

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

DEPARTMENT: Development Services Department-Planning Division

AGENDA DATE: Introduction 08-18-09; Public Hearing 08-25-09

CONTACT PERSON/PHONE: Mirian Spencer, Planner, (915) 541-4192, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance amending Ordinance No. 016874 granting a Special Privilege to ONIHC, L.L.C. permitting the encroachment onto public right-of-way with a sidewalk café located at 504 West San Antonio Avenue by adding the sale and service of alcoholic beverages as a permissible activity in the public right-of-way described in Ordinance 016874 and extending the term of the Special Privilege License to ten (10) years. Subject Property: 504 W. San Antonio. Avenue Applicant: ONIHC, L.L.C. SPL07-00018, **(District 8)**.

BACKGROUND / DISCUSSION:

See attached information.

PRIOR COUNCIL ACTION:

City Council approved Ordinance 016874 granting the Special Privilege License to ONIHC, L.L.C. on April 22, 2008.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

The DCC recommended approval of the amendments to the special privilege license at the August 5, 2009 meeting.

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

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

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 016874 GRANTING A SPECIAL PRIVILEGE TO ONIHC, L.L.C. PERMITTING THE ENCROACHMENT ONTO PUBLIC RIGHT-OF-WAY WITH A SIDEWALK CAFE' LOCATED AT 504 WEST SAN ANTONIO AVENUE BY ADDING THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES AS A PERMISSIBLE ACTIVITY IN THE PUBLIC RIGHT-OF-WAY DESCRIBED IN ORDINANCE 016874 AND EXTENDING THE TERM OF THE SPECIAL PRIVILEGE LICENSE TO TEN (10) YEARS.

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

WHEREAS, on April 22, 2008, the El Paso City Council approved Ordinance No. 016874 which granted to ONIHC, L.L.C. a Special Privilege License to encroach onto portions of public right-of-way adjacent to the property located at 504 West San Antonio Avenue, City and County of El Paso, Texas, as more particularly described by metes and bounds in the attached Exhibit "B" with an outdoor patio café, a copy of which is attached and is hereto as Exhibit "C" and made part hereof for all purposes:

WHEREAS, the purpose of the Special Privilege License is solely for the encroachment and operation of an outdoor patio café located on a portion of public right-of-way located within the City of El Paso, El Paso County, Texas, and which real property is described in the Special Privilege License; and

WHEREAS, the Grantee is requesting that the Special Privilege License be amended to include provisions to allow for the sale and service of alcoholic beverages within the portion of public right-of-way within the outdoor patio café and to extend the term of the Special Privilege License to ten (10) years with two renewable terms of five (5) years; and

WHEREAS the City agrees to amend the Special Privilege License to include provisions to allow for the sale and service of alcoholic beverages within the portion of public right-of-way within the outdoor patio café and to extend the term of the Special Privilege License to ten (10) years with two renewable terms of five (5) years.

NOW, THEREFORE, 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, an amendment to the Special Privilege Exhibit "A" of Ordinance 016874 granted to ONIHC, L.L.C., for the property located at 504 West San Antonio Avenue:

1. The Amendment to the Special Privilege shall be in a form that is attached hereto and incorporated herein as Exhibit "A".

2. The Amendment to the Special Privilege is to permit ONIHC, L.L.C to sell and serve alcoholic beverages within the outdoor café designated in Exhibit "C" of Ordinance No. 016874 and to extend the term of the Special Privilege to ten (10) years with two renewal options, each for an additional five (5) year period.

PASSED AND APPROVED this _____ day of _____, **2009.**

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Mathew McElroy
Deputy Director - Planning

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

EXHIBIT "A"
AMENDMENTS TO THE
SPECIAL PRIVILEGE

WHEREAS, on April 22, 2008 the El Paso City Council approved Ordinance No. 016874 which granted to ONIHC, L.L.C. a Special Privilege License for the purpose of encroaching upon a portion of public right-of-way with an outdoor patio café located within the City of El Paso, El Paso County, Texas, a copy of which is attached hereto as Exhibit "D" and made a part hereof for all purposes; and

WHEREAS, the purpose of the Special Privilege License is associated with the encroachment and operation of an outdoor patio café located on a portion of public right-of-way located within the City of El Paso, El Paso County, Texas; and

WHEREAS, ONIHC, L.L.C. desires to include provisions for the sale and service of alcoholic beverages within the portion of public right-of-way within the outdoor patio café and extend the term of the Special Privilege License to ten (10) years with two renewal options, each for an additional five (5) year term; and

WHEREAS, Section 12 of the Special Privilege License requires modifications to the Special Privilege be in writing and signed by both parties; and

WHEREAS, ONIHC, L.L.C. is requesting that the City approve the amendments to the Special Privilege License granted by Ordinance No. 016874 to ONIHC, L.L.C; and

WHEREAS, ONIHC, L.L.C. hereby agrees to be responsible for all duties, obligations and responsibilities under the Special Privilege License; and

WHEREAS, the City agrees to the amendments to the Special Privilege License granted by Ordinance No. 016874, to ONIHC, L.L.C; and

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The City approves the amendments to the Special Privilege License granted by Ordinance No. 016874, to ONIHC, L.L.C.
2. ONIHC, L.L.C. agrees to assume and perform all duties, obligations, and responsibilities of said Special Privilege License.
3. ONIHC, L.L.C. agrees to indemnify, defend, and hold harmless the City from and against any and all claims, demands, causes of action, court costs, expenses

and attorneys fees which are connected with or arising from the assignment of this Special Privilege License and the City's acceptance and recognition of the assignment of the Special Privilege License.

4. ONIHC, L.L.C. agrees to enclose the outdoor patio café with wrought-iron fencing as approved by the City of El Paso Development Services Department – Planning Division and the Texas Alcoholic Beverage Commission.

5. ONIHC, L.L.C. agrees to maintain all applicable licensing for the sale and service of alcoholic beverages, for the property located at 504 West San Antonio Avenue.

6. ONIHC, L.L.C. agrees to obtain and maintain a liquor liability insurance policy, or the equivalent thereof, in the amount of One Million and NO/100 Dollars (\$1,000,000.00) and provide a certificate of insurance as required for other insurance policies in this Section and name the City as an additional insured.

7. All notices provided shall be 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: Mayor
2 Civic Center Plaza
El Paso, Texas 79901-1196

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

and: ONIHC, L.L.C.
Attn: Jose Adan Fong
504 W. San Antonio, Suite A
El Paso, Texas 79901

8. Except as herein amended; Ordinance No. 016874 shall remain in full force and effect.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

(Signatures are on the following page)

THE CITY OF EL PASO

Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Mathew McElroy
Deputy Director-Planning

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this _____ day of _____, 2009.

GRANTEE: ONIHC, L.L.C.

By: _____

(Printed Name and Title)

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2009, by _____ as _____, on behalf of ONIHC, L.L.C.

Notary Public, State of Texas

Notary's Printed or Typed Name:

My Commission Expires:

BARRAGAN & ASSOCIATES

Land Planning & Land Surveying

10950 Pellicano Drive, Building "F", El Paso, Texas 79935

Ph. (915) 591-5709
Fax (915) 591-5706

DESCRIPTION

Description of a parcel of land being a portion of Durango Street right-of-way in front of Block 160, Campbell Addition (recorded in Book 2, page 68, Plat Records of El Paso, County, Texas), an Addition to The City of El Paso, El Paso, County, Texas, and being more particularly described as follows:

Commencing for reference at a point of intersection of the southerly line of West San Antonio avenue and the westerly line of Durango Street, said point being the northeasterly corner for said Block 160; **THENCE**, S 00°00'00" E, along the westerly line of Durango Street, a distance of 8.67 feet to the **Point of Beginning** of this **Description**;

THENCE, N 90°00'00" E, a distance of 11.00 feet to a point for corner ;

THENCE, S 00°00'00" E, a distance of 77.83 feet to a point for corner,

THENCE, N 90°00'00" W, a distance of 11.00 feet to a point for corner on the westerly right-of-way line of Durango Street;

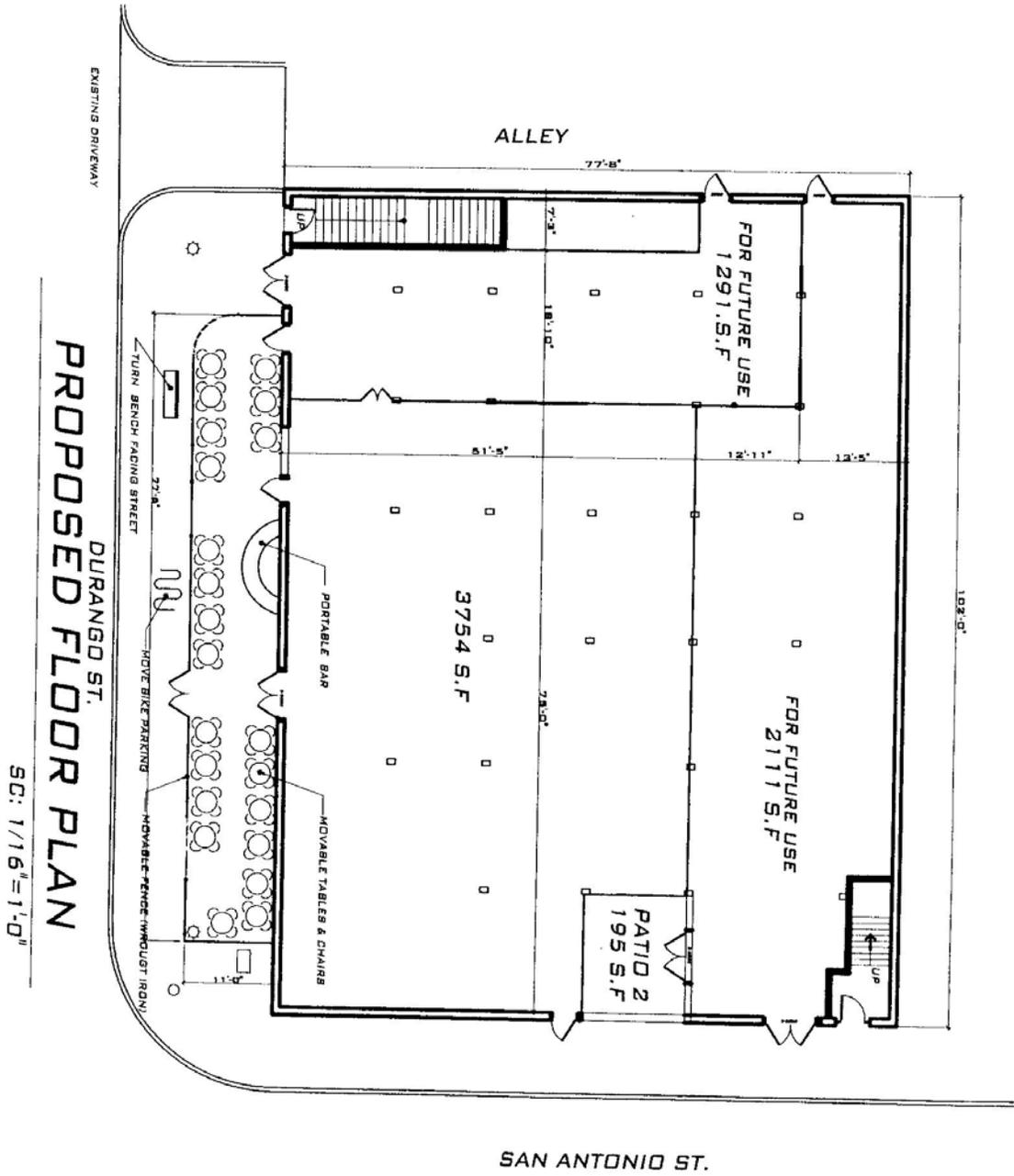
THENCE, N 00°00'00" E, along said westerly line, a distance of 77.83 feet to the **POINT OF BEGINNING** of the herein parcel being described, containing 856 square feet or 0.0197 acres of land more less.

NOTES:

1. Not a ground Survey.
2. Bearings recited herein are based on assumed north for Durango Street.

Benito Barragan T&R.P.L.S. 5615 12/24/07
Durango st-row





ORDINANCE NO. 016874

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO ONIHC, L.L.C. PERMITTING THE ENCROACHMENT OF A SIDEWALK CAFE' ONTO A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED AT 504 WEST SAN ANTONIO AVENUE.

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 ONIHC, L.L.C. (hereinafter referred to as "Grantee"), for the property located at 504 W. San Antonio Avenue:

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 at 504 W. San Antonio Avenue, as more particularly described by metes and bounds in the attached Exhibit "B", to encroach onto a portion of public right-of-way with one (1) sidewalk café, as more particularly shown in the attached and incorporated Exhibit "C";
3. As consideration for this Special Privilege, Grantee 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 five (5) years with two renewal options, each for an additional five (5) year period.

PASSED AND APPROVED this 22nd day of April, 2008.

THE CITY OF EL PASO

ATTEST:


Richarda Duffy-Momsen
City Clerk

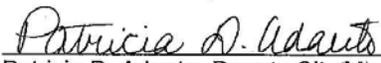

John F. Cook
Mayor

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APPROVED AS TO FORM:


Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:


Patricia D. Adauto, Deputy City Manager
Development and Infrastructure Services

permitted by this Special Privilege.

3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City the fee of Three Hundred and No/100 Dollars (\$300.00) per year for a five (5) year total of One Thousand Five Hundred and No/100 Dollars (\$1,500.00); the annual fee shall be due prior to execution of this Special Privilege by the El Paso City Council. The advance payment shall be payable to the "City of El Paso" and delivered to the Development Services Department. If the Special Privilege is disapproved by the El Paso City Council, the City 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 outdoor café 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 of a sidewalk café. As an express condition of this Special Privilege, and not as a mere covenant, Grantee agrees that the sidewalk café must contain removable chairs and related appurtenances, and further agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein. This Special Privilege shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance. Grantee, at no cost to the City, shall clean up all litter and debris within the Premises, leaving the public right-of-way in a clean and orderly condition at all times when not in use as a sidewalk café. The Premises shall be temporarily fenced using the materials and methods approved by the concurrence of the Engineering and Fire Departments with a minimum clearance width of five (5) feet of unobstructed sidewalk for pedestrian traffic. 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

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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

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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 Development Services 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 days (30) 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 days (30) 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 days (30) 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.

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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, maintenance and 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 Premises without first having obtained any required building permits from the City Development Services 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 504 W. San Antonio Avenue 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 504 W. San Antonio Avenue shall contain this restriction, condition and covenant and shall embody this Special Privilege by express reference.

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- 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: ONIHC, L.L.C.
Attn: Jose Adan Fong
504 W. San Antonio, Suite A
El Paso, Texas 79901

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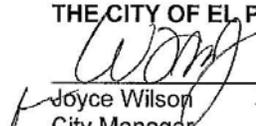
or to such other address as the parties may designate to each other in writing from time to time.

- 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 Development Services 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 Development Services 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 Development Services 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:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto, Deputy City Manager
Development and Infrastructure Services

CITY OF EL PASO DEPT.
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(Signatures continue on following page)

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this
2nd day of April, 2008.

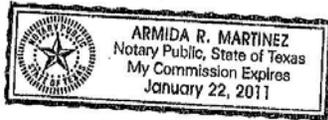
GRANTEE: ONIHC, L.L.C.

By: Jose Fong
Jose Adan Fong, Member
(Printed Name and Title)

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 2nd day of April,
2008, by Jose Fong as Member, on behalf
of ONIHC, L.L.C.



Armida R. Martinez
Notary Public, State of Texas

ARMIDA R. MARTINEZ
Notary's Printed or Typed Name:

January 22, 2011
My Commission Expires:

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03 APR - 2 PM 3:05

BARRAGAN & ASSOCIATES

Land Planning & Land Surveying

10950 Pellicano Drive, Building "F", El Paso, Texas 79935

Ph. (915) 591-5709
Fax (915) 591-5706

DESCRIPTION

Description of a parcel of land being a portion of Durango Street right-of-way in front of Block 160, Campbell Addition (recorded in Book 2, page 68, Plat Records of El Paso, County, Texas), an Addition to The City of El Paso, El Paso, County, Texas, and being more particularly described as follows:

Commencing for reference at a point of intersection of the southerly line of West San Antonio avenue and the westerly line of Durango Street, said point being the northeasterly corner for said Block 160; **THENCE**, S 00°00'00" E, along the westerly line of Durango Street, a distance of 8.67 feet to the **Point of Beginning** of this **Description**;

THENCE, N 90°00'00" E, a distance of 11.00 feet to a point for corner ;

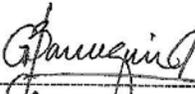
THENCE, S 00°00'00" E, a distance of 77.83 feet to a point for corner;

THENCE, N 90°00'00" W, a distance of 11.00 feet to a point for corner on the westerly right-of-way line of Durango Street;

THENCE, N 00°00'00" E, along said westerly line, a distance of 77.83 feet to the **POINT OF BEGINNING** of the herein parcel being described, containing 856 square feet or 0.0197 acres of land more less.

NOTES:

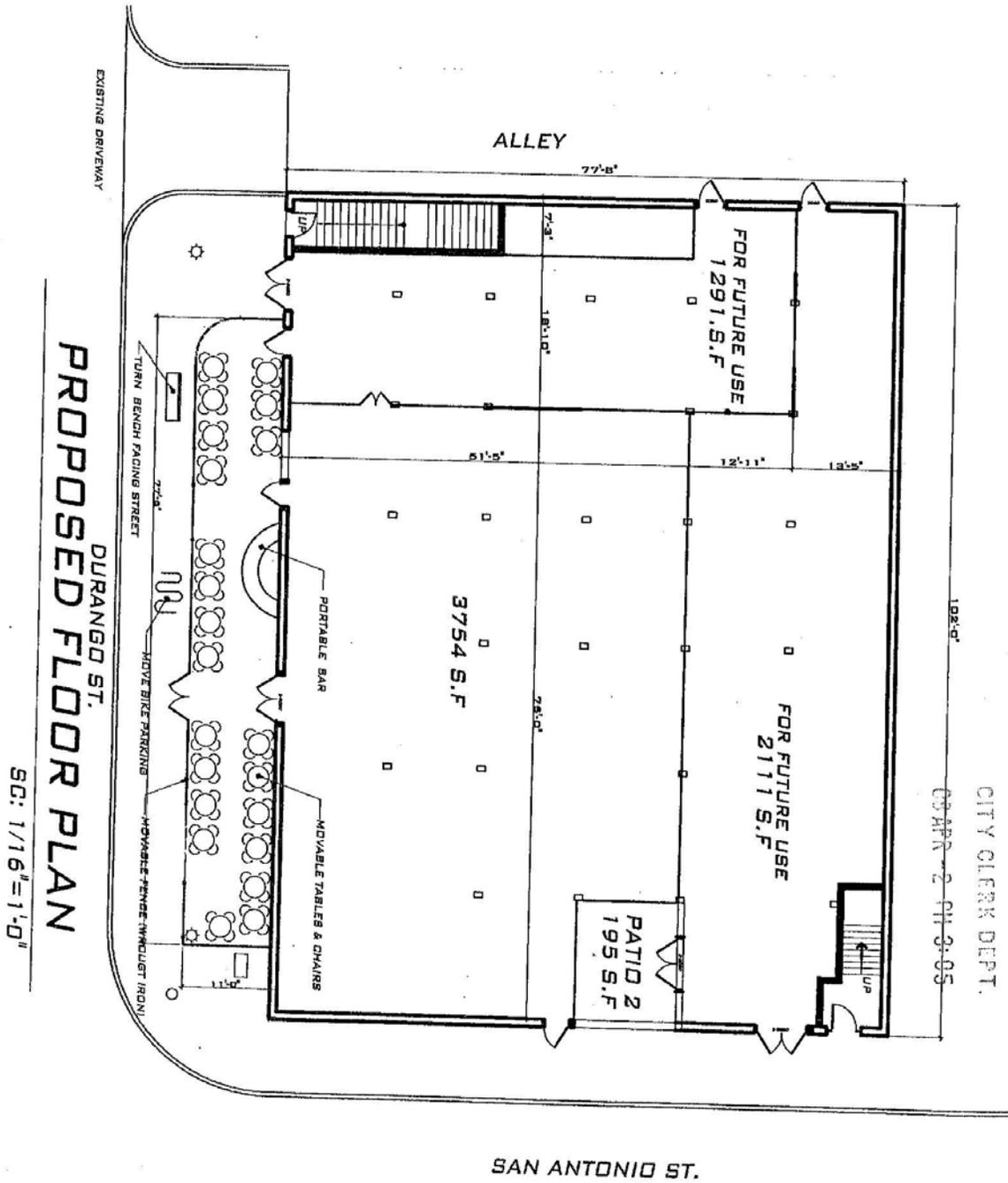
1. Not a ground Survey.
2. Bearings recited herein are based on assumed north for Durango Street.


Benito Barragan T&R.P.L.S. 5615
Durango st-row

12/24/07



CITY CLERK DEPT.
03 APR -2 PM 3:05



MEMORANDUM

DATE: August 6, 2009

TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager

FROM: Mirian Spencer, Planner

SUBJECT: SPL07-00018

As part of the proposed Union Plaza Entertainment District approved by City Council on July 28, 2009, the Texas Alcoholic Beverage Commission requires City Council approval for the sale and service of alcoholic beverages within city right-of-way. The applicant submitted the written request to the Development Services Department requesting the Special Privilege License granted on April 22, 2008 be amended to include provisions for the sale and service of alcoholic beverages. In reviewing the Special Privileges previously granted for the area, the terms of the licenses were for ten years, so in the interest of consistency staff has recommended extending the license agreement. The amendments are in the spirit of the Ordinance approved for the Union Plaza Entertainment by City Council.

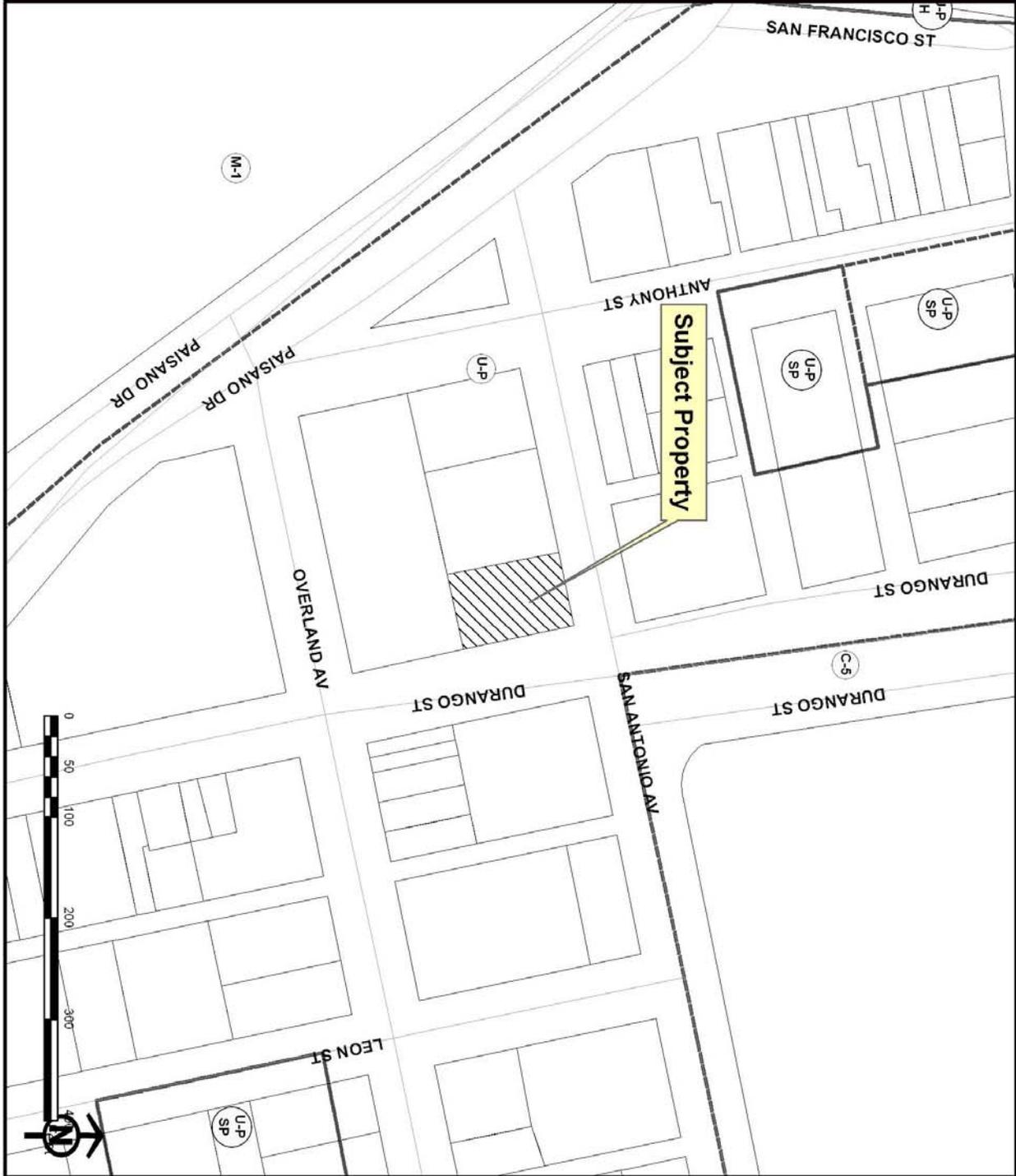
Approval of the amendment is subject to the following:

- Grantee has agreed to enclose the outdoor patio café with wrought-iron fencing as approved by the Texas Alcoholic Beverage Commission and the Development Services Department.
- Grantee will provide copies of the Texas Alcoholic Beverage Commission licensing annually in conjunction with the annual payment and insurance provisions of the Special Privilege License.
- Grantee is responsible for all maintenance and any damages due to a failure to maintain.
- The City may, upon thirty (30) days written notice, cancel the Special Privilege at no cost to the City and may take possession of the public right-of-way.
- Grantee may cancel the Special Privilege, for any reason, upon thirty (30) days prior written notice to the city, and all rights of the Grantee shall be terminated.
- Grantee is responsible for providing liability insurance throughout the term of the license agreement.
- Grantee shall obtain and maintain a liquor liability insurance policy, or the equivalent thereof, in the amount of One Million and NO/100 Dollars (\$1,000,000.00) and provide a certificate of insurance as required for other insurance policies in this Section and name the City as an additional insured.
- Grantee will indemnify, defend, and hold the city harmless against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, demands, causes of action, liability, and suits of any kind and nature, arising out of, resulting from, or related to the activities under the license.

Attachment: Zoning Map, Aerial Map, Location Site Plan, Fencing Detail approved by the TABC

ZONING MAP

SPL07-00018



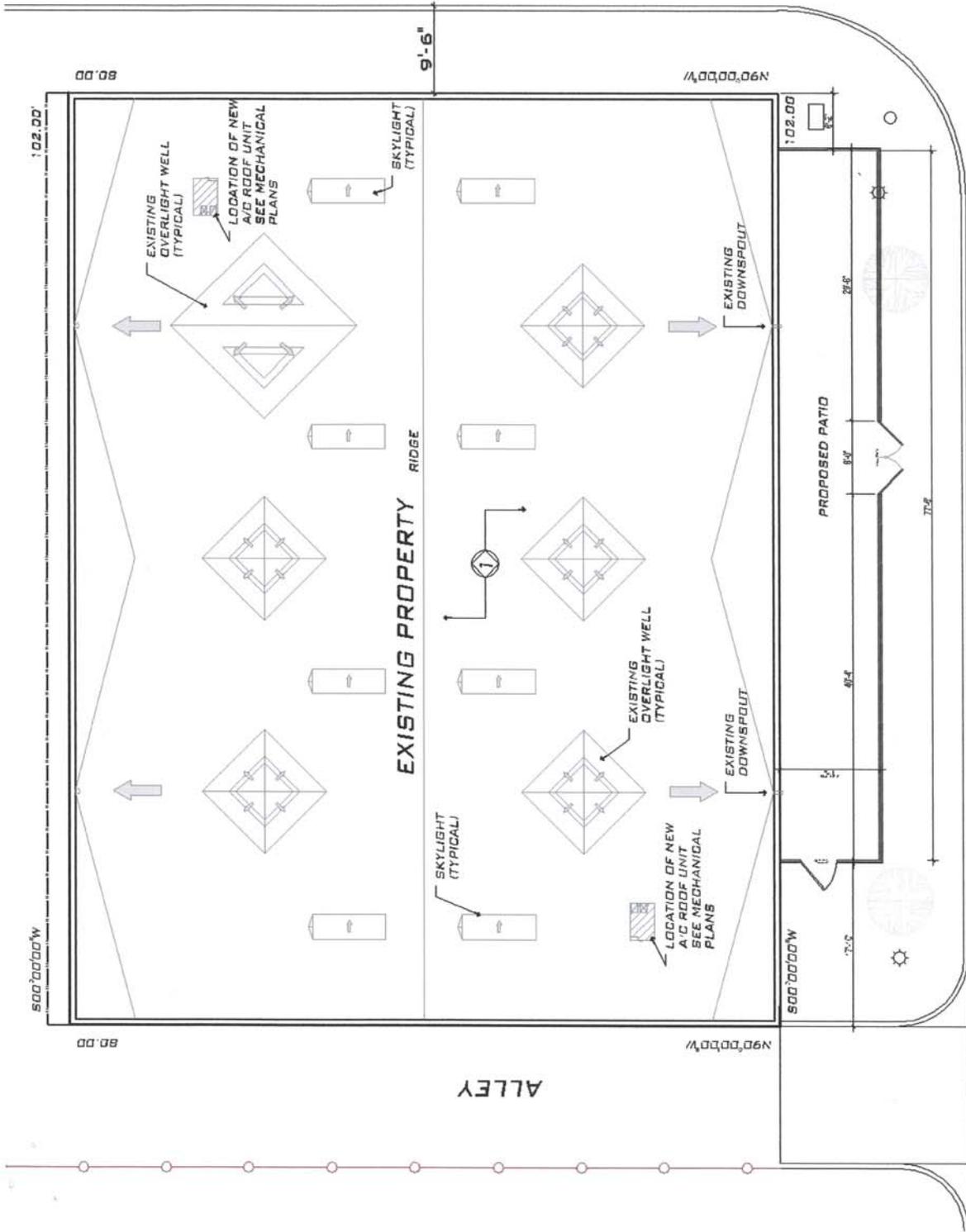
AERIAL MAP

SPL07-00018



LOCATION SITE PLAN

SAN ANTONIO ST.



LEGAL DESCRIPTION
 504 SAN ANTONIO ST.
 THE EASTERLY 80 FEET OF THE NORTHERLY 102 FEET
 OF BLOCK 160, CAMPBELL ADDITION
 CITY OF EL PASO, EL PASO COUNTY, TEXAS.

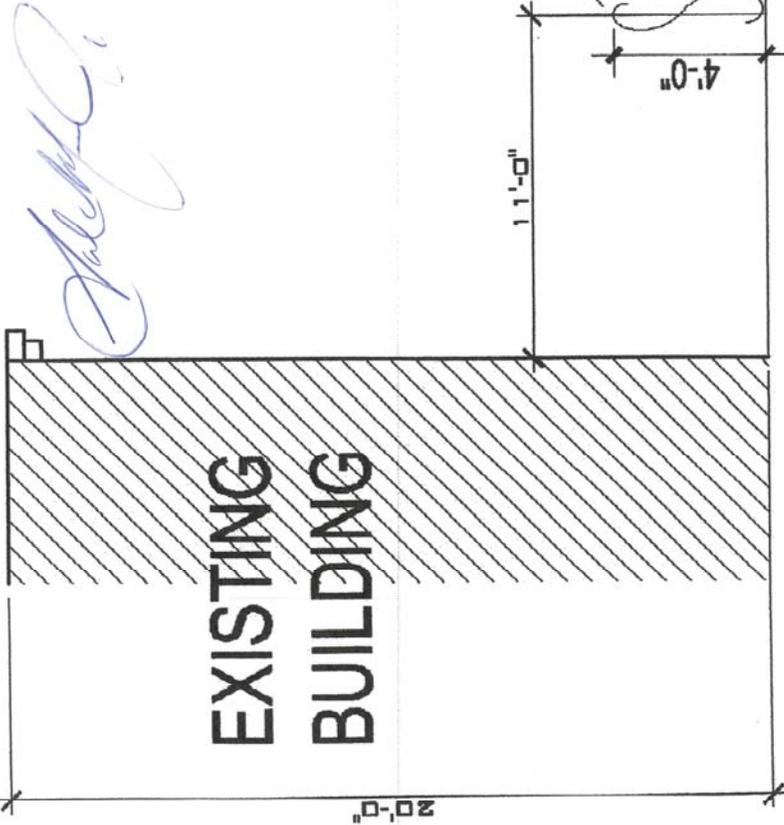
DURANGO ST.

① EXISTING 3 PLY BUILT UP ROOF TO REMAIN AS IS.

FENCING DETAIL

RECEIVED
MAY 19 2009
TABCO/EL PASO
ENFORCEMENT

RECEIVED
MAY 19 2009
TABCO/EL PASO
ENFORCEMENT



PATIO CROSS SECTION.
 $\frac{3}{16}'' = 1'-0''$