

AN ORDINANCE **80 69 4**

APPROVING A 25-YEAR LICENSE AGREEMENT WITH THE EXCHANGE GROUP-1992, LTD. TO USE PUBLIC RIGHT-OF-WAY (AIR RIGHTS) FOR THE ENCROACHMENT OF AN EXISTING BALCONY ATTACHED TO THE EXCHANGE BUILDING AT THE SOUTHWEST CORNER OF PECAN AND NORTH ST. MARY'S STREETS FOR A CONSIDERATION OF \$2,500.00.

\* \* \* \*

**WHEREAS,** THE EXCHANGE GROUP-1992, LTD., a Texas Limited Partnership, as "PETITIONER", has requested that the CITY OF SAN ANTONIO ("CITY") grant them a 25 year license to use public right-of-way (air rights) for the encroachment of an existing balcony attached to the west facade of the Exchange Building located at the southwest corner of Pecan and North St. Mary's Streets; and

**WHEREAS,** said balcony overhangs the San Antonio River, being approximately 13 feet above the River Walk; and

**WHEREAS,** CITY has issued a building permit for the balcony which balcony has previously been built; and

**WHEREAS,** the CITY is agreeable to granting such License, subject to the conditions and restrictions imposed by the City Public Service Board and the City of San Antonio Fire Department, to which conditions and restrictions PETITIONER has agreed to comply; and

**WHEREAS,** the City Planning Commission has approved such License at its regular meeting on August 24, 1994; NOW THEREFORE:

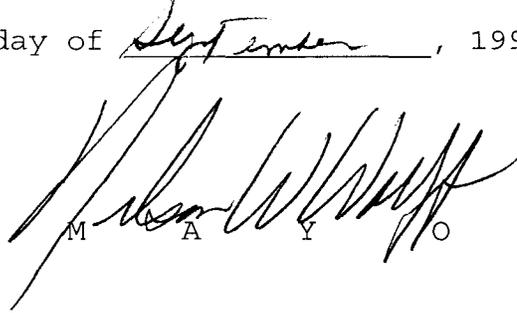
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

**SECTION 1.** A 25-year License Agreement is hereby authorized and approved with THE EXCHANGE GROUP-1992, LTD., a Texas Limited Partnership, in order to allow the encroachment into the public right-of-way (air rights) of an existing balcony attached to the Exchange Building at the southwest corner of Pecan and North St. Mary's Street.

**SECTION 2.** Upon the receipt of \$2,500.00 as a one-time payment of a license fee for the entire 25 year term, the City Manager, or in his stead, the Assistant City Manager or Assistant to the City

Manager is hereby authorized to execute said License Agreement on behalf of the CITY OF SAN ANTONIO, which said Agreement will be affixed hereto as Attachment I upon execution.

PASSED and APPROVED on this 1st day of September, 1994.

  
MAYOR R

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney

94 · 42

	ARTS & CULTURAL AFFAIRS
	AVIATION
1	BUILDING INSPECTIONS
	BUILDING INSPECTIONS-HOUSE NUMBERING
	CITY ATTORNEY
	MUNICIPAL COURT
1	REAL ESTATE (FASSNIDGE)
	REAL ESTATE (WOOD)
	REAL ESTATE (HUBBARD)
	TRIAL SECTION
	CITY MANAGER
	TRAVIS BISHOP, ASST. TO CITY MGR.
	CODE COMPLIANCE
	INTERGOVERNMENTAL RELATIONS
	INTERNATIONAL RELATIONS
	YOUTH INITIATIVES
	CITY PUBLIC SERVICE-GENERAL MANAGER
	CITY PUBLIC SERVICE-MAPS & RECORDS
	COMMERCIAL RECORDER (PUBLISH)
	COMMUNITY INITIATIVES
	CONVENTION & VISITORS BUREAU
	CONVENTION FACILITIES
	DOME DEVELOPMENT OFFICE
	ECONOMIC DEVELOPMENT
	FINANCE DIRECTOR
	ASSESSOR
1	CONTROLLER
	GRANTS
1	RISK MANAGEMENT
1	TREASURY
	FIRE DEPARTMENT
	HOUSING & COMMUNITY DEVELOPMENT
	INFORMATION SERVICES
	INTERNAL REVIEW
	LIBRARY
1	MANAGEMENT SERVICES (BUDGET)
1	MANAGEMENT SERVICES (PERSONNEL)
	MARKET SQUARE
	METROPOLITAN HEALTH DISTRICT
	MUNICIPAL COURTS
	PARKS & RECREATION
	PLANNING
	DISABILITY ACCESS OFFICE
	LAND DEVELOPMENT SERVICES
	POLICE DEPARTMENT
	POLICE DEPARTMENT-GROUND TRANSPORTATION
	PUBLIC INFORMATION OFFICE
	PUBLIC UTILITIES
1	PUBLIC WORKS
	CAPITAL PROJECTS
	CENTRAL MAPPING
	ENGINEERING
	PARKING DIVISION
	REAL ESTATE (BILL TOUDOUZE)
	SOLID WASTE
	TRAFFIC ENGINEERING
	PURCHASING & GENERAL SERVICES
	SAN ANTONIO WATER SYSTEM (SAWS)
1	ASSET MGMT.
	MUNICIPAL CODE CORPORATION (PUBLISH)

ITEM NO. 25  
 DATE: SEP 01 1994

MEETING OF THE CITY COUNCIL  
 MOTION BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_  
 ORD. NO. **80694** ZONING CASE \_\_\_\_\_  
 RESOL. \_\_\_\_\_ PETITION \_\_\_\_\_

	ROLLCALL	AYE	NAY
ROGER PEREZ DISTRICT 1			
RUTH MC-CLENDON DISTRICT 2			
LYNDA BILLA BURKE DISTRICT 3		<b>ABSENT</b>	
HENRY AVILA DISTRICT 4			
JUAN F. SOLIS III DISTRICT 5			
HELEN AYALA DISTRICT 6			
BOB ROSS DISTRICT 7			
BILL THORNTON DISTRICT 8		<b>ABSENT</b>	
HOWARD PEAK DISTRICT 9			
LYLE LARSON DISTRICT 10			
NELSON WOLFF MAYOR			

**94-42**

**NEW FILE** "EL CHANES GROUP 1992, LTD."  
**AGENDA**

## LICENSE AGREEMENT

This agreement is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, as Licensor, (hereinafter called "**CITY**") acting by and through its City Manager, Assistant City Manager or an Assistant to the City Manager, pursuant to Ordinance No. 80694 dated September 14, 1994 and THE EXCHANGE GROUP-1992, LTD., a Texas Limited Partnership, hereinafter called "**LICENSEE**".

### I. GRANT OF LICENSE

1.1 For and in consideration of the observance of the terms and conditions set forth below, the **CITY** hereby grants to **LICENSEE**, a license ("License") to encroach upon and use public right-of way (air rights) above the San Antonio River at the southwest corner of Pecan and North St. Mary's Streets in San Antonio, Bexar County, Texas, as more specifically shown on Exhibit "A" attached hereto and incorporated herein by reference for all purposes, hereafter called "Licensed Premises" or "Premises".

### II. USE

2.1 Such license is granted by **CITY** and herein restricted to the use by **LICENSEE** for the sole purpose of using public right-of-way (air rights) for the encroachment of an eight (8') feet wide x thirty-nine (39') feet long (total area, approximately 310 square feet) balcony overhanging approximately thirteen (13') feet above the sidewalk (riverwalk) of the San Antonio River and being attached to the west facade of the Exchange Building located at the southwest corner of Pecan and North St. Mary's Streets, San Antonio, Texas in accordance with the terms and conditions hereafter recited.

### III. TERM

3.1 The License hereby granted shall be for a term of twenty-five (25) years beginning September 24, 1994, unless terminated at the option of **LICENSEE** or by **CITY**, pursuant to the terms herein. **LICENSEE** may request and negotiate for an extension hereof prior to the time of the expiration hereof pursuant to the provisions of Article XI of the City Charter, or its successor provision. However, at such renewal, if approved by a future City of San Antonio Ordinance, the fee set forth herein shall be adjusted to reflect the fair market license fee existing at the time of renewal, as determined by an appraisal done by **CITY** through its Director of Asset Management or his successor. All other terms and provisions still in force under this agreement will remain in effect at the time of said renewal. **LICENSEE** recognizes that the twenty-five

*Att. I*

(25) year term is necessitated by the current City of San Antonio Charter limitations, specifically in Sections 134 and 130 as to renewal, treating a license in the nature of a "franchise."

IV.  
CONSIDERATION

4.1 As consideration for this grant, the **LICENSEE** shall pay to the **CITY OF SAN ANTONIO** the sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to cover the entire 25 year term of this License at the Office of the City of San Antonio Treasurer in San Antonio, Bexar County, Texas.

4.2 **CITY** acknowledges receipt of the one time payment of a License fee for this agreement which was received and deposited into Index Code No. 012435 within ten (10) days after the date of passage of the City Ordinance referenced above.

V.  
IMPROVEMENTS

5.1 While the encroachment is of an existing balcony improvement, if in the future **LICENSEE** desires to install or construct any improvements, then **LICENSEE** agrees to assume full responsibility for all installation and construction costs and related activities, as to any improvements to be made by **LICENSEE** to the Premises during the term hereof

5.2 **LICENSEE** and any contractor and subcontractors, it may use, further agree to comply with all applicable federal and state laws and **CITY** ordinances and codes in connection with any construction or installation of improvements. Further, **LICENSEE** agrees to the following specific conditions, respecting the designated entities as to the said balcony improvement, to wit:

**CITY PUBLIC SERVICE BOARD**

1. **LICENSEE** agrees to relocate the street light, at **LICENSEE's** sole cost and expense, since the balcony interferes with the existing street light.

2. **CITY OF SAN ANTONIO FIRE DEPARTMENT:**

A. **LICENSEE** agrees to modify, at its sole cost and expense, the metal gate leading from the Pecan Street sidewalk to the balcony to allow the fire escape ladder to operate properly.

B. **LICENSEE** also agrees, at its sole cost and expense, to remove or permanently close the first set of double glass doors on the balcony closest to Pecan Street, because when they are in the opened position, they prevent the fire escape ladder from operating properly. Note: See Exhibit "A" attached hereto for details".

5.3 **CITY** shall assume no liability and no expense by reason of its grant of this license or its exercise by **LICENSEE** and **CITY** shall not be liable for any damages caused to the premises of **LICENSEE** by reason of any improvements performed, authorized or permitted by **CITY** in the areas covered by this License.

5.4 If it should become necessary that any relocation, maintenance, or adjustment be made in **LICENSEE's** improvements hereunder, by reason of the exercise of **CITY's** rights, powers and/or duties, such relocation, maintenance or adjustments shall be done at **LICENSEE's** sole cost and expense.

## VI. TERMINATION/REMEDIES

6.1 Any breach or violation by **LICENSEE** of the provisions herein contained shall give rise immediately to the right on the part of the **CITY**, at its option, upon thirty (30) days' written notice to **LICENSEE**, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this License or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by **CITY** of a breach or violation on the part of **LICENSEE** shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained

6.2 The right is expressly reserved to **CITY**, acting through its Council, to terminate this License should it be deemed inconsistent with the public use of the property of the **CITY** or be deemed to have become a nuisance during the terms hereof.

6.3 If termination occurs or **LICENSEE** voluntarily removes the improvements, **LICENSEE** shall restore the air rights right-of-way to the extent possible to be in substantially the same condition as existed prior to the removal of said improvements.

## II. MAINTENANCE

7.1 **LICENSEE**, at its sole cost and expense, agrees to maintain, as necessary, the improvements installed by it, adhering to all applicable safety standards.

7.2 **LICENSEE** also agrees to promptly repair any damage to the Premises caused by the installation or maintenance of the improvements, whether existing or future improvements.

## VIII. COMPLIANCE

8.1 **LICENSEE** shall, in connection with any construction, repair, use, alteration, relocation, renovation, remodeling, restoration, reconstruction, or maintenance of the

Premises, comply with all applicable federal, state and local laws, ordinances, rules and regulations

IX.  
INSURANCE

9.1 Without limiting **CITY's** right to indemnification, **LICENSEE** agrees to provide and maintain insurance, at its own expense, in the following types and amounts during the term of the License, including periods of construction and installation of any improvements, with companies admitted to do business in the State of Texas:

TYPE	AMOUNT
(1) Workers' Compensation during construction or an approved alternate plan at other periods during the term hereof	Statutory, with a waiver of subrogation in favor of <b>CITY</b>
AND	
(2) Employers' Liability during construction or an approved alternate plan at other periods during the term hereof	\$500,000 per occurrence, with a waiver of subrogation in favor of <b>CITY</b>
(3) Commercial General (Public) Liability Insurance-to include coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury and Property Damage: \$1,000,000 per occurrence
(a) Premises and Operations	
(b) Independent Contractors	
(c) Products/Completed Operations Liability	
(d) Personal Injury Liability	
(e) Contractual Liability	
(f) Explosion Collapse and Underground Property, if applicable	
(g) Broad-Form Property Damage	
(h) Liquor Legal Liability if <b>LICENSEE</b> sells or serves alcoholic beverages, (Liquor Host Liability, if serves) on the Premises;	

- (1.) Fire Damage Legal Liability
- (4 ) Business Automobile Liability--to include coverage for: Combined Single Limit for Bodily Injury and Property Damage: \$1,000, 000.00 (or its equivalent)
- (1) Owned/Leased Automobiles
- (2) Non-Owned Automobiles
- (3) Hired Automobiles
- (5 ) Property Insurance--for physical damage to the property of the **LICENSEE** including improvements and betterments made to the Premises Replacement Cost Coverage for the replacement cost of **LICENSEE's** improvements and with a Waiver of Subrogation in favor of **CITY**, as to improvements and betterments made to the Premises.
- (6 ) Plate Glass Coverage (if said balcony is enclosed in the future) Replacement Cost Insurance or, at the option of **LICENSEE**, self-insurance

Any alternate plan for Workers' Compensation and Employer's Liability must be approved in advance by the **CITY's** Risk Manager. Alternate plans will not be allowed or accepted during any periods of installation, construction, repairs, additions, alterations, relocation, renovation, remodeling, restoration, reconstruction, or maintenance of the improvements to the Premises.

9.2 **CITY's** Risk Manager is hereby authorized to modify the requirements set forth above in the event he determines that such modification is in **CITY's** best interest.

9.3 **LICENSEE** further agrees that, with respect to the above required insurance, each insurance policy required by this License shall contain the following clauses:

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

- (a) City Clerk, City of San Antonio  
City Hall/Military Plaza  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attention: Risk Manager
- (b) Asset Management Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
**ATTENTION: Roland Lozano, Director**

"It is agreed that any insurance provided by **LICENSEE** 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".

9.4 Each insurance policy required by this License, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, shall contain the following clause:

"The **CITY OF SAN ANTONIO**, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under a License with the City of San Antonio".

9.5 In those cases where **LICENSEE** makes installation, construction, repairs, alterations, additions, relocation, renovation, remodeling, restoration, reconstruction or maintenance of or improvements to the Licensed Premises, (collectively "construction work"), then **LICENSEE** shall further provide Workers' Compensation, Employer's Liability, Builder's Risk Insurance Coverage, Professional Liability Insurance Coverage for architects and engineers, and any other liability or other insurance coverage in the 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 construction work and until said work is accepted by the **CITY OF SAN ANTONIO**. **LICENSEE** shall procure and maintain said insurance, as well as other insurance coverage enumerated above, in full force and effect during the construction phase of such work. Also, payment and performance bonds naming the **CITY** as indemnitee shall be provided by **LICENSEE** or its contractors or subcontractors. Should the size and/or the scope of a contract for such construction work be limited in nature, the **LICENSEE** may request, in writing to the **CITY OF SAN ANTONIO's** Director of Asset Management, a waiver of the requirements in this Article; however, a waiver may only be granted by **CITY's** Risk Manager. In any event, the **CITY's** Risk Manager's decision shall be final.

9.6 Also, **LICENSEE** agrees to provide to **CITY**, within thirty (30) days after the execution date of this License Agreement endorsements to the above-required policies, which add to these policies the applicable clauses referenced above in Sections 9.3 and 9.4. 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 the **CITY**, it shall be **LICENSEE's** responsibility to see that the **CITY** receives documentation acceptable to **CITY** which confirms that the individual signing said endorsements is authorized to do so by the insurance company.

9.7 Said Notices and Certificates of Insurance shall be provided to:

- (a) Department of Asset Management  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

(b) City Clerk , City of San Antonio  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for the payment of damages to persons or property resulting from **LICENSEE's** activities or the activities of **LICENSEE's** employees, agents, representatives, sublicensees, contractors, subcontractors, or invitees under this License.

9.9 **CITY**, its agents, representatives, or employees shall not be liable, and **LICENSEE** waive all claims for any damage to persons or property sustained by **LICENSEE** or any person claiming through **LICENSEE**, which may occur on the Premises, or for the loss of, or damage to, any property of **LICENSEE** or of others by theft or otherwise, whether caused by other persons on the Premises or by occupants of adjacent property or the public or **LICENSEE's** employees, agents, representatives, sublicensees, patrons, customers, invitees, contractors, or subcontractors. **LICENSEE shall save and hold harmless CITY from any claims arising out of damage to LICENSEE's property or damage to LICENSEE's business, including subrogation claims by LICENSEE's insurers.**

9.10 Any and all employees, representatives, agents, contractors, subcontractors, sublicensees, assignees, or volunteers of **LICENSEE** or any other party providing services on behalf of **LICENSEE** while engaged in the performance or any work required by the **CITY** or **LICENSEE** related to the Premises shall be considered employees, representatives, agents, contractors, subcontractors, sublicensees, assignees, or volunteers or service providers of **LICENSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LICENSEE** 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, contractors, subcontractors, sublicensees, assignees, or volunteers or service providers shall be the sole obligation and responsibility of **LICENSEE**.

9.11 **CITY** shall review **LICENSEE's** required insurance as stated herein at any time during the term hereof and **CITY** reserves the right to require reasonable additional limits and/or coverages to be obtained by **LICENSEE**. **LICENSEE** agrees to comply with any such request by **CITY**.

## X. INDEMNITY

**10.1 LICENSEE WILL BE SOLELY RESPONSIBLE FOR ALL MATERIALS, EQUIPMENT AND WORK DIRECTLY RELATED TO THE IMPROVEMENTS LOCATED ON THE PREMISES DURING THE TERM OF THE LICENSE. FURTHER, LICENSEE AGREES TO FULLY INDEMNIFY, SAVE AND HOLD HARMLESS CITY FROM AND AGAINST ALL CLAIMS AND ACTIONS AND ALL EXPENSES INCIDENTAL TO THE INVESTIGATION AND DEFENSE THEREOF, BASED UPON, OR ARISING OUT OF, THE EXECUTION OF THIS LICENSE OR ANY DAMAGES OR**

INJURIES TO, OR DEATH OF, ANY THIRD PERSONS OR DAMAGES TO THEIR PROPERTY RESULTING FROM THE IMPROVEMENTS WHICH HAVE BEEN OR WILL BE, CONSTRUCTED ON THE PREMISES. FURTHER, CITY SHALL NOT BE LIABLE FOR, AND LICENSEE WILL REIMBURSE, INDEMNIFY AND SAVE CITY HARMLESS FROM, ANY AND ALL COSTS, FINES, SUITS, CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION OR LIABILITY OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, INVESTIGATION EXPENSES, DEFENSE COSTS, WITH SELECTION OF THE DEFENSE ATTORNEY SUBJECT TO CITY'S PRIOR WRITTEN APPROVAL, COURT COSTS, AND ATTORNEY'S FEES BY REASON OF ANY NEGLIGENCE, MISCONDUCT, ACTS OR OMISSIONS, OR ANY BREACH, VIOLATION, PERFORMANCE OR NON-PERFORMANCE OF ANY COVENANT HEREOF ON THE PART OF LICENSEE OR ITS AGENTS, EMPLOYEES, REPRESENTATIVES, INVITEES, CUSTOMERS, PATRONS, ASSIGNEES, SUBLICENSEES, CONTRACTORS OR SUBCONTRACTORS. FURTHER THIS INDEMNITY INCLUDES ANY DAMAGES, EXPENSES, FINES, CLAIMS, SUITS, AND LIABILITY ON ACCOUNT OF ANY AND ALL, DAMAGES TO, OR LOSS OR DESTRUCTION OF, ANY PROPERTY, OR DEATH OF, OR INJURY TO, ANY PERSON OR PERSONS, RESULTING FROM, OR IN ANY WAY RELATED TO, OR CONNECTED WITH, THE WORK COVERED HEREUNDER, THE USE OF THE PREMISES, AND THE PROPERTY OF LICENSEE, AND CONTRACTORS AND SUBCONTRACTORS OF LICENSEE AND CITY. SUCH INDEMNITY SHALL APPLY WHERE ANY SUCH COSTS, FINES, EXPENSES SUITS, CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, OR LIABILITY ARISE IN PART FROM THE NEGLIGENCE OF CITY. IT IS THE EXPRESS INTENTION OF CITY AND LICENSEE THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE IS INDEMNITY BY LICENSEE TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE, EXCLUDING ONLY WHERE THE CAUSE OF THE INJURY, DEATH OR DAMAGE WAS THE SOLE ACTIVE NEGLIGENCE OF CITY OR ITS EMPLOYEES, AND THEN ONLY UPON FINAL ADJUDICATION OR SETTLEMENT AND IN AN AMOUNT NOT TO EXCEED THE STATUTORY LIMITS UNDER THE TEXAS TORT CLAIMS ACT, AS AMENDED FROM TIME TO TIME. CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY LOSS OR DAMAGE TO ANY PROPERTY OR PERSON OCCASIONED BY THEFT, FIRE, ACT OF GOD, PUBLIC ENEMY, INJUNCTION, RIOT, STRIKE, INSURRECTION, WAR, COURT ORDER, REQUISITION OR ORDER OF A GOVERNMENTAL BODY OR AUTHORITY OR OTHER MATTER BEYOND THE REASONABLE CONTROL OF CITY, OR FOR ANY DAMAGE OR INCONVENIENCE WHICH MAY ARISE THROUGH REPAIR, MAINTENANCE, OR ALTERATION OF ANY PART OF THE PREMISES, OR FAILURE TO MAKE REPAIRS, OR FROM ANY CAUSE WHATEVER EXCEPT AS RESULTS FROM CITY'S SOLE ACTIVE NEGLIGENCE AND THEN ONLY UNDER THE FINAL ADJUDICATION/SETTLEMENT CONDITION STATED HEREIN.

XI.  
ASSIGNMENT

11.1 This license is personal to **LICENSEE** and shall not be assigned or sublicensed by **LICENSEE** without the prior written consent of **CITY**, which consent must be evidenced by passage of a future **CITY OF SAN ANTONIO** ordinance.

XII.  
CONDEMNATION

12.1 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 License 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. **LICENSEE** hereby waives all rights to any proceeds of such condemnation, but **LICENSEE** shall have the right to seek a separate condemnation award.

XIII.  
ATTORNEY'S FEES

13.1 In the event **CITY** brings any action under this License Agreement alleging that **LICENSEE** has defaulted hereunder, and **CITY** prevails, then **CITY** shall be entitled to recover from **LICENSEE** its reasonable attorney's fees. **LICENSEE** agrees to make prompt payment of such fees to **CITY**.

XIV.  
SEPARABILITY

14.1 The parties hereto agree that if any clause or provision of this License 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 City ordinances of the **CITY OF SAN ANTONIO**, Texas, effective during the term of this License, then and in that event, it is the intention of the parties hereto that the remainder of this License shall not be affected thereby, and it is also the intention of the parties to this License that in lieu of each clause or provision of this License that is held to be illegal, invalid or unenforceable, there be added as a part of this License 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.

XV.  
AMENDMENT

15.1 No amendment, modification, or alteration of the terms of this License 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.

XVI.  
TAXES AND LICENSES

16.1 **LICENSEE** agrees to pay, on or before their 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

Premises, or upon **LICENSEE**, or incurred by **LICENSEE** related to its improvements, operations, and activities hereunder, or upon any of **LICENSEE's** property used in connection therewith, and **LICENSEE** further agrees to maintain in current status all Federal, State and local licenses and permits required for the improvements in the **CITY** air rights public right of way.

XVII.  
CONFLICT OF INTEREST

17.1 **LICENSEE** acknowledges that it has been informed that Texas law prohibits contracts between the **CITY** and its "officers" and "employees", and that the prohibition extends to an officer and employee of **CITY** agencies such as **CITY**-owned utilities and certain **CITY** boards and commissions, and to contracts with any partnership, corporation or other organization in which the officer or employee has an interest. **LICENSEE** certifies (and this License Agreement is made in reliance thereon) that neither **LICENSEE** nor any of its respective agents, employees, or anyone under its control, nor any person having an interest in this License Agreement, is an officer or employee of **CITY** or any of its agencies.

XVIII.  
NOTICES

18.1 Any notice hereunder may be given by U.S. certified or registered mail to the City of San Antonio by addressing: City Clerk, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966, and to THE EXCHANGE GROUP-1992, LTD., a Texas Limited Partnership at the address shown on the signature page hereto. Such addresses may be changed from time to time by written notice of such change given in accordance with this Article XVIII.

XIX.  
APPROVAL OF THE CITY

19.1 Whenever this License calls for approval by **CITY**, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of Asset Management of the **CITY OF SAN ANTONIO** or his designee.

XX.  
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 parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of licensor and licensee.

XXI.  
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, codes, and ordinances of the CITY OF SAN ANTONIO, Texas and not to include anything inconsistent with the rights of the public in the aforementioned public air rights right-of-way.

XXII.  
GENDER

22.1 Words of any gender used in this License 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.

XXIII.  
CAPTIONS

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

XXIV.  
COVENANTS

24.1 Covenants and obligations of **LICENSEE** contained herein shall be covenants running with the land, binding upon its legal representatives, successors, and assigns.

XXV.  
ENTIRE AGREEMENT

25.1 This License Agreement, together with its exhibits and the authorizing ordinance or ordinances, in writing, constitute the entire agreement, with any other written or parol agreement with **LICENSEE** being expressly waived by **LICENSEE**. It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance.

XXVI.  
AUTHORITY

26.1 The signers of this License for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this License on behalf of **LICENSEE**.

**EXECUTED** to have an Effective Date of September 24, 1994.

ATTEST

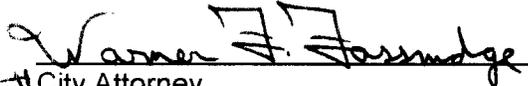
By \_\_\_\_\_  
City Clerk

LICENSOR:

CITY OF SAN ANTONIO,  
a Texas Municipal Corporation

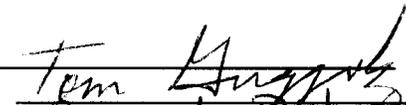
By:   
City Manager

APPROVED AS TO FORM:

  
City Attorney

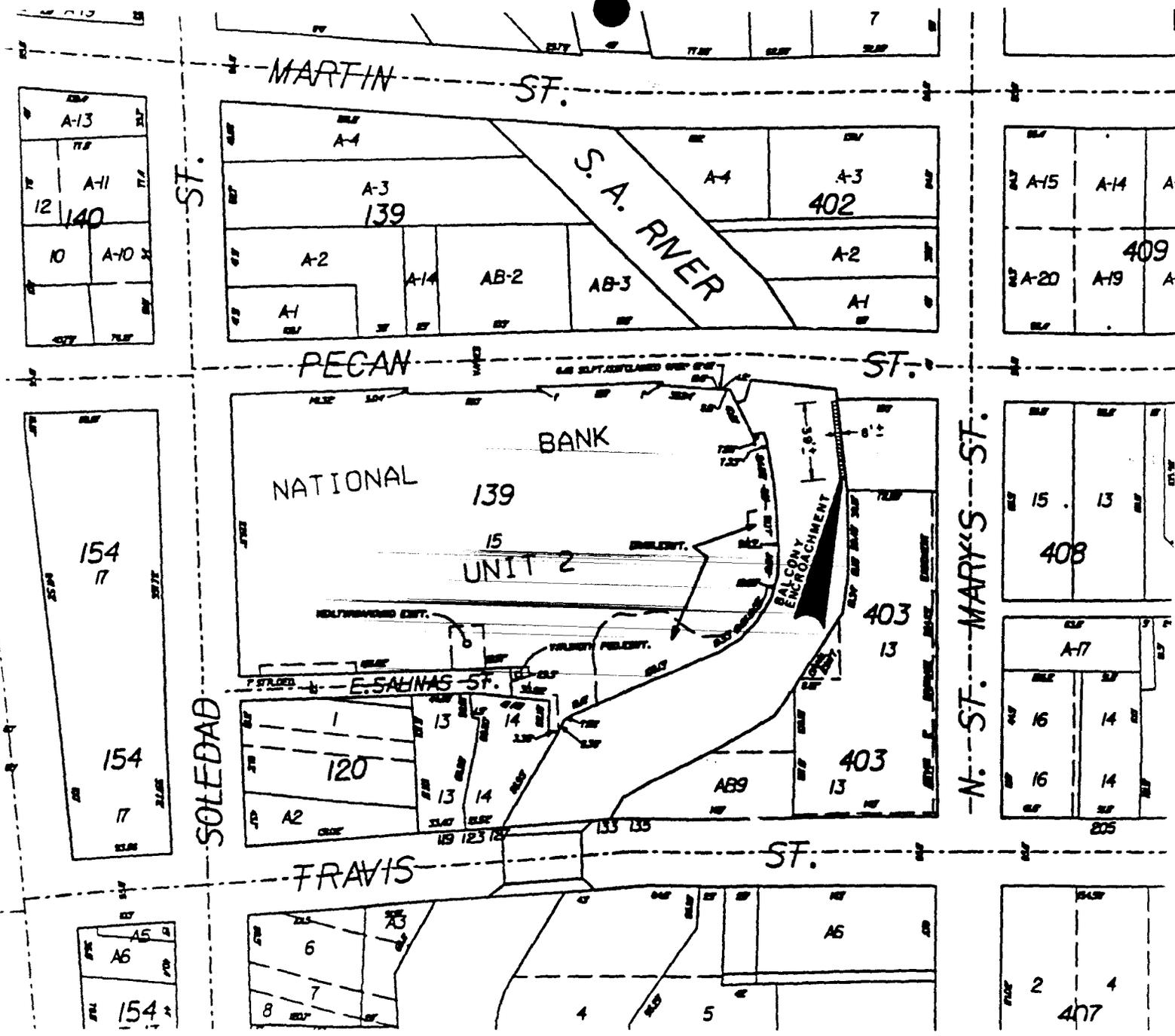
LICENSEE:

THE EXCHANGE GROUP -1992, LTD.,  
a Texas Limited Partnership

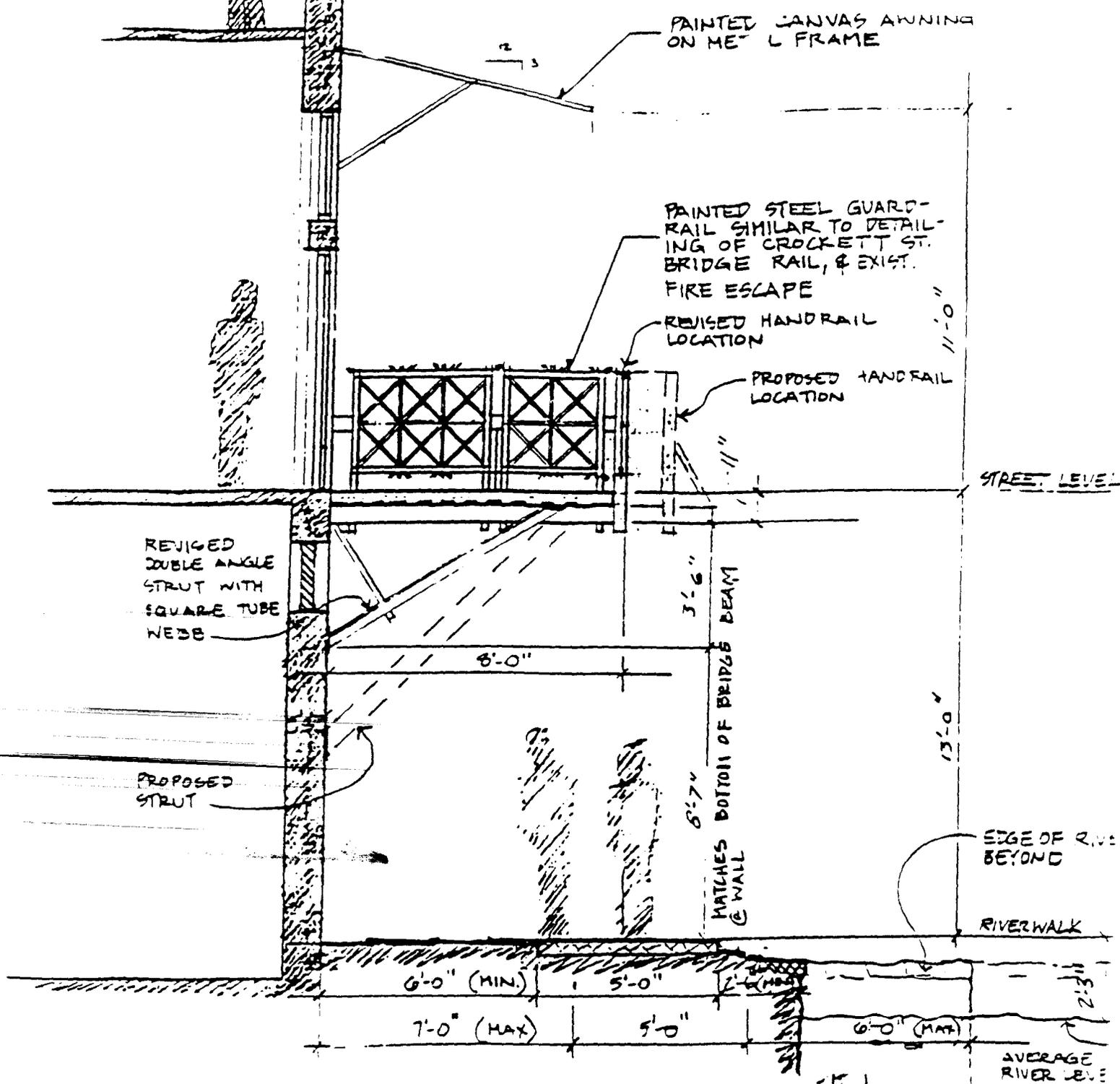
BY:   
Name: Tom Gungor  
Title: General Partner  
Address: 152 East Pecan Street  
San Antonio, Texas 78205

Mailing Address  
731 Alta Avenue  
San Antonio, Texas  
78209

**EXHIBIT "A"**  
**CONSIST**  
**OF**  
**THREE (3) PAGES**







THE EXCHANGE BUILDING  
BALCONY SECTION - 1/4" = 1'-0"

LAKE / FLAT  
ARCHITECT  
INC • 311 THIRD STREET •  
SAN ANTONIO • TEXAS • 78205  
512 227 3335

# CONSENT AGENDA

CITY OF SAN ANTONIO ITEM NO. 25

## Interdepartment Correspondence Sheet

TO: CITY COUNCIL

FROM: Roland A. Lozano, Acting Director, ASSET MANAGEMENT DEPARTMENT

COPIES TO: Oscar Serrano, Sr. Real Estate Specialist, ASSET MANAGEMENT DEPARTMENT; File

SUBJECT: (S.P. 865) - Request for License to use Public Right-of-Way  
(General location: Pecan & North St. Mary's Streets)

DATE: August 18, 1994

**PETITIONER:** THE EXCHANGE GROUP 1992, LTD.  
c/o Mr. Tom Guggolz, General Partner  
731 Alta Avenue  
San Antonio, Texas 78209

### SUMMARY AND RECOMMENDATIONS:

The captioned Petitioner is requesting a License to use Public Right-of-Way (air rights) for an existing balcony in the location as shown on attached Exhibits "A" and "B". Exhibits "C" and "D" reflect an overview and side detail of the current encroachment. The balcony is attached to the Exchange Building located at the southwest corner of Pecan and North St. Mary's Streets. This balcony is attached to the west facade of the building and overhangs the San Antonio River. The City of San Antonio has issued a building permit for the balcony and it has been built. The balcony is cantilevered approximately 13 feet above the sidewalk of the San Antonio River. The balcony is approximately 8 feet in width by 39 feet in length and covers an area of approximately 310 square feet.

The Asset Management Department is recommending City Council approve this request.

In compliance with City procedures, Petitioner's request has been circulated through all interested City departments and utility agencies involved. The Fire Department and City Public Service Board have imposed specific conditions to which Petitioner has formally assured compliance.

Licensee has agreed to provide insurance coverage and hold the City of San Antonio harmless from any and all liability in connection with the License.

The License for this encroachment will be for a period of 25 years for a total consideration of \$2,500.00. Petitioner has agreed to pay this amount. This agreement will contain any and all requirements and stipulations between the City of San Antonio and Petitioner.

**CITY COUNCIL**

Page 2/S.P. No. 865

August 18, 1994

**POLICY ANALYSIS:**

The action requested is in accordance with the Department's present policies and procedures.

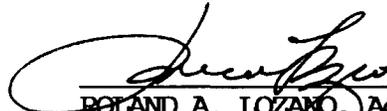
**FINANCIAL IMPACT:**

The City of San Antonio will receive a \$2,500.00 License Fee.

**SUPPLEMENTAL COMMENTS:**

The City of San Antonio's Planning Commission will consider this request at its regular meeting of August 24, 1994 and its findings will be presented to the City Council at its September 1, 1994 Council meeting.

The Historic and Urban Design Section has no objections to this request.

  
\_\_\_\_\_  
ROLAND A. LOZANO, Acting Director  
ASSET MANAGEMENT DEPARTMENT

**RECOMMENDATION APPROVED:**

  
\_\_\_\_\_  
ALEXANDER E. BRISEÑO  
City Manager

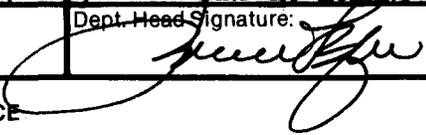








DO NOT TYPE IN THIS SPACE		CITY OF SAN ANTONIO  <b>Request For Ordinance/Resolution</b>	For CMO use only	
<b>Approval</b>			Date Considered	
Finance	Budget		Consent <input type="checkbox"/>	Individual <input type="checkbox"/>
Legal	Coordinator	Item No. <b>25</b> Ord. No.		

Date: <b>August 18, 1994</b>	Department: <b>ASSET MANAGEMENT (Special Projects)</b>	Contact Person/Phone # <b>ROLAND A. LOZANO (7885)</b>
Date Council Consideration Requested: <b>September 1, 1994</b>	Deadline for Action:	Dept. Head Signature: 

**SUMMARY OF ORDINANCE**

This Ordinance will authorize a License to Use Public Right-of-Way (air rights) for an existing balcony attached to the Exchange Building located at the southwest corner of Pecan and North St. Mary's Streets.

The Asset Management Department is recommending City Council's approval of this request.

Council Memorandum Must Be Attached To Original

Other Depts., Boards, Committees Involved (please specify): **The City of San Antonio's Planning Commission will consider this request on August 24, 1994. LEGAL SECTION/WARNER FASSNIDGE**

Contract signed by other party  
Yes  No

FISCAL DATA (If Applicable)	Budgetary Implications
Fund No. _____ Amt. Expended _____	Funds/Staffing Budgeted Yes <input type="checkbox"/> No <input type="checkbox"/>
Activity No. _____ SID No. _____	Positions Currently Authorized
Index Code _____ Project No. _____	Impact on future O & M _____
Object Code _____	If positions added, specify class and no.

Comments:

**COUNCIL DISTRICT NO. 1**

Coordinator — White  
Legal — Green  
Budget — Canary  
Finance — Pink  
Originator — Gold