A RESOLUTION BY: Debi Starnes **04-R-0764**

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH HYATT EQUITIES, L.L.C., OWNER OF HYATT REGENCY ATLANTA OR ITS DESIGNEE(S) FOR THE RENOVATION / EXPANSION OF HYATT REGENCY ATLANTA IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

BACKGROUND:

Hyatt Equities, L.L.C. (Owner) is the Owner of Hyatt Regency Atlanta (hereinafter referred to as the "Hotel") located at 265 Peachtree Street, N.E., Atlanta, Georgia which property is more particularly described and shown on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"; and

Since the initial construction of the Hotel, it has undergone several renovations / expansions; and

The Hotel, or portions thereof or attachments thereto, encroaches onto the public right-of-way surrounding the Hotel and commonly known as Harris Street, Bakers Street and Peachtree Center Avenue (collectively, the "Right-of-Way"), said encroachments being more particularly described and shown on Exhibit B attached hereto and incorporated herein by reference (hereinafter the "Existing Encroachments"); and

The parties hereto believe the Existing Encroachments were covered by one or more encroachment agreements between Owner and the City, but the agreements cannot be located; and

The Hotel is currently in the process of renovating its loading dock area located adjacent to Peachtree Center Avenue; and

The structure of the Hotel and its foundation occupies substantially all of the Property so as to necessitate that portions of the proposed loading dock addition will encroach across the boundary line of the Property onto Peachtree Center Avenue (hereinafter referred to as the "Proposed Encroachments"), said Proposed Encroachments being more particularly described and shown on Exhibit C attached hereto and incorporated herein by reference; and

Owner has approached the City seeking an Encroachment Agreement allowing the installation of the Encroachments under the Right-of-Way; and

CITY's Code of Ordinances (Section 138, Article II) requires a Right-of-Way Encroachment Agreement for the construction and operation of private utilities and facilities within the public right-of-way;

The Director of the Bureau of Buildings and the Commissioner of the Department of Public Works have reviewed the plans for Encroachments, have determined that the plans meet the appropriate technical requirements and believe it to be desirable and in the best interests of the City to authorize the City to execute an Encroachment Agreement with Owner allowing the installation of the Encroachments;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

Section 1. The Mayor is authorized to enter into an Encroachment Agreement, as outlined in Section 138, Article II, of the City's Code of Ordinances, with Owner or its designee(s), for the installation of Encroachments, in a form and pursuant to conditions determined by the Commissioner of the City's Department of Public Works and the City Attorney to be desirable, appropriate and in the best interests of the City for this transaction.

Section 2. That the City Attorney is directed to prepare an Encroachment Agreement in accordance with Section 138, Article II, of the City's Code of Ordinances.

Section 3. That the Encroachment Agreement will not become binding upon the City and the City will incur no liability under it until the Mayor has executed it, attested to by the Municipal Clerk and delivered to Owner.

After Recording Return To:

Robert B. Caput
City of Atlanta
Department of Law
68 Mitchell Street, S.W.
Suite 4100
Atlanta, Georgia 30303

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 200__, between the CITY OF ATLANTA ("CITY") and HYATT EQUITIES, L.L.C., a Delaware limited liability company ("OWNER").

BACKGROUND:

OWNER is the Owner of the Hyatt Regency Atlanta (hereinafter referred to as the "Hotel") located at 265 Peachtree Street, N.E., Atlanta, Georgia, which property is more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"); and

Since the initial construction of the Hotel, it has undergone several renovations/expansions; and

The Hotel, or portions thereof or attachments thereto, encroaches onto the public rights-of-way surrounding the Hotel and commonly known as Harris Street, Baker Street and Peachtree Center Avenue (collectively, the "Right-of-Way"), said encroachments being more particularly described and shown on Exhibit B attached hereto and incorporated herein by reference (hereinafter the "Existing Encroachments"); and

The parties hereto believe the Existing Encroachments were covered by one or more encroachment agreements between OWNER and the CITY, but the agreements cannot be located; and

The Hotel is currently in the process of renovating its loading dock area located adjacent to Peachtree Center Avenue; and

The structure of the Hotel and its foundation occupies substantially all of the Property so as to necessitate that portions of the proposed loading dock addition will encroach across the boundary line of the Property onto Peachtree Center Avenue (hereinafter referred to as the "Proposed Encroachments"), said Proposed Encroachments being more particularly described and shown on Exhibit C attached hereto and incorporated herein by reference; and

The Proposed Encroachments do not extend into the Right-of-Way beyond the Existing Encroachments; and

OWNER has approached the CITY seeking an Encroachment Agreement allowing the Existing Encroachments and permitting the Proposed Encroachments (hereinafter collectively referred to as the "Encroachments") over the CITY Right-of-Way; and

CITY's Code of Ordinances (Section 138, Article II) requires a Right-of-Way Encroachment Agreement for the construction and operation of private utilities and facilities within the public right-of-way; and

The Director of the Bureau of Buildings and the Commissioner of the Department of Public Works have reviewed the plans for Encroachments, have determined that the plans meet the appropriate technical requirements and believe it to be desirable and in the best interests of the CITY to authorize the CITY to execute an Encroachment Agreement allowing the installation of the Encroachments; and

The Council of CITY has authorized the Mayor, by Resolution, to enter into an Encroachment Agreement with OWNER, allowing them to maintain and construct the Encroachments;

Accordingly, CITY and OWNER agree as follows:

1. **Public Benefit of Encroachments.** In the opinion of the Commissioner of CITY's Department of Public Works, the construction, installation, operation, use and maintenance of the Encroachments (the Encroachments may also be referred to as the "Work") extending over the Right-of-Way (the area over the Right-of-Way is referred to as the "Encroachment Area"), as shown on attached plans/drawings, will constitute a benefit to the public and, except for permitted temporary disruptions of service, will not adversely impact the ability of the Right-of-Way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function.

2. **Grant Of Rights In Encroachment Area.** CITY grants to OWNER the right to construct, install, operate, use, repair and maintain the Work within the Encroachment Area.

3. **Agreement Condition Precedent To Permitting Process.** The execution of this Agreement by OWNER is, in addition to OWNER satisfying all other applicable legal, administrative or other requirements, a condition precedent to CITY considering issuing a permit for constructing, installing, operating, using, repairing and maintaining the Work within the Encroachment Area.

4. **Plans, Calculations and Technical Specifications.** The Work must be done pursuant to plans, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, and approved by the Commissioner of

CITY's Department of Public Works, pursuant to the standards set forth in or promulgated under Chapter 138 of CITY's Code of Ordinances and, when applicable, all other appropriate legal requirements or administrative rules, including, but not limited to, the standards of Georgia Department of Transportation or the Federal Highway Administration, or any other governmental agency having jurisdiction over the Right-of-Way or Encroachment Area.

5. **Public Liability Insurance.** OWNER agrees to indemnify and hold CITY harmless from all claims arising out of the use of the Encroachment Area and the construction, operation, use, maintenance or removal of the Work in the Encroachment Area by it or any of its contractors, and to maintain a policy of public liability insurance, at no expense to CITY, satisfactory to CITY and naming CITY as an additional insured, in a reasonable amount approved by CITY's Risk Manager. OWNER's hold harmless and indemnification obligations under this Agreement will not be limited to the amount of the insurance.

6. **Indemnification Obligations Not Limited.** OWNER's indemnification obligations under this Agreement are not be waived or reduced because of the Commissioner of CITY's Department of Public Works having approved any plans, calculations or specifications submitted by or on behalf of OWNER concerning or relating to the Work to be performed in the Encroachment Area or by the requiring or not requiring modifications to any plans, calculations or specifications, even if CITY is later adjudicated to have been negligent because of its acts or failure to act concerning its approval of any plans, calculations or specifications for the Work.

7. **Performance Bonds As Conditions Of A Permit.** The City of Atlanta requirements for a performance bond are waived. Notwithstanding the CITY's waiver of any performance bond requirements set forth in the CITY's Code of Ordinances, OWNER is not relieved of any requirements under applicable law to provided a payment bond concerning the Work.

8. **Removal From And Restoration Of Encroachment Area and Right-of-Way.** OWNER agrees to remove the Proposed Encroachments constructed or installed by it or on its behalf within the Encroachment Area, and to replace any area beneath and including the Right-of-Way where the Proposed Encroachments were constructed or installed by it or on its behalf, to a condition satisfactory to CITY within ninety (90) days after being notified to do so by the Commissioner of CITY's Department of Public Works, without cost to CITY, and to provide, if requested at that time to do so by CITY, to ensure that the Proposed Encroachments are removed and backfilled and the Proposed Encroachment area and Right-of-Way returned to a condition satisfactory to the Commissioner of CITY's Department of Public Works, without the cost to CITY.

9. **Rental.** OWNER agrees to pay to CITY a one-time rental fee for the Encroachment Area of $5,000.

10. **Non-Exclusivity Of Agreement.** This Agreement is not exclusive and does not negate any past, present, or future agreement that CITY may enter into with any other utility OWNER or provider for use of the Right-of-Way.

11. **Compliance With Applicable Law; Reparation Of Facilities And Utilities.** OWNER agrees to conduct all activities within the Encroachment Area and Right-of-Way in accordance with all applicable local, state, and federal rules, regulations, and standards. OWNER agrees to maintain the Work installed and constructed in the Encroachment Area in good condition, and to repair any damage to any CITY facilities, and any public or private utilities, and to reimburse CITY for any consequential damages that may result from OWNER's occupation of the Encroachment Area. If CITY determines that the condition of the Work installed and constructed by OWNER in the Encroachment Area presents an imminent danger to life or property of the public, CITY may undertake all reasonable measures to protect life or property of the public, and the expense of those measures will be borne by OWNER.

12. **Reimbursement Of Damages To CITY.** OWNER agrees to repair any damage to the Right-of-Way or Encroachment Area resulting from the use of the Encroachment Area or the construction, installation, maintenance, repair or use of the Work in the Encroachment Area and to reimburse CITY for any damages to the Right-of-Way or Encroachment Area resulting from the use of the Encroachment Area or the construction, installation, maintenance, repair or use of the Work in the Encroachment Area.

13. **Compliance With CITY's Code Of Ordinances.** OWNER agrees at all times during the term of this Agreement to comply with all of the terms of CITY's Code of Ordinances applicable to this Agreement, including, but not limited to Chapter 138.

14. **Removal Of Work From Encroachment Area; Public Safety And Efficiency Considerations.** OWNER agrees to remove the Proposed Encroachments from the Encroachment Area without cost to CITY if the Commissioner of CITY's Department of Public Works determines that removal is required for the safe and efficient use of the Right-of-Way by the public.

15. Notices.

1.1. **Addresses:** CITY and OWNER agree that all notices, demands, and requests required under this Agreement must be in writing and sent to CITY or to OWNER addressed as follows:

TO THE CITY:

Commissioner
City of Atlanta, Department of Public Works
55 Trinity Avenue, Suite 4700
Atlanta, GA. 30335

(404) 658-7379

TO OWNER:

Hyatt Regency Atlanta
265 Peachtree Street NE
Atlanta, GA 30303
Attn: General Manager

With a copy to:

Hyatt Hotels Corporation
200 W. Madison St.
Chicago, IL 60606
Attn: General Counsel

1.2. **Delivery.** All notices given by any party to the others under this Agreement must be in writing and may be delivered to the addresses or facsimile numbers in this section by:

1.2.1. regular mail, first class, postage prepaid;
1.2.2. certified or registered mail;
1.2.3. facsimile, with a hard copy sent within 24 hours of transmission by one of the other permitted delivery means; or
1.2.4. hand-delivery.

1.3. **Receipt.** Notices sent by mail will be deemed received 3 Days after deposit in the mail, properly addressed. Notices sent by certified or registered mail will be deemed to be received upon the date of the acknowledgment. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number; if the sender can produce a facsimile transmission confirmation report. Notices delivered by hand-delivery will be deemed to be received upon written acceptance by the respective party.

1.4. **Change of Address or Facsimile Number.** Any party may, at any time, change its respective address or facsimile number by sending written notice to the other parties of the change.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to its subject matter and no representations or agreements, oral or otherwise, which are not set forth in this Agreement, will be of any force or effect.

17. **Covenant Running With Land.** This Agreement is intended as a covenant running with the land and will be binding upon and shall inure to the benefit of the successors, the successors in title, and the assigns of the parties to this Agreement.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single instrument.

19. **Title Certificate.** OWNER must provide to CITY, contemporaneously with the execution and delivery of this Agreement to CITY, a title certificate of an attorney, setting forth the names and the addresses of all signatories to this Agreement other than CITY. If any of the parties set forth in the title certificate are corporate or other similar entities (i.e. not natural persons), the title certificate must provide the full formal organizational name of the entity, as reflected in any of the entity's organizational papers or filings with any applicable governmental or other authorities in the state in which the entity was formed.

20. **Default and Termination of Agreement.** If OWNER defaults in its performance of this Agreement, and fails to cure the default within thirty 30 days of CITY's written notice to OWNER of the default [or if such default is not capable of being cured within thirty (30) days, OWNER has not commenced curing the default and diligently pursued such cure to completion within a reasonable amount of time], this Agreement may be terminated by CITY upon 5 days prior written notice to OWNER. Upon termination of this Agreement by CITY, OWNER must remove the Encroachments constructed or installed by it or on its behalf within the Encroachment Area and replace any area beneath and including the Right-of-Way where the Encroachments were constructed or installed by it or on its behalf within the Encroachment Area in accordance with this Agreement.

21. **Parties Bound.** This Agreement will be binding upon and inure to the benefit of CITY and OWNER and their respective permitted successors, successors in title and assigns.

22. **Governing Law.** This Agreement will be construed under Georgia law. OWNER and CITY fix jurisdiction and venue for any action brought with respect to this Agreement in Fulton County, Georgia.

23. **Legal Construction.** If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not effect any other provision of this Agreement and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained in this Agreement.

24. **Waiver.** The failure of CITY to seek redress for any violation of, or to insist upon the strict performance of, any term of this Agreement will not prevent a subsequent violation of this Agreement from being actionable by CITY. The provision in this Agreement of any particular remedy will not preclude CITY from any other remedy.

25. **Further Acts.** CITY and OWNER agree to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to

carry out the provisions and effectuate the intent of this Agreement.

26. **Modifications.** This Agreement may be altered or amended only by written instrument signed by CITY and OWNER.

27. **Ethics: Gratuities and Kickbacks.**

27.1. **Gratuities and Kickbacks.** This Agreement may be terminated if OWNER, or any other representative of OWNER, gave or agreed to give any employee or former employee of CITY a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal for a contract or subcontract.

27.2. **Contingent Fees.** OWNER warrants that it has not employed or retained any company or Person, other than a bona fide employee working for OWNER, to solicit or secure this Agreement; and that OWNER has not paid or agreed to pay any company, association, corporation, firm or person, other than a bona fide employee working for OWNER, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, CITY may terminate this Agreement and, at its discretion, may recover the full amount of any fee, commission, percentage, gift or consideration.

27.3. **Rights and Remedies.** The rights and remedies of CITY provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

CITY:

_____

MAYOR

ENCROACHING PARTY:

HYATT EQUITIES, L.L.C., a Delaware limited liability company

BY:_____

NAME:_____

TITLE:_____

ATTEST:

MUNICIPAL CLERK (SEAL)

CORPORATE SECRETARY/ ASSISTANT SECRETARY [SEAL]

APPROVED:

APPROVED AS TO FORM:

COMMISSIONER, DEPT. OF PUBLIC WORKS

CITY ATTORNEY

RECOMMENDED:

DIRECTOR, BUREAU OF PURCHASING AND REAL ESTATE

EXHIBIT A
Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 51, 14th District, City of Atlanta, Fulton County, Georgia and being bounded on the east by Peachtree Center Avenue, on the west by Peachtree Street, on the north by Baker Street and on the south by Harris Street.

EXHIBIT B
Existing Encroachments
(One page of Descriptions and four pages of Images)

Harris St. (South side of building)

- Harris St. Emergency Exit doors (when open) to stairwell #4 [Photo Ref.#s: Encroachment 01, 02]
- Decorative lighting [Photo Ref.#s: Encroachment 03, 04, 05]
- Decorative concrete fins [Photo Ref.#s: Encroachment 05, 06]
- Decorative concrete square [Photo Ref.#s: Encroachment 07, 08]
- HYATT logo signs (2) [Photo Ref.#s: Encroachment 09, 10, 11, 12]

Baker St. (North side of building)

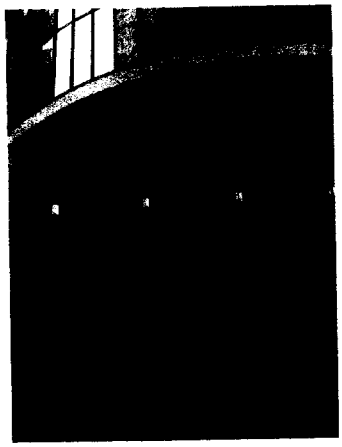
- Balcony [Photo Ref.#s: Encroachment 13, 14]
- Security camera [Photo Ref.#s: Encroachment 13, 14]

Peachtree Center Ave. (East side of building)

- Scuppers from ballroom roof [Photo Ref.#s: Encroachment 15, 16]
- HYATT – parking sign [Photo Ref.#s: Encroachment 17]
- Marquee lighting @ stairs to pool deck [Photo Ref.#s: Encroachment 17, 18, 19]
- Bollards @ motor lobby entrance [Photo Ref.#s: Encroachment 20]
- Decorative concrete fins [Photo Ref.#s: Encroachment 19, 23]
- Decorative concrete squares [Photo Ref.#s: Encroachment 17, 18, 19]
- HYATT logo sign [Photo Ref.#s: Encroachment 19]
- Security camera [Photo Ref.#s: Encroachment 23]

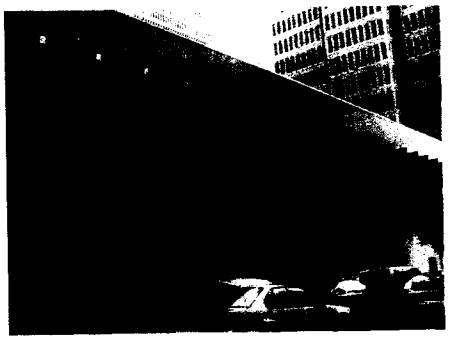
Encroachment 01.jpg

Encroachment 02.jpg



Encroachment 03.JPG

Encroachment 04.JPG



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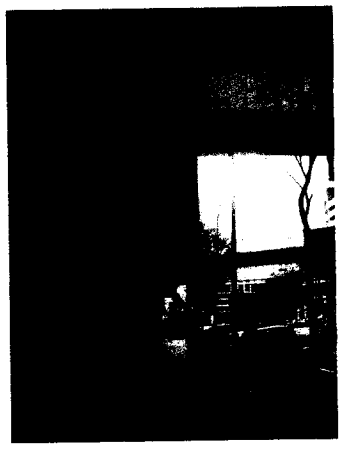
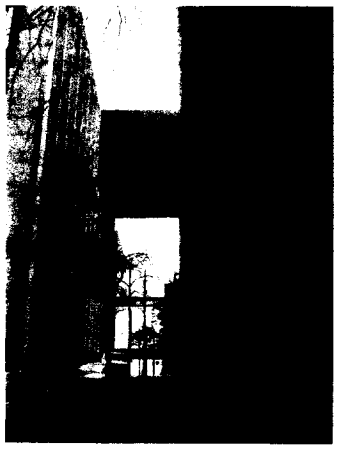


Encroachment 06.JPG

Encroachment 07.JPG



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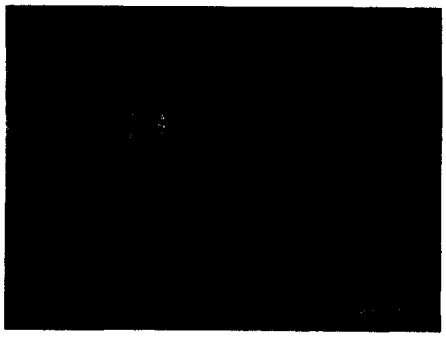

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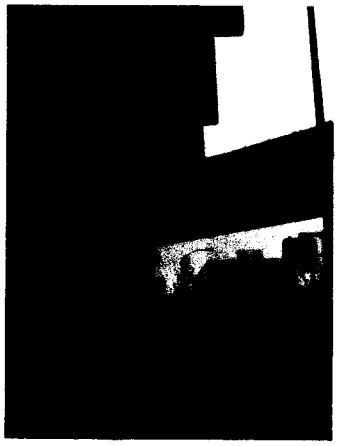
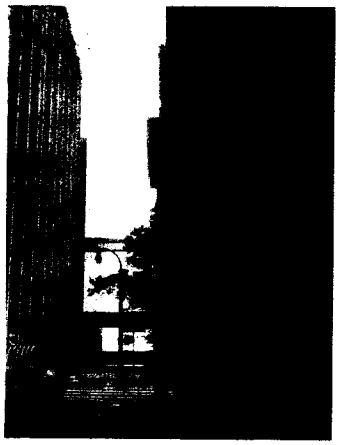


Encroachment 10.JPG

Encroachment 11.JPG



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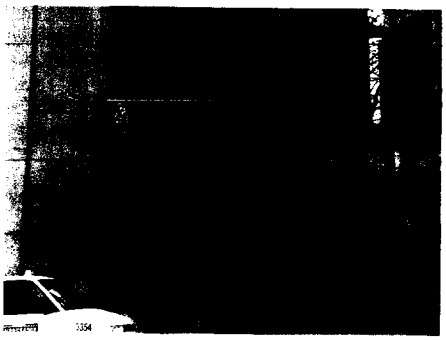

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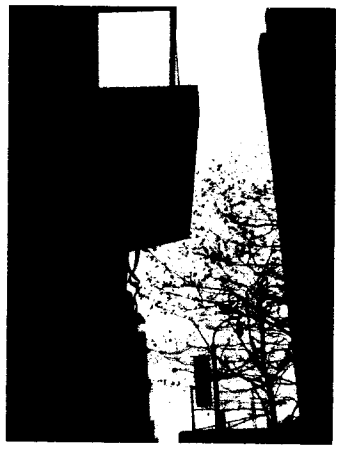

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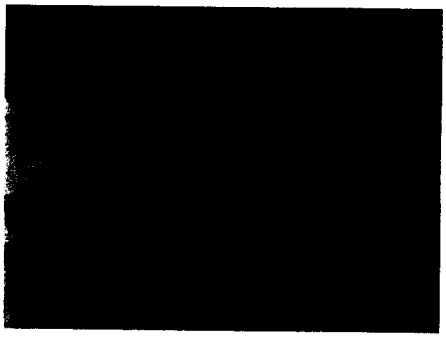

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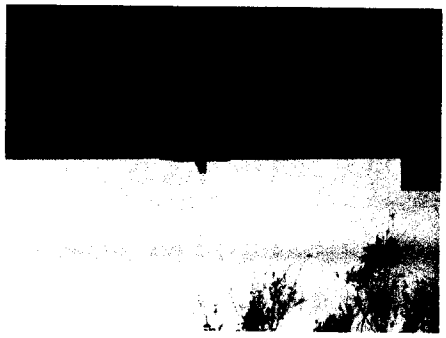
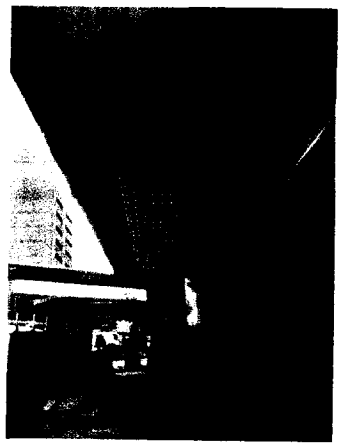


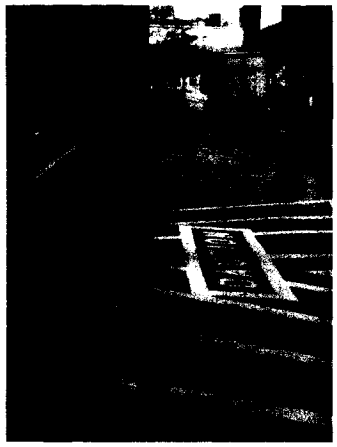
Encroachment 16.JPG

Encroachment 17.JPG



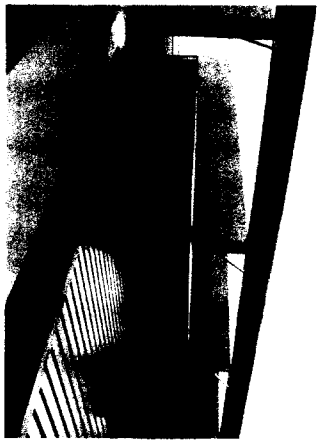
Encroachment 18.JPG

Encroachment 19.JPG



Encroachment 20.JPG

Encroachment 21.JPG



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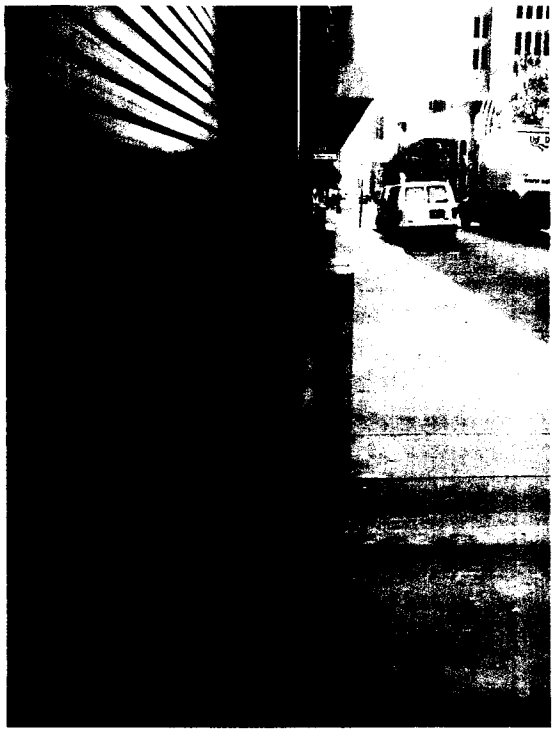
Encroachment 23.JPG



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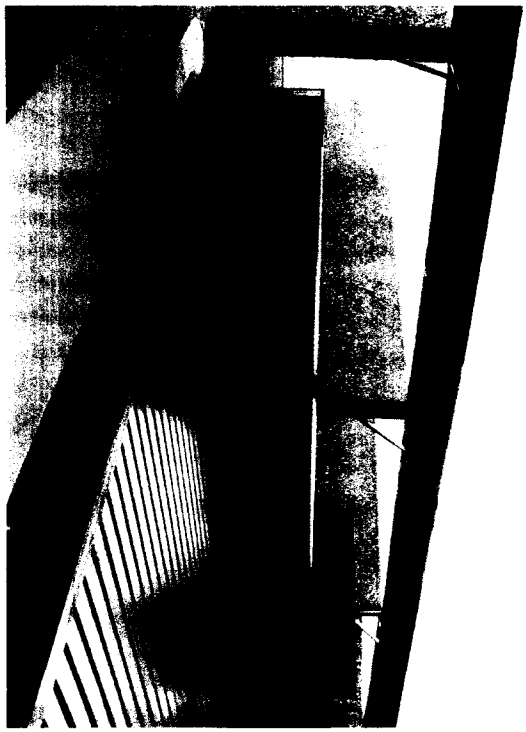

Encroachment 22.JPG

Encroachment 23.JPG

EXHIBIT C
Proposed Encroachments
(One page of Descriptions and one page of Images)

Proposed Encroachments on Peachtree Center Ave:

- Roll-up doors and operating mechanisms [Photo Ref.#s: Encroachment 22, 23]
- Trench drains [Photo Ref.#s: Encroachment 21]
- Bollards [Photo Ref.#s: Encroachment 21]
- Awning [Photo Ref.#s: Encroachment 22, 23]

#79

04- R-0764

(Do Not Write Above This Line)

A RESOLUTION BY:

CITY UTILITIES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH HYATT EQUITIES, L.L.C., OWNER OF HYATT REGENCY ATLANTA OR ITS DESIGNEE(S) FOR THE RENOVATION/ EXPANSION OF HYATT REGENCY ATLANTA IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

By: _____

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

Date Referred 4/19/04

Referred To: City Utilities

Date Referred

Refferred To:

Date Referred

Referred To:

First Reading

Committee _____

Date _____

Chair _____

Referred To _____

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

MAYOR'S ACTION