

(R-2008-1013) 336 C  
5/20

RESOLUTION NUMBER R- 303733

DATE OF FINAL PASSAGE MAY 20 2008

WHEREAS, California Streets and Highways Code section 8300 et seq. and the San Diego Municipal Code section 125.0910(b) provide a procedure for the summary vacation of a public right of way by City Council resolution; and

WHEREAS, the affected property owner has requested the summary vacation of a portion of Fifth Avenue, Montecito Way and Sixth Avenue [Summary Public Right-of-Way Vacation No. 1] to unencumber the property and facilitate development of the site as conditioned in Conditional Use Permit No. 304755, as shown on Drawing No. 20644-B, marked as Exhibit "B"; and

WHEREAS, Summary Public Right-of-Way Vacation No. 1 contains public utility facilities that would not be affected by the vacation; and

WHEREAS, Summary Public Right-of-Way Vacation No. 1 is excess public right-of-way and is not required for street or highway purposes; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 1, there is no present or prospective use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 1, the public will benefit from the action through improved use of the land made available by the vacation; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 1, the vacation does not adversely affect the Uptown Community Plan or the Progress Guide and General Plan; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 1 the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation; and

WHEREAS, the affected property owner has requested the summary vacation of a portion of Fifth Avenue [Summary Public Right-of-Way Vacation No. 2] to unencumber the property, re-align the street and facilitate development of the site as conditioned in Conditional Use Permit No. 304755, as shown on Drawing No. 20642-B, marked as Exhibit "B"; and

WHEREAS, Summary Public Right-of-Way Vacation No. 2 contains public utility facilities that would not be affected by the vacation; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 2, the public right of way has been superseded by relocation, and the vacation would not cut off all access to an individual property that, before relocation, adjoined the public right of way; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 2 there is no present or prospective use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 2, the public will benefit from the action through improved use of the land made available by the vacation; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 2, the vacation does not adversely affect the Uptown Community Plan or the Progress Guide and General Plan; and

WHEREAS, for Summary Public Right-of-Way Vacation No. 2 the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation; and

WHEREAS, the City of San Diego hereby reserves and excepts, from Summary Vacation No. 1, the right, easement, and privilege of placing, constructing, repairing, replacing, maintaining, using, and operating public utilities of any kind or nature, and appurtenant structures thereto, including, but not limited to, general utilities and all necessary and proper fixtures and equipment for use in connection therewith, in, through, over, under, upon, along, and across these summarily vacations, together with the right of ingress thereto and egress therefrom, together with the right to maintain the public utility easement(s) free and clear of any excavation or fills, the erection or construction or any buildings or other structures, the planting of any tree or trees thereon, or the drilling or digging of any well or wells thereon, together with the right to otherwise protect from all hazards the operation and use of any right hereby reserved. If the owner of the underlying fee obtains approval for an encroachment permit from the City Engineer pursuant to the San Diego Municipal Code, then the owners of the underlying fee may utilize the Subject Property for structures, the planting or growing of trees or the installation of privately owned pipelines; and

WHEREAS, the City of San Diego hereby reserves and excepts, from these summary vacations described herein, the easements and rights of any public utility pursuant to any existing franchise or renewals thereof, at any time, or from time to time, to construct, maintain, operate, replace, remove, renew, and enlarge overhead or underground line of pipes, conduits, cables, wires, poles, and other structures, equipment, and fixtures for the transportation and distribution of electrical or electronic energy and natural gas, and the transportation and distribution of communication signals and for incidental purposes including access to protect these public works from all hazards in, upon, over, and across the Public Rights-of-Way to be summarily vacated; and

WHEREAS, granting of these Summary Public Right-of-Way Vacations does not free the summarily vacated property described herein, from any other easements for vehicular or non-vehicular trail use that the City had previously transferred or granted to the State or other public agency nor does it affect any existing private easements or other rights of a person (including, but not limited to, a public utility, the state, a public corporation, or a political subdivision, other than the City) in, to, or over the summarily vacated property described herein, regardless of the manner in which the private easement or other right was acquired; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

NOW, THEREFORE,

BE IT RESOLVED, as follows:

- (a) There is no present or prospective use for the public right-of-ways, either for the facilities for which they originally acquired or for any other public use of a like nature that can be anticipated; and
- (b) The public will benefit from the action through improved use of land made available by the vacations; and
- (c) The vacations do not adversely affect any applicable land use plan; and
- (d) The public facilities for which the public right-of-ways were originally acquired will not be detrimentally affected by these vacations; and

BE IT FURTHER RESOLVED, the Council of the City of San Diego finds:

1. That the public right of way, located within Parcel   1   of Parcel Map No. 18598, recorded on 12/08/2000 as Document No. 2000-0669213 O.R. as more particularly described in the legal description marked as Exhibit "A", and as shown on Drawing No. 20642-B, marked as Exhibit "B," and on file in the Office of the City Clerk as Document Nos. RR-303733<sup>-1</sup>, and RR-303733<sup>-2</sup> which are by this reference incorporated herein and made a part hereof, is ordered summarily vacated, reserving therefrom all existing rights in the summarily vacated public right of way as described herein; and

2. That the public right of way, located within Parcel   1   of Parcel Map No. 577/811, recorded on DATE as Document No. ADD O.R. as more particularly described in the legal description marked as Exhibit "A", and as shown on Drawing No. 20644-B, marked as Exhibit "B," and on file in the Office of the City Clerk as Document Nos. RR-303733<sup>-3</sup>, and RR-303733<sup>-4</sup> which are by this reference incorporated herein and made a part hereof, is ordered summarily vacated, reserving therefrom a general utility and access easement, and a building restricted easement as described herein; and

3. That the City Engineer shall advise the City Clerk of the completion of the two conditions listed below and the City Clerk shall cause a certified copy of this Resolution, with attached Exhibits, attested by her under Seal, to be recorded in the Office of the County Recorder. From and after the date of recordation of this Resolution, the summarily vacated public rights of way shall no longer constitute public right of way easements. Upon such recordation, the summary vacation is complete.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

(R-2008-1013)

By *Rachel Lipsky*  
Rachel C. Lipsky  
Deputy City Attorney

RL:mm  
05/02/08  
Or.Dept:DSD  
R-2008-1013  
MMS #6208

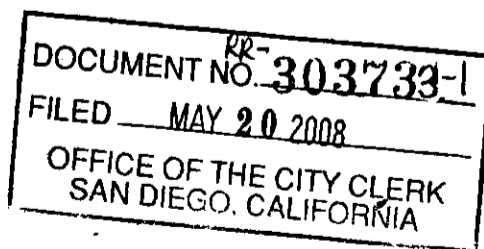
EXHIBIT "A"

LEGAL DESCRIPTION  
STREET VACATION - PARCEL 'F'

BEING A PORTION OF PARCEL 1, OF PARCEL MAP NO. 18598, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DECEMBER 8, 2000 AS FILE NO 2000-0669213 OF OFFICIAL RECORDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THAT CERTAIN CORNER OF SAID PARCEL 1, SAID CORNER LYING ON THE EASTERLY RIGHT OF WAY OF 5<sup>TH</sup> AVENUE AS SHOWN ON SAID PARCEL MAP NO. 18598; SAID CORNER ALSO BEING THE BEGINNING OF A 219.89 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 75°21'18" WEST; THENCE ALONG THE ARC OF SAID CURVE AND THE WESTERLY PARCEL LINE OF SAID PARCEL 1

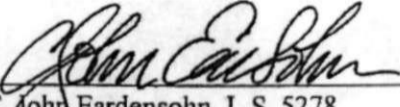
1. NORTHEASTERLY 53.94 FEET THROUGH A CENTRAL ANGLE OF 14°03'15" TO A POINT ON A TANGENT COMPOUND 374.41 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 61°18'03" WEST; THENCE ALONG THE ARC OF SAID COMPOUND CURVE
2. NORTHEASTERLY 29.98 FEET THROUGH A CENTRAL ANGLE OF 04°35'14" TO A POINT ON A TANGENT 93.16 FOOT RADIUS REVERSE CURVE CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 56°42'49" WEST; THENCE ALONG THE ARC OF SAID REVERSE CURVE NORTHEASTERLY, NORTHERLY AND
3. NORTHWESTERLY 142.32 FEET THROUGH A CENTRAL ANGLE OF 87°31'55", TO A POINT TO WHICH A RADIAL LINE BEARS NORTH 35°45'16" EAST; THENCE LEAVING SAID REVERSE CURVE AND THE EASTERLY PARCEL LINE OF SAID PARCEL 1
4. SOUTH 00°10'15" EAST 112.35 FEET TO A TANGENT 330.00 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE ALONG THE ARC OF SAID CURVE
5. SOUTHERLY 85.33 FEET THROUGH A CENTRAL ANGLE OF 14°48'57"; THENCE LEAVING THE ARC OF SAID CURVE



6. SOUTH 14°38'42" WEST 5.83 FEET TO THE POINT OF BEGINNING

ATTACHED HERETO IS DRAWING NO. 20642-3-B LABELED EXHIBIT 'B' BY THIS REFERENCE MADE A PART HEREOF.

CONTAINS AN AREA OF 4,333 SQUARE FEET MORE OR LESS.

  
C. John Eardensohn, L.S. 5278  
My Registration Expires 12-31-09

FILE: PTS 94392  
WO 425937  
DRAWING 20642-3-B



3/10/08  
DATE



**EXHIBIT "A"**

**LEGAL DESCRIPTION  
STREET VACATION**

THAT PORTION OF FIFTH AVENUE (FORMERLY FIFTH STREET), MONTECITO WAY (FORMERLY BROADWAY STREET) AND SIXTH AVENUE (FORMERLY SIXTH STREET), OF FIFTH STREET ADDITION, ACCORDING TO MAP THEREOF NO. 577, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 10, 1889, AND THAT PORTION OF SIXTH AVENUE (FORMERLY SIXTH STREET) OF FLEISCHER'S ADDITION, ACCORDING TO MAP THEREOF NO 811, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 4, 1806, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF LOT 12, IN BLOCK 2 OF SAID MAP NO. 577; THENCE ALONG THE WESTERLY LINE OF SAID BLOCK 2,

1. NORTH 00°08'40" WEST 93.58 FEET; THENCE LEAVING THE WESTERLY LINE OF SAID BLOCK 2
2. SOUTH 89°51'20" WEST 40.00 FEET SAID POINT BEING ON THE CENTERLINE OF FIFTH AVENUE; THENCE ALONG THE CENTER LINE OF FIFTH AVENUE; THENCE
3. NORTH 00°08'40" WEST 10.00 FEET; THENCE LEAVING SAID CENTERLINE
4. SOUTH 89°50'05" WEST 40.00 FEET TO A POINT LYING ON THE WESTERLY LINE OF FIFTH AVENUE; THENCE ALONG SAID WESTERLY LINE
5. SOUTH 00°08'40" EAST 153.42 FEET TO THE INTERSECTION OF THE WESTERLY LINE OF FIFTH AVENUE AND THE SOUTHERLY LINE OF MONTECITO WAY; THENCE ALONG SAID SOUTHERLY LINE
6. NORTH 89°57'29" EAST 325.08 FEET TO THE INTERSECTION OF THE SOUTHERLY LINE OF MONTECITO WAY WITH THE EASTERLY LINE OF SIXTH AVENUE; THENCE ALONG SAID EASTERLY LINE
7. NORTH 00°25'08" WEST 25.81 FEET; TO THE INTERSECTION OF THE EASTERLY LINE OF SIXTH AVENUE WITH THE CENTERLINE OF MONTECITO WAY; THENCE CONTINUING ALONG THE EASTERLY LINE OF SIXTH AVENUE

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8. NORTH 00°04'53" EAST 119.29 FEET; THENCE LEAVING SAID EASTERLY LINE
9. SOUTH 89°54'48" WEST 45.28 FEET; TO A POINT LYING ON THE WESTERLY LINE OF SIXTH AVENUE; THENCE ALONG SAID WESTERLY LINE
10. SOUTH 00°05'12" EAST 95.06 FEET TO THE INTERSECTION OF THE WESTERLY LINE OF SIXTH AVENUE AND THE NORTHERLY LINE OF MONTECITO WAY; THENCE ALONG SAID NORTHERLY LINE
11. SOUTH 89°57'29" WEST 200.05 FEET TO THE POINT OF COMMENCEMENT

RESERVING THEREFROM A GENERAL UTILITIES AND ACCESS EASEMENT OVER THE EASTERLY 40.00 FEET OF SAID VACATED PORTION OF FIFTH AVENUE AND MONTECITO WAY LYING NORTH OF THE CENTERLINE OF MONTECITO WAY.

ALSO RESERVING THEREFROM A 20.00 FOOT WIDE BUILDING RESTRICTED EASEMENT OVER THE WESTERLY 20.00 FEET OF THE EASTERLY 40.00 FEET OF SAID VACATED PORTION OF FIFTH AVENUE AND MONTECITO WAY LYING NORTH OF THE CENTERLINE OF MONTECITO WAY.

ATTACHED HERETO IS DRAWING NO. 20644-B LABELED EXHIBIT 'B' BY THIS REFERENCE MADE A PART HEREOF.

CONTAINS AN AREA OF 28,423 SQUARE FEET MORE OR LESS.

  
 C. John Eardensohn, L.S. 5278  
 My Registration Expires 12-31-09



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 DATE

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 DRAWING 20644-B

