

Introduced By

\_\_\_\_\_  
Councilmember

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2010 APR 29 PM 7:41

Approved For Form And Legality

  
\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. 82746 C.M.S.

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### RESOLUTION GRANTING MONTGOMERY REALITY INVESTORS I LLC A CONDITIONAL AND REVOCABLE PERMIT TO ALLOW EXISTING PORTIONS OF A BUILDING LOCATED AT 902 CENTER STREET TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ALONG CENTER STREET AND 9th STREET

**WHEREAS**, Montgomery Reality Investors I LLC (Permittee), a California limited liability company (no. 200711010339) and owner of the property described in a grant deed, recorded November 3, 2008, series no. 2008321590, by the Alameda County Recorder, and identified by the Alameda County Assessor as APN 004-0065-020-00, and identified by the City of Oakland as 902 Center Street, and more particularly described in *Exhibit A* attached hereto, has made an application to the City Engineer of the City of Oakland for a conditional and revocable permit (ENMJ 10053) to allow existing portions of a building to encroach approximately eighteen (18) inches into the rights-of-way along Center Street and 9th Street; and

**WHEREAS**, the two (2) story building was originally constructed circa 1896 on a corner lot bounded by Center Street and 9th Street; and

**WHEREAS**, said parcel is a portion of Lot 15 in Block 552, as shown on the "Map of Eight Street Tract", filed with the Alameda County Recorder on March 17, 1876, in book 7 of maps, on page 22; and

**WHEREAS**, the owner has filed an application with the City of Oakland for a Parcel Map (PM09840) to convert the two (2) residential apartments to condominium ownership; and

**WHEREAS**, pursuant to Oakland Municipal Code Section 16.24.070, said application requires that the owner submit a boundary survey performed by an engineer or land surveyor licensed by the State of California for the subsequent Parcel or Final Map; and

**WHEREAS**, said survey has identified the existing encroachments of a second story oriel window, a utility meter, and a wood fence into the public rights-of-way; and

**WHEREAS**, the limit of said encroachments are delineated in *Exhibit B* attached hereto; and

**WHEREAS**, the adjoining sidewalks are approximately twelve (12) feet wide and the encroachments and their locations have not interfered with pedestrian access or the maintenance of buried utilities in the public right-of-way for more than one-hundred and fourteen (114) years; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), 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 CEQA Guideline Section 15332 (Class 32: Infill Projects) and Section 15303 (new construction or conversion of small structures) and Section 15301 (existing facilities) this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

**RESOLVED:** That the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

**FURTHER RESOLVED:** That the encroachment, as conditioned herein and delineated in *Exhibit B*, is hereby granted for a revocable permit to allow an existing oriel window, a utility meter, and a wood fence to encroach into Center Street and 9th Street public rights-of-way; and be it

**FURTHER RESOLVED:** That the encroachment is hereby conditioned by the following special requirements:

1. the Permittee (Montgomery Reality Investors I LLC) 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 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, 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

5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, 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. This indemnification shall survive termination of this Permit; 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 solely 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, 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 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

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 Permittee's 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.); 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 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 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 of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 18 2010, 2010

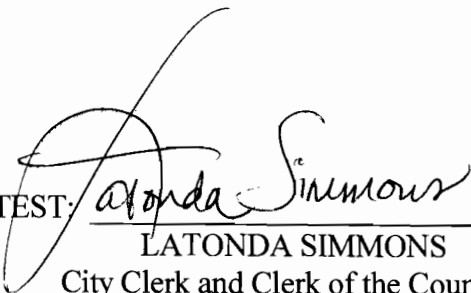
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,  
AND PRESIDENT BRUNNER - 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 902 Center Street

Parcel no. 004 -0065-020-00

Deed no. 2008321590

Recorded November 03, 2008

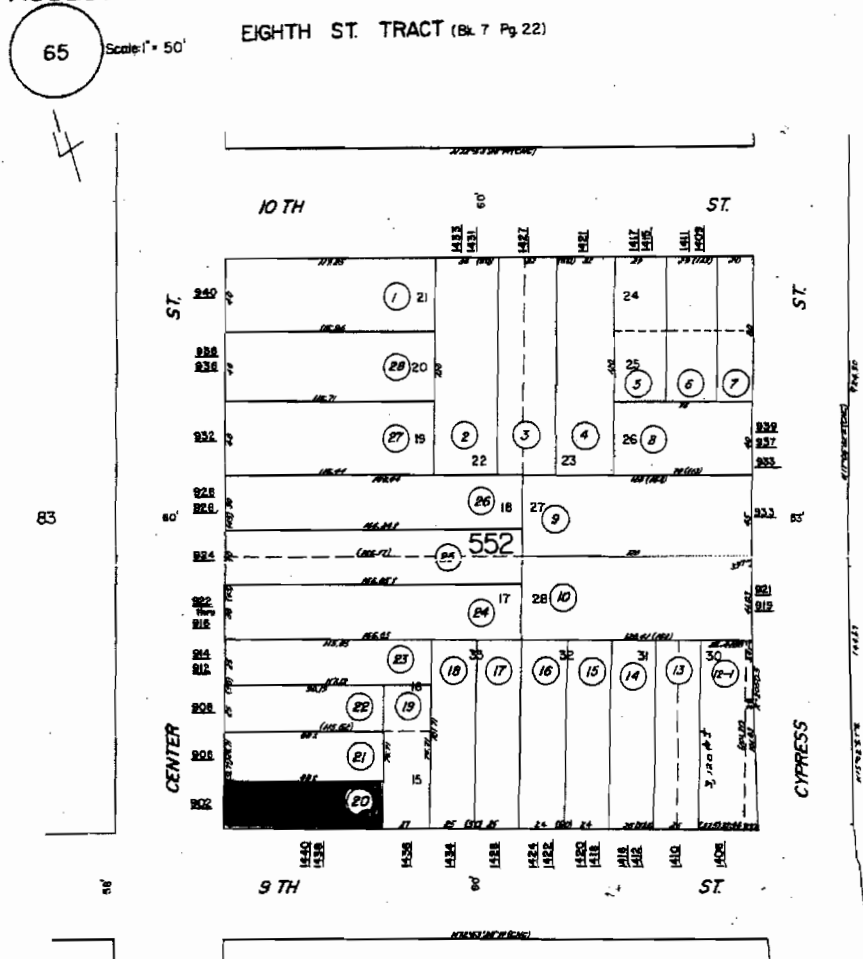
The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

A portion of Lot 15, Block 552, "Map of Eighth Street Tract", filed March 17, 1976, Map Book 7, Page 22, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the Northern line of 9th Street, with the Eastern line of Center Street; running thence Easterly along said line of 9th Street, 88 feet, 2 1/4 inches; thence Northerly parallel with the Eastern line of Lot 15, 25 feet; thence Westerly parallel with said line of 9th Street 88 feet, 2 1/4 inches, more or less, to said line of Center Street; and thence Southerly along last named line 25 feet to a point of beginning.

APN: 004-0065-020

### ASSESSOR'S MAP 4

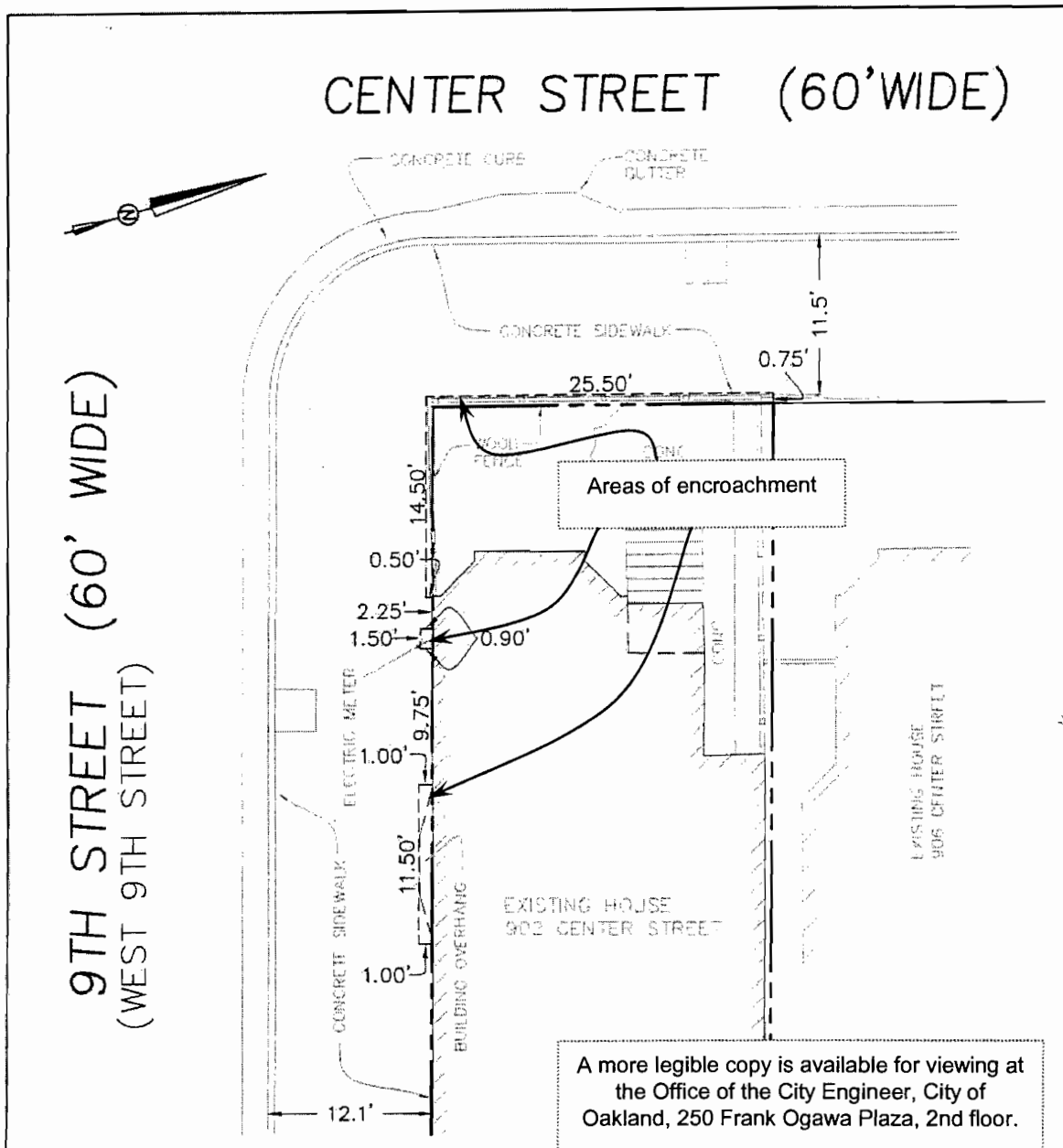


# EXHIBIT B

## Limits of the Encroachment in the Public Right-Of-Way

address 902 Center Street

parcel no. 004 -0065-020-00



A more legible copy is available for viewing at the Office of the City Engineer, City of Oakland, 250 Frank Ogawa Plaza, 2nd floor.

### LEGEND

- — — — — PROPERTY LINES
- - - - - ENCROACHMENT AREA LINES

NOTE:  
ENCROACHMENT LINES ARE PARALLEL WITH AND PERPENDICULAR TO THE PROPERTY LINES.

## PLAT OF PROPOSED ENCROACHMENT PERMIT

902 CENTER STREET  
CITY OF OAKLAND, COUNTY OF ALAMEDA,  
CALIFORNIA

MARCH 2010

SCALE: 1" = 10'

MORAN ENGINEERING, INC.  
1930 SHATTUCK AVENUE  
BERKELEY, CALIFORNIA 94704

APN 004-0065-020 CENTER-ENCROACH.DWG JOB NO. 08-7389