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**CITY COUNCIL AGENDA ITEM**

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**TO:** Mayor & City Council                      **DATE:** April 13, 2011

**FROM:** John McDonough, City Manager

**AGENDA ITEM:** Acceptance of Encroachment and Indemnification Agreement  
Located at 6450 Powers Ferry Road within the City of Sandy Springs, Land Lots 204, 205, 210 and 211 of the 17th District between Double Feature, LLC, High Cotton Properties LLC and Dr. Richard Goldstein and Marshall E. Siegel as Co-Trustees of the Brett Alan Schwartz Trust and the City of Sandy Springs

**MEETING DATE:** For Submission onto the April 19, 2011, City Council Regular Meeting Agenda

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*BACKGROUND INFORMATION: (Attach additional pages if necessary)*

See attached:

Memorandum  
Resolution  
Exhibits

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APPROVAL BY CITY MANAGER:                     JTM                     APPROVED

\_\_\_\_\_ NOT APPROVED

PLACED ON AGENDA FOR:                     4/19/11                    

CITY ATTORNEY APPROVAL REQUIRED: (  ) YES      (  ) NO

CITY ATTORNEY APPROVAL:                     [Signature]                    

REMARKS:

TO: John McDonough, City Manager

FROM: Thomas Black, Public Works Director

DATE: April 12, 2011 for Submission onto the Consent Agenda of the April 19, 2011, City Council Meeting

ITEM: Acceptance of Encroachment and Indemnification Agreement located at 6450 Powers Ferry Road within the City of Sandy Springs, Land Lots 204, 205, 210 and 211 of the 17<sup>th</sup> District between Double Feature LLC, High Cotton Properties LLC and Dr. Richard Goldstein and Marshall E. Siegel as Co-Trustees of the Brett Alan Schwartz Trust and the City of Sandy Springs.

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***Public Works Department's Recommendation:***

Public Works Staff recommends that the Mayor and City Council accept and approve the proposed Encroachment and Indemnification Agreement from the applicant to allow for a trade fixture sign to partially remain within the City's rights of way.

***Background:***

Applicant has supplied the City with required documentation and justification for the existing sign to partially remain in the City's rights of way. The proposed agreement relinquishes the City of any liability pertaining to the sign's partial existence in the City's rights of way and its existence doesn't create any unsafe traffic/visibility issues.

***Discussion:***

The Public Works Department and Traffic Planners have studied this request and found it to be reasonable and considering the cost to fully relocate the trade fixture sign, believes it's not in the City's best interest to force the applicant to relocate the sign.

***Alternatives:***

The Mayor and City Council may elect to reject this agreement and the property owner shall be directed to completely relocate the trade fixture sign outside of the City's rights of way.

***Financial Impact:***

There is no financial impact to the city.

***Attachment:***

- I. Resolution
- II. Aerial Location Maps
- III. GIS Location Maps
- IV. Warranty Deed

*Public  
Works*

STATE OF GEORGIA  
COUNTY OF FULTON

**A RESOLUTION TO APPROVE THE ENCROACHMENT AND INDEMNIFICATION  
AGREEMENT FOR PROPERTY LOCATED AT 6450 POWERS FERRY ROAD IN LAND LOTS  
204, 205, 210 AND 211 OF THE 17TH DISTRICT, CITY OF SANDY SPRINGS, FULTON COUNTY,  
GEORGIA**

**WHEREAS**, it is necessary, from time to time, to establish policies, procedures and guidelines consistent with the administration of a municipal government consistent with the US Constitution, Federal Statutes, alignment with Federal, Georgia's State Constitution, and the Charter for the City of Sandy Springs, and

**WHEREAS**, the City Manager directed the Department of Public Works to develop standard policies for recurring matters, to establish appropriate internal controls and legal compliance, and to provide for an efficient and effective means to serve constituents; and

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA**

That the City of Sandy Springs Mayor and City Council accept the Encroachment and Indemnification of the following property: 6450 Powers Ferry Road, Land Lots 204, 205, 210 and 2311, 17<sup>th</sup> District, City of Sandy Springs, Fulton County, Georgia.

**RESOLVED** this the 19<sup>th</sup> day of April, 2011.

Approved:

\_\_\_\_\_  
Eva Galambos, Mayor

Attest:

\_\_\_\_\_  
Michael Casey, City Clerk  
(Seal)





## **ENCROACHMENT AND INDEMNIFICATION AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of March, 2011, between Double Feature, L.L.C., a Georgia limited liability company, High Cotton Properties, LLC, a Georgia limited liability company, and Dr. Richard Goldstein and Marshall E. Siegel, as Co-Trustees of The Brett Alan Schwartz Trust under instrument dated September 24, 1997, the owners of that certain tract or parcel of land located at 6450 Powers Ferry Road, within the City of Sandy Springs, Georgia, their successors, affiliates and assigns (the "Indemnitor(s)"), and the City of Sandy Springs, a municipality of the State of Georgia (the City").

### **W I T N E S S E T H:**

For good and valuable considerations, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1.

The City of Sandy Springs grants the Indemnitor(s), the right to enter within a portion of its right-of-way abutting that certain tract or parcel of land lying and being in Land Lots 204, 205, 210 and 211, 17<sup>th</sup> District of Fulton County, Georgia, as more fully described in Exhibit "A", which is attached hereto and incorporated herein. The Agreement granted to the Indemnitor(s) allows for them to maintain and encroach on the City's right-of-way, from time to time as may be needed, for the purpose of maintaining the encroachment located within the City right-of-way along Powers Ferry Road for the purpose of installing, maintaining and repairing a portion of an existing monument sign as set forth in Exhibit "B" (full description of encroachment).

2.

With respect to this Agreement, the Indemnitor(s) shall maintain the encroachment within the City's right-of-way in a manner which complies with all federal, state, and local laws and regulations governing monuments, fences and/or signs. The Indemnitor(s) will at all times adhere to best management practice procedures to protect the environment and public motorist in connection with the maintenance of the right-of-way.

3.

This Agreement shall commence on the date of execution hereof and shall continue in full force and effect unless and until it is terminated pursuant to the terms of this Agreement.

4.

The Indemnitor(s) may terminate this Agreement by written notice to the City and shall return the area to its natural vegetative state.

5.

The Indemnitor(s) must provide verification to the City's Public Works Department that its maintenance activities will not adversely impact the right-of-way. The Indemnitor(s) and/or their employees, agents or assigns shall perform all work on the right-of-way in a good workmanlike manner and in compliance with all applicable governmental laws, ordinance and regulations.

6.

City of Sandy Springs personnel and/or agents shall have free access to and across the right-of-way to perform routine maintenance and any emergency repairs to the existing drainage easement right-of-way when needed to protect the health, safety and general welfare of the public.

7.

The Indemnitor(s) shall be solely responsible for the maintenance, repair and replacement of the encroachment within the City's right-of-way and the City grants the Indemnitor(s) a right of access in order to carry out these obligations.

8.

Notwithstanding any other provisions, in the case of an emergency the City of Sandy Springs may immediately suspend or revoke the Agreement without notice in order to protect the health, safety and welfare of the public. In non-emergency situations, after providing at least 10 days notice to the Indemnitor(s), the City of Sandy Springs may suspend or revoke the

Agreement in order to carry out any necessary governmental function. In the event of the suspension or revocation of the Agreement for failure to meet any obligations under this Agreement, the Indemnitor(s) must cure all defects specified by the City in its notice and within the times reasonably specified by the City. Failure on the part of the Indemnitor(s) to cure any defects within the allotted time will be grounds for the City to terminate the Agreement. Alternately, the City may, but shall not be required to, cure any such defect at the sole cost and expense to the Indemnitor(s) and assess all costs against the Indemnitor(s). The City may elect to terminate the Agreement at will without liability for terminating this agreement.

9.

The Indemnitor(s) hereby agrees to indemnify the City of Sandy Springs and hold the City of Sandy Springs harmless from any and all damages which the City of Sandy Springs may suffer and from any and all liability, claims, penalties, forfeitures, suits, and costs, and expenses incidental to the granting of the Agreement and this Agreement (including cost of defense, settlement, and reasonable attorney's fees), which it may hereafter incur, become responsible for, or pay out as a result of the death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violations of governmental laws, regulations or orders caused solely by the negligent act, negligent omissions or willful misconduct of the Indemnitor(s), their employees, subcontractors, or assigns in the performance of this Agreement.

10.

The Indemnitor(s) agrees to repair or replace in a manner acceptable to the City and/or the owner thereof any public utilities damaged by its employees or subcontractors during performance of this Agreement. At its election, the City may repair or replace the damaged utility and assess all costs against the Indemnitor(s).

11.

The Indemnitor(s) shall obtain and furnish applicable insurance certificates to the City for the following amounts of insurance and the insurance shall be maintained in full force and effect during life of the Agreement:

- (a) General Comprehensive Liability Insurance providing coverage for injuries to persons as well as damages to property in an amount not less than Five Hundred Thousand and 00/100 dollars (\$500,000).

12.

This Agreement shall be binding upon the Indemnitor(s), their assigns, affiliates, and successors and to the extent allowable by law, upon the City of Sandy Springs. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

13.

This Agreement shall be recorded in the real property records of Fulton County, Georgia, and shall be binding upon all subsequent purchases and/or transfers of the Indemnitor(s)'s business or interest, unless otherwise terminated according to the provisions set forth herein.

14.

All notices, consents, requests, demands or other communications to or upon the respective party shall be in writing and shall be effective for all purposes upon receipt, including, but not limited to (1) personal delivery; (ii) delivery by messenger, express or air courier or similar courier, or (iii) delivery by United States first class certified or registered mail, postage prepaid and addressed as follows:

CITY: City of Sandy Springs  
Director of Public Works  
7840 Roswell Road  
Building 500  
Sandy Springs, GA 30350

WITH A COPY TO: City of Sandy Springs  
Office of the City Attorney  
7840 Roswell Road  
Building 500  
Sandy Springs, GA 30350

OWNER: c/o Mr. Steven Schwartz  
600 Galleria Parkway  
Suite 1660  
Atlanta, GA 30339

WITH A COPY TO: Marshall E. Siegel, Esq.  
Siegel & Golder, P.C.  
One Premier Plaza  
5605 Glenridge Drive, Suite 690  
Atlanta, Georgia 30342

[Signatures on Following Page]

**CITY:**

Sworn to and subscribed  
before me this \_\_\_ day  
of \_\_\_\_\_, 2011.

CITY OF SANDY SPRINGS,  
a municipality of the State of Georgia

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (SEAL)

Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_ (SEAL)

**INDEMNITORS:**

Sworn to and subscribed  
before me this 25 day  
of MARCH, 2011.

DOUBLE FEATURE, L.L.C.,  
a Georgia limited liability company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (SEAL)

Steven M. Schwartz, Manager

\_\_\_\_\_  
Notary Public



Sworn to and subscribed  
before me this 24th day  
of March, 2011.

HIGH COTTON PROPERTIES, LLC,  
a Georgia limited liability company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (SEAL)

Marshall E. Siegel, Manager

\_\_\_\_\_  
Notary Public



Sworn to and subscribed  
before me this 24th day  
of March, 2011.

Marshall E. Siegel, as Co-Trustee of  
The Brett Alan Schwartz Trust under  
instrument dated September 24, 1997  
(pursuant to the authority and power  
granted to him therein)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
Notary Public



## EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 204, 205, 210 and 211, 17<sup>th</sup> District, Fulton County, Georgia, and being more particularly described as follows:

To find the true point of beginning, commence at the intersection of the South right-of-way of Powers Ferry Road, having a varying right-of-way and the West right-of-way of Northside Drive, having a varying right-of-way; thence, leaving said point of intersection, run westerly and southwesterly, along the South right-of-way of said Powers Ferry Road, a distance of 1,265.92 feet to an iron pin placed, and THE TRUE POINT OF BEGINNING. Thence, leaving said Powers Ferry Road right-of-way, run South 10 degrees 50 minutes 44 seconds West, a distance of 89.97 feet to an iron pin placed; thence South 75 degrees 04 minutes 53 seconds West, a distance of 33.57 feet to a point; thence, along an arc of a curve to the left (which has a radius of 50.00 feet, a central angle of 40 degrees 42 minutes 11 seconds, and a chord distance of 34.78 feet, along a bearing of South 54 degrees, 43 minutes 48 seconds West), an arc distance of 35.52 feet to a point; thence, South 34 degrees 22 minutes 42 seconds West, a distance of 44.24 feet to a point; thence South 43 degrees 53 minutes 27 seconds West, a distance of 74.13 feet to a point; thence, South 28 degrees 44 minutes 53 seconds West, a distance of 45.43 feet to a point; thence, South 43 degrees 49 minutes 44 seconds West, a distance of 106.45 feet to a point; thence along an arc of a curve to the right (which has a radius of 65.00 feet, a central angle of 49 degrees 16 minutes 36 seconds, and a chord distance of 54.20 feet, along a bearing of South 68 degrees 28 minutes 02 seconds West), an arc distance of 55.90 feet to a point; thence, North 86 degrees 53 minutes 02 seconds West, a distance of 33.02 feet to a point; thence, South 21 degrees 21 minutes 56 seconds West, a distance of 45.99 feet to a point; thence, along an arc of a curve to the right (which has a radius of 25.00 feet, a central angle of 52 degrees 22 minutes 54 seconds, and a chord distance of 22.07 feet, along a bearing of South 47 degrees 33 minutes 23 seconds West), an arc distance of 22.86 feet to a point; thence, South 73 degrees 44 minutes 51 seconds West a distance of 15.25 feet to a point; thence, along an arc of a curve to the left (which has a radius of 125.00 feet, a central angle of 15 degrees 40 minutes 25 seconds, and a chord distance of 34.09 feet, along a bearing of South 65 degrees 54 minutes 38 seconds West), an arc distance of 34.19 feet to a point; thence, South 58 degrees 04 minutes 25 seconds West, a distance of 57.02 feet to a point; thence, South 60 degrees 26 minutes 03 seconds West, a distance of 35.68 feet to a point; thence, South 53 degrees 27 minutes 18 seconds West, a distance of 41.76 feet to an iron pin placed; thence, North 00 degrees 01 minutes 37 seconds East, a distance of 62.92 feet to a point; thence, North 57 degrees 41 minutes 02 seconds East, a distance of 78.31 feet to a point; thence, North 23 degrees 14 minutes 35 seconds West, a distance of 340.51 feet to an iron pin placed, said iron pin being located on the South right-of-way of the aforementioned Powers Ferry Road; thence, Northeasterly, along said right-of-way along an arc of a curve to the right (which has a radius of 1,006.88 feet, a central angle of 24 degrees 58 minutes 28 seconds, and a chord distance of 435.42 feet, along a bearing of North 79 degrees 35 minutes 52 seconds East), an arc distance of 438.88 feet to a point; thence, South 87 degrees 54 minutes 54 seconds East, a distance of 164.93 feet to an iron pin placed, and the TRUE POINT OF BEGINNING.

Said tract of land containing 153,014 square feet, or 3.513 acres, more or less, and being more particularly described as Parcel 1, on a SURVEY for MSCL Powers Ferry Landing, L.L.C., by Engineering & Inspection Systems, Inc., dated January 25, 2006, last revised March 27, 2006, and also as shown on and described as Tract 2 on that certain ALTA/ACSM Land Title Survey prepared for Double Feature, L.L.C., High Cotton Properties, L.L.C., The Brett Alan Schwartz Trust, First Horizon Bank and Chicago Title Insurance Company by Smith & Smith Land Surveyors, P.C., dated April 12, 2007, last revised April 28, 2007, each of which surveys are incorporated herein and made a part of this legal description.

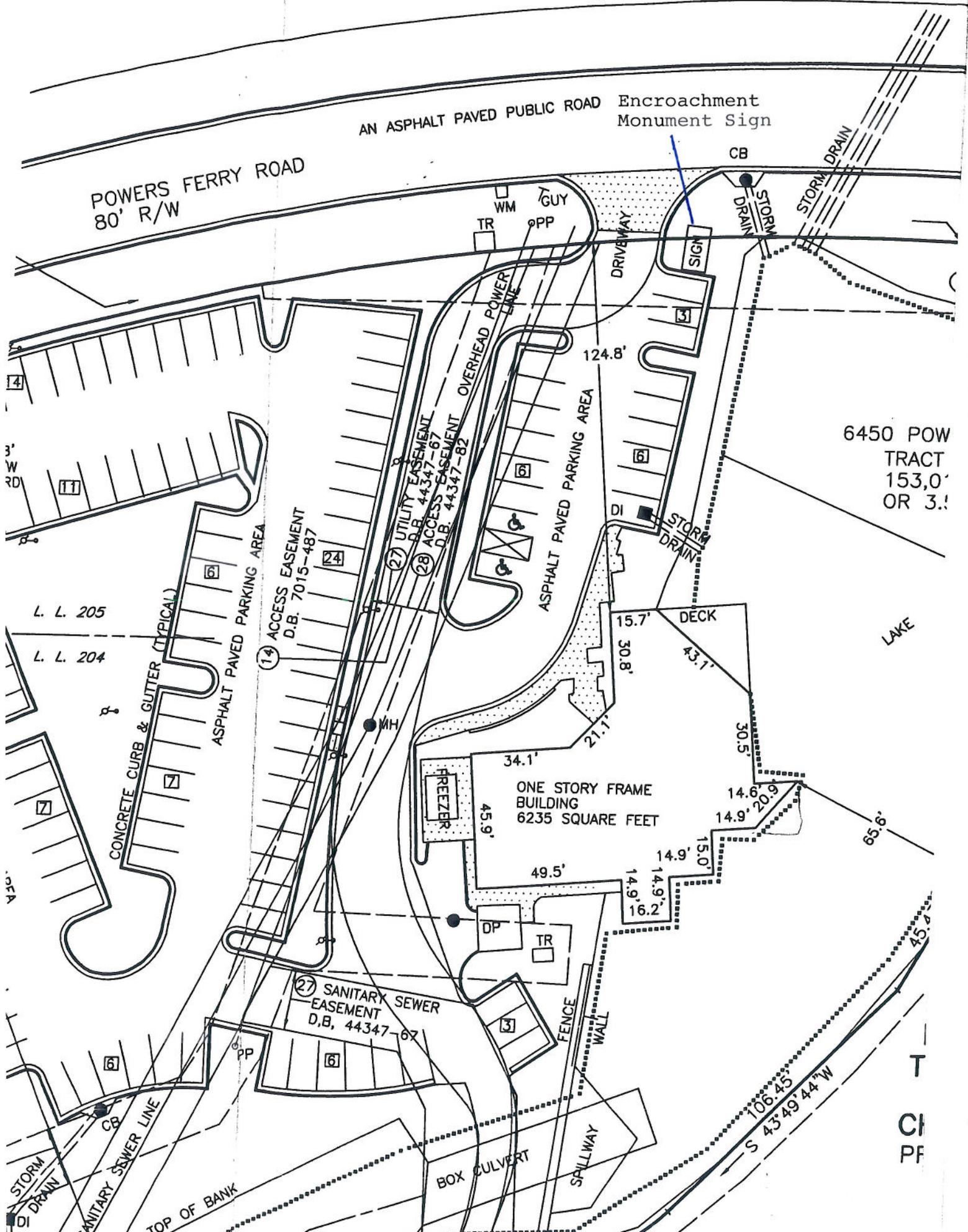
## **EXHIBIT "B"**

### **ALLOWABLE ENCROACHMENT**

- All fence structures must be at least 13.5 feet from the back of the curb.
- All gates must be set back a minimum of 20 feet from the back of the curb.

**(PICTURE AND DRAWING AND DESCRIPTION)**

EXHIBIT B



6450 POW TRACT 153.0' OR 3.1'

LAKE

T  
C  
P  
F