

*David Sodergren*

OFFICE OF THE CITY CLERK  
OAKLAND

**OAKLAND CITY COUNCIL**

FEB 25 AM 10:05

RESOLUTION No. 78420 C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**A RESOLUTION GRANTING TO THE SALVATION ARMY, A CALIFORNIA CORPORATION, A CONDITIONAL REVOCABLE PERMIT FOR THE ENCROACHMENT OF AN EXISTING STRUCTURAL SIDEWALK AND BASEMENT INTO THE PUBLIC RIGHT-OF-WAY ON 6<sup>TH</sup> STREET OFF FRANKLIN STREET.**

**WHEREAS**, The Salvation Army, a California Corporation ("**Permittee**"), owner of that certain property described under the following Grant Deeds and recording dates: 1) April 08,1963; Series No. RE:851 IM:264, 2) February 27,1968; Series No. RE:2132 IM:847, 3) August 17,1946; Series No. 72394, and 4) March 24,1938; volume 3638 at the Office of the County Recorder, Alameda County, California, commonly known as 601 Webster Street and more particularly described in Exhibit "A" attached hereto and made a part hereof, has made application for a conditional revocable permit to the Council of the City of Oakland for the encroachment of an existing basement under the sidewalk of the public right-of-way area on 6th Street off Franklin Street, and

**WHEREAS**, the existing structural sidewalk over the basement located into the public-right-of-way on 6<sup>th</sup> Street off Franklin Street requires repair and improvement, and

**WHEREAS**, the location of said encroachment to be granted by this resolution is delineated in Exhibit "B" attached hereto and made a part hereof; and

**WHEREAS**, said encroachment will not interfere with the public use of the sidewalk area on 6<sup>th</sup> Street, and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Class 15301 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 the California Environmental Quality Act, and be it

**FURTHER RESOLVED**: That the Permittee is hereby granted a conditional revocable permit for the encroachment of an existing structural sidewalk and basement into the public right-of-way area on 6th Street off Franklin Street, 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, but not limited to, fire alarm cable, master signal cable, street lighting and intersection signal cable, as required.
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 \$300,000 for each occurrence, and property damage insurance in the amount of \$50,000 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 to said right-of-way area 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 therefrom 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".
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 he or she will use the encroachment area at his or her 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 himself or herself and any of his or her personnel in connection with its entry under this revocable permit.
12. That the Permittee acknowledges that the City is unaware of the existence of any hazardous substances beneath the encroachment area, and hereby waives and fully releases and forever discharges the City and its officers, directors, employees, agents, servants, representatives, assigns and successors 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 in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water

Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.). Notwithstanding the above provisions of this Paragraph 12, Permittee shall not be liable to the City for any hazardous substances on, in or beneath the encroachment area that were not caused by the Permittee, his or her agents, employees, tenants or service providers.

13. Permittee further acknowledges that he or she understands and agrees that he or she hereby expressly waives all rights and benefits which he or she 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."
14. Permittee recognizes that by waiving the provisions of this section, Permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect his or her 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.
15. That the Permittee, by the acceptance of this revocable permit, 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 Permittees' use, installation or maintenance of the encroachment, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health

and Safety Code Section 25249.5 et seq.).

16. 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 16 2004, 2004.

PASSED BY THE FOLLOWING VOTE:

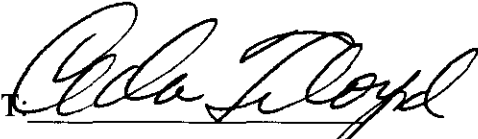
AYES- ~~BROOKS~~, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND  
PRESIDENT DE LA FUENTE -7

NOES- 0

ABSENT- BROOKS -1

ABSTENTION- 0

ATTEST

  
CEDA FLOYD  
City Clerk and Clerk of the Council  
Of the City of Oakland, California

RECORDING REQUESTED BY

AD 01035

RE: 851 IM:264

EXHIBIT "A"  
1 of 4

RECORDED at REQUEST OF  
Title Insurance & Trust Co.  
AT 2:30 P M.

AND WHEN RECORDED MAIL TO

APR 1 0 1963

PROPERTY DEPARTMENT

APR 2 4 1963

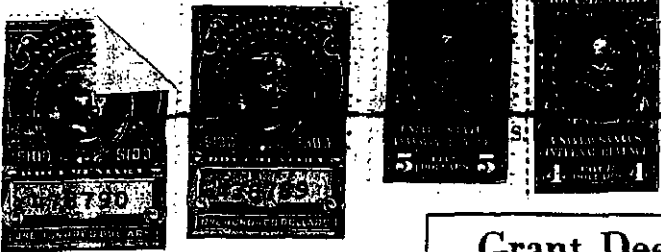
SAN FRANCISCO

Name Major McIntyre  
Street Address The Salvation Army  
101 Valencia Street  
City & State San Francisco, California

OFFICIAL RECORDS OF  
ALAMEDA COUNTY, CALIFORNIA  
JACK G. BLUE  
COUNTY RECORDER

200

MOVE THIS LINE FOR RECORDER'S USE



THIS SPACE

### Grant Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

TO 408 C

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, JOHN F. ANDREWS and DOROTHY S. ANDREWS, his wife, as joint tenants,

hereby GRANT(S) to THE SALVATION ARMY, a California corporation

the following described real property in the City of Oakland  
County of Alameda, State of California:

BEGINNING at the point of intersection of the northern line of 6th Street with the eastern line of Franklin Street, running thence northerly along said line of Franklin Street, 100 feet; thence at right angles easterly 125 feet; thence at right angles southerly 100 feet to the northern line of 6th Street; thence westerly along said line of 6th Street, 125 Feet to the point of beginning.

BEING Lots 1, 2, 3, 4, 27 and 28, in Block 64, as said lots and block are shown on Kellersberger's Map of Oakland, on file in the office of the County Recorder of Alameda County.

Dated: April 8, 1963

STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA } SS.

On April 8, 1963 before me, the undersigned, a Notary Public in and for said County and State, personally appeared JOHN F. ANDREWS and DOROTHY S. ANDREWS, his wife

*John F. Andrews*  
JOHN F. ANDREWS  
*Dorothy S. Andrews*  
DOROTHY S. ANDREWS

\_\_\_\_\_, known to me to be the person s whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal)

Seal Affixed

Signature *James J. Dipon*  
JAMES J. DIPON, Notary Public  
My Commission Expires August 20, 1964  
Name (Typed or Printed)

Notary Public in and for said County and State  
If executed by a Corporation the Corporation Form of Acknowledgment must be used.

Title Order No. \_\_\_\_\_

Escrow No. \_\_\_\_\_

\* END OF DOCUMENT \*

EXHIBIT A  
2 of 4

Recorded at the request of:

Return to: **BA20527**  
The Salvation Army  
366 Sixth Street  
Oakland, California, 94607  
Attn.: Captain David Allen, Mgr.  
MAIL TAX STATEMENTS TO:  
SAME AS ABOVE

RE: 2132 IM:847

RECORDED at REQUEST OF  
Western Title Guaranty Company  
At 9:30 A.M.

*M.S. Dept. Oakland*

FEB 28 1968

PROPERTY DEPARTMENT  
MAY 13 1968

OFFICIAL RECORDS OF  
ALAMEDA COUNTY, CALIFORNIA  
**JACK G. BLUE**  
COUNTY RECORDER

SAN FRANCISCO

200

THIS BOX FOR EXCLUSIVE USE OF COUNTY RECORDER

H.A. 615-McCall

NO TRANSFER TAX REQUIRED

**GRANT DEED**

(Corporation Grantor)

Order No. H.A.-615

For value received

EAST BAY TITLE CO., a corporation,

GRANTS to

THE SALVATION ARMY, a California corporation,

\*

all that real property situate in the  
Alameda,

City of Oakland,  
State of California, described as follows:

County of

Lots 5, 6, 7, 8, 9, 10, 11, 12 and 13, Block 64,  
Map of Kellersberger's Map of Oakland, filed  
September 2, 1953, Map Book 7, page 3, Alameda  
County Records.

IN WITNESS WHEREOF, said Corporation has executed these presents by its officer... thereunto duly  
authorized, this 27th day of February, 1968.

EAST BAY TITLE CO.

\* For joint tenancy deed add after  
grantee names: "as joint tenants"

(AFFIX SEAL)

By R. D. Blanchard  
R. D. Blanchard, Vice President

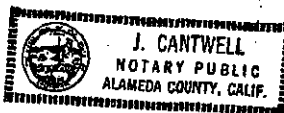
Attest R. C. McCall  
R. C. McCall, Assistant Secretary

STATE OF CALIFORNIA

County of Alameda

On February 27th, 1968, before me, the undersigned

a Notary Public, in and for said State, personally appeared  
R. D. Blanchard and R. C. McCall, known to me  
to be the Vice President and the Asst. Secretary of the corporation that executed the  
within instrument, and also known to me to be the persons who executed it on  
behalf of such corporation, and acknowledged to me that such corporation executed the within  
same, and further acknowledged to me that such corporation executed the within  
instrument pursuant to its by-laws or a resolution of its Board of Directors.



J. Cantwell  
Notary Public

" " EXHIBIT A 3 of 4

Grant to THE SALVATION ARMY, A California Corporation

the second party, all that real property situated in the City of Oakland County of Alameda, State of California, described

as follows:

Beginning at the point of intersection of the southern line of 7th Street, with the western line of Webster Street; running thence westerly along said line of 7th Street, 100 feet; thence at right angles southerly 100 feet; thence at right angles easterly 100 feet to the western line of Webster Street; and thence northerly along said last named line 100 feet to the point of beginning.

Being lots 14, 15, 16, 17 and 18 in Block "64" as said lots and block are shown on Kellersberger's Map of the City of Oakland, on file and of record in the office of the County Recorder of Alameda County.

In Witness Whereof, the said first parties have executed this conveyance this

12th day of August, 1946

Mellie Osburn
Margaret J Osburn



condition, order and repair to save for present and future all buildings and improvements situated thereon; to remove or demolish any buildings or other improvements situated thereon; to complete in a good and workmanlike manner any building or other improvement which may be commenced thereon, and to pay, when necessary, all claims for labor performed and for materials furnished therefor; to undertake and support, when necessary, any building or other improvement which may be commenced thereon, and otherwise to protect and preserve the same; not to commit or permit any waste or deterioration of said buildings and improvements or of said

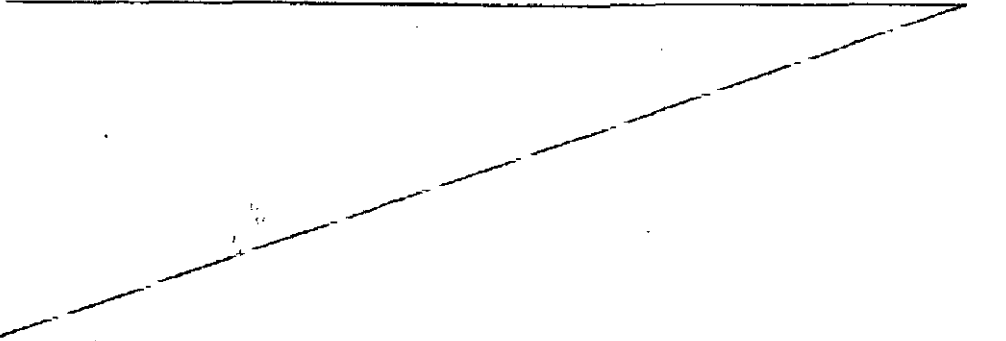
ARTICLE IV. THE TRUSTEES.

Section 1. The Trustee promises to properly care for and keep the property herein described in first class condition, order and repair to save for present and future all buildings and improvements situated thereon; to remove or demolish any buildings or other improvements situated thereon; to complete in a good and workmanlike manner any building or other improvement which may be commenced thereon, and to pay, when necessary, all claims for labor performed and for materials furnished therefor; to undertake and support, when necessary, any building or other improvement which may be commenced thereon, and otherwise to protect and preserve the same; not to commit or permit any waste or deterioration of said buildings and improvements or of said

DOLLARS (\$ 25,000.00)

An amount for the payment of (a) Fifty-two thousand nine hundred

TO HAVE AND TO HOLD the same unto the said Trustee and its successors, upon the trusts herein after expressed, namely:  
TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, which the Trustee now has or may hereafter acquire, of, in or to the said premises or any part thereof, with the appurtenances.



Block Lots numbered nineteen (19) to twenty-six (26) inclusive, in Block Numbered Twenty-five (25), as said lots and block are shown on the plat of the City of Oakland, on file in the office of the County Recorder of said Alameda County. Northern line of 6th Street and running thence Northwesterly along said line of Robert Street one hundred (100) feet; thence at a right angle Westerly one hundred seventy-five (175) feet to the point of beginning. Eastern line of 6th Street and running thence Northwesterly along said line of Robert Street one hundred (100) feet; thence at a right angle Southerly one hundred seventy-five (175) feet and to the point of beginning.

County of Alameda, State of California, to wit:

power of sale, the following described real property situate in the City of Oakland, California, to-wit:  
WITNESSETH: That said Trustee hereby grants, conveys and confirms unto said Trustee in trust with full power of sale, the following described real property situate in the City of Oakland, California, to-wit:  
AND SAVINGS ASSOCIATION, a corporation organized and existing under and by virtue of the laws of the State of California, as Trustee, and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a corporation organized and existing under and by virtue of the laws of the United States of America, as Beneficiary. (It is distinctly understood that the word "Trustee" and the word "Beneficiary" as herein used, are intended to and do include the masculine, feminine and neuter genders and the singular and plural numbers, as indicated by the context.)

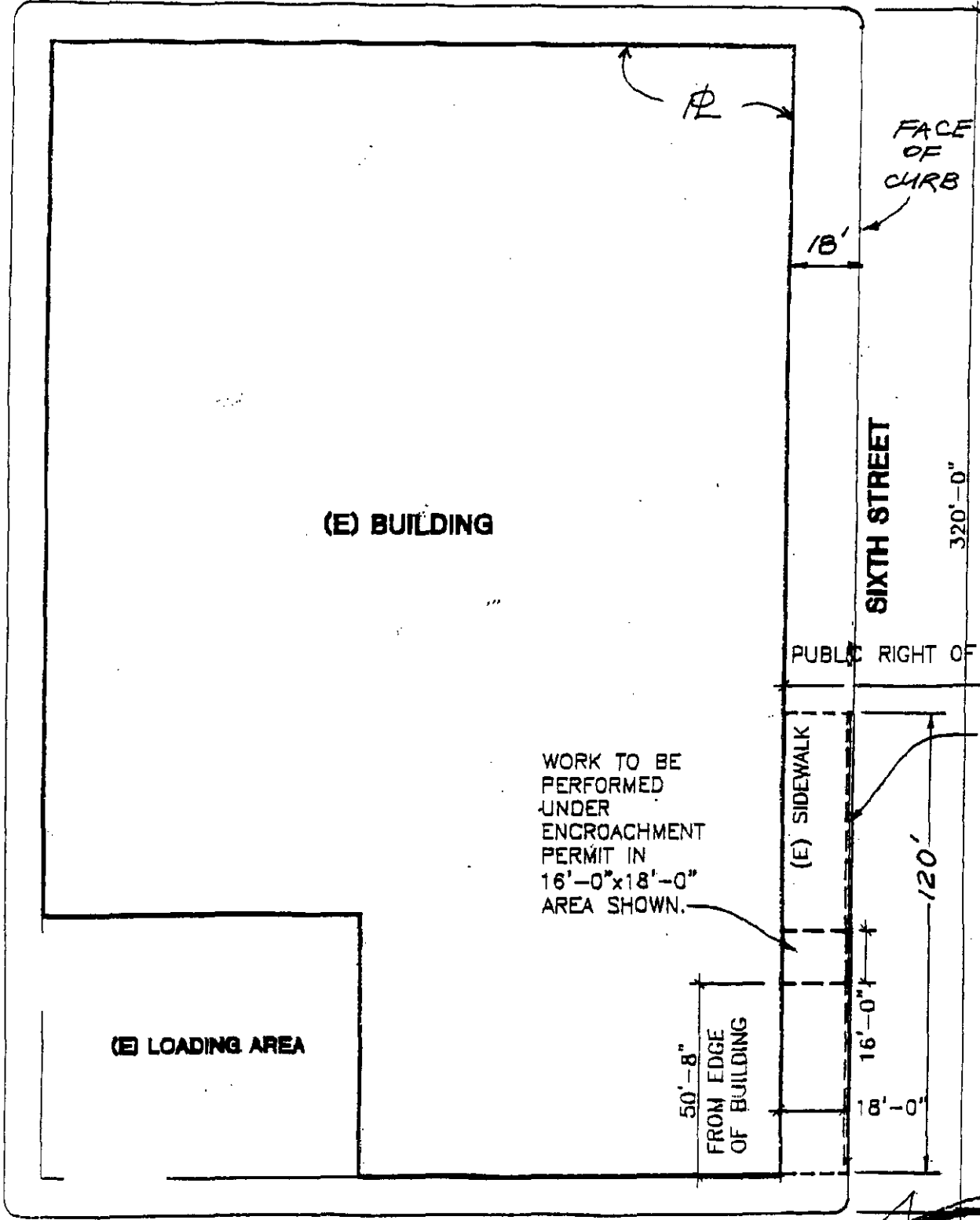
CALL ORTEGA,  
as Trustee, and CORPORATION OF AMERICA, a corporation duly organized and existing under and by virtue of the laws of the State of California, as Beneficiary, and by virtue of the laws of the United States of America, as Beneficiary.

A. D. 19 38, by and between THE SALVATION ARMY, also known as SALVATION ARMY, a corporation duly organized and existing under and by virtue of the laws of the State of California, as Beneficiary, and by virtue of the laws of the United States of America, as Beneficiary.

EXHIBIT A  
4 of 4

WEBSTER STREET

SEVENTH STREET



(E) BUILDING

(E) LOADING AREA

PUBLIC RIGHT OF WAY

WORK TO BE PERFORMED UNDER ENCROACHMENT PERMIT IN 16'-0" x 18'-0" AREA SHOWN.

(E) SIDEWALK

BASEMENT EXTENDS UNDER SIDEWALK. 18' x 120'

50'-8" FROM EDGE OF BUILDING

120'

16'-0"

18'-0"

320'-0"

SIXTH STREET

FRANKLIN STREET

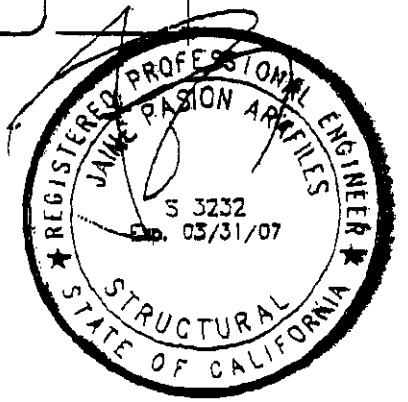
1 SK-2

LOCATION PLAN

SCALE: 1"=40'-0"

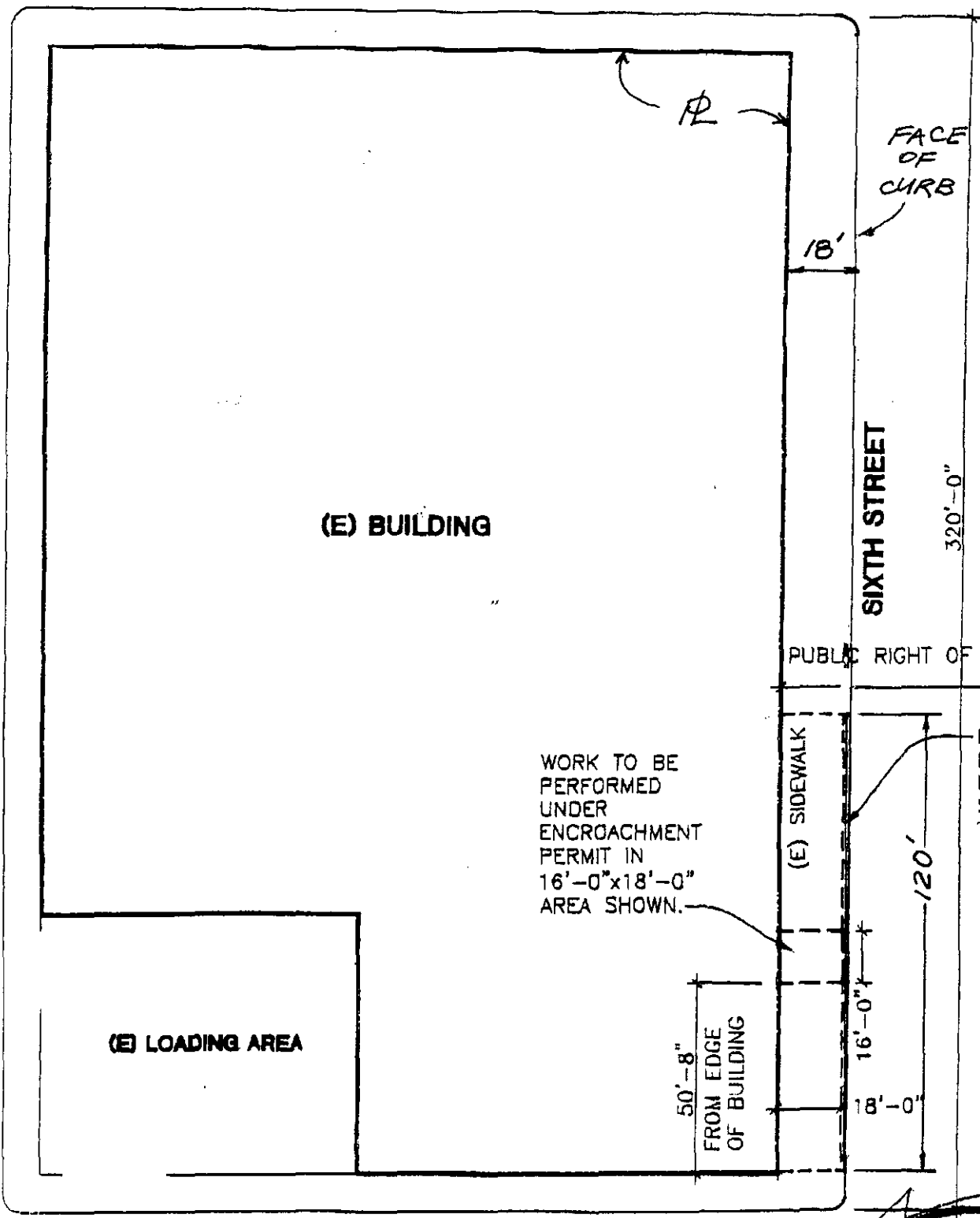


THIS PLAN LOCATES WORK TO BE PERFORMED UNDER ENCROACHMENT PERMIT BY SALVATION ARMY NORTH



WEBSTER STREET

SEVENTH STREET



(E) BUILDING

(E) LOADING AREA

PUBLIC RIGHT OF WAY

(E) SIDEWALK

WORK TO BE PERFORMED UNDER ENCROACHMENT PERMIT IN 16'-0" x 18'-0" AREA SHOWN.

(E) BASEMENT EXTENDS UNDER SIDEWALK. 18' x 120'

FRANKLIN STREET

1 SK-2

**LOCATION PLAN**

SCALE: 1"=40'-0"



THIS PLAN LOCATES WORK TO BE PERFORMED UNDER ENCROACHMENT PERMIT BY SALVATION ARMY

