

AN ORDINANCE

96484

**AUTHORIZING THE EXECUTION OF A TWENTY FIVE (25) YEAR LICENSE AGREEMENT WITH STREET RETAIL SAN ANTONIO, L.P., A DELAWARE LIMITED PARTNERSHIP, (SRSA), TO USE PUBLIC RIGHT OF WAY AT CERTAIN POINTS ALONG HOUSTON STREET AND ST. MARY'S STREET AND AUTHORIZING THE EXECUTION OF A TEMPORARY EASEMENT AGREEMENT DEALING WITH PUBLIC IMPROVEMENTS IN CONNECTION WITH SRSA'S CONSTRUCTION OF THE VALENCIA HOTEL AND THE HOUSTON STREET BRIDGE/PASEO DEL RIO LINKAGE PROJECT.**

\* \* \* \* \*

**WHEREAS**, City Ordinance No. 94900, passed and approved on November 8, 2001, authorized execution of a twenty-five (25) year License Agreement with **STREET RETAIL SAN ANTONIO, LP (SRSA)** for the use of Public Right of Way at certain points along Houston Street and St. Mary's Street in connection with **SRSA's** construction of the Valencia Hotel and the Houston Street Bridge/Paseo del Rio Linkage Project with provision for a 45-day period for execution of the License agreement by the parties; however, the 45-day period has lapsed; and

**WHEREAS**, in light of the economic benefits accruing to the City from the construction of the Valencia Hotel and development of the Houston Street Bridge/Paseo del Rio Linkage Project, it is in the City's best interest to re-authorize execution of the License Agreement and to also authorize the execution of a Temporary Easement Agreement dealing with public improvements in connection with such construction; **NOW THEREFORE**;

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

**SECTION 1.** Execution of a twenty-five (25) year License Agreement by the City Manager or her designee is hereby re-authorized with **STREET RETAIL SAN ANTONIO, LP (SRSA)** to use Public Right of Way at certain points along Houston Street and St. Mary's street at the location shown and more specifically described in **EXHIBIT "A"** attached hereto and incorporated herein verbatim for all purposes. A copy of the License Agreement, signed on behalf of SRSA is attached hereto as **EXHIBIT "B"** and incorporated herein verbatim for all purposes. A copy of the Letter Agreement, also signed on behalf of SRSA, setting forth conditions agreed to in connection with the License Agreement, is attached hereto as **EXHIBIT "C"** and incorporated herein verbatim for all purposes.

**SECTION 2.** Execution of A Temporary Easement Agreement by the City Manager or her designee is hereby authorized with **SRSA** dealing with public improvements in connection with construction of the Valencia Hotel and the Houston Street Bridge/Paseo Del Rio Linkage Project. A copy of the Temporary Easement Agreement, signed on behalf of SRSA, is attached hereto as **EXHIBIT "D"** and incorporated herein verbatim for all purposes.

**SECTION 3.** As previously referenced in Ordinance No. 94900 dated November 8, 2001, the License Fee shall be deposited into Fund No. 26-054104 entitled "HOUSTON STREET BRIDGE-PASEO DEL RIO LINDAGE PROJECT" is hereby designated for use in accounting for the grant funds.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific Index Codes and fund numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 7.** This ordinance shall take effect on October 13, 2002.

**PASSED AND APPROVED** this 3<sup>rd</sup> day of October, 2002.

  
M A Y O R PRO TEM

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

02-37

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - PUBLIC UTILITIES SUPERVISOR
FINANCE- TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT - NEIGHBORHOOD PLNG;
URBAN DESIGN/HISTORIC PRESERVATION
DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 24

DATE: OCT 3 2002

MOTION: \_\_\_\_\_

ORDINANCE NUMBER: 96484

RESOLUTION NUMBER: \_\_\_\_\_

ZONING CASE NUMBER: \_\_\_\_\_

TRAVEL AUTHORIZATION: \_\_\_\_\_

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1			
JOHN H. SANDERS District 2			
ANTONETTE "TONI" MOORHOUSE District 3			
ENRIQUE "KIKE" MARTIN District 4			
DAVID A. GARCIA District 5	ABSENT		
ENRIQUE M. BARRERA District 6			
JULIAN CASTRO District 7			
BONNIE CONNER District 8	ABSENT		
CARROLL W. SCHUBERT District 9	-		
DAVID CARPENTER District 10			
EDWARD D. GARZA Mayor	ABSENT		

**FILE** *Street Retail*  
*San Antonio*

**02-37**

**CONSENT AGENDA**

## LICENSE AGREEMENT

This LICENSE AGREEMENT is entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, as LICENSOR, hereinafter referred to as "CITY", acting by and through its City Manager pursuant to Ordinance No. 96484 dated October 3, 2002, and STREET RETAIL SAN ANTONIO, LP, a Delaware limited partnership, (hereinafter called "LICENSEE").

### I. PREMISES

1.1 The CITY has agreed to grant to LICENSEE a license to encroach into the CITY's right-of-way at certain points along Houston Street and St. Mary's Street in downtown San Antonio as more fully described and shown on Exhibit "A", which is attached hereto and incorporated herein for all purposes. The described areas are hereinafter referred to as the "Premises" or "Licensed Premises".

### II. PURPOSE AND USE

2.1 For and in consideration of the observance of the terms and conditions set forth herein, CITY grants to LICENSEE, a license (the "License") for the encroachments as shown on Exhibit "A" attached hereto and for use of the Premises as reasonably necessary for the maintenance and operation of said encroachments. This License does not grant to LICENSEE the authority to use any area beyond the Licensed Premises.

2.2 The Parties acknowledge and agree that a copy of this License Agreement shall be recorded by CITY in the Official Public Records of Real Property of Bexar County, Texas.

### III. TERM

3.1 The License granted hereby shall be for a term of twenty-five (25) years ("License Term"), beginning on the Effective Date of this License Agreement, unless sooner terminated by the CITY or the LICENSEE pursuant to the terms hereof.

### IV. LICENSE FEE

4.1 The Parties agree that the license fee for this License is part of the services and consideration exchanged under the Project Management Contract-Houston Street Linkage between the CITY and LICENSEE dated January 8, 2002 ("PM Contract") and no further monetary or other consideration is required or expected. .

### V. CONSTRUCTION, MAINTENANCE AND OPERATIONS

5.1 **Costs.** Except as otherwise agreed between the Parties in writing under the PM Contract or this License Agreement, LICENSEE shall be solely responsible for all costs of construction, installation, repairs, maintenance, alterations, additions, improvements, adjustments, relocation, replacement, renovations, remodeling, rehabilitation, restoration,

reconstruction to the Premises, (hereafter "LICENSEE's Work"), and use or operation of any property placed in the Premises by LICENSEE.

**5.2 Damages.** The CITY shall not be liable for any damages caused to the Premises by reason of construction performed by LICENSEE previously or in the future or any maintenance or operation of activities authorized by LICENSEE.

**5.3 Maintenance.** LICENSEE, at its sole cost and expense, agrees to maintain, as necessary, the facilities installed by LICENSEE, adhering to all applicable safety standards, including those imposed by State laws, Federal laws, CITY ordinances and Bexar County ordinances.

**5.4 Not Binding.** LICENSEE covenants that LICENSEE shall not bind, nor shall LICENSEE's contractors or subcontractors bind, or attempt to bind, CITY for payment of any money in connection with any LICENSEE's Work in, on or about the Premises, whether authorized or unauthorized hereunder.

**5.5 Contractors and Subcontractors.** LICENSEE hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all current or future LICENSEE's Work.

**5.6 No Liability.** CITY assumes 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 by reason of the construction performed previously or in the future or any maintenance or operation activities authorized or permitted by CITY in or on the Licensed Premises.

**5.7 Signs.** LICENSEE will have LICENSEE's contractors 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.

## VI. INDEMNITY

**6.1** LICENSEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, agents, officers, and directors, 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 injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to LICENSEE's activities under this LICENSE, including any acts or omissions of LICENSEE, and any respective agent, officer, director, representative, employee, consultant or subconsultant, contractor, subcontractor, sublicensee, assignee, invitee, volunteer or service provider of LICENSEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this LICENSE, 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 are not intended to create or grant any rights, contractual or otherwise, to any person or entity. LICENSEE shall promptly advise CITY in writing of any claim or demand against CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this LICENSE and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this ARTICLE.

VII. INSURANCE

7.1 Without limiting the CITY's rights to indemnification, LICENSEE shall provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company, in the following type and amounts for the term of this Agreement, including periods of LICENSEE's Work:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation during the performance of LICENSEE's Work or an approved alternate plan at other periods during the term hereof.	Statutory, with a waiver of subrogation in favor of CITY
2. Employers' Liability during LICENSEE's or Work an approved alternate plan at other periods split during the term hereof.	\$500,000 per category, with a waiver of subrogation in favor of CITY.
3. Commercial General (Public) Liability - to include coverage for the following where the exposure exists:	Combined Single Limit For Bodily Injury and Property Damage: \$1,000,000 per Occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability coverage.
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed	
(d) Personal Injury Liability	
(e) Contractual Liability	
(f) Explosion, Collapse and Underground Property	
(g) Broad Form Property Damage	
4. Property Insurance -- for physical damage to the property of LICENSEE including improvements and betterments to the Premises.	Coverage for a minimum of 80% of the actual cash value of the improvements.

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 LICENSEE's Work in, on, or about the Premises, whether authorized or unauthorized hereunder.

**7.2 LICENSEE** further agrees that, with respect to the above required insurance, that 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: Property Disposition Manager

"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."

**7.3** 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 elected officials, employees, agents, officers, and directors, are added as additional insureds as respects operations and activities on, or on behalf of, the named insured performed under a License with the City of San Antonio."

**7.4** In those cases where LICENSEE makes the initial construction of improvements or any subsequent LICENSEE's Work, as provided herein, the LICENSEE shall further procure and maintain in full force and effect during the term of such contract for LICENSEE's Work, (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 LICENSEE 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, LICENSEE's Work; (3) workers' compensation and employer's liability insurance; and (4) professional liability insurance for architects and engineers, covering all risks of physical loss during the term of any contract for such LICENSEE's Work.

7.5 Further LICENSEE agrees to provide to CITY, within thirty (30) days after the execution date of this Agreement, endorsements to the above-required policies, which add to these policies the applicable clauses referenced above in SECTIONS 8.3 and 8.4. 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.

7.6 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  
Attn: Property Disposition Manager
- (b) City Clerk, City of San Antonio  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attn: Risk Manager

7.7 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 agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees or volunteers under this License.

7.8 CITY, its elected officials, employees, agents, officers, and directors, shall not be liable, and LICENSEE waives 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 agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees or volunteers. LICENSEE shall save and hold harmless CITY from any and all claims arising out of damage to LICENSEE's property, including subrogation claims by LICENSEE's insurers.

7.9 Any and all agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees, volunteers or service providers of LICENSEE or any other party providing services on behalf of LICENSEE while engaged in the performance of any work required by the CITY or LICENSEE related to the Premises shall be considered agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees, volunteers or service providers of LICENSEE only, and not of the CITY unless otherwise required by law. 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 agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees, volunteers or service providers shall be the sole obligation and responsibility of LICENSEE. LICENSEE shall also secure Releases of Liability from said parties and provide copies thereof to CITY.

## VIII. RENEWAL

8.1 Subject to City Council approval of any subsequent agreements, either Party may, within one hundred eighty (180) days of its termination, initiate negotiations to continue and renew this Agreement. Any licensing fee assessed shall consider the value of any existing or proposed public easements granted by LICENSEE or a successor-in-interest.

## IX. ASSIGNMENT

9.1 This Agreement may be assigned by LICENSEE and/or its successors-in-interest provided the assignment requires the assignee to assume full responsibility of the terms and conditions contained herein. Further, the assignor shall provide the CITY with thirty (30) days' prior written notice of the assignment. The notice must identify a contact person and contain the name, address, and telephone number of the Assignee.

## X. AMENDMENT

10.1 No amendment, modification or alteration of the terms of this Agreement shall be binding unless it be in writing, dated subsequent to the date hereof, agreed to and duly executed by the parties, and approved by the CITY Council.

## XI. NOTICES

11.1 To CITY. 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  
Department of Asset Management  
P.O. Box 839966/2nd Floor, Main Plaza

San Antonio, Texas 78283-3966  
Attn: Property Disposition Manager

or to such other address as may hereafter be designated in writing by the CITY.

**11.2 To LICENSEE.** Notices to **LICENSEE** shall be addressed to:

Street Retail San Antonio, LP  
c/o Street Retail, Inc.  
1626 East Jefferson Street  
Rockville, Maryland 20852-4041  
Attn: Legal Department

or to such other address as may herein designated in writing by **LICENSEE**.

## **XII. RELATIONSHIP OF PARTIES**

**12.1** 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, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provisions contained herein nor any acts of the parties hereto create a relationship other than that of LICENSOR and LICENSEE.

## **XIII. APPLICABLE LAW**

**13.1** 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.

## **XIV. CAPTIONS**

**14.1** The captions contained in this instrument are for convenience only and in no way limit or enlarge the terms and conditions of this Agreement.

## **XV. MISCELLANEOUS**

**15.1 Nondiscrimination.** **LICENSEE** covenants that **LICENSEE**, 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 Premises, which said discrimination **LICENSEE** acknowledges is prohibited.

**15.2 Conflict of Interest.** **LICENSEE** 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 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 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 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. LICENSEE warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. LICENSEE further warrants and certifies that, if required to do so, is has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

**15.3 Condemnation.** It is agreed and understood that in the event that the Premises are taken, in whole or in part, by the exercise of the right of eminent domain by any authority with the legal right to condemn LICENSEE's interest hereunder, then 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. LICENSEE shall have the right to seek a separate condemnation award.

**15.4 Attorney's Fees.** In the event any action is brought under this Agreement by either Party, the prevailing Party shall be entitled to recover from its reasonable costs and attorney's fees.

**15.5 Separability.** 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 CITY ordinances of the City of San Antonio, Texas, 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 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.

**15.6 Taxes and Licenses.** LICENSEE shall 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 Licensed Premises, or upon LICENSEE, or incurred by LICENSEE related to its improvements, operations, and activities hereunder, or upon any of LICENSEE's personal property used in connection therewith, and shall maintain in current status all Federal, State and local licenses and permits required for the improvements within and above the CITY public right of way.

15.7 **Approval of the CITY.** Whenever this Agreement 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 the Director's designee.

**XVI. ENTIRE AGREEMENT**

16.1 This Agreement, together with its exhibits and the authorizing ordinance or ordinances, in writing, constitute the entire Agreement, as it relates to the Licensed Premises with any other written or oral 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.

**XVII. AUTHORITY**

17.1 The signer of this Agreement for LICENSEE hereby represents and warrants that he or she has full authority to execute this license on behalf LICENSEE and that he or she has had full opportunity to read the contents hereof and to seek its review by legal counsel.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2002. ("Effective Date").

**CITY OF SAN ANTONIO**  
a Texas municipal corporation  
acting by and

**STREET RETAIL SAN ANTONIO, LP**  
a Delaware limited partnership,

through its sole general partner, SRI San Antonio, Inc., a Maryland Corporation

*Erik Wall*  
BY: \_\_\_\_\_  
for Terry M. Brechtel,  
City Manager  
RPW  
  
ATTEST:  
*Glenn L. Ledesma*  
City Clerk

BY: *Stuart M. Becker*  
NAME: *Stuart M. Becker*  
TITLE: *President* 

WITNESS:  
*[Signature]*

**APPROVED:**

*Warner F. Fassnidge*  
City Attorney  
*for the*

**ATTACHMENTS:**

Exhibit "A"      Plat showing Specific Encroachments/Licensed Premises  
Exhibit "B"      Copy of a Project Management Agreement of Even Date Herewith

F-928

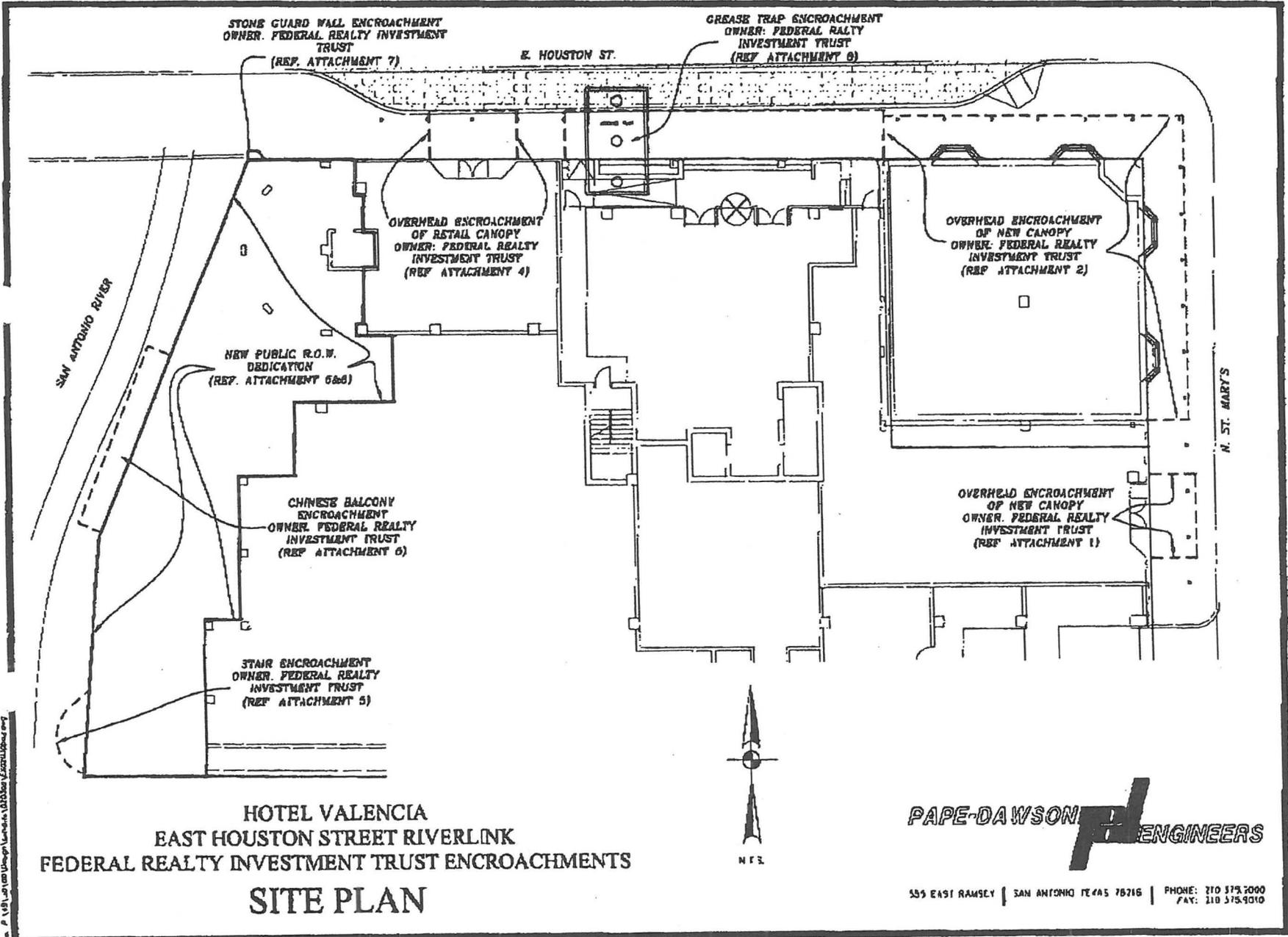
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Mar-08-2002 06:08 pm

San Antonio Riverwalk Authority



**HOTEL VALENCIA  
 EAST HOUSTON STREET RIVERLINK  
 FEDERAL REALTY INVESTMENT TRUST ENCROACHMENTS  
 SITE PLAN**



555 EAST RAMSEY | SAN ANTONIO TX 78216 | PHONE: 210 375 2000  
 FAX: 210 375 9010

F-928

P. 003/005

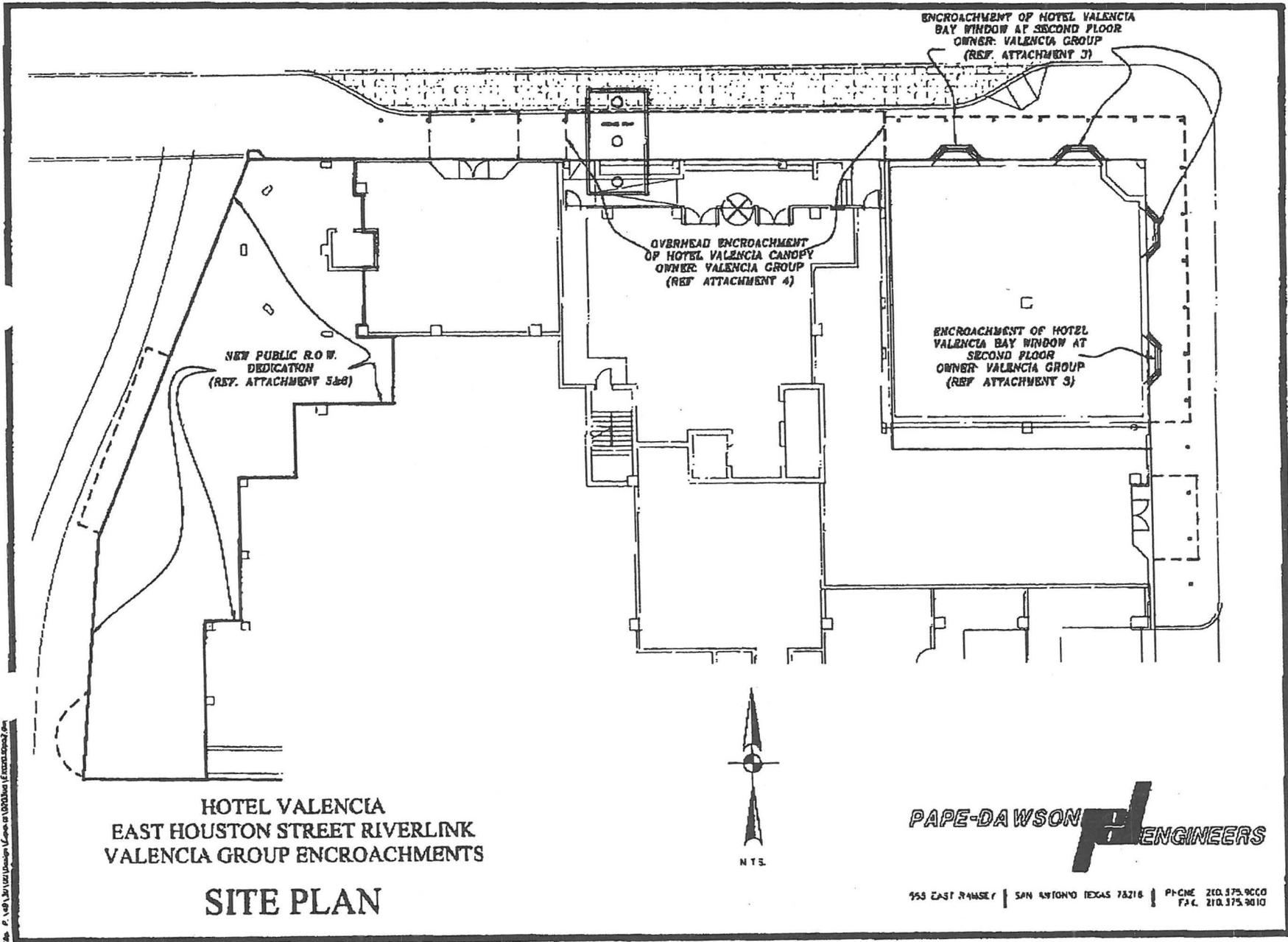
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Mar-06-2002 06:08 pm

From-PAPE-DAWSON

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HOTEL VALENCIA  
 EAST HOUSTON STREET RIVERLINK  
 VALENCIA GROUP ENCROACHMENTS

**SITE PLAN**



**PAPE-DAWSON ENGINEERS**

955 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.9000  
 FAX 210.375.9010





# EXHIBIT B

STATE OF TEXAS  
COUNTY OF BEXAR

\*  
\*  
\*

PROJECT MANAGEMENT CONTRACT  
HOUSTON STREET LINKAGE

This Agreement for Project Management services ("AGREEMENT") for the construction of the public improvement, described as the "Project" below, is made between the CITY OF SAN ANTONIO, a municipal corporation of Bexar County, Texas (hereinafter called "CITY"), and STREET RETAIL SAN ANTONIO, LP, a Delaware limited partnership, (hereinafter called "DEVELOPER").

## WITNESSETH:

WHEREAS, the City, in Ordinance No. 90969, passed and approved on December 9, 1999, designated an area in the central business district as a tax increment reinvestment zone to be known as the "Reinvestment Zone Number Nine, City of San Antonio, Texas"; and

WHEREAS, the City created the Zone to support redevelopment and public infrastructure improvements for the Houston Street/Redevelopment Projects, including the Houston Street Linkage to River Level (the "Project"); and

WHEREAS, the City has entered into a Development Agreement (the "Development Agreement") with Developer, pursuant to authority granted in Ordinance 91539, passed and approved March 30, 2000, to undertake the construction of certain public improvements in a manner and as provided therein, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "A"; and

WHEREAS, the Development Agreement contemplates that, contingent upon the availability of funding for the Houston Street Linkage, the City would cause the Project to be constructed and retain DEVELOPER as project manager therefor; and

WHEREAS, funding for the Project has been obtained by and through an Urban Development Action Grant ("UDAG"); and

WHEREAS, both the CITY and DEVELOPER now desire to implement the applicable provisions of the Development Agreement by setting out the manner and means by which the Project will be constructed with said funding;

NOW THEREFORE, the Parties, in consideration of the foregoing, and the terms and conditions herein contained, do hereby agree as follows:

## I. TERM

1.1 Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall commence immediately upon its execution and shall terminate upon completion of the Project, which shall occur when DEVELOPER has fulfilled its obligations set out under Article VI of this AGREEMENT.

## II. PARTY REPRESENTATIVES

2.1 Unless written notification by DEVELOPER to the contrary is received by the CITY, John Tschiderer shall be DEVELOPER's designated representatives responsible for the management of all contractual matters pertaining to this AGREEMENT.

TB/HousStrLinkage2  
1/8/02

2.2 The Director of the City's Economic Development Department (hereafter "Director") shall be CITY's representative responsible for the administration of this AGREEMENT.

2.3 Communications between the CITY and DEVELOPER shall be directed to the designated representative of each by the manner and means set out in Paragraph 33.1 of this AGREEMENT.

### III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.1 DEVELOPER understands that funds provided to it pursuant to this AGREEMENT are funds, which have been made available to CITY through the United States Department of Housing and Urban Development ("HUD") in the form of UDAG funding. DEVELOPER therefore, assures and certifies that it will comply with all State Laws, Regulations and Administrative Directives applicable to the Project, to the extent applicable to the obligations of DEVELOPER hereunder, as well as all Federal Laws, Regulations and Administrative Directives applicable to UDAG, including but not limited to the Davis-Bacon Act, as amended (40 U.S.C. 276a), the Americans with Disabilities Act and the requirements of the UDAG as contained in the Grant Agreement, as amended, a copy of which is attached hereto and incorporated herein as Exhibit "B", to the extent applicable to the obligations of DEVELOPER hereunder. DEVELOPER understands, however, that said State and Federal Laws and Regulations in no way constitute a complete compilation of all duties imposed on DEVELOPER by law or administrative ruling, or narrow the standards which DEVELOPER must follow. CITY acknowledges that DEVELOPER is not being paid any HUD funding under this Agreement but is merely being reimbursed for funds it has spent on the CITY's behalf as Project Manager. Entering into this Agreement does not cause DEVELOPER to be a contractor or subcontractor under the UDAG.

3.2 The Project being funded under this AGREEMENT is a public improvement and, to the extent applicable, DEVELOPER agrees to and shall utilize a Sealed Bid or a Request for Proposal ("RFP") process to award any contract(s) as would be required under Chapter 252 of the Texas Local Government Code ("Code") as modified by Section 212.071 et seq. of the Code as if the CITY was constructing the Project. This includes all applicable notice requirements, the selection process and the bonding requirements of any contractor, such as payment and performance bonds. The Parties agree that for each contract, the City Clerk shall receive all bids, open same and turn them over to DEVELOPER.

3.3 DEVELOPER shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting DEVELOPER's operations under this AGREEMENT.

### IV. LEGAL AUTHORITY

4.1 DEVELOPER represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.

4.2 The signer of this AGREEMENT for DEVELOPER represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of DEVELOPER and to bind DEVELOPER to all terms, performances and provisions herein contained.

4.3 CITY represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.

4.4 The signer of this AGREEMENT for CITY represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of CITY and to bind CITY to all terms, performances and provisions herein contained.

4.5 In the event that a dispute arises as to the legal authority to enter into this AGREEMENT of either the DEVELOPER or CITY or the person signing on behalf of DEVELOPER or CITY, the other party shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT.

## V. CONSIDERATION

5.1 DEVELOPER, at its sole cost and expense, agrees to convey to CITY perpetual public easements in the form of a dedication as described and shown on the plat and further delineated by metes and bounds description as set out and attached hereto as Exhibit "C" (the "dedication"), within 90 days of the completion of the Project as follows:

- (A) The DEVELOPER agrees to provide at its expense a plat showing the metes and bounds description as well as a site survey describing known utility locations and legal description. DEVELOPER shall be responsible for the removal and handling of all hazardous materials, if any, to the Texas Natural Resource Commissions Residential Standard, prior to conveyance. These responsibilities include, but are not limited to, removal, transportation, manifesting, and legal disposal of any hazardous materials such as lead, lead paint, asbestos or asbestos-related products as may be required in connection with the Project. CITY may supply a separate consultant to monitor the activities of any abatement contractor hired by DEVELOPER, if hazardous materials are encountered on the Project, and DEVELOPER agrees to cooperate and keep the CITY, its consultants, agents and representatives informed of activities and progress of the abatement processes. In addition, the DEVELOPER shall provide to the CITY a copy of any soils reports, subsurface investigation reports and environmental reports it may have in its possession, if any.
- (B) The dedication of the public easement will be superior to all liens and encumbrances against the property covered by the dedication easement (the "Easement Property"), other than liens for ad valorem taxes for the current year, and will be in form and content reasonably acceptable to CITY. The DEVELOPER will retain from the definition of the Easement Property the air rights which are located fifteen (15) feet above the surface of the Easement Property. The dedication will grant to the CITY a perpetual easement and right of way for pedestrian access to, from and across the Easement Property, with full and free right and liberty for the CITY, in common with all members of the public for all purposes, to pass and re-pass along and over the Easement Property, to provide access to and from the public streets and sidewalks abutting or adjoining the Easement Property, to gain access to and from the structures adjoining or abutting the Easement Property, including the right of the CITY to temporarily close access to the Easement Property as necessary for such purposes, emergencies, repairs and other related purposes, subject to the DEVELOPER's retained rights to utilize portions of the Easement Property for dining, food and beverage (alcoholic and non-alcoholic) service, retail sales and other uses in accordance with Governmental Rules and such other uses as may be approved by CITY, all in accordance with the mutually acceptable easement agreements negotiated between CITY and DEVELOPER.

5.2 Except as modified herein, paragraph 9.10 of the Development Agreement is in full force and effect.

5.3 The dedication of the easement shall provide that the owner of the subservient estate and the owner of the appurtenant property (hereinafter identified and described) will observe and perform the following obligations, covenants and duties: (a) upon completion of all improvement, to maintain, repair and insure, at grantor's sole cost and expense, all improvements now or hereafter located on the easement

property (other than improvements constructed by CITY after the effective date of the easement agreement), (b) to remit to CITY the portion of the revenue received from the use or operation of the easement property (including without limitation any reimbursements from third parties) which exceeds the maintenance, repair, utilities, taxes, insurance and other costs incurred in connection with the easement property as provided in the easement agreement; provided however, CITY acknowledges it is not to receive any portion of amounts paid to DEVELOPER pursuant to that certain ninety-nine (99) year lease entered into between the DEVELOPER and the owner(s) of the Valencia Hotel, (c) to pay all taxes assessed against the easement property by all taxing authorities, (d) to pay all utility charges associated with the easement property, (e) to fully comply with all Governmental Rules in connection with the easement property, and (f) UPON COMPLETION OF ALL IMPROVEMENTS, TO FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE RELATED TO THE USE OF THE EASEMENT PROPERTY AND ALL IMPROVEMENTS THEREON. For the purposes of such easement agreement, the "owner of the appurtenant property" with respect to the Houston Street Linkage will be the owner of the real property upon which the Valencia Hotel currently stands. This Section 5.3 shall survive termination of this AGREEMENT.

## **VI. PERFORMANCE BY DEVELOPER**

6.1 DEVELOPER, in accordance and compliance with the terms, provisions and requirements of this AGREEMENT, shall manage, perform and provide all of the activities and services set forth in the Work Statement attached hereto and incorporated herein for all purposes as Exhibit "E".

6.2 Modifications or alterations to Exhibit "E" may only be made upon the prior written approval of the Director and DEVELOPER.

6.3 DEVELOPER agrees and understands that all construction work shall be performed by Contractor(s) under separate Construction Contracts.

6.4 DEVELOPER understands and agrees that time is of the essence, and DEVELOPER agrees to undertake commercially reasonable efforts within the budgetary limitations described in Article VII of this AGREEMENT to cause the Project to be substantially completed within a reasonable time period that is contemporaneous with the completion of construction of the adjacent buildings.

## **VII. FUNDING AND DOCUMENTATION OF PROJECTS**

7.1 Funding of the PROJECT shall be as follows:

(A) In consideration of DEVELOPER's satisfactory and efficient performance under this AGREEMENT, CITY agrees to reimburse DEVELOPER for all allowable expenses as defined in Article IX of this Agreement subject to the "CAP" as hereinafter defined. Reimbursement is subject to any and all limitations and provisions set forth in this AGREEMENT.

(B) Notwithstanding any other provisions of this AGREEMENT, the total of all payments and other obligations made or incurred by CITY hereunder shall not be in excess of the sum of \$974,000 (the "Cap"). DEVELOPER shall endeavor to design and bid the Project with alternatives, as approved in writing by the CITY, to allow for adequate cost adjustments, contingencies and retainage so as to avoid exceeding the Cap. Nothing herein shall prohibit a design in excess of the Cap and the DEVELOPER understands that any amounts in excess of the Cap shall be treated as an Additional Public Improvement under Section 7.4 of the

Development Agreement all of which shall be eligible for reimbursement from the Tax Increment Fund.

- (C) It is expressly understood and agreed by CITY and DEVELOPER that CITY's obligations under this Article are contingent upon the availability of funds in the form of an Urban Development Action Grant ("UDAG"). Should availability of proceeds be less than anticipated or for any reason become unavailable for use in the Projects, CITY shall notify DEVELOPER in writing within a reasonable time after such fact has been determined and DEVELOPER may, at its option, terminate this AGREEMENT and either continue construction of the Project under the terms of the Development Agreement or reduce the amount of its obligation accordingly.
  - (D) Notwithstanding any other provision of this AGREEMENT, the Parties agree that the Work Statement attached as Exhibit "E" may be amended and the design of the Project may be changed with the consent of the DEVELOPER and the Director as needed to maintain the expenditure Cap on the Project.
  - (E) It is expressly understood by CITY and DEVELOPER that this AGREEMENT in no way obligates CITY's general fund monies or any other monies or credits of CITY.
  - (F) CITY shall not be liable for any DEVELOPER cost, or portion thereof, which:
    - (i) was incurred subsequent to the termination date of this AGREEMENT;
    - (ii) was not incurred by DEVELOPER in accordance with the terms of this AGREEMENT, including all exhibits attached hereto;
    - (iv) has not been billed to CITY within forty-five (45) calendar days following termination of this AGREEMENT; or
    - (v) is not an allowable cost as defined in Article IX of this AGREEMENT.
  - (H) CITY shall not be liable for any DEVELOPER cost, or portion thereof, which is or was incurred in connection with an activity of DEVELOPER where:
    - (i) Prior written authorization from CITY is required either under this Agreement or by law for the activity and such authorization is not procured; or
    - (ii) CITY has requested, in writing, that DEVELOPER furnish data concerning an activity prior to proceeding further therewith and DEVELOPER nonetheless proceeds without first submitting the data and receiving CITY approval thereof.
  - (I) CITY shall not be obligated or liable under this AGREEMENT to any party, other than DEVELOPER, for payment of any monies or provisions of any goods or services.
- 7.2 (A) Within ninety (90) days after substantial completion of any construction phase, DEVELOPER agrees to and shall:
- (i) Notify CITY in writing upon the substantial completion of construction whereupon CITY will promptly inspect, as required by the Development Agreement, the completed work to determine if construction has been (1) completed in a satisfactory

and workmanlike manner, and (2) substantially completed in accordance with the plans and specifications for such work approved by CITY.

- (ii) Submit all permits, if applicable, obtain a Certificate of Occupancy and submit a copy of each of these documents to the CITY before final allocation of funds to DEVELOPER.
  - (iii) Submit "as-built" drawings to CITY.
- (B) DEVELOPER will require its contractor(s) and consultant(s) to be covered by insurance, as applicable, in the same types and amounts as that set out in and required of DEVELOPER under Article XVII of this AGREEMENT and will require its contractor(s) and any subcontractors to be covered by payment and performance bonds at no additional cost to CITY.

#### **VIII. RECEIPT, DISBURSEMENT AND ACCOUNTING OF FUNDS BY DEVELOPER**

8.1 DEVELOPER understands and agrees that it shall maintain a separate numbered account for the receipt and disbursement of all funds received from CITY pursuant to this AGREEMENT. DEVELOPER further agrees that:

- (A) Such account shall contain only those funds received pursuant to this AGREEMENT and that no other funds shall be mingled therewith;
- (B) All checks and withdrawals from such account shall have itemized documentation in support thereof;
- (C) Such account shall be maintained in a financial institution having federal deposit insurance coverage; and
- (D) Upon DEVELOPER's written request and solely within the discretion of CITY, an alternative accounting mechanism may be permitted, provided such alternative adheres at all times to generally accepted accounting principles.

8.2 Regarding method of payment, CITY and DEVELOPER agree as follows:

- (A) DEVELOPER shall deliver a Requisition for Payment, in a form reasonably acceptable to CITY, to Director on a monthly billing cycle, with the prior month's Billing Package received no later than the fifteenth (15th) day of each month;
- (B) Upon receipt of and approval by CITY of each of DEVELOPER's Requisition for Payment, CITY shall pay to DEVELOPER, on or before the 30<sup>th</sup> day after receipt, an amount equal to CITY's obligation not previously paid pursuant to Article IX of this Agreement by CITY, subject to deduction for any costs not allowable pursuant to Article IX of this Agreement. Any other provision of this AGREEMENT notwithstanding, the provisions of Chapter 2251 of the Texas Government Code, as amended, shall control payments made under this AGREEMENT.
- (D) DEVELOPER's financial management system shall provide for an adequate procedure to minimize the time elapsed between CITY's payment to DEVELOPER and DEVELOPER's disbursement of funds.

8.3 Within ten (10) working days of CITY's written request therefor, DEVELOPER shall refund to CITY any sum of money paid by CITY to DEVELOPER later determined to have resulted in overpayment to DEVELOPER;

8.4 Upon termination of this AGREEMENT, should any expense or charge for which payment has been made to DEVELOPER by CITY and then subsequently disallowed or disapproved as a result of any auditing or monitoring by HUD, DEVELOPER shall refund such amount to CITY within ten (10) business days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified.

8.5 Utilizing a format agreed to by the Parties, a "Close-Out Package", together with a final expenditure report, for the period commencing on the date of DEVELOPER's last invoice requesting reimbursement of funds pursuant to this AGREEMENT, shall be submitted by DEVELOPER to CITY within ninety (90) business days following substantial completion of the Project.

#### IX. ALLOWABLE COSTS

9.1 Costs shall be considered allowable only if approved and incurred directly and specifically in the performance of and in compliance with this AGREEMENT as set forth on DEVELOPER's budget in Exhibit "F". It is expressly agreed that DEVELOPER may move funds from one line item into another within the budget without the need to obtain the consent of the CITY.

#### X. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 DEVELOPER further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY, are and shall be complete and accurate, in all material respects, as of the date shown on the information, data or report;
- (B) No litigation or proceedings are presently pending or, to DEVELOPER'S knowledge, threatened against DEVELOPER; and
- (C) None of the provisions contained herein contravene or in any way conflict with the authority under which DEVELOPER is doing business or with the provisions of any existing indenture or agreement of DEVELOPER.

#### XI. MAINTENANCE OF RECORDS

11.1 DEVELOPER agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this AGREEMENT. DEVELOPER further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this AGREEMENT; and
- (B) That DEVELOPER's record system shall contain sufficient documentation to provide in detail support and justification for each expenditure.

11.2 DEVELOPER agrees to retain, for the period of four (4) years, all books, records, documents, reports, and written accounting policies and procedures pertaining to the expenditures of funds under this AGREEMENT. This paragraph shall survive termination of this AGREEMENT.

11.3 Nothing in this Article shall be constructed to relieve DEVELOPER of:

(A) Responsibility for retaining accurate and current records which clearly reflect the services provided under this AGREEMENT; and

(B) Fiscal accountability and liability pursuant to this AGREEMENT and any applicable rules, regulations and laws.

## XII. ACCESSIBILITY OF RECORDS

12.1 At any reasonable time during normal business hours and as often as CITY or HUD may deem necessary, DEVELOPER agrees to and shall make available, at CITY'S principal place of business, copies of all of its records directly relating to this AGREEMENT to CITY, HUD or any authorized representative of either for the purpose of auditing, examining, and making excerpts and/or copies of same. DEVELOPER's records shall include, but shall not be limited to, the following: construction and other contracts, bids received, payroll, personnel, employment records, Board minutes, and invoices directly relating to this AGREEMENT. Upon completion of construction, DEVELOPER shall provide CITY with a complete copy of all records it has relating to this Project and Agreement.

## XIII. PROGRESS/PERFORMANCE RECORDS AND REPORTS

13.1 As often and in such form as CITY may reasonably require, DEVELOPER shall furnish to CITY such progress/performance records and reports as reasonably deemed by CITY or HUD as pertinent to matters covered by this AGREEMENT.

13.2 At a minimum, DEVELOPER agrees to and shall keep monthly performance records and reports, which shall be submitted to CITY by DEVELOPER every calendar quarter and no later than the thirtieth (30th) day of the month following the end of the quarter. DEVELOPER agrees to and shall cooperate with CITY in providing and keeping the reports and records in a format reasonably acceptable to CITY. Any additional reports shall be furnished at CITY's expense.

## XIV. MONITORING AND EVALUATION

14.1 CITY may perform on-site monitoring of DEVELOPER's performance pursuant to the terms of this AGREEMENT.

14.2 DEVELOPER agrees that CITY may carry out monitoring and evaluation activities so as to ensure compliance by DEVELOPER with this AGREEMENT, including the design and construction documents and with all other laws, regulations and ordinances related to the performance hereof.

14.3 DEVELOPER agrees to cooperate fully with CITY in the development, implementation and maintenance of record-keeping systems and to provide CITY with any data reasonably determined by CITY to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities.

14.4 DEVELOPER agrees that it will cooperate with CITY in such a way so as not to obstruct or delay City in its monitoring of DEVELOPER's performance and that it will designate one of its staff to coordinate the monitoring process as requested by CITY staff.

XV. INSURANCE

15.1 DEVELOPER shall maintain such Workers' Compensation, Unemployment Compensation or Disability Benefits insurance coverages as may be required by law.

15.2 On or before the date of this AGREEMENT, DEVELOPER shall furnish an original completed Certificate of Insurance to the City Clerk and the Director, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limit, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number and be mailed directly to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the City Clerk and the Director, and no officer or employee shall have authority to waive this requirement, except the City's Risk Manager. CITY acknowledges that it has received from DEVELOPER certificates satisfying the foregoing requirements as of the date of execution of this Agreement by the DEVELOPER.

15.3 After the initial nine months of this AGREEMENT, CITY reserves the right to and may review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal of the term thereof and to modify insurance coverage and their limits when deemed necessary and prudent by the 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. DEVELOPER shall pay any additional cost incurred as a result of having to obtain such additional or different insurance coverages.

15.4 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 or otherwise acceptable to CITY, in the following types and amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
(A)	Worker's Compensation Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
(B)	Commercial General (Public) Liability-to include but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000
	(1) Premises/Operations	
	(2) Independent Contractor's Liability	
	(3) Products and Completed Operations	
	(4) Personal Injury	
	(5) Contractual Liability	
	(6) Explosion, Collapse, Underground	
	(7) Fire Damage Legal Liability	
	(8) Broad-Form Property Damage Liability	
(C)	Business Automobile Liability Insurance-to	Combined Single Limit for Bodily Injury

include coverage of:

and Property Damage of \$1,000,000 per occurrence or its equivalent

- (1) Owned/Leased Automobiles
- (2) Non-Owned Automobiles
- (3) Hired Automobiles

- (D) Commercial Crime  
(deductibles of \$10,000 employee honesty and \$5,000 fraud)

\$974,500 with the fidelity portion to be written on a "blanket" basis to cover all employees with access to the funds received under this AGREEMENT, including new hires

DEVELOPER may provide the insurance required under this AGREEMENT pursuant to a blanket policy covering other properties that it owns.

15.5 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.

15.6 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 as an additional insured 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 professional liability policies;
- DEVELOPER's insurance shall be deemed primary with respect to any insurance or self insurance carried by the CITY for liability arising pursuant to matters under this AGREEMENT.
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY;

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 non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

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

City of San Antonio  
Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

15.7 If DEVELOPER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may determine DEVELOPER to be in default of this AGREEMENT.

15.8 Prior to undertaking or causing to be undertaken construction of improvements and/or repairs, maintenance, alterations, relocation or reconstruction work, DEVELOPER shall procure and maintain or cause to be procured and maintained by the contractor(s) in full force and effect during the term of such construction contract, (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

DEVELOPER 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, the construction of said improvements; (3) workers' compensation and employer's liability insurance; (4) professional liability insurance for architects and engineers; and (5) Payment/Performance Bond in the amount of the contract. In addition, payment and performance bonds naming the CITY as indemnitee shall be required covering any contractors or subcontractors. Should the size and scope of a contract for such construction work be limited in nature, the DEVELOPER may request, in writing to the Director, a waiver of the requirements in this paragraph 15.8; 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.

15.9 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 any approved subcontractor's performance of the work covered under this AGREEMENT.

#### XVI. INDEMNIFICATION

16.1 DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, to the same extent as previously agreed and as set out in that one certain Development Agreement entered into between the DEVELOPER and CITY pursuant to authority granted in Ordinance 91539, passed and approved March 30, 2000 and which is attached hereto as Exhibit "A".

16.2 It is expressly understood and agreed that DEVELOPER is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

#### XVII. NONDISCRIMINATION

17.1 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, sex, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises, which said discrimination DEVELOPER acknowledges is prohibited.

#### XVIII. CONFLICT OF INTEREST

18.1 DEVELOPER covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. DEVELOPER further covenants that in the performance of this AGREEMENT, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

18.2 DEVELOPER will not enter into any contracts with related or affiliated parties which would be paid in whole or part with funds received under this AGREEMENT.

18.3 No member of CITY's governing body or of its staff who exercise any function or responsibility in the review or approval of the undertaking or carrying out of this AGREEMENT shall:

(A) Participate in any decision relating to this AGREEMENT which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;

(B) Have any direct or indirect interest in this AGREEMENT or the proceeds thereof.

#### **XIX. POLITICAL ACTIVITY**

19.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

#### **XX. SECTARIAN ACTIVITY**

20.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activities.

#### **XXI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

21.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by DEVELOPER pursuant to this AGREEMENT, shall, upon receipt, become the property of CITY. These documents shall be promptly delivered to CITY in a reasonably organized form, without restriction on its future use by CITY on any additional work associated with the Project and related facilities. DEVELOPER may retain for its files any copies of documents it chooses to retain and may use work product as it deems fit. Nothing herein shall deny DEVELOPER the right to retain duplicates. All of the documents shall be maintained within the DEVELOPER's principal place of business. In the event an Open Records Request is received, DEVELOPER agrees to and shall provide the CITY with a copy of its records relating to the Project, at no cost to CITY, to the extent required by law. DEVELOPER will be under no obligation to manipulate the data contained in such records and they may be presented in the format held by DEVELOPER.

#### **XXII. DEBARMENT CLAUSE**

22.1 DEVELOPER certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this AGREEMENT by any federal, state or local agency.

#### **XXIII. SUB-CONTRACTING**

23.1 Any work or services sub-contracted hereunder shall be sub-contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT, except it is agreed that the general contractor may carry blanket insurance and bonds for the Project and its subcontractors. Compliance by sub-contractors with this AGREEMENT shall be the responsibility of DEVELOPER.

23.2 DEVELOPER agrees that no contract for work pursuant to this AGREEMENT shall provide for the payment on a "cost plus a percentage of cost" basis.

23.3 CITY shall in no event be obligated to any third party, including and sub-contractor of DEVELOPER, for performance of work or services.

#### XXIV. CHANGES AND AMENDMENTS

24.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the City Council of the CITY and DEVELOPER.

#### XXV. TERMINATION

25.1 "Termination" of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

25.2 Either Party may terminate this AGREEMENT for any of the following reasons:

(A) Neglect or failure by the other Party to perform or observe any of the terms, conditions, covenants or guarantees of this AGREEMENT; and the continuation of such failure for a period of sixty (60) days after notice of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such sixty (60) day period, then no Event of Default shall occur unless the other Party fails to commence such performance or observance within such sixty (60) day period and fails to diligently prosecute such performance or observance to conclusion thereafter.

25.3 Upon decision to terminate, written notice of such and the effective date thereof, shall be immediately provided.

25.4 Upon receipt of notice to terminate, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of DEVELOPER under this AGREEMENT with respect to the Project, shall, at the option of CITY and if the cost therefore has been paid by CITY, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by DEVELOPER to CITY in a timely and expeditious manner.

25.5 Within thirty (30) days after receipt of notice to terminate, DEVELOPER shall submit a statement to CITY, indicating in detail the services performed under this AGREEMENT prior to the effective date of termination. Any termination of this AGREEMENT as herein provided shall not relieve DEVELOPER from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or any claim for actual damages then or theretofore accruing against DEVELOPER hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for actual damages from DEVELOPER. In no event shall CITY be entitled to recover any special or consequential damages as a result of any termination of this AGREEMENT. All rights, options, and remedies of CITY contained in this AGREEMENT shall be constructed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this AGREEMENT.

## XXVI. NOTIFICATION OF ACTION BROUGHT

26.1 In the event that any claim, demand, suit, proceeding, cause of action or other action relating to this AGREEMENT (hereinafter collectively referred to as "claim") is made or brought against DEVELOPER, DEVELOPER shall give written notice thereof to CITY within five (5) working days after itself being notified. DEVELOPER's notice to CITY shall state the date of notification to DEVELOPER of the claim; the name and addresses of those instituting or threatening to institute the claim; the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened.

## XXVII. ASSIGNMENTS

27.1 DEVELOPER shall not transfer, pledge or otherwise assign this AGREEMENT, any interest in and to same, or any claim arising thereunder, except pursuant to the same terms and conditions as an assignment of the Development Agreement.

## XXVIII. SEVERABILITY OF PROVISIONS

28.1 If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## XXIX. NON-WAIVER OF PERFORMANCE

29.1 No waiver by a party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the affected party.

29.2 No act or omission of a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to a party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

29.3 No representative or agent of a party shall waive the effect of the provisions of this Article.

## XXX. ENTIRE AGREEMENT

30.1 This AGREEMENT (including the exhibits attached hereto) constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to

exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

30.2 The Parties acknowledge and agree that in the event a conflict arises between Exhibit "A" and this AGREEMENT, the provisions of this AGREEMENT shall control.

30.3 This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document.

#### XXXI. INTERPRETATION

31.1 In the event any disagreement or dispute should arise between the parties hereto, the resolution of which would have an adverse affect on the UDAG funding or would cause a default on the UDAG, then the CITY, as the party ultimately responsible for all matters of compliance with the UDAG, rules and regulations, shall have the final authority to secure an interpretation from HUD and the parties shall follow the direction of HUD.

31.2 Each party has thoroughly reviewed and revised this AGREEMENT and has had the advice of legal counsel prior to execution hereof, and the parties agree that none of them shall be deemed to be the drafter thereof.

#### XXXII. NOTICES

32.1 For purposes of this AGREEMENT, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the address set forth below:

CITY:

Director  
Economic Development Department  
Post Office Box 839966  
San Antonio, Texas 78283-3966

DEVELOPER:

Street Retail San Antonio, LP  
c/o Street Retail, Inc.  
1626 East Jefferson Street  
Rockville, Maryland 20852-4041  
Attn: John Tschiderer

with a copy to:

Street Retail San Antonio, LP  
c/o Street Retail, Inc.  
1626 East Jefferson Street  
Rockville, Maryland 20852-4041  
Attn: Legal Department

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

**XXXIII. PARTIES BOUND**

33.1 This AGREEMENT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

**XXXIV. GENDER**

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

**XXXV. RELATIONSHIP OF PARTIES**

35.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of partners, joint venturers, or any other similar such relationship between the parties hereto. DEVELOPER shall not be considered an employee of the CITY, but shall occupy the status of Independent Contractor with the CITY. The DEVELOPER shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the CITY, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

**XXXVI. TEXAS LAW TO APPLY**

36.1 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.

**XXXVII. CAPTIONS**

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

**XXXVIII. DISPUTE RESOLUTION**

38.1 In the event there is any dispute between or among the Parties that cannot be resolved, the Parties agree to submit the dispute to a mutually agreeable third party who will assist in mediating the dispute to a satisfactory resolution utilizing the then current construction industry mediation rules of the American Arbitration Association or other mutually agreed to and recognized industry source for such standardized mediation rules, prior to recourse to any other formal dispute resolution procedure. The mediation process may be invoked by any Party on written request and shall not be construed to constitute an admission against interest of the Party requesting mediation. Any mediation shall be confidential and non-binding on the Parties, all costs to be equally borne by the Parties, and no statements made or information exchanged during mediation will be admissible in any future legal or arbitrable proceedings without the written consent of the other Party.

[SIGNATURES FOR THIS AGREEMENT ARE ON THE NEXT PAGE]

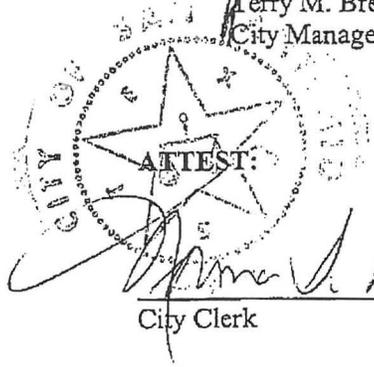
EXECUTED in duplicate originals this the 8th day of January, 2002.

**CITY OF SAN ANTONIO**  
a Texas municipal corporation

**STREET RETAIL SAN ANTONIO, LP**  
a Delaware limited partnership, acting by and  
through its sole general partner, SRI San  
Antonio, Inc., a Maryland Corporation

BY: Christopher J. Brady  
Terry M. Brechtel,  
City Manager

BY: [Signature]  
NAME: Dewitt Wood  
TITLE: Pres CO



ATTEST:  
[Signature]  
City Clerk

WITNESS:  
[Signature]

**APPROVED:**

Thomas Bailey  
Asst. City Attorney

**ATTACHMENTS:**

- Exhibit "A" Development Agreement Approved in Ordinance 91539
- Exhibit "B" UDAG, as Amended
- Exhibit "C" Plat of Public Dedication by Developer
- Exhibit "D" [Not Used in this Agreement]
- Exhibit "E" Work Statement inclusive of design and scope of Project
- Exhibit "F" Developer's Budget for the Project
- Exhibit "G" Change Orders



# CITY OF SAN ANTONIO

DEPARTMENT OF ASSET MANAGEMENT  
P O BOX 839966 SAN ANTONIO, TEXAS 78283-3966  
TEL 210-207-4032 FAX 210-207-7888

July 18, 2002

Street Retail San Antonio, LP  
Attn: James P. Plummer  
300 Covenant Street, Suite 2200  
San Antonio, Texas 78205-3792

Re: S. P. No. 1052— Request for a license to use Public Right of Way at certain points along Houston and St. Mary's Streets adjacent to NCB 404 for the construction of the Valencia Hotel

Dear Mr. Plummer:

With reference to the captioned project, please be advised that the City of San Antonio has now completed the canvassing process and will recommend approval of your request subject to the following conditions:

PUBLIC WORKS DEPARTMENT: "Grease trap must not interfere with existing 18" stormwater pipe in Houston Street and must be installed with a waterproof housing due to its location in the flood plain" (Stormwater Division).

"Maintenance of encroachment facilities are subject to same right of way use requirements as all work done in Public Right of Way" (Traffic Division).

CITY PUBLIC SERVICE: "Any lines extending out of grease trap must not interfere with CPS ductbank on Houston Street. CPS will not be held accountable for any damage to the customers encroaching property while performing regular or emergency maintenance to CPS gas facilities. Contact Carmen Vilchis at CPS at 353-3640 for review of details over new vault opening along St. Mary's Street."

SAN ANTONIO WATER SYSTEM: "All water and/or sewer easements must remain accessible for operational and maintenance purposes at all times."

The Project Management Contract (with form License Agreement attached), approved by Ord. No. 94900 on November 8, 2001, provided that "the parties agree that the license fee for this License is part of the services and consideration exchanged under the Agreement attached hereto...and no further monetary or other consideration is required or expected."

A Certificate of Insurance must be provided and the City of San Antonio must be formally released from any and all liabilities, which may be incurred in connection with this request.

Further, a fully completed and signed Discretionary Contracts Disclosure Statement is required and enclosed for your convenience.

If you concur with the above mentioned conditions, including the payment of the fee established for this encroachment, please countersign this letter in the space provided below and return to the undersigned. Upon receipt of this signed Letter of Agreement and the Discretionary Contracts Disclosure Statement we will continue processing your request.

This Letter of Agreement is being offered by the City of San Antonio only to the above named petitioner and will expire thirty (30) days after the date of issuance unless a specific extension is requested by the petitioner and granted by the City.

Sincerely,

*Shawn P. Eddy*

Shawn P. Eddy  
Special Projects Manager

AGREED AS TO TERMS AND CONDITIONS:

Street Retail San Antonio, LP

By: SRI San Antonio, Inc.

*Dawn M. Becker*  
By

*(MS)*

*President*  
Title

*Dawn M. Becker*  
Print Name

*8/14/02*  
Date

# Canvassing Checklist

SPNo 1052

Request: The City of San Antonio entered into a development agreement with Street Retail San Antonio, LP pursuant to Ordinance No. 91539, passed and approved March 30, 2002, for the Valencia Hotel construction project. Street Retail San Antonio, LP is requesting a license agreement, in conjunction with this development agreement, to use certain portions of Public Right of Way along Houston and St. Mary's Street, for the purpose of installing a grease trap, a stairway, overhead canopies and bay windows as shown on attached Exhibits "A", "B", "C", "D" and "E".

	Included in Canvassing	Out Date	In Date	Uncond. Approval	Conditional Approval	Denial
Planning Department	<input checked="" type="checkbox"/>	5/7/2002	6/12/2002	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PublicWorks	<input checked="" type="checkbox"/>	5/7/2002	5/30/2002	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Development Services	<input checked="" type="checkbox"/>	5/7/2002	5/15/2002	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police Department	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire Department	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation	<input checked="" type="checkbox"/>	5/7/2002	5/10/2002	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Neighborhood Action (NAD)	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
City Public Service	<input checked="" type="checkbox"/>	5/7/2002	5/20/2002	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
S.A. Water System (SAWS)	<input checked="" type="checkbox"/>	5/7/2002	5/6/2002	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TXDOT	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S.A. River Authority (SARA)	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
VIA Metropolitan	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Agency	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Neighborhood Association	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Canvassing Comments

Letter of agreement rece. 8/20/02



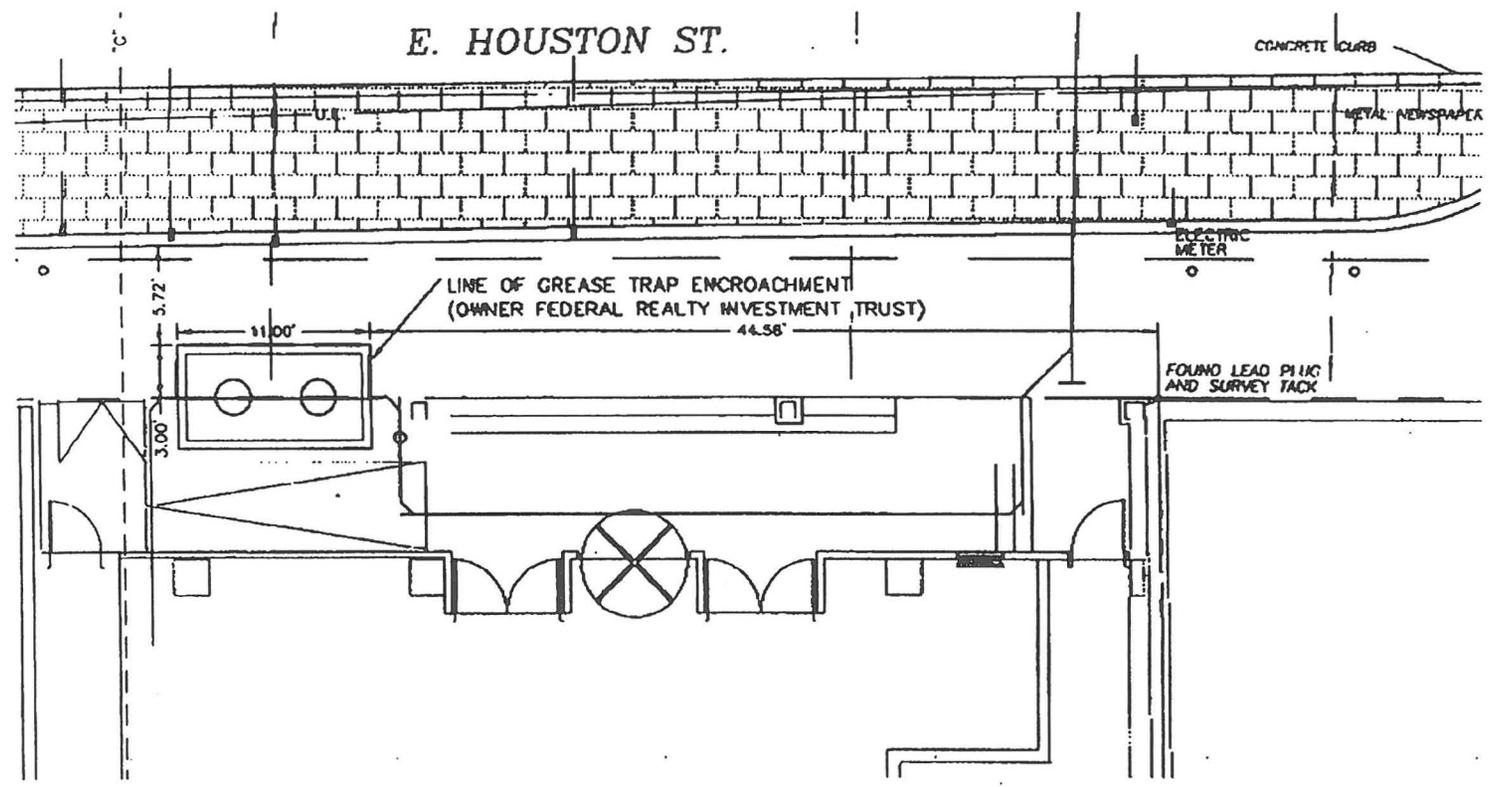


EXHIBIT "B"

HOTEL VALENCIA  
EAST HOUSTON STREET RIVERWALK  
ATTACHMENT 8

# GREASE TRAP ENCROACHMENT

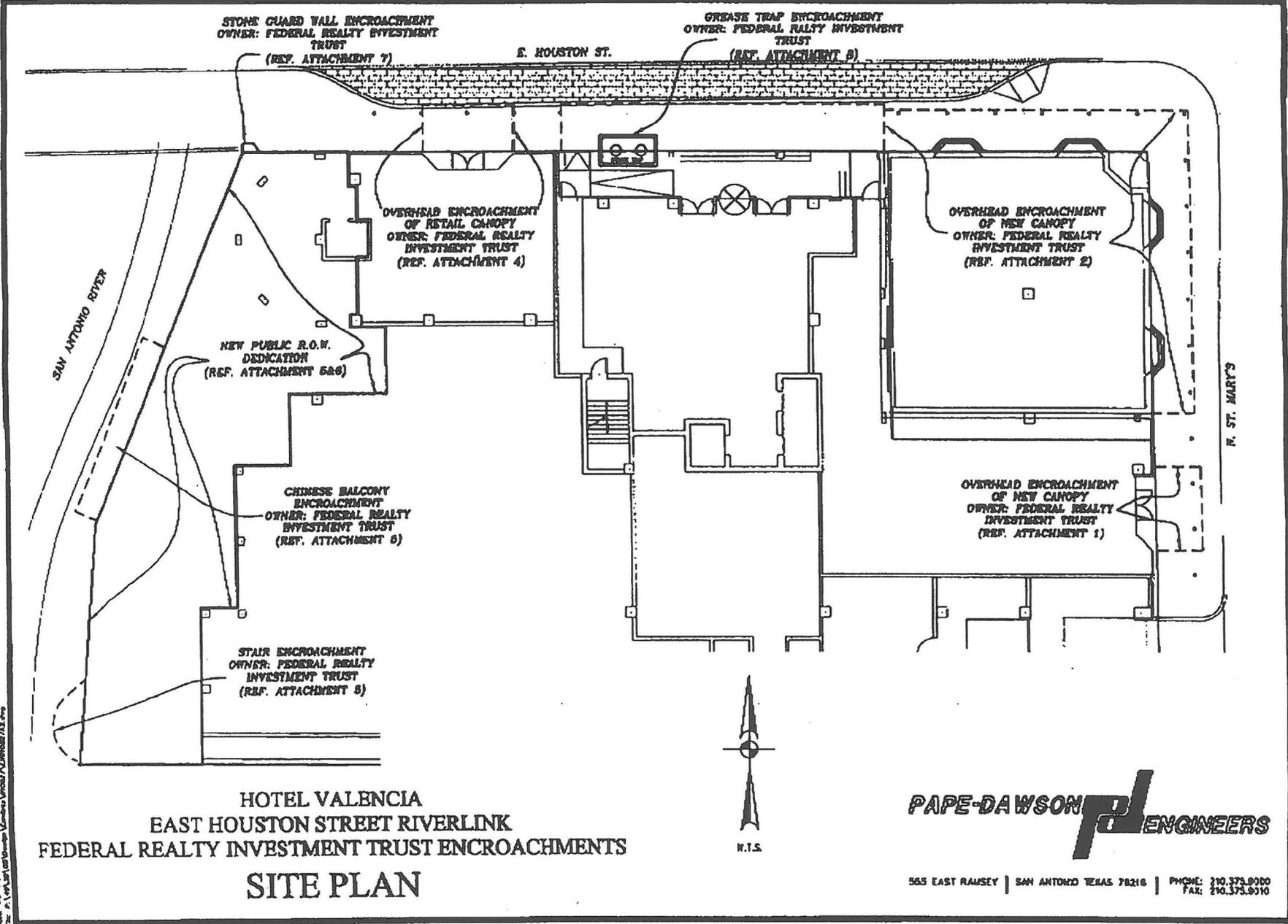


955 EAST RAMBEY | SAN ANTONIO TEXAS 78216 | PHONE: 214.375.0000  
FAX: 214.375.0010

Scale: 1/8" = 1'-0" (Horizontal) 1/16" = 1'-0" (Vertical)  
Date: 4/8/02  
Drawn: JHT  
Checked: JAW

EXHIBIT "C"

DATE: 07/27/2017  
DRAWN BY: JAW  
CHECKED BY: JAW  
DATE: 07/27/2017  
SCALE: AS SHOWN  
PROJECT: HOTEL VALENCIA  
SHEET: 111 OF 111



**HOTEL VALENCIA  
EAST HOUSTON STREET RIVERLINK  
FEDERAL REALTY INVESTMENT TRUST ENCROACHMENTS  
SITE PLAN**

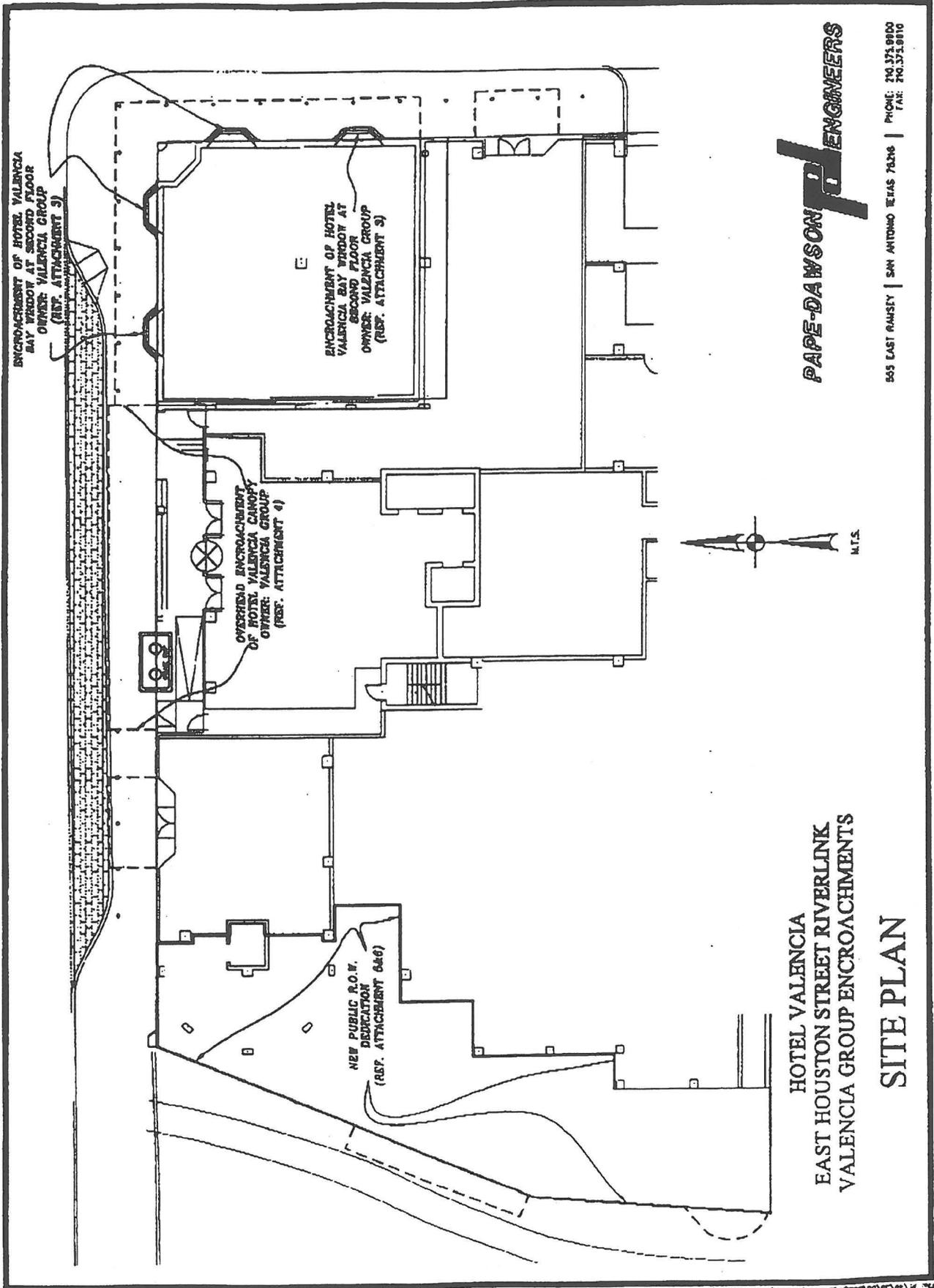
**PAPE-DAWSON ENGINEERS**

565 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.0000  
FAX: 210.375.0010

4 - 8-02: 2:33PM: FUL ) GHT 2 JAWDESKI

:001 210 270 7205

# 67 17



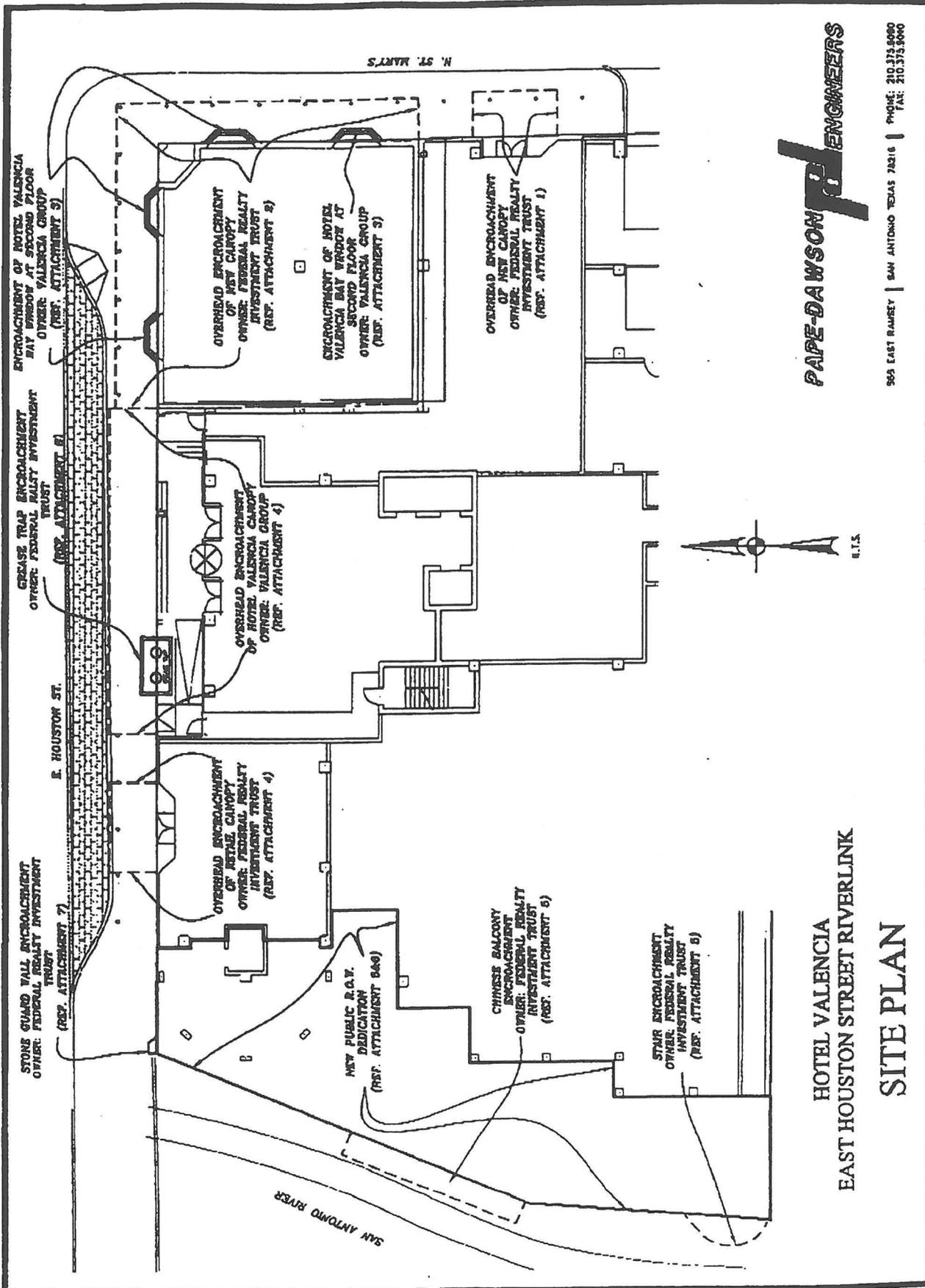
**PAPE-DAWSON ENGINEERS**

555 EAST RAMSEY | SAN ANTONIO TEXAS 78266 | PHONE: 210.375.9800  
FAX: 210.375.9810

**HOTEL VALENCIA  
EAST HOUSTON STREET RIVERLINK  
VALENCIA GROUP ENCROACHMENTS  
SITE PLAN**

**EXHIBIT "D"**

Date: Nov 01, 2002 1:28pm User: DJ [unclear]  
File: P:\001000\001000.dwg



**PAPE-DAWSON ENGINEERS**

565 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9090  
 FAX: 210.375.9060

**HOTEL VALENCIA  
 EAST HOUSTON STREET RIVERLINK  
 SITE PLAN**

**EXHIBIT "E"**

Scale: 1/8" = 1'-0" (Not to Scale) Date: 04/21/02



may be approved by Grantee; provided, however, Grantee shall have the right to temporarily close access to the Easement Property as necessary for such purposes, emergencies, repairs and other related purposes. Notwithstanding the foregoing, Grantor retains from the definition of "Easement Property" the air rights which are located fifteen (15) feet above the surface of the Easement Property from any such Permanent Easement.

The easement and right-of-way herein granted shall run with the land and be binding upon and inure to the benefit of the Grantor and Grantee, and their respective successors, assigns, and legal representatives.

TO HAVE AND TO HOLD said easement and right-of-way unto the Grantee, its successors and assigns; and Grantor does hereby bind itself, its legal representatives, successors and assigns, to specially warrant and forever defend said easement and right-of-way unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise; subject, however, to the matters set forth herein.

*[signatures contained on next page]*

EXECUTED as of the \_\_\_\_ day of \_\_\_\_\_, 2002.

GRANTOR:

STREET RETAIL SAN ANTONIO, LP  
a Delaware limited partnership

By: SRL San Antonio, Inc.  
Its General Partner

By: [Signature]  
Name: STAN M. BECKER  
Title: President

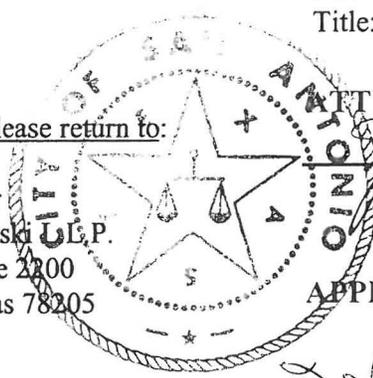
GRANTEE:

CITY OF SAN ANTONIO  
a Texas municipal corporation

By: [Signature]  
Name: Eric J. Walsh  
Title: Asst. to the City Mgr.

After recording, please return to:

James P. Plummer  
Fulbright & Jaworski LLP  
300 Convent, Suite 2800  
San Antonio, Texas 78205



ATTEST:

[Signature]  
City Clerk

APPROVED AS TO FORM:

[Signature]  
for the City Attorney

[acknowledgments contained on next page]

THE STATE OF ~~TEXAS~~ <sup>Maryland</sup> §  
COUNTY OF ~~BEXAR~~ <sup>Montgomery</sup> §

This instrument was acknowledged before me on the 14<sup>th</sup> day of August, <sup>WF</sup>  
2002, by Dawn Becker, as President of Street Retail San Antonio, LP, <sup>SRI</sup> the <sup>San Antonio</sup>  
General Partner of STREET RETAIL SAN ANTONIO, LP, a Delaware limited partnership.

(SEAL)

Lisa Foxwell  
Notary Public in and for the State of ~~Texas~~ <sup>Maryland</sup>

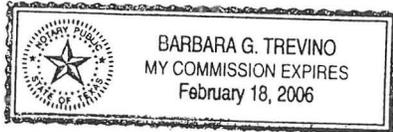
LISA FOXWELL  
NOTARY PUBLIC STATE OF MARYLAND  
(Printed Name of Notary) My Commission Expires April 14, 2003

My Commission Expires: 4/14/03

THE STATE OF TEXAS §  
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 4<sup>th</sup> day of December,  
2002, by ERIC J Walsh, on behalf of the City of San Antonio, a Texas municipal  
corporation.

(SEAL)



Barbara G. Trevino  
Notary Public in and for the State of Texas

Barbara G. Trevino  
(Printed Name of Notary)

My Commission Expires: 02/18/06

EXHIBIT "A"

"Easement Property"

This description and the accompanying exhibit are based on recorded and proposed property lines: a 0.0781 acres (3,405 square feet) tract of land situated within Lot 11, Block 20, New City Block 404 as recorded with the plat of Hotel Valencia San Antonio Riverwalk in the City of San Antonio as described in instrument recorded in Volume 9550, Page 24 in the Official Public Records of Real Property of Bexar County, Texas, and being situated below a horizontal plane crossing all of such real property at an elevation of approximately 661.52 feet above mean sea level crossing at the centerline of the second floor slab of the improvements to be constructed on such real property pursuant to the amended and restated lease agreement dated as of May 19, 2000 between Street Retail San Antonio, LP and Hotel Valencia San Antonio Riverwalk, LP, a memorandum of which has been or will be recorded in the real property records of Bexar County, Texas, the said tract being more particularly described by metes and bounds as follows:

COMMENCING: At a found nail in concrete at the intersection of the south right-of-way line of E. Houston Street (60-foot right-of-way) with the west right-of-way line of N. St. Mary's Street (55.6-foot right-of-way), same point being the northeast corner of Lot 12 as recorded with the aforementioned plat of Hotel Valencia San Antonio Riverwalk:

THENCE: WEST, a distance of 154.55 feet along the said south right-of-way line of E. Houston Street to the POINT OF BEGINNING of the herein described tract;

THENCE: S 00°00'00" E, a distance of 6.66 feet to an angle point;

THENCE: S 90°00'00" E, a distance of 1.58 feet to an angle point;

THENCE: S 00°00'00" W, a distance of 7.06 feet to an angle point;

THENCE: S 90°00'00" E, a distance of 2.25 feet to an angle point;

THENCE: S 00°00'00" W, a distance of 6.67 feet to an angle point;

THENCE: N 90°00'00" W, a distance of 2.25 feet to an angle point;

THENCE: S 00°00'00" W, a distance 10.94 feet to an angle point;

THENCE: N 89°59'59" W, a distance of 1.33 feet to an angle point;

THENCE: S 00°00'00" E, a distance of 2.33 feet to an angle point;

THENCE: S 90°00'00" E, a distance of 7.00 feet to an angle point;

THENCE: S 00°00'00" W, a distance of 12.54 feet to an angle point;

THENCE: N 90°00'00" W, a distance of 19.25 feet to an angle point;

THENCE: S 00°00'00" W, a distance of 14.00 feet to an angle point;

THENCE: N 90°00'00" W, a distance of 10.92 feet to an angle point;

THENCE: S 00°00'00" W, a distance of 27.75 feet to an angle point;

THENCE: N 90°00'00" W, a distance of 7.00 feet to an angle point;

THENCE: S 00°00'00" W, a distance of 29.85 feet to an angle point in the common south line of the said Lot 11 and the north line of Lot 10, Holiday Inn-Riverwalk Subdivision as recorded in Volume 9511, Page 130, Deed and Plat Records of Bexar County, Texas;

THENCE: N 89°28'03" W, coincident with the north line of Lot 10, a distance of 24.07 feet to a found "X" in concrete on a wall at the San Antonio River, the southwest corner of the said Lot 11, the northwest corner of said Lot 10, and the southwest corner of the herein described tract;

THENCE: N 04°21'49" E, a distance of 46.00 feet coincident with the east line of the San Antonio River, to a found ½" iron rod, an angle point in the herein described tract;

THENCE: N 22°37'33" E, a distance of 77.69 feet coincident with the southeast line of the San Antonio River, to a found lead plug and survey tack on the aforementioned south right-of-way line of E. Houston Street, the northwest corner of the said Lot 11, the northwest corner of the herein described tract;

THENCE: EAST, along and with said south right-of-way line, a distance of 20.60 feet to the POINT OF BEGINNING and containing 0.0781 of an acre.

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;

NONE

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:  
\_\_\_\_\_ a  
and the name of:

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

STREET RETAIL SAN ANTONIO LP

(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;

NONE

(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.

NONE

<sup>1</sup> 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.

**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:
NONE	NONE	NONE

**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 question<sup>2</sup> 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.

<p><b>Signature:</b>  </p>	<p><b>Title:</b> <del>President</del>            Company: SAS San Antonio, Inc.            Site General Partner of Street Retail            San Antonio, LP</p>	<p><b>Date:</b>            8/14/02</p>

<sup>2</sup> 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.

CONSENT AGENDA  
ITEM NO. 24

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

---

**TO:** Mayor and City Council

**FROM:** Rebecca Waldman, Director, Department of Asset Management

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Erik Walsh, Assistant to the City Manager; Christopher J. Brady, Assistant City Manager; Ramiro Cavazos, Director, Economic Development Department; Trey Jacobsen; file

**DATE:** October 3, 2002

**SUBJECT:** S.P. No. 1052-Request for an ordinance to authorize the execution of a License Agreement and Temporary Easement Agreement with the Valencia Hotel Project and the Houston Street Bridge-Paseo del Rio Linkage Project

**PETITIONER:** Street Retail San Antonio, LP  
Attn: James P. Plummer  
300 Covenant Street, Suite 2200  
San Antonio, Texas 78205

**SUMMARY AND RECOMMENDATIONS**

This ordinance will authorize the execution of a License Agreement, with a term of twenty-five (25) years, between the City of San Antonio and Street Retail San Antonio, LP (SRSA) to use Public Right of Way at certain points along Houston Street and St. Mary's Streets and authorize the execution of a Temporary Easement Agreement dealing with the public improvements being constructed by SRSA for the Houston Street Bridge/Paseo del Rio Linkage Project.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Ordinance No. 91539, passed and approved on March 30, 2000, authorized a Development Agreement between the City of San Antonio and Street Retail San Antonio, LP (SRSA) to construct certain public improvements as part of the revitalization of Houston Street. Ordinance No. 94900, passed and approved on November 8, 2001 authorized the execution of a Project Management Contract and License Agreement with SRSA for the construction of the Valencia Hotel and the Houston Street Bridge/Paseo del Rio Linkage Project, with a provision that the agreements would have to be executed by the parties within 45 days or require further action by City Council.

The Project Management Contract has been executed, but the License Agreement was delayed due to an extended legal review at the developer's corporate office. The Temporary Easement Agreement was required by the U.S. Department of Housing and Urban Development and will convert to a permanent easement as contemplated in the Project Management Contract on the completion of the public improvements.

**POLICY ANALYSIS**

These agreements implement the applicable provisions of the Development Agreement between the City of San Antonio and SRSA. This action is consistent with the City Code, which requires City Council approval for any private use of property owned or controlled by the City.

**FISCAL IMPACT**

The fee for this License Agreement is part of the services and consideration authorized by City Council in Ordinance No. 94900 (11/8/01) and no further monetary or other consideration is required.

**COORDINATION**

In compliance with City procedures, this request has been canvassed through all interested City departments, public utilities and applicable agencies. A Canvassing Checklist and an executed Letter of Agreement, by which the petitioner agrees with all conditions imposed through this canvassing, are attached for review.

**SUPPLEMENTARY COMMENTS**

The City of San Antonio's Planning Commission will consider this request at its regular meeting of 9/25/02 and its findings will be presented to City Council on 10/3/02.

Executed Discretionary Contracts Disclosure Statement from petitioner(s) is attached.

  
Rebecca Waldman, Director  
Department of Asset Management

  
Erik J. Walsh  
Assistant to the City Manager