

ORDINANCE NO. 2011-01

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE, ON BEHALF OF THE CITY, A
FIRST AMENDMENT TO THE DEVELOPMENT
AGREEMENT FOR THE 20-LOT, TRACT 933
RESIDENTIAL DEVELOPMENT

PLANNING CASE NO. PHG 10-0001

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN
as follows:

SECTION 1. That proper notices of a public hearing have been given and
public hearings have been held before the City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Mitigated
Negative Declaration (City Log No. ER 2005-38) and Mitigation Monitoring Report
prepared at the time the project was originally approved and has determined that all
environmental issues associated with the project have been addressed and no
significant environmental impacts will result from approving this modification to the
Development Agreement.

SECTION 3. That upon consideration of the staff report and all public
testimony presented at the hearing held on this amendment, this City Council finds that
the proposed amendment to the Development Agreement for Tract 933 is consistent
with the General Plan and all applicable specific plans of the City of Escondido.

SECTION 4. That the City Council desires at this time and deems it to be in the best public interest to approve the First Amendment to the Development Agreement, attached as Exhibit "A," which is incorporated by this reference, and authorizes the Mayor and City Clerk, on behalf of the City, to execute the First Amendment to the Development Agreement.

SECTION 5. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 6th day of April, 2011 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MORASCO, WALDRON, ABED
NOES : Councilmembers: NONE
ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



MARSHA WHALEN, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, MARSHA WHALEN, City Clerk of the City of Escondido, hereby certify that the foregoing
ORDINANCE NO. 2011-01 passed at a regular meeting of the City Council of the City of Escondido
held on the 6th day of April, after having been read at the regular meeting of said City Council held on the
23th day of March , 2011.



MARSHA WHALEN, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2011-01

RECORDING REQUESTED BY:
CITY CLERK, CITY OF ESCONDIDO

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

THIS SPACE FOR RECORDER'S USE ONLY

RECORDING FEES EXEMPT PER GOVERNMENT CODE SECTION 27383

FIRST AMENDMENT TO
NORTHEAST GATEWAY DEVELOPMENT AGREEMENT
(TRACT 933)

This First Amendment to Northeast Gateway Development Agreement (“Amendment”) is made and entered into this _____ day of _____ 2011, by and between the City of Escondido, State of California (“City”) and Lark & Sons, LLC, a California limited liability company, including its successors and assigns (“Owner”) (collectively, “the Parties”).

RECITALS

Whereas, on March 24, 2006, the City and the Owner’s predecessor-in-interest, Northeast Gateway, LLC (“Northeast”), entered into that certain agreement entitled “Development Agreement for Tract 933” which was recorded on July 11, 2006, Document No. 2006-0488074, Official Records of San Diego County (the “Agreement”). Pursuant to the Development Agreement, Northeast agreed to develop certain property more particularly described in the Development Agreement (the “Property”), subject to certain conditions and obligations as set forth in the Agreement.

Whereas, on June 15, 2009, Northeast transferred the Property to Owner.

Whereas, Northeast assigned the Agreement to Owner. As such, Owner assumed all rights, title, interest, burden, and obligation under the Agreement with respect to and as related to the Property.

Whereas, the terms defined in the Agreement shall have the same meaning in this Amendment, unless otherwise specified herein.

The Parties now desire to amend the Agreement to extend the Term of the Agreement to allow the Parties to negotiate other terms of the Agreement.

NOW, THEREFORE, City and Owner agree as follows:

1. **Extension of the Term of the Agreement.**

The Term, as defined under Article III, Section 1 of the Agreement, is hereby extended from March 24, 2011 to June 23, 2011, unless terminated, modified, or extended as permitted by the Agreement.

2. **Agreement Still in Effect.**

All other terms of the Agreement between City and Owner shall remain in full force and effect; in the event of any conflict between any specific provision of the Agreement and this Amendment, this Amendment shall prevail.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to Northeast Gateway Development Agreement as of the date set forth above.

CITY OF ESCONDIDO

By: _____
Its: Mayor

CITY OF ESCONDIDO,

By: _____
Its: Clerk

Lark & Sons, LLC

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:
CITY OF ESCONDIDO

By: _____
Jeffrey R. Epp, Esq.
Its: City Attorney