

Instrument #: 2016-000584

02/04/2016 09:33:30 AM Total Pages: 9

AFR RESOLUTION

Recording Fee: \$47.00 Transfer Tax: \$0

Lisa L. Schreiner, Recorder, Des Moines County Iowa



Prepared by:	City of Burlington	400 Washington St., Burlington, IA 52601
	Eric Tysland, Development & Parks Director	(319) 753-8158

**RESOLUTION NO. 2013-502**

Meeting No. 43 Paper No. 4

Introduced By: McC Campbell AYES: Davidson, Fleming, McC Campbell, Reed + Anderson

Seconded By: Reed NAYS: none

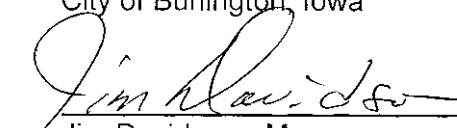
**RESOLUTION AUTHORIZING A PERMANENT ENCROACHMENT AGREEMENT BETWEEN THE CITY OF BURLINGTON AND KAREL VAN HAEFTEN & TERRY ARELLANO FOR ENCROACHMENT INTO N 3RD STREET RIGHT-OF-WAY ALONG THE EAST SIDE OF 300 JEFFERSON STREET, BURLINGTON, IOWA**

**WHEREAS**, an Encroachment Agreement is made between the City of Burlington and Karel Van Haeften & Terry Arellano permitting encroachment into N 3<sup>rd</sup> Street right-of-way to the east of 300 Jefferson / 305 N 3<sup>rd</sup> Street. Such encroachment is for stairs and railings and is further described and shown in the Encroachment Contract, attached hereto and made a part thereof.

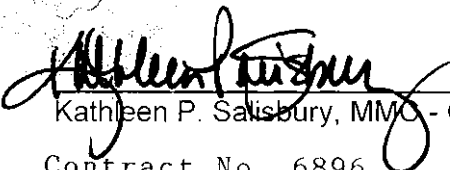
**NOW, THEREFORE, BE IT RESOLVED:** That the City Council hereby approves this Encroachment Agreement on behalf of the City, and that the City Clerk is authorized to file said agreement upon signature of the Mayor.

Signed this 7<sup>th</sup> day of October, 2013.

City of Burlington, Iowa

  
Jim Davidson - Mayor

ATTEST:

  
Kathleen P. Salisbury, MMC - City Clerk  
Contract No. 6896

FILED-For Record

OCT 07 2013

CITY CLERKS OFFICE  
BURLINGTON, IOWA

Prepared by: City of Burlington, Iowa  
Eric Tysland, Development & Parks Director

400 Washington Street, Burlington, IA 52601  
(319) 753-8158

**CONTRACT NO.** 6896

**AGREEMENT BETWEEN KAREL VAN HAEFTEN & TERRY ARELLANO AND THE CITY OF BURLINGTON TO ENCROACH UPON N 3<sup>RD</sup> STREET RIGHT OF WAY.**

This Agreement is entered into by and between the City of Burlington, Iowa, hereinafter known in this agreement as "City" and Karel Van Haefte & Terry Arellano, for the property located at 300 Jefferson St / 305 N 3<sup>rd</sup> St, Burlington, IA, hereinafter known in this agreement as "Applicant".

**PROJECT DESCRIPTION**

Encroachment shall be on the east and west side of the stated property, within N 3rd Street and alley right-of-way as further described and illustrated in the application as shown in Exhibit "A" and as below. For the purpose of this agreement, 300 Jefferson Street / 305 N 3<sup>rd</sup> Street, Burlington, Iowa, shall be known as "The Property". The encroachment shall include stair access to the basement of the property, along with railings surrounding such stairs within N 3<sup>rd</sup> Street right-of-way.

**TERMS OF THE AGREEMENT**

1. The City hereby grants to the Applicant permission to encroach into the public right-of-way adjacent to "The Property", as described above and in the attached application (Exhibit "A").
2. All work within the city right-of-way shall be in accordance with all applicable codes and regulations and shall apply for and receive all required approvals / permits from the applicable official, including a right-of-way permit from the Public Works Department, prior to starting any work in the right-of-way.
3. The Applicant agrees to keep the allowed structures in good repair and to maintain the same in a clean and orderly manner in addition to the adjacent property. The applicant shall complete any necessary repairs to the encroaching structures in a timely manner.
4. At such time as the encroaching structures no longer become necessary for any reason, such structure shall be removed from City right-of-way and the right-of-way shall be repaired and reconstructed to existing standards of the City.
5. The right-of-way between the encroaching structure and the street curb shall remain free of any structures, signs, or other objects and shall remain in good repair at all times or be repaired if any cracks or other hazards occur on the sidewalk or to the structure.
6. The encroachments on the N 3<sup>rd</sup> Street side of the property shall be constructed and maintained as shown in the attached application, leaving a minimum of six (6) feet from the edge of the railing and stairs to the curb.

7. The street curb shall be designed and constructed to allow for pedestrian step access where feasible and as allowed and required by the City of Burlington.
8. The encroaching stairs that are not utilized shall be appropriately blocked to prevent pedestrian access as required and to be approved by the City of Burlington.
9. Damage or necessary repairs to City property or City services, such as utilities services, curbs, or sidewalk, which result from the construction of encroaching structures, shall be the responsibility of the Applicant. Any damages to the encroaching structure from City workers, vehicles, or equipment shall be the responsibility of the Applicant for costs and repairs.
10. In the event of an occurrence within the agreed upon encroachment area which would result in a claim, demand or suit being made or brought against the City based on, arising from, or involving the presence of the allowed improvements, the Applicant expressly agrees to indemnify, defend, and hold harmless the City from any and all costs, expenses, demands, claims, judgments or liabilities of any kind incurred, including attorney fees and court costs, as a result of such action.
11. The encroachment shall become effective upon signing of this agreement and is subject to all plans being approved by the City of Burlington and the issuance of all required permits.

**TERMINATION**

In the event that either party would decide to cancel this agreement, the party wishing to terminate shall notify the other party in writing 30 days prior to the termination of this Agreement. Written notice shall be made through first class mail to the other party. In the event that the City would desire to terminate, it would send notice to Karel Van Haefen & Terry Arellano, PO Box 933, Burlington, IA 52601. If the applicant would desire to terminate this Agreement, notification would be send to City of Burlington, 400 Washington St, Burlington, IA 52601.

In the event this Agreement is terminated, the applicant would be responsible for removing the described encroachments. If the encroachments are not removed within 30 days from the date of termination, the City shall cause the encroachments to be removed and assess all associated cost to the applicant per Section 364.12 (2) of the Code of Iowa.



**ASSIGNMENT**

This Agreement is solely between the City and Karel Van Haefen & Terry Arellano. If Karel Van Haefen & Terry Arellano sells or transfers ownership of this property, a new Encroachment Agreement must be requested from the City. If all terms are agreed to, a new Agreement will be issued to the new owners. Upon sale or transfer of ownership, this Agreement would become null and void and removal of encroachment must be made within 30 days from the termination of this Agreement, unless a new Agreement is in place.

Signed this 7<sup>th</sup> day of October, 2013.

City of Burlington, Iowa


  
\_\_\_\_\_  
Jim Davidson - Mayor

  
\_\_\_\_\_  
Karel Van Haefen, owner  
  
\_\_\_\_\_  
Terry Arellano, owner

ATTEST:

  
\_\_\_\_\_  
Kathleen P. Salisbury, MMC City Clerk

# Exhibit "A"



## ENCROACHMENT PERMIT APPLICATION

**City Hall**  
**400 Washington Street**

**Planning & Zoning - (319) 753-8158**  
**Building Codes - (319) 753-8172**

The adopted Encroachment Policy represents the City of Burlington's position with regard to proposed encroachments and the private use of public right-of-way within the corporate limits of the City of Burlington, Iowa. In the context of this application, "public right-of-way" refers to all public sidewalks; street and alley right-of-way; and parks, open space, and other properties or lots owned or controlled by the City of Burlington.

This Encroachment Permit Application solely covers encroaching on the public right-of-way and by no means covers other permits or licenses required by individuals or businesses to bring or have merchandise for the purpose of selling the merchandise within the corporate limits of the City of Burlington.

Encroachment Policy for the City of Burlington is on file with the City Development Department.

### 1) GENERAL INFORMATION

Address / Location of Encroachment: N. 3rd St @ Jefferson Tame Bldg  
 Name of Applicant: Karel van Hoeflen  
 Address: 2800 S. Main St. Bldg 52601 Phone: (319) 572-6636  
 Signature of Applicant: [Signature] Date: 08/28/2013  
 Name of Property Owner: Karel van Hoeflen Phone: (319) 572 6636  
 Signature of Property Owner: [Signature] Date: 08/28/13  
 Type of Permit Requested :  PERMANENT     TEMPORARY     VERTICAL  
 Length of Time Requested for Permit: \_\_\_\_\_

### 2) ENCROACHMENT INFORMATION

Describe the requested encroachment (use back of sheet if necessary). What is it, what does it include, height, dimensions, hours of operation, reason seeking encroachment, how it will be managed, etc:

Restore original dual stairwell into Tame Bldg basement for pedestrian ingress & egress into commercial space. This is part of 'historical' preservation & use of original architecture! Owner will install handrails, gate & bermeades to comply with current codes. Will use existing drain for water drainage.

No adjacent property owners.

3) SUBMITTAL INFORMATION

PLEASE MAKE SURE THE FOLLOWING ITEMS ARE INCLUDED, WERE APPLICABLE

- SITE PLAN MUST BE SUBMITTED:** showing proposed encroachments, building outline and dimensions, property lines and dimensions, driveways, and all easements and utilities that are in the vicinity of the proposed encroachments.
- PICTURE/ILLUSTRATION:** including dimensions of proposed encroachment including special features.
- FORMS:** Copy of Insurance Certificate or Special Endorsement Form – releasing the City, its elected boards, officers, agents, and employees from liability or the above mentioned as being additional insured.
- HEALTH CERTIFICATE** (if applicable – selling food or drink) with expiration date: \_\_\_\_\_

The applicant Karel van Hoellen, agrees to construct all encroachments in accordance with the Burlington Encroachment Policy and all other applicable ordinances and regulations of the City of Burlington, Iowa, and further agrees to hold the City harmless from any liability incurred as a result of the placement of any encroachment.

Karel van Hoellen Signature of Applicant      08/28/2013 Date

**DEVELOPMENT DEPARTMENT REVIEW**

Conditions or explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ZONING OFFICIAL \_\_\_\_\_ Date \_\_\_\_\_ CODE OFFICIAL \_\_\_\_\_ Date \_\_\_\_\_

**- TEMPORARY / VERTICAL ENCROACHMENT APPROVAL:**

APPROVED  DENIED  CITY MANAGER \_\_\_\_\_ Date \_\_\_\_\_

**OFFICE USE ONLY**

Permit Type: Permanent Fee: \$ 300<sup>00</sup>  
 Dates Allowed:      Paid: 8/28/13  
 Zoning District: C-3 Historic District: No

#### 4) DEFINITIONS

**ENCROACHMENT** – To intrude or infringe upon the property of another. An individual or business setting anything in the public right-of-way, whether it be permanent, temporary, continuous, or special event in nature. Examples of items that would encroach include: tables, chairs, benches, furniture, clothing racks, signs, stairs, railings, ramps, planters, and awnings.

**PERMANENT ENCROACHMENT** – Any item permanently attached to the ground or because of size or weight cannot be relocated without special equipment or large expense. The encroaching item is considered permanent if it is not the intent of the applicant to move the item after it is in place. An encroachment that may be moved, but will remain for an extended period of time or continually, would be considered a permanent encroachment (A-frame sign). Examples include but are not limited to benches, planters, ramps, steps, stairs, awnings, signs, and balconies.

**PUBLIC RIGHT-OF-WAY** – Land owned or controlled by the local, state, or federal government, usually over which facilities such as roads, highways, railroads, or power lines are built. In most cases this would include the area between the street and the private property line.

**SPECIAL EVENT** – Something designated for a particular occasion, such as Steamboat Days, Snake Alley Criterium, neighborhood block party, downtown sidewalk sale, etc.

**TEMPORARY ENCROACHMENT** – Any item that is not permanent or fixed in nature and can be moved from one location to another. Examples include but are not limited to tables, chairs, clothing racks, planters, benches, and temporary signs.

**VERTICAL ENCROACHMENT** – Any item that projects over the public right-of-way and is located eight feet (8') above grade or higher.

#### 5) APPLICATION PROCEDURE AND FEES

- ◆ Application shall contain all necessary information requested by the permit.
- ◆ **\$25** non-refundable administrative fee required for Permanent and Vertical Encroachments.

##### Permanent Encroachment Permit

- ◆ Non-refundable permit fee: \*Commercial / Industrial - **\$275** \*Residential - **\$55**
- ◆ The Development Department may request any additional information for review prior to consideration by City Council.
- ◆ Application should include a list of adjacent property owners to the proposed encroachment – these individuals will be notified of the public hearing by the Development Department.
- ◆ A permanent encroachment permit application requires a public hearing before the City Council for approval, which will take approximately 45-60 days.

##### Vertical Encroachment Permit

- ◆ Non-refundable permit fee: \* Vertical - **\$75**, no renewal required unless otherwise specified.
- ◆ The Development Department may request any additional information for review prior to consideration by the City Manager.
- ◆ A vertical encroachment will go to the Development Department for review and then will be forwarded to the City Manager for approval; this takes approximately 7-14 days.

##### Temporary Encroachment Permit

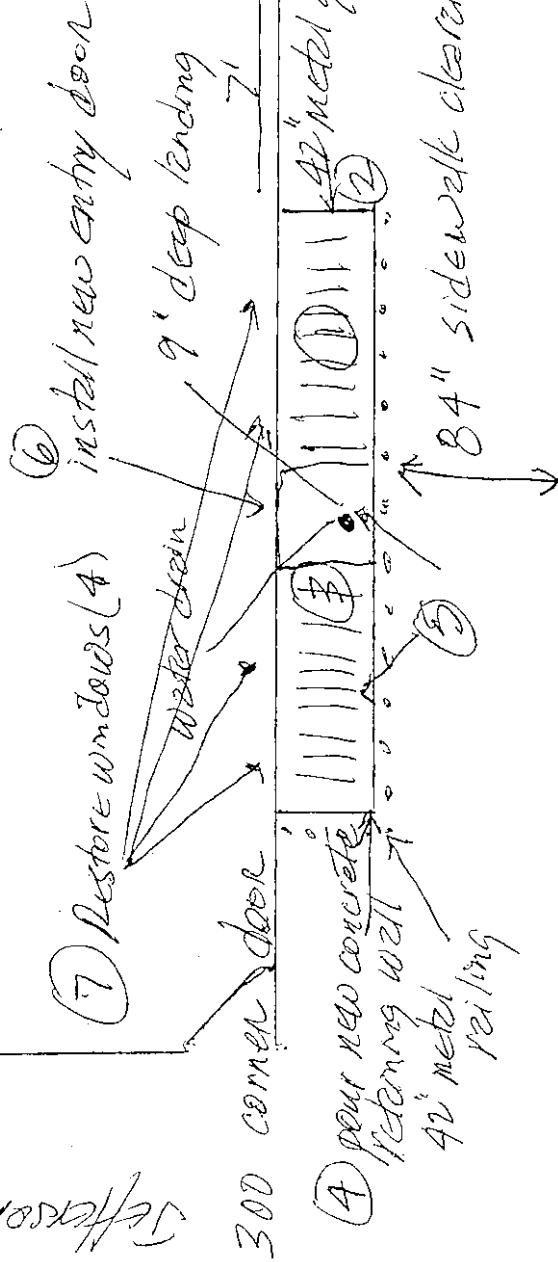
- ◆ Non-refundable permit fee: \*Three (3) day - **\$25** \*One (1) week - **\$50**  
\* Three (3) month - **\$125** \* Six (6) month - **\$200**
- ◆ The Development Department may request any additional information for review prior to consideration by the City Manager.
- ◆ Application should include a signed statement from adjacent property owners who are giving permission to the applicant to locate the encroachment in front of their property.
- ◆ A temporary encroachment will go to the Development Department for review and then will be forwarded to the City Manager for approval; this takes approximately 7-14 days.



SideWalk Encroachment  
Permit Application 08/28/13

TARA BLDG

Jefferson St. Sidewalk



North 3rd St.

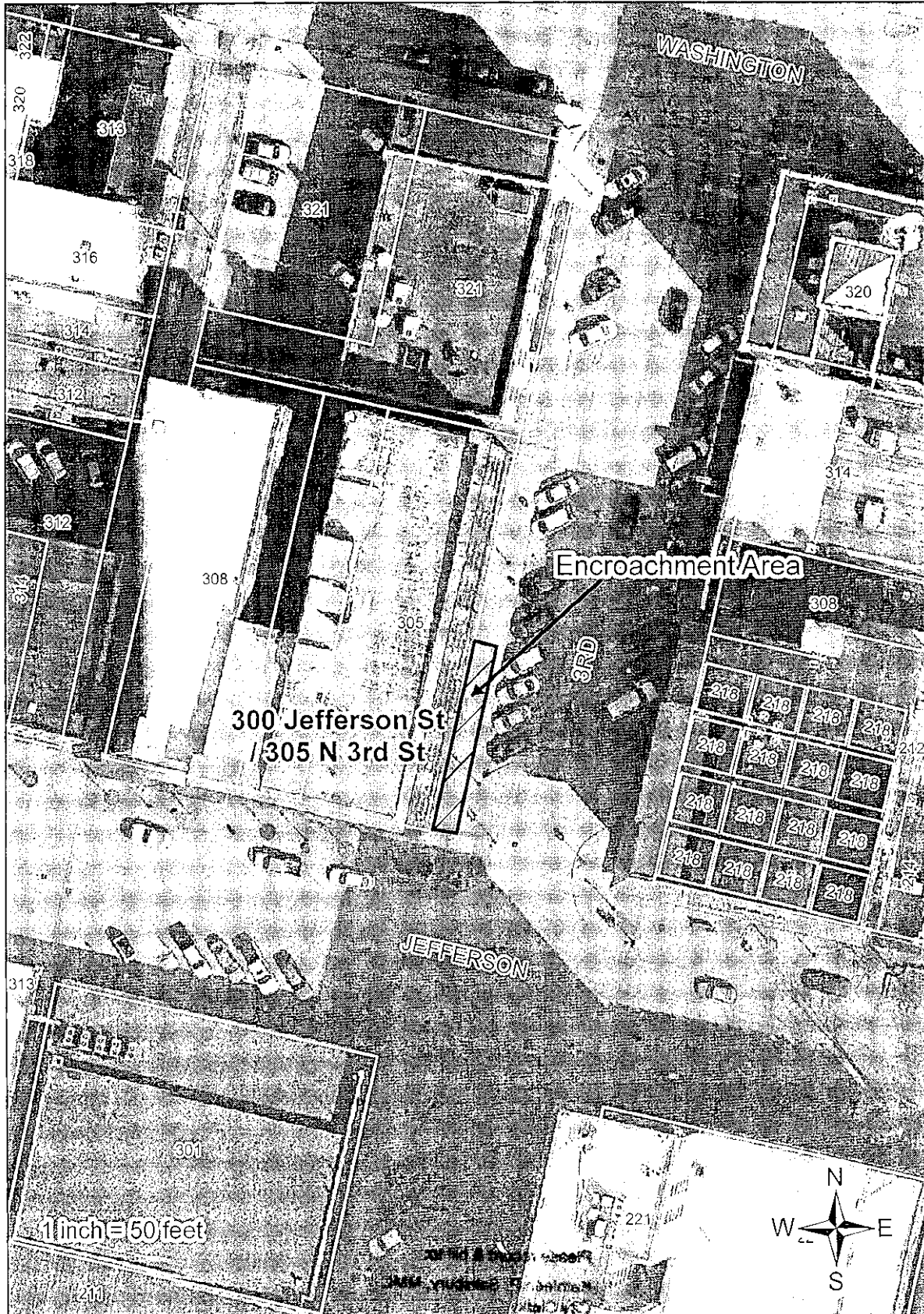
Jefferson St.

Tanz Sidewalk Encroachment Permit Application  
08/28/2013

- ① Existing stone steps to remain in place on north.
- ② Repair top stone step on north side
- ③ Barricade bottom of south stairwell to prevent exit
- ④ Pour new concrete wall to support new sidewalk
- ⑤ Restore brick facing on interior of east side stairwell
- ⑥ Install new entry door from landing into basement
- ⑦ Restore original glass side lights



# EXHIBIT "B"



2016-000584 AFR 02/04/2016 09:33:30 AM Page 9 of 9