

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 FEB 26 AM 10:00

TO: Office of the City Manager
ATTN: Deborah Edgerly, City Manager
FROM: Public works Committee
DATE: March 09, 2004

RE: 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 6TH STREET OFF FRANKLIN STREET.

SUMMARY

A resolution has been prepared granting The Salvation Army, owner of the property commonly known as 601 Webster Street, a conditional revocable permit to encroach into the public right-of-way area on 6th Street off Franklin Street. The encroachment consists of an existing structural sidewalk and basement in the public right-of-way. The subject encroachment does not interfere with the use of the public right-of-way.

FISCAL IMPACT

There is no fiscal impact to the City if City Council approves the resolution. All costs associated with the construction, liability and maintenance of the encroachment will be at the owner's expense.

BACKGROUND

The Salvation Army, owner of the property located at 601 Webster Street, is applying for a revocable encroachment permit in order to repair the existing structural sidewalk. The structural calculations for the Building Permit have been reviewed and approved. The aforesaid encroachment is shown in Exhibit "A" of the attached resolution. The conditional revocable permit will formally authorize the encroachment of existing structural sidewalk and basement into the public right-of-way on 6th Street.

SUSTAINABLE OPPORTUNITIES


The applicant will be required to adhere to Best Management Practices to minimize dust, noise and storm water contamination at all times.

Item 9
Public Works Committee
March 9, 2004

RECOMMENDATION AND RATIONALE

Since the encroachment will not interfere with the public's use of the roadway area, staff recommends approval of the resolution.

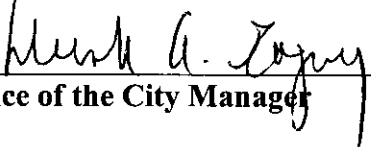
Respectfully submitted,



Claudia Cappio
Development Director

Prepared by:
Calvin N. Wong
Director of Building Services

APPROVED AND FORWARDED TO
THE PUBLIC WORKS COMMITTEE



Office of the City Manager

Daniel Sodergren

OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

FEB 25 AM 10:05

RESOLUTION No. _____ 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 6TH 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 6th 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 6th 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

9

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

PUBLIC WORKS CMTE.
MAR 9 2004

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, _____, 2004.

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

9

PUBLIC WORKS CMTE.

MAR 9 2004

RECORDING REQUESTED BY

AU 01035

RE: 851 IM:264

EXHIBIT "A"
1 of 4

RECORDED at REQUEST OF
Title Insurance & Trust Co.
RE: 230 P M.

APR 10 1963

PROPERTY DEPARTMENT

APR 24 1963

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

SAN FRANCISCO

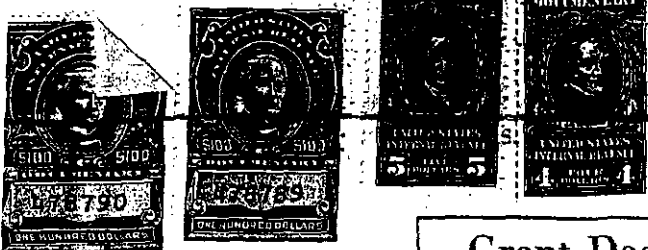
AND WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

Major McIntyre
The Salvation Army
101 Valencia Street
San Francisco, California

200

MOVE THIS LINE FOR RECORDER'S USE



Grant Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

TO 405 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. Dillon*
JAMES J. DILLON, Notary Public
Notary Commission Expires August 20, 1966
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

H.A. 615-McCall

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
MAR 13 1968
SAN FRANCISCO

200

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

THIS BOX FOR EXCLUSIVE USE OF COUNTY RECORDER

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.

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

(AFFIX SEAL)

EAST BAY TITLE CO.

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

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

STATE OF CALIFORNIA

County of Alameda, ss.
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 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

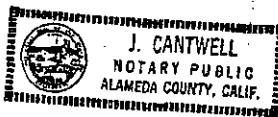


EXHIBIT A
3 of 4

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

Public Act of 1938, made this _____ day of _____, 1938.

EXHIBIT "A"
4 of 4

A. D. 1938, 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,

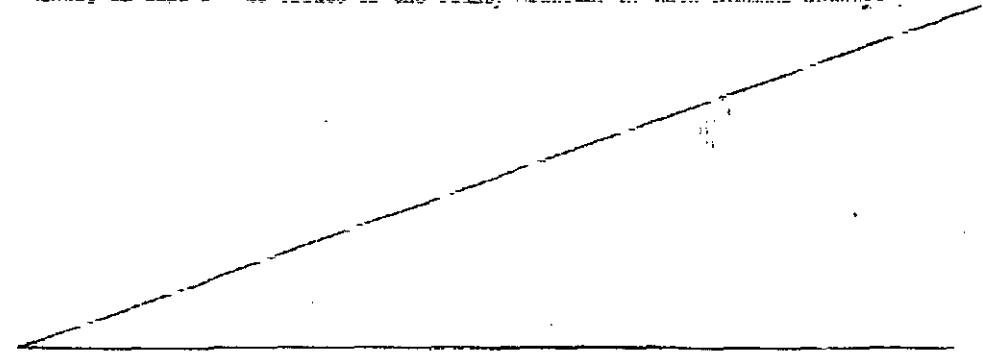
as Trustor, and CORPORATION OF AMERICA, a corporation duly organized and existing under and by virtue of the laws of the State of California, as Trustee, and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a corporation organized and existing under and by virtue of the laws of the United States of America, as Beneficiary. (It is distinctly understood that the word "Trustor" and the word "his" referring to the Trustor, 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.)

WITNESSETH: That said Trustor hereby grants, conveys and confirms unto said Trustee in trust with power of sale, the following described real property situate in the City of Oakland,

County of Alameda, State of California, to wit:

BEGINNING at the intersection of the Western line of Webster Street with the Northern line of 8th Street; and running thence Northeasterly along said line of Webster Street One hundred (100) feet; thence at a right angle Westerly One hundred seventy-five (175) feet; thence at a right angle Southerly One hundred (100) feet to the said Northern line of 8th Street; and thence Easterly along said line of 8th Street One hundred seventy-five (175) feet and to the point of beginning.

BEING Lots Numbered Nineteen (19) to Twenty-six (26) inclusive, in Block Numbered Sixty-four (64), as said lots and block are shown on Hollerberg's Map of Oakland, on file in the office of the County Recorder of said Alameda County.



TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of all the rights, title and interest, demands or other claim or demand, as well in law as in equity, which the Trustor now has or may hereafter acquire, of, in or to the said premises or any part thereof, with the appurtenances.

TO HAVE AND TO HOLD the same unto the said Trustee and its successors, upon the trusts hereinafter expressed, namely:

As security for the payment of (a) Sixty-two thousand nine hundred DOLLARS (\$ 62,900.00)

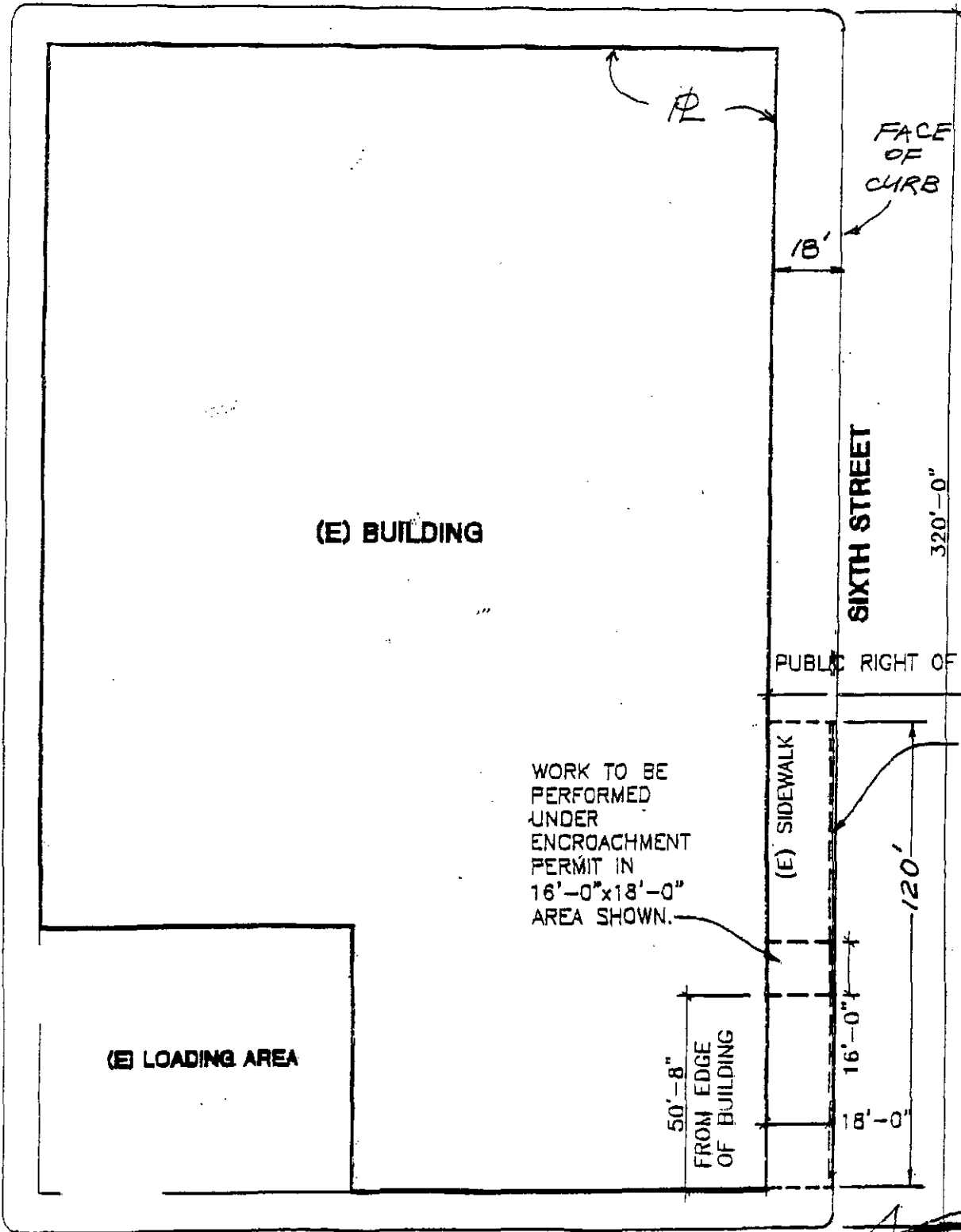
of lawful money of the United States of America, with interest thereon in like lawful money according to the terms of the promissory note or notes for said sum executed and delivered by the Trustor to the Beneficiary; (b) such additional amounts as may be hereafter loaned by the Beneficiary or its successor to the Trustor or any of them, or any proceeds in interest of the Trustor, with interest thereon, and any other indebtedness or obligation of the Trustor or any of them, and any present or future demands of any kind or nature which the Beneficiary, or its successor, may have against the Trustor or any of them, whether created directly or acquired by assignment; whether absolute or contingent; whether due or not, or whether collectible or not, or whether existing at the time of the execution of this instrument, or arising thereafter; also as security for the payment and performance of every obligation, covenant, promise or agreement herein or in said note or notes contained.

AND THE INDENTURED FURTHER WITNESSETH:

FIRST: The Trustor promises to properly care for and keep the property herein described in first class condition, order and repair; to care for, protect and repair all buildings and improvements situate thereon; not to remove or demolish any buildings or other improvements situate thereon; to complete in a good and workmanlike manner any building or other improvement which may be constructed thereon, and to pay, when due, all claims for labor performed and for materials furnished therefor; to underpin and support, when necessary, any building or other improvement situate thereon, and otherwise to protect and preserve the same; to comply with all laws, ordinances and regulations with reference to any alterations or improvements made thereon; not to commit or permit any waste or deterioration of said buildings and improvements or of said

WEBSTER STREET

SEVENTH STREET



(E) BUILDING

(E) LOADING AREA

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

PUBLIC RIGHT OF WAY

(E) SIDEWALK

BASEMENT EXTENDS UNDER SIDEWALK.

18' x 120'

50'-8" FROM EDGE OF BUILDING

120'

16'-0"

18'-0"

FRANKLIN STREET

1 SK-2

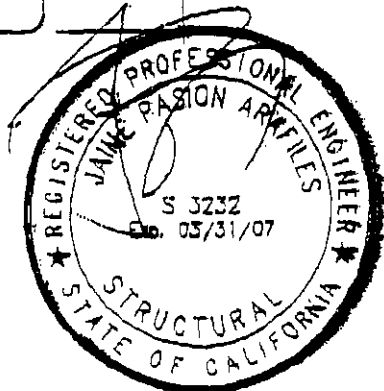
LOCATION PLAN

SCALE: 1"=40'-0"

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

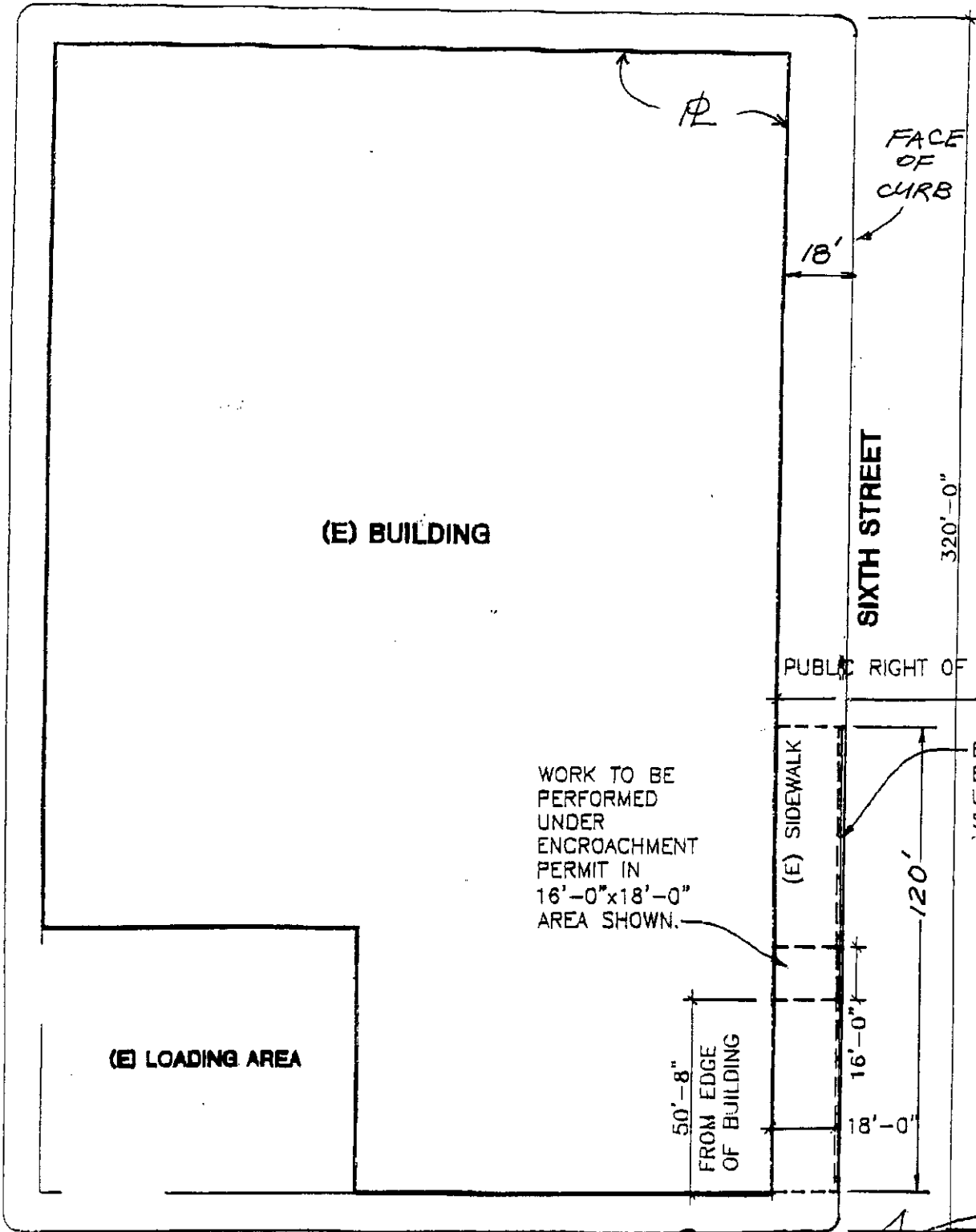


NORTH



WEBSTER STREET

SEVENTH STREET



FRANKLIN STREET

PUBLIC WORKS CMTE.
MAR 9 2004

1
SK-2

LOCATION PLAN

SCALE: 1"=40'-0"



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

NORTH

