

2019 SEP 12 AM 2:18

OAKLAND CITY COUNCIL

Approved as to Form and Legality

City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE MAJOR ENCROACHMENT PERMIT TO ESSEX MADISON LLC AND GREEN VALLEY CORPORATION TO ALLOW PORTIONS OF THE NEW BUILDING ABOVE GRADE AT 412 MADISON STREET TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ON 4TH, 5TH AND MADISON STREETS, MAJOR ENCROACHMENT PERMIT ENMJ19056.

WHEREAS, Essex Madison, LLC, a Delaware limited liability company, and Green Valley Corporation, a California corporation ("Permittee"), is the owner of the real property known as 412 Madison Street and described in a Grant Deed Recorded December 31, 2018 by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as APN: 001-0163-001, 001-0163-002, 001-0163-008, 001-0163-009, 001-0163-010 and 001-0163-011 and commonly known as 412 Madison Street hereto and incorporated herein (the "Property"); and

WHEREAS, Permittee proposes to develop a seven-story building with 157 dwellings above ground and commercial space above ground level on the Property (the "Project"); and

WHEREAS, the Project includes balconies and roof parapet, above grade fronting 4th, 5th and Madison Streets, that encroach onto the public right-of-way controlled by the City, the limits of which encroachments are delineated on *Exhibit A* hereto and incorporated herein (the "Encroachments"); and

WHEREAS, the City has approved the development of the Project (PLN18084), subject to a condition of approval that Permittee obtain a conditional and revocable major encroachment permit for the Encroachments; and

WHEREAS, Permittee has filed an application with Department of Transportation for such conditional and revocable Major Encroachment Permit (ENMJ19056) (hereinafter referred to as the "Permit"); and

WHEREAS, staff has determined, in accordance with the Oakland Municipal Code Chapter 12.08 and based on review of the plans and investigation of the Property and the area of the proposed Encroachments, that the Encroachments in the public right-of-way and their location will not, currently understood, interfere with the public use of the roadway, sidewalk, buried utilities, and will not endanger the public welfare and convenience during said public use; and

WHEREAS, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning); 15183.3 (streamlining for qualified infill projects); and/or 15168/15180 (projects consistent with a Redevelopment Program EIR); now, therefore, be it

RESOLVED: That the City Council has reviewed all relevant documents relating to its grant of this Permit; and be it

FURTHER RESOLVED: That the City Council finds and determines that the decision made hereby is made in conformance with the requirements of CEQA; and be it

FURTHER RESOLVED: That the City Council hereby grants to the Permittee a conditional revocable Permit to allow the Encroachments, which Permit shall take effect only upon the City and Permittee entering into an Indenture Agreement in the form substantially attached hereto as *Exhibit B* (the "Indenture Agreement"), the conditions therein being incorporated into the Permit; and be it

FURTHER RESOLVED: That the Permit shall commence and continue in effect so long as Permittee satisfies, and continues to satisfy, all conditions and obligations set forth in the Indenture Agreement; and be it

FURTHER RESOLVED: That the City Council, at its sole discretion and at a future date not yet determined, may impose additional and continuing fees for use and occupancy of the public right-of-way; and be it

FURTHER RESOLVED: That the Permit authorized by this Resolution shall take effect when all the conditions and obligations set forth in the Indenture Agreement 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 and obligations set forth in the Indenture Agreement, subject to the notice and cure provisions set forth therein, or upon a termination by resolution of the City Council as being in the City's best interest; and be it

FURTHER RESOLVED: That the City Engineer is hereby directed to file a certified copy of this Resolution for recordation with the Office of the Alameda County Clerk-Recorder as an encumbrance of the title of the property identified above.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO
AND PRESIDENT KAPLAN

NOES -

ABSENT -

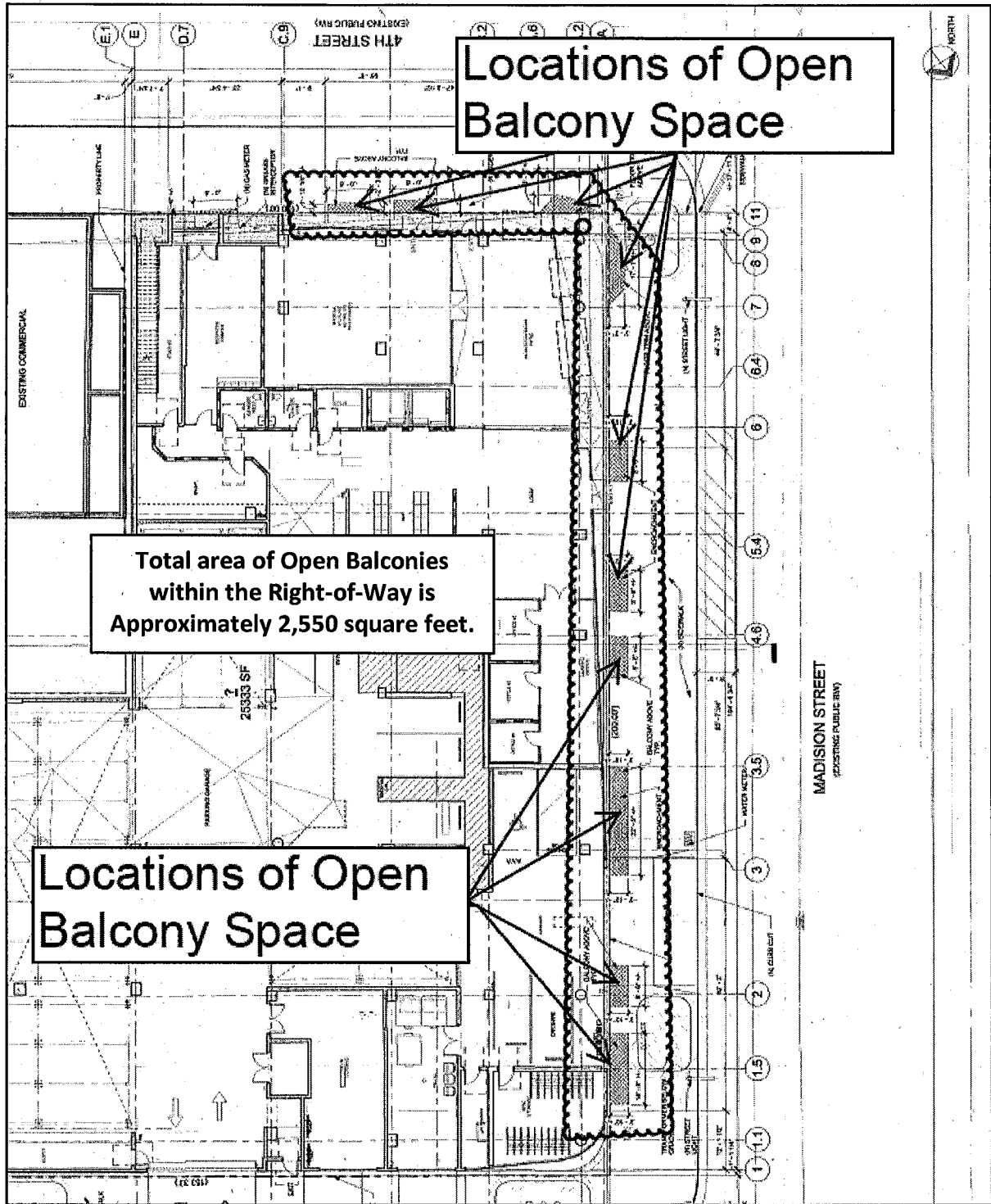
ABSTENTION -

ATTEST: _____

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

Exhibit A: 412 Madison Street (3 page)
Exhibit B: Indenture Agreement (9 pages)

EXHIBIT A: 412 MADISON STREET ENCROACHMENTS



Locations of Open Balcony Space

Total area of Open Balconies within the Right-of-Way is Approximately 2,550 square feet.

Locations of Open Balcony Space

MADISON STREET (EXISTING PUBLIC HWY)



EXHIBIT A (continued)

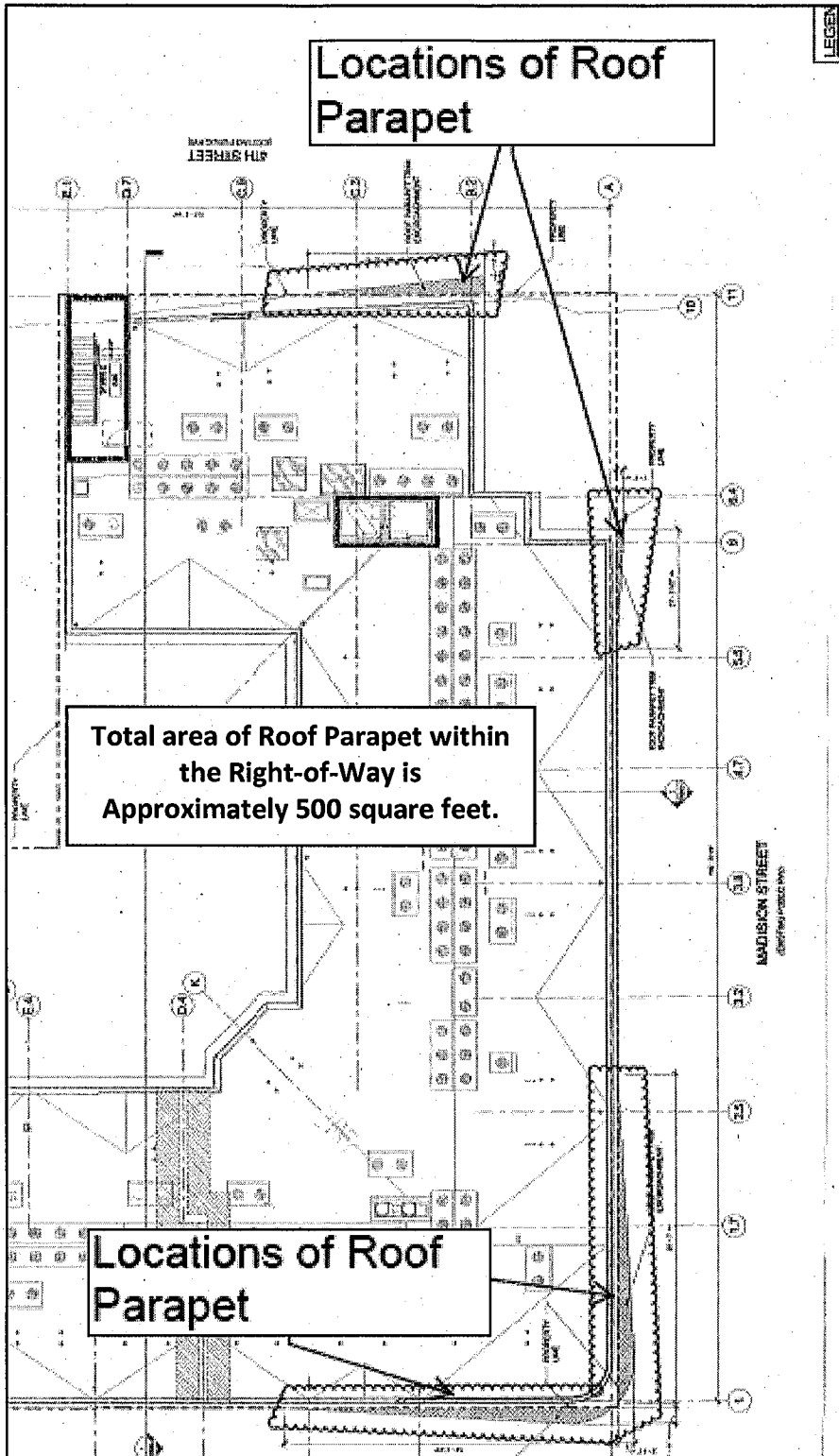


EXHIBIT A (continued)

Profile Views of Balconies and Roof Parapet Encroachments

Total area of Open Balconies within the Right-of-Way is Approximately 2,550 square feet.

Total area of Roof Parapet within the Right-of-Way is Approximately 500 square feet.

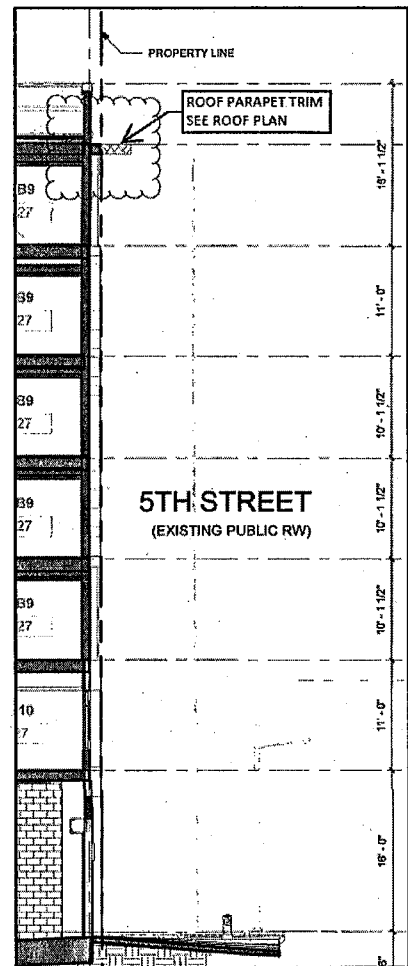
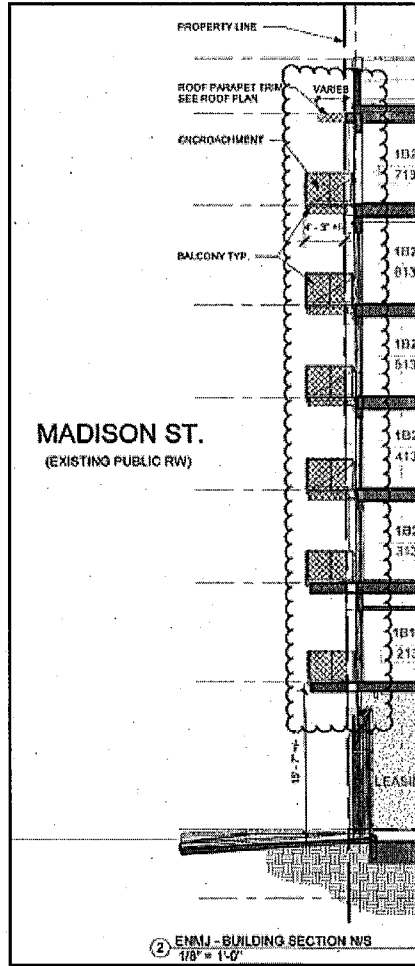
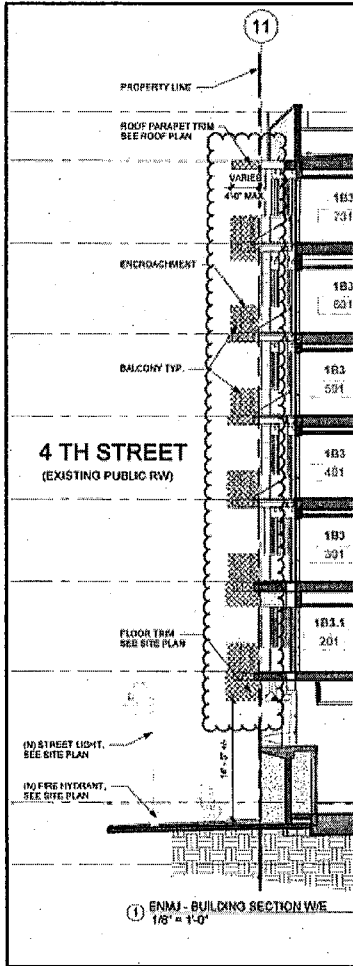


EXHIBIT B: INDENTURE AGREEMENT

(Attached Separately)