

INTRODUCED BY COUNCILMEMBER _____

A RESOLUTION GRANTING HOUSEWIVES MARKET LLC A CONDITIONAL REVOCABLE PERMIT FOR THE ENCROACHMENT OF FLOOR AREA PROJECTIONS ABOVE THE SIDEWALK FROM A PROPOSED RESIDENTIAL STRUCTURE

WHEREAS, Housewives Market LLC, a California Limited Liability Company (“Permittee”), has applied for a conditional, revocable, major encroachment permit as an aspect of the development of that certain property commonly known as 801 Clay Street, Oakland, California, which property is bounded by Jefferson and Clay Streets, and 8th and 9th Streets and which property is more fully described in the legal descriptions attached as Exhibit “D” incorporated herein (the “Property”) and which Property has been acquired by Permittee pursuant to that Deed recorded _____ 2003, Instrument No. _____; and

WHEREAS this encroachment permit pertains solely to the encroachment of certain floor area projections of up to thirty inches out over the public sidewalk starting at a height of twenty feet above the sidewalks bounding said Property in the manner fully delineated and detailed in Exhibits “A” “B” and “C” attached hereto and incorporated herein, which together are referred to as “the Encroachment” herein; and

WHEREAS, subject to the terms and conditions of this Resolution, said Encroachment will not interfere with the public use of Jefferson and Clay Streets or 8th and 9th Streets; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the guidelines as prescribed by the Secretary of Resources, and the City’s environmental review regulations, as amended, have been satisfied, and that in accordance with Section 15301 Class 1 of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act; now therefore,

BE IT RESOLVED: That this resolution complies with CEQA, and be it

FURTHER RESOLVED: That the Permittee is hereby granted a conditional revocable permit for the floor area projection Encroachment as above described; and be it

FURTHER RESOLVED: That the Council of the City of Oakland, in granting this permission prescribes as special conditions thereof; the following:

1. That the Permittee is responsible for the relocation of all existing public utilities including fire alarm cable, master signal cable, street lighting and intersection signal cable, as required by the construction of the encroachments.

2. That, after notice to Permittee, this permit shall be revocable at the reasonable discretion of the Council of the City of Oakland, expressed by resolution of said Council.
3. That the Permittee, by the acceptance, either expressed or implied, of this revocable permit hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area underlying the said Encroachment or the air space above and agrees that said temporary use of said area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise.
4. The Permittee shall maintain in force and effect at all times that said Encroachment occupies said public sidewalk area, good and sufficient public liability insurance in the amount of \$1,000,000 for each occurrence, and property damage insurance in the amount of \$1,000,000 for each occurrence both including contractual liability insuring the City of Oakland, its officers and employees, against any and all claims arising out of the existence of said Encroachment in said right-of way area, and that a certificate of such insurance and subsequent notices of the renewal thereof shall be filed with the Director of Building Services of Community of Economic Development Agency of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days' written notice to said Director of Building Services. The Permittee also agrees that the City may review the type and amount of insurance required every five (5) years and may require the Permittee to increase the amount of and/or change the type of insurance coverage required, if such is reasonably necessary as determined by the City.
5. That the Permittee, by the acceptance, either expressed or implied of this revocable permit agrees and promises to defend and hold harmless and indemnify the City of Oakland, its agents, officers, and employees, from any and every claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of said Encroachment in said right-of-way and street area and regardless of responsibility for negligence. The liability insurance referred to in the preceding paragraph shall cover this contractual liability, provided that nothing herein shall be interpreted as limiting the Permittee's defense, hold harmless and indemnification obligations to the amount set forth in the preceding paragraph.
6. That Permittee shall make no changes to the Encroachment hereby allowed either structurally, with regard to dimension, or with respect to use, without the written consent of the Director of Building Services and understands that the City may impose reasonable fees and considerations for processing permits required for such proposed changes. Permittee also understands that the City is not obligated to grant any changes proposed by said Permittee.
7. That the Permittee, by the acceptance, either expressed or implied, of this revocable permit shall be solely and fully responsible for the repair or

replacement of any portion or all of said improvements in the event that said improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be liable for the expenses connected therewith.

8. That upon the termination of the permission herein granted, Permittee shall immediately remove said Encroachment from the right-of-way area, and any damage resulting there from shall be repaired to the satisfaction of the Director of Building Services.
9. The Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution. Said disclaimer and agreement shall be subject to the approval of the City Attorney and the *Director of Building Services*.
10. That the plans and exact location of said Encroachment hereby granted are subject to the review and approval of the Community and Economic Development Agency, Building Services Division and that the Permittee shall obtain all necessary permits prior to commencing said work. Generally, said Encroachment shall be located as set forth in Exhibit "A", "B" and "C".
11. That the Permittee acknowledges that the City makes no representations or warranties as to the conditions beneath said Encroachment. By accepting this revocable permit, Permittee agrees that it will use the Encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the Encroachment area and for the safety of itself and any of its personnel in connection with its entry under this revocable permit.
12. Permittee further acknowledges that they understand and agree that they hereby expressly waive all rights and benefits which they now have or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Permittee recognizes that by waiving the provisions of Section 1542, Permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

13. That the Permittee, by the acceptance of this revocable permit, further agrees and promises to indemnify, defend, and hold harmless the City of Oakland, its officers, agents, and employees, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action,

penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or be in any way connected with the Permittee's use, installation or maintenance of the Encroachment.

14. That the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the Director of Building Services of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner.

FURTHER RESOLVED: The City Clerk is hereby directed to have a certified copy of this resolution recorded at the Office of the Alameda County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, **MAR 18 2003**, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, ~~WAN~~, AND
PRESIDENT DE LA FUENTE - 7

NOES- 0
Excused
ABSENT- WAN - 1

ABSTENTION- 0

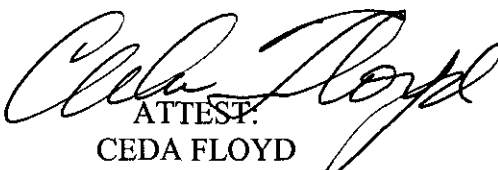
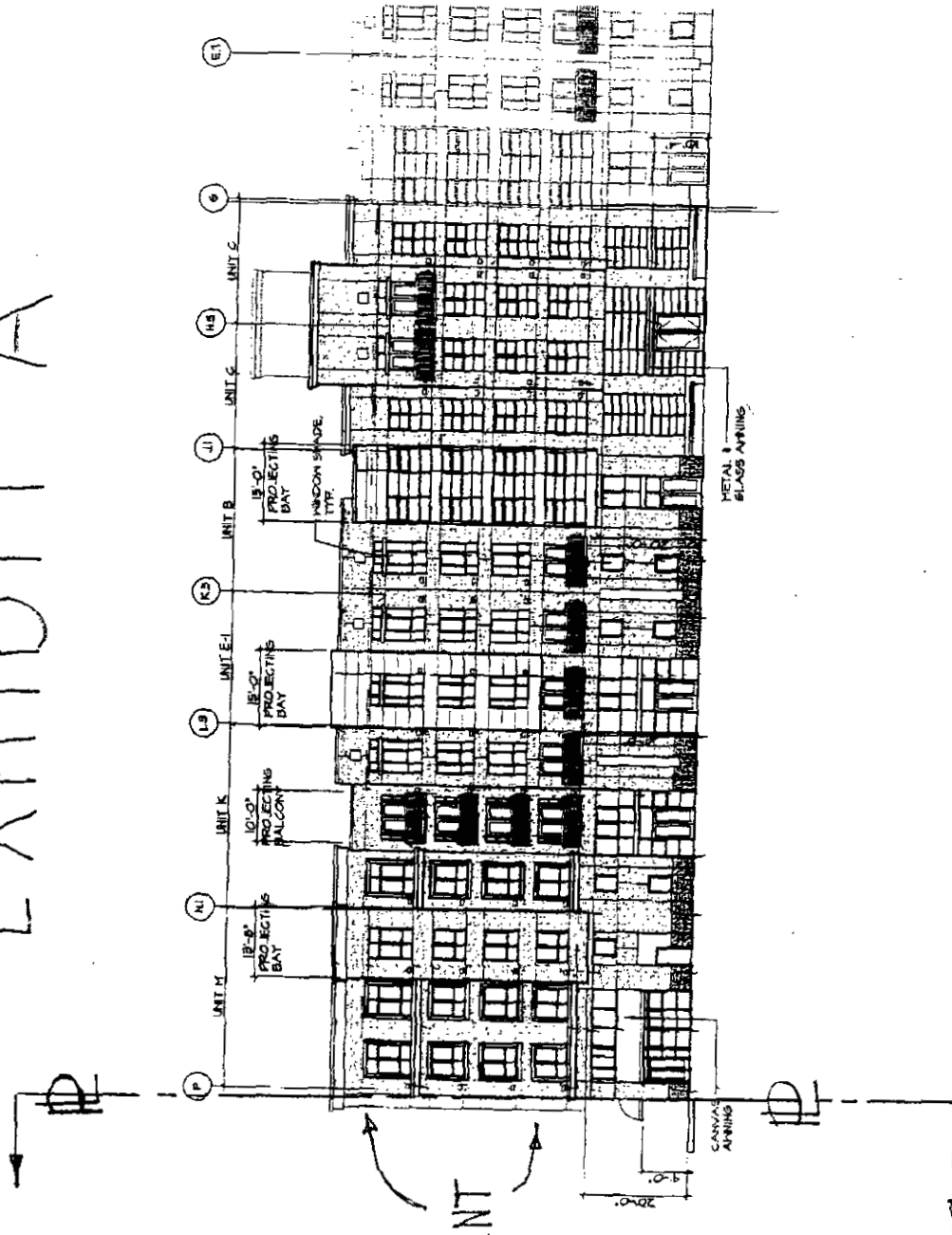

ATTEST:
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT "A"



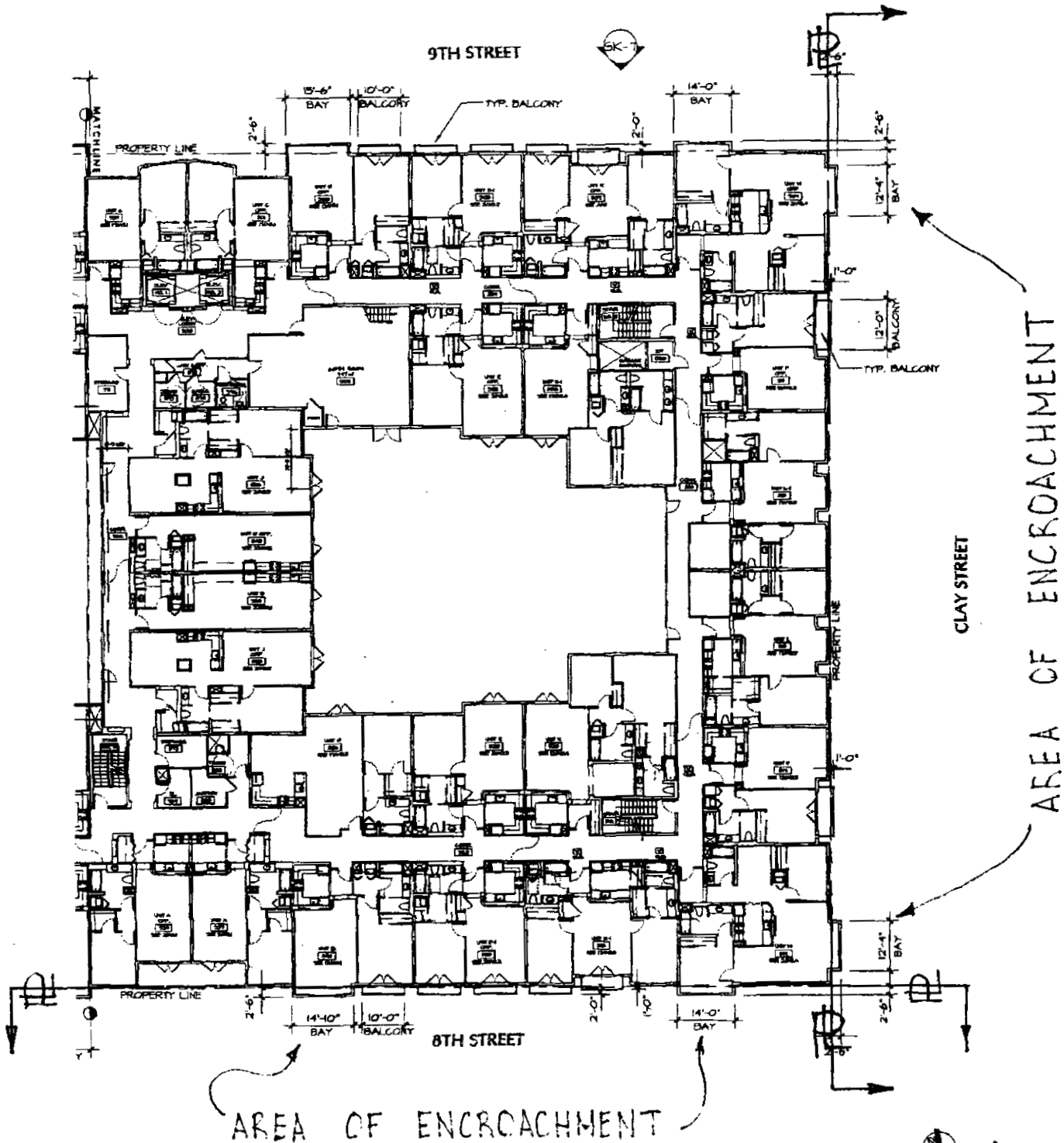
SK-7

job number: 20118
 scale: 1/32" = 1'-0"
 date: 1/27/03
 drawn by: JT
 checked by: 20118A31.cwg

PARTIAL 9TH STREET ELEVATION
 HOUSEWIVES MARKET

david baker + partners
 dbarchitect.com
 461 second street, lot 127
 san francisco california 94107
 415 896 6700 fax 415 896 6103





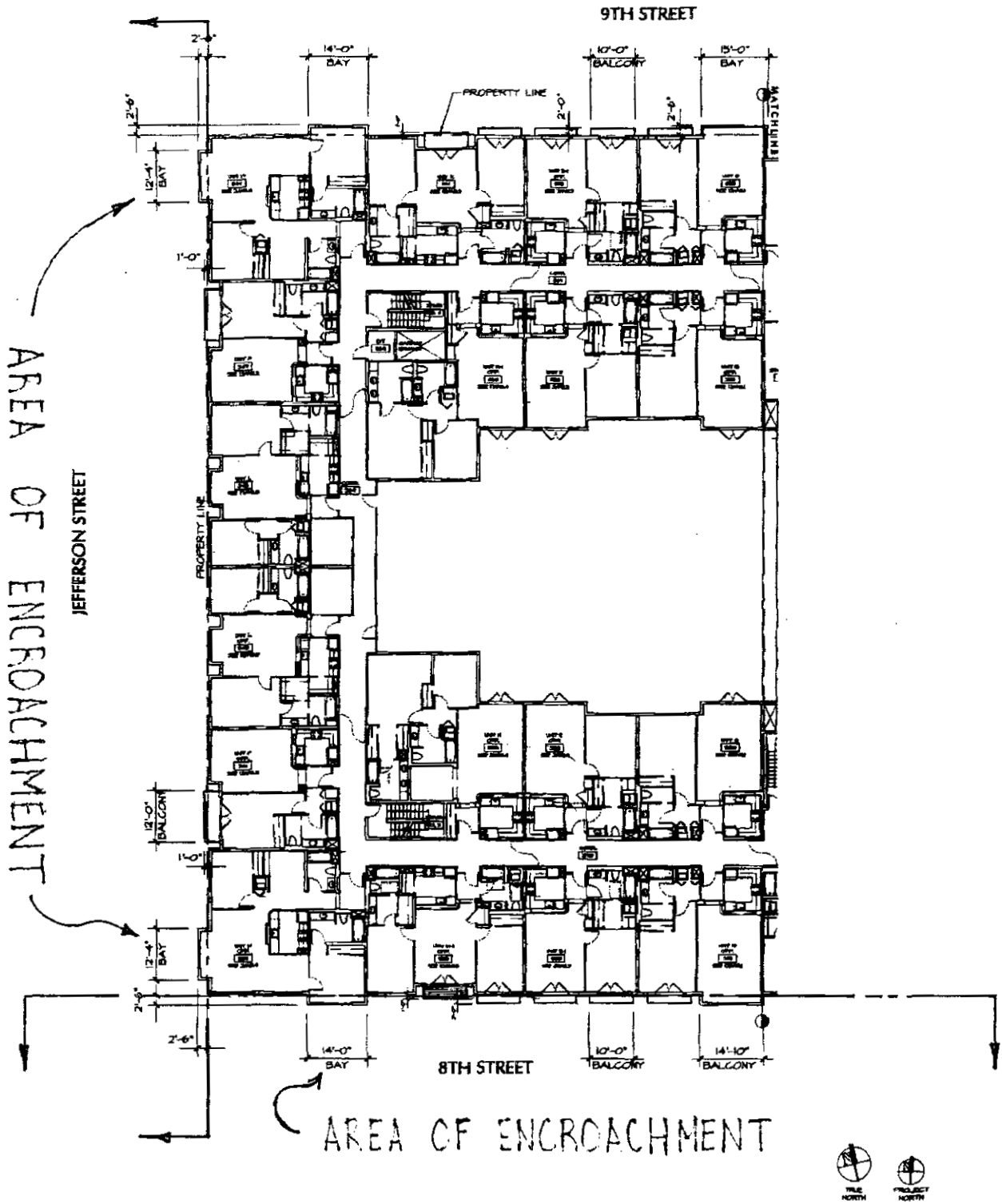
db david baker + partners
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 461 second street loft 127
 san francisco california 94107
 415 896 6700 fax 415 896 6103

**THIRD FLOOR- PHASE I
 HOUSEWIVES MARKET**

job number: 20118
 scale: 1/32" = 1'-0"
 date: 1/27/03
 drawn by: JT
 cadd file: 20118A23.DWG

SK-3

EXHIBIT "B"



Db david baker + partners
 dbarchitect.com
 461 second street loft 127
 san francisco california 94107
 415 896 6700 fax 415 896 6103

THIRD FLOOR - PHASE II
HOUSEWIVES MARKET

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 cadd file: 20118A23.DWG

SK-4

EXHIBIT "C"