

**REVISED**

Introduced by

\_\_\_\_\_  
Councilmember

05 NOV - 5 PM 3:23

Approved for Form and Legality

*F. Fair*

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

**OAKLAND CITY COUNCIL**

**RESOLUTION No. 80240 C.M.S.**

**RESOLUTION GRANTING ROTUNDA GARAGE LP A REVOCABLE AND  
CONDITIONAL PERMIT TO ALLOW A PORTION OF THE UPPER FLOORS OF A  
PROPOSED BUILDING AT 1630 SAN PABLO AVENUE TO ENCROACH OVER THE  
PUBLIC SIDEWALK ALONG 17th STREET AND SAN PABLO AVENUE**

**WHEREAS**, Rotunda Garage LP ("Permittee"), a California limited liability company (no. 200418100034) and owner of the property described in a Grant Deed, recorded October 5, 2001, Series No. 2001381062, by the Alameda County Recorder, and identified by the Alameda County Assessor as APN 008-0620-014-03, and identified by the City of Oakland as 1630 San Pablo Avenue, and more particularly described in Exhibit A attached hereto, has made an application to the Council of the City of Oakland for a conditional and revocable permit to allow the construction of a cantilevered portion of the upper floors (second through eight stories) of a proposed new building to encroach over the public sidewalk along 17th Street and San Pablo Avenue; and

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

**WHEREAS**, the encroachment and its location beyond the property boundaries and clearance above the public right-of-way will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

**WHEREAS**, approval of the conditional and revocable permit for the encroachment shall not be an approval for any signage that may be proposed for the building and the property, and that in addition to any requirements contained in the Oakland Municipal Code, including but not limited to Title 14 (Signs) and Title 17 (Planning), the design review for said signage shall be approved by the Council of the City of Oakland as a condition for issuance of all required permits to install said signage; 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 in April 2001, the Planning Commission certified the EIR, and adopted CEQA Findings in connection with approval of this project; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the encroachment permit as conditioned herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the

CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance” as described in CEQA Guidelines 15162(a)(3); 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 Exhibits B and C, is hereby granted for a revocable permit to allow the cantilevered construction of the proposed building over the public sidewalk along San Pablo Avenue for a proposed building at 1630 San Pablo Avenue; 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 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 insureds 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 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, assigns, successors, and volunteers from any and all claims, demands, lawsuits and judgments 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 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 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 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.); 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 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, OCT 31 2006, 2006.

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND~~ BRUNNER, ~~CHANG~~, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE - 6

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brooks, Chang - 2

ATTEST:

  
LATONDA SIMMONS

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

## Exhibit A

### Lands of Rotunda Garage LP

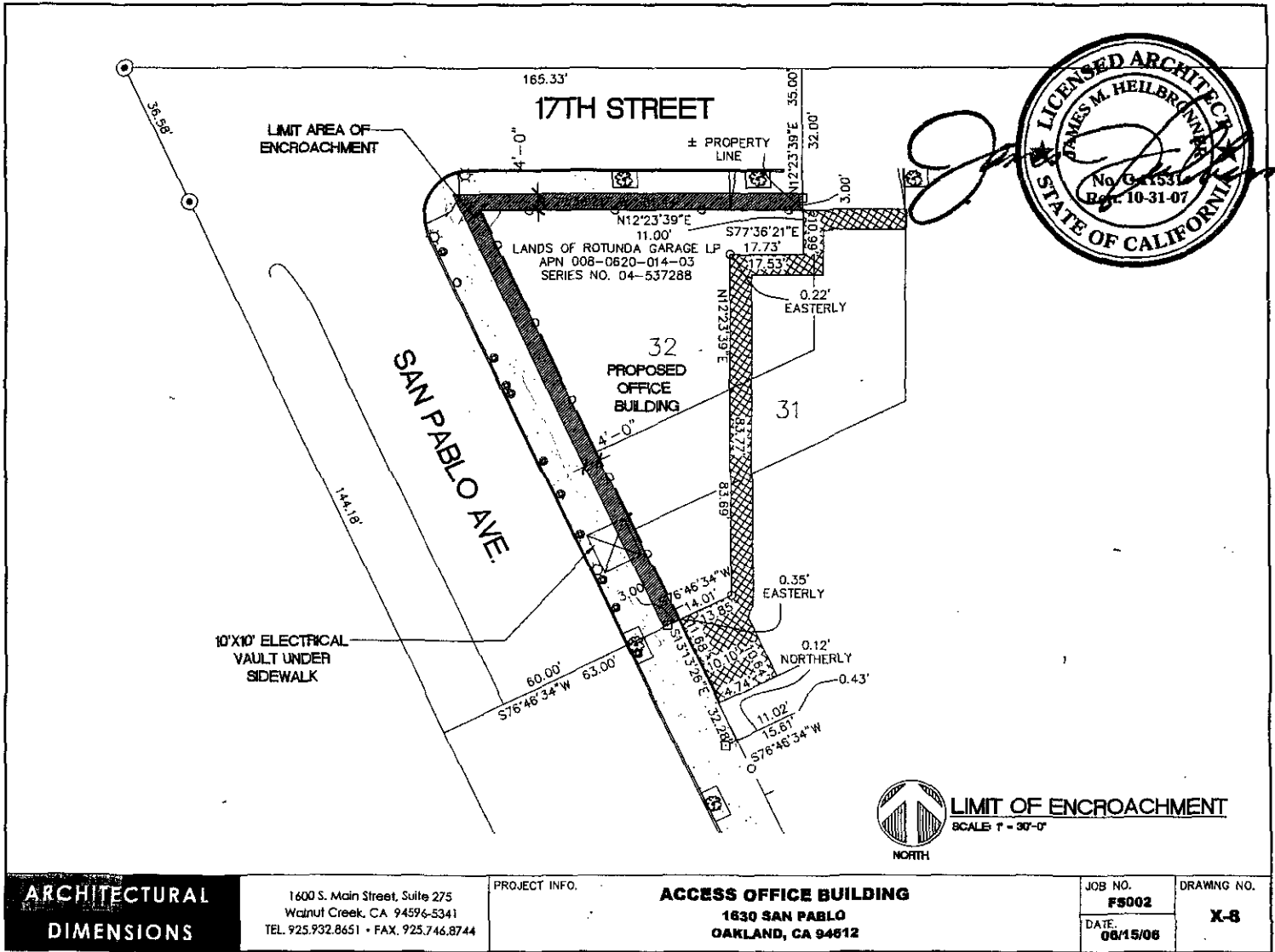
ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING A PORTION OF LOTS 28, 30, 31 AND 32 BLOCK "B", AS SAID LOTS AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE SURVEY MADE FOR G. C. POTTER, MARCH 28, 1877 BY T. ARNOLD C.E.", FILE APRIL 23, 1877 IN BOOK 2 OF MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, SAID REAL PROPERTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF 17<sup>TH</sup> STREET (60 FEET WIDE) AND THE EAST RIGHT OF WAY LINE OF SAN PABLO AVENUE (100 FEET WIDE) AS SHOWN ON SAID MAP; THENCE, SOUTH 77°36'21"EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF 17<sup>TH</sup> STREET 78.68 FEET; THENCE LEAVING SAID LINE, PERPENDICULAR TO SAID SOUTH RIGHT OF WAY LINE, SOUTH 12°23'39"WEST, 11.00' FEET; THENCE NORTH 77 °36'21" WEST, 17.73 FEET; THENCE , SOUTH 12°23'36" WEST, 83.69' TO A LINE DRAWN PERPENDICULAR TO SAID EAST LINE OF SAN PABLO AVENUE, DISTANT THEREON, SOUTH 12°23'39" EAST, 111.73 FEET ALONG THE SAID EAST LINE OF SAN PABLO AVENUE FROM THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE, SOUTH 76°46'34"WEST, 14.01 FEET, TO SAID EAST RIGHT OF WAY LINE OF SAN PABLO AVENUE; THENCE, NORTH 13°13'26" WEST, 111.73 FEET ALONG SAID EAST RIGHT OF WAY LINE, TO THE POINT OF BEGINNING

CONTAINING 3,863 SQUARE FEET/0.09 ACRES MORE OR LESS

**Exhibit B**

**Plan view**



**ARCHITECTURAL  
DIMENSIONS**

1600 S. Main Street, Suite 275  
Walnut Creek, CA 94596-5341  
TEL. 925.932.8651 • FAX. 925.746.8744

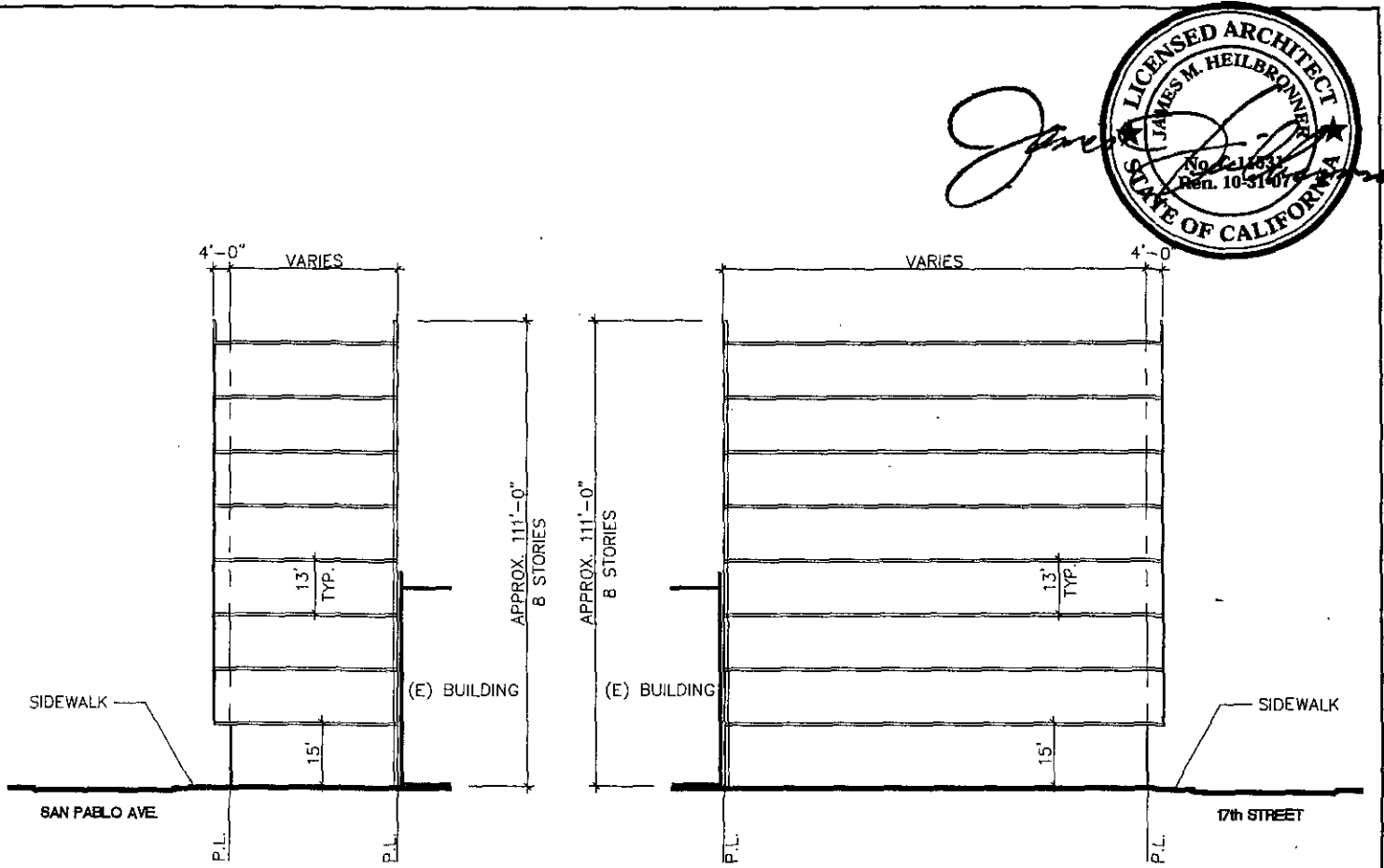
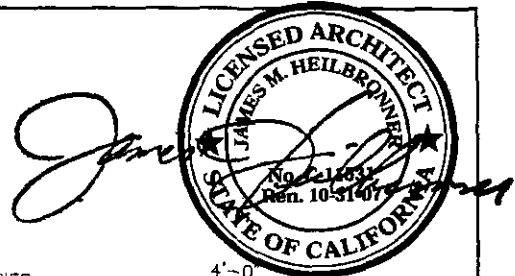
PROJECT INFO.

**ACCESS OFFICE BUILDING**  
1630 SAN PABLO  
OAKLAND, CA 94612

JOB NO.  
**F5002**  
DATE:  
**08/15/08**

DRAWING NO.  
**X-8**

**Exhibit C**  
Elevation View



**BUILDING SECTIONS**  
SCALE 1/24" = 1'-0"

<b>ARCHITECTURAL DIMENSIONS</b>	1600 S. Main Street, Suite 275 Walnut Creek, CA 94596-5341 TEL. 925.932.8651 • FAX. 925.746.8744	PROJECT INFO.  <b>ACCESS OFFICE BUILDING</b> 1630 SAN PABLO OAKLAND, CA 94612	JOB NO. <b>F8002</b>	DRAWING NO. <b>X-7</b>
			DATE: <b>6/15/06</b>	