

**CITY OF OAKLAND**  
**Agenda Report**

OFFICE OF THE CITY ADMINISTRATOR  
2006 OCT 12 PM 2:11

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: October 24, 2006

RE: **A Report And Resolutions Granting Rotunda Garage LP Revocable And Conditional Permits For A Proposed Building At 1630 San Pablo Avenue To Allow:**

- **A Vault And An Electrical Transformer To Encroach Under The Public Sidewalk Along San Pablo Avenue, And To Allow**
- **Upper Floors To Encroach Over The Public Sidewalk Along 17th Street and San Pablo Avenue**

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**SUMMARY**

Two resolutions have been prepared granting Rotunda Garage LP, a California limited partnership (no. 200418100034), and owner of the vacant corner lot at 1630 San Pablo Avenue, separate conditional and revocable permits that will allow:

- a below-ground concrete vault with an electrical transformer to be installed under the public sidewalk along San Pablo Avenue, and allow
- the upper floors of a proposed eight (8) story retail and office building to project four (4) feet over the public sidewalk along 17th Street and San Pablo Avenue and increase the available commercial office space by approximately twenty-five percent (25%).

**FISCAL IMPACT**

Staff costs for processing the proposed encroachments permit will be covered by fees set by the Master Fee Schedule and paid by the developer and will be deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured.

**BACKGROUND**

The 3,800 square feet parcel (APN 008-0620-014-03) is located at the intersection of 17th Street and San Pablo Avenue and adjoins the new Rotunda Parking Garage. The site is being developed for commercial use. The proposed eight (8) story building will have 2,650 square feet of ground-floor retail space (all of the ground-floor will be within the parcel boundaries) and 22,400 square feet of upper-floor office space (one-quarter of the upper floors will project over the public sidewalk). The developer has not yet submitted a Planning permit application for review and approval. Construction of the proposed building will necessitate interior retrofitting of the abutting parking garage (new ventilation system, new stairwell enclosure, etc.).

Oakland Municipal Code Section 12.08.030 requires that the City Council approve certain encroachments that project over the sidewalk (enclosed floor space, balcony projection more than four feet, awning projection more than seven feet, etc.) and all encroachments that intrude beneath the sidewalk (basements, vaults, earth retaining structures, etc.).

## **KEY ISSUES AND IMPACTS**

### ▪ Below-sidewalk encroachment

The underground vault on San Pablo Avenue will be approximately ten feet wide by ten feet long and will encroach approximately ten feet beyond the property line. The electrical transformer, which will be maintained by Pacific Gas and Electric, will be accessed through removable covers set flush with the pedestrian walking surface. The below-ground encroachment will not interfere with the public's use of the right-of-way nor with the maintenance of underground public utilities. The City Council has previously approved similar underground encroachments for other buildings in the downtown area.

### ▪ Above-sidewalk encroachment

The interior office space for the second through eighth stories will project four (4) feet over the public sidewalk for the full length of the building facade along 17th Street and San Pablo Avenue (approximately 170 lineal feet). The underside of the second story projection will have a clearance of fifteen (15) feet above the sidewalk (twelve feet minimum required by the Oakland Building Code). The projection will increase the available leased floor area of each of the upper floors by approximately twenty-five percent. Projections for other buildings that the City Council has previously approved have been for a very minor percentage of the total floor area.

The sidewalks are (10) ten feet wide along 17th Street and fourteen (14) feet wide along San Pablo Avenue. The clearance between the projecting overhead façade and the curb will be six (6) feet along 17th Street (60% of the sidewalk width) and ten (10) feet along San Pablo Avenue (70% of the sidewalk width). The above-sidewalk encroachment will not interfere with the public's use of the right-of-way.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

The new project will provide opportunities for professional services and construction related jobs for the Oakland community. 25,000 square feet of commercial space would be added to the downtown tax base.

### **Environmental**

Land use approvals and construction permits for real property improvements and new buildings require that the permittee comply with City ordinances and regional Best Management Practices

for reducing nuisance noise, fugitive dust, construction debris disposal, and storm drainage pollutant runoff.

### **Social Equity**

The retail and office project will assist the economic revitalization of the uptown commercial district.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

Construction permits for new buildings will conform with State and City requirements for handicapped accessibility.

### **RECOMMENDATIONS**

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the two resolutions approving separate permits for the public right-of-way encroachments.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept this report and adopt the two proposed resolutions approving separate conditional and revocable encroachment permits (ENMJ 06262) for Rotunda Garage LP to allow

- a below-ground electrical transformer vault to encroach approximately ten (10) feet under the public sidewalk along San Pablo Avenue, and allow
- upper stories for commercial office space to encroach four (4) feet over the public sidewalk along 17th Street and San Pablo Avenue.

Respectfully submitted,



\_\_\_\_\_  
**CLAUDIA CAPPIO**  
Development Director  
Community and Economic Development Agency

Prepared by:

Raymond M. Derania  
Interim City Engineer  
Building Services Division

APPROVED FOR FORWARDING TO  
THE PUBLIC WORKS COMMITTEE

  
\_\_\_\_\_  
OFFICE OF THE CITY ADMINISTRATOR

OFFICE OF THE CITY CLERK  
Introduced by

Approved for Form and Legality

2006 OCT 12 PM 2:12

*F. Faiz*

Councilmember

City Attorney

### OAKLAND CITY COUNCIL

**RESOLUTION No. \_\_\_\_\_ C.M.S.**

**RESOLUTION GRANTING ROTUNDA GARAGE LP A REVOCABLE AND  
CONDITIONAL PERMIT TO ALLOW A VAULT AND AN ELECTRICAL  
TRANSFORMER FOR A PROPOSED BUILDING AT 1630 SAN PABLO AVENUE  
TO ENCROACH UNDER THE PUBLIC SIDEWALK ALONG SAN PABLO AVENUE**

**WHEREAS**, Rotunda Garage LP ("Permittee"), a California limited liability company (no. 200418100034) and owner of the property described in a Grant Deed, recorded October 5, 2001, Series No. 2001381062, by the Alameda County Recorder, and identified by the Alameda County Assessor as APN 008-0620-014-03, and identified by the City of Oakland as 1630 San Pablo Avenue, and more particularly described in Exhibit A attached hereto, has made an application to the Council of the City of Oakland for a conditional and revocable permit to allow the installation and encroachment of a concrete vault with an electrical transformer under the public sidewalk along San Pablo Avenue; and

**WHEREAS**, the transformer is necessary to provide electrical power for the proposed building and will be maintained by the Pacific Gas and Electric Company (PG&E); and

**WHEREAS**, the location of the encroachment has been approved by PG&E; and

**WHEREAS**, the limits of the encroachment are delineated in Exhibits B and C attached hereto; and

**WHEREAS**, the encroachment and its location beyond the property boundaries and construction beneath the public right-of-way will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), 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 in April, 2001, the Planning Commission certified the EIR, and adopted CEQA Findings in connection with the approval of this project; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the encroachment permit as conditioned herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the

project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance” as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

**RESOLVED:** That the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

**FURTHER RESOLVED:** That the encroachment, as conditioned herein and delineated in Exhibits B and C, is hereby granted for a revocable permit to allow the installation of an underground concrete vault with an electrical transformer under the public sidewalk along San Pablo Avenue for a proposed building at 1630 San Pablo Avenue; and be it

**FURTHER RESOLVED:** That the encroachment permit is hereby conditioned by the following special requirements:

1. 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; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insureds the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers 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 City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five years; and
5. the Permittee, by the acceptance of this conditional permit, agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, assigns, successors, and volunteers from any and all claims, demands, lawsuits and judgments for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for

negligence. This indemnification shall survive termination of this Permit; and

6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and

7. the Permittee, by the acceptance of this conditional permit, shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the 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 solely liable for the expenses connected therewith; and

8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and

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; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and

10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits B and C; and

11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the 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 its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers 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.); and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has 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" ; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its 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; and

15. 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 City Engineer 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; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Office of the Alameda County Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA,** \_\_\_\_\_, 2006.

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**Exhibit A**

Lands of Rotunda Garage LP

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING A PORTION OF LOTS 28, 30, 31 AND 32 BLOCK "B", AS SAID LOTS AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE SURVEY MADE FOR G. C. POTTER, MARCH 28, 1877 BY T. ARNOLD C.E.", FILE APRIL 23, 1877 IN BOOK 2 OF MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, SAID REAL PROPERTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

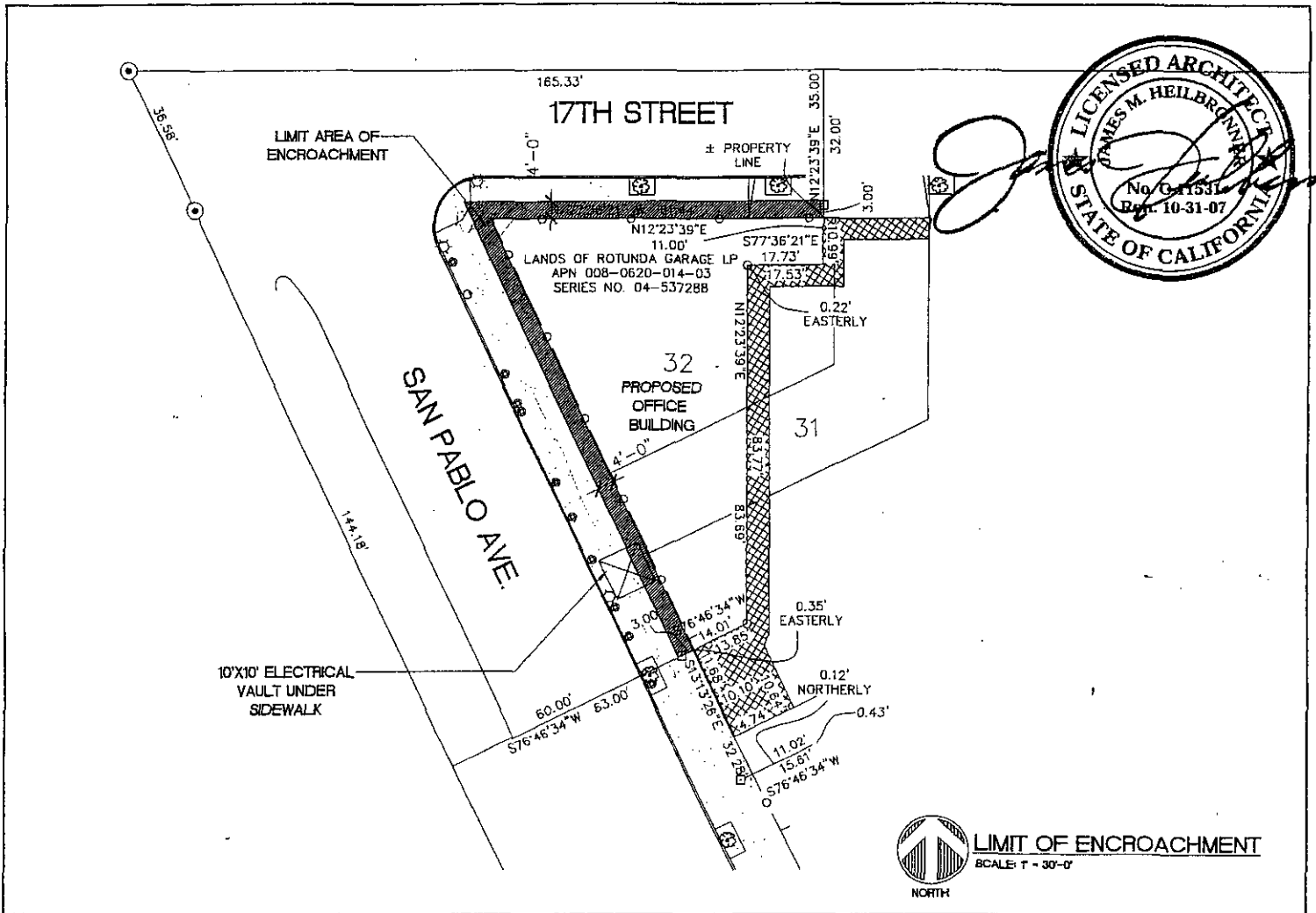
BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF 17<sup>TH</sup> STREET (60 FEET WIDE) AND THE EAST RIGHT OF WAY LINE OF SAN PABLO AVENUE (100 FEET WIDE) AS SHOWN ON SAID MAP; THENCE, SOUTH 77°36'21"EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF 17<sup>TH</sup> STREET 78.68 FEET; THENCE LEAVING SAID LINE, PERPENDICULAR TO SAID SOUTH RIGHT OF WAY LINE, SOUTH 12°23'39"WEST, 11.00' FEET; THENCE NORTH 77 °36'21" WEST, 17.73 FEET; THENCE , SOUTH 12°23'36" WEST, 83.69' TO A LINE DRAWN PERPENDICULAR TO SAID EAST LINE OF SAN PABLO AVENUE, DISTANT THEREON, SOUTH 12°23'39" EAST, 111.73 FEET ALONG THE SAID EAST LINE OF SAN PABLO AVENUE FROM THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE, SOUTH 76°46'34"WEST, 14.01 FEET, TO SAID EAST RIGHT OF WAY LINE OF SAN PABLO AVENUE; THENCE, NORTH 13°13'26" WEST, 111.73 FEET ALONG SAID EAST RIGHT OF WAY LINE, TO THE POINT OF BEGINNING

CONTAINING 3,863 SQUARE FEET/0.09 ACRES MORE OR LESS



Exhibit B

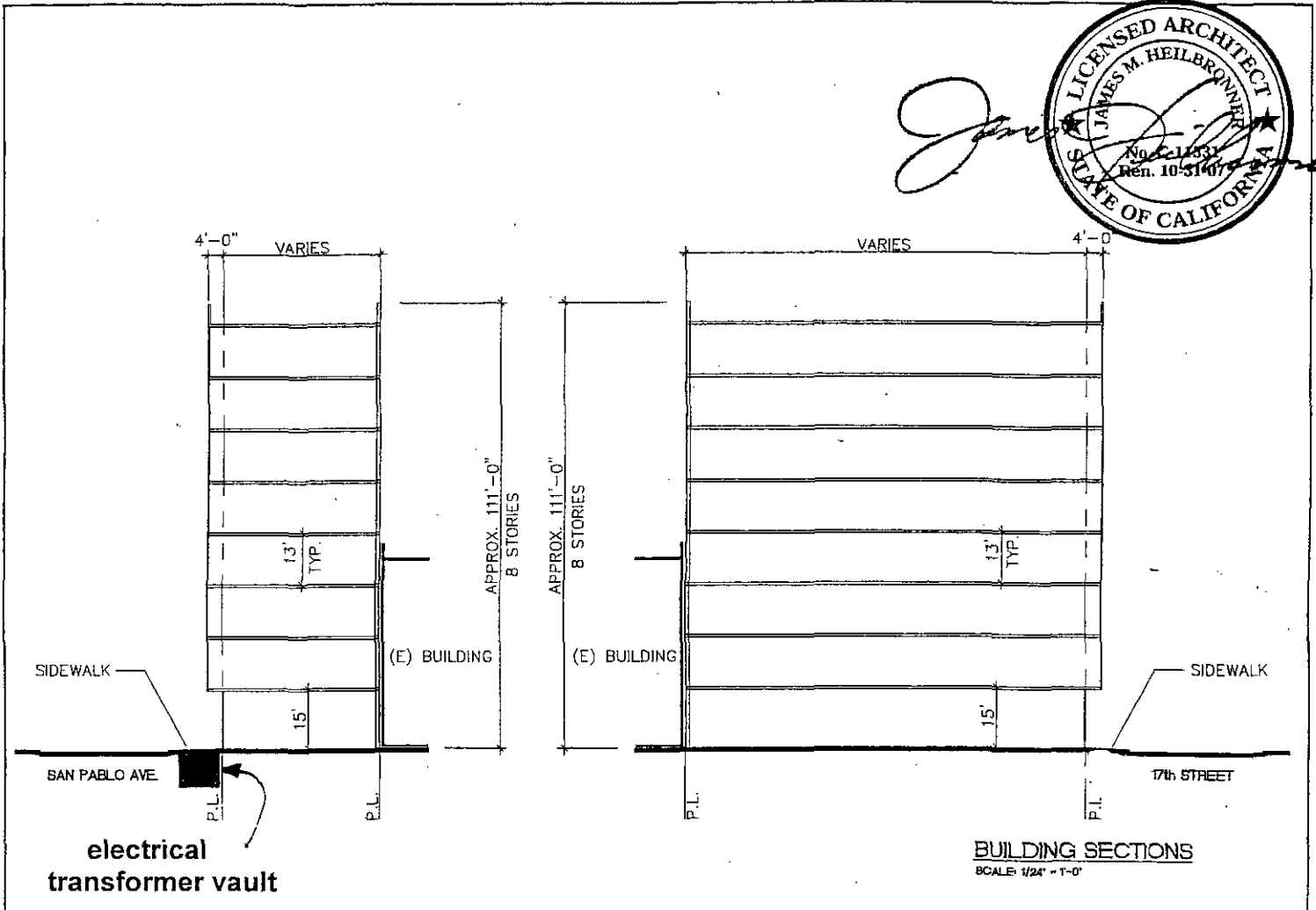
Plan view



<b>ARCHITECTURAL DIMENSIONS</b>	1600 S. Main Street, Suite 275 Walnut Creek, CA 94596-5341 TEL. 925.932.8651 - FAX. 925.746.8744	PROJECT INFO.  <b>ACCESS OFFICE BUILDING</b> 1630 SAN PABLO OAKLAND, CA 94612	JOB NO. <b>FS002</b>	DRAWING NO. <b>X-8</b>
			DATE <b>08/15/06</b>	

Exhibit C

Elevation View



**BUILDING SECTIONS**  
SCALE: 1/24" = 1'-0"

<b>ARCHITECTURAL DIMENSIONS</b>	1600 S. Main Street, Suite 275 Walnut Creek, CA 94596-5341 TEL. 925.932.8651 • FAX. 925.746.8744	PROJECT INFO.  <b>ACCESS OFFICE BUILDING</b> 1630 SAN PABLO OAKLAND, CA 94612	JOB NO.	DRAWING NO.
			<b>F5002</b>	<b>X-7</b>
			DATE:	
			<b>6/15/06</b>	

OFFICE OF THE CITY CLERK  
Introduced by

Approved for Form and Legality

2005 OCT 12 PM 2:12

Councilmember

*F. FAIZ*

City Attorney

## OAKLAND CITY COUNCIL

**RESOLUTION No. \_\_\_\_\_ C.M.S.**

**RESOLUTION GRANTING ROTUNDA GARAGE LP A REVOCABLE AND  
CONDITIONAL PERMIT TO ALLOW A PORTION OF THE UPPER FLOORS OF A  
PROPOSED BUILDING AT 1630 SAN PABLO AVENUE TO ENCROACH OVER THE  
PUBLIC SIDEWALK ALONG 17th STREET AND SAN PABLO AVENUE**

**WHEREAS**, Rotunda Garage LP ("Permittee"), a California limited liability company (no. 200418100034) and owner of the property described in a Grant Deed, recorded October 5, 2001, Series No. 2001381062, by the Alameda County Recorder, and identified by the Alameda County Assessor as APN 008-0620-014-03, and identified by the City of Oakland as 1630 San Pablo Avenue, and more particularly described in Exhibit A attached hereto, has made an application to the Council of the City of Oakland for a conditional and revocable permit to allow the construction of a cantilevered portion of the upper floors (second through eight stories) of a proposed new building to encroach over the public sidewalk along 17th Street and San Pablo Avenue; and

**WHEREAS**, the limits of the encroachment are delineated in Exhibits B and C attached hereto; and

**WHEREAS**, the encroachment and its location beyond the property boundaries and clearance above the public right-of-way will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), 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 in April, 2001, the Planning Commission certified the EIR, and adopted CEQA Findings in connection with the approval of this project; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the encroachment permit as conditioned herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

**RESOLVED:** That the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

**FURTHER RESOLVED:** That the encroachment, as conditioned herein and delineated in Exhibits B and C, is hereby granted for a revocable permit to allow the cantilevered construction of the proposed building over the public sidewalk along San Pablo Avenue for a proposed building at 1630 San Pablo Avenue; and be it

**FURTHER RESOLVED:** That the encroachment permit is hereby conditioned by the following special requirements:

1. 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; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insureds the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers 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 City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five years; and
5. the Permittee, by the acceptance of this conditional permit, agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, assigns, successors, and volunteers from any and all claims, demands, lawsuits and judgments for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and

understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and

7. the Permittee, by the acceptance of this conditional permit, shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the 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 solely liable for the expenses connected therewith; and

8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and

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; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and

10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits B and C; and

11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the 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 its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers 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.); and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has 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" ; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its 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; and

15. 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 City Engineer 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; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Office of the Alameda County Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006.**

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**Exhibit A**

Lands of Rotunda Garage LP

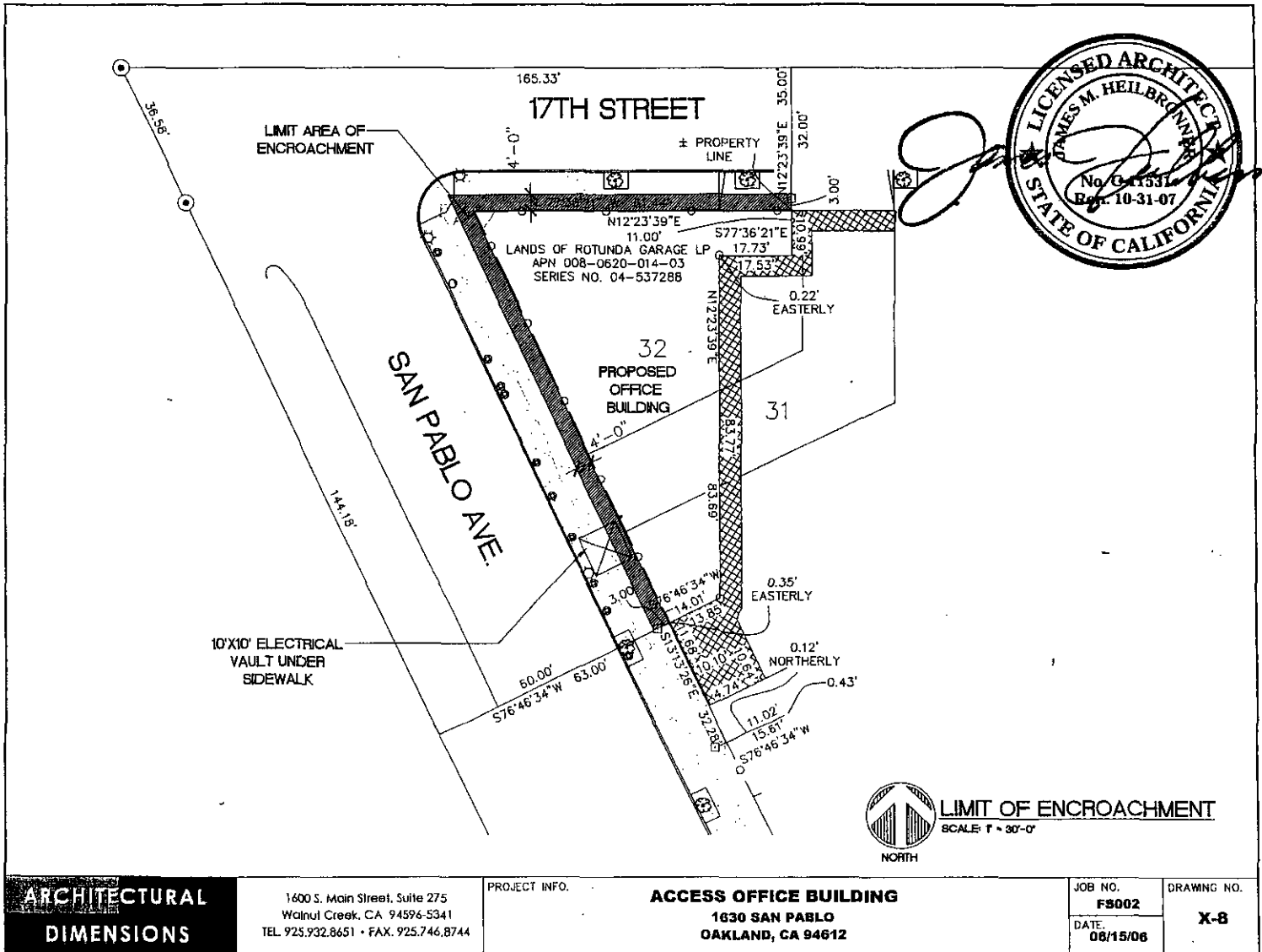
ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING A PORTION OF LOTS 28, 30, 31 AND 32 BLOCK "B", AS SAID LOTS AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE SURVEY MADE FOR G. C. POTTER, MARCH 28, 1877 BY T. ARNOLD C.E.", FILE APRIL 23, 1877 IN BOOK 2 OF MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, SAID REAL PROPERTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF 17<sup>TH</sup> STREET (60 FEET WIDE) AND THE EAST RIGHT OF WAY LINE OF SAN PABLO AVENUE (100 FEET WIDE) AS SHOWN ON SAID MAP; THENCE, SOUTH 77°36'21"EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF 17<sup>TH</sup> STREET 78.68 FEET; THENCE LEAVING SAID LINE, PERPENDICULAR TO SAID SOUTH RIGHT OF WAY LINE, SOUTH 12°23'39"WEST, 11.00' FEET; THENCE NORTH 77 °36'21" WEST, 17.73 FEET; THENCE , SOUTH 12°23'36" WEST, 83.69' TO A LINE DRAWN PERPENDICULAR TO SAID EAST LINE OF SAN PABLO AVENUE, DISTANT THEREON, SOUTH 12°23'39" EAST, 111.73 FEET ALONG THE SAID EAST LINE OF SAN PABLO AVENUE FROM THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE, SOUTH 76°46'34"WEST, 14.01 FEET, TO SAID EAST RIGHT OF WAY LINE OF SAN PABLO AVENUE; THENCE, NORTH 13°13'26" WEST, 111.73 FEET ALONG SAID EAST RIGHT OF WAY LINE, TO THE POINT OF BEGINNING

CONTAINING 3,863 SQUARE FEET/0.09 ACRES MORE OR LESS

**Exhibit B**

Plan view

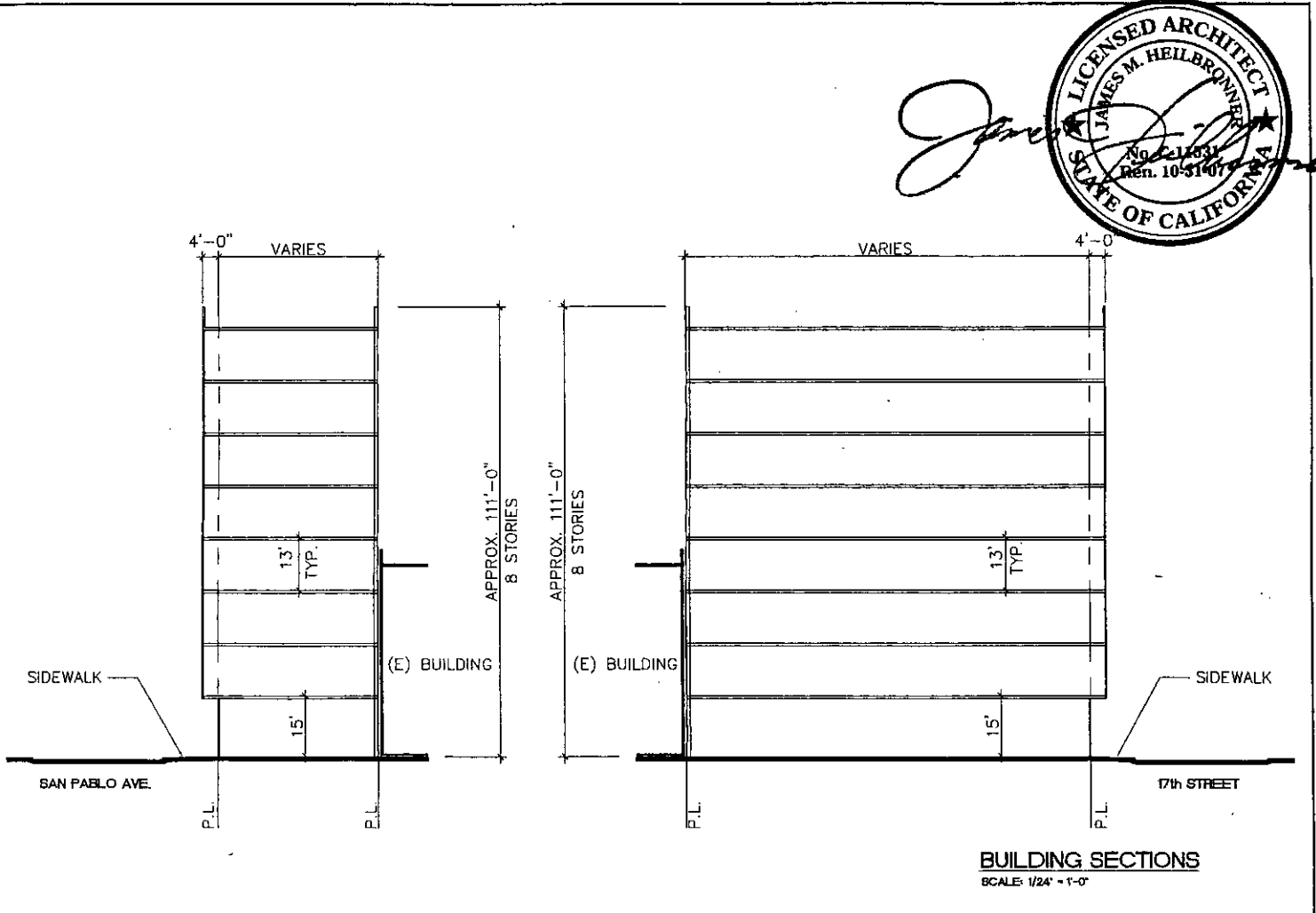
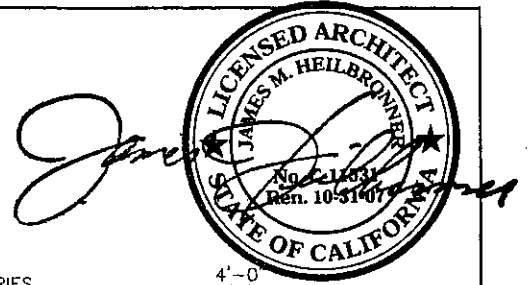


**LIMIT OF ENCROACHMENT**  
SCALE 1" = 30'-0"



Exhibit C

Elevation View



**BUILDING SECTIONS**  
SCALE: 1/24" = 1'-0"

<b>ARCHITECTURAL DIMENSIONS</b>	1600 S. Main Street, Suite 275 Walnut Creek, CA 94596-5341 TEL. 925.932.8651 • FAX. 925.746.8744	PROJECT INFO.	<b>ACCESS OFFICE BUILDING</b>		JOB NO. <b>F8002</b>	DRAWING NO. <b>X-7</b>
			1630 SAN PABLO OAKLAND, CA 94612		DATE: <b>6/15/06</b>	