

AN ORDINANCE

89573

AUTHORIZING A FIVE (5) YEAR LICENSE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND HOUSTON STREET HOTEL PARTNERS, L.P., A DELAWARE LIMITED PARTNERSHIP, TO USE PUBLIC RIGHT-OF-WAY (SUBSURFACE, SURFACE AND AIR RIGHTS) WITHIN EAST HOUSTON, NORTH ST MARY'S AND TRAVIS STREETS ADJACENT TO THE CAMBERLEY GUNTER HOTEL LOCATED AT 205 EAST HOUSTON STREET, FOR A TOTAL CONSIDERATION OF \$198,682 00, TERMINATING THE LICENSE AGREEMENT WITH GUNTER LIMITED PARTNERSHIP, WHICH WAS AUTHORIZED BY ORDINANCE 84153, DATED MAY 23, 1996, CONDITIONING THE FIVE (5) YEAR LICENSE AND THE TERMINATION UPON AN APRIL 13, 1999 REAL ESTATE CLOSING, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE UPON PASSAGE OF EIGHT (8) AFFIRMATIVE VOTES

* * * * *

WHEREAS, Ordinance No 84153, dated May 23, 1996, authorized a five (5) year license agreement to allow the Gunter Limited Partnership to use the public rights-of-way adjacent to the Sheraton Gunter Hotel, now called the Camberley Gunter Hotel; and

WHEREAS, Houston Street Hotel Partners, L.P ("Licensee"), a Delaware Limited Partnership, is purchasing the Camberley Gunter Hotel from the Gunter Limited Partnership and has requested a License Agreement ("License") to use the public rights-of-way (subsurface, surface and air rights) for the continued use of existing facilities within East Houston, North St Mary's and Travis Streets adjacent to the Camberley Gunter Hotel, located at 205 East Houston Street, in Lots 1, 2, 3, 4, part of 5, and 6, New City Block 407, San Antonio, Bexar County, Texas, and

WHEREAS, the License will allow the Licensee the continued use of an existing 4,487 square-foot basement encroachment under, and a 4,487 square-foot balcony dining area over, the public sidewalks of North St Mary's and East Houston streets, an existing smokestack and related 87 square-foot basement encroachments over and under a 14-foot wide alley adjacent to the east side of the hotel, an existing 4-foot wide overhead parking structure encroachment of 1,304 square feet above the public sidewalks of Travis and North St Mary's streets, and an existing open air sidewalk café of 207 square feet on East Houston Street, and

WHEREAS, in connection with such purchase, Licensee has requested that the City of San Antonio ("City") terminate the existing non-assignable license agreement with Gunter Limited Partnership, approved pursuant to Ordinance No 84153; and

WHEREAS, termination of the existing license and granting of the new License are contingent upon an April 13, 1999, closing date for the purchase of the Camberley Gunter Hotel by the Houston Street Partners, L P , from the Gunter Limited Partnership, and

WHEREAS, processing of the new License Agreement through the Planning Commission will not be necessary since these are existing facilities and the same rights will be granted under a new license, and

WHEREAS, this action is consistent with Ordinance No 88489, dated September 17, 1998, which adopts rates for private use of public rights-of-way, and will generate a total of \$198,682 00, **NOW THEREFORE:**

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

SECTION 1 Subject to the specified existing contingency as a condition precedent to termination, the existing license between the City and the Gunter Limited Partnership, an Illinois Limited Partnership, which was passed and approved by Ordinance 84153, dated May 23, 1996, is hereby terminated. This action of termination is contingent upon the April 13, 1999 purchase and closing of the underlying fee simple interest in the land and improvements, known as the Camberley Gunter Hotel, located at 205 East Houston Street, in Lots 1, 2, 3, 4, part of 5, and 6, New City Block 407, San Antonio, Bexar County, Texas, by the Houston Street Hotel Partners, L P , a Delaware Limited Partnership, from the Gunter Limited Partnership. A copy of said Termination of License Agreement, in substantially final form, is affixed hereto and incorporated herein as Attachment 1

SECTION 2 Contingent upon closing of the purchase set forth in SECTION 1 above, the City hereby releases the Gunter Limited Partnership from its future obligations or responsibilities under the agreement hereby terminated

SECTION 3. Contingent on closing of the purchase referred to in SECTION 1 above, a new five (5) year License Agreement is approved between the City, as Licensor, and the Houston Street Hotel Partners, L P , as Licensee, for continued use of the existing encroachment rights described above, in connection with the Camberley Gunter Hotel, for a total License fee of \$198,682 00, to be payable in yearly installments of \$39,736 40 The location of the existing encroachments is more specifically described in a copy of said License Agreement, in substantially final form which is affixed hereto and incorporated herein as Attachment 2

SECTION 4. The City Manager, or his designee, is hereby authorized to execute, CONTINGENT ON THE AFOREMENTIONED CLOSING OF SAID PURCHASE REFERENCED IN SECTION 1 above, said Termination of License Agreement, License Agreement, and any and all other documents, as first reviewed and approved by the City Attorney, necessary to effectuate said closing or termination

SECTION 5. Approval of the License Agreement in SECTION 3 and authorization for execution of said License Agreement and other instruments referenced in SECTION 4 is further contingent and conditioned upon the receipt of the payment to the City of San Antonio by the Gunter Limited Partnership of all delinquent License Fees, lease rentals, Hotel Occupancy Taxes, ad valorem real and personal property taxes, Downtown Improvement District assessments, and any and all other taxes and general and special assessments due to the City, if any, as of the date of closing of the purchase of the Camberley Gunter Hotel by Licensee

SECTION 6. The amount collected on the above contract shall be deposited in the General Fund 11-000, Index Code 012732, entitled "License Agreement - use of ROW "

SECTION 7. Due to the immediate need to close the purchase (of which the termination of the existing License Agreement and the grant of a new License Agreement are a part) by April 13, 1999, the City deems an emergency exists in this matter, and upon the affirmative vote of at least eight (8) members, this Ordinance will become effective immediately, otherwise this ordinance shall be effective on the tenth day after the date of passage hereof

PASSED AND APPROVED this 8th day of April, 1999



M A Y O R
Howard W. Peak

ATTEST


City Clerk

APPROVED AS TO FORM

Veronica M. Zestuche
for City Attorney

99-14

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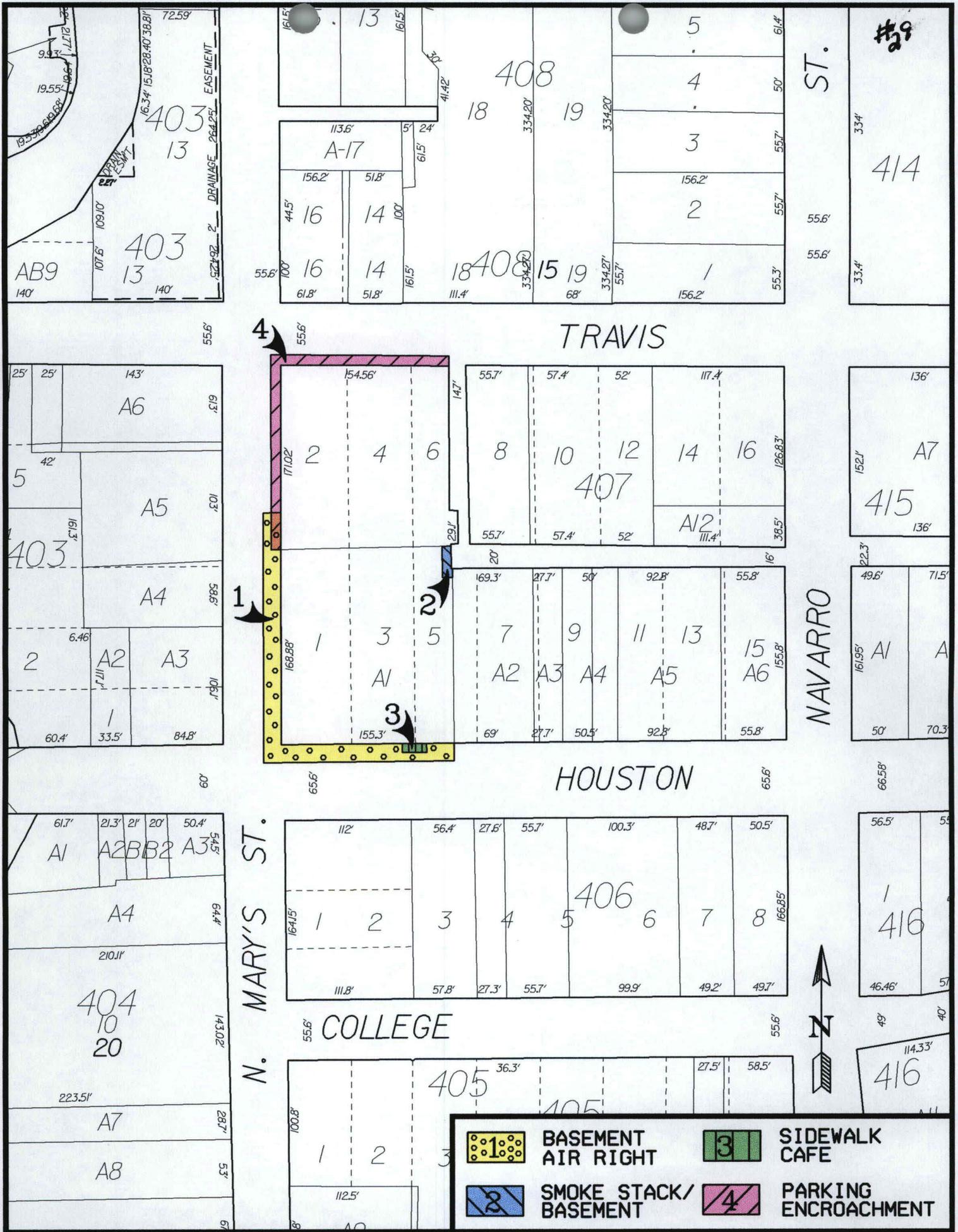
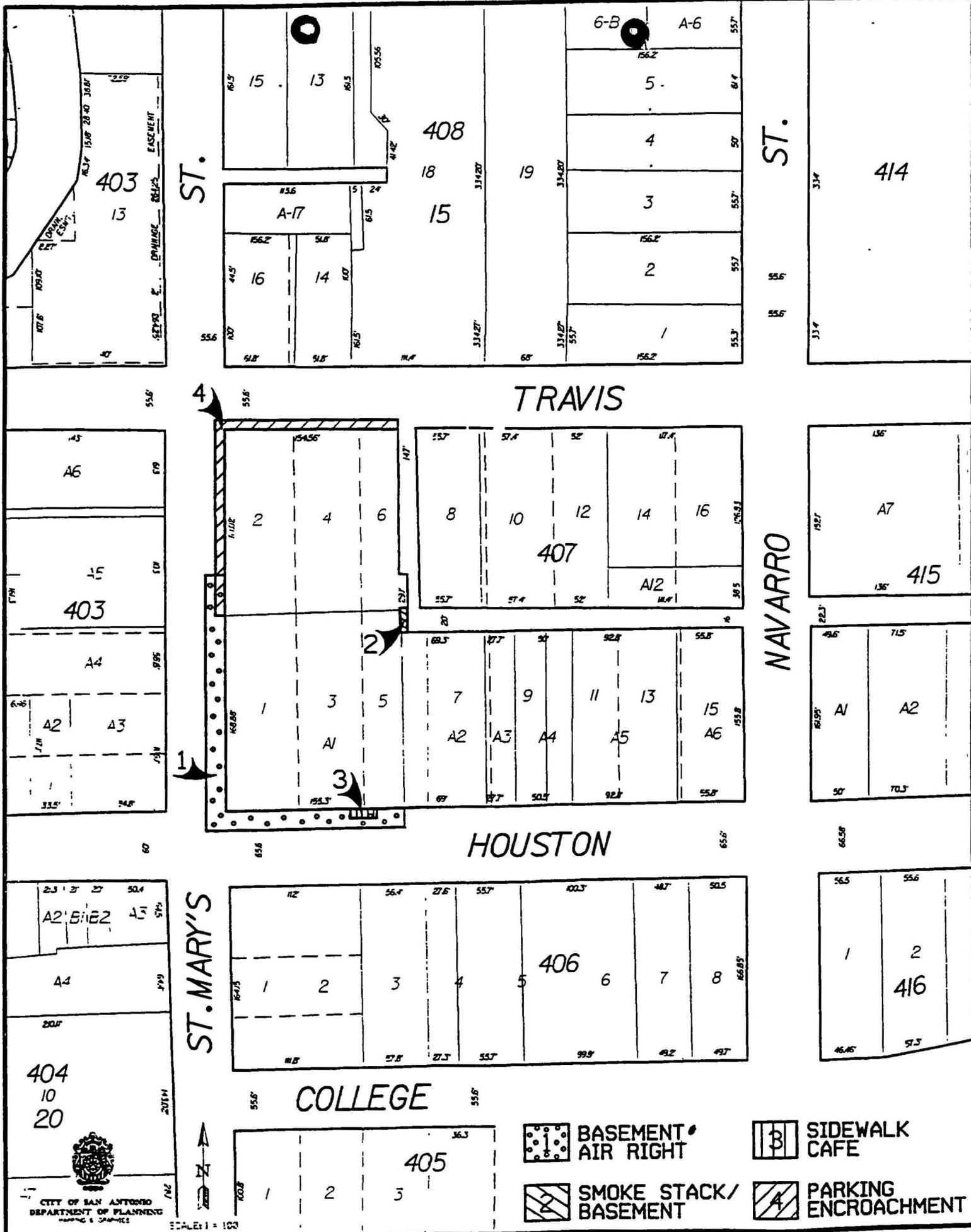


EXHIBIT "A"



2.3 3 27 50.4
 A2 B1 B2 A3
 44
 20.7
 404
 10
 20
 2014
 1/2
 CITY OF SAN ANTONIO
 DEPARTMENT OF PLANNING
 MAPING & SURVEYING

SCALE: 1" = 100'

EXHIBIT "A" 99

CITY OF SAN ANTONIO
DEPARTMENT OF ASSET MANAGEMENT
INTERDEPARTMENTAL CORRESPONDENCE SHEET

TO: Mayor and City Council
FROM: Rebecca Waldman, Director, Department of Asset Management
COPIES: Christopher J. Brady, Assistant to the City Manager
Oscar Serrano, Real Estate Manager/Property Disposition, File
SUBJECT: Special Project No. 970—Request for License to Use Public Right of Way
(subsurface, surface and air rights) within East Houston, North St. Mary's and
Travis Streets adjacent to the Camberley Gunter Hotel located at 205 East
Houston Street
DATE: March 26, 1999

PETITIONER: HOUSTON STREET HOTEL PARTNERS, L.P.,
a Delaware Limited Partnership
c/o Mr. Brian Siegal
Akin, Gump, Strauss, Hauer & Feld
Attorneys at Law
1700 Pacific Avenue
Suite 4100
Dallas, Texas 75201-4675

SUMMARY AND RECOMMENDATIONS

This Ordinance will authorize a 5-year License Agreement from the City of San Antonio to HOUSTON STREET HOTEL PARTNERS, L.P., a Delaware Limited Partnership, to use Public Right of Way (subsurface, surface and air rights) within East Houston, North St. Mary's and Travis Streets adjacent to the Camberley Gunter Hotel located at 205 East Houston Street, for a total consideration of \$198,682.00, to be paid in yearly installments of \$39,736.40.

Subject to scheduled April 13, 1999 real estate closing, this Ordinance will also terminate existing Ordinance No. 84153 dated May 23, 1996, between the City of San Antonio and GUNTER LIMITED PARTNERSHIP, an Illinois Limited Partnership, which represent existing encroachment/lease rights

This request requires an emergency declaration providing for an immediate effective date upon passage by eight (8) affirmative votes

Staff recommends City Council's approval of this request.

BACKGROUND:

In conjunction with its proposal to purchase the Camberley Gunter Hotel and associated parking facilities from the Gunter Limited Partnership, an Illinois Limited partnership, Applicant is requesting necessary rights for continued use of existing facilities within public streets in the locations as shown on attached Exhibit "A". These existing facilities consist of the following:

1. Existing basement encroachment located within East Houston and North St. Mary's Streets (4,487 square feet);
2. Existing overhead dining area encroachment located within East Houston and North St. Mary's Streets (4487 square feet),
3. Existing parking structure with a 4-foot wide overhead encroachment above the sidewalk of Travis and North St. Mary's Streets (1,304 square feet),
4. Existing use of East Houston Street right of way for open air sidewalk café (207 square feet);
5. Existing smokestack and related basement over and under a public 14-foot wide alley adjacent to the east side of the hotel (87 square feet)

Rights for all of the above listed existing encroachments were previously obtained by the current owners of the property by Ordinance No 84153 dated May 23, 1996. Being that the existing rights are non-assignable, the prospective purchasers (who anticipate closing on this property on April 13, 1999) must acquire new rights. Please note that no construction is to take place, as all facilities are already in place.

The Applicant has formally agreed to abide by all existing conditions as are imposed by existing agreement. A copy of letter dated March 24, 1999 by which the Applicant agrees to the conditions imposed is attached.

The License for these encroachments will be for a period of five (5) years for a total consideration of \$198,682, to be paid in annual installments of \$39,736.40. The Licensee has agreed to provide insurance coverage and hold the City of San Antonio harmless from any and all liabilities in connection with this License.

COORDINATION:

This project has been coordinated with the City Attorney's Office and was originally coordinated with all interested City Departments and Utility Agencies during the initial installation of these encroachments.

POLICY ANALYSIS.

The action being taken is consistent with the City's Ordinance No. 88489, dated September 17, 1998 which regulates private use of public properties.

FINANCIAL IMPACT:

The City of San Antonio will receive the overall \$198,682, to be paid over the five-year term. This total amount is to be paid on an annual basis as stipulated above

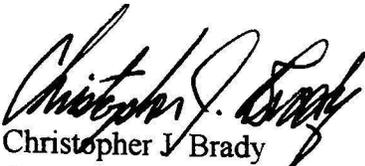
SUPPLEMENTAL COMMENTS:

Executed Ethics Ordinance Disclosure Statement from Petitioner is attached.



Rebecca Waldman
Director
Department of Asset Management

Approved:



Christopher J. Brady
Assistant to the City Manager



Alexander E. Briseño
City Manager

Approval		CITY OF SAN ANTONIO	Date Considered
Finance	Budget	Request for Ordinance/Resolution	Consent <input checked="" type="checkbox"/> Individual <input type="checkbox"/>
			Item No. <i>79</i>
Legal	Coordinator		Ord. No.

Date	Department	Contact Person/Phone No.
March 26, 1999	Asset Management/Special Projects	Rebecca Waldman, Director Ext: 7114

Date Council Consideration Requested	Deadline for Action	Dept. Head Signature
April 8, 1999	April 8, 1999	<i>Rebecca Waldman</i>

SUMMARY OF ORDINANCE

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Subject to scheduled April 13, 1999 real estate closing, this Ordinance will also terminate existing Ordinance No 84153 dated May 23, 1996, between the City of San Antonio and GUNTER LIMITED PARTNERSHIP, an Illinois Limited Partnership, which represent existing encroachment/lease rights.

This request requires an emergency declaration providing for an immediate effective date upon passage by eight (8) affirmative votes

Staff recommends City Council's approval of this request

Other Depts/Boards/Committees Involved (please specify): City Attorney's Office

FISCAL DATA (if applicable) **Budgetary Implications**

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

Comments:

Council District No 1

ATTACHMENT 1
TO ORDINANCE NO. 89573

PASSED AND APPROVED

ON APRIL 8, 1999

TERMINATION OF LICENSE AGREEMENT
FROM THE GUNTER LIMITED PARTNERSHIP

TERMINATION OF LICENSE AGREEMENT

Pursuant to the provisions of CITY OF SAN ANTONIO Ordinance No 89573 passed and approved April 8, 1999, the CITY OF SAN ANTONIO hereby TERMINATES and declares NULL AND VOID AND OF NO FURTHER FORCE OR EFFECT the following License Agreement

(1) A five (5) year License Agreement granted and manifested by CITY OF SAN ANTONIO Ordinance No 84153, passed and approved on May 23, 1996 to Gunter Limited Partnership, an Illinois Limited Partnership, as Licensee, to occupy space over and under public sidewalks at North St Mary's Street and East Houston Street and the 14-foot wide alley adjacent to the east side of the Sheraton Gunter (now Camberley Gunter) Hotel for balcony and basement encroachments and the encroachment of an existing smokestack over such public right-of-way in two tracts described as:

PART I

BEING 0 103 acres of land out of the street rights-of-way of East Houston Street and North St Mary's Street adjacent to Lots 1, 2, 3 and 5, New City Block 407, within the City Limits of San Antonio, Bexar County, Texas, and being more particularly described in said Ordinance and License Agreement, and

PART II

BEING 0 002 acres of land out of the variable width public alley running through New City Block 407 adjacent to the remaining portions of Lots 5 and 6, New City Block 407, within the City Limits of San Antonio, Bexar, County, Texas, and being more particularly described in said Ordinance and License Agreement,

Further, the CITY OF SAN ANTONIO does hereby release and discharge the Gunter Limited Partnership, from any and all liability, claims, demands and causes of action, loss, damage or expense, suits, costs of any settlement or judgment or claims of any and every kind whatsoever which may now or in the future (whether before or after the release and termination of this License and Lease Agreement) arises out of, or relate to

that certain License Agreement approved by the indicated respective CITY OF SAN ANTONIO Ordinance No 84153

LICENSOR
CITY OF SAN ANTONIO,
a Texas Municipal Corporation

By *Christopher J. Brady*
Name Christopher J. Brady
Title Asst. to the City Manager
City Manager
RW

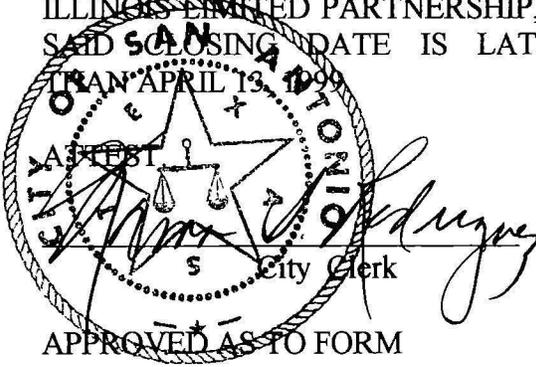
LICENSEE
ACCEPTED BY
GUNTER LIMITED PARTNERSHIP,
an Illinois, limited partnership

By La Salle Gunter Limited Partnership,
an Illinois limited partnership,
general partner

By La Salle Gunter, G P , Inc ,
an Illinois corporation,
general partner

By *Todd Noonan*
Name Todd Noonan
Title Vice President

Pursuant to Ordinance No 89573 passed and approved on April 8, 1999 EFFECTIVE ON April 13, 1999 OR ON THE DATE OF CLOSING OF THE PURCHASE OF THE LAND AND IMPROVEMENTS KNOWN AS THE CAMBERLEY GUNTER HOTEL BY HOUSTON STREET HOTEL PARTNERS ON DELAWARE LIMITED PARTNERSHIP FROM GUNTER LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, IF SAID CLOSING DATE IS LATER


APPROVED AS TO FORM

Warner F. Farnidge
for the City Attorney
my

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 12th day of May, 1999 by Christopher J. Brady, Assistant to the City Manager, on behalf of the CITY OF SAN ANTONIO, a Texas municipal corporation.



Margaret Gonzales
Notary Public, State of Texas

Notary's Commission Expires: 6/12/2000

District
STATE OF ~~TEXAS~~ §
Columbia §
COUNTY OF ~~BEXAR~~ §

This instrument was acknowledged before me on the 12 day of April, 1999 by Todd Nornz, Vice President of La Salle Gunter G P, Inc, an Illinois corporation, general partnership, on behalf of Gunter Limited Partnership, an Illinois limited partnership

Jan E. [Signature]
Notary Public, State of Texas District of Columbia

Notary's Commission Expires Jan. 31, 2004

AFTER RECORDING, RETURN TO

City of San Antonio
P O. Box 839966, 3rd Floor City Hall
San Antonio, Texas 78253-3966
Attention Warner F Fassnidge,
City Attorney's Office

ING REALTY MANAGEMENT

May 9, 2000

VIA CERTIFIED MAUL
RETURN RECEIPT REQUESTED

City Clerk
City of San Antonio
City Hall/Military Plaza
Post Office Box 83996/2nd Floor
San Antonio, Texas 78283-3966

Re: License Agreement between City of San Antonio and Houston Street Hotel Partners, L.P. pursuant to Ordinance No. 89573, dated April 8, 1999

Ladies and Gentlemen:

Reference is made to that certain License Agreement between the City of San Antonio, a Texas Municipal Corporation, as licensor, and Houston Street Hotel Partners, L.P., a Delaware limited partnership, as licensee, pursuant to Ordinance No. 89573, dated April 8, 1999 (the "License Agreement").

Please take notice that the current first lienholder under the License Agreement is:

Freemont Investment & Loan
175 North Riverside Drive
Anaheim, California 92808

Very truly yours,

Houston Street Hotel Partners, L.P., A Delaware
limited partnership,

By: Houston Street Hotel General Partner Corp.,
a Delaware corporation

Its: General Partner

By: Thomas K. Naughton

Name: Thomas K. Naughton

Title: Vice President

ATTACHMENT 2

TO ORDINANCE NO. _____

PASSED AND APPROVED

ON APRIL 8, 1999

LICENSE AGREEMENT

WITH HOUSTON STREET HOTEL PARTNERS, L.P.

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, or an Assistant City Manager or an Assistant to the City Manager, , pursuant to Ordinance No. 89573 dated April 8, 1999, and HOUSTON STREET HOTEL PARTNERS, L.P. a Delaware Limited Partnership, hereinafter referred to as **LICENSEE**

I. PREMISES AND USE

1.1 **Licensed Premises.** For and in consideration of the observance of the terms and conditions set forth herein, **CITY** grants to **LICENSEE**, a license being permission to use public right-of-way, specifically (1) the subsurface under and air space over the sidewalks of North St Mary's and East Houston streets, (2) the air space above and subsurface under a 14-foot wide alley adjacent to the east side of the Camberley Gunter Hotel, (3) the sidewalk surface and subsurface under and air space above said sidewalk surface on East Houston Street, and (4) the air space above the sidewalks of Travis and North St Mary's streets, all areas being adjacent to and abutting portions of land and improvements, known as the Camberley Gunter Hotel at 205 East Houston Street, being Lots 1, 2, 3, 4, part of 5, and 6, New City Block 407, San Antonio, Bexar County, Texas, such areas are legally described in Exhibit "A" and shown on Exhibit "B" attached hereto, being the Licensed Premises, hereafter "Premises" and solely for the purposes described below

1.2 Notwithstanding anything to the contrary contained in any easements, whether recorded or unrecorded but apparent affecting the Premises or property adjacent to the Premises in which **LICENSEE** has an interest, **LICENSEE** shall have the right to use, maintain and operate the improvements currently existing or hereafter constructed, replaced, installed, or otherwise placed within the Premises provided (1) the **CITY** shall retain the right to full use of the surface, subsurface under and air space above, the Premises, except for the areas set forth herein where **LICENSEE** has acquired the right to place **LICENSEE'S** improvements, and (2) **LICENSEE** shall promptly replace or repair to their prior condition or promptly relocate any other improvements or utility lines or utility improvements which are damaged, disturbed, or otherwise affected by the maintenance of **LICENSEE'S** improvements by **LICENSEE** , its, employees, agents, representatives, contractors or subcontractors within the Premises

1.3 **Purpose and Use.** The purpose of this license is to permit the use, maintenance, and operation as well as, any future installation, construction, replacement, or placement of improvements if approved by **CITY**, and improvements currently existing and in place as follows: (1) existing basement and balcony encroachments over and under the public sidewalks of North St Mary's and East

Houston streets, (2) existing smokestack and related basement encroachments over and under a 14-foot wide alley adjacent to the east side of the Camberley Gunter Hotel, (3) an existing use of 207 square feet of East Houston Street right-of-way for an open air sidewalk cafe, and (4) a 4-foot overhead encroachment by an existing parking structure above the public sidewalks of Travis and North St Mary's streets LICENSEE'S entry into and use of CITY'S property above shall be limited to these purposes

1.4 **CITY'S Superior Interest.** LICENSEE acknowledges that this License Agreement is limited in nature and the CITY does not purport to convey any real property interest in any of the property over, under or upon the Premises in which LICENSEE'S improvements are located. The CITY reserves the right to enter the Premises at any time for the minimum time necessary to prevent an accrual of any rights in any person other than such rights established prior to and pursuant to this License Agreement and also for the purpose of asserting its superior interest and exercise of the CITY'S superior (condemnation) rights and for emergency purposes

1.5 **Recording.** CITY and LICENSEE will execute for the purposes of recordation in the appropriate real property records, a memorandum or short form of the License Agreement containing the names of the parties, a description of the Premises, the term of the License, and other such provisions as either party may require. The cost and expense of recording the memorandum, or short form of the License Agreement, shall be borne by the LICENSEE

II. **LICENSE FEE**

2.1 **Payment as consideration** The total License Fee for this grant, to be delivered to CITY by LICENSEE, is ONE HUNDRED NINETY-EIGHT THOUSAND SIX HUNDRED EIGHTY-TWO DOLLARS (\$198,682.00) for the five (5) year term, payable at the office of the City Treasurer, 506 Dolorosa Street, San Antonio, Bexar County, Texas. Said Fee is due and payable annually, with the first payment of \$39,736.40 due on or before April 18, 1999 and each subsequent payment due on or before April 18th of each year of the term commencing with the second payment due in 2000.

III **TERM**

3.1 **Term.** The LICENSE hereby granted shall be for a term of five (5) years, beginning on the effective date of this License Agreement, unless terminated at the option of the LICENSEE or CITY, pursuant to the terms herein. CITY will consider, and LICENSEE may negotiate for, an extension prior to the time of the expiration hereof pursuant to the provisions of Article XI of the City Charter, or its successor provision. However, at such renewal, the terms for such renewal shall be adjusted to reflect the fair market license fee existing at the time of renewal, as determined by an appraisal done by CITY through its Director of Asset Management or his successor. All other terms and provisions still in force under this agreement will remain in effect at the time of said renewal

IV.
CONSTRUCTION, MAINTENANCE AND OPERATIONS

4.1 **Costs**. LICENSEE shall be solely responsible for all costs of construction, installation, maintenance and operation and future repair and replacement of existing improvements and construction and installation of future improvements of the aforementioned improvements and any other costs related to this License. The CITY shall have no financial obligations whatsoever regarding this License.

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

4.3 **Barricades**. If a detour route or a barricade is required to protect the interest of the CITY or the public, LICENSEE shall, in accordance with plans developed and furnished by the CITY'S Department of Traffic and Transportation, construct the detour and make arrangements for such barricades at LICENSEE'S sole cost and expense.

4.4 **Maintenance**. If it should become necessary that any maintenance or adjustment be made in LICENSEE'S improvements hereunder by reason of the exercise of CITY'S rights, powers and/or duties, such maintenance or adjustments shall be done at LICENSEE'S sole cost and expense. LICENSEE, at its sole cost and expense, agrees to maintain, as necessary, the improvements constructed and installed by LICENSEE, previously by its predecessors or in the future, adhering to all applicable safety standards, including those imposed by State laws, Federal laws, CITY ordinances and Bexar County ordinances.

4.5 **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 construction, repair, maintenance, alterations, additions, improvements, adjustments, relocation, or reconstruction work in, on or about the Premises, whether authorized or unauthorized hereunder. LICENSEE hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all current or future installation, construction, repair, maintenance, alterations, additions, improvements, adjustments, relocation, or reconstruction that may be made. **LICENSEE WILL REQUIRE LICENSEE'S CONTRACTORS AND SUBCONTRACTORS TO FULLY INDEMNIFY AND HOLD HARMLESS CITY AGAINST ANY AND ALL CLAIMS, LIENS, SUITS, OR ACTIONS ASSERTED BY ANY PERSON, FIRM OR CORPORATION ON ACCOUNT OF LABOR, MATERIAL OR SERVICES FURNISHED TO LICENSEE OR SAID CONTRACTORS OR SUBCONTRACTORS DURING THE PERFORMANCE OF ANY SAID CONSTRUCTION AND AGAINST ANY CLAIM FOR INJURY OR DEATH TO PERSONS OR DAMAGE TO ANY PROPERTY.**

4.6 **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, in the event construction, maintenance or operations of the improvements warrant same

V.
SPECIFIC CONDITION

5.1 **LICENSEE** acknowledges that the execution of this License Agreement by **CITY** and approval of the **CITY** Ordinance authorizing such execution were specifically conditioned upon the payment to **CITY** by **GUNTER LIMITED PARTNERSHIP**, the prior **LICENSEE**, to the extent such entity is indebted to the **CITY**) of all delinquent License Fees, Lease rentals, Hotel Occupancy Taxes, ad valorem real and personal property taxes, Downtown Improvement District assessments, and any and all other taxes and general and special assessments due to the **CITY** as of the date of closing of the purchase of the Camberley Gunter Hotel by **LICENSEE**.

VI.
INDEMNITY

6.1 **LICENSEE** agrees to **FULLY INDEMNIFY, SAVE and HOLD HARMLESS, CITY** and the elected officials, agents, employees, officers, directors, volunteers and representatives of **CITY**, individually or collectively, from and against all and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including, but not limited to, personal or bodily injury or death and property damage, made upon **CITY**, directly or indirectly arising out of, or resulting from, or related to **LICENSEE'S** activities or **CITY'S** activities under this **AGREEMENT**, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, contractor, subcontractor, consultant, subconsultant, invitee, or volunteer of **LICENSEE**, and their respective agents, officers, directors, representatives, employees, contractors, subcontractors, consultants, subconsultants, invitees, or volunteers while in the exercise or performance of the rights or duties under this **AGREEMENT**, all without, however, waiving any governmental immunity available to **CITY** under Texas law and without waiving any of the defenses of the parties under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS OF ANY KIND AND NATURE ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractually or otherwise, to any other 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 or **CITY'S** activities under this **AGREEMENT** 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.

6.2 It is the **EXPRESS INTENT** of the parties to this Agreement, that the **INDEMNITY** provided for in this Article, is an indemnity extended by **LICENSEE** to **INDEMNIFY, PROTECT and HOLD HARMLESS CITY** from the consequences of

CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of CITY is the sole cause of the resultant injury, death, or damage. LICENSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against CITY and its elected officials, agents, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

6.3. THE CITY SHALL NOT BE LIABLE FOR ANY DAMAGE EITHER TO THE PERSON OR PROPERTY OF LICENSEE COVERED BY THIS LICENSE OR TO OTHER PERSONS DUE TO THE PREMISES OR ANY PART OR APPURTENANCES THEREOF ARISING FROM BURSTING OR LEAKING OF WATER, GAS, WASTE PIPES, SPRINKLER SYSTEMS, OR DEFECTIVE WIRING OR EXCESSIVE OR DEFICIENT ELECTRICAL CURRENT OR CONDUIT MALFUNCTIONING, OR FROM ANY ACT OR OMISSION OF LICENSEE, OR ANY OTHER PERSONS ON OR ABOUT SAID PREMISES, UNLESS SUCH DAMAGE SHALL HAVE BEEN CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF THE CITY, ITS EMPLOYEES, CONTRACTORS OR REPRESENTATIVES, AND THEN ONLY TO THE EXTENT OF THE CITY'S LIMITS OF LIABILITY UNDER THE TEXAS TORT CLAIMS ACT, WITH ANY INDEMNIFICATION TO BE MADE ONLY UPON FINAL ADJUDICATION OR SETTLEMENT, SUCH LIMIT OF LIABILITY TO APPLY TO ALL OTHER REFERENCES AS TO CITY'S SOLE ACTIVE NEGLIGENCE IN THIS LICENSE AGREEMENT.

VII. INSURANCE

7.1 Prior to the commencement of any work under this agreement, LICENSEE shall furnish an original completed Certificate(s) of Insurance to the CITY Clerk and the CITY Director of Asset Management, 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 hand-delivered or mailed directly from LICENSEE'S agent or insurance carrier directly to said parties. CITY shall have no duty to perform under this agreement until such Certificate shall have been mailed or hand-delivered to all of said parties, and no CITY officer or employee, other than the CITY'S Risk Manager, shall have authority to waive this requirement. The CITY'S Risk Manager may request changes to the Certificate of Insurance and no work shall begin until it has been approved by said Risk Manager.

7.2 CITY reserves the right to review insurance requirements under this Article during the effective period of this agreement and any extension or renewal thereof and to modify insurance coverage and their limits within ten (10) days after a request has been made to LICENSEE by CITY when such modification is 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.

7.3 **LICENSEE'S** financial integrity is of interest to **CITY**, therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, and without limiting **CITY'S** right to indemnification, **LICENSEE** agrees to obtain and maintain in full force and effect for the duration of this agreement, and any extension thereof, including during periods of construction and installation of any improvements, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A M Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts

	TYPE	AMOUNT
1	Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
2.	Commercial General (Public) Liability Insurance--to include coverage for the following. a. Premises and Operations b. Independent Contractors c. Products/Completed Operations Liability d. Personal Injury Liability e. Contractual Liability f. Explosion, Collapse and Underground Property * g. Broad-Form Property Damage, to include fire legal liability* h. Liquor Legal Liability* * if applicable	Combined Single Limit for Bodily Injury and Property Damage \$1,000,000 per occurrence
3	Business Automobile Liability--to include coverage for: a. Owned/leased vehicles b. Non-Owned Automobiles c. Hired Automobiles	Combined Single Limit for Bodily Injury and Property Damage. \$1,000,000 per occurrence (or its equivalent)
4.	Property Insurance--for physical damage to the property of the LICENSEE including improvements and betterments made to the Premises	Replacement Cost Coverage for the replacement cost of LICENSEE'S improvements and with a Waiver of Subrogation in favor of CITY , as to improvements and betterments made to the Premises

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

7.5 **LICENSEE** agrees that, with respect to the above required insurance, all insurance policies and certificates of insurance will contain the following provisions.

Name **CITY** and its officers, employees, agents, volunteers, and elected officials and volunteers as additional insureds as respects operations, including installation and construction of improvements, and activities of, or on behalf of, the named insured performed under agreements with **CITY**, with the exception of the workers' compensation and professional liability policies,

LICENSEE'S insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations, including installation and construction of improvements, and activities under this agreement with the City of San Antonio, and

Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**

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

7.7 **LICENSEE** 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 shall be accompanied by a replacement Certificate of Insurance. All notices, including any Certificate(s) of Insurance, shall be given to **CITY** at the following address:

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

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

7 8 If **LICENSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this agreement, however, procuring of such insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **LICENSEE** to maintain said insurance or secure such endorsement. In addition to other remedies **CITY** may have upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** until **LICENSEE** demonstrates compliance with the requirements hereof

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

7 10 **CITY**, its agents, representatives, or employees, shall not be liable, and **LICENSEE** waive all claims for any damage to persons or property sustained by **LICENSEE** or any person claiming through **LICENSEE**, which may occur on the Premises, or for the loss of, or damage to, any property of **LICENSEE** or of others by theft or otherwise, whether caused by other persons on the Premises or by occupants of adjacent property or the public or **LICENSEE'S** employees, agents, representatives, sublicensees, invitees, contractors, or subcontractors. **LICENSEE shall save and hold harmless CITY from any claims arising out of damage to LICENSEES' property or damage to LICENSEE's business, including subrogation claims by LICENSEE's insurers.**

7 11 Any and all employees, representatives, agents, contractors, subcontractors, sublicensees, assignees, or volunteers of **LICENSEE** or any other party providing services on behalf of **LICENSEE** while engaged in the performance or any work required by the **CITY** or **LICENSEE** related to the Premises shall be considered employees, representatives, agents, contractors, subcontractors, sublicensees, assignees, or volunteers or service providers of **LICENSEE** only and not of **CITY**. Any and all claims that may result from any obligation for which **LICENSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents, contractors, subcontractors, sublicensees, assignees, or volunteers or service providers shall be the sole obligation and responsibility of **LICENSEE**.

VIII. **TERMINATION**

8 1 In light of the consideration herein and the expense involved by **LICENSEE**, the parties agree that this License Agreement may not be terminated prior to the expiration of the term unless (1) the use made of the Premises under this License may become a nuisance, pursuant to the provisions of Section 137 of **CITY** Charter of **City** of San Antonio, Texas; or its successor section, or (2) in the event **LICENSEE** abandons the use of the Premises, or (3) in the event it is determined by the City's Public Works Director that **LICENSEE's** improvements unreasonably interfere with **CITY'S** use of the public right-of-way or (4) the failure to timely pay the annual License Fee in accordance

with **SECTION 2.1** or to pay any other sums due to the **CITY** or (5) failure to comply with any other provisions hereof

8.2 Prior to terminating this License Agreement for the reasons stated in 8.1 above, **CITY** shall give the **LICENSEE** and any first lienholder thirty (30) days prior written notice of the **CITY's** intent to terminate in all instances and **LICENSEE** and any first lienholder shall be given a reasonable time to cure the cause for the termination notice, but, not to exceed forty-five (45) days from **LICENSEE's** and the first lienholder's receipt of notice

IX.
ASSIGNMENT/SUBLICENSING

9.1 This License Agreement is personal to **LICENSEE** and shall not be assigned or sublicensed by **LICENSEE**, other than to its parent or affiliated entities or first lienholder or in connection with a foreclosure or deed in lieu with respect to such first lien, without the prior written consent of **CITY**, as evidenced by passage of a subsequent City of San Antonio ordinance

X.
AMENDMENT

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

XI
NOTICES

11.1 To CITY. Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if by personal delivery or if by mail, in writing and mailed, registered or certified mail, postage prepaid, addressed to:

CITY Clerk
CITY of San Antonio
CITY Hall/Military Plaza
P O 83996/2nd Floor
San Antonio, Texas 78283-3966

or to such other address as may hereafter be designated in writing by City Manager of the City of San Antonio

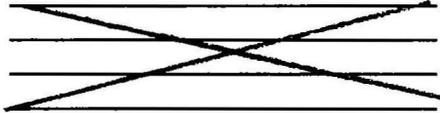
11.2 To LICENSEE. Notices to Licensee shall be addressed to:

HOUSTON STREET HOTEL PARTNERS, L.P.
c/o ING Realty Partners Acquisition Company
135 East 58th Street
New York, New York 10022

and a copy to:

Duval and Stachenfeld, L L.P.
405 Lexington
32nd Floor
New York, New York 10174
Attn Mr Bruce M. Stachenfeld

and a copy to the First Lienholder



or to such other address or addressee as may herein be designated in writing by **LICENSEE** or the First Lienholder

11.3 Notice will be deemed received not later than five (5) days after the date of mailing, if properly addressed.

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 in the aforementioned public right-of-way areas.

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 License.

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 **Wages** LICENSEE shall pay wages which are not less than the minimum wages required by Federal and State statues and CITY and County ordinances, to persons employed in LICENSEE's operation under this License Agreement.

15.3 **Conflict of Interest** LICENSEE acknowledges that it is informed that Texas law and the CITY Charter prohibit contracts between the CITY and any local public official ("official") , such as a CITY officer and employee, and that the prohibition extends to an officer and employee of CITY agencies such as City-owned utilities and certain CITY contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. LICENSEE certifies (and this License Agreement is made in reliance thereon) that to the actual knowledge of the undersigned representative of LICENSEE, neither LICENSEE, its employees or agents, nor any person having a substantial interest in this License Agreement, is an officer or employee of CITY or any of its agencies. LICENSEE has tendered to CITY a Disclosure Statement in compliance with the CITY OF SAN ANTONIO'S Ethics Ordinance

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

15.5 **Condemnation** It is agreed and understood that in the event that the Premises is taken, in whole or in part, by an governmental authority and the taking materially deprives LICENSEE of its rights to use the remaining part of the Premises, if any, and any other rights pursuant to this License Agreement, either party may, upon thirty (30) days prior written notice to the other, terminate this License Agreement. In the event of a taking or condemnation, LICENSEE shall have the right to pursue in the condemnation proceedings all claims arising from the taking or condemnation as it affects LICENSEE'S rights hereunder, including but not limited to, damage to any improvements made to the Premises by LICENSEE, damage to and interruption of LICENSEE'S business, damage to LICENSEE'S improvements, and expenses for LICENSEE'S relocation and replacement of access across the Licensed Premises.

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

15.7 **Taxes and Licenses**. LICENSEE shall pay before delinquency all current and future taxes, assessments, license and permit fees, and governmental impositions of whatever kind or nature imposed with respect to the Licensed Premises, including, but not limited to, taxes on LICENSEE's interest, and LICENSEE's improvements and, if in the future, the fee simple

interest of CITY is subject to taxation, then such tax will be included in the charges payable by LICENSEE. Further, LICENSEE, upon request, shall reimburse CITY with interest thereon at the maximum rate of interest, under applicable law, if CITY shall have paid any such taxes, assessments, license or permit fee, or governmental imposition in the first instance, provided CITY was legally obligated to pay the same and provided LICENSEE is in default under this provision. LICENSEE further agrees to maintain in current status all Federal, State and local licenses and permits required for the improvements within the CITY public alley right of way.

15.8 **Approval of the City.** Whenever this License 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 his designee.

**XVI.
ENTIRE AGREEMENT**

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

**XVII.
AUTHORITY**

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

EXECUTED to be effective as of April 13, 1999 or the Closing date of LICENSEE'S purchase of the Camberley Gunter Hotel, if later ("Effective Date").

LICENSOR:

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

LICENSEE:

**HOUSTON STREET HOTEL PARTNERS, L.P.
a Delaware limited partnership**

By: Houston Street Hotel General Partner, Corp.,
its general partner

By: [Signature]
City Manager

By: [Signature]
Name: Eric S. Berglund
Title: Senior VP



[Signature]
City Clerk

Warner J. Fassnidge
for the City Attorney

- (1) Existing basement, balcony and smokestack encroachments in two tracts:

PART I

BEING 0.103 acres of land out of the street rights-of-way of East Houston Street and North St. Mary's Street adjacent to Lots 1, 2, 3 and 5, New City Block 407, within the City Limits of San Antonio, Bexar County, Texas, and being more particularly described as follows:

ORIGINATING: At an X found in the concrete walk at the point of intersection of the east right-of-way line of N. St. Mary's St. and the south right-of-way line of Travis Street, said corner being the northwest corner of Lot 2, New City Block 407;

S 00° 07' 13" W, 125.35 feet along the east right-of-way line of N. St. Mary's Street to an X inscribed in the concrete walk for the POINT OF BEGINNING of the hereinafter described tract;

THENCE: S 00° 07' 13" W, 205.09 feet along the east right-of-way line of N. St. Mary's Street and the western boundary of Lots 1 and 2, New City Block 407, to an X found in the concrete sidewalk at the corner of the intersection of the north right-of-way line of Houston Street and the east right-of-way line of N. St. Mary's Street for an interior corner of this tract;

THENCE: N 89° 58' 00" E, 155.32 feet along the north right-of-way line of Houston Street and the southern boundary of Lots 1, 3 and 5, New City Block 407, to a point in the north right-of-way line of Houston Street from whence an X was found in the concrete sidewalk bearing S 00° 07' 13" W a distance of 3.00 feet, said corner being the easternmost northeast corner of this tract;

THENCE: S 00° 02' 00" W, 17.30 feet to a point on the face of the curb of the north curb line of East Houston Street for the southeast corner of this tract;

THENCE: N 89° 55' 22" W, 150.28 feet along the north curb line of East Houston Street to a point of curvature of the curb line to the right;

THENCE: 20.81 feet along the arc of a curve to the right whose radius is 13.25 feet, delta angle is 89° 58' 25", tangent is 13.29 feet, and a chord of 18.73 feet which bears N 44° 56' 09" W to a point on the east curb line of N. St. Mary's Street for the southwest corner of this tract;

THENCE: N 00° 03' 03" E, 208.86 feet along the east curb line of N. St. Mary's Street to a point for the northwest corner of this tract;

THENCE: S 89° 52' 47" E, 8.45 feet to a point on the east right-of-way line of N. St. Mary's Street, said point being the POINT OF BEGINNING and containing 0.103 acres of land,

EXHIBIT

"A"

BEING 0.002 acres of land out of the variable width public alley running through New City Block 407 adjacent to the remaining portions of Lots 5 and 6, New City Block 407, within the City Limits of San Antonio, Bexar County, Texas, and being more particularly described as follows:

ORIGINATING: At an X found in the concrete walk at the point of intersection of the east right-of-way line of N. St. Mary's Street and the south right-of-way line of Travis Street, said point being the northwest corner of Lot 2, New City Block 407;

S 89° 48' 40" E, 155.32 feet along the south right-of-way line of Travis Street and the north boundary line of Lots 2, 4 and 6, New City Block 407 to an X found in the concrete at the point of intersection of the south right-of-way line of Travis Street and the west right-of-way line of a public alley;

S 00° 07' 13" W, 129.70 feet along the west right-of-way line of a public alley and the east boundary line of the Gunter Hotel property, following the east edge of the exterior wall of the Gunter Hotel;

S 89° 52' 47" E, 3.80 feet along the west right-of-way line of the public alley and the east edge of the Gunter Hotel;

S 00° 07' 13" W, 29.00 feet along the west right-of-way line of the public alley and the east edge of the Gunter Hotel to the POINT OF BEGINNING of the hereinafter described tract;

THENCE: S 89° 52' 47" E, 3.20 feet to a point in the variable width public alley for the northeast corner of this tract;

THENCE: S 00° 07' 13" W, 14.30 feet to a point in the variable width public alley for the southeast corner of this tract;

THENCE: N 89° 52' 47" W, 7.00 feet to a point on the west right-of-way line of the public alley and the east edge of the Gunter Hotel for the southwest corner of this tract;

THENCE: N 00° 07' 13" E, 14.30 feet along the west right-of-way line of the public alley and the east edge of the Gunter Hotel for the northwest corner of this tract;

THENCE: S 89° 52' 47" E, 3.80 feet along the west right-of-way line of the public alley to the POINT OF BEGINNING and containing 0.002 acres of land, more or less,

EXHIBIT

"A"

(3) Sidewalk Cafe encroachment.

One area containing a total of 207.00 square feet;
located at 205 East Houston Street, south of Lots 5 and
3 (A-1), NCB 407, San Antonio, Bexar County, Texas

From the southeast corner of Lot 5, NCB 407:

THENCE 23.71 feet west of said corner and being the
north right-of-way of Houston Street to point
of beginning of lease area;

THENCE 23.00 feet west on Houston Street north right-
of-way;

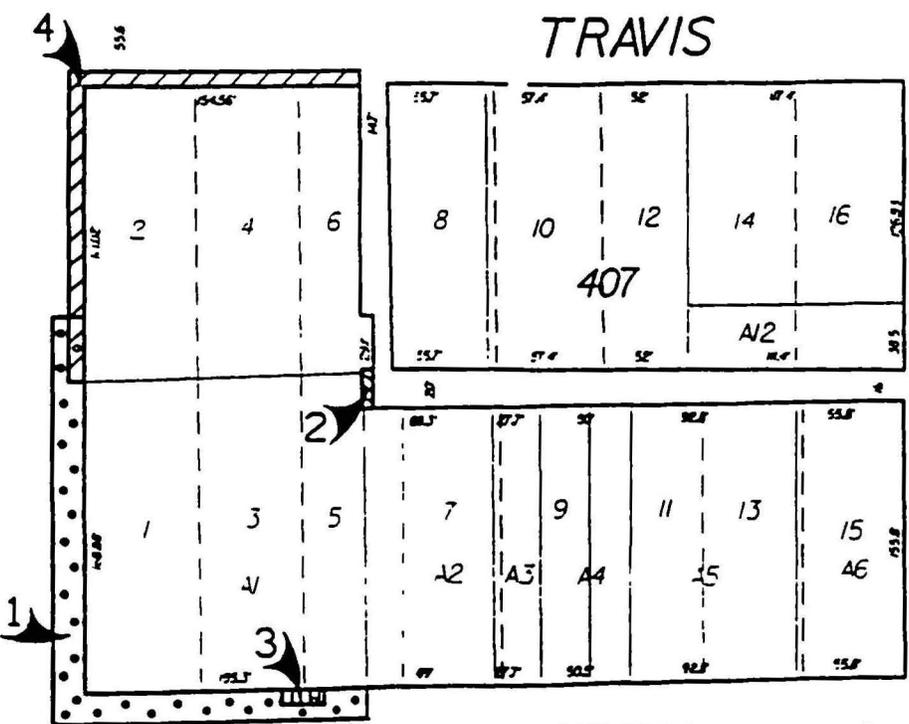
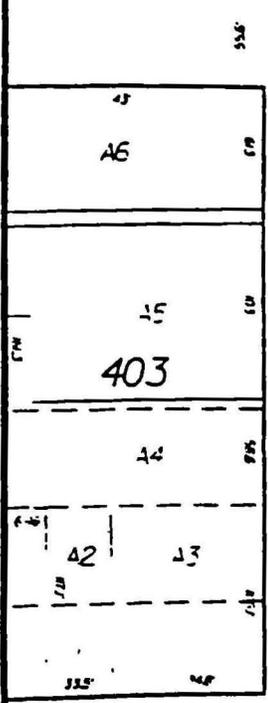
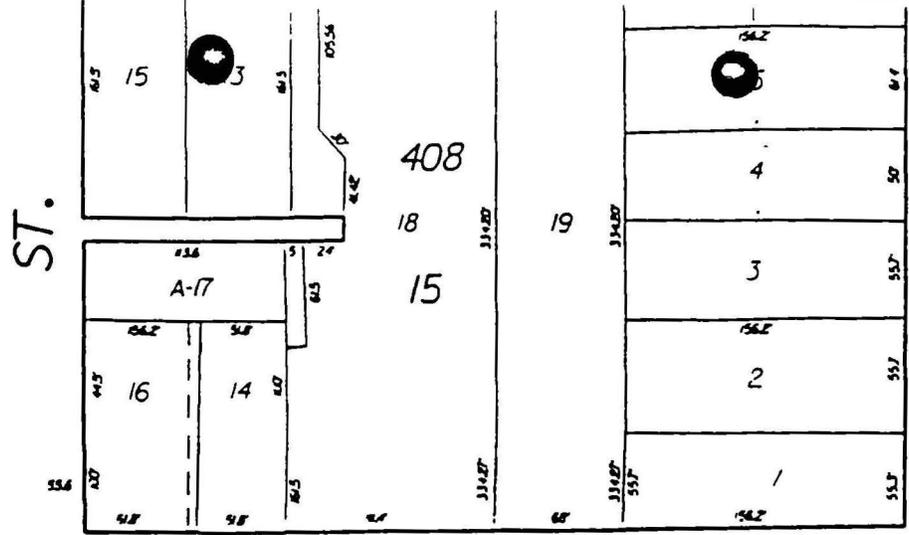
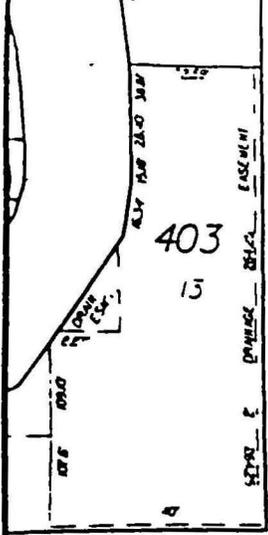
9.00 south;

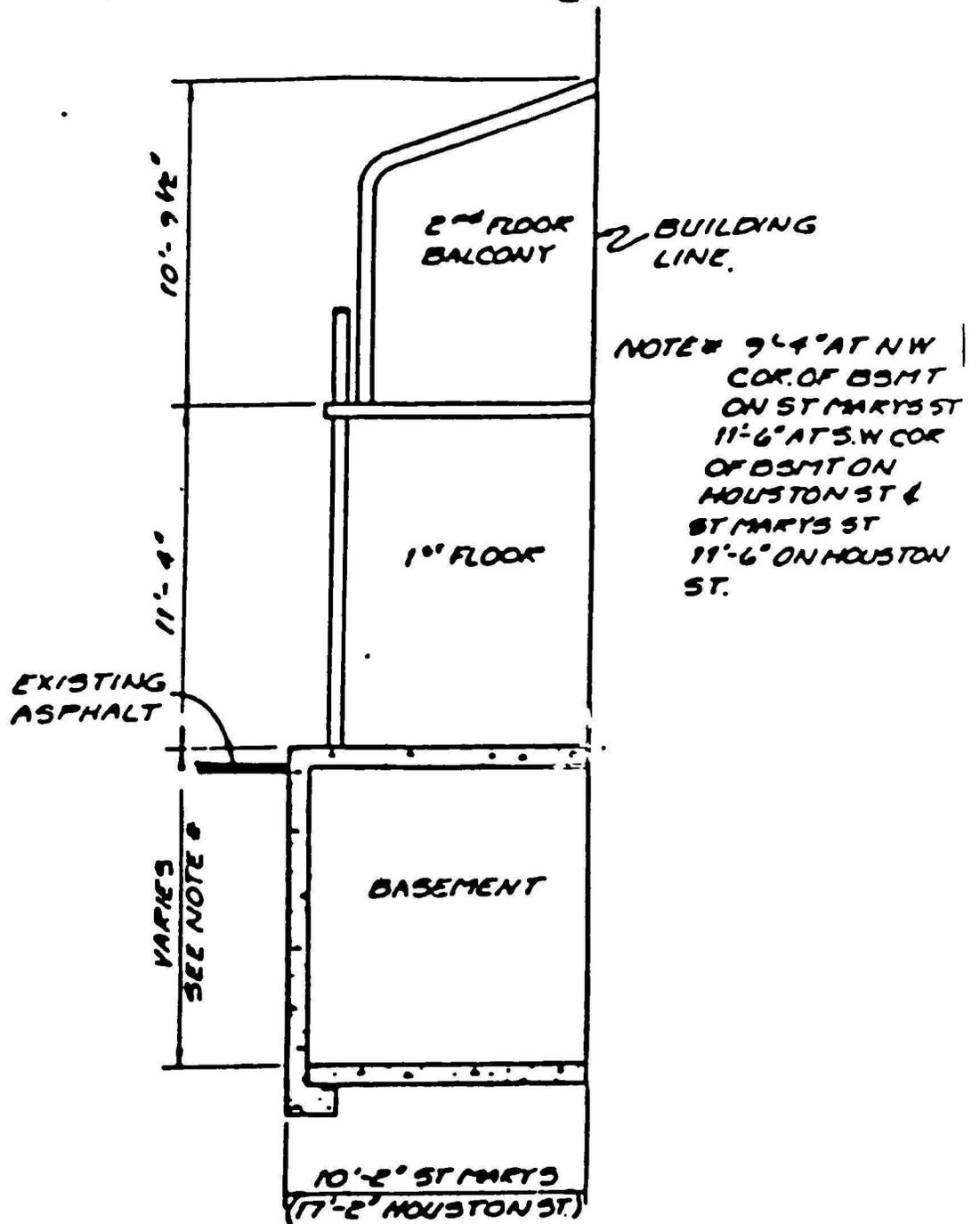
23.00 east;

9.00 north to point of beginning and
containing ±207.00 square feet

EXHIBIT

"A"



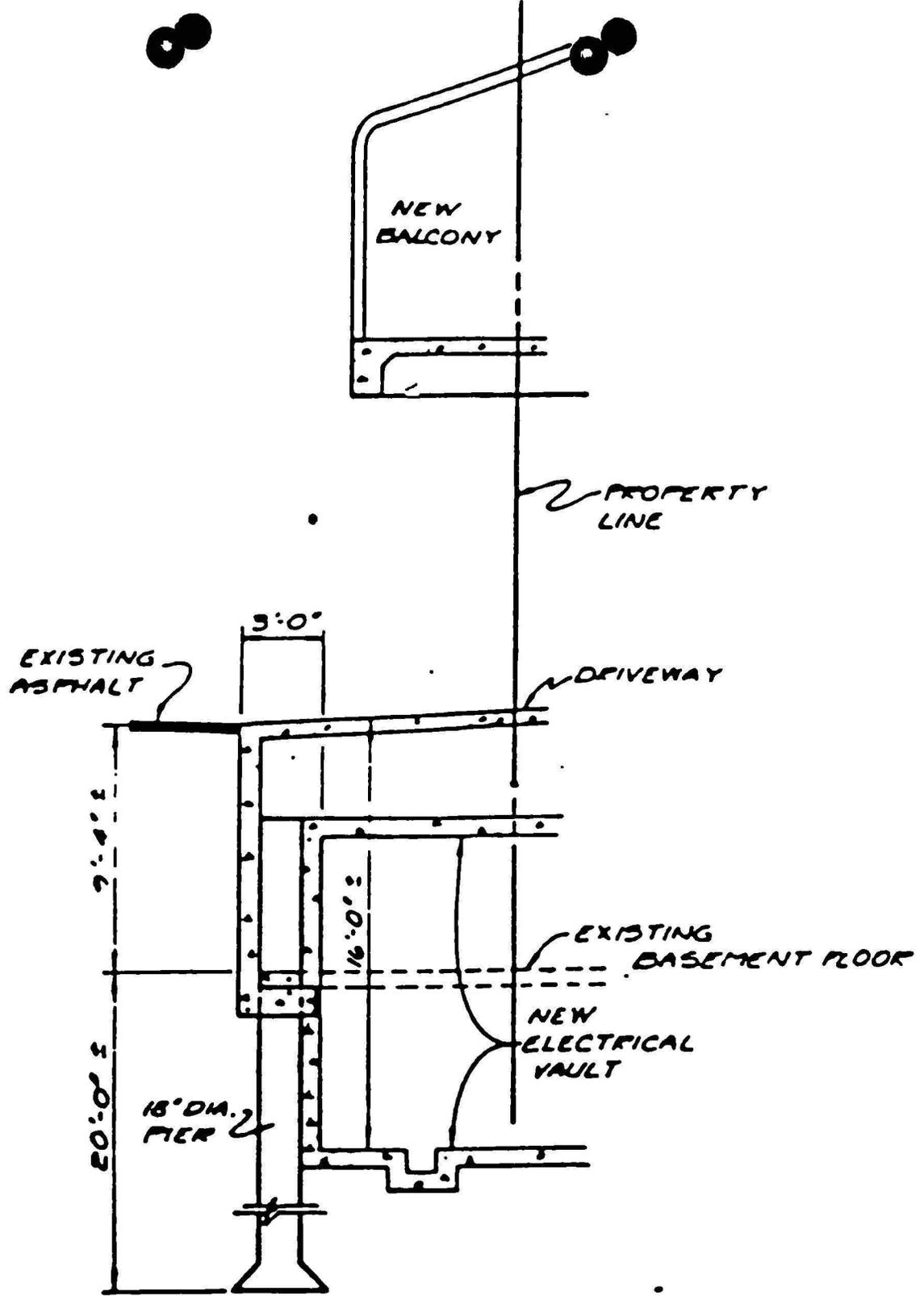


BALCONY & BASEMENT ENCROACHMENT SECTION

A

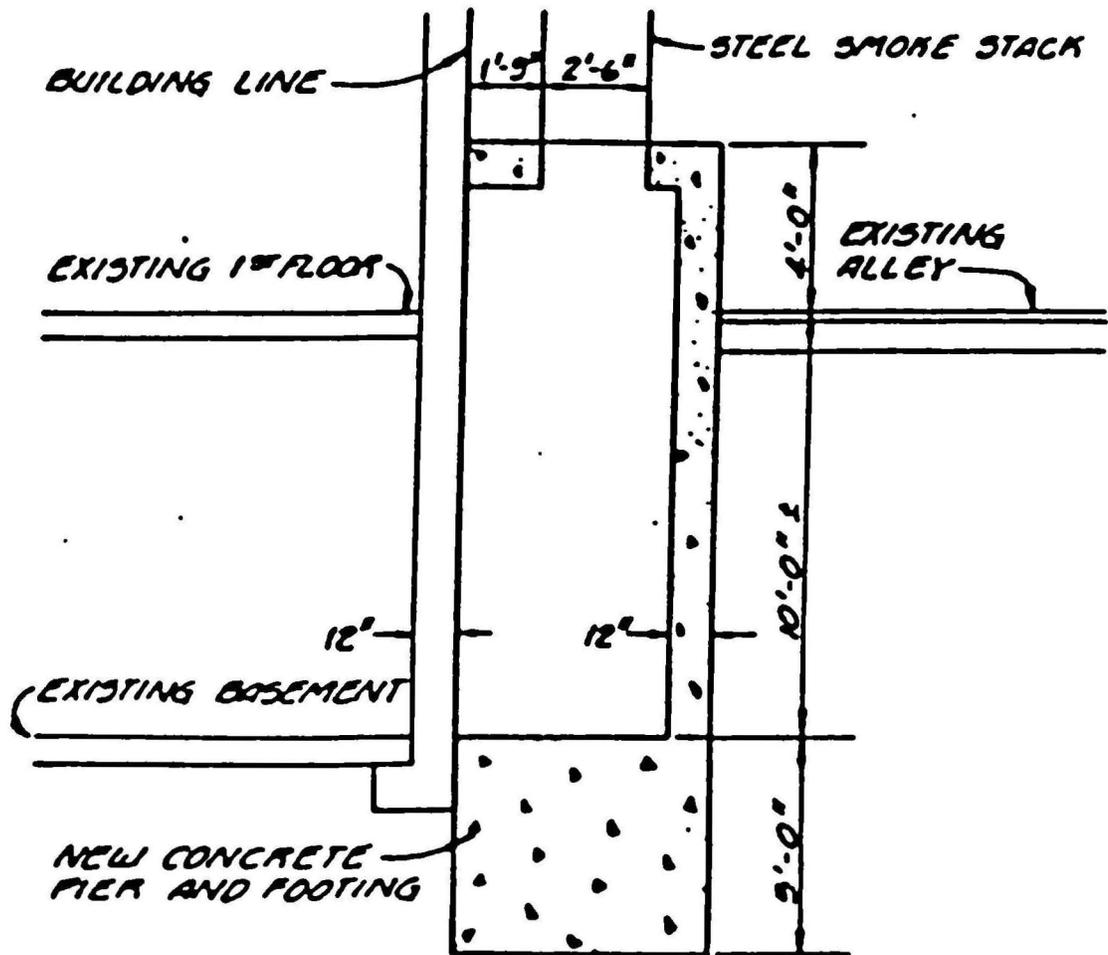
SCALE: 1"=5'

EXHIBIT
"B"
LICENSE



(B) SECTION THRU DRIVEWAY
 SCALE: 1"=6'

EXHIBIT
 'B'
 LICENSE



© SECTION THRU SMOKE STACK



Memorandum

J&H Marsh & McLennan
777 S Figueroa Street
Los Angeles, CA 90017
(213) 346-5540 Fax (213) 346-5933

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
99 MAY -3 AM
J&H MARSH &
MCLENNAN

A Marsh & McLennan Company

Date: April 29, 1999

To: City Clerk, City of San Antonio
PO Box 839968, 2nd Floor City Hall
San Antonio, TX 78283-3966
Attn Risk Manager

From: Lori Graham Property

Subject: ING Realty Partners
Certificate No 2
Camberly Guntner Hotel

An attachment to the above referenced certificate was inadvertently left off. Please find this attachment enclosed along with a copy of the certificate it relates to.

We are sorry for any inconvenienced this may have caused you.

#89573
4-8-99

CERTIFICATE OF INSURANCE NO. 2

COPY

Broker: J&H MARSH & MCLENNAN, INC. - 777 SOUTH FIGUEROA STREET, LOS ANGELES, CA 90017

(1) This certificate is not an insurance policy and does not amend extend or alter the coverage afforded by the policies listed on this certificate, and (2) notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be concerned or may pertain, the insurance afforded by the policies listed on this certificate is subject to all the terms, exclusions and conditions of such policies. (California Insurance Code, Section 384)

NAME AND ADDRESS OF CERTIFICATE HOLDER:

City Clerk, City of San Antonio
 P.O. Box 839968, 2nd Floor City Hall
 San Antonio, TX 78283-3966
 Attn: Risk Manager

NAME AND ADDRESS OF INSURED:

ING Realty Partners Holding, LLC
 11100 Santa Monica Blvd.
 Los Angeles, CA 90025

This is to certify that the policy(ies) of insurance listed below have been issued to the Insured named above and are in force at this time. Coverage subject to annual aggregate limits may be eroded by prior occurrences.

Type of Insurance: All Real & Personal Property including Rental Income

Insurance Company & Policy Number: St. Paul Fire & Marine Insurance Company #144CA0116

Policy Term: August 5, 1998 to August 5, 1999

Perils of Coverage: Blanket "All Risk" Real & Personal Property
 Primary to any insurance carried by the City of San Antonio, Texas
 Waiver of Subrogation Included

Description of Coverage: Camberly Guntner Hotel
 East Houston & St. Mary's Street
 San Antonio, TX

Limits of Liability: \$100,000,000 Per Occurrence
 Additional limits/sublimits apply per attached

Valuation of Property: Property Damage - Replacement Cost
 Business Interruption - Actual Loss Sustained

Deductibles: \$5,000 All Perils
 Additional deductibles per attached

Additional Insured: The City of San Antonio, Texas, and its officers, employees, agents, volunteers, and elected officials as respects operations, including installation and construction of improvements, and activities of, or on behalf of the Named Insured performed under agreements with The City of San Antonio, Texas, effective May 1, 1999.

Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing Company will endeavor to mail thirty (30) days written notice to the certificate holder named above, but failure to mail such notice shall impose no obligation or liability of any kind upon the **COMPANY, ITS AGENTS OR REPRESENTATIVES.**

Date Issued: April 26, 1999

BY: Amber Martin
 Amber Martin

IES HEALTH PARTNERS, LP
 and its affiliated, subsidiary & associated companies,
 corporations and/or partnerships
 as now exist or may hereafter be constituted or required,
 or as may be required by contract to insure

"ALL RISKS" PROPERTY

CARRIER:	St. Paul Fire & Marine Best Rating - A+ XV	
COVERAGE:	Blanket all Real and Personal Property, Boiler & Machinery, Business Interruption, Extra Expense, Rental Income, Extended Period of Indemnity for 365 Days From Date Repairs are Completed, Builders Risk including all hard and soft costs, testing and permission to occupy before completion, Lessor's Leasehold Interest, Transit, Valuable Papers, Account Receivable, Fine Arts, Electronic Data Processing Equipment, Media, Extra Expense, Demolition, Increased Cost of Construction, Debris Removal, Ingress & Egress and Civil Authority for up to 4 Consecutive Weeks	
VALUATION:	Property Damage - Replacement Cost Business Interruption - Actual Loss Sustained	
PERILS INSURED:	"All Risks" including Flood and California Earthquake	
LIMITS:	\$100,000,000	Per Occurrence, except:
	\$100,000,000	Per Occurrence and Annual Aggregate for Flood
	\$100,000,000	Per Occurrence and Annual Aggregate for non-CA Earthquake
	\$ 5,000,000	Annual Aggregate for CA Earthquake Damage
	\$50,000,000	Any One Accident for Boiler & Machinery Direct Damage and Time Element
	\$ 500,000	Valuable Papers
	\$ 500,000	Accounts Receivable
	\$ 500,000	Transit
	\$ 25,000	Pollution Clean-Up
DEDUCTIBLES:	\$ 5,000	All Perils, except:
	\$ 25,000	Flood
	\$ 25,000	Non-CA Earthquake
	2½	Per Unit of Insurance for Tier I Windstorm, subject to minimum of \$25,000
	5½	California Earthquake (Total Insured Value of Location)
	24 Hours	Boiler & Machinery Time Element
CANCELLATION:	90 Days except 10 Days for Non-Payment of Premium	
COINSURANCE:	None; Agreed Amount	

