

OAKLAND CITY COUNCIL

RESOLUTION NO. 76245 C.M.S.

INTRODUCED BY COUNCILMEMBER _____



A RESOLUTION GRANTING NEW MARKET LOFTS LLC, A CONDITIONAL REVOCABLE PERMIT FOR THE ENCROACHMENT OF PROPOSED PLANTER BOXES, HANDICAP RAMPS AND CONCRETE STAIRS WITHIN THE PUBLIC SIDEWALK AREAS OF FOURTH AND JACKSON STREETS

WHEREAS, New Market Lofts LLC ("**Permittee**"), owners of that certain property described in the **Deed**, recorded September 20, 2000, Series No. 2000-283206, at the Office of the County Recorder, Alameda County, California, commonly known as 201 Fourth Street, have made application for a conditional revocable permit to the Council of the City of Oakland for the encroachment of proposed planter boxes, handicap ramps and concrete stairs; and

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

WHEREAS, said encroachments will not interfere with the public use of Fourth and Jackson 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 have been satisfied and an Environmental Impact Report was prepared and previously certified by the City Planning Commission on XXXXX; now therefore,

BE IT RESOLVED: That this resolution complies with the CEQA, and the City Council relies upon the previously certified Environmental Impact Report in approving this resolution; and be it

FURTHER RESOLVED: That the Permittee is hereby granted a conditional revocable permit for the encroachment of proposed planter **boxes**, handicap ramps and concrete stairs **within** the public right-of-way areas of Fourth and Jackson Streets; 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.
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 encroachments 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 **cancelled** 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 Permit **tee'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 acknowledge that the City makes no representations or warranties **as** to the conditions beneath said encroachment. By accepting **this** revocable permit, Permittee agree that it will **use** the encroachment area at its own **risk**, **are** responsible for the proper coordination of its activities with **all** other Permittee, 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. That the Permittee acknowledge that the City is unaware of the existence of any hazardous substances beneath the encroachment area, and hereby waive and fully **release** and forever discharge 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, **fin**es, 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 was not caused by the Permittee, its agents, employees, tenants or service providers.

13. Permittee further acknowledge 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."
14. Permittee recognize 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 their decision to execute this encroachment agreement, regardless of whether Permittee' 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, agree and promise 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' 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, JAN 23 2001, 19


PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, ~~MILLER~~, NADEL, REID, RUSSO. SPEES AND
PRESIDENT DE LA FUENTE **7**

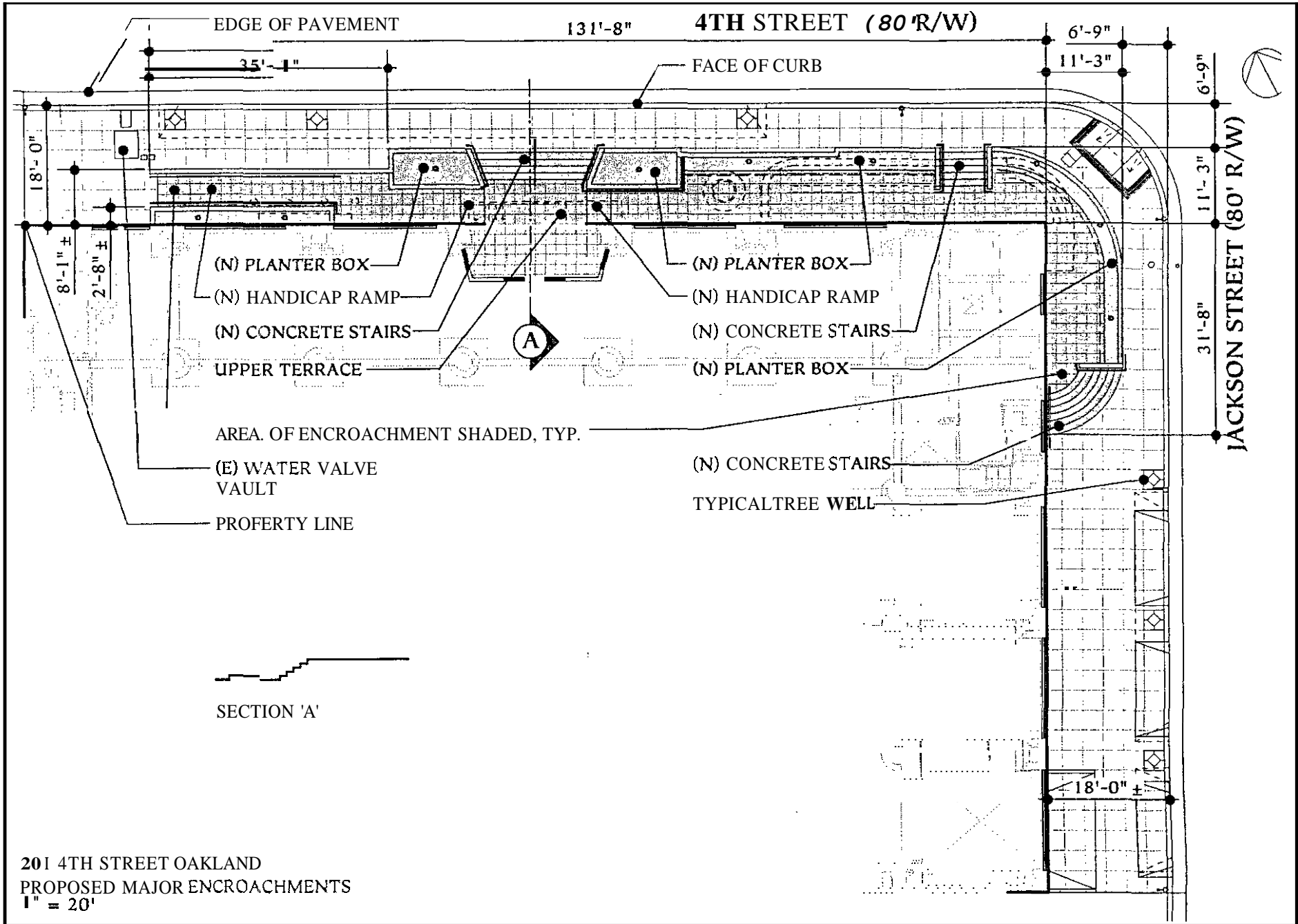
NOES- *None*

ABSENT- *None*

ABSTENTION- *None*

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

ENCROACHMENT PLAN



201 4TH STREET OAKLAND
PROPOSED MAJOR ENCROACHMENTS
1" = 20'

RECORDING REQUESTED BY
First American Title Guaranty Company

Escrow No. 159303

WHEN RECORDED MAIL TO:

Law Offices of Dana Parry
1200 Concord Avenue
Suite 200
Concord, CA 94520

First American Title Guaranty Company hereby certifies that the within instrument is a true and correct copy of the original instrument recorded in the office of the recorder of the County of Alameda, State of California,

on January 26 2001

Recorder's Serial No. 030007

FIRST AMERICAN TITLE GUARANTY COMPANY.

By [Signature]

SPACE ABOVE THIS LINE FOR RECORDERS USE

OAKLAND CITY COUNCIL RESOLUTION NO. 76245
TITLE OF DOCUMENT

FILED
OFFICE OF THE RECORDER
2001 FEB - 2 AM 9:56
CLERK

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(GOVT. CODE 27361.6)
(Additional recording fee applies)

OAKLAND CITY COUNCIL

RESOLUTION NO. 76245 C. M. S.

INTRODUCED BY COUNCILMEMBER _____

**A RESOLUTION GRANTING NEW MARKET LOFTS LLC, A
CONDITIONAL REVOCABLE PERMIT FOR THE
ENCROACHMENT OF PROPOSED PLANTER BOXES,
HANDICAP RAMPS AND CONCRETE STAIRS WITHIN THE
PUBLIC SIDEWALK AREAS OF FOURTH AND JACKSON
STREETS**

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

WHEREAS, said encroachments will not interfere with the public use of Fourth and Jackson 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 have been satisfied and an Environmental Impact Report was prepared and previously certified by the ~~City~~ **City** Planning Commission on ~~XXXXX~~; now **therefore**,

BE IT RESOLVED: That this resolution complies with the CEQA, and the ~~City~~ **City** Council ~~relies~~ upon the previously certified Environmental Impact Report in approving ~~this~~ resolution; and be it

FURTHER RESOLVED: That the Permittee ~~is~~ hereby granted a conditional revocable permit for the encroachment of proposed planter boxes, handicap ~~ramps and concrete~~ **ramps and concrete** stairs within the public right-of-way areas of Fourth and Jackson ~~Streets~~; 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~~.
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 encroachments 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.
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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**.
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12. That the Permittee acknowledge that the City is unaware of the existence of any hazardous substances beneath the encroachment **area**, **and** hereby waive and fully release and forever discharge 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, **fin**es, 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 Sea.), 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

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13. Permittee further acknowledge 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 **MSJST** HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."
14. Permittee recognize 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 their decision to execute ~~this~~ encroachment agreement, regardless of whether Permittee' 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, agree and promise 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, **finer**, 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' 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.

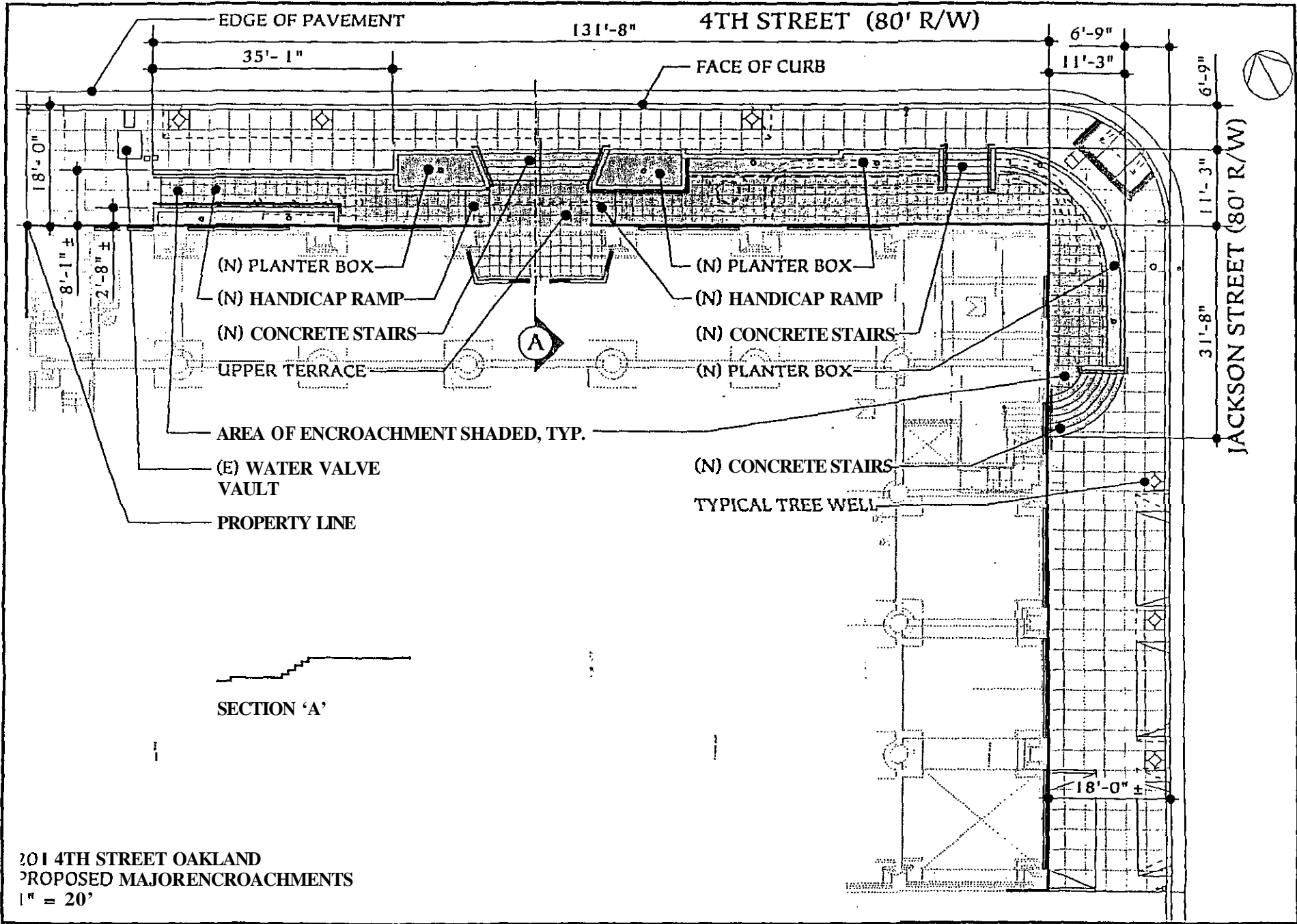
FURTHER RESOLVED: The City Clerk is hereby directed to have a **certified** copy of **this** resolution recorded at the Office of the Alameda County Recorder.

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution passed by the City Council of the City of Oakland on January 23, 2001.

CEDA FLOYD

City Clerk and Clerk of the Council

Per *Onetta Middleton* Deputy



EDGE OF PAVEMENT

131'-8" 4TH STREET (80' R/W)

35'-1"

FACE OF CURB

6'-9"

11'-3"

6'-9"

18'-0"

8'-1" ±

2'-8" ±

(N) PLANTER BOX

(N) HANDICAP RAMP

(N) CONCRETE STAIRS

UPPER TERRACE

AREA OF ENCROACHMENT SHADED, TYP.

(E) WATER VALVE VAULT

PROPERTY LINE

(N) PLANTER BOX

(N) HANDICAP RAMP

(N) CONCRETE STAIRS

(N) PLANTER BOX

(N) CONCRETE STAIRS

TYPICAL TREE WELL

JACKSON STREET (80' R/W)

31'-8"

SECTION 'A'

18'-0" ±

201 4TH STREET OAKLAND
 PROPOSED MAJOR ENCROACHMENTS
 1" = 20'