

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Planning Research & Development

AGENDA DATE: Introduction 06-14-05; Public Hearing 06-28-05

CONTACT PERSON/PHONE: Esther Guerrero, Planning Technician III – 541-4720

DISTRICT(S) AFFECTED: #8

SUBJECT:

An ordinance granting a Special Privilege to Octavio Gomez permitting the encroachment onto public rights-of-way of three (3) accessibility ramps with stairs, four (4) awnings, five (5) wall signs, and two (2) outdoor cafés all located at 115 Durango Street. (Annual Fee: \$810.00, SP-05010, **District 8**)

BACKGROUND / DISCUSSION:

See attached information.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

See attached general information.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) unanimously recommended approval on May 11, 2005.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: George Sarmiento

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

GENERAL INFORMATION:

SUBJECT: Special Privilege SP-05010

This Special Privilege will allow for the encroachment and installation of three (3) accessibility ramps with stairs. The ramps are needed in order to provide accessibility to main floor areas, reason being that three (3) of the entrance/exit doors are above street level. The installation of four (4) awnings will be placed over various doors and windows of the facility. Five (5) wall signs to be installed on the surface of the existing building and two (2) outdoor cafés within public right-of-way with one (1) café along Western Court and one (1) along café the alley to the rear of the property.

The applicant is renovating the existing building, which is located in the Union Plaza District at 115 Durango Street and will be opening a new nightclub in the near future.

The (DCC) also recommended approval based on and subject to the following:

- Permits must be obtained by the applicant from the Building Permits and Inspections Department prior to construction and installation of the ramps, awnings and signs;
- A ten (10) year term with the City having the option to renew for two (2) additional ten (10) year terms upon the request of the Grantee;
- Annual consideration of \$810.00; and
- Providing liability insurance throughout the term of the license agreement.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO OCTAVIO GOMEZ PERMITTING THE ENCROACHMENT ONTO PUBLIC RIGHTS-OF-WAY OF THREE (3) ACCESSIBILITY RAMPS WITH STAIRS, FOUR (4) AWNINGS, FIVE (5) WALL SIGNS, AND TWO (2) OUTDOOR CAFÉS ALL LOCATED AT 115 DURANGO STREET.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to Octavio Gomez (hereinafter referred to as "Owner"), for the property located at 115 Durango Street:

1. This Special Privilege shall be in a form, which is attached hereto and incorporated as Exhibit "A;"

2. The Special Privilege is to permit the Owner of property located in Block 51, Mills Addition, City and County of El Paso, Texas and more commonly known as 115 Durango Street, to encroach onto portions of public rights-of-way with three (3) accessibility ramps (hereinafter called "accessibility ramps"), as more particularly shown in the attached and incorporated Exhibit "B;" four (4) awnings (hereinafter called "awnings"), and as more particularly shown in the attached and incorporated Exhibit "C;" five (5) wall signs (hereinafter called "signs"), and as more particularly shown in the attached and incorporated Exhibit "D;" and two (2) outdoor cafés (hereinafter called "cafés"), as more particularly shown in the attached and incorporated Exhibit "E".

3. As consideration for this Special Privilege, Owners, shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A," subject to the terms and conditions of this ordinance and Special Privilege; and

4. This Special Privilege shall be for a term of ten (10) years with two renewal options for two additional ten (10) year periods.

PASSED AND APPROVED this 28th day of June, 2005.

(Signatures on following page)

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney
Doc No. 12853

APPROVED AS TO CONTENT:



George Sarmiento, AICP, Director of
Planning, Research and Development
Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

EXHIBIT "A"
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE, made and entered into this 28th day of June, 2005, by and between the **CITY OF EL PASO**, hereinafter called "City," and **OCTAVIO GOMEZ (Owner)**, hereinafter called "Grantee," of property located at 115 Durango Street.

WITNESSETH:

WHEREAS, Grantees are requesting the use of portions of City rights-of-way located at 115 Durango Street in the City of El Paso, El Paso County, Texas.

WHEREAS, the Grantees have requested permission from the City to erect three (3) accessibility ramps; four (4) window awnings; five (5) wall signs; and two (2) outdoor cafés.

WHEREAS, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION**. The City hereby grants a Special Privilege to Grantee to encroach onto portions of public rights-of-way abutting the property commonly known as 115 Durango Street, as shown in Exhibits "B", "C", "D" and "E", which are attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "Premises."

2. **TERM**. The term of this Special Privilege shall be for ten (10) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee for two (2) additional ten (10) year terms. If the Grantee wishes that the City renew this Special Privilege for an additional ten (10) year term, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege.

This Special Privilege shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantee as

herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege

3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City the fee of Ten and No/100 Dollars (\$10.00) per year, per accessibility ramp, for a total of Three Hundred and No/100 Dollars (\$300.00); Twenty and No/100 Dollars (\$20.00) per year, per awning, for a total of Eight Hundred and No/100 Dollars (\$800.00); Twenty and No/100 Dollars (\$20.00) per year, per wall sign, for a total of One Thousand and No/100 Dollars (\$1,000.00); and Three Hundred and No/100 Dollars (\$300.00) per year, per outdoor café, for a total of Six Thousand and No/100 Dollars (\$6,000.00); all of which shall be due prior to execution of this Special Privilege by the El Paso City Council. The advance payment shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the City Planning, Research and Development Department for remittance to the Office of the City Comptroller. If the Special Privilege is disapproved by the El Paso City Council, the Office of the City Comptroller shall make full refund of the advance payment within fifteen (15) days of the denial action.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120 of the El Paso Municipal Code. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which could result from a re-computation or assessment of fees pursuant to enactment of future amendments to 15.08.120. This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with the accessibility ramps, awnings, signs and outdoor cafés and as well as all costs for the restoration of the Premises.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment onto public right-of-way with three (3) accessibility ramps, four (4) awnings, five (5) wall signs and two (2) outdoor cafés. As an express condition of this Special Privilege, and not as a mere covenant, Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein. Grantee

shall coordinate all design and construction plans with the Director for Building Permits and Inspections or his designee. Grantee shall not commence construction under this Special Privilege until the City Building Permits and Inspections Department has approved all plans for the construction of the Structure as appropriate under the applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair of the encroachments provided for herein.

5. IMPROPER USE. This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

6. REPAIRS. Grantee shall keep the property, Structure, and Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. INDEMNITY. As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. **LIABILITY INSURANCE.** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insureds to the full amount of the policy limits.

No special privilege license shall be granted by El Paso City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the City Planning, Research & Development Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

9. **CANCELLATION.** Should the City at any time or for any reason decide that the right-of-way onto which any of the encroachments are needed for public use, the City may upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty (30) days prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee ceases to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fail to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, all encroachments shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

10. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. ASSIGNMENT. Grantee shall not assign this Special Privilege without prior written consent of the El Paso City Council.

12. MISCELLANEOUS.

- a. **SIGNS:** This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein. Permission to erect signage must be obtained by Grantee pursuant to applicable City Code and ordinance provisions and subject to the restrictions and requirements contained therein.
- b. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.
- c. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the Structure, as well as Grantee's use of the

Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structures without first having obtained any required building permits from the City Building Permits and Inspections Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

- d. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns. This Special Privilege is a restriction, condition and covenant running with the property known as 115 Durango Street and a charge and servitude thereon, and shall bind the Grantee and his successors in title. Any further lease or conveyance of this property known as 115 Durango Street shall contain this restriction, condition and covenant and shall embody this Special Privilege by express reference.
- e. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Joyce Wilson, City Manager
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

with copy to: City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196

and: Octavio Gomez
2828 Federal
El Paso, Texas 79930

or to such other address as the parties may designate to each other in writing from time to time.

- f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.
- g. SEVERABILITY: Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.
- h. LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.
- i. The Director of Building Permits and Inspections or that person's designee is the principal City official responsible for the administration of this Special Privilege and Grantee recognizes that questions regarding the interpretation or application of this ordinance shall be referred to the Director of Building Permits and Inspections or designee.

13. RESTRICTIONS AND RESERVATIONS. This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. EFFECTIVE DATE. This Special Privilege shall not take effect unless Grantee files his written acceptance with the City Planning, Research & Development Department prior to its passage and approval by the El Paso City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the

persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

Joyce Wilson
City Manager

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney
Doc No. 12853

APPROVED AS TO CONTENT:



George Sarmiento, AICP, Director of
Planning, Research & Development
Department

(Signatures continue on following page)

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this 2nd day of June, 2005.

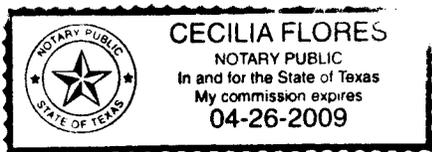
GRANTEE: OCTAVIO GOMEZ

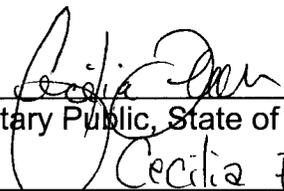
By: 
Octavio Gomez
Printed Name and Title

ACKNOWLEDGEMENT

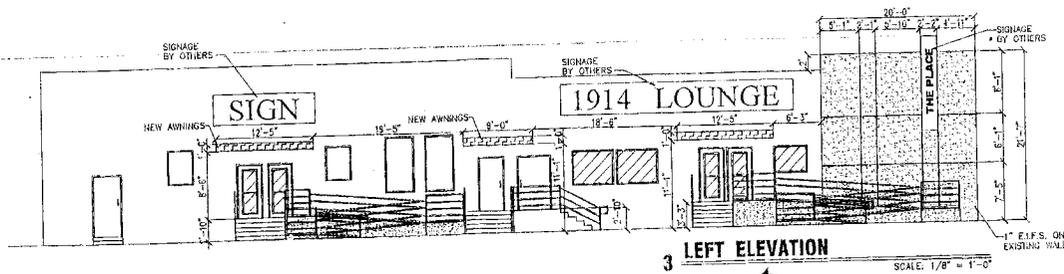
THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 2nd day of June, 2005, by **OCTAVIO GOMEZ** as Grantee.

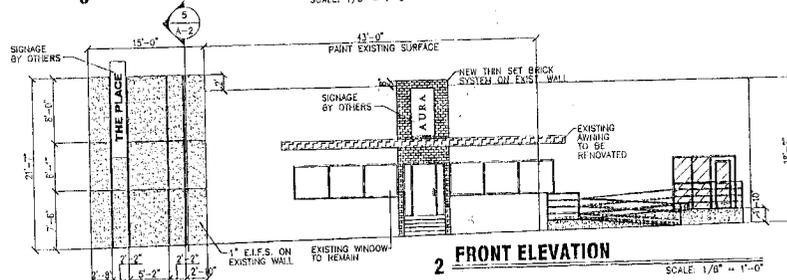



Notary Public, State of Texas
Cecilia Flores
Notary's Printed or Typed Name:

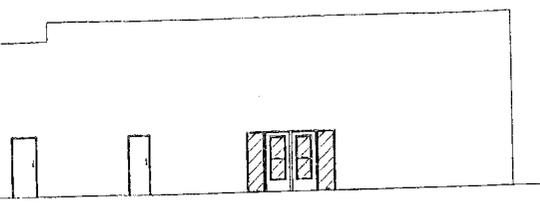
My Commission Expires:



3 LEFT ELEVATION
SCALE: 1/8" = 1'-0"



2 FRONT ELEVATION
SCALE: 1/8" = 1'-0"



4 RIGHT ELEVATION
SCALE: 1/8" = 1'-0"

WALL LEGEND

NOTE: ALL RAMPS & HANDRAILS TO COMPLY WITH IAS STANDARDS

- EXISTING WALL
- ▨ NEW 2 HR. RATED WALL
- ▨ NEW 1 HR. RATED WALL

DOOR KEYED NOTES

- ① NEW ALUMINUM DOOR/STOREFRONT W/ 1/4" TEMPERED SMOKE GLASS
 - ② NEW HOLLOW METAL DOORS—PAINTED
 - ③ NEW 45 MIN. HOLLOW MET. DOOR W/ CLOSERS
 - ④ NEW 60 MIN. HOLLOW MET. DOOR W. CLOSERS
 - ⑤ EXISTING DOOR
- NOTE: ALL NEW DOORS TO BE 3068 UNLESS NOTED OTHERWISE

WINDOW KEYED NOTES

- ⊕ NEW ALUMINUM WINDOW/STOREFRONT W/ 1/4" TEMPERED SMOKE GLASS
- ⊕ NEW ALUM. FRAME W/1/4" SMOKE TEMPERED GLASS
- ⊕ NEW ALUM. FRAME W/1/4" SMOKE TEMPERED GLASS
- ⊕ EXISTING WINDOW

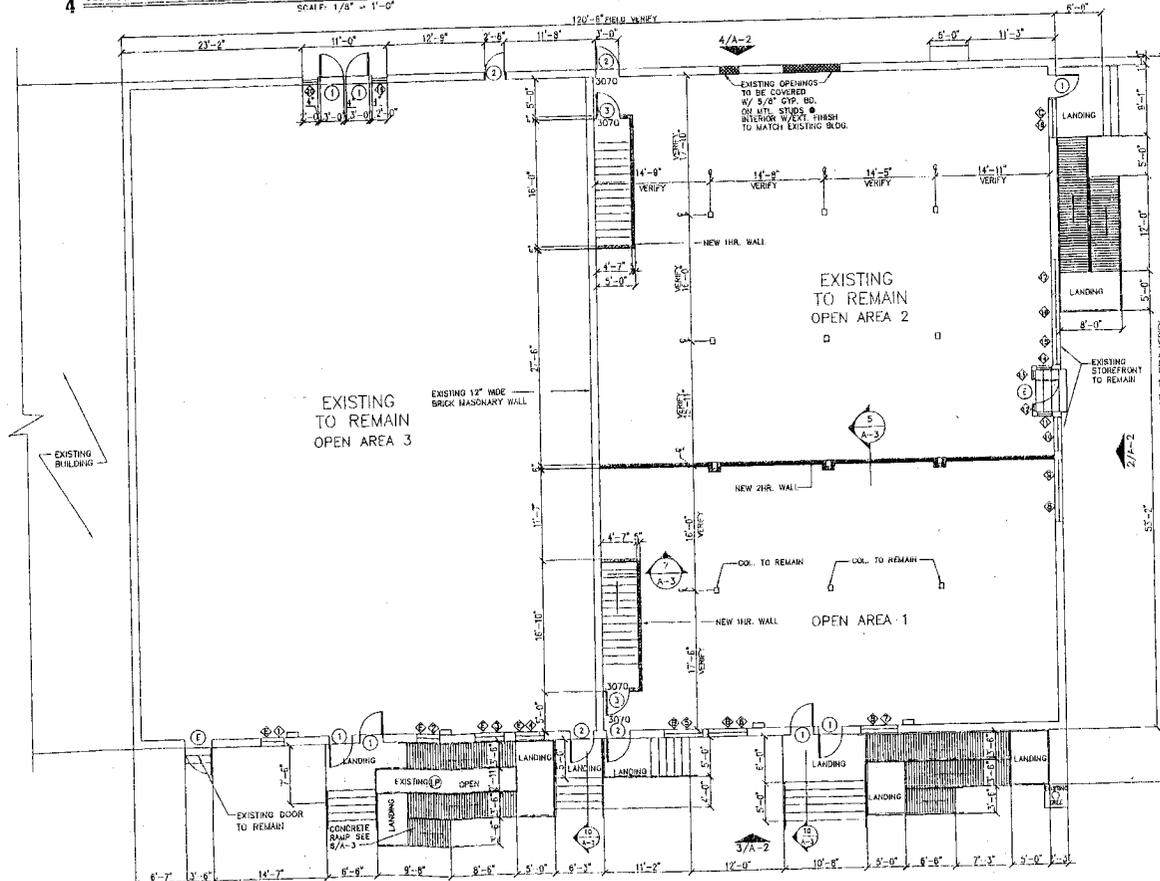
WINDOW SCHEDULE

⊕ 3040	⊕ NOT USED	⊕ 4440	⊕ 1060	⊕ 4440
⊕ 3040	⊕ 4030	⊕ 4440	⊕ 2040	⊕ 5088
⊕ 3068	⊕ 4030	⊕ 2040	⊕ 4440	⊕ 2068
⊕ 3568	⊕ 4440	⊕ 1060	⊕ 4440	⊕ 2068

NOTE: ALL EXISTING WINDOWS TO REMAIN THE SAME FIELD VERIFY ALL EXISTING OPENINGS

WINDOW KEYED NOTES

OPEN AREA 1: S.F. 1983 S.F.
 OPEN AREA 2: S.F. 2880 S.F.
 OPEN AREA 3: S.F. 4891 S.F.
 TOTAL 1ST FLOOR AREA: 10,273 S.F.
 TOTAL BASEMENT AREA: 10,273 S.F.
 TOTAL AREA: 20,546 S.F.



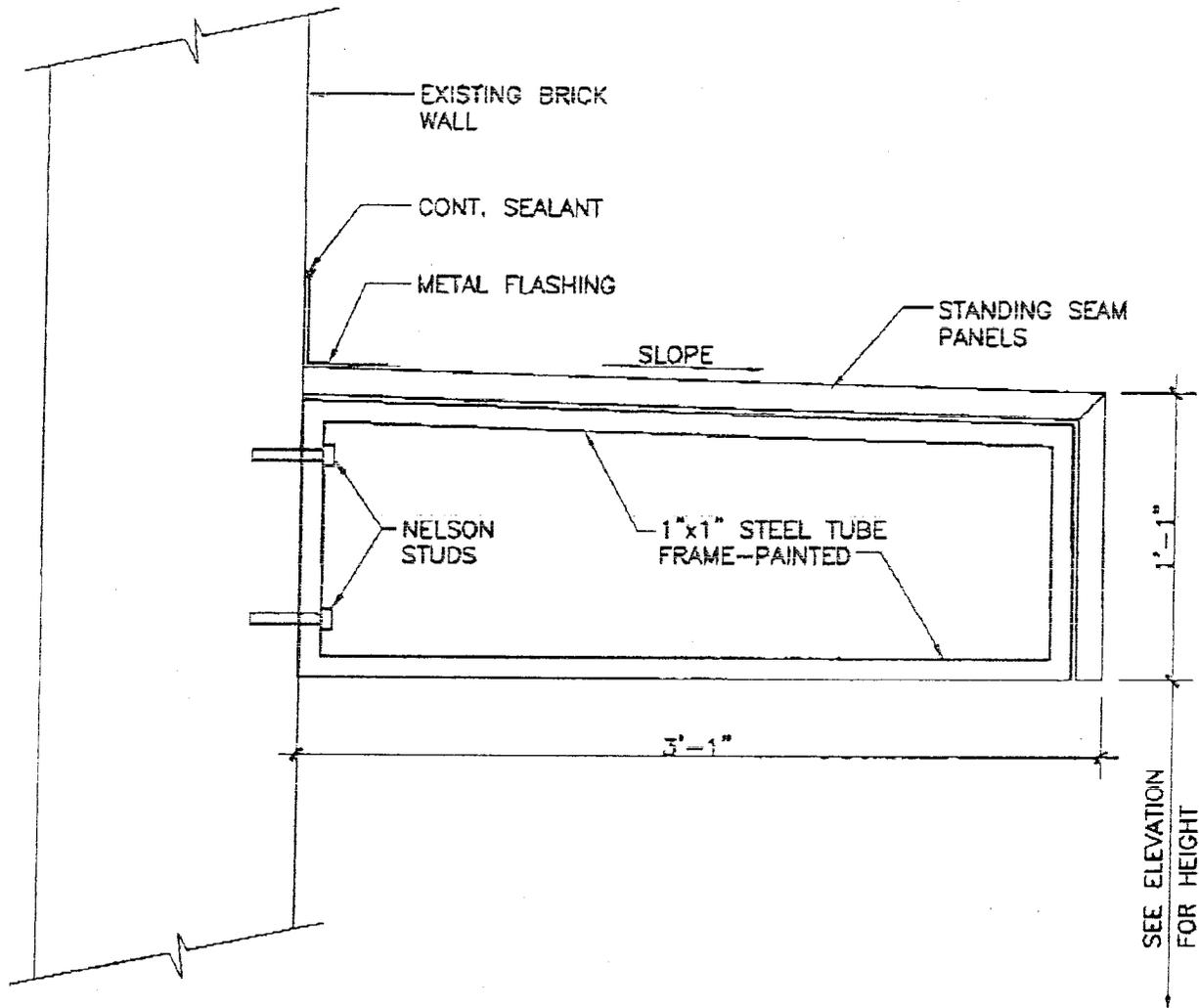
CARRERA
 ARCHITECTS
 137 N. Macd. Road
 El Paso, Texas 79901
 Tel: (915) 726-5795

OWNER
OCTAVIO GOMEZ YAFOR
 115 DURANGO
 EL PASO, TEXAS 79901
 TEL: (915) 726-5795



PROJECT NAME:
**THE PLACE AT
 UNION PLAZA**
 115 DURANGO EL PASO, TX

EXHIBIT "B"



1 AWNING DETAIL

SCALE: 1 1/2" = 1'-0"

-A-2105 - MON 4/18/2005 12:34 FAX - BR:5/cas/mg/ava 4/15/2005 12:30:22 PM, jarr.

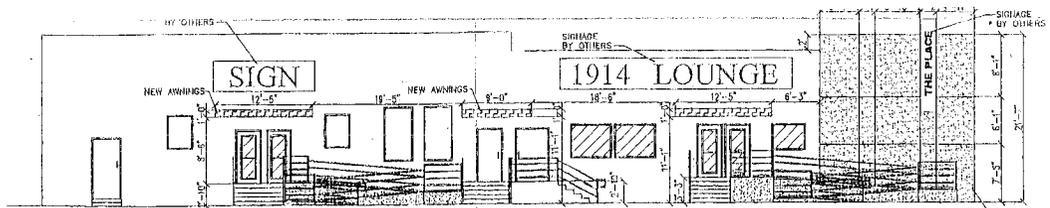
CARRERA
design consultants

132 W. Redd Road El Paso Texas 79902
 (915) 642-1808 (915) 642-1805

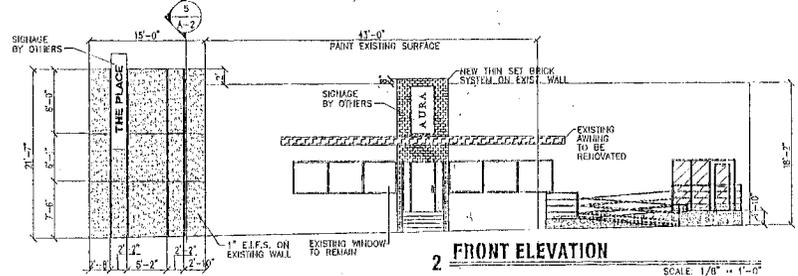
PROJECT NAME:
 THE PLACE AT
 UNION PLAZA

DATE: APRIL 15, 2005

SHEET
A-1



3 LEFT ELEVATION
SCALE: 1/8" = 1'-0"



2 FRONT ELEVATION
SCALE: 1/8" = 1'-0"

4 RIGHT ELEVATION
SCALE: 1/8" = 1'-0"

WALL LEGEND
NOTE: ALL RAMPS & TRIMMALS TO COMPLY WITH IAS STANDARDS

- EXISTING WALL
- NEW 2 HR. RATED WALL
- NEW 1 HR. RATED WALL

DOOR KEYED NOTES

- 1 NEW ALUMINUM DOOR/STOREFRONT W/ 1/4" TEMPERED SLIKED GLASS
 - 2 NEW INFLOW METAL DOORS - PAIRED
 - 3 NEW 45 IN. INFLOW MET. DOOR W/ CLOSERS
 - 4 NEW 60 IN. INFLOW MET. DOOR W. CLOSERS
 - 5 EXISTING DOOR
- NOTE: ALL NEW DOORS TO BE 3068 UNLESS NOTED OTHERWISE

WINDOW KEYED NOTES

- 1 NEW ALUMINUM WINDOW/STOREFRONT W/ 1/4" TEMPERED
- 2 NEW ALUM. FRAME W/ 1/4" SLIKED TEMPERED GLASS
- 3 NEW ALUM. FRAME W/ 1/4" SLIKED TEMPERED GLASS
- 4 EXISTING WINDOW

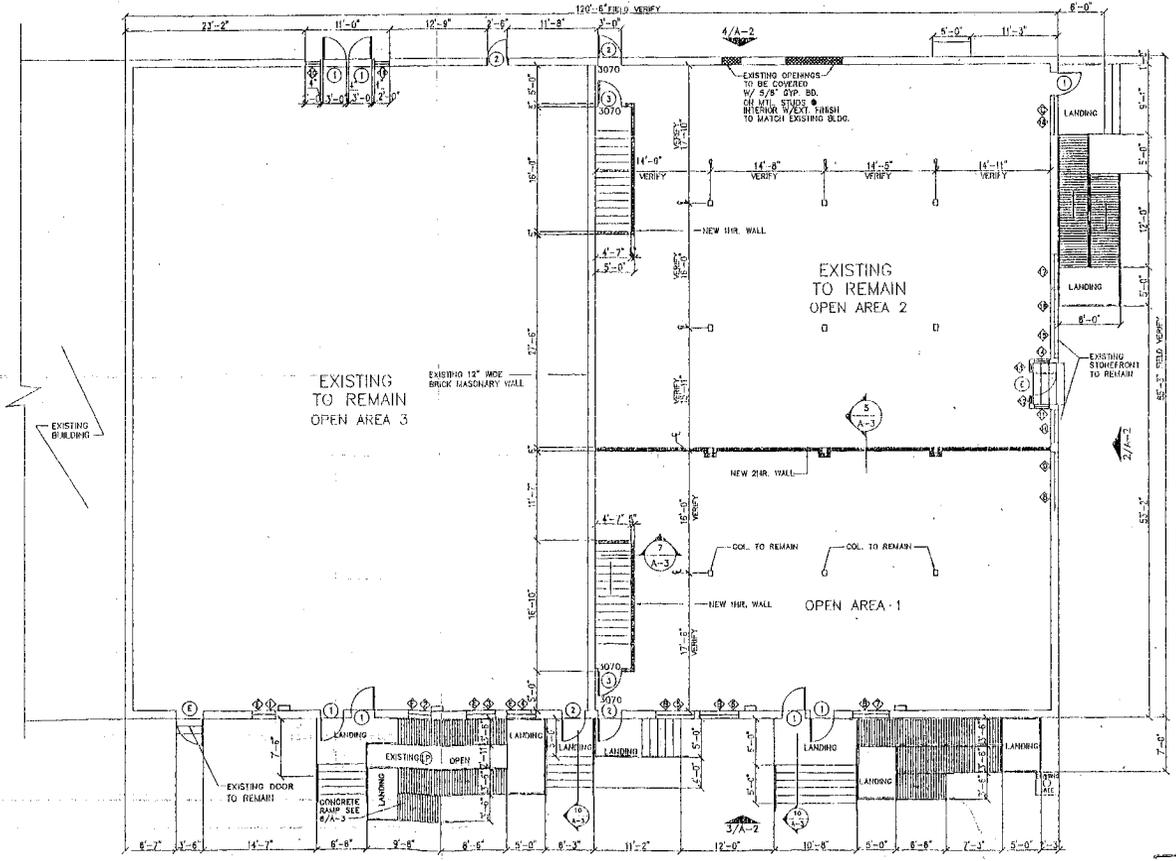
WINDOW SCHEDULE

3040	NOT USED	4440	1080	4440
3040	4050	4140	2040	5088
3568	4030	2040	4440	2068
3568	4410	1050	4440	2068

NOTE: ALL EXISTING WINDOWS TO REMAIN THE SAME FIELD VIEW / ALL EXISTING OPENINGS

WINDOW KEYED NOTES

OPEN AREA 1: S.F. 1963 S.F.
OPEN AREA 2: S.F. 2880 S.F.
OPEN AREA 3: S.F. 4891 S.F.
TOTAL 1ST FLOOR AREA: 10,273 S.F.
TOTAL BASEMENT AREA: 10,273 S.F.
TOTAL AREA: 20,546 S.F.



CARRERA
ARCHITECTS
125 E. Durango, Suite 200
El Paso, Texas 79901
Tel: (915) 726-3795

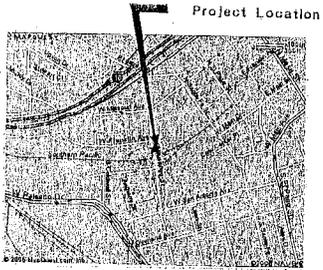
OWNER
OCTAVIO GOMEZ VAJOR
115 DURANGO
EL PASO, TEXAS 79901
TEL: (915) 726-3795



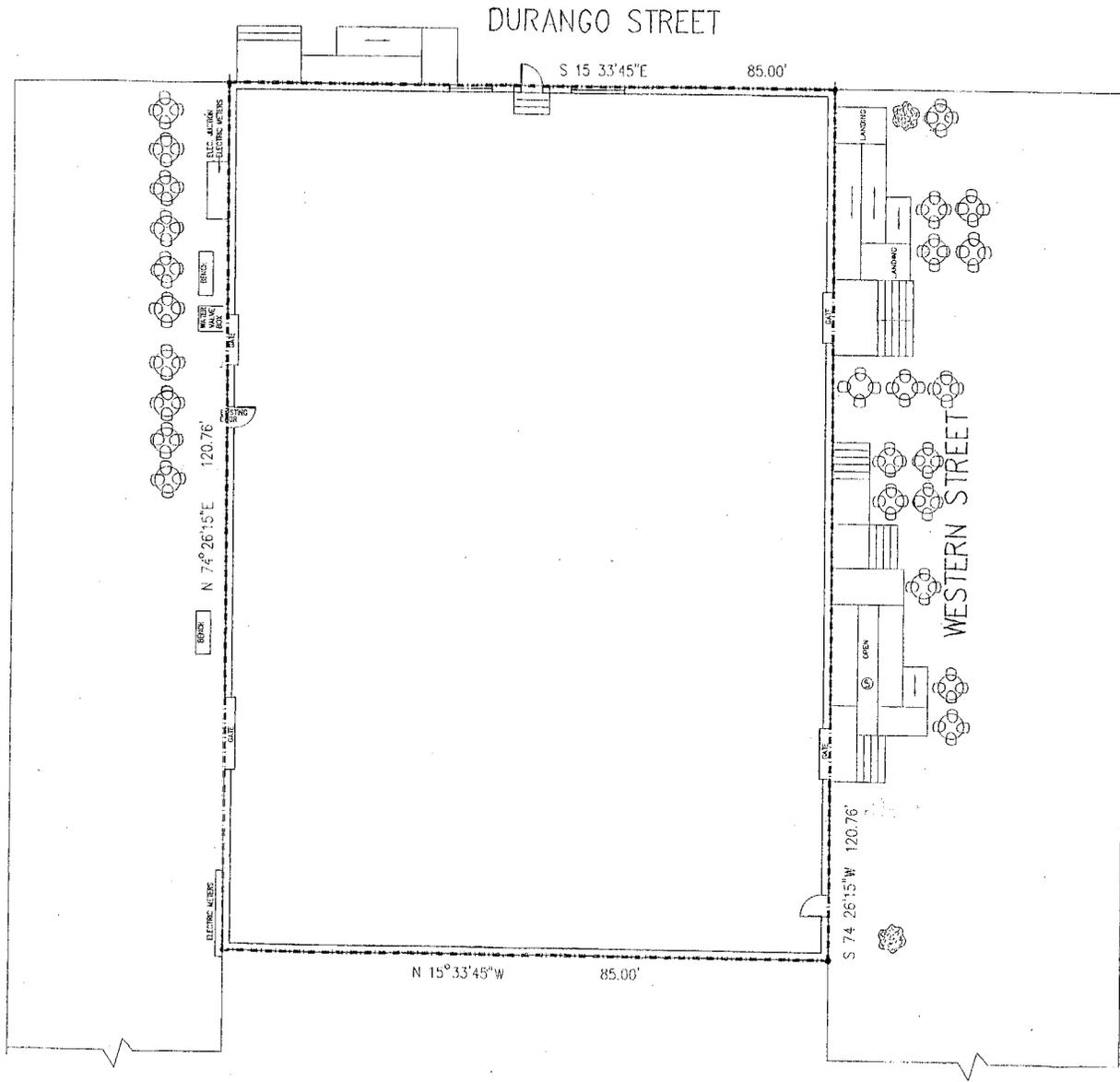
PROJECT NAME:
**THE PLACE AT
UNION PLAZA**
115 DURANGO EL PASO, TX

EXHIBIT "D"

EXHIBIT "E"



LOCATION PLAN



LEGAL DESCRIPTION
 115 DURANGO STREET
 A PORTION OF BLOCK 51, ANSON MILLS MAP
 AN ADDITION TO THE CITY OF EL PASO,
 EL PASO COUNTY, TEXAS

DRAWING:
 SITE PLAN

PROJECT NAME:
 THE PLACE AT



OWNER:
 [Illegible text]

DATE:
 [Illegible text]