SW/vv
06/18/15
Item #29

AN ORDINANCE 2015-06-18-0555

AUTHORIZING A RIVER WALK PATIO LEASE WITH CHILTON RESTORATION, LLC FOR USE OF RIVER WALK PATIO SPACE FOR FOOD AND BEVERAGE SERVICE.

* * * * *

WHEREAS, in 2013, Chilton Restoration, LLC purchased the properties at 155 and 161 E. Commerce Street; and

WHEREAS, the two buildings have been vacant for over 20 years; and

WHEREAS, the properties are located at the northwest corner of Commerce and St. Mary's Street, and the north edge of both properties abuts the River Walk; and

WHEREAS, Chilton has plans to demolish the building at 161 E. Commerce and construct an 18 story hotel on the site; and

WHEREAS, the Historic Design & Review Commission granted conceptual approval for Chilton's proposal on January 21, 2015; and

WHEREAS, Chilton is seeking to lease 1,361 square feet of City-owned patio space on the River Walk for outdoor food and beverage service; and

WHEREAS, the proposed patio space is adjacent to their properties and under the St. Mary's Street bridge on the south side of the river; and

WHEREAS, the proposed operating term shall be five years with four renewal options, and the lease term will begin January 1, 2018 or the first date of commercial operations; and

WHEREAS, the monthly rent shall be $2,408.97, based on a rate of $1.77 per square foot, and increase 2% annually; and

WHEREAS, Chilton must secure financing within 12 months to complete the proposed hotel; if they fail to do so, the City may terminate the lease; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the Center City Development and Operations Department or her designee, is hereby authorized to approve a River Walk patio lease agreement with Chilton Restoration, LLC for use of River Walk patio space for food and beverage service. A copy of the lease agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SW/vv
06/18/15
Item #29

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29093000, WBS Element OR-00001-01-01-01-01 and General Ledger 4407711.

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

SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 18th, day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**29 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a River Walk patio lease with Chilton Restoration, LLC for use of River Walk patio space for food and beverage service. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development and Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

RIVER WALK LEASE AGREEMENT

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation (hereinafter referred to as "**CITY**"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____, passed and approved by the City Council on the _____day of_____, 2015, and Chilton Restoration, LLC, a Texas limited liability company (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers, WITNESSETH:

1. DEMISE OF PREMISES

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

1.1.1. River Level Commercial Space: Patio space located on the River Walk on the south side of the San Antonio River, directly east of the building known as "The Esquire Tavern," and located in the area north of 155-161 E. Commerce Street, San Antonio, Texas 78205, including the area under the bridge, and which is identified as Lease Area 1 as shown in Exhibit A and as shown in the photos in Exhibit B incorporated by reference herein, consisting of one thousand three hundred sixty one (1,361) total square feet, on which **LESSEE** must pay rent.

1.1.2. The Leased Premises shall not include the River Walk drains thereon as identified in Exhibit A, and as shown in the photos in Exhibit B; however, **LESSEE** at its sole election, may cause improvements to beautify said items, provided before making this alteration or allowing this alteration to be made, the **LESSEE** must first obtain prior written approval of the **CITY** through the Director of Center City Development & Operations Department (hereinafter referred to as "**DIRECTOR**") and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission.

2. USE OF PREMISES

2.1. **LESSEE** agrees that the Leased Premises shall be utilized for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas.

2.2. **CITY'S** Reservation of Rights – In addition to the **CITY'S** Reservations set out in Article 15 and other sections of the Lease Agreement, **CITY** reserves the right to a public right-of-way along the River Walk area to follow a path designated by the **CITY** for safe passage by pedestrians and identified in Exhibit A. **LESSEE** shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into **LESSEE'S** business establishment, in said public right of way. **LESSEE** shall comply with the **CITY'S** laws pertaining to queuing along the River Walk area and in addition to the right of way restrictions described above, shall not use any public space along the River Walk area for the queuing or waiting of patrons without first obtaining the consent of **CITY**. Failure to comply with

this section may, at **CITY'S** option, constitute default under this Lease Agreement.

3. TERM, AND TERMINATION

3.1. **PHASES.** This Lease shall consist of two Phases: Phase I, Construction Phase and Phase II, Operating Term.

3.1.1. **Phase I, Construction Phase.** Phase I, the Construction Phase, shall commence October 2, 2017 and will terminate no later than December 31, 2017. **LESSEE** may not use the property for commercial purposes during the Construction Phase. Throughout the Construction Phase, **LESSEE** shall abide by all terms and conditions of **Article 12. INDEMNIFICATION** and **Article 13. INSURANCE REQUIREMENTS** of this Lease.

3.1.2. **Phase 2, Operating Term**. The Operating Term of this Lease is for an five (5) year period beginning on January 1, 2018 and ending on December 31, 2022 or beginning on the first date of commercial operation on the property and ending on the date exactly five years from the first date of commercial operation, depending on which beginning term date occurs first. This initial Operating Term may be extended by **LESSEE'S** exercise of the renewal options as provided in Section 3.5.

3.2. The right is expressly reserved to the **CITY** to terminate this Lease Agreement for the following:

3.2.1. In the event this Lease Agreement is deemed to be inconsistent with the public use of the property; or

3.2.2. In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction; or

3.2.3. In the event **LESSEE** shall default in the performance of any covenants or agreements contained herein and shall fail to remedy same following thirty (30) calendar days' written notice of such default, save and except a ten (10) calendar days' notice period will apply in the case of default in the payment of rent; or

3.2.4. In the event **LESSEE** fails to provide evidence to **DIRECTOR** that **LESSEE** has received all financing necessary to complete construction of the building located at 155-161 E. Commerce Street and identified in HDRC Case No. 2015-024 within twelve (12) months from the date of the approving ordinance.

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

3.4. **LESSEE** or **CITY** may cancel this Lease Agreement by giving twelve (12) months written notice to the other party.

3.5. RENEWAL OPTION. **CITY** hereby grants to **LESSEE** four (4) renewal options (the "Option(s)") to extend the initial Operating Term for additional consecutive term(s) of five (5) years each (the "Extended Term(s)"), on the same terms, conditions and covenants set forth in this Lease Agreement if still in effect and legally enforceable. Option shall be deemed to be exercised by **LESSEE** on the express condition that at the time of the Renewal, **LESSEE** shall not be in default beyond the lapse of any applicable cure period under any of the provisions of this Lease Agreement. If **LESSEE** holds over after termination, it shall be considered a tenancy at sufferance and the provisions of **ARTICLE 16. HOLDING OVER** will apply.

4. RENTAL

4.1. The monthly rental shall be **$1.77** per square foot per month or **$21.24** per square foot for the first Lease year of the Operating Term, and shall increase by a rate of two percent (2.0%) per square foot per year, commencing upon the anniversary date of each remaining Lease year. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following payment schedule or an equivalent monthly schedule if the Operating Term begins on the first date of commercial operation on the property instead of on January 1, 2018:

4.1.1. For the term 01/01/2018 – 12/31/2018 (**$1.77** per square foot per month): $28,907.64 payable in one lump sum in advance per year or $2,408.97 per month.

4.1.2. For the term 01/01/2019 – 12/31/2019 (**$1.81** per square foot per month): $29,560.92 payable in one lump sum in advance per year or 2,463.41 per month.

4.1.3. For the term 01/01/2020 – 12/31/2020 (**$1.84** per square foot per month): $30,050.88 payable in one lump sum in advance per year or $2,504.24 per month.

4.1.4. For the term 01/01/2021 – 12/31/2021 (**$1.88** per square foot per month): $30,704.16 payable in one lump sum in advance per year or $2,558.68 per month.

4.1.5. For the term 01/01/2022 – 12/31/2022 (**$1.92** per square foot per month): $31,357.44 payable in one lump sum in advance per year or $2,613.12 per month.

4.2. Payment shall be submitted to:

City of San Antonio
Revenue Division
P. O. Box 839975
San Antonio, Texas 78283-3975

ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE TERM OF THIS LEASE AGREEMENT.

4.3. A fifty dollar ($50.00) late charge will be assessed on any payment received on the eleventh (11th) calendar day of the applicable month or any day thereafter. All past due rentals under the terms of this Lease Agreement shall bear interest at the rate of 12% per annum from the date due until paid in full by **LESSEE**, or at the highest rate allowed by law, should 12% be deemed usurious.

4.3.1. The ten (10) calendar day period before the fifty dollar ($50.00) late charge is applied should not be considered a **"GRACE PERIOD;"** nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the **CITY'S** Treasury office by the close of business on the first day of each month.

4.3.2. At any time during the Lease term if more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a twenty-four (24) month period, **LESSEE** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made

4.3.3. At any such time, should the **CITY'S** Department of Finance establish and issue

uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in subsections 4.3.1 – 4.3.2 above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LESSEE** of any such change(s) in advance.

4.3.4. Notwithstanding anything to the contrary set forth in this Lease Agreement, if **LESSEE** shall fail to make the timely payment of any rent or any additional charges due the **CITY** from **LESSEE** or the payment of any other money due the **CITY** from **LESSEE** under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that any such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a **Repeated Event of Default**.

4.3.5. In the event of a **Repeated Event of Default**, **CITY**, without giving **LESSEE** any notice and without affording **LESSEE** an opportunity to cure the default, may terminate this Lease forthwith without notice to **LESSEE**.

4.4. Payment shall be made in a manner consistent with Treasury division rules and regulations and shall be subject to various charges and requirements for failure to comply with those rules including, but not limited to, charges and requirements imposed for the submittal of insufficient fund checks.

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1. **LESSEE** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LESSEE'S** taking possession of the Leased Premises shall be conclusive evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding, and agreement that **CITY** disclaims any warranty of suitability for **LESSEE'S** intended commercial purposes.

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

6. UTILITIES

6.1. **LESSEE** shall furnish and pay for all gas, water, electricity, sewer, cable TV, or other utilities, if any, which may be necessary for its operations as authorized herein on the Leased Premises. **LESSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LESSEE** agrees to pay any expenses therefore, unless the same is caused by any acts undertaken by **CITY**.

6.2. **LESSEE** must allow **CITY** and **CITY**'s contractors access to the sub-surface electrical line and conduit that run underneath the Leased Premises with **CITY**'s twenty-four (24) hour notice.

7. IMPROVEMENTS

7.1. **LESSEE** shall not construct, or allow to be constructed, any improvements, or structures on the Leased Premises nor shall **LESSEE** make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the **CITY** through **DIRECTOR** and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission.

7.2. **LESSEE** may re-purpose or redesign existing flower bed on Leased Premises for use in support of food and beverage service, i.e., **LESSEE** may replace the flower bed with a hard surface; provided, however, before making this alteration or allowing this alteration to be made, the **LESSEE** must first obtain prior written approval of the **CITY** through **DIRECTOR** and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission.

7.2.1. If **LESSEE** removes the existing limestone block edge of flower bed on Leased Premises, **LESSEE** must provide the limestone blocks to **CITY** for re-use.

7.2.2. If **LESSEE** replaces existing flower bed, **LESSEE** must hire a professional arborist or landscaper to transplant Big Tooth Maple tree planted in existing flower bed on Leased Premises to an alternate location on the River Walk identified by **CITY.**

7.2.3. **LESSEE** may add lighting and landscaping under the bridge, and **LESSEE** may remove the six (6) concrete stools under the bridge.

7.2.4. **LESSEE** shall, during the term of this lease, install and maintain landscaping, planters, flower beds, green space, or other pervious cover, within the Leased Premises or adjacent patio, consisting of either:

A. an area of no less than fifty (50) square feet of such materials; or
B. in accordance to a landscaping plan which must be approved by **DIRECTOR** or her designee.

7.3. **LESSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on, or about the Leased Premises. Further, **LESSEE** agrees to remove, within thirty (30) calendar days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

8. MAINTENANCE OF PROPERTY

8.1. **LESSEE** shall, at all times, maintain the sidewalks adjacent to the Leased Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the River Walk free and clear of any tables or other property placed by **LESSEE** on such Leased Premises, and **LESSEE** shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the Leased Premises; however, **LESSEE'S** use may at no time obstruct public access to the six (6) feet River Walk public right-of-way.

8.2. **LESSEE** shall, at all times, keep or cause to be kept the Leased Premises free of litter, trash, paper, and other waste and shall conform with all applicable garbage, sanitary, and health regulations of the **CITY**.

8.3. **LESSEE** shall, at its sole expense, keep the Leased Premises in good order, repair, and

leasable condition at all times during the term hereof and shall promptly repair all damages to the Leased Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards, or commissions of the **CITY**, including, but not limited to, the Historic and Design Review Commission. If **LESSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

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

8.5. **LESSEE** will, at the termination of this Lease Agreement, return the flower bed on Leased Premises to its pre-existing condition, depicted in photographs which are attached as Exhibit B.

8.6. **LESSEE** agrees to hold **CITY** harmless for any theft, damages, or destruction of signs, goods and/or other property of **LESSEE** both during the term of this Lease and as so left on the Leased Premises after **LESSEE** vacates the Leased Premises. If said signs, goods and any other property placed by **LESSEE** upon the Leased Premises are not removed by **LESSEE** within thirty (30) calendar days after the Leased Premises are vacated, then the **CITY** may remove same without further notice or liability.

9. TAXES AND LICENSES

9.1. **LESSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **LESSEE**, or upon the business conducted on the Leased Premises, or upon any of **LESSEE'S** property used in connection therewith, and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by **LESSEE**. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the **CITY**.

10. ASSIGNMENT AND SUBLETTING

10.1. Except as to the parent, subsidiary or similarly Affiliated Company, **LESSEE** shall not assign this Lease Agreement, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Leased Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. An Affiliated Company will include, but is not limited to, any company which includes Christopher C. Hill as a majority shareholder. Any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this Lease Agreement by the **CITY**.

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

10.3. The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and or an acceptance of the assignee, or occupant as a **LESSEE**, or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in this Lease

Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

11. DEFAULT AND REMEDIES

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

11.1.1. **LESSEE** shall fail to pay any installment of rent as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) calendar days.

11.1.2. The subletting of any part of the Leased Premises.

11.1.3. The encroachment on the public right-of-way beyond the authorized Leased Premises.

11.1.4. **LESSEE** shall fail to comply with any term, provision, or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) calendar days after written notice thereof to **LESSEE**, unless **LESSEE** has undertaken to effect such cure within such thirty (30) calendar day period and is diligently pursuing the same to completion.

11.2. Upon the occurrence of an event of default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or **CITY**, its agents or attorney may, at its option, resume possession of the Leased Premises and re-let the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **LESSEE** without relieving **LESSEE** of any liability hereunder as to rent still due and owing in this Lease Agreement, or any extension thereof, as applicable. **LESSEE** shall make good any deficiency.

11.3. Any termination of this Lease Agreement as herein provided, shall not relieve **LESSEE** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **LESSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LESSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

11.4. Upon any such expiration or termination of this Lease Agreement, **LESSEE** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LESSEE** and remove **LESSEE** and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Leased Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Leased Premises by **LESSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

12. INDEMNIFICATION

12.1 **LESSEE** covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LESSEE'S** activities under this Agreement, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant or sublessee of **LESSEE**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT **LESSEE** AND **CITY** ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

12.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE**'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **LESSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

13. INSURANCE REQUIREMENTS

13.1 Prior to the commencement of any work under this Agreement, **LESSEE** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's **Center City Development & Operations Department**, which shall be clearly labeled "Chilton Restoration, LLC" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's **Center City Development & Operations Department**. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

13.3 A **LESSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LESSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LESSEE** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension

hereof, at **LESSEE'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

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TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/ $500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Lessees c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by **LESSEE**	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Liquor Liability	$1,000,000 per ocurrence, $2,000,000 aggregate

13.4 **LESSEE** agrees to require, by written contract, that all sublesees providing goods or services hereunder obtain the same insurance coverages required of **LESSEE** herein, and provide a certificate of insurance and endorsement that names the **LESSEE** and the CITY as additional insureds. Respondent shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the sublessee. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.5 As they apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **LESSEE** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within ten (10) calendar days of the requested change. **LESSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

13.6 **LESSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

13.6.1 Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;

13.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

13.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.

13.6.4 Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LESSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LESSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.8 In addition to any other remedies the **CITY** may have upon **LESSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LESSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LESSEE** hereunder until **LESSEE** demonstrates compliance with the requirements hereof.

13.9 Nothing herein contained shall be construed as limiting in any way the extent to which **LESSEE** may be held responsible for payments of damages to persons or property resulting from **LESSEE'S** or its sublessees' performance of the work covered under this Agreement.

13.10 It is agreed that **LESSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.

13.12 **LESSEE** and any Sublessees are responsible for all damage to their own equipment and/or property.

14. RULES AND REGULATIONS AND PROHIBITED USES

14.1. **LESSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LESSEE'S** business, including but not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.

14.2. No advertisements, signs, decorations or displays shall be placed in, on, or about the Leased Premises without the prior written approval of the **CITY** through the **DIRECTOR** or her designee, and any and all other necessary departments, boards or commissions of the **CITY**, including, but not limited to, the Historic and Design Review Commission. **LESSEE** agrees to remove all signs

from the Leased Premises when **LESSEE** vacates the Leased Premises.

14.3. **LESSEE** shall be allowed to place only those chairs, tables, umbrellas, hostess stations, and/or any other furnishings as approved by **CITY** and all applicable boards and/or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission (HDRC).

14.4. Encroachment on the public sidewalk beyond the authorized Leased Premises or into the Public Right-of-Way is not permitted.

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

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

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

14.5.3. Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.

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

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

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

14.9. **LESSEE** shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the Leased Premises, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to **LESSEE'S** customers seated at tables within the Leased Premises.

14.10. **LESSEE** shall abide by Vending Requirements and Regulations as set forth in Section 16-236 of the City Code of the City of San Antonio and Section 35-679 of the Unified Development Code.

14.10.1. Notwithstanding the preceding, **LESSEE** shall be allowed to provide entertainment to its customers in the form of traditional Mariachis so long as such Mariachis are employees of **LESSEE**, and the Mariachis are not allowed to engage in solicitation of business to **LESSEE'S** customers or any other persons on the Premises.

15. RESERVATIONS: CITY

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

use of Leased Premises was denied.

15.2. No provision of this Lease Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments or amusements, or river walk parades for the benefit of the public.

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

16. HOLDING OVER

16.1. Should **LESSEE** hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to one-hundred twenty-five percent (125%) of the amount of the rent paid for the last month of the term of this Lease Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LESSEE** to hold over.

17. QUIET ENJOYMENT

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

18. CONFLICT OF INTEREST

18.1. **LESSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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)l or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

18.2. **LESSEE** warrants and certifies, and this Lease Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

19. SEPARABILITY

19.1. If any clause or provision of this Lease Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease Agreement, then and in that event it

is the intention of the parties hereto that the remainder of this Lease Agreement shall not be affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Lease 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.

20. NOTICES

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

City of San Antonio
Center City Development & Operations Department
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **LESSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LESSEE** at:

Chilton Restoration, LLC
Attn: Christopher C. Hill
5111 Broadway
San Antonio TX 78209

or at such other address on file with the City Clerk as **LESSEE** may provide from time to time in writing to **CITY**.

21. PARTIES BOUND

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

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

22. TEXAS LAW TO APPLY

22.1. **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.**

23. LIEN FOR RENT

23.1. In consideration of the mutual benefits arising under this Lease Agreement, **LESSEE** does

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

24. RELATIONSHIPS OF PARTIES

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

25. GENDER

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

26. CAPTIONS

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

27. ENTIRE AGREEMENT/AMENDMENT

27.1. This Lease Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LESSEE**.

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

27.3. It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

28.1. The signer of this Lease Agreement for **LESSEE** hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of **LESSEE.**

LESSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By: _____
Name: Carlos J. Contreras, III
Title: Assistant City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LESSEE:

CHILTON RESTORATION, LLC

CHRISTOPHER G. HILL
Printed Name

Signature

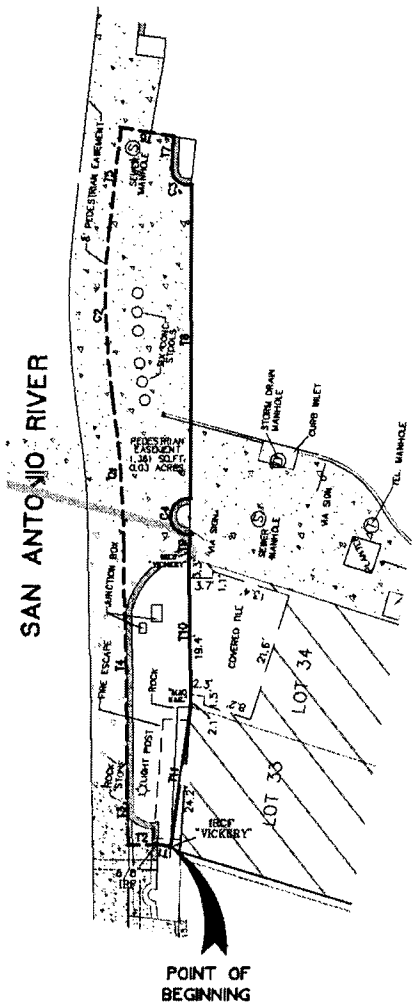
MANAGER
Title

5111 BROADWAY
Address

SAN ANTONIO TX 78209
City, State, and Zip Code

210-828-6565
Area Code/Telephone Number

Exhibit A



LINE TABLE		
LINE	DIRECTION	LENGTH
T1	N03°30'14"E	2.32
T2	N07°54'19"W	4.66
T3	N62°05'43"E	10.84
T4	N82°29'19"E	38.33
T5	N89°40'23"E	16.95
T6	S02°37'54"W	8.95
T7	S86°41'31"W	5.39
T8	S83°23'16"W	52.46
T9	S85°07'38"W	3.99
T10	S82°58'04"W	24.87
T11	N88°46'17"W	23.60

CRS = 1/2" IRON ROD SET WITH "ACES" CAP

IRF = 1/2" IRON ROD FOUND

IRCF = 1/2" IRON ROD FOUND WITH "-" CAP

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	DELTA	CORD BRG.	CORD.
C1	199.74'	26.10'	13.07'	7°29'13"	N78°44'42"E	26.08'
C2	109.37'	28.00'	14.08'	14°40'08"	N82°20'20"E	27.92'
C3	2.82'	4.98'	3.44'	101°19'02"	S31°50'00"W	4.36'
C4	3.02'	10.27'	23.37'	194°44'16"	S83°40'38"W	6.00'

* PER RESTRICTIONS

BASIS OF BEARING IS SUBDIVISION PLAT

1/2" IRON RODS FOUND AT ALL LOT CORNERS UNLESS NOTED OTHERWISE

A SIDEWALK LEASE AGREEMENT BEING 0.03 ACRES(1,381 SQ.FT.), A PARCEL OF LAND OUT OF THE SAN ANTONIO RIVER WALK OWNED BY THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS.

NOTE: THIS SURVEY PLAT AND FIELD NOTES MEETS THE LEGAL REQUIREMENTS FOR A GOVERNMENTAL SURVEY.

STATE OF TEXAS REGISTERED KEVIN CONROY 4198 PROFESSIONAL LAND SURVEYOR

ACES

ALAMO CONSULTING ENGINEERING & SURVEYING, INC.
4363 EAST EVANS RD.
SAN ANTONIO, TX. 78261
(210) 828-0691
FIRM REGISTRATION NUMBER TBPE F-4480 & TBPLS 100076-00

STATE OF TEXAS
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT REPRESENTS AN ACTUAL SURVEY MADE ON THE GROUND BY PEOPLE WORKING UNDER MY DIRECT SUPERVISION AND THIS DRAWING CONFORMS TO THE MINIMUM STANDARDS OF SURVEY PRACTICES AS SET OUT BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING AS OF THIS DATE.

THIS 4TH DAY OF FEBUARY 2014 A.D.

KEVIN CONROY R.P.L.S. NO. 4198

REVISED: APRIL 21, 2015 JOB NO. 12881

Apr 21, 2015, 11:50am ACESSM
File: F:\PROJECT\SURVEYS\12500\12881-155 E COMMERCE\dwg\WALK ASBUILT.dwg

Exhibit B

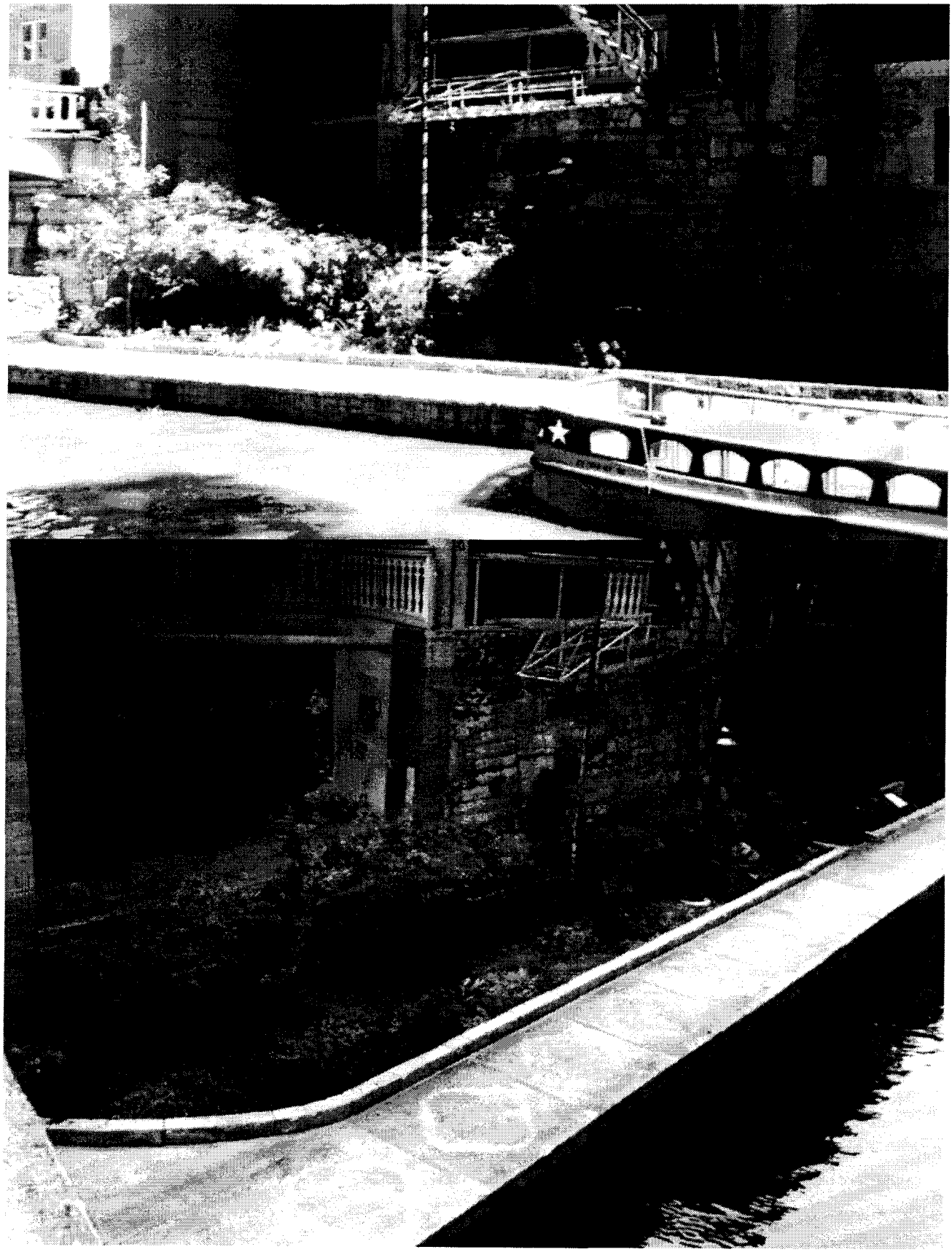


Exhibit B