

Introduced by

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND Approved for Form and Legality

\_\_\_\_\_  
Councilmember

2005 JUN 16 PM 6:29 F. Fai Z  
City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. 79344 C.M.S.

**A RESOLUTION GRANTING OLSON 737 – OAKLAND 1, LLC, A REVOCABLE AND  
CONDITIONAL PERMIT TO ALLOW ORIEL WINDOWS ON THE 2<sup>ND</sup>, 3<sup>RD</sup>, 4<sup>TH</sup>, AND 5<sup>TH</sup>  
FLOORS OF A BUILDING AT 1307 JEFFERSON STREET TO ENCROACH OVER THE  
PUBLIC RIGHT-OF-WAY**

**Whereas**, Olson 737 – Oakland 1, a Limited Liability Company ("Permittee"), owner of the property described in the Grant Deed, recorded September 22, 2004, Series No. 2004429415, at the Office of the County Recorder, Alameda County, California, commonly known as 1307 Jefferson Street (APN: 002 -0029-001-00 ) and more particularly described in Exhibit A attached hereto, has made application to the Council of the City of Oakland for a conditional permit to allow the oriel windows of residential occupancies on the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> floors of a new building to encroach over the public right-of-way, and

**Whereas**, the locations of the encroachments are described in Exhibits B and C attached hereto; and

**Whereas**, the encroachments will not interfere with the use by the public of the roadway or sidewalk, and

**Whereas**, the requirements of the California Environmental Quality Act (CEQA) of 1970, 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 that in accordance with Section 15332 (Class 32: Infill Projects) and Section 15301 (Minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act.

**Now, therefore, the Council of the City of Oakland does resolve as follows:**

**Resolved**, that the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it further

**Resolved**, that the encroachment permit, as conditioned herein, is hereby granted for oriel windows of residential occupancies on the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> floors of a new building at 1307 Jefferson Street to encroach over the public right-of-way, as described herein in Exhibits B and C; 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 sidewalk area, good and sufficient commercial general insurance in the amount of \$2,000,000 for each occurrence, and property damage insurance in the amount of \$250,000 for each occurrence both including contractual liability insuring the City of Oakland, its officers and employees, 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 or be permitted to lapse without thirty (30) days' written notice to said Director of Building Services. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required every one (1) year and may require the Permittee to increase the amount of and/or change the type of insurance coverage required, if such is reasonably necessary as determined by the City of Oakland; and

5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend and hold harmless and indemnify the City of Oakland, its directors, agents, officers, employees, and volunteers from any and all claim, demand, lawsuit and judgment 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. The liability insurance referred to in the preceding paragraph shall cover this contractual liability, provided that nothing herein shall be interpreted as limiting the Permittee's defense, hold harmless and indemnification obligations to the amount set forth in the preceding paragraph; 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 liable for the expenses connected therewith; and

8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, and shall repair any damage resulting there from 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 the 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.). Notwithstanding the above provisions of this Paragraph 12, Permittee shall not be liable to the City of Oakland for any hazardous substances on, in or beneath the encroachment area that were not caused by the Permittee, his or her agents, employees, tenants or service providers; 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 Permittee, by the acceptance of this revocable permit, agrees and promises to indemnify, defend, and hold harmless the City of Oakland, its directors, officers, agents, employees, and volunteers to the maximum extent permitted by law, 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 be in any way connected with the Permittee's use, installation or maintenance of the encroachment, 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

16. 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, JUL 19 2005, 2005.

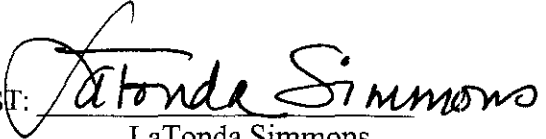
PASSED BY THE FOLLOWING VOTE:

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

APN: 002 -0029-001-00

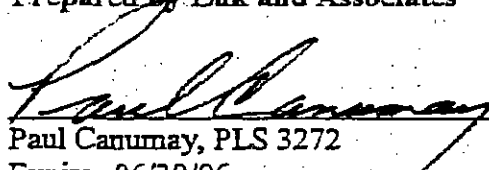
The real property referred to herein is situated in the State of California, County of Alameda, City of Oakland, and is described as follows:

A parcel of land located in Block 187 and a part of 13<sup>th</sup> Street as shown on Kellersberger's Map of Oakland, recorded in Map Book 7, on Page 3, Alameda County Records, California, and more particularly described as follows:

Beginning the most Northerly Corner of Block 187, Kellersberger's Map of Oakland, recorded in Map Book 7, on Page 3, Alameda County Records; thence South 62°35'06" East a distance of 300.05 feet to a point on the Northwest right-of-way of Jefferson Street and the most Easterly Corner of said Box 187; thence, along the Northwest right-of-way of Jefferson Street, South 27°24'54" West a distance of 220.00 feet; thence North 62°35'06" West a distance of 300.05 feet to a point on the Southeast right-of-way of Martin Luther King Jr. Way (formerly Grove Street); thence, along the Southeast right-of-way of Martin Luther King Jr. Way (formerly Grove Street), North 27°24'54" East 220.00 feet to the Point of beginning.

Containing 66,011 square feet, more or less.

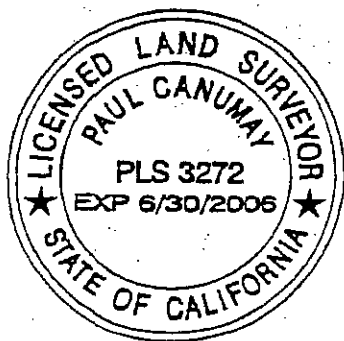
Prepared by Lnk and Associates

  
Paul Canumay, PLS 3272

Expires 06/30/06

Date: 8-10-04

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

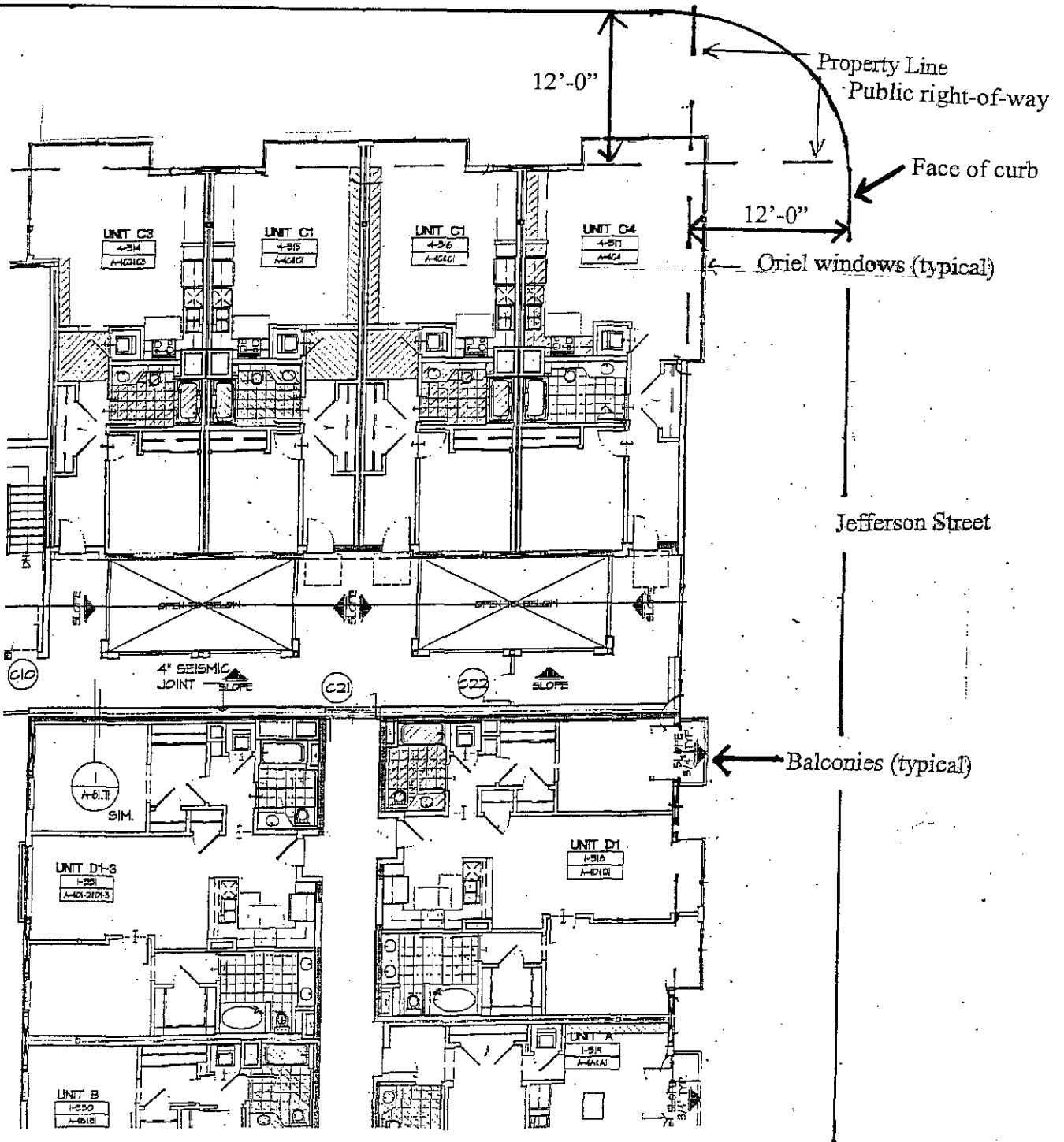


**Exhibit B**  
Floor Plan

- Encroachment of proposed oriel windows along 14<sup>th</sup> Street and Jefferson Street wall front.
- 3'0" maximum encroachment beyond property line.
- Total of 10 oriel windows per floor on 14<sup>th</sup> Street.
- Total of 5 oriel windows per floor on Jefferson Street.



14<sup>th</sup> Street



**Exhibit C**  
Building Elevation

