

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE MAJOR ENCROACHMENT PERMIT TO STEVEN H. BANKER AND JENNIFER J. BANKER, AND GARY BETTENCOURT AND MARI BETTENCOURT, AS TRUSTEES OF THE GARY AND MARI BETTENCOURT 2014 TRUST, TO ALLOW A NEW UPWARD SWINGING DOUBLE LEAF BASEMENT ACCESS DOOR AND A PORTION OF AN EXISTING BASEMENT BELOW GRADE TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ON FRANKLIN STREET, MAJOR ENCROACHMENT PERMIT ENMJ20055; AND MAKING CALIFORNIA ENVIRONMENTAL ACT FINDINGS (CEQA).

WHEREAS, Steven H. Banker and Jennifer J Banker, and Gary Bettencourt and Mari Bettencourt, as Trustees of The Gary and Mari Bettencourt 2014, (“Permittee”), is the owner of the real property known as 394 17th Street and described in a Grant Deeds Recorded August 22, 2017, by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as APN: 008-0624-010 and commonly known as 394 17th Street hereto and incorporated herein (the “Property”); and

WHEREAS, Permittee owns the existing two story building on the Property with existing habitable space encroaching into the right-of-way; and

WHEREAS, Permittee desires to replace the malfunctioning upward swinging double leaf basement access door leading to the existing basement and has obtained approval for design review for such renovations (PLN XXXX); and

WHEREAS, The City of Oakland Department of Planning and Building issuance of design review for building renovations is subject to a condition of approval that Permittee obtain a conditional and revocable major encroachment permit for the Encroachment shown on *Exhibit A*; and

WHEREAS, Permittee has filed an application with Department of Transportation for such conditional and revocable Major Encroachment Permit (ENMJ20055) (hereinafter referred to as the “Permit”); and

WHEREAS, staff has determined, in accordance with the Oakland Municipal Code Chapter 12.08 and based on review of the plans and investigation of the Property and the area of the proposed Encroachments, that the Encroachments in the public right-of-way and their location will not, currently understood, interfere with the public use of the roadway, sidewalk, buried utilities, and will not endanger the public welfare and convenience during said public use; and

WHEREAS, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301 (Existing Facilities); now, therefore, be it

RESOLVED: That the City Council has reviewed all relevant documents relating to its grant of this Permit; and be it

FURTHER RESOLVED: That the City Council finds and determines that the decision made hereby is made in conformance with the requirements of CEQA; and be it

FURTHER RESOLVED: That the City Council hereby grants to the Permittee a conditional revocable Permit to allow the Encroachments, which Permit shall take effect only upon the City and Permittee entering into an Indenture Agreement in the form substantially attached hereto as *Exhibit B* (the “Indenture Agreement”), the conditions therein being incorporated into the Permit; and be it

FURTHER RESOLVED: That the City Council, at its sole discretion and at a future date not yet determined, may impose additional and continuing fees for use and occupancy of the public right-of-way; and be it

FURTHER RESOLVED: That the Permit authorized by this Resolution shall take effect when all the conditions and obligations set forth in the Indenture Agreement shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions and obligations set forth in the Indenture Agreement, subject to the notice and cure provisions set forth therein, or upon a termination by resolution of the City Council as being in the City’s best interest; and be it

FURTHER RESOLVED: That the City Engineer is hereby directed to file a certified copy of this Resolution for recordation with the Office of the Alameda County Clerk-Recorder as an encumbrance of the title of the property identified above.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT
FORTUNATO BAS

NOES –

ABSENT –

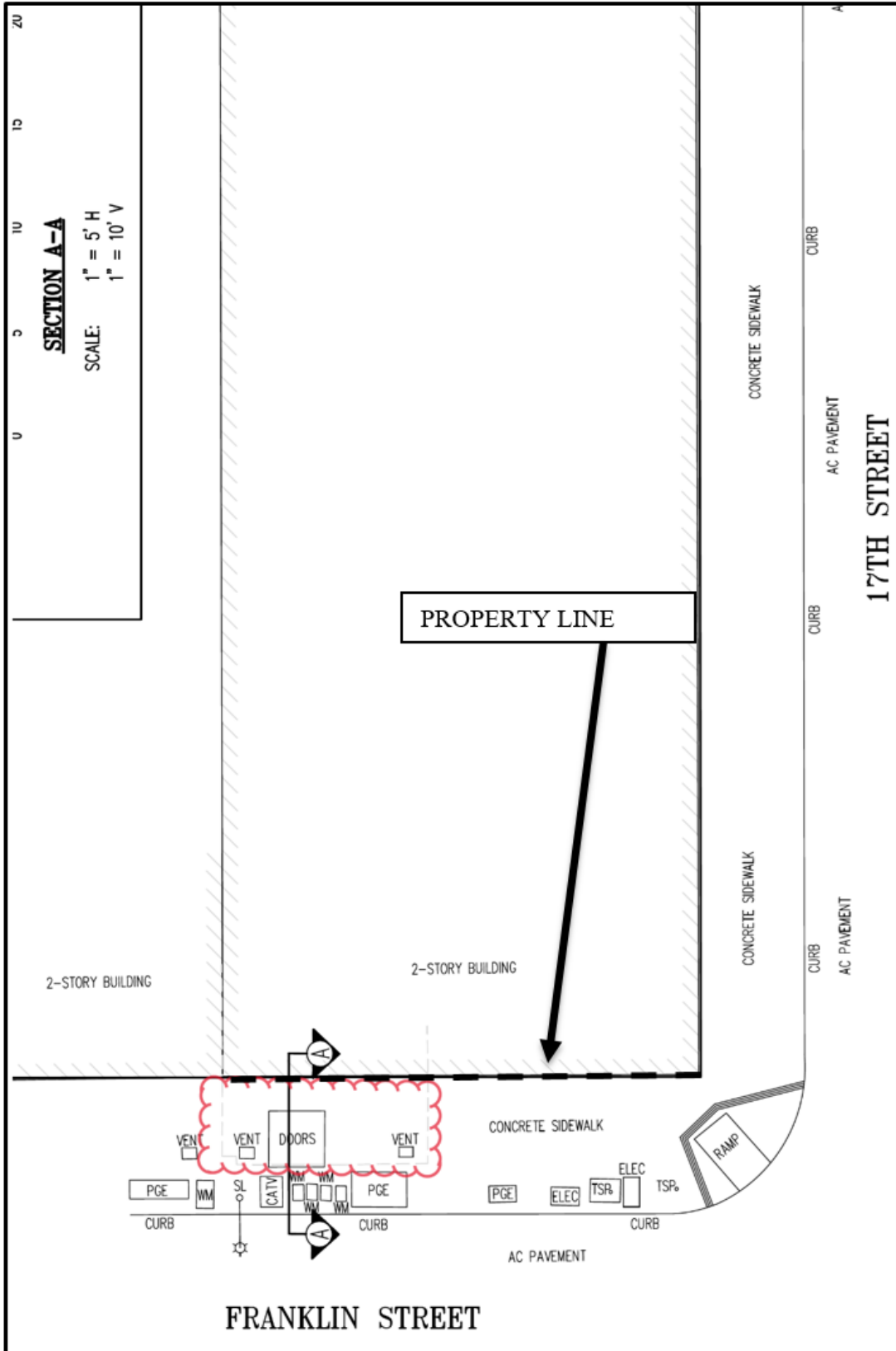
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Exhibit A: 394 17th Street Encroachments (2 pages)

Exhibit B: Indenture Agreement (11 pages)

EXHIBIT A: 394 17TH STREET ENCROACHMENTS



Portions of existing building encroaching approximately 165 square feet into the Public Right-of-Way.

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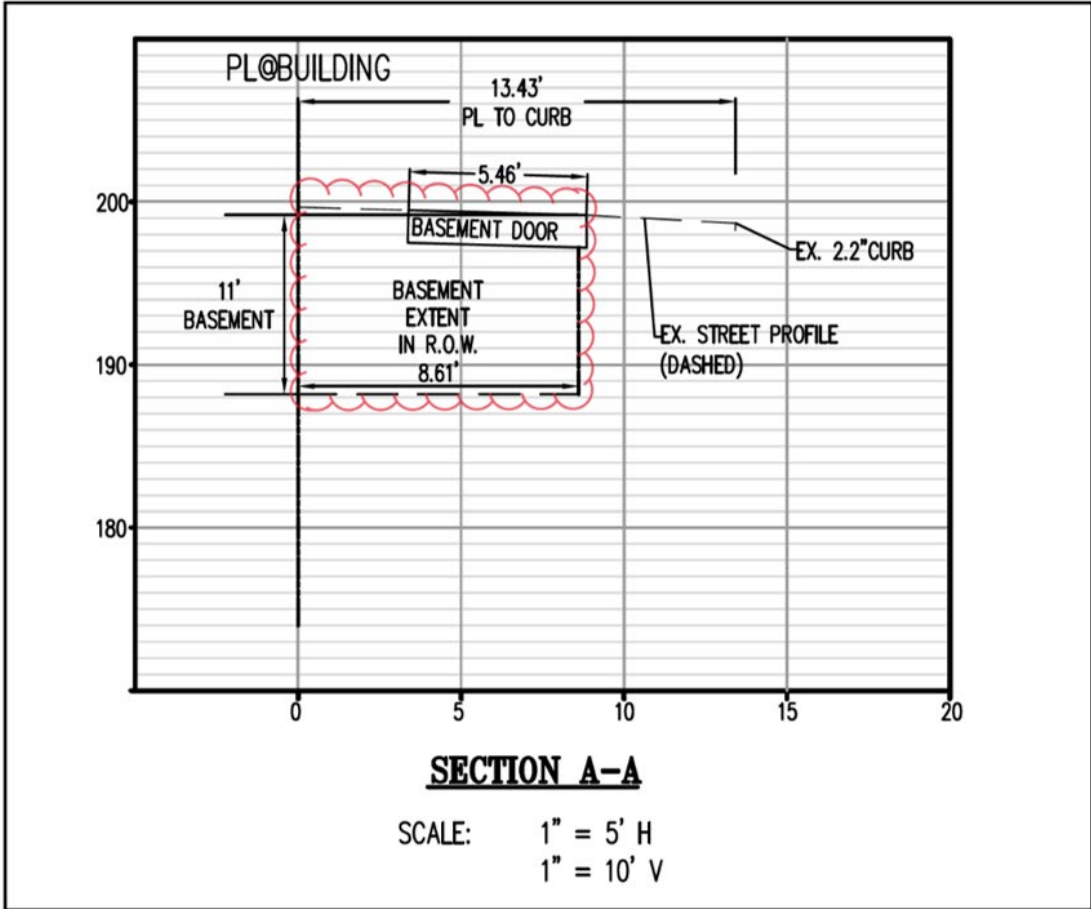


EXHIBIT B: INDENTURE AGREEMENT

(Attached Separately)