

ORDINANCE NO. 2011-08

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 SECOND 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 amendment 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 second 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 Second 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 Second 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That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.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 11th day of May, 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. 2011-08 passed at a regular meeting of the City Council of the City of Escondido held on the 11th day of May, after having been read at the regular meeting of said City Council held on the 4th day of May, 2011.

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

ORDINANCE NO. 2011-08

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

**SECOND AMENDMENT TO
NORTHEAST GATEWAY DEVELOPMENT AGREEMENT
(TRACT 933)**

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

RECITALS

1. 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 Agreement, Northeast agreed to develop certain property more particularly described in the Agreement (the "Property"), subject to certain conditions and obligations as set forth in the Agreement.
2. Whereas, on December 9, 2008, the City and Northeast, entered into that certain agreement entitled "Operating Memorandum for the Northeast Gateway Development Agreement (Tract 933)" (the "Operating Memorandum"). Pursuant to the Operating Memorandum, Northeast agreed to pay financial consideration toward its pro-rata share of the cost of completing certain construction improvements, which are conditions of approval for the Property, and to grant to the City an Irrevocable Offer of Dedication for property along the Property's entire East Valley Parkway Frontage.
3. Whereas, on June 15, 2009, Northeast transferred the Property to Owner.

4. Whereas, on March 23, 2011, City Council approved the First Amendment to the Agreement, extending the March 24, 2011 expiration date of the Agreement by three months. Concurrent with the approval of the First Amendment, Northeast assigned the Agreement to Owner with formal consent of the City. As such, Owner assumed all rights, title, interest, burden, and obligation under the Agreement with respect to and as related to the Property.
5. Whereas, the terms defined in the Agreement shall have the same meaning in this Amendment, unless otherwise specified herein.
6. Whereas, the Parties now desire to amend the Agreement to, among other things, provide for certain changes to the Agreement, including extending the Term of the Agreement, and add several provisions to the Agreement that will effectively transfer the right-of-way for the Project frontage to the City, will allow Owner to pay compensation to the City to fulfill certain of the Owner's construction obligations for the frontage of the Property, and to provide for the orderly and mutually agreeable location of the fruit stand business located on the Property, in the area of the future right-of-way frontage for the Project.

NOW, THEREFORE, City and Owner agree as follows:

1. **Existing Laws.**

Existing Laws, as defined under Article II, Section 5 of the Agreement, refers to the ordinances, resolutions, codes, rules, regulations and official policies of City governing the development of the Property, including, but not limited to the permitted uses of the Property, the density or intensity of use, the design, improvement and construction standards and specifications for the Project, including the maximum height and size of proposed buildings, and the provisions for reservation and dedication of land for public purposes, in effect on the Effective Date of the Agreement. With regard to stormwater regulations, "Existing Laws" refers to the ordinances, resolutions, codes, rules, regulations and official policies of City governing the development of the Property in effect on the date of this Amendment.

2. **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 March 24, 2016, unless terminated, modified, or extended as permitted by the Agreement.

3. **Notices.**

Article III, Section 7 shall be amended as follows: All notices between the City and Owner pursuant to the Agreement shall be in writing and shall be given by personal delivery (including commercial express delivery services providing acknowledgments of receipt), registered, certified, express mail, facsimile or telecopy, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

- a. For personal delivery, upon actual receipt;
- b. For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
- c. For facsimile, upon transmission of the facsimile or, if transmitted after business hours, then the next business day.

Notices shall be addressed as follows:

To the City: City Clerk
 City of Escondido
 201 N. Broadway
 Escondido, CA 92025
 FAX (760) 741-7541

With Copy to: Jeffrey R. Epp, Esq.
 City of Escondido
 201 N. Broadway
 Escondido, CA 92025
 FAX (760) 741-7541

To the Owner: Linda Kaeser
 P.O. Box 9707
 Rancho Sante Fe, CA 92067 FAX (858) 756-6998

With copy to: David W. Ferguson, Esq.
 Lounsbury Ferguson Altona & Peak
 960 Canterbury Place, Suite 300
 Escondido, CA 92025
 FAX (760) 743-9926

The addresses to which notices shall be sent may be changed by giving ten (10) days written notice of change of address in the manner set forth above.

4. **Permitted Fees.**

Article IV, Section 5 of the Agreement shall be amended as follows: Except as otherwise provided in the Agreement, (including without limitation under Paragraph 7 of Article IV), and specifically excluding fees set by entities not controlled by City that are collected by City, City shall charge and impose those General Fees and Exactions described as "Processing Fees," "Permit/Inspection Fees," "Connection Fees," and "Development Fees" in the amounts and of the type which are in effect at the time they are incurred by the Owner or any successor-in-interest as described in the Escondido Fee Guide For Development Projects (the "Fee Guide").

5. **Infrastructure Capacity.**

Article IV, Section 11 shall be amended as follows: Subject to Owner's proportionate financial contribution to infrastructure and the Public Improvements & Public Benefits provided by Owner, in accordance with the requirements of this Agreement, City hereby acknowledges that it will have sufficient capacity in the following infrastructure services and utility systems: traffic circulation and flood control and, except for reasons beyond City's control, water supply, treatment, distribution and service, to accommodate the Project. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on connections or service for the Project except for reasons beyond City's control. City acknowledges and Owner understands that the City may have sufficient capacity for sewer collection, sewer treatment, and sanitation service.

6. **Payment For Increased Allowable Density.**

Article V, Section 3 shall be amended as follows: Owner shall pay City a maximum of THREE HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$388,000.00) calculated as follows:

a. Owner shall pay City FIFTY-ONE THOUSAND DOLLARS AND ZERO CENTS (\$51,000.00) in exchange for each of the eight (8) additional developable units granted to Owner, under the Agreement.

b. Owner shall be credited the amount of TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$20,000.00) as the amount Northeast paid at execution of the Agreement.

c. If at the time Owner sells the Property, the City acknowledges that the City has sufficient capacity for sewer collection, sewer treatment and sanitation service for development of the Property, Owner shall pay City \$388,000.00 within seven (7) days of the close of escrow date.

d. If Owner decides to develop the Property in accordance with the Agreement and the current Tentative Map, and at such time of development the City acknowledges there is sufficient capacity for sewer collection, sewer treatment, and sanitation service for development of the Property, Owner shall pay City the \$388,000 when the City issues Encroachment Permits for sewer construction.

e. If the City is unable to acknowledge that the City has sufficient capacity for sewer collection, sewer treatment, and sanitation service at the time Owner sells the Property, but has sufficient capacity when the Property is developed in accordance with the Agreement and the current Tentative Map, any successor-in-interest shall pay City the \$388,000.00 when the City issues Encroachment Permits for sewer construction.

7. **Payment in Lieu of Construction of Certain Roadway Improvements.**

Owner agrees to pay City financial consideration toward Owner's pro-rata share of the cost of completing certain construction improvements, which are conditions of approval for the Project. Instead, these improvements will be constructed by City as part of a City-planned project, as follows:

a. Owner shall pay City TWO HUNDRED FIFTY NINE THOUSAND EIGHT HUNDRED TWENTY NINE DOLLARS (\$259,829.00) prior to issuance of the first certificate of occupancy for a residence in the Project. City agrees that Owner will not perform the construction required for East Valley Parkway.

b. Owner shall be credited the amount of TWENTY-FOUR THOUSAND NINE HUNDRED AND SEVENTY-TWO DOLLARS AND ZERO CENTS (\$24,972.00) as the traffic impact fee credit for the frontage improvement for the Owners' twelve (12) units.

c. Prior to issuance of the first certificate of occupancy for a residence in the project, Owner shall pay an undergrounding in-lieu fee to the City, pursuant to Section 23-48 of the Escondido Municipal Code, and pursuant to City Resolution No. 2007-115, in the amount of FOUR HUNDRED TWENTY DOLLARS (\$420.00) per linear foot of frontage on East Valley Parkway, which portion for the Project is currently estimated to be a total of 285 linear feet. City agrees to accept payment of this fee in lieu of requiring Owner to complete the construction required for East Valley Parkway in paragraphs one and two of the "Utility Undergrounding and Relocation" section of the Engineering Conditions of Approval for Tract 933.

8. **Grant of Rights-of-Way and Construction Access.**

On or around December 2, 2008, Northeast granted to the City an Irrevocable Offer of Dedication ("IOD") for property along the project's entire East Valley Parkway Frontage (found at Attachment A to this Amendment), and a temporary construction easement ("TCE") for 10 additional feet of right of way during construction of frontage improvements (found at Attachment B to this Amendment). The location of the IOD and TCE is described in an exhibit to Attachments A and B, respectively.

The parties agree that this Amendment and the terms of the IOD shall hereby:

a. Allow the buildings on the Property to continue to be occupied for their current use (retail produce sales) for no less than one year after the effective date of this Second Amendment;

b. After that time, require no less than 90 days prior notice from the City to the Owner that all buildings must be removed from the property granted in the IOD and temporary easement areas;

c. Allow the operator of the buildings and/or the Owner to relocate such buildings on the Property and to continue to use such buildings on the Property when construction or right-of-way activity in the roadway does not, in the City's sole discretion, prevent their use; and,

d. Any lease or agreement Owner has with any tenant or building operator shall include notification of these terms.

9. **Waiver of Eminent Domain Rights.**

In exchange for Owner's desire to receive all of the benefits of this Amendment and of the Agreement, and for Owner's desire to induce City to complete required roadway and right-of-way improvements on Owner's behalf, Owner hereby waives any right to compensation of all types related to the closure, relocation, or removal of the structures and business on the Property, including goodwill, attorneys' fees, and any other statutory form of compensation that might be available were the City to exercise its rights of eminent domain to acquire the area defined in the IOD and the TCE. Owner agrees to indemnify, defend, and provide and pay all costs incurred by the City for any compensation paid to Owner's tenant or building operator for the closure, relocation, or removal of any structures and business on the Property, including goodwill, attorneys' fees, and any other statutory form of compensation that might be available were the City to exercise its rights of eminent domain to acquire the area defined in the IOD and the TCE.

10. **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.

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IN WITNESS WHEREOF, the Parties hereto have executed this Second 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

2011-08
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RECORDING REQUESTED BY

City of Escondido

And When Recorded Mail to:

City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025

No recording fee required; this document exempt
from fee pursuant to Section 27383 of the California
Government Code.

CITY OF ESCONDIDO
IRREVOCABLE OFFER TO DEDICATE REAL PROPERTY
ESC. DOCUMENT NO. M-43-08

APN 240-020-22

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

NORTHEAST GATEWAY LLC, A Delaware Limited Liability Company, **GRANTORS**

hereby make an Irrevocable Offer of Dedication to

the CITY OF ESCONDIDO, (Grantee) a municipal corporation

of the hereinafter described real property for public purposes.

The real property referred to above is situated in the City of Escondido, County of San Diego
State of California, and is more particularly described in the attached Exhibit "A", Parcel "A"
and delineated on the attached Exhibit "B"

City of Escondido
Engineering
File 9 of 18
2011-08
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**CITY OF ESCONDIDO
IRREVOCABLE OFFER TO DEDICATE REAL PROPERTY
ESC. DOCUMENT NO. M-43-08**

This Offer of Dedication is made pursuant to Section 7050 of the Government Code of the State of California and may be accepted at any time by the Escondido City Council.

This Offer of Dedication may be terminated and the right to accept the offer may be abandoned in accordance with the summary vacation procedures in Section 8300 et seq. of the Streets and Highway Code of the State of California. The termination and abandonment may be made by the Escondido City Council.

The GRANTOR hereby further offers to the GRANTEE the privilege and right to extend drainage structures and excavation and embankment of slopes beyond the limits of the herein described right-of-way where required for the construction and maintenance of a highway or other public purpose, RESERVING unto GRANTOR of the above-described parcel of land, his successors or assigns, the right to eliminate such slopes and/or drainage structures or portions thereof, when in the written opinion of the City Engineer of GRANTEE the necessity therefore is removed by substituting other protection, support and/or drainage facility, provided that such substitution is first approved in writing by said Engineer, which approval shall not be withheld if the substitution is plausible.

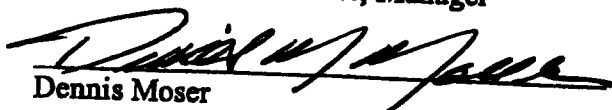
The GRANTOR hereby further offers to GRANTEE all trees, growths (growing or that may hereafter grow), and road building materials within said right-of-way, including the right to take or remove ground water as necessary to construct or maintain road, together with the right to use the same in such manner and such locations as said GRANTEE may deem proper, needful or necessary, in the construction, reconstruction, improvement or maintenance of said highway or public purpose.

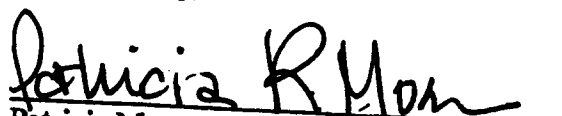
The GRANTOR, for himself, his successors and assigns, hereby waives any claim for any and all damages to GRANTOR's remaining property contiguous to the right-of-way hereby conveyed by reason of the location, construction, landscaping or maintenance of said highway or public purpose.

This Offer of Dedication shall be irrevocable and shall be binding on the GRANTOR(s), their heirs, executors, administrators, successors and assigns.

In Witness Whereof, the GRANTOR(s), Northeast Gateway, LLC, caused this Irrevocable Offer of Dedication to be executed this _____ day of _____, 2008.

Northeast Gateway, LLC, A Delaware Limited Liability Company,
By: Moser Ventures Inc., Manager


Dennis Moser
President


Patricia Moser
Secretary

2011-08

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EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF PARCEL 3 OF PARCEL MAP THEREOF NO. 6048, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY ON JUNE 16, 1977, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL "A"

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID PARCEL 3 AND THE EASTERLY RIGHT-OF-WAY OF 60 FOOT WIDE VALLEY CENTER ROAD AS SHOWN AND DESCRIBED ON SAID PARCEL MAP NO. 6048; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 3, SOUTH 89°34'31" EAST, 33.10 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 04°14'38" WEST, 285.50 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", SAID POINT ALSO BEING THE NORTHERLY LINE OF THE EXISTING RIGHT-OF-WAY DEDICATED TO THE CITY OF ESCONDIDO PER DOCUMENT RECORDED DECEMBER 20, 2005 AS DOCUMENT NO. 2005-01089146 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHERLY LINE NORTH 85°45'22" WEST, 33.65 FEET TO THE EASTERLY RIGHT-OF-WAY OF 60 FOOT WIDE VALLEY CENTER ROAD AS SHOWN AND DESCRIBED ON SAID PARCEL MAP NO. 6048; THENCE ALONG SAID EASTERLY LINE, NORTH 04°22'16" EAST, 283.30 FEET TO THE POINT OF BEGINNING.

THE HEREINABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.218 ACRE, MORE OR LESS.

PARCEL "B"

BEING A 10.00 FOOT WIDE STRIP OF LAND LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE.

A 2011-08
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BEGINNING AT THE HEREINABOVE DESCRIBED POINT "A"; THENCE NORTH 04°14'38" EAST, 285.50 FEET TO THE NORTHERLY LINE OF SAID PARCEL 3, SAID POINT ALSO BEING THE POINT OF TERMINUS.

THE SIDELINES OF THE HEREINABOVE DESCRIBED 10.00 FOOT WIDE STRIP OF LAND SHALL BE SHORTENED OR EXTENDED SO AS TO TERMINATE NORTHERLY IN THE NORTHERLY LINE OF PARCEL 3 OF SAID PARCEL MAP NO. 6048.

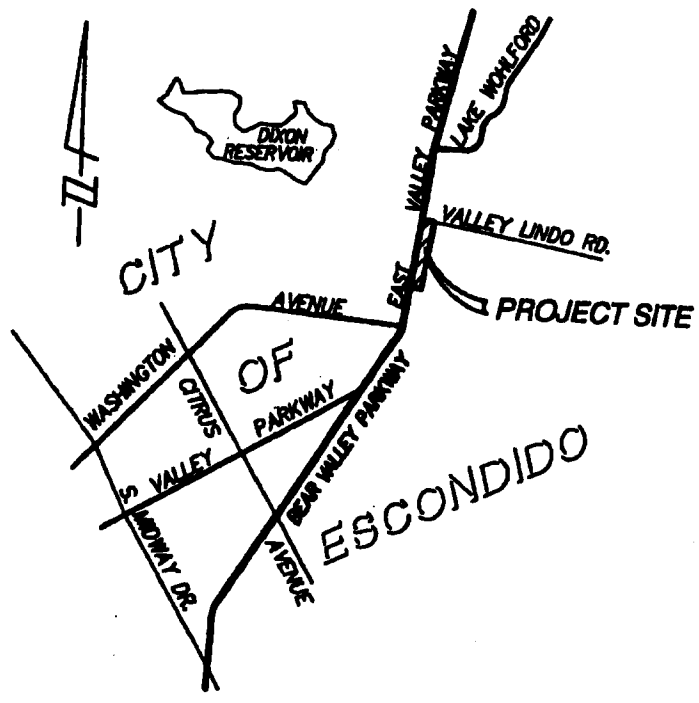
THE HEREINABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.066 ACRE, MORE OR LESS.

David W. Ambler 1/31/2008
DAVID W. AMBLER L.S. 7322
HUNSAKER & ASSOCIATES SAN DIEGO, INC.



EXHIBIT "B" DEDICATION PLAT

2011-08
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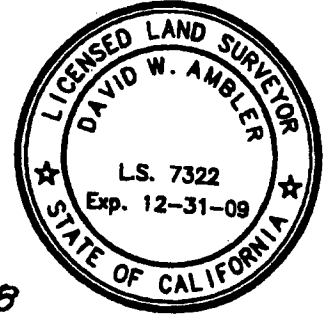
VICINITY MAP
NOT TO SCALE

LEGEND:

 INDICATES RIGHT-OF-WAY AREA TO BE DEDICATED.
AREA = 0.218 ACRES

 INDICATES TEMPORARY CONSTRUCTION EASEMENT TO BE DEDICATED.
AREA = 0.066 ACRES

P.O.B. POINT OF BEGINNING



HUNSAKER & ASSOCIATES
SAN DIEGO, INC

PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING P(619)558-4300 • F(619)558-1414

David W. Ambler 1-31-2008
DAVID W. AMBLER L.S. 7322
EXP. 12-31-09

R:\0622\Map\DP EAST VALLEY PRKW-DUNCAN SHT 01.DWG [Jan-31-2008: 09:49 W.O. 2505-2


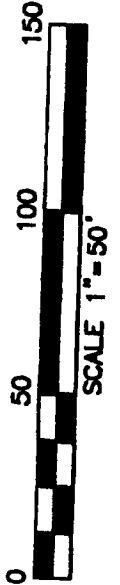
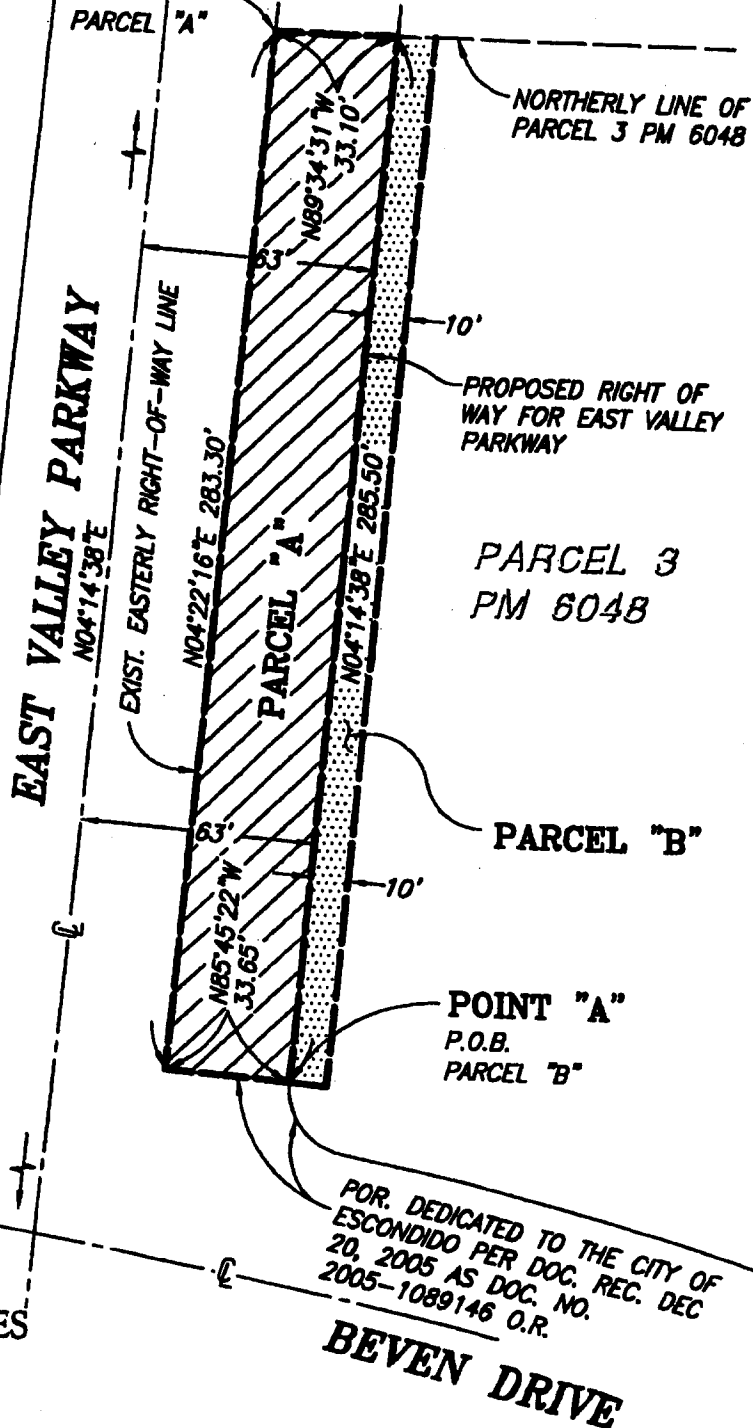
Revised:	-	Date	-	CITY OF ESCONDIDO RIGHT-OF-WAY DEDICATION	 ESCONDIDO City of Choice
Drawn By:	RZP	-	SCALE: -----		
Checked By:	KH	-	SHEET: 1 OF 2		
Approved By:	DA	-			

EXHIBIT "B"

DEDICATION PLAT

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13 B

P.O.B.



HUNSAKER & ASSOCIATES
SAN DIEGO, INC

PLANNING 1707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(619)558-4500 • FX(619)558-1414

R: \0622\Map\DP EAST VALLEY PARK-DUNCAN SH1 02.DWG [Jan-31-2008: 09:49 W.O. 2505-2

Revised:	-	Date	-	CITY OF ESCONDIDO RIGHT-OF-WAY DEDICATION	 ESCONDIDO City of Choice
Drawn By:	RZP				
Checked By:	KH				
Approved By:	DA				
				SCALE: 1" = 50'	SHEET: 2 OF 2

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of San Diego }
 On 12/2/08 before me, Arthur P. Arquilla Notary
Date Here Insert Name and Title of the Officer
 personally appeared Dennis M. Moser + Patricia A. Moser
Name(s) of Signer(s)

2011-08
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who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal
 Signature Arthur P. Arquilla
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Rededication
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____



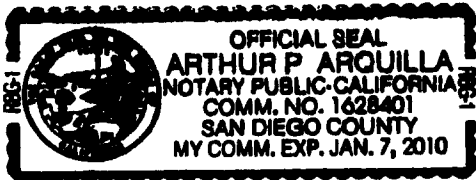
Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of San Diego }
 On 12/2/08 before me, Arthur P. Arquilla NOTARY
Date Here Insert Name and Title of the Officer
 personally appeared Dennis M. Moser & Patricia A. Moser
Names(s) of Signer(s)

2011-08
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who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
 Signature Arthur P. Arquilla
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Dedication

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

RECORDING REQUESTED BY

City of Escondido

And When Recorded Mail To:

City Clerk
City of Escondido
201 North Broadway
Escondido, CA 92025

2011-08
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No recording fee required; this document exempt from fee pursuant to Section 27383 of the California Government Code.

**CITY OF ESCONDIDO
TEMPORARY CONSTRUCTION EASEMENT
ESC. DOCUMENT NO. M-45-08**

This deed exempt from tax – Section 11922 of the California Revenue and Taxation Code

T.R.P. No.: 240-020-22

NORTHEAST GATEWAY LLC, A Delaware Limited Liability Company

owner of the hereinafter described land, hereby GRANT(S) to the CITY OF ESCONDIDO, a municipal corporation, an easement for the purpose of temporary access for roadway construction works for a period commencing no sooner than one year from the date of this document, but thereafter, from the time the City requests commencement of construction, and lasting until completion of said roadway construction, said period in no event to continue beyond completion of construction activities, over and across the following described land: City of Escondido Tract 933.

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**TEMPORARY CONSTRUCTION EASEMENT
ESC. DOCUMENT NO. M-45-08**

TOGETHER with the right to grade, remove and reconstruct existing improvements, pavement, trenching and stripping . In addition reconstruction of the driveways, parking areas, asphalt pavement, PCC pavement, asphalt berm, relocation of utilities, private light, retaining walls, irrigation, landscaping, temporary fencing, metal fence, fence post, signs and water services are items of work to take place under this temporary construction easement.

PROVIDES HOWEVER, that all construction material left over after the completion of construction shall be removed from the property.

PROVIDES FURTHER, that GRANTORS, their successors and assigns, agree not to erect buildings or structures upon any portion of the above described Easement during the effective terms of this grant.

IN WITNESS WHEREOF, the GRANTOR has hereunto subscribed their names this _____ date of _____, 2008.

NORTHEAST GATEWAY, LLC, A Delaware Limited Liability Company
By: Moser Ventures Inc., Manager

[Handwritten Signature]
Signature

PRESIDENT
Title

[Handwritten Signature]
Signature

SECRETARY
Title

Acknowledged and Accepted by the City of Escondido

[Handwritten Signature]
Anne Marc Aurele, Real Property Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 12/2/08
Date

before me,

Arthur P. Arquilla, Notary
Here Insert Name and Title of the Officer

personally appeared

Dennis M. Moser & Patricia R. Moser
Name(s) of Signer(s)

2011-08
18 A 18



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Arthur P. Arquilla
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Easement

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____