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Councilmember

F. Faiz

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 80380 C.M.S.

RESOLUTION SUMMARILY VACATING TWO PUBLIC SERVICE EASEMENTS TO ASIAMERILAND CORPORATION FOR PARCEL MAP 8290 ON 73rd AVENUE

WHEREAS, Asiameriland ("Subdivider"), a California corporation (no. C2761838) and owner of the property delineated on subdivision Parcel Map no. 8290, filed November 21, 2006, in book 294 of parcel maps, pages 15 and 16, series no. 2006431605, Alameda County Records, and identified by the Alameda County Assessor as APN 040A-3419-026-06 and more particularly described in *Exhibit A* attached hereto, has made an application to the Council of the City of Oakland for a summary vacation of two (2) adjoining public service easements that transect vacant Parcel 1 and abut vacant Parcel 2, as shown on said parcel map; and

WHEREAS, said parcel map delineates the individual locations and metes and bounds of said adjoining easements; and

WHEREAS, said adjoining easements are also described and delineated on the subdivision Tract Map "Leona Heights Addition", filed February 27, 1925, in book 4, page 64, Alameda County Records, and shown on Lots 10, 13, and 13A; and

WHEREAS, as shown on said tract map, said adjoining easements were dedicated to the City of Oakland for purpose of constructing and maintaining sewers and the right to permit to construct and maintain public utility structures for gas, telephone, telegraph, and other wires and cables of all kinds used for conveying and supplying electric current of all kinds and for all purposes; and

WHEREAS, a sanitary sewer main was subsequently constructed within said adjoining easements and has been continually maintained by the City of Oakland; and

WHEREAS, no other public utilities have been constructed within said adjoining easements by local service providers; and

WHEREAS, as a condition of approval by the City of Oakland of said parcel map, the Subdivider dedicated a companion ten (10) feet wide sanitary sewer easement and a twenty (20) feet wide public utility easement to the City of Oakland, as described and delineated on said parcel map; and

WHEREAS, as a condition of approval by the City of Oakland of said parcel map, the Subdivider has constructed a new section of sewer main in said companion easement with permit PX0500067 and has abandoned the existing section of sewer main within said adjoining easements; and

WHEREAS, the vacation of said adjoining easements, as further delineated on *Exhibit B* attached hereto, will facilitate construction of future buildings on said vacant parcel; and

WHEREAS, section 8300 et seq. of the California Streets and Highways Code provides for the summary vacation of a public service easement where said easement has been relocated and no maintained public improvements remain in said easement and no objection to said vacation has been received from local public utility providers; and

WHEREAS, the City of Oakland has notified the Pacific Gas and Electric Company, the East Bay Municipal Utility District, and the American Telephone and Telegraph Company of its intention to vacate summarily said adjoining easements; and

WHEREAS, the City of Oakland has not received objections from said local providers for the proposed vacation of said adjoining easements; 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 Sections 15304, 15305, and 15183 this project is exempt; now, therefore, be it

RESOLVED: That the summary vacation of said adjoining easements does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the summary vacation of said adjoining easements is hereby granted; and be it

FURTHER RESOLVED: That the summary vacation of said adjoining easements is hereby conditioned by the following special requirements:

1. the Subdivider, by its application for the summary vacation, 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 public improvements in the easements and regardless of responsibility for negligence; and
2. the Subdivider acknowledges that the City of Oakland makes no representations or warranties as to the conditions within the easements; and that by its application for the summary vacation, the Subdivider agrees that it will use the easement areas at its own risk; and
3. the Subdivider acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement 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 easement areas 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

4. the Subdivider 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

5. the Subdivider 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 make an application for a summary vacation, regardless of whether Subdivider's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

6. the hereinabove conditions shall be binding upon the Subdivider and the successive owners and assigns thereof; 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, FEB 6 2007, 2007.

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, ~~REID~~, AND
PRESIDENT DE LA FUENTE - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST:

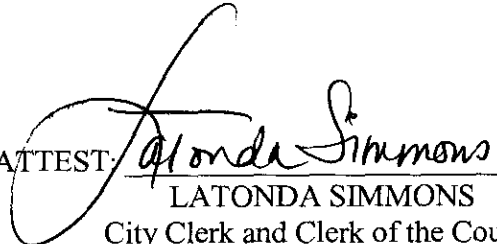

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Metes and Bounds - Parcel 040A-3419-026-06

Portion of Lot 10, 13, and 13A, block H, map of the Leona Heights Addition, filed February 27, 1925, map book 4, page 64, Alameda County Records, further described as follows:

Beginning at the most northerly corner of Lot 10, thence south $10^{\circ} 09' 00''$ east 5.09 feet to the actual point of beginning; thence north $85^{\circ} 37' 25''$ east 5.03 feet; thence south $10^{\circ} 09' 00''$ east 86.18 feet; thence north $67^{\circ} 58' 22''$ west 11.82 feet; thence north $10^{\circ} 09' 00''$ west 80.90 feet; thence north $85^{\circ} 37' 25''$ east 5.03 feet to the actual point of beginning.

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