

AN ORDINANCE 2013-06-20-0451

AUTHORIZING A LICENSE TO MTC REAL ESTATE, LLC, TO CONTINUE MAINTAINING EXISTING BUILDING FEATURES ON BUILDINGS AT 102 PRODUCE ROW AND 120 PRODUCE ROW THAT CONSTITUTE MINOR ENCROACHMENTS ON PUBLIC RIGHT-OF-WAY BUT DO NOT IMPAIR THE PUBLIC USE OF THE RIGHT-OF-WAY, LOCATED IN COUNCIL DISTRICT 1.

* * * * *

WHEREAS, the licensed improvement or facility will not be located on, extend onto, or intrude on (A) the roadway; or (B) a part of the sidewalk needed for pedestrian use;

WHEREAS, the licensed improvement or facility will not create a hazardous condition or obstruction of vehicular or pedestrian travel on the municipal street; and

WHEREAS, the design and location of licensed the improvement or facility includes all reasonable planning to minimize potential injury or interference to the public in the use of the municipal street.

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

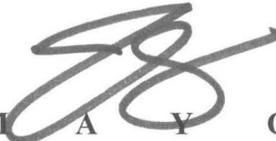
SECTION 1. The City Manager or her designee is authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee should take all other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

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29604001, Internal Order 228000000148 and General Ledger 4202410.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

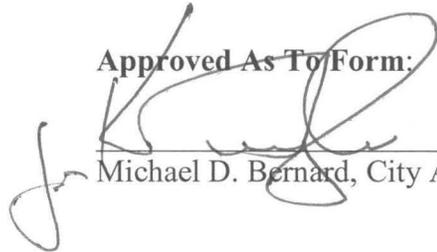
SECTION 4. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

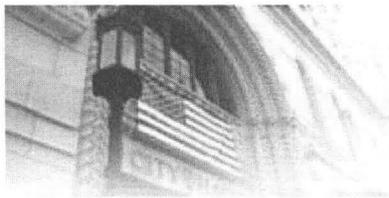
PASSED AND APPROVED this 20th day of June 2013.


M A Y O R
Julián Castro

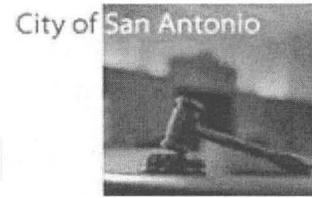
Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 25

Name:	5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20A, 20B, 21A, 21B, 22A, 22B, 25, 26, 27, 28A, 28B, 30, 31, 32, 33, 34B, 36, 37, 38, 39, 40, 41, 42, 44, 46A, 46B, 47A, 47B, 48B, 49A, 49B, 49C						
Date:	06/20/2013						
Time:	11:16:24 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a license to MTC Real Estate, LLC, to continue maintaining existing building features on buildings at 102 Produce Row and 120 Produce Row that constitute minor encroachments on public right-of-way but do not impair the public use of the right-of-way, located in Council District 1. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

License Agreement

(MTC Real Estate, 102 Produce Row, 120 Produce Row, and Concho, Dolorosa, and San Saba)

This License Agreement (“License”) is entered into between Licensee and the City of San Antonio (“Licensor”) under the authority of the Authorizing Ordinance.

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1. Identifying Information.

Authorizing Ordinance:

Licensee: MTC Real Estate, LLC

Licensee's Address: 800 Dolorosa, # 204, San Antonio, Texas 78207

Term: 25 Years

Fee: \$10,000

Premises: Encroachment upon areas A, B, C, and D as described below:

- A:** A portion of the public right-of-way of Produce Row and in front of 102 Produce Row (Lot 7, NCB 340) encroached upon by Licensee within the Scope of the License.
- B:** A portion of the public right-of-way of Produce Row and Concho and next to of 120 Produce Row (Lot 1, the west 66.66 feet of the north 78.4 feet of Lot 2, and west 66.66 feet of the south 6.13 feet of Lot 2, Arbitrary Lot A, NCB 340) encroached upon by Licensee within the Scope of the License
- C:** A portion of the public rights-of-way of Concho and Dolorosa next to 102 Concho Street (adjacent to NCB 340) encroached upon by Licensee within the Scope of the License
- D:** A portion of the public rights-of-way of Concho, Produce Row, San Saba, and Dolorosa (next to Lots 1, 2, 3, and 4, NCB 428) encroached upon by Licensee within the Scope of the License

Scope of License, Encroachment A: Balcony with vertical supports sitting in Produce Row right-of-way, as graphically depicted on **Exhibit A**, which is incorporated by reference for all purposes as if fully set forth.

Scope of License, Encroachment B: Covered balcony with vertical supports sitting in Produce Row right-of-way, as graphically depicted on **Exhibit B**, which is incorporated by reference for all purposes as if fully set forth.

Scope of License, Encroachment C: Covered balcony with vertical supports sitting in Concho and Dolorosa rights-of-way, as graphically depicted on **Exhibit C**, which is incorporated by reference for all purposes as if fully set forth.

Scope of License, Encroachment D: Clay tile awning with brick vertical support columns over Produce Row, Concho, Dolorosa, and part of San Saba and four fabric awnings with structural support frames overhanging a portion of the San Saba sidewalk

between Produce Row and Dolorosa, as graphically depicted on **Exhibit D**, which is incorporated by reference for all purposes as if fully set forth.

Effective Date: The effective date of the Authorizing Ordinance

Licensor's Address: City Clerk, City of San Antonio, P.O. Box 839966/2nd Floor, City Hall, San Antonio, Texas 78283-3966

2. Grant of License.

Licensor grants Licensee a license ("License") to use, maintain, and operate the Premises within the Scope of the License. This License is limited to the stated Term and is conditioned on Licensee's payment of the Fee. This license does not relieve Licensee of any other approvals, permits, or licenses that may otherwise be required including but not limited to right-of-way management permits. This license is subject to all pre-existing rights of the San Antonio Water System, CPS Energy, telecommunications and cable companies, and others who have rights in the Premises. Licensor expressly disclaims a covenant of quiet enjoyment as to this License.

3. Restrictions on Use/Recording.

3.01. This License does not grant Licensee authority to use any public rights-of-way beyond the Premises.

3.02. This License grants only a privilege, not a real property interest. Licensor may enter the Premises at any time to assert its real property interest or for other purposes not interfering unreasonably with the Scope of License.

3.03. A Memorandum of License Agreement in form satisfactory to Licensor will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee must pay the recording fees.

4. License Fee.

Licensee must pay the Fee in a one-time lump sum, on or before the Effective Date. The Fee must be paid at the Department of Downtown Operations, 400 N. St. Mary's, Suite 100, San Antonio, Texas 78205.

5. Construction, Maintenance, and Operations.

5.01. Costs. Licensee is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed on the Premises.

5.02. No Liability. Licensor assumes neither liability nor expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licensor in the vicinity.

5.03. Maintenance. Licensee, at its sole cost and expense, must maintain all improvements it has constructed or will construct or install on the Premises in a commercially reasonable manner. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations.

5.04. No Power to Bind. Licensee cannot bind or permit another to bind Licensor for payment of money or for any other obligation.

5.05. Contractors and Subcontractors. Licensee must promptly pay anyone performing work on behalf of Licensee who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 45 days prior written notice to Licensee. But if the lien is removed or released of record within the notice period, this License remains in effect. Licensee remains obligated to clear the lien without cost to Licensor even after termination. Despite anything to the contrary in this Section 5.05, Licensee may contest the validity or amount of any mechanic's or materialmen's lien filed by any contractor or other person providing labor, materials, or services to the Premises on behalf of Licensee. No such lien is a default hereunder and or terminates this License for so long as, during the pendency of Licensee's contest of the lien, Licensee furnishes Licensor an indemnity bond in an amount equal to that being contested.

6. Indemnity.

6.01. These definitions apply to the indemnity provisions of this Contract:

6.01.01. **"Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of Licensee or any of Licensee's employees, agents, or invitees that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.**

6.01.02. "Indemnites" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. "Indemnitor" means Licensee.

6.02. Indemnitor must indemnify Indemnites, individually and collectively, from all Indemnified Claims.

6.03. If Indemnitor and one or more Indemnites are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnites from liability arising from the Indemnites' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnites until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnites.

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnites..

6.05. Indemnitor and Licensor must promptly advise the City of San Antonio and any other Indemnitee against whom an Indemnified Claim is asserted in writing of any Indemnified Claim for which it receives notice, and Indemnitor must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnites. The City may also require Indemnitor to hire specific-named counsel, subject to Indemnitor's prior written consent (such consent not to be unreasonably withheld) for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnites, not Indemnitor.

6.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any

Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

7. Termination.

7.01. Licensor may terminate this License in whole or in part at any time before expiration by giving Licensee 180 days' written notice.

7.02. Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of them and restore the Premises, at Licensee's sole cost, to their condition before encroachments were installed. Improvements or appurtenances not removed within 90 days after termination, whether by expiration or otherwise, become the property of Licensor. Licensor may, without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

8. Assignment/Sublicensing.

This License cannot be assigned or sublicensed, other than to Licensee's parent or subsidiaries or any other entity controlling, controlled by, or under common control with Licensee. Licensee must give Licensor 30 days' written notice before such an assignment or sublicense. Licensee cannot lease or sublease the Premises.

9. Condemnation.

If the Premises are taken, in whole or in part, by eminent domain, Licensor may terminate this License as of the date title to the taken land vests in the condemning authority.

Licensee waives any claim to condemnation proceeds paid to Licensor. Licensee may seek a separate condemnation award.

10. Attorney's Fees and Court Costs.

In any action in which Licensee is found to have materially defaulted hereunder, Licensor can recover from Licensee its reasonable attorney's fees.

11. Taxes and Licenses.

Licensee must pay, on or before the due date all federal, state, and local taxes, license fees, permit fees, and similar charges now or hereafter levied on Licensee or its property or on the Premises and arising from Licensee's use thereof.

12. Prohibited Interests in Contracts.

12.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of 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) a City officer or employee;
- (b) his parent, child or spouse;
- (c) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (d) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

12.02. Licensee warrants and certifies as follows:

- (a) Licensee and its officers, employees and agents are neither officers nor employees of the City.
- (b) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

12.03. Licensee acknowledges that City's reliance on the above warranties and certifications is reasonable.

13. Licensee Financing.

Licensee may encumber Licensee's personal property on the Premises, and any lien of Licensor (whether by statute or under this License) is subordinate to the financing lien. Licensor will acknowledge this subordination in writing, if the proffered documents do not modify the rights and obligations of this License. The City Manager or a designee may execute such documents, without a further ordinance. But if the documents modify the License, then a specific ordinance is required.

14. Consent/Approval of Licensor.

When Licensor's consent and approval is called for under this License, the consent and approval may be granted or withheld by the Director of Downtown Operations, unless the City Charter requires Council action.

15. Appropriations.

All obligations of the City of San Antonio under this instrument are funded at the discretion of City Council. The City need not pay any sum not appropriated by City Council.

16. Miscellaneous Provisions

16.01. Relationship Limited. This instrument creates only the relationship of Licensor and Licensee. The parties are not principal and agent, partners, joint venturers, or participants in any other enterprise between them.

16.02. Nondiscrimination. Licensee must 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 Premises.

16.03. Release From Liability. If Licensor transfers the Premises, Licensor will have no liability relating to the period after transfer. Licensor's transferee will succeed to all Licensor's rights hereunder.

16.04. Yielding Up. Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully.

16.05. Applicable Law. The Construction Of This License And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas. But the Texas conflicts of law rules must not cause the application of

the laws of a jurisdiction other than Texas. The obligations of both parties are performable in San Antonio, Bexar County, Texas.

16.06. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

16.07. Successors. This License inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

16.08. Integration. This Written License Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

16.09. Modification. This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

16.10. Third Party Beneficiaries. This License is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries.

16.11. Notices. Notices must be in writing and by certified mail, return receipt requested. Notice is complete three calendar days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice. Unless changed, notice to Licensee goes to Licensee's address specified at the beginning, and notice to Licensor goes to:

City Clerk		Director, Downtown Operations Department
City of San Antonio	With a copy	City of San Antonio
P.O. Box 839966	to	400 N. St. Mary's, Suite 100
San Antonio, Texas 78283-3966		San Antonio, Texas 78205

16.12. Captions. Paragraph captions in this License are for ease of reference only and do not affect the interpretation hereof.

16.13. Counterparts. This License may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this License, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

16.14. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties under this License

16.15. Ambiguities Not to Be Construed Against Drafter. Ambiguities in this License must be resolved without constructing against the drafter.

17. Public Information.

Licensee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands:

Licensor:

Licensee:

City of San Antonio,
a Texas municipal corporation

MTC Real Estate, LLC, a Texas
limited liability company

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney

Exhibit A

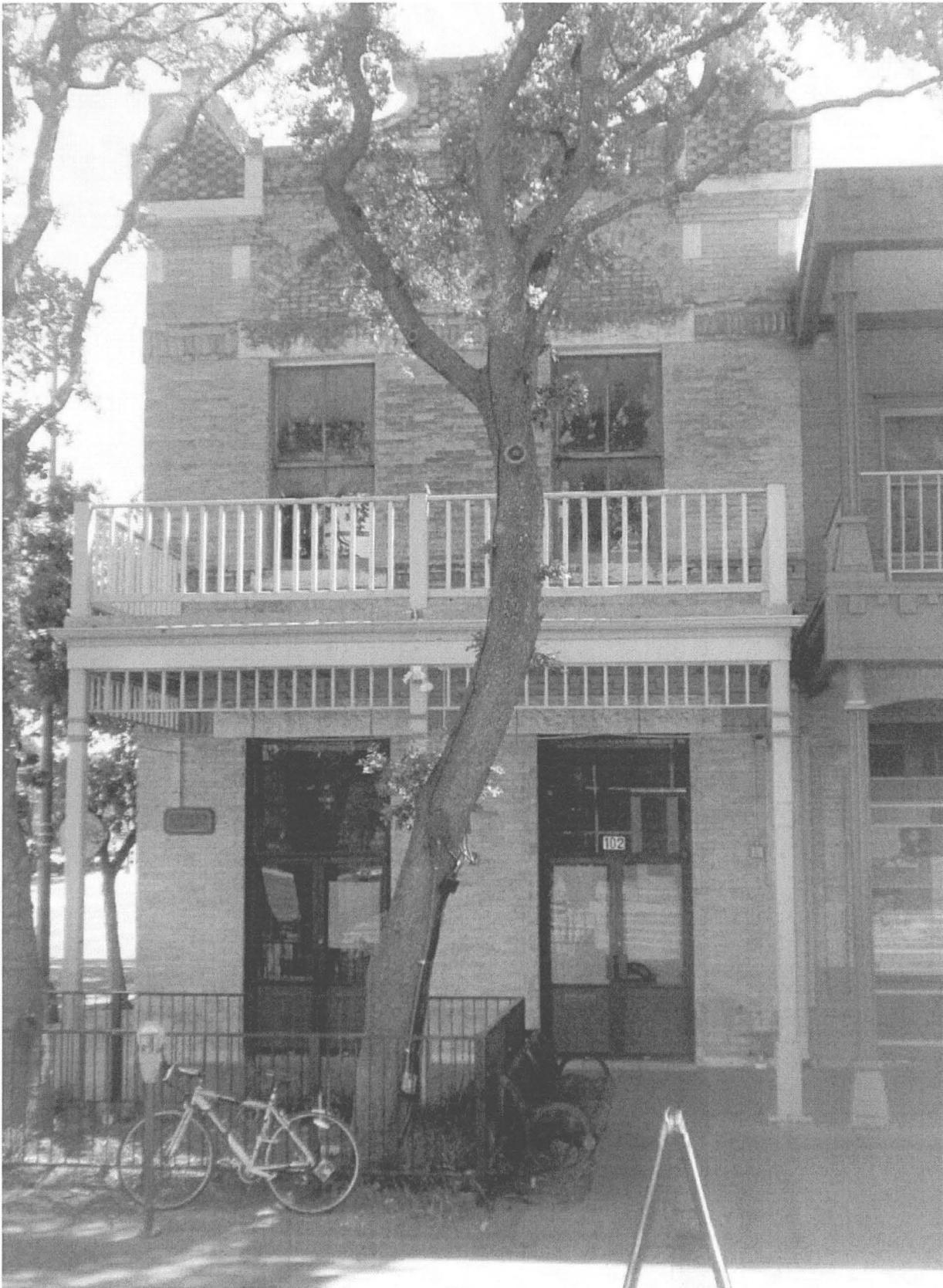




Exhibit B











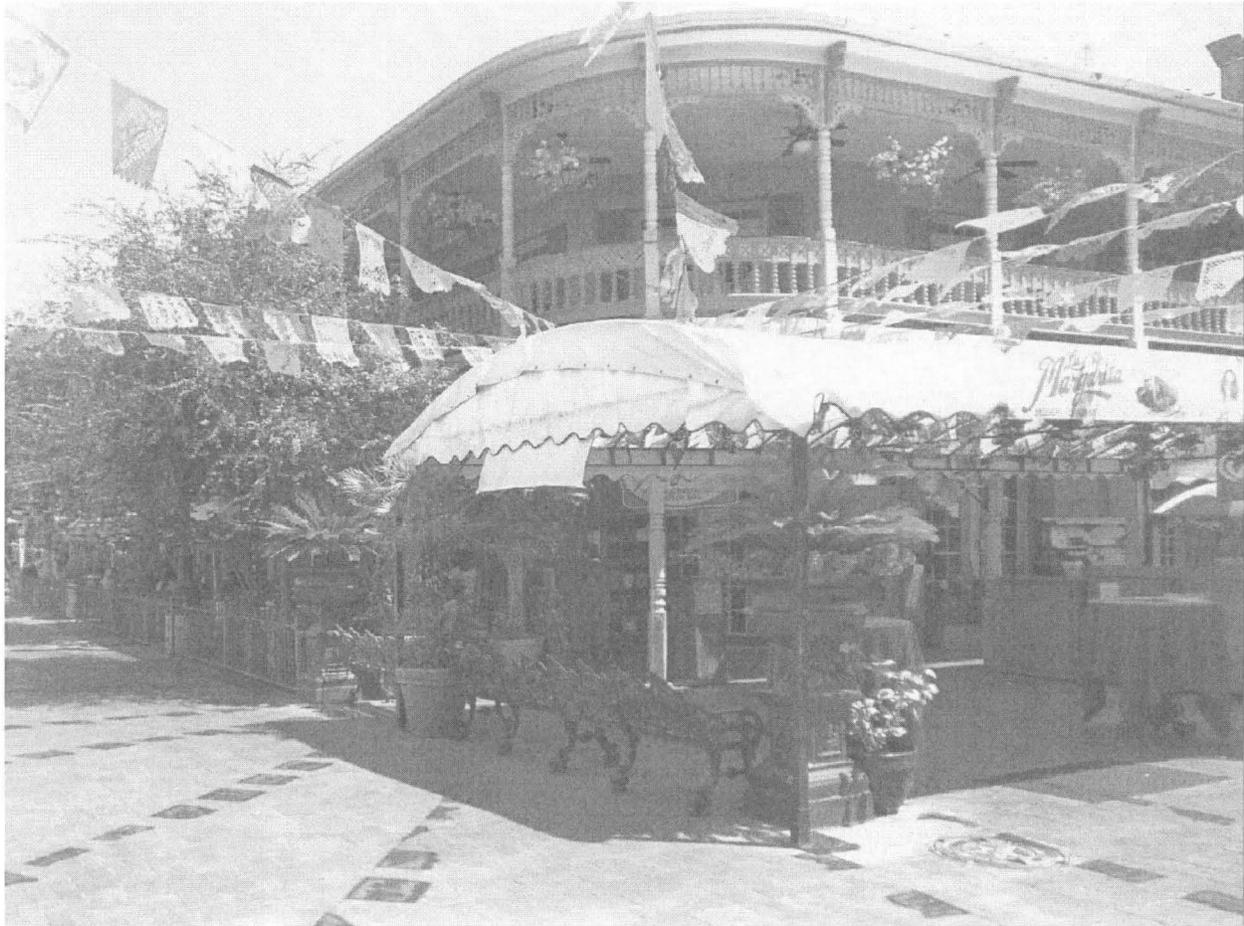


Exhibit C





Exhibit D







