6 **LESSEE** agrees to indemnify and hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LESSEE** both during the Original Term and each Extended Term of this Lease and as so left on the Leased Premises after **LESSEE** vacates the Leased Premises. If said signs, goods and any other property placed by **LESSEE** upon the Leased Premises are not removed by it within thirty (30) days after the Leased Premises are vacated, such items shall be deemed abandoned and then the **CITY** may remove same and sell same by public or private sale without further notice or liability to **LESSEE** on any other parties therefor.

ARTICLE 9. TAXES AND LICENSES

9.1 **LESSEE** shall pay, before delinquency, all current and future taxes, assessments, license and permit fees and governmental impositions of whatever kind or nature imposed with respect to the Leased Premises, including, but not limited to, taxes, assessments, license and permit fees, and governmental impositions of any kind or nature which now or may hereafter be levied upon the Leased Premises, or upon **LESSEE**, or upon the business conducted by **LESSEE** on the Leased Premises, or upon any of **LESSEE**'s property used in connection therewith, on **LESSEE**'s leasehold interest, leasehold improvements and personal property, and, if in the future, the fee simple interest of **CITY** is subject to any taxation, assessments, license and permit fees or governmental impositions of any kind or nature then any and all such taxation, assessments, license and permit fees, and governmental impositions, as the case may be, will be included in the charges payable by **LESSEE**, including its assigns, sublessees, licensees, sublicensees, permittees, concessionaires, and any contractor, subcontractor or transferee or occupant of any kind or nature whatsoever ("third parties"), as the case may be. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease by **CITY**. **LESSEE** or said third parties shall, however, have the right to contest the imposition of or the amount of any such tax, assessment, or fee or imposition; provided that such contest shall be prosecuted with diligence and pursuit of such contest even when such taxes, assessments, fees or impositions remain unpaid shall not constitute a default under this

Lease. If prosecution of such contest is not, in **CITY's** sole judgment, being conducted with diligence and pursuit, then **LESSEE**, or said transferees, as the case may be, shall be deemed to be in default under this provision and if **CITY** shall have paid such tax, assessment, license fee, permit fee, or governmental imposition in the first instance (provided **CITY** was legally obligated to pay the same) then **LESSEE** shall reimburse **CITY** forthwith upon request, with interest thereon at the maximum rate of interest under applicable law.

9.2 **LESSEE** agrees to maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **LESSEE**. Failure to comply with this provision shall constitute grounds for termination of this Lease by **CITY**. If **LESSEE** should assign, sublease, license, sublicense, permit, grant a concession, contract, subcontract, transfer, or grant occupancy in any way whatsoever (collectively to a "third party") of the Leased Premises pursuant to **ARTICLE 10** hereinafter, such instrument executed by the third party and **LESSEE**, if approved in advance by the **CITY** Council, as required pursuant to **ARTICLE 10**, which evidences **LESSEE's** action, must require that the third party pay all said applicable Federal, State and **CITY** taxes assessments, license and permit fees and governmental impositions, said third party and to maintain current all local licenses and permits applicable to **LESSEE'S** business on the Leased Premises. Failure of **LESSEE** to enforce these requirements will constitute an event of default by **LESSEE** and shall be cause for termination of the Lease, after expiration of the notice and cure periods set forth in **ARTICLE 11** hereinafter.

9.3 **LESSEE**, on behalf of itself and all said third parties, as referenced in this **ARTICLE 9** and in **ARTICLE 10**, during construction of all improvements, including fixtures, installation of trade fixtures, and throughout the entire Original Term of this Lease and each Extended Term, agrees to comply with all federal and state laws and **CITY** and county ordinances and regulations of said entities. Failure to comply with this provision shall constitute grounds for termination of this Lease by **CITY**.

9.4 The terms "third party" and "third parties", as used in this **ARTICLE 9** and in **ARTICLE 10**, shall include, but not be limited to, any and all of **LESSEE'S** assigns,

sublessees, licensees, sublicensees, permittees, concessionaires, contractors, subcontractors, transferees or occupants of any kind or nature whatsoever.

ARTICLE 10. ASSIGNMENT AND SUBLETTING

10.1 Except as provided below, **LESSEE** shall not assign this Lease, or allow same to be assigned by operation of law or otherwise, or sublet, license, sublicense, permit, or grant a concession or subcontract or transfer or grant occupancy in any way whatever of its rights hereunder in the Leased Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the **CITY** Council. Any assignment or subletting, licensing, sublicensing, permitting granting a concession, subcontracting, transferring or granting occupancy in any way whatsoever, by **LESSEE** without such permission shall constitute grounds for termination of this Lease by the **CITY** with thirty (30) days prior written notice. **LESSEE's** rights, duties and obligations under this Lease may however, be assigned and transferred to any future owner of fee simple title to the Hotel Property without such prior approval.

10.2 Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease and in the improvements and property referred to herein; and, to the extent that such assignee assumes **CITY's** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

10.3 The receipt by **CITY** of rent from an assignee, subtenant, licensee, sublicensee, permittee, concessionaire, contractor, subcontractor, or any transferee or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease against assignment or subletting, licensing, sublicensing, permitting, granting a concession, subcontracting, transferring, or granting occupancy or an acceptance of the assignee, subtenant, licensee, sublicensee, permittee, concessionaire, contractor, subcontractor, or any transferee or occupant whatsoever as a **LESSEE**, or a release of **LESSEE** from further observance or performance by **LESSEE** of the covenants contained in this Lease. No provision of this Lease shall be deemed to have been waived by **CITY** unless such waiver be in writing signed by **CITY** and approved by the City Council.

10.4 **LESSEE**, and any third party, if said third party is first approved by **CITY** through passage of a **CITY** ordinance, as referenced above in **Section 10.1**, may collaterally assign and grant security interests in personal property, trade fixtures and fixtures installed in the Leased Premises, without prior approval of such collateral assignment by **CITY** through passage of a **CITY** ordinance and **CITY** agrees to subordinate its landlord's lien, both contractual and statutory, to such security interests provided:

10.4.1 **CITY** is to receive prior written notice of any action to take possession of the personal property trade fixtures or fixtures;

10.4.2 **CITY** is afforded the opportunity to be present if any such property, trade fixtures or fixtures are to be removed;

10.4.3 **CITY's** fee simple interest in the Leased Premises is NOT subordinated to such security interest.

10.5 **LESSEE**, and such approved third parties may also collaterally assign their leasehold interest hereunder to a lender, provided the collateral assignment requires the lender to:

10.5.1 give **CITY** written notice in advance of any foreclosure, so that **CITY** may be present at the foreclosure sale;

10.5.2 grant **CITY**, in writing, at **CITY's** option, the right to cure a default of **LESSEE**; and

10.5.3 further provided that **CITY's** fee simple interest in the Leased Premises will not be subordinated in anyway whatsoever by virtue of such collateral or actual assignment to the interest assigned or otherwise transferred to said Lender.

10.6 All assignments, subleases, licenses, sublicenses, permits, concession agreements, and contracts, subcontracts, transfers, or occupancies of any kind or nature whatsoever shall be subject to **ARTICLE 14. RULES AND REGULATIONS** of this Lease, and all of these said third parties must agree in writing in advance of any assignments, subleases, licenses, sublicenses, permits, concession agreements, and contracts, subcontracts, transfers, or occupancies to be bound to the terms hereof. Any assigning, subletting, licensing, sublicensing, permitting, granting of a concession, contracting, or subcontracting, transferring, or occupying of any kind or nature by **LESSEE** without

such prior written agreement shall constitute grounds for termination of this Lease by the CITY.

ARTICLE 11. DEFAULT AND REMEDIES

11.1 The following events shall be deemed to be events of default by LESSEE under this Lease:

11.1.1 If LESSEE breaches this Lease in such a fashion that an ongoing activity, or a failure to act, would constitute a threat to CITY property, CITY may terminate this LEASE if: (i) CITY gives oral notice of such activity, or failure to act, directly to Bill Shown or Jim Blomstrom, followed by written notice to Bill Shown or Jim Blomstrom (such notice to be sent by fax to 225-5910); and (ii) LESSEE does not cease such activity or take remedial action within one business day of such notice. Notwithstanding the preceding, if such breach cannot reasonably be cured within one business day of notice from CITY, CITY may not terminate this LEASE so long as: (i) LESSEE meets with representatives of CITY within one (1) business day of receiving notice of the breach to organize a reasonable strategy for curing the breach, and (ii) LESSEE diligently pursues an agreed upon strategy for curing the breach. Because of the severe nature of this section, the oral notice to be provided hereunder by CITY must be delivered directly, either in person or by phone (225-3053). A voice-mail message will not suffice. Also, in connection with such notice, CITY agrees to make a good faith effort to contact the general manager of the hotel and notify such general manager of the breach.

11.1.2 Monetary Default. LESSEE shall fail to pay any installment of rent as provided for in this Lease or other fees or charges due hereunder when due and such failure shall continue for a period of ten (10) days following receipt of written notice of failure to pay any installment of rent or other fees or charges when due and owing.

11.1.3 Non-Monetary Default. LESSEE shall fail to comply with any term, provision, condition covenant or agreements of this Lease, other than the default set forth in Section 11.1.1 or in Section 11.1.2 for the non-payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to LESSEE.

11.1.4 The taking by a court of competent jurisdiction of **LESSEE** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

11.2 Upon the occurrence of an event of default as heretofore provided, **CITY** may, at its option: (i) treat such default as an anticipatory breach of the Lease, or (ii) declare this Lease, and all rights and interests created by it, terminated, thus relieving **LESSEE** of the obligation to pay unaccrued, future rent. Upon **CITY** electing to treat such default as an anticipatory breach, without terminating said Lease, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Original Term or then current Extended Term hereof; **CITY**, its agents or attorney may, at its option, resume possession of the Leased Premises and re-let the same for the remainder of the Original Term or then current Extended Term, as applicable, for the best rent **CITY**, its agents or attorney may obtain for the account of **LESSEE** without relieving **LESSEE** of any liability hereunder as to rent still due and owing in this Lease Agreement, or any extension thereof, as applicable. **LESSEE** shall make good any deficiency. **CITY** shall be entitled to recover from **LESSEE** the net present value of the difference, if any, between the rent contracted for hereunder for the remainder of the Original Term or then current Extended Term, as applicable, and the reasonable rental value of the Leased Premises for the remainder of the Original Term or then current Extended Term, as applicable. The discount rate used for purposes of determining the net present value shall be the then current interest rate paid on **CITY'S** General Obligation bonds.

11.3 Upon resuming possession of the Leased Premises, whether or not this Lease is terminated, and notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, **LESSEE** and **CITY** agree that **CITY'S** duty to relet the Premises or otherwise to mitigate damages under this Lease, shall be limited to those requirements set forth in the Texas Property Code, as amended, with regard to a tenant abandoning premises, and the Texas case law, in connection with such duty to mitigate, if such case law is broader in scope or more definitive, than the Texas Property Code. **LESSEE** agrees, however, that **CITY** shall in no event be liable and **LESSEE'S** liability shall not be affected or diminished in any way whatsoever for **CITY'S** failure to relet the Premises, or in the event the Premises are relet, for failure to

collect any rental under such reletting provided **CITY** uses objectively reasonable efforts in seeking to re-let the Leased Premises in order to comply with said Texas Property Code and said Texas case law, if broader in scope than said Texas Property Code. **CITY** and **LESSEE** agree that any such duty shall be satisfied and **CITY** shall be deemed to have used objectively reasonable efforts to relet the Premises and mitigate **CITY'S** damages by: (1) posting a "For Lease" sign on the Premises; (2) directing **CITY'S** lease agent, if any, to seek a replacement tenant after the **LESSEE** has defaulted and not cured said default; and (4) advertising the property "For Lease" in at least one (1) newspaper of general circulation in the City of San Antonio, Texas.

11.4 If **CITY** receives any payments from the reletting of the Premises, any such payment shall be applied: First, to the payment of any indebtedness due hereunder from **LESSEE** to **CITY**; Second, to the payment of any cost of such reletting; Third, to the payment of the cost of any repairs to the Leased Premises; which **CITY**, in good faith deems advisable; and the residue, if any, shall be held by **CITY**. **LESSEE** shall also pay to **CITY**, as soon as ascertained, any costs and expenses incurred by **CITY** in such reletting or in making such repairs not covered by the rentals received from such reletting of the Premises.

11.5 Any amount paid or expense or liability incurred by **CITY** for the account of **LESSEE** may be deemed to be additional rental and the same may, at the option of **CITY**, be added to any other sums then due or thereafter falling due hereunder.

11.6 Any termination of this Lease as herein provided, except under **ARTICLE THREE, Section 3.1** or **Section 3.2.1** shall not relieve **LESSEE** or any assignees, sublessees, licensees, sublicensees, permittees, concessionaires, contractors, subcontractors, transferees, occupants, of any kind or nature whatsoever or any other party (collectively "other parties") from the payment of any sum or sums that shall be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **LESSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LESSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease. No waiver by **CITY** of a breach of any of the

covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or proceeding breach of the same or any other covenant, condition or restriction herein contained. **LESSEE** hereby covenants and agrees that it will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease.

11.7 Upon any such expiration or termination of this Lease, **LESSEE** or an assignee, sublessee, licensee, sublicensee, permittee, concessionaire, contractor, subcontractor, transferee, or occupant of any kind or nature whatsoever, or other party, as applicable, shall quit and peacefully surrender the Leased Premises to **CITY**, within ten (10) days after the effective date of expiration or termination, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LESSEE** and remove **LESSEE** and any and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Leased Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Leased Premises by **LESSEE** nor prevent **CITY** from pursuing all legal or equitable remedies available to it. **CITY** may retain or dispose of **LESSEE'S** property, and the property of said other parties, without notice, at a public or private sale and without liability to **LESSEE**, said other parties or those claiming under **LESSEE** or said other parties.

11.8 Further, **CITY** may repossess the Premises without termination and such repossession of the Premises shall not be construed as an election to terminate this Lease, nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the Original Term or then current Extended Term, as applicable, unless a written notice of such intention be given to **LESSEE** by **CITY**. Notwithstanding any reletting without termination by **CITY** because of any default by **LESSEE**, **CITY** may, at any time after such reletting, elect to terminate this Lease for any such default.

ARTICLE 12. INDEMNIFICATION

12.1 LESSEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, agents, officers,

directors, volunteers, contractors, subcontractors, consultants, subconsultants and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage (collectively "DAMAGES"), made upon the CITY directly or indirectly arising out of, resulting from or related to LESSEE'S activities or CITY's activities under this Lease, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, contractor, assignee, subtenant, sublicensee, permittee, concessionaire, consultant, subconsultant, subcontractor, transferee, occupant, invitee, or volunteer of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Lease, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Each party hereto shall promptly advise the other in writing of any claim or demand against the CITY or LESSEE known to LESSEE related to or arising out of LESSEE'S activities or CITY's activities under this Lease or otherwise covered by this indemnification and LESSEE shall see to the investigation and defense of such claim or demand at LESSEE's cost. Notwithstanding any condition imposed by a policy of insurance to which LESSEE and CITY are named, CITY shall retain the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of LESSEE under this ARTICLE without relieving LESSEE of any of its obligations under this ARTICLE.

12.2 It is the EXPRESS INTENT of the parties to this Lease, that the INDEMNITY provided for in this ARTICLE 12, is an INDEMNITY extended by LESSEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the

NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant INJURY, DEATH OR DAMAGE, and shall have no application when the negligent act of the CITY is the sole cause of the resultant INJURY, DEATH OR DAMAGE . LESSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, agents, officers, directors, volunteers and representatives, in connection with any such INJURY, DEATH OR DAMAGE for which this INDEMNITY shall apply, as set forth above.

ARTICLE 13. INSURANCE REQUIREMENTS

13.1 Any and all employees, representatives, agents, assignees, tenants, subtenants, contractors, subcontractors, licensees, sublicensees, consultants, subconsultants, transferees, permittees, occupants, concessionaires, invitees or volunteers of LESSEE while engaged in the performance of any work required by the CITY or any work related to an employment contract, representation or agency agreement, assignment, lease, sublease, contract, subcontract, license, sublicense, consulting contract, subconsulting contract, transfer agreement, or permit or occupancy of space agreement or Concession Agreement with the CITY shall be considered employees, representatives, agents, assignees, tenants, subtenants, contractors, subcontractors, licensees, sublicensees, consultants, subconsultants, transferees, permittees, occupants, concessionaires, invitees or volunteers of LESSEE only and not of the CITY. Any and all claims that may result from any obligation for which LESSEE or such person holding under an employment contract, representation or agency agreement, assignment, lease, sublease, contract, subcontract, license, sublicense, consulting contract, subconsulting contract, transfer agreement, or permit or occupancy of space agreement or Concession Agreement may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents, assignees, tenants, subtenants, contractors, subcontractors, licensees, sublicensees, consultants, subconsultants, transferees, permittees, occupants, concessionaires, invitees or volunteers shall be the sole obligation and responsibility of LESSEE.

13.2 A **LESSEE'S** financial integrity is of interest to **CITY**, therefore, subject to **LESSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LESSEE** shall obtain and maintain in full force and effect for the duration of the Lease, and any extension hereof, at **LESSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation*	Statutory, with a waiver of subrogation in favor of CITY
	Employers Liability*	\$500,000/\$500,000/\$500,000, with a waiver of subrogation in favor of CITY
2.	Commercial General Public Liability Insurance to include coverage for the following:	for Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence;
	a. Premises/Operations	\$2,000,00 general aggregate,
	b. Independent Contractors	or its equivalent in umbrella
	c. Broad Form Contractual Liability	or excess liability coverage
	d. Products/completed operations	
	e. Broad form property damage, to include fire legal liability	
	f. Personal Injury	
	g. Explosion, collapse, underground**	
	h. Host Liquor Liability Insurance, to be carried by LESSEE or LESSEE'S tenants or subtenants if LESSEE or LESSEE'S tenants or subtenants serve alcoholic beverages on the Leased Premises. CITY will be named as an additionally insured in the event a tenant or subtenant obtains insurance as a	\$1,000,000

	TYPE	AMOUNT
	requirement of a sublease with LESSEE.	
3.	Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence
4.	Property Insurance: For physical damage to the property of LESSEE , including improvements and betterments made to the Leased Premises	All Risk Coverage for a minimum of eighty percent (80%) of the actual cash value of LESSEE'S improvements and betterments made to the Leased Premises
5.	Liquor Liability Insurance to be carried by LESSEE or LESSEE'S tenants or subtenants if LESSEE or LESSEE'S tenants or subtenants sell alcoholic beverages on the Leased Premises. CITY will be named as an additionally insured in the event a tenant or subtenant obtains insurance as a requirement of a sublease with LESSEE.	\$1,000,000 per occurrence

* Alternate Plans are subject to approval by **CITY's** Risk Manager

** If Applicable

13.3 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the Lease and any extension or renewal hereof and to modify insurance coverages and their limits when deemed reasonably necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.

13.4 **LESSEE** further agrees that, with respect to the above-required insurance, that each insurance policy required by this Lease shall contain the following clauses:

"This insurance shall not be canceled, limited in scope or coverage (or otherwise materially changed in scope of coverage), or non-renewed until after thirty (30) days' prior written notice has been given to:

(a) City Clerk, City of San Antonio and
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
ATTN: Risk Manager

Parks and Recreation Dept.
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

"It is agreed that any insurance or self-insurance provided by **LESSEE** is primary to any insurance or self-insurance maintained by the CITY OF SAN ANTONIO."

"It is agreed that any insurance or self-insurance maintained by the CITY OF SAN ANTONIO shall apply in excess of, or not contribute with, insurance provided by this policy."

13.5 Each insurance policy required by this Lease, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, shall contain a clause that adds the City of San Antonio as an additional insured as per this Lease. The coverage provided under such clause shall cover the CITY OF SAN ANTONIO, its elected officials, employees, agents, officers, directors, consultants, subconsultants, contractors, subcontractors, volunteers, representatives and invitees are added as additional insureds as respects operations and activities or, or on behalf of, the named insured performed under a Lease Agreement with the City of San Antonio.

13.6 If **LESSEE** makes any modifications to the Leased Premises, **LESSEE** shall further procure, or have its contractors and subcontractors procure, and maintain in full force and effect during the term of such contract for such modifications and until all work is accepted by **CITY**, (1) builder's risk insurance for the replacement cost of the improvements being constructed; (2) commercial general (public) liability insurance adequate to fully protect **CITY** and **LESSEE** from and against any and all liability for

death of, or injury to, persons, or damage to property, caused in or about, or by reason of, such modifications; (3) workers' compensation and employer's liability insurance; (4) professional liability insurance for architects and engineers; and (5) any other liability or other insurance coverage in the reasonable amounts and types of coverage approved by **CITY's** Risk Manager, covering all risks of physical loss during the term of any contract for such modifications and until said work is accepted by **CITY**. Also payment and performance bonds naming **CITY** as additional indemnitee shall be provided by **LESSEE** or its contractors or subcontractors. Should the size and scope of a contract for such modifications be limited in nature, **LESSEE** may request, in writing to **CITY's** Director of Public Works Department, a waiver of the requirements in this **ARTICLE**; however, a waiver may only be granted by **CITY's** Risk Manager. In any event, **CITY's** Risk Manager's decision shall be final.

13.7 Further **LESSEE** agrees to provide to **CITY** within thirty (30) days after the Commencement Date of this Lease endorsements to the above-required policies, which add to these policies the applicable clauses referenced above in **SECTIONS 13.4 and 13.5**. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by **CITY**, it shall be **LESSEE's** responsibility to see that **CITY** receives documentation acceptable to **CITY** which confirms that the individual signing said endorsements is authorized by the insurance company to do so.

13.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LESSEE** may be held responsible for the payment of damages to persons or property resulting from **LESSEE's** activities or the activities of **LESSEE's** agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, subtenants, assignees, invitees, volunteers, or service providers under this Lease.

13.9 All personal property placed in the Leased Premises shall be at the sole risk of **LESSEE**. **CITY** shall not be liable, and **LESSEE** waives all claims for any damage either to the person or property of **LESSEE** or to other persons due to the Leased

Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **LESSEE shall save and hold harmless CITY from any claims arising out of damage to LESSEE'S property or damage to LESSEE'S business, including subrogation claims by LESSEE'S insurers.**

ARTICLE 14. RULES AND REGULATIONS

14.1 Compliance with City Code, Ordinances and Laws, etc. LESSEE shall observe and comply with the City Code, City Charter, all City ordinances, Bexar County Ordinances, and federal and state laws affecting LESSEE'S business, including but not limited to, the CITY'S noise ordinance, smoking ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.

14.2 Signs. No advertisements, signs, decorations or displays shall be placed in, on or about the Leased Premises without the prior written approval of the CITY through the Director of the Department of Parks and Recreation and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. LESSEE agrees to remove all signs from the Leased Premises when LESSEE vacates the Leased Premises. Any signs remaining shall be deemed abandoned and CITY may sell same at a public or private sale without notice or liability whatsoever.

14.3 Table and Chair Placement. LESSEE will be allowed to place only tables and chairs and any other service furniture on the Leased Premises, as approved in advance in writing by CITY through the Director of the Parks and Recreation Department.

14.4 No activity or method of operation shall be allowed in, on or about the Leased Premises which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:

- A. Nudity means total absence of clothing or covering for the human body.

B. Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

14.5 The operation of a massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.

14.6 Discrimination on account of race, color, sex, age, handicap or national origin, directly or indirectly, in employment or in the use of or admission to the Leased Premises is prohibited.

14.7 LESSEE shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes to persons employed in its operations hereunder.

14.8 LESSEE shall not place speakers or amplified music on or near the patio of the Leased Premises or in any other location outside the enclosed building on any side of the premises which can be seen from the San Antonio River. LESSEE shall comply with CITY'S laws pertaining to noise. LESSEE agrees to comply with any requests by the CITY'S park rangers, police officers or noise abatement officers to close the windows and doors of LESSEE'S business establishment after the hour of 11:00 p.m., except as necessary for entry to and exit from the establishment. Such requests shall be limited to instances in which the officers have measured a nighttime noise decibel level at the establishment exceeding the requirements of Chapter 21 of the CITY Code of the CITY of San Antonio immediately prior to making such request. Failure to comply with this section may, at CITY'S option, constitute a default under this Lease.

14.9 LESSEE shall not cause the loading or unloading of delivery devices in the Leased Premises, nor shall LESSEE cause the undue obstruction of surrounding River Walk improvements. At any time that LESSEE moves equipment or furniture in or out of the Leased Premises, LESSEE will be responsible for covering or otherwise protecting the paving and/or any other River Walk improvements.

14.10 LESSEE must keep the Premises neat and clean, and it shall dispose of garbage and refuse in accordance with City of San Antonio municipal ordinances.

14.11 **LESSEE**, its employees, and/or its agents, representatives, or volunteers, shall not solicit business, distribute handbills or participate in other advertising activities that violate applicable municipal ordinances..

14.12 No auction, fire, bankruptcy, going out of business, or other selling-out sales shall be conducted on or about the Leased Premises without the prior written consent of the **CITY**.

14.13 No tables or chairs, or any improvements, trade fixtures, equipment, other furniture, fixtures, furnishings, personal property or any other property of **LESSEE** whatsoever will be allowed to encroach into the River Walk or public right-of-way, including, but not limited to, the public sidewalk area.

ARTICLE 15. RESERVATIONS: CITY

15.1 **CITY** reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LESSEE** shall not be entitled to an abatement or reduction of rent by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LESSEE** from the Leased Premises. Should construction or other activity by **CITY** prevent **LESSEE'S** use of the Leased Premises for the purposes outlined herein for longer than ten (10) days, then this Lease shall be automatically extended for the same number of days **LESSEE'S** use of Leased Premises was denied.

15.2 No provision of this Lease shall operate in any manner to prevent **CITY** from permitting displays, tournaments or amusements, or River Walk parades for the benefit of the public on or about the San Antonio River Walk.

15.3 **CITY** park rangers and other safety personnel shall have the right of entry on and into the Leased Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. **LESSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. **LESSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LESSEE'S** property and does not

guarantee security against theft, vandalism, or injury of whatsoever nature and kind to persons or property.

ARTICLE 16. CONDEMNATION

16.1 It is understood and agreed that in the event that the Premises are taken, in whole or in part, by any governmental authority including **CITY** as to **LESSEE'S** leasehold interest and any other interest which **CITY** has the right to so take hereunder, this Agreement and all rights or permission to use hereunder shall, at the option of **CITY**, cease on the date title to such land so taken or transferred vests in the condemning authority. **LESSEE** hereby waives all rights to any proceeds of such condemnation with regard to any condemnation by **CITY**, but as to condemnation by other entities, **LESSEE** reserves its right to seek a separate award relating to any taking of **LESSEE'S** fixtures on the Premises or any remainder damages to other property of **LESSEE**.

ARTICLE 17. HOLDING OVER

17.1 Should **LESSEE** hold over the Leased Premises, or any part thereof, after the expiration or termination of the Original Term or then current Extended Term of this Lease, as applicable, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to double the amount of the rent paid for the last month of the Original Term or then current Extended Term of this Lease, whichever is applicable. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LESSEE** to hold over.

ARTICLE 18. QUIET ENJOYMENT

18.1 **CITY** covenants and agrees, subject to the provisions of this Lease, that **LESSEE**, on paying the rent and all other charges in this Lease provided for and observing and performing the covenants, agreements and conditions of this Lease on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the Original Term or then current Extended Term, as applicable, without hindrance or molestation of any kind whatsoever.

ARTICLE 19. CONFLICT OF INTEREST

19.1. **LESSEE** 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.

19.2. **LESSEE** warrants and certifies, and this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **LESSEE** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY'S** Ethics Code.

ARTICLE 20. SEPARABILITY

20.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Original Term or then current Extended Term, of this Lease, whichever is applicable, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

ARTICLE 21. NOTICES

21.1 Notices to **CITY** required or appropriate under this Lease shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage, Prepaid, addressed to:

Director of Parks and Recreation
CITY of San Antonio
115 Plaza de Armas, Suite 260
P.O. Box 839966
San Antonio, Texas 78283-3966

CITY Clerk
CITY of San Antonio
CITY Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time. Notices to **LESSEE** (other than the notice required under Section 11.1.1) shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LESSEE**:

Riverton Suites, Ltd
c/o Hixon Properties
315 E. Commerce St., Suite 300
San Antonio, Texas 78205
Attn: Jack Spector

or to such other address on file with the CITY Clerk as **LESSEE** may provide from time to time in writing to CITY. All notices shall be deemed received by the party to whom mailed on a date five (5) days after mailing.

ARTICLE 22. PARTIES BOUND

22.1 If there shall be more than one party designated as **LESSEE** in this Lease, they shall each be bound jointly and severally hereunder.

22.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and such assigns as have been approved by CITY.

ARTICLE 23. TEXAS LAW TO APPLY

23.1 THIS LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

ARTICLE 24. LIEN FOR RENT

24.1 In consideration of the mutual benefits arising under this Lease, **LESSEE** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto

CITY, upon all property of **LESSEE** now or hereafter placed in or upon the Leased Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest of **CITY** for payment of all rents and other sums agreed to be paid by **LESSEE** herein. At **CITY'S** request, **LESSEE** shall execute and deliver to **CITY** a financing statement appropriate for use under said Code. Such lien and security interest shall be in addition to and cumulative of **CITY'S** liens provided by law.

ARTICLE 25. RELATIONSHIPS OF PARTIES

25.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationships between the parties hereto other than that of **LESSOR** and **LESSEE**.

ARTICLE 26. GENDER

26.1 Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE 27. CAPTIONS

27.1 The captions contained in this Lease are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease.

ARTICLE 28. ENTIRE AGREEMENT/AMENDMENT

28.1 This Lease, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, with respect to the subject matter hereof, any other written or parole agreement with **CITY** being expressly waived by **LESSEE**.

28.2 No amendment, modification or alteration of the terms of this Lease shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto. Further it is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments and

other modifications or alterations of the terms of this Lease of any kind or nature whatsoever also need approval evidenced by an ordinance and are not legally binding on the CITY unless so evidenced.

ARTICLE 29. AUTHORITY

29.1 THE SIGNER OF THIS LEASE FOR LESSEE HEREBY REPRESENTS AND WARRANTS THAT HE OR SHE HAS FULL AUTHORITY TO EXECUTE THIS LEASE ON BEHALF OF LESSEE.

IN WITNESS WHEREOF, we have affirmed our signatures this _____ day of _____, 2000.

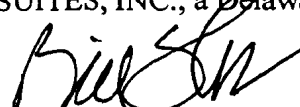
LESSOR:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

By: _____
Name: _____
Title: _____
Date: _____

LESSEE:

RIVERTON SUITES, LTD.
a Texas Limited Partnership, acting by
and through its General Partner
HPI SUITES, INC., a Delaware Corporation

FEB 18/04
By: 
Name: William G. Shaver
Title: Vice President
Date: FEB 18, 2004

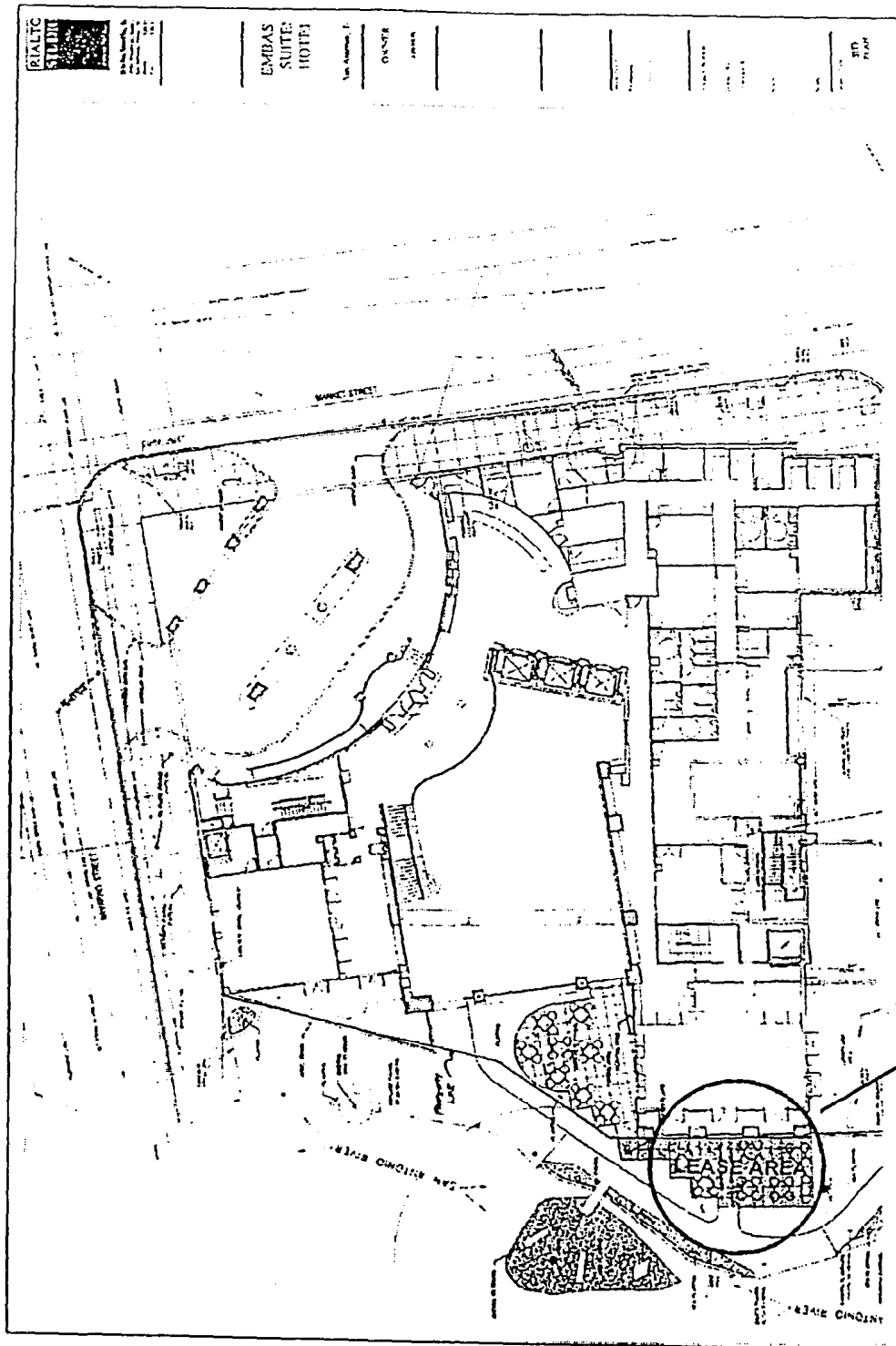
ATTEST:

CITY Clerk

APPROVED AS TO FORM:

CITY Attorney

Exhibit A
(page 1 of 2)



See following
page

NORTH



ROCK
WALL



FIELD NOTES
FOR

A 0.6418 acre (27,955 square foot) tract of land being all of Lot 4, New City Block 157, Southport One Subdivision as recorded in Volume 9504, Page 188, Deed and Plat Records of Bexar County, Texas, and the remaining portion of Lot 2, and Lot A-3, New City Block 157, San Antonio, Bexar County, Texas, as recorded in Volume 2324, Page 988, Deed Records of Bexar County, Texas, and being more particularly described as follows:

BEGINNING: At a found $\frac{1}{4}$ " iron rod at the intersection of the east right-of-way line of Navarro Street and the southwest right-of-way line of W. Market Street, the north corner of the above referenced Lot 4, the north corner of the herein described tract;

THENCE: S $76^{\circ}56'34''$ E, (bearings are based on the Subdivision Plat of Westin Riverwalk recorded in Volume 9538, Page 224, Deed and Plat Records of Bexar County, Texas), with the southwest right-of-way line of W. Market Street, at 139.05 feet pass a found nail, the east corner of the referenced Lot 4, the north corner of the remaining portion of the referenced Lot 2, and continuing a total distance of 184.00 feet to a set "+" in concrete at the intersection of the southwest right-of-way line of W. Market Street and the west right-of-way line of South Presa Street, the east corner of the herein described tract;

THENCE: S $21^{\circ}59'37''$ W, with the west right-of-way line of South Presa Street, at 105.90 feet pass the south corner of the remaining portion of Lot 2, the east corner of the remaining portion of Lot A-3, and continuing a total distance of 189.58 feet to a set "+" in concrete, a point on the north line of the San Antonio River, the south corner of the herein described tract;

THENCE: With the north line of the San Antonio River, the following:

N $66^{\circ}52'45''$ W, 46.16 feet to a found "+" on a concrete wall, an angle;

N $67^{\circ}36'18''$ W, 24.54 feet to a found "+" on a concrete wall, an angle;

N $33^{\circ}03'02''$ W, 32.68 feet to a found "+" on a concrete wall, an angle;

N 53°40'13" W, 69.67 feet to a found "+" on a concrete bridge rail, a point on the east right-of-way line of Navarro Street, the west corner of the herein described tract;

THENCE: N 14°16'34" E, 125.08 feet with the east right-of-way line of Navarro Street to the **POINT OF BEGINNING**, containing 0.6418 acres. Said tract of land being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

SAVE AND EXCEPT THE 0.0028 ACRE TRACT DESCRIBED
AS FOLLOWS:

Prepared by: Pape-Dawson Engineers, Inc.
Job No.: 9186-99
Date: March 22, 1999
Revised: April 2, 1999, July 12, 2000
Doc. Id.: 4661\00\WORD\FIELD NOTES\000712A1.DOC

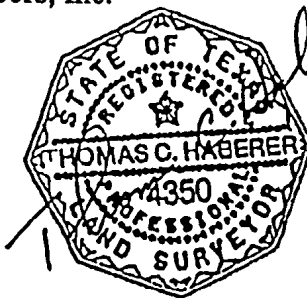


FIELD NOTES
FOR

A 0.0028 acre (120 square foot) tract of land, situated within Lot 4, New City Block (N.C.B.) 157, Southport One Subdivision, in the City of San Antonio, Bexar County, Texas, as recorded in Volume 9504, Page 188, Deed and Plat Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

- BEGINNING: At a found "X" in concrete bridge rail at the intersection of the east right-of-way line of Navarro Street (a 60-foot right-of-way) with the north line of the San Antonio River, said point being the southwest corner of the referenced Lot 4;
- THENCE: S 53°40'13" E, (bearings are based on the subdivision plat of Westin Riverwalk as recorded in Volume 9538, Page 224, Deed and Plat Records of Bexar County, Texas) a distance of 0.33 feet, coincident with the north line of the San Antonio River, the south line of Lot 4, to the POINT OF BEGINNING and the north corner of the herein described tract;
- THENCE: S 75°43'21" E, departing from the north line of the San Antonio River and entering Lot 4, a distance of 8.51 feet to the northeast corner of the herein described tract;
- THENCE: S 51°39'14" E, a distance of 45.74 feet to the southeast corner of the herein described tract;
- THENCE: S 14°16'39" W, a distance of 1.71 feet to the southwest corner of the herein described tract on the said north line of the San Antonio River;
- THENCE: N 53°40'13" W, a distance of 54.25 feet, coincident with the north line of the San Antonio River, the south line of Lot 4, to the POINT OF BEGINNING, containing 0.0028 of an acre in accordance with a survey made on the ground by Pape-Dawson Engineers, Inc.

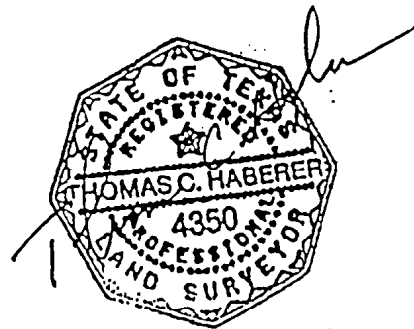
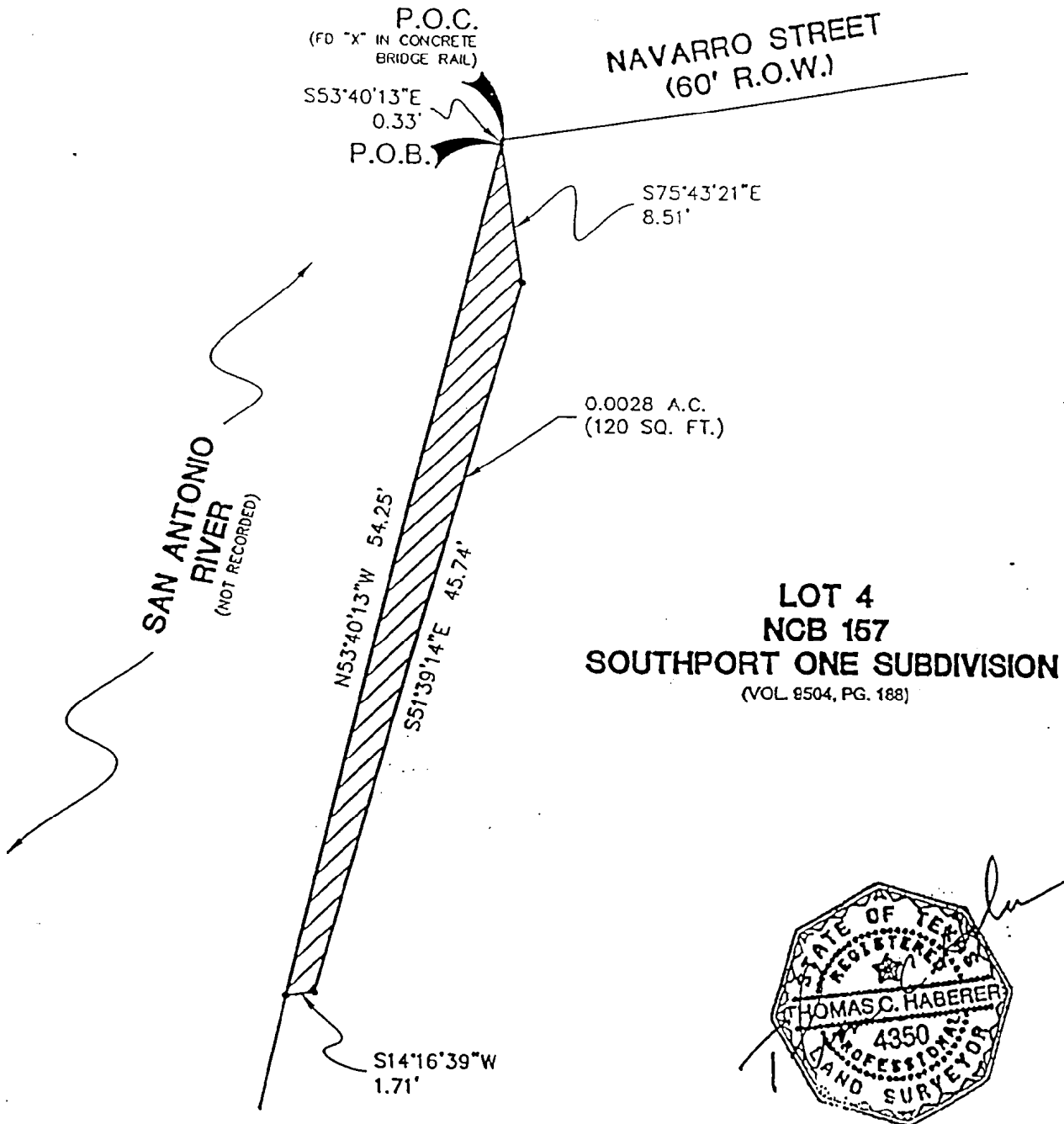
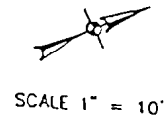
Prepared by: Pape-Dawson Engineers, Inc.
Job No: 4661-00
Date: July 12, 2000
Doc Id: 466100\WORD\FIELD NOTES\000510A1.DOC



PAPE-DAWSON ENGINEERS, INC.

555 East Ramsey | San Antonio, Texas 78216 | Phone: 210.375.9000 | Fax: 210.375.9010 | info@pape-dawson.com

A SURVEY OF
A 0.0028 ACRE (120 SQUARE FOOT) TRACT OF LAND,
SITUATED WITHIN LOT 4, NEW CITY BLOCK (N.C.B.) 157,
SOUTHPORT ONE SUBDIVISION, IN THE CITY OF SAN ANTONIO,
BEXAR COUNTY, TEXAS, AS RECORDED IN VOLUME 9504,
PAGE 188, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.



NOTES:

BEARINGS ARE BASED ON THE SUBDIVISION PLAT OF WESTIN RIVERWALK AS RECORDED IN VOLUME 9538, PAGE 224, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

THE PROFESSIONAL SERVICES PROVIDED HERewith INCLUDE PREPARATION OF A FIELD NOTE DESCRIPTION.

PAPE-DAWSON ENGINEERS
CIVIL & ENVIRONMENTAL

SAN ANTONIO TEXAS 78216

855 E. RAMSEY

210-375-8000

JOB NO. 4661.00

CONCRETE
BANDS, BAR

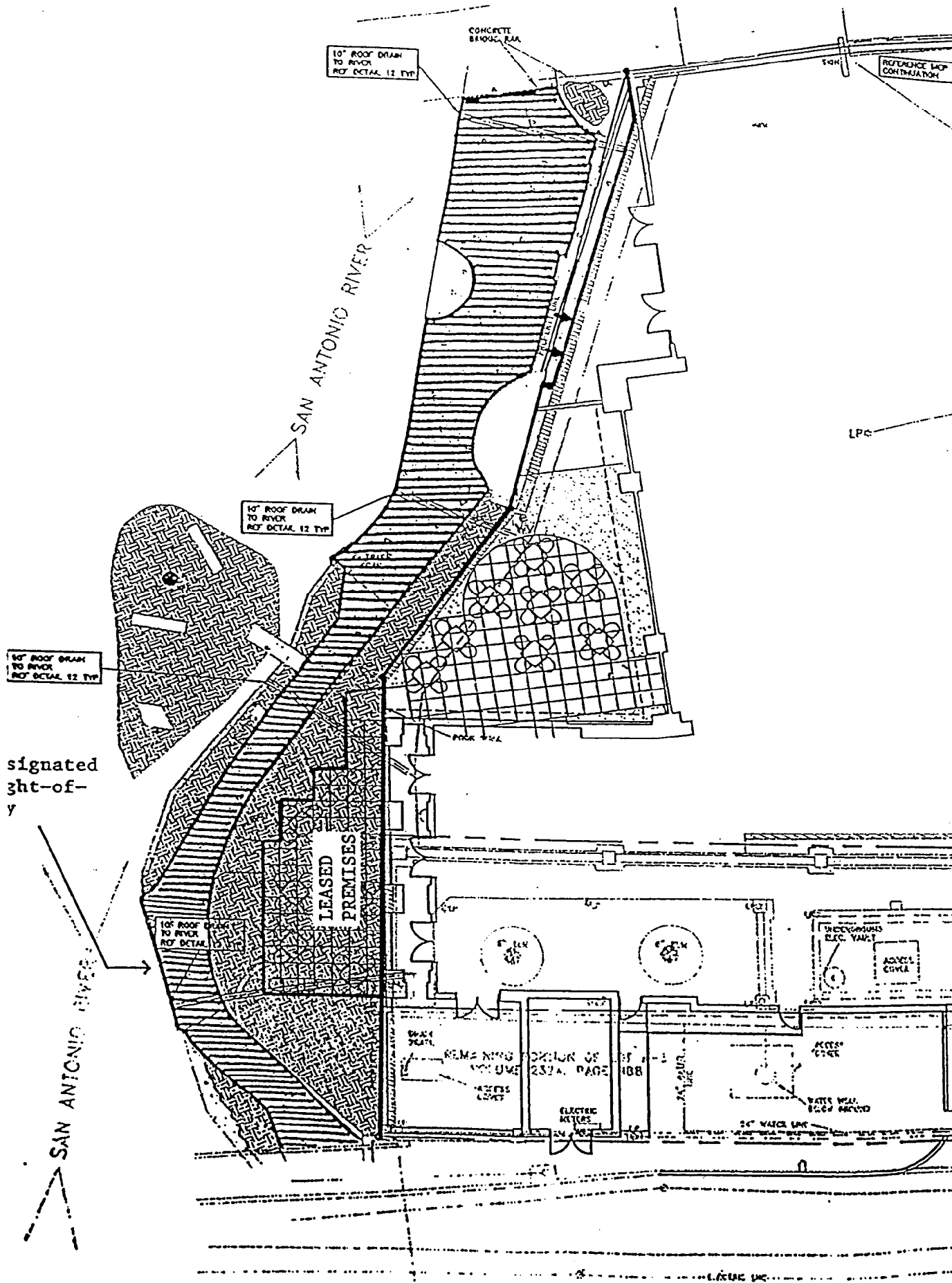


EXHIBIT "C"

COMMENCEMENT OF TERM MEMO

THIS COMMENCEMENT OF TERM MEMO is entered into by and between Riverton Suites, Ltd. ("Riverton") and the City of San Antonio (the "City").

WHEREAS, Riverton and the City entered into that certain Lease Agreement Riverwalk (the "Lease"), dated June __, 2000, whereby the City leased a portion of the San Antonio Riverwalk to Riverton; and

WHEREAS, the Lease requires Riverton and the City to execute a Commencement of Term Memo that establishes a specific date on which the term of the Lease commences:

NOW, THEREFORE, Riverton and the City agree as follows:

The date on which the term of the Lease commences is _____, _____, _____.

EXECUTED AS OF THIS _____ day of _____, _____.

CITY OF SAN ANTONIO

RIVERTON SUITES, LTD.

By: _____

By: HPI Suites, Inc., its General Partner

Printed Name: _____

Title: _____

By: _____

Jack J. Spector, President

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney