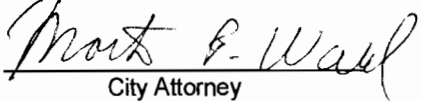


Introduced By

Councilmember

Approved For Form And Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 83478 C.M.S.

RESOLUTION GRANTING DEREK S. KUBOTA A REVOCABLE AND CONDITIONAL PERMIT TO ALLOW PORTIONS OF AN EXISTING RESIDENCE AT 14010 BROADWAY TERRACE TO ENCROACH INTO THE PUBLIC RIGHT- OF-WAY

WHEREAS, Derek S. Kubota, who is the owner of the property described in a grant deed, recorded November 3, 2003, series no. 2003653875, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as parcel number 048G-7427-014-03, and identified by the City of Oakland as 14010 Broadway Terrace and more particularly described in *Exhibit A* attached hereto, has made an application to the City Engineer of the City of Oakland for a permit (ENMJ 11053) to allow portions of an existing garage, stairs, retaining walls, and courtyard to encroach into the public right-of-way along Broadway Terrace; and

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

WHEREAS, the owner has also applied to the Building Official of the City of Oakland for a permit (RB1101686) to repair the driveway serving said residence and replace the entry stairs; and

WHEREAS, section 12.08.030 of the Oakland Municipal Code requires that applications for permanent encroachments into the public right-of-way receive approval from the Council of the City of Oakland as a condition of permit issuance; and

WHEREAS, said encroachment into the public right-of-way and its location beyond the limits of said parcel's boundaries has not interfered with the use by the public of the right-of-way since the construction of said residence in 1996; and

WHEREAS, the Council of the City of Oakland has previously approved similar encroachments of portions of existing residences into the public right-of-way throughout Oakland

WHEREAS, the encroachments are categorically exempted from the requirements of the California Environmental Quality Act (CEQA) in accordance with, but not limited to, each of the following California Code of Regulations: Section 15332 (Class 32: Infill Projects), Section 15301 (minor alteration to existing structures), and Section 15304 (minor alterations to land); now, therefore, be it

RESOLVED: That the encroachments comply with the requirements of the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the encroachments, as conditioned herein and delineated in *Exhibit B*, are hereby granted for a revocable permit to allow said portions of said existing residence to encroach into the public right-of-way along Broadway Terrace; and be it

FURTHER RESOLVED: That the encroachments are hereby conditioned by the following special requirements:

1. the Permittee (Derek S. Kubota) 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 insured the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims, liability, demands, lawsuits, actions, causes of action, proceeding and judgments for injury and/or damages of any kind and nature whatsoever arising out of, related to or caused by 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 (5) years; and
- 5a. the Permittee, by the acceptance of this conditional permit agrees and promises to defend (with counsel acceptable to the City), hold harmless, and indemnify the City of Oakland, the Oakland City Council and its respective officials, officers, employees, agents, representatives, and volunteers (collectively called "City") from any and all liability, claims, demands, lawsuits, actions, causes of action, proceeding and judgments for injury and/or damages of any kind and nature whatsoever (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") arising out of, related to or caused by the existence, installation or maintenance of the encroachments into the

public right-of-way and regardless of responsibility for negligence. The City may elect, in its sole and absolute discretion, to participate in the defense of said Action and the Permittee shall reimburse the City for its reasonable legal costs and attorneys' fees; and

- 5b. within ten (10) calendar days of the filing of any Action as specified in subsection a) above, the Permittee shall execute a Joint Defense Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment or invalidation of this Permit. Failure to timely execute the Letter Agreement does not relieve the Permittee of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City; 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 its maintenance and /or repair and/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, at its sole cost and expense, immediately remove the encroachments from within 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 **Exhibit B**; 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, that it is responsible for the proper coordination of its activities with all other permittees, underground

utilities, contractors, or workmen operating within the encroachment area, and that it is responsible for its own safety and the safety 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 the Council of the City of Oakland, at its sole discretion and at a future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule, for use and occupancy of the public right-of-way; 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 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; and be it

FURTHER RESOLVED: That the City Engineer is hereby authorized to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 19 2011, 2011

PASSED BY THE FOLLOWING VOTE:

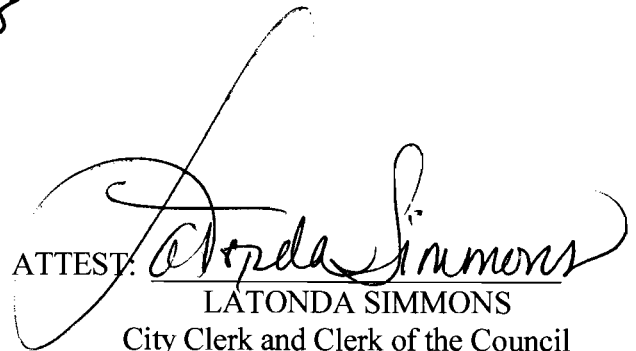
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

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

EXHIBIT A

Description of the Private Property Abutting the Encroachment

Address 14010 Broadway Terrace

Parcel no. 048G-7427-014-03

Deed no. 2003-653875

Recorded November 3, 2003

Portion of Lot 3, Block "K", a Resubdivision of Pinehaven, filed March 16, 1923, Map Book 3, Pages 53 and 54, Alameda County Records, described as follows:

Beginning at the point of intersection of the Western line of Broadway Terrace, formerly Pinehave boundary line of Lot 3, running thence South $78^{\circ} 42' 30''$ West, 26.9 feet; thence North $88^{\circ} 02' 30''$ West, 120.0 feet; thence North $72^{\circ} 03' 05''$ West, 69.72 feet to the Northern boundary line of said Lot 2, thence South 53.85 feet; thence South $87^{\circ} 09' 30''$ East, 190.49 feet; thence South $59^{\circ} 02' 30''$ East, 26.75 feet to the Eastern boundary line of said Lot 3; thence Northerly along said line of Broadway Terrace on the arc of a curve to the right, with a radius of 114.19 feet, a distance of 5.8 feet; thence Northerly along said line of Broadway Terrace on the arc of a curve to the left, a radius of 34.71 feet, a distance of 37.44 feet; thence Northerly along said line of Broadway Terrace on the arc of a curve to the right with a radius of 144.24 feet, a distance of 17.79 feet to the point of beginning.

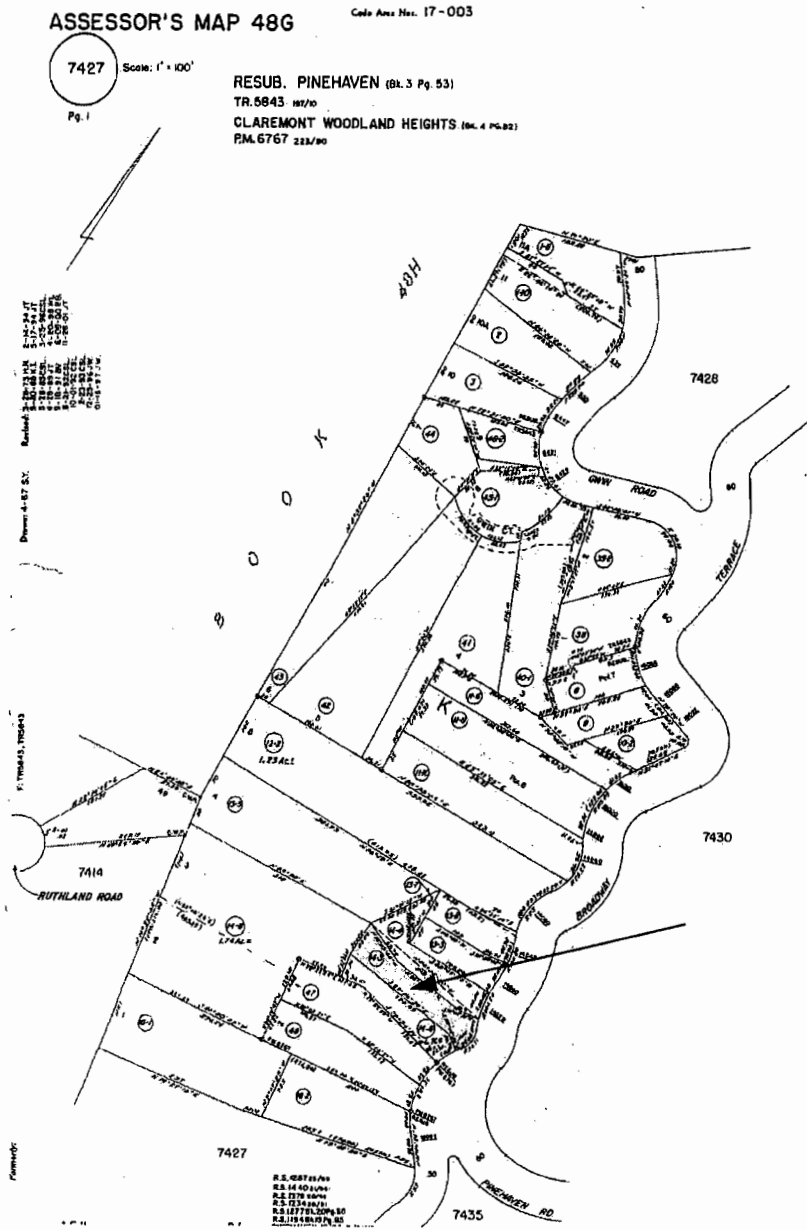
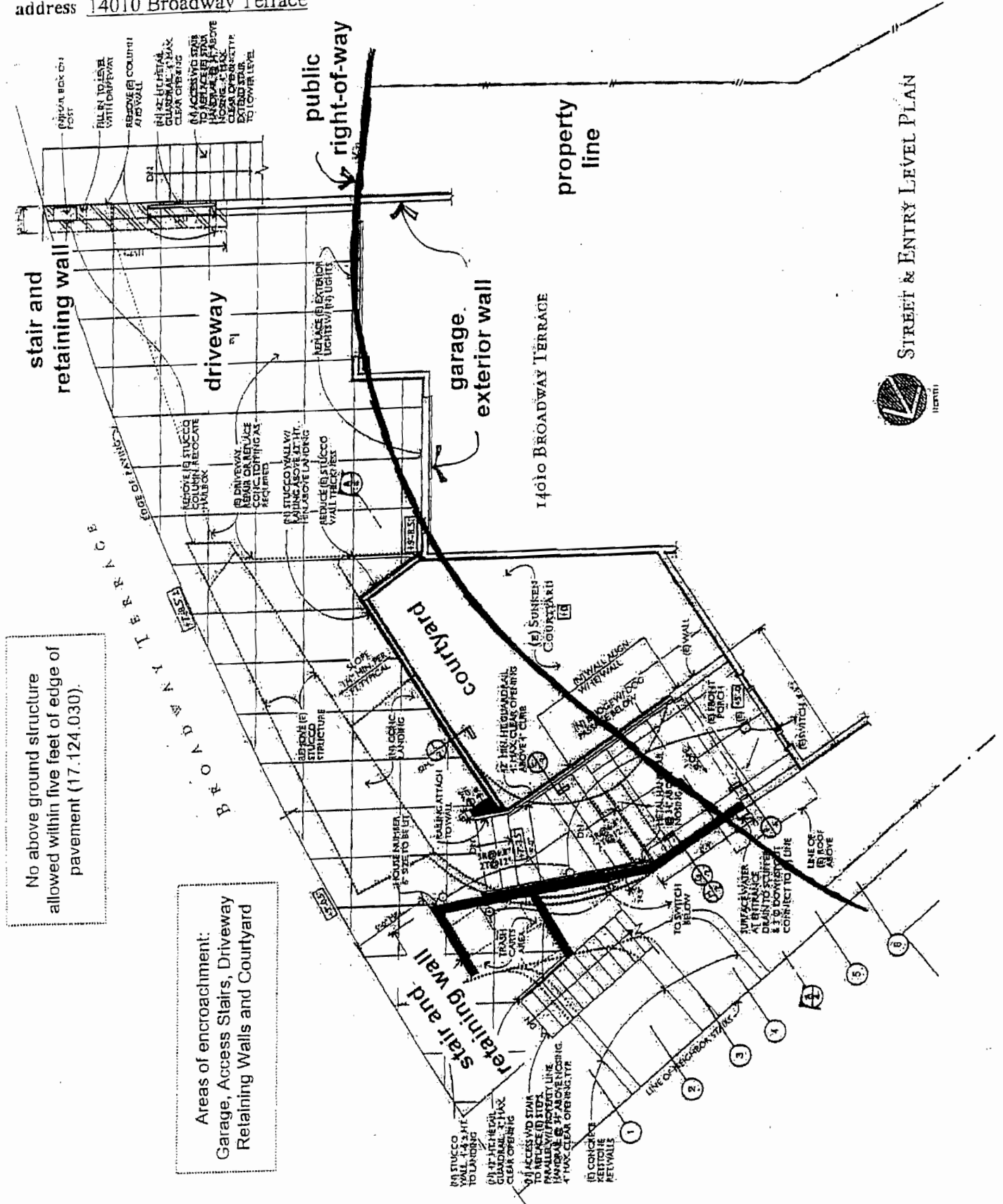


EXHIBIT B

Limits Of The Encroachment In The Public Right-Of-Way

parcel no. 048G-7427-014-03

address 14010 Broadway Terrace



No above ground structure allowed within five feet of edge of pavement (17.124.030).

Areas of encroachment:
Garage, Access Stairs, Driveway
Retaining Walls and Courtyard



STREET & ENTRY LEVEL PLAN