

ORDINANCE NO. 2018-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA; ADOPTING THE ADDENDUM TO AN AMENDED MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING AND REPORTING PROGRAM; AND APPROVING A MASTER DEVELOPMENT PLAN FOR A 34-LOT RESIDENTIAL DEVELOPMENT, A DEVELOPMENT AGREEMENT FOR THE RESIDENTIAL DEVELOPMENT, AND A PREZONE OF TWO ADDITIONAL PARCELS TO RE-20

APPLICANT: Casey Johnson, North Avenue Estates
CASE NOS.: SUB 17-0007, PHG 17-0034, and ENV 17-0011

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

SECTION 1. The City Council makes the following findings:

a) Casey Johnson of North Avenue Estates ("Applicant") submitted a verified land use development application to extend and revise a Tentative Subdivision Map (formerly known as Tract 916-R and currently known as SUB 17-0007) and a Master Development Plan and Development Agreement for a 34-lot single-family residential development on a site approximately 17.2 acres in size, on property located to the north of the City, along the north side of North Avenue, between Laurashawn Lane and Kaywood Drive. The site is currently unaddressed but includes Assessor's Parcel Numbers 224-153-19 and 224-153-20; and

b) The application also included a request for a Prezone of 632 North Avenue (0.23 acre in size) and 644 North Avenue (0.29 acre in size), also located along the north side of North Avenue; and

c) The residential development site and three additional parcels ("Project") are legally described in Exhibit "A;" and incorporated herein by reference as though fully set forth herein; and

d) Said verified application was submitted to, and processed by, the Planning Division of the Community Development Department as Planning Case Nos. SUB 17-0007, PHG 17-0034, and ENV 17-0011 in accordance with the rules and regulations of the Escondido Municipal and Zoning Codes, and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code Section 65920 et seq.) and CEQA (Public Resources Code Section 21000 et seq.); and

e) Pursuant to CEQA (Public Resources Code Section 21000 et. seq.), and its implementing regulations (the State CEQA Guidelines), 14 California Code of Regulations Section 15000 et. seq., the City is the lead agency for the Project, as the public agency with the principal responsibility for approving the proposed Project. In accordance with CEQA, an Addendum to an Amended Initial Study and Mitigated Negative Declaration was prepared for the Project.

f) The Planning Division of the Community Development Department completed its review and scheduled a public hearing regarding the application before the Planning Commission for November 28, 2017. Following the public hearing on November 28, 2017, the Planning Commission adopted Resolution No. 6107, which recommended that the City Council, among other things, adopt the Addendum to the Amended Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and approve the Project's Master Development Plan, Development Agreement, and Prezone.

SECTION 2. An original copy of the proposed Addendum to the Amended Mitigated Negative Declaration, Master Development Plan, Development Agreement, and Prezone and all other related Project materials are on file in the Office of the City Clerk, with a copy of each document submitted to the City Council for its consideration. The City Clerk, whose office is located at 201 North Broadway, Escondido CA 92025, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act.

SECTION 3. The City Council did on January 10, 2018, hold a duly noticed public hearing as prescribed by law. Evidence was submitted to and considered by the City Council, including, without limitation:

- a) Written information including all application materials and other written and graphical information.
- b) Oral testimony from City staff, interested parties, and the public.
- c) The City Council staff report, dated January 10, 2018, which along with its attachments, is incorporated herein by this reference as though fully set forth herein, including the Planning Commission's recommendation on the request.
- d) Additional information submitted during the public hearing.

SECTION 4. Said Addendum to an Amended Initial Study and Mitigated Negative Declaration determines whether any significant environmental impacts which were not identified in the previously-adopted IS/MND would result or whether previously identified significant impacts would be substantially more severe. The City

Council has carefully reviewed and considered all environmental documentation comprising the Addendum to an Amended Initial Study and Mitigated Negative Declaration, including any revisions and additions thereto, the technical appendices and referenced documents (if any), and the public comments and the responses thereto (on file in the Office of the City Clerk and incorporated by this reference), and has found that none of the circumstances set forth in CEQA Guidelines Sections 15162 or 15163 calling for the preparation of a subsequent Mitigated Negative Declaration have occurred, therefore an Addendum to an Amended Initial Study and Mitigated Negative Declaration is appropriate. Furthermore, the Addendum is complete and adequate in that it considers all potentially significant environmental impacts of the Project and there is no evidence that the Project, as revised, will have a significant effect on the environment. The Addendum fully complies with all requirements of CEQA and the State CEQA Guidelines. The City Council also finds that the Addendum reflects the City's independent judgment as the lead agency for the proposed Project.

SECTION 5. That the Findings of Fact/Factors to be Considered, attached as Exhibit "C" and incorporated herein by this reference as though fully set forth herein, are hereby made by this City Council, and represent the City Council's careful consideration of the record. The findings of this City Council shall be the final and determinative Findings of Fact on this matter.

SECTION 6. That the City Council hereby approves the Addendum to the Amended Mitigated Negative Declaration, attached as Exhibit "D," subject to the Mitigation Monitoring and Reporting Program attached as Exhibit "E;" which are

attached to this Ordinance and are incorporated herein by this reference as though fully set forth herein.

SECTION 7. That the City Council desires at this time and deems it to be in the best public interest to approve the Master Development Plan, which is attached to the January 10, 2018 City Council staff report and is incorporated herein by this reference as though fully set forth herein.

SECTION 8. That the Zone District Map of the City of Escondido is hereby amended by reclassifying the real property legally described on Exhibit "A" to Prezone RE-20 (Residential Estates – 20,000 square foot minimum lot size), as set forth in Exhibit "B" and incorporated herein by reference as though fully set forth herein.

SECTION 9. That the Development Agreement is hereby approved, as set forth substantially to the same form on file with the Office of the City Clerk, and attached as Exhibit "F," and incorporated herein by this reference as though fully set forth herein.

SECTION 10. All references within this Ordinance to "Applicant," "Developer," or "Subdivider" shall be equally applicable to the current property owner and to any successors-in-interest or assigns, whether such successors or assigns own, control, or otherwise have development authority for all, a portion, or portions of that property included within the Project site.

SECTION 11. 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 12. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 13. Concurrently with this Ordinance, the City Council is taking a number of actions in furtherance of the Project, as generally described by the January 10, 2018 City Council staff report. No single component of the series of actions made in connection with the Project shall be effective unless and until it is approved by an Ordinance or Resolution and is procedurally effective within its corporate limits as a statute in the manner provided by state law. Therefore, this Ordinance shall become effective after final passage and publication as required by law, and operative only if City Council Resolution No. 2018-01 is approved.

SECTION 14. The City Council authorizes all subsequent action to be taken by City Officials consistent with this Ordinance.

SECTION 15. That pursuant to Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e), all documents and other materials which constitute the record of proceedings are located at the City of Escondido, City Civic Center. The City Clerk, whose office is located at 201 North Broadway, Escondido CA 92025, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act.

SECTION 16. 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 prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its

passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

SECTION 17. The Ordinance shall become effective 30 days from the date of the passage.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 24th day of January, 2018 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, , MORASCO, ABED

NOES : Councilmembers: NONE

ABSTAINED : Councilmembers: MASSON

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

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

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2018-02 passed at a regular meeting of the City Council of the City of Escondido held on the 24th day of January, 2018, after having been read at the regular meeting of said City Council held on the 10th day of January, 2018.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2018-02

SUB 17-0007

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of San Diego, State of California, described as follows:

PARCEL 1: (APN: 224-153-19-00)

THAT PORTION OF BLOCK 410 OF RANCHO RINCON DEL DIABLO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE GRAHAM MAP NO. 723 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF LOT 28 OF LAS LOMAS RANCHOS UNIT NO. 1, ACCORDING TO MAP THEREOF NO. 5151 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, ALSO BEING ON THE MOST NORTHERLY RIGHT OF WAY OF NORTH AVENUE, 66.00 FEET WIDE; THENCE NORTH 19°39'40" WEST 95.00 FEET; THENCE NORTH 1°10'23" EAST, 47.81 FEET; THENCE SOUTH 88°49'37" EAST, 83.45 FEET; THENCE NORTH 70°20'20" EAST, 209.62 FEET; THENCE NORTH 6°22'30" EAST, 159.70 FEET; THENCE SOUTH 83°37'30" EAST, 250.00 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO RINCON BUILDERS, INC., RECORDED MAY 28, 1971 AS INSTRUMENT NO. 112464; THENCE SOUTH 6°22'30" WEST, 160.00 FEET ALONG SAID EASTERLY LINE TO A POINT ON THE NORTHERLY RIGHT OF WAY OF SAID NORTH AVENUE WHICH BEARS NORTH 70°20'20" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 70°20'20" WEST, 529.12 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THAT PORTION THEREOF LYING SOUTHWESTERLY OF THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO GAROLD HERBERT CARR, JR., ET UX, RECORDED MARCH 6, 1972 AS INSTRUMENT NO. 72-53694 OF OFFICIAL RECORDS.

PARCEL 2: (APN: 224-153-20-00)

THAT PORTION OF BLOCK 410 OF RANCHO RINCON DEL DIABLO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO GRAHAM MAP NO. 723 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892, AND THAT PORTION OF THE UNNAMED STREET, 20.00 FEET WIDE, LYING EASTERLY OF AND ADJOINING SAID BLOCK 410 AS VACATED AND CLOSED TO PUBLIC USE ON JULY 1, 1927, BY ORDER OF THE BOARD OF SUPERVISORS OF SAID COUNTY OF SAN DIEGO, A CERTIFIED COPY OF SAID ORDER HAVING BEEN RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY ON JULY 2, 1927 IN BOOK 1336, PAGE 7 OF DEEDS, LYING EASTERLY OF LAS LOMAS RANCHOS UNIT NO. 1, ACCORDING TO MAP THEREOF NO. 5151, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON APRIL 5, 1963.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK 410: THENCE ALONG THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE THEREOF, NORTH 70°20'20" EAST, 20.00 FEET TO THE EASTERLY LINE OF RANCHO RINCON DEL DIABLO; THENCE ALONG SAID EASTERLY LINE NORTH 19°39'45" WEST, 175.00 FEET; THENCE SOUTH 70°20'20" WEST 302.32 FEET; THENCE SOUTH 6°22'30" WEST 194.77 FEET TO THE SOUTHEASTERLY LINE OF SAID BLOCK 410; THENCE NORTH 70°20'20" EAST 367.80 FEET ALONG SAID SOUTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF SAID BLOCK 410; THENCE NORTH 19°39'45" WEST 175.00 FEET; THENCE NORTH 70°20'20" EAST, 20.00 FEET TO A POINT IN THE EASTERLY LINE OF RANCHO RINCON DEL DIABLO, BEING THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING ALSO BEING THE NORTHEASTERLY CORNER OF THE LAND DESCRIBED IN DEED TO OLEN K. HOOD, ET UX RECORDED MAY 4, 1962 AS INSTRUMENT NO. 77035 OF OFFICIAL RECORDS; THENCE SOUTH 70°20'20" WEST 282.32 FEET ALONG THE NORTHWESTERLY LINE OF SAID HOOD LAND AND ITS SOUTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CAROL JANE CRISPIN, AN UNMARRIED WOMAN, RECORDED OCTOBER 13, 1965 AS INSTRUMENT NO. 185349 OF OFFICIAL RECORDS; THENCE NORTH 6°22'30" EAST 325.31 FEET ALONG THE WESTERLY LINE OF SAID CRISPIN LAND AND ALONG THE WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOEL FREDERICK FRIBERG ET UX, RECORDED MARCH 6, 1969 AS INSTRUMENT NO. 39539 OF OFFICIAL RECORDS TO THE NORTHWESTERLY CORNER OF SAID FRIBERG LAND: THENCE CONTINUING NORTH 06°22'30" EAST, 180.83 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE CLOCKWISE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 31.12 FEET: THENCE TANGENT TO SAID CURVE SOUTH 83°37'30" EAST, 59.44 FEET TO THE NORTHEASTERLY BOUNDARY OF SAID RANCHO RINCON DEL DIABLO; THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 19°39'45" EAST 442.16 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF LOT 28 OF LAS LOMAS RANCHOS UNIT NO. 1, ACCORDING TO MAP THEREOF NO. 5151, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, ALSO BEING ON THE MOST NORTHERLY RIGHT OF WAY OF NORTH AVENUE 66.00 FEET WIDE; THENCE NORTH 19°39'40" WEST 95.00 FEET; THENCE NORTH 1°10'23" EAST 47.81 FEET; THENCE SOUTH 88°49'37" EAST 83.45 FEET; THENCE NORTH 70°20'20" EAST 209.62 FEET; THENCE NORTH 6°22'30" EAST 159.70 FEET, THENCE SOUTH 83°37'30" EAST 250.00 FEET; THENCE SOUTH 6°22'30" WEST 160.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF SAID NORTH AVENUE WHICH BEARS NORTH 70°20'20" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 70°20'20" WEST 529.12 FEET TO THE TRUE POINT OF BEGINNING.

Property: 632 NORTH AVE, ESCONDIDO, CA 92026

**LOT 2 OF LAS LOMAS RANCHOS UNIT NO. 1, IN THE CITY OF ESCONDIDO, COUNTY OF
SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5151, FILED IN
THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON APRIL 5, 1963.**

A.P.N. 224-331-16-00

Property: 644 North Avenue, Escondido, CA 92026

LEGAL DESCRIPTION FOR APN 224-331-1400:

Lot 4 of Las Lomas Ranchos Unit No. 1, in the City of Escondido, County of San Diego, State of California, according to the Map thereof No. 5151, filed in the office of the County Recorder of San Diego, April 5, 1963.

THAT PORTION IN BLOCK 410 OF RANCHO RINCON DEL DIABLO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO GRAHAM MAP THEREOF NO. 723, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHWESTERLY LINE OF NORTH AVENUE (66.00 FEET WIDE) DISTANT THEREON NORTH 70 DEGREES 20' 20" EAST, 190.00 FEET FROM THE SOUTHEASTERLY CORNER OF LOS LOMAS RANCHOS UNIT NO. 1, ACCORDING TO THE MAP THEREOF NO. 5151, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, APRIL 5, 1963; THENCE ALONG THE NORTHWESTERLY LINE OF SAID NORTH AVENUE, NORTH 70 DEGREES 20' 20" EAST 54.96 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 63 DEGREES 13' 42" AN ARC DISTANCE OF 22.07 FEET; THENCE TANGENT TO SAID CURVE, NORTH 07 DEGREES 06' 38" EAST, 110.00 FEET; THENCE SOUTH 70 DEGREES 20' 20" WEST, 122.76 FEET TO A LINE THAT BEARS NORTH 19 DEGREES 39' 40" WEST FROM THE POINT OF BEGINNING; THENCE ALONG LINE SOUTH 19 DEGREES 39' 40" EAST, 110.00 FEET TO THE POINT OF BEGINNING.

APN: 224-153-15-00

Address: 714 North Avenue

EXHIBIT B TO ORDINANCE 2018-02

PREZONE

AT 632 AND 644 NORTH AVENUE, ESCONDIDO, CA
SUB 17-0007 / PHG 17-0034 / ENV 17-0011

Each parcel associated with the proposed Prezone:

APNs	Existing Zone	Proposed Zone
224-331-16	County RS (Residential-Single)	RE-20
224-331-14	County RS (Residential-Single)	RE-20

I. Official Zoning Map

That the Official Zoning Map, also known as the Zoning Map of the City, is hereby amended, incorporating SUB 17-0007 / PHG 17-0034 / ENV 17-0011 Prezone parcels described in the January 10, 2018 City Council staff report. All parcels will carry the Residential Estates – 20,000 square feet minimum lot size (RE-20) Zoning Designation. The existing, complete Map being amended is on file with the Office of the City Clerk.

EXHIBIT C TO ORDINANCE 2018-02

FINDINGS OF FACT/FACTORS TO BE CONSIDERED

Environmental Review Determinations:

1. Pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et. seq.), and its implementing regulations (the State CEQA Guidelines), 14 California Code of Regulations Section 15000 et. seq., the City is the lead agency for the Project, as the public agency with the principal responsibility for approving the proposed Project.
2. An Initial Study and Mitigated Negative Declaration (IS/MND, City Log No. ER 2005-12) were prepared for Tract 916, 2005-17-PZ/PD/DA, and 2005-03-AN, which represents the original project. The IS/MND identified potential environmental effects to biological resources, cultural resources, and hazards and hazardous materials, and proposed mitigation measures to minimize these impacts to a less than significant level. The IS/MND was circulated for a 20-day public review from October 28 to November 17, 2005. The City received comments during the public review period for the IS/MND from the general public as well as from the County of San Diego. To address the comments from the County of San Diego, the City amended the IS/MND with language explaining the results of a new noise study and air quality study, as well as clarification on a previously-conducted traffic study. Pursuant to CEQA Section 15073.5, the Amended MND was not recirculated. No new significant effects were identified that required new mitigation measures or project revisions to reduce the effects to insignificance, and the lead agency did not determine that proposed mitigation measures or project revisions would fail to reduce potential effects to a less than significant level. On April 5, 2006, the City Council carefully reviewed and considered all environmental documentation comprising the Amended IS/MND, including the public comments, technical appendices, and referenced documents (on file in the Office of the City Clerk and incorporated by this reference), and found that the Amended IS/MND considered all potentially significant environmental impacts of the Project and was complete and adequate, and fully complied with all requirements of CEQA and the State CEQA Guidelines. The City Council considered all significant impacts and mitigation measures identified in the Amended IS/MND and found that all potentially significant impacts of the project were lessened or avoided to the extent feasible. Pursuant to Public Resource Code Section 21082.1(c)(3) and CEQA Guidelines Section 15074(b), the City Council also found that the Amended IS/MND reflected the City's independent judgment as the lead agency for the proposed Project. The City Council adopted the Amended IS/MND on April 5, 2006.
3. Based on the revised project description provided by the applicant for SUB17-0007, and updated aesthetics, greenhouse gas, traffic, hydrology, and soils information provided by the applicant, the City has determined that substantial changes are not proposed under SUB17-0007 that would require major revision of the document due to the creation of new significant environmental effects or a substantial increase in the severity of previously identified environmental effects, nor have substantial changes occurred with respect to the circumstances under which the project would be undertaken that require major revision of the document due to the creation of new significant environmental effects or a substantial increase in the severity of previously identified environmental effects. Therefore, an Addendum to the Amended IS/MND is an appropriate level of environmental review for SUB17-0007.
4. State CEQA Guidelines Section 15164 requires lead agencies to prepare an Addendum to a previously adopted/certified environmental document if some changes or additions to the project are necessary, but none of the conditions requiring preparation of a subsequent Environmental Impact Report or Mitigated Negative Declaration are present. The City Council has reviewed and considered the 2006 Amended IS/MND and Addendum to the Amended MND and finds that those

documents taken together contain a complete and accurate reporting of all of the environmental impacts associated with the revised project, described herein. The City Council further finds that the Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and that the 2006 Amended IS/MND and Addendum to the Amended IS/MND, taken together, reflect the City's independent judgment.

5. Based on the substantial evidence set forth in the record, including but not limited to the 2006 Amended IS/MND and Addendum to the Amended IS/MND, the City Council finds that, in its independent judgement, based on the whole record before it, none of the conditions under State CEQA Guidelines Sections 15162 or 15163, requiring subsequent environmental review, have occurred because the revised project:
 - a) will not result in substantial changes that would require major revisions of the 2006 Amended IS/MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - b) will not result in substantial changes with respect to the circumstances under which the revised project is developed that would require major revisions of the 2006 Amended IS/MND due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and
 - c) does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the 2006 Amended IS/MND documents were certified or adopted, as applicable, showing any of the following: (i) that the modifications would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the Applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt.
6. As required by CEQA, the City Council is also adopting a Mitigation Monitoring and Reporting Program (MMRP) for the restated mitigation measures included in the Addendum to the Amended MND. The City Council finds that the MMRP meets the requirements of California Public Resources Code (PRC) Section 21081.6 by providing for the implementation and monitoring of measures intended to mitigate the potentially significant effects of the recommended Plan.

Master Development Plan Determinations:

1. The location, design, and density of the proposed development is consistent with the goals and policies of the General Plan, since the density of the proposed development and the minimum lot size of 10,000 SF are in conformance with the Estate II land use designation. The proposed project would not diminish the Quality of Life standards of the General Plan, as the project would not materially degrade the level of service on adjacent streets or public facilities or create excessive noise, and adequate on-site parking, circulation, and public services can be provided to the site.
2. The proposed location of the site allows the development to be well integrated with its surroundings near residentially-zoned property and would not cause deterioration of bordering land uses.
3. All vehicular traffic generated by the proposed development would be accommodated safely and without causing undue congestion upon adjoining streets, per the Amended Mitigated Negative Declaration and the Addendum to the Amended Mitigated Negative Declaration prepared for the

project. Primary access to the residential development site would be from North Avenue only, which would minimize project-related traffic on Laurashawn Lane.

4. All public facilities, sewer, and water service are existing or would be available to the development site, with proposed and anticipated improvements and annexation.
5. The overall design of the planned development would produce an attractive, efficient, and stable environment for living, since open space areas have been incorporated into the project design, landscaping would be provided within these open space areas and along project streets, and adequate separations will be provided between the new residences, as well as between new residences and existing residences on surrounding properties.
6. The proposed development would be well integrated into its surroundings since the design would be consistent with the surrounding single-family residential development. Adverse impacts related to aesthetics and privacy would be minimized for residents on Laurashawn Lane, since at least six of the lots between 20 and 33 would be developed with single-story homes. While the remaining eight lots in this range may be developed with two-story homes, a minimum rear setback of 40' would be maintained for any two-story structure.
7. The approval of the proposed Master Development Plan would be based on sound principles of land use since adequate parking, circulation, utilities, and access would be provided for the development of the project. The project is conditioned to require submittal of a separate application for a Precise Development Plan, for approval of architectural design for the new residences.

Development Agreement Determinations:

1. The proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan since there are no changes to the General Plan land use designations or policies that affect development of the site, a Citywide Facilities Plan has been adopted to address infrastructure deficiencies on a citywide basis, and the agreement has a provision for a community benefit that could not otherwise be required of the developer.
2. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the property is located, since the General Plan land use designation of the site is Estate II, which allows the number of dwelling units approved for the development in conformance with Subdivision Ordinance Section 32.202.03.
3. The proposed Development Agreement conforms to the public convenience and general welfare because the proposed agreement provides for construction of drainage improvements in the area and payment of a fee needed to construct future improvements that resolve traffic and drainage infrastructure issues in the North Broadway area.
4. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will be developed with single-family residences, in conformance with the existing General Plan designation on the property.
5. The Development Agreement is consistent with the provisions of State law (Government Code, Sections 65864 – 65869.5) to develop in accordance with project approvals and existing laws. These Government Code Sections outline requirements related to the contents of agreements, the applicability of an agreement and on the public hearing and approval process. The proposed Development Agreement is consistent with Government Code Section 65864, which states that the lack of certainty in the approval of development projects can result in a waste of resources and escalated housing costs while discouraging comprehensive planning, because the proposed Development Agreement provides certainty to the applicant regarding fees required and construction obligations for associated public improvements for a period of five (5) years. In

addition, the agreement complies with Article 58 of the Escondido Zoning Code, which outlines the procedures and requirements for the review, approval and amendment of development agreements.

Prezone Determinations:

1. The public health, safety, and welfare would not be adversely affected by the proposed prezone of 632 and 644 North Avenue to RE-20. These two properties are already developed with single-family residential uses and those uses would continue after annexation. Both properties have already connected to City sewer services due to septic system issues, and have signed agreements to annex to the City as a condition of that connection. The proposed RE-20 zoning would be consistent with the Estate II General Plan designation that applies to these properties.
2. The two properties to be prezoned are suitable for the single-family residential uses allowed in the RE-20 zone, and are already developed with this type of use.
3. The uses permitted by the RE-20 zone would not be detrimental to surrounding properties. The surrounding neighborhood contains a variety of zones (both City and County) that allow single-family residential uses, and most lots in the area are occupied by this type of use. The properties to be prezoned are already developed with single-family homes and no redevelopment of these two lots is proposed at this time.
4. The proposed prezone of 632 and 644 North Avenue is consistent with the General Plan, as these lots are located within the Estate II designation as depicted on the General Plan Land Use Map (Figure II-1 of the Land Use and Community Form Element). The Residential Estates (RE) zone, as described in the Zoning Code, corresponds to the Estate II designation of the General Plan as noted in Figure II-6 of the General Plan.
5. The proposed change of zone does not establish a residential density below seventy (70) percent of the maximum permitted density of any lot or parcel of land previously zoned R-3, R-4, or R-5. The two lots to be prezoned do not have R-3, R-4, or R-5 zoning.
6. The two lots to be prezoned are not covered under any Specific Plans.

Proceedings:

1. The Record of Proceedings upon which the City Council bases its decision includes, but is not limited to: (1) the Addendum to the Amended IS/MND and the appendices and technical reports cited in and/or relied upon in preparing the Addendum; (2) the staff reports, City files and records and other documents, prepared for and/or submitted to the City relating to the Addendum and the Project itself; (3) the evidence, facts, findings and other determinations set forth in herein; (4) the General Plan and the Escondido Municipal Code; (5) all designs, plans, studies, data and correspondence submitted to the City in connection with the Addendum and the Project itself; (6) all documentary and oral evidence received at public meetings and hearings or submitted to the City during the course of the review of the Project itself; (7) all other matters of common knowledge to the to the City, including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the City and its surrounding areas.

ADDENDUM
to the
AMENDED MITIGATED NEGATIVE DECLARATION
FOR
NORTH AVENUE ESTATES 39-LOT RESIDENTIAL LOT SUBDIVISION

Former Case Nos.: TR 916-R, 2005-17-PZ/PD(R)/ DA, 2005-03-AN, ER 2005-12

Current Case No.: SUB 17-0007

For the proposed

REVISION TO THE PREVIOUSLY APPROVED TENTATIVE SUBDIVISION MAP;
MASTER DEVELOPMENT PLAN; DEVELOPMENT AGREEMENT; PREZONE OF 632
AND 644 NORTH AVENUE; AND ANNEXATION OF THE DEVELOPMENT SITE AND
632, 644, AND 714 NORTH AVENUE

Prepared for:

City of Escondido
Planning Division
201 N. Broadway
Escondido, CA 92025

December 18, 2017

INTRODUCTION

On April 5, 2006, the Escondido City Council adopted a Mitigated Negative Declaration (City File No. ER 2005-12, the "2005 MND") for the North Avenue Estates Tentative Subdivision Map, Master and Precise Development Plan, Annexation, Prezone, and Development Agreement (City Council Resolution No. 2006-08). On April 9, 2008, the Escondido City Council approved a revision to the Tentative Subdivision Map and Precise Development Plan to reconfigure the site to provide access to the entire subdivision from North Avenue rather than using Laurashawn Lane/Tamara Drive for primary access as previously approved. The City Council reviewed the 2005 MND and determined that it adequately addressed all of the environmental issues associated with the Project, including as modified.

The 2005 MND evaluated the impacts of the proposed 39-lot residential project (34 residential lots and 5 open space lots) on the approximately 17.2-acre site located on North Avenue between Laurashawn Lane and Kaywood Drive. The analysis identified several mitigation measures for impacts related to hazardous materials and biological and cultural resources that would reduce potential impacts to less than a significant level.

The current application to the City proposes a 12.5-foot-wide buffer between the property line of the existing homes on Laurashawn Lane and the homes proposed to be built as North Avenue Estates (the "Proposed Project"). This Addendum addresses the proposed modifications to the approved project and the associated potential environmental impacts. This Addendum is an informational document, intended to be used in the planning and decision-making process as provided for under Section 15164(b) of the California Environmental Quality Act (CEQA) Guidelines. This Addendum concludes that the proposed changes to the project will not: (1) result in new significant impacts; or (2) substantially increase the severity of previously disclosed impacts beyond those already identified in the 2005 MND. Therefore, a subsequent MND would not be required under CEQA to implement the proposed project modifications.

STATUTORY BACKGROUND

The City of Escondido is the CEQA lead agency for the Proposed Project. Under CEQA, an Addendum to a certified Environmental Impact Report (EIR) or Negative Declaration may be appropriate if minor technical changes or modifications to the project are proposed (CEQA Guidelines § 15164). An Addendum is appropriate only if these minor technical changes or modifications do not result in any new significant impacts or a substantial increase in the severity of previously identified significant impacts. The Addendum need not be circulated for public review (CEQA Guidelines § 15164(c)). However, an Addendum is to be considered along with the adopted MND by the decision-making body prior to making a decision on the project (CEQA Guidelines § 15164(d)).

This MND Addendum demonstrates that the environmental analysis, impacts, and mitigation requirements identified in the 2005 MND remain substantively unchanged by the

situation described herein, and supports the finding that the proposed project modifications do not result in new significant impacts and do not exceed the level of impacts identified in the 2005 MND. Accordingly, pursuant to CEQA Guidelines Section 15164, recirculation of the adopted MND for public review is not required. The City has also determined that preparation of a subsequent EIR or MND is not required under CEQA Guidelines Section 15162. To support this decision, the following discussion describes the proposed project modifications and the associated environmental analysis.

SUMMARY OF ORIGINAL PROJECT DESCRIPTION

The original project (Tract 916, 2005-17-PZ/PD/DA, and 2005-03-AN) included a Tentative Subdivision Map, Master and Precise Development Plan, Development Agreement, Prezone, and Annexation, for a 39-lot residential subdivision (34 single-family lots and five open space lots) on approximately 17.2 acres of vacant land located at North Avenue at the terminus of Conway Drive (APNs 224-153-19, and -20) (the "Project Site"). The City Council had previously initiated annexation of the Project Site, as well as four adjacent parcels developed with single-family residences (702, 708, and 714 North Avenue), on October 27, 2004. Under the original project, the Project Site was prezoned PD-R-1.97, while the other four lots were prezoned RE-20, in anticipation of annexation. The PD-R-1.97 and RE-20 zones are consistent with the E2 land use designation of the General Plan.

The Tentative Subdivision Map and Precise Development Plan were revised in 2008 (under Tract 916-R and 2005-PD(R)) to consolidate the primary access point at the southern entrance, and to designate the western entrance as a gated emergency-only entrance.

The site is located within the City of Escondido's Sphere of Influence with a General Plan designation of Estate II (E2), a residential designation allowing 20,000-SF lots. The City's General Plan allows for clustering in this designation with minimum lot sizes of 10,000 SF with adequate open space. The original subdivision utilized lot clustering, and proposed residential lot sizes in excess of 10,000 SF. The project would have been consistent with surrounding land uses, as the area was occupied primarily by single-family residential uses, and the project proposed lot sizes compatible in size with the County lots located immediately to the west of the subject site.

The original project proposed a multi-use trail running north to south through the residential development, with connections to Kaywood Drive and North Avenue. This was a community benefit to City and County residents that have historically used the site for jogging, dog walking, and horseback riding. These recreational activities would remain available to nearby residents.

PROJECT REVISIONS

The Proposed Project (SUB 17-0007) revises the annexation boundary. The Proposed Project requests annexation of the Project Site (APNs 224-153-19 and -20; prezoned PD-R-1.97) and 714 North Avenue (APN 224-153-15; prezoned RE-20). It also includes the annexation of 632 and 644 North Avenue (APNs 224-331-14 and -16), which would be prezoned to RE-20 before the annexation as part of the Proposed Project. The properties at 632, 644, and 714 North Avenue

are included in the current annexation proposal because they have previously connected to City sewer services due to septic failure or impending septic failure, and have signed agreements to annex as a condition of that sewer connection.

The Proposed Project also revises the Tentative Subdivision Map by creating a 12.5-foot open space buffer along the rear property line of Lots 1-6, Lots 19-30, and the east and north sides of Lot 34 to eliminate any potential impact to septic systems on adjacent properties. No grading, structures, or activity will be allowed within this buffer.

The Proposed Project would also change a few previously-approved conditions of approval and development standards. First, the applicant is proposing to use vinyl fencing along the edge of the 12.5-foot open space buffer. The previous approval had required masonry walls along rear property lines, with wrought-iron or other open materials for any fencing above six feet in height.

Second, the applicant is proposing to construct no more than eight two-story homes on the fourteen lots numbered 20 through 33, which are adjacent to homes on Laurashawn Lane. Any two-story homes in this range would be limited to a height of 27 feet and would be required to maintain a 40-foot rear setback. One-story homes on the remaining six lots in this range would be limited to a height of 17 feet. The original project had limited all new residences abutting the rear property line of existing residences along Laurashawn Lane (with the exception of Lot 34) to a height of one story and 17 feet, to protect views and privacy for Laurashawn residents.

Third, the applicant is proposing a 15-foot front setback on all lots, rather than the previously approved 20 feet. Side and rear setbacks will remain the same, with the exception of the 40-foot rear setback for two-story homes on Lots 20 through 33. The original project imposed no limits on floor area ratio (FAR) or lot coverage, and the revised project will set those at 0.5 and 40%, respectively.

Finally, the Proposed Project does not include a request for a Precise Development Plan. The applicant will be required to submit a separate Precise Development Plan application, to specify details about the design and architecture of the proposed new residences. This application will be subject to the review of the Planning Division and approval by the Planning Commission.

IMPACT ANALYSIS

This Addendum analyzes the 2005 MND in conjunction with the Proposed Project and concludes that the proposed changes described in this Addendum would not result in new significant impacts or a substantial increase in the severity of significant impacts identified for the 2005 MND. Analysis of the Proposed Project is consistent with the previously approved project as follows:

AESTHETICS

The 2005 MND included a discussion of aesthetics under the heading "Land Use and Planning". Appendix G of the CEQA Guidelines includes the following to be considered:

- a) *Would the project have a substantial adverse effect on a scenic vista?*
- b) *Would the project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?*
- c) *Would the project substantially degrade the existing visual character or quality of the site and its surroundings?*
- d) *Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?*

The 2005 MND considered the above and concluded that there would be no impact as the Project Site is characterized as "in-fill" because development is planned within an established residential neighborhood and is virtually surrounded by development. In addition, as noted in the 2005 MND, the Project Site is not located on a ridgeline identified in the Community Open Space/Conservation Element of the General Plan. The site has a slope of approximately 10% and no grading exemptions are proposed. Further, because residential projects typically do not directly illuminate or reflect glare upon adjacent properties, the 2005 MND concluded no significant light or glare impact would result from the proposed project. Lastly, development of the proposed project will also not obstruct scenic views or vistas open to the public as neither the City nor the State designates North Avenue as a scenic resource.

The Proposed Project will not be modifying the location or footprint of the project as approved, but is requesting that two-story homes be permitted on up to eight of the fourteen lots abutting existing homes on Laurashawn Lane (lots 20-33). The single-story homes would be limited to 17' with a 20' rear setback, as previously approved, and the two-story homes will be limited to 27' in height with a 40' rear setback.

AIR QUALITY

The Proposed Project does not propose substantial changes that would require revisions to the analysis of the significance of air quality impacts in the 2005 MND. There has been no change in circumstances that would require revisions to the analysis of the significance of air quality impacts in the 2005 MND due to the occurrence of new or more severe air quality impacts. Further there is no new information of substantial importance concerning air quality impacts that could not have been known with the exercise of reasonable diligence at the time the 2005 MND was adopted. Due to the small amount of grading and with appropriate use of grading and operation procedures, the Proposed Project would not generate significant particulate matter or dust and therefore would not result in a significant impact.

BIOLOGICAL RESOURCES

The 2005 MND found potential impacts to the biological resources on the project site based on a biological assessment conducted by Helix Environmental Planning on January 7, 2005. According to the assessment the vacant site included mainly non-native vegetation, which is consistent with the vegetation characterization listed for the site on the SanGIS website. A total of five vegetation communities and disturbed and developed land occurred within the Project Site boundaries.

The 2005 MND concluded that the proposed project would directly and significantly impact sensitive vegetation communities and required implementation of Mitigation Measures 1-5 to mitigate impacts per the guidelines described in the Escondido Subarea Plan. The original project and the Proposed Project include the same use, are of similar design, and will be required to implement the same Mitigation Measures as required in the 2005 MND. The Proposed Project does not propose substantial changes that would require major revisions to the analysis of the potential impacts to the biological resources in the 2005 MND. There has been no change in circumstances that would require major revisions to the analysis of the significance of the impacts due to the occurrence of new or more severe impacts. There is no new information of substantial importance concerning impacts to biological resources that could not have been known with the exercise of reasonable diligence at the time the 2005 MND was adopted.

CULTURAL RESOURCES

No historic, cultural, or archaeological resources were identified for the 2005 MND based on the results of a cultural resources study prepared by Brian F. Smith and Associates dated April 5, 2005, a field survey conducted on March 24, 2005 by Seth A. Rosenberg and Charles Callahan, and an archaeological record search by SCIC at SDSU. The 2005 MND concluded there would be no impacts and none of the modifications would result in new or substantially increased significant impacts related to cultural resources. However, as recommended in the 2005 MND, if culturally significant human remains are found during project activities, work should be temporarily halted in that area and appropriate mitigation measures and protocols would be implemented with consultation with the City to avoid and minimize impacts.

GREENHOUSE GAS ANALYSIS

According to Appendix G of the CEQA Guidelines, impacts related to GHG emissions are normally considered significant if implementation of the proposed project would either: (a) Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment; or (b) Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHG.

The 2012 General Plan discusses the City's goals to meet the State's targets for reducing Greenhouse Gas ("GHG") emissions and includes implementation tools to reach those goals, including the Escondido Climate Action Plan (E-CAP). The EIR for the General Plan Update (GPU) determined that with the GHG-reducing GPU policies and E-CAP measures, the City's GHG emissions would be less than significant for projects consistent with the General Plan, as updated.

City Council approved the GHG Emissions Thresholds and Screening Tables as part of the E-CAP on December 4, 2013. The E-CAP provides established CEQA significance thresholds for GHG analyses.

The City has determined that projects emitting less than 2,500 metric tons of CO₂e will not result in a significant impact and presented a list of sample projects that generate less than 2,500 metric tons of CO₂e; for example, a Single Family Residential project with 86 dwelling units is estimated to produce 2,500 metric tons of CO₂e per year (CEQA Thresholds and Screening Tables, Appendix B, Page B-1). The Proposed Project is smaller and will produce GHG emissions that are less than significant.

The E-CAP states that "Mitigation of GHG emissions impacts through the Development Review Process ('DRP') provides one of the most substantial reduction strategies for reducing community-wide emissions associated with new development." To address the GHG from stationary sources, the E-CAP ensures that GHG emissions impacts are mitigated through the DRP.

For future projects, under the E-CAP guidelines each project subject to CEQA would follow one of three scenarios for the GHG analysis:

- If the project is below the set screening threshold for GHGs, then the project's GHG emissions are determined less than significant and no further GHG analysis would be required. OR
- If the project is above the set screening threshold, then the project would be able to tier from the GHG analysis associated with the E-CAP by accumulating 100 points from the E-CAP Screening Tables for New Development document. OR
- If the project is above the GHG screening threshold and the project has unusual characteristics that make the Screening Tables analysis inappropriate for the project, then the project would need to complete a separate, independent GHG analysis.

The Proposed Project is below the set screening threshold for GHGs, easily fits into the general project descriptions and features described in the Screening Tables provided in the E-CAP document; and therefore, a project-specific technical analysis is not necessary to quantify and mitigate GHG emissions (see first bullet above).

Accordingly, as the Proposed Project falls below the GHG emissions threshold requirements, the Proposed Project does not present new information of substantial importance concerning GHG impacts.

HAZARDS AND HAZARDOUS MATERIALS

The 2005 MND identified less than significant impacts for the original project based on a Phase I and II Environmental Assessment Report performed by Geocon Consultants, Inc. on July 7, 2004. The 2005 MND required implementation of Mitigation Measures 1 and 2 prior to grading, to abandon or remove on-site water wells in accordance with applicable laws, and regulations; and to remove trash/debris from the site and dispose of it in accordance with applicable law and regulations. Because the Proposed Project would encompass essentially the same area of grading/disturbance as the original project description and would be required to comply with the same Mitigation Measures, no new or substantially increased significant impacts related to hazards and hazardous materials would result from the Proposed Project.

HYDROLOGY/ WATER QUALITY

The 2005 MND found that project implementation would not result in any significant impacts related to alteration of drainage patterns/directions; runoff volumes/velocities; the capacity of existing/planned drainage systems; flooding/floodplains; inundation by seiche, tsunami or mudflow; or water quality based on a November 15, 2005 letter from Geocon Inc. The letter also noted the requirement for best management practices (BMPs) for grading of the site and maintenance by the development's homeowner's association. On July 11, 2017, Geocon provided a Summary of Conclusions in Previous Geotechnical Reports, concluding that grading performed at the Project Site will not impact existing septic systems on adjacent properties, and that the proposed 10-foot buffer area is an added measure of conservatism. Because the Proposed Project would encompass essentially the same area of grading/disturbance as the original project description, and would be required to comply with BMPs, no new or substantially increased significant impacts related to hydrology or water quality would result from the Proposed Project.

TRANSPORTATION/ TRAFFIC

A Traffic Study Report was prepared for the original project by Linscott, Law and Greenspan on April 15, 2005 and revised November 11, 2005. The 2005 MND concluded there would be no significant impacts to air traffic patterns, emergency access, or parking capacity and there are no design features or incompatible uses that would substantially increase hazards. Linscott, Law & Greenspan prepared a Traffic Counts Memorandum on August 29, 2017, studying traffic counts at the intersection of Broadway and North Avenue and roadway segments on Broadway south of North Avenue, north of North Avenue, and on North Avenue from Broadway to Conway. The 2017 study concluded that delays in intersection operations and the levels of service in the studied segments are similar compared to those in the November 2005 Traffic Study Report. (Linscott, Law & Greenspan, Traffic Counts Memorandum, August 29, 2017, attached).

Accordingly, the Proposed Project does not propose substantial changes that would require major revisions to the analysis of the significance of transportation/traffic circulation impacts in the 2005 MND because there has been no change in circumstances that would require major revisions to the analysis of the significance of transportation/ traffic circulation impacts in the 2005 MND due to the occurrence of new or more severe transportation/ traffic circulation impacts and there is no new information of substantial importance concerning transportation/traffic circulation

impacts that could not have been known with the exercise of reasonable diligence at the time the 2005 MND was adopted.

AGRICULTURAL RESOURCES, GEOLOGY/ SOILS, LAND USE AND PLANNING,
MINERAL RESOURCES, NOISE, POPULATION/ HOUSING, PUBLIC SERVICES,
RECREATION, AND UTILITIES/ SERVICE SYSTEMS

The adopted 2005 MND concluded that potential impacts associated with all the listed issues would be less than significant, based on considerations including the nature, location, and extent of project-related disturbance and development and requirements for conformance with applicable regulatory and industry standards. The original and revised project descriptions would affect the same area, include the same types of land use, and would be constructed using similar grading and building practices. Accordingly, the impact conclusions noted for the listed issues in the adopted 2005 MND would also apply to the revised project description, with all associated potential impacts to be less than significant as summarized below by topic.

Agricultural- As described for the previous project description in the adopted 2005 MND, the Project Site is not listed as Prime Agricultural Lands as identified in the General Plan Final EIR, which was prepared for the City's General Plan revisions in 2000 and is listed as "Urban and Built-up Land" in the Final Environmental Impact Report for the 2012 General Plan Update. The 2005 MND concluded there would be no impacts and none of the modifications would result in new or substantially increased significant impacts related to agricultural resources as described in the 2005 MND.

Geology/Soils- The 2005 MND identified less than significant impacts based on the location of the site relative to active faults and requirements for conformance to applicable design, construction, and inspection standards and practices. Geocon Inc. prepared the Geotechnical Investigation for the project dated September 22, 2004. Because the Proposed Project would be located in the same general location and would also be subject to the noted standards and best practices, it would not generate any new significant impacts related to geology/soils.

Land Use and Planning- The original project and Proposed Project affect the same project site and general development footprint and would include the same residential type of land use.

None of the modifications would result in new or substantially increased significant impacts related to land use and planning, including effects to an established community or conflicts with established plans, policies or regulations as described in the 2005 MND.

Mineral Resources - The adopted 2005 MND concluded that only a portion of the site includes granite rock and the limited size of the project would not substantially increase the use of, or result in the depletion of any nonrenewable natural resources. Based on the same location and similar nature of the revised project design, this conclusion would also be applicable to the Proposed Project. As a result, no new or substantially increased significant impacts related to mineral resources would result from implementation of the Proposed Project.

Noise - Based on required conformance with applicable City standards related to construction and operational noise levels (including the General Plan Noise Element and Noise Ordinance), the

adopted 2005 MND concluded that no significant noise impacts would result from implementation of the original project because the Proposed Project would be located in the same location, would still be subject to the noted standards, and would generate similar levels of volume as estimated in 2005. The 2017 report noted that the volumes on two of the three segments are lesser in 2017 than in November 2005 (Linscott, Law & Greenspan Engineers, 2017); as such, the Proposed Project is not expected to generate new significant impacts related to noise.

Population/Housing - The adopted 2005 MND concluded that the original project design would be consistent with the then applicable criteria in the City General Plan regarding the number, type, and density of proposed residential development. Because the revised project design would not change the previously proposed residential uses, the noted conclusion would also be applicable to the Proposed Project. As a result, no new or substantially increased significant impacts related to population/ housing would result from implementation of the Proposed Project.

Public Services- The adopted 2005 MND concluded that the original project design would not result in significant impacts to services including sewer and water service, fire protection, law enforcement, and schools. Because the revised project design does not increase the previously proposed residential units, the Proposed Project would not generate new significant impacts related to public services or substantially increase the severity of previously disclosed impacts.

Recreation- The adopted 2005 MND concluded that the original project would not adversely affect existing parks or recreational facilities, and that the Project Site is not listed as a park site in the City's Master Plan of Parks, Trails and Open Space. Because the revised project design does not increase the previously proposed residential units, no new or substantially increased significant impacts related to recreation would result from implementation of the Proposed Project.

Utility and Service Systems- The adopted 2005 MND concluded that the original project design would not result in impacts to services including sewer, municipal water, storm water, or refuse collection/disposal. Because the revised project design does not increase the previously proposed residential units, the Proposed Project would not generate new significant impacts related to public services/ utilities or substantially increase the severity of previously disclosed impacts.

SUMMARY AND FINDINGS

The City previously prepared and approved the 2005 MND, which is on file in the Planning Division. The CEQA Guidelines call for an addendum to an adopted Negative Declaration to be prepared if only minor technical changes or additions are necessary, or if none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred. (See Section 15164.)

Pursuant to Section 15162(a) of the CEQA Guidelines and based upon a review of the current proposed project, it has been determined that:

1. No substantial changes are proposed in the project that would require major revisions of the 2005 MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. No substantial changes have occurred with respect to the circumstances under which the project is undertaken that would require major revisions of the 2005 MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
3. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2005 MND was certified as complete, that shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the 2005 MND;
 - (B) Significant effects previously examined will be substantially more severe than shown in the 2005 MND;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives that are considerably different from those analyzed in the 2005 MND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA is clear in its preference to use previously prepared environmental documents when anticipated project specific impacts have been clearly assessed. Section 15162 of the CEQA Guidelines prescribes criteria where a previously adopted Negative Declaration can be used and when a new Negative Declaration should be prepared.

The Impact Analysis in this Addendum indicates the proposed modification is in substantial conformance with the previously approved design and operation of the Project and therefore would have no impacts not already identified in the previous 2005 MND. The 2005 MND did not identify any impacts associated with implementation of the Proposed Project that would be significant after mitigation. This Addendum does not identify any Proposed Project impacts that would be significant after mitigation and no new or additional mitigation is required.

There is substantial evidence to approve this Addendum pursuant to Sections 15164 and 15162 of the CEQA Guidelines. No additional environmental review is warranted, because the lead agency has determined that on the basis of substantial evidence in the whole record the Proposed Project does not create any of the substantial effects on the environment that are identified in Section 15162(a)(1) through (a)(3). No circulation of this Addendum for public comment is required. (CEQA Guidelines Section 15164(c)).

Mitigation Monitoring Program

City of Escondido

TR 916 Residential Project

MITIGATION MONITORING PROGRAM

Issue	Potential Impact	Mitigation Measure	Implementing Entity	Implementation Timing	Certified Initial/ Date
V. Biology	Coast Live Oak Woodland	BIO-1 Impacts to 0.29 acre of coast live oak woodland shall be mitigated at a 2:1 ratio through acquisition of .58 acre of coast live oak woodland at the Daley Ranch Mitigation Bank.	Applicant	Prior to Grading Permit Issuance	
V. Biology	Mule Fat Scrub	BIO-2 Impacts to 0.03 acre of mule fat scrub shall be mitigated at a 1:1 ratio through acquisition of 0.03 acre of woodland habitat at the Daley Ranch Mitigation Bank.	Applicant	Prior to Grading Permit Issuance	
V. Biology	Non-Native Grassland	BIO-3 Impacts to 15.13 acres of non-native grassland shall be mitigated at a 0.5:1 ratio through acquisition of 7.57 acres of non-native grassland at the Daley Ranch Mitigation Bank.	Applicant	Prior to Grading Permit Issuance	
V. Biology	Coast Live Oak Trees	BIO-4 Mitigation for impacts to the four protected coast live oak trees, the four mature coast live oak trees, one mature Engelmann oak tree, four oak hybrids and the 178 mature ornamental trees will occur with the planting of at least 13 oak trees and 178 ornamentals within the project landscaping in the form of street trees throughout the project. The actual number and	Applicant	Prior to Grading Permit Issuance	

		size of replacement trees as well as the planting location shall be determined through consultation with City staff and shall be specified in the project proponent's Development Agreement with the City. The habitat value of the oak trees is also being mitigated by the purchase of mitigation credits at the Daley Ranch Mitigation Bank.			
V. Biology	Active Raptor Nests	BIO-5 A qualified biologist shall determine if any active raptor nests occur on or in the immediate vicinity of the project site if construction is set to commence or continue into the breeding season of raptors (January 1 to June 15). If active raptor nests are found, their situation shall be assessed based on topography, line of site, existing disturbances and proposed disturbance activities to determine an appropriate distance or temporal buffer.	Applicant	Prior to Grading Permit Issuance	
VI. Cultural Resources	Potential Subsurface Archaeological Deposits	CR-1 The project applicant shall provide archaeological monitoring for the significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area shall be identified and the boundaries marked to avoid further	Applicant	Prior to Grading Permit Issuance	

		ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.			
VIII. Hazards and Hazardous Materials	On-Site Water Wells	HHM-1 Prior to grading, on-site water wells shall be abandoned or removed in accordance with applicable laws, and regulations.	Applicant	Prior to Grading	
VIII. Hazards and Hazardous Materials	Trash/Debris	HHM-2 Prior to grading, the trash/debris shall be removed from the site and disposed of in accordance with applicable laws and regulations.	Applicant	Prior to Grading	

Mitigation Monitoring Program

City of Escondido

TR 916 Residential Project

MITIGATION MONITORING PROGRAM

Issue	Potential Impact	Mitigation Measure	Implementing Entity	Implementation Timing	Certified Initial/ Date
V. Biology	Coast Live Oak Woodland	BIO-1 Impacts to 0.29 acre of coast live oak woodland shall be mitigated at a 2:1 ratio through acquisition of .58 acre of coast live oak woodland at the Daley Ranch Mitigation Bank.	Applicant	Prior to Grading Permit Issuance	
V. Biology	Mule Fat Scrub	BIO-2 Impacts to 0.03 acre of mule fat scrub shall be mitigated at a 1:1 ratio through acquisition of 0.03 acre of woodland habitat at the Daley Ranch Mitigation Bank.	Applicant	Prior to Grading Permit Issuance	
V. Biology	Non-Native Grassland	BIO-3 Impacts to 15.13 acres of non-native grassland shall be mitigated at a 0.5:1 ratio through acquisition of 7.57 acres of non-native grassland at the Daley Ranch Mitigation Bank.	Applicant	Prior to Grading Permit Issuance	
V. Biology	Coast Live Oak Trees	BIO-4 Mitigation for impacts to the four protected coast live oak trees, the four mature coast live oak trees, one mature Engelmann oak tree, four oak hybrids and the 178 mature ornamental trees will occur with the planting of at least 13 oak trees and 178 ornamentals within the project landscaping in the form of street trees throughout the project. The actual number and size of replacement trees as well as the planting location shall be determined through consultation with City staff and shall be specified in the project proponent's Development Agreement with the City. The habitat value of the oak trees is also being	Applicant	Prior to Grading Permit Issuance	

			mitigated by the purchase of mitigation credits at the Daley Ranch Mitigation Bank.			
V. Biology	Active Raptor Nests		BIO-5 A qualified biologist shall determine if any active raptor nests occur on or in the immediate vicinity of the project site if construction is set to commence or continue into the breeding season of raptors (January 1 to June 15). If active raptor nests are found, their situation shall be assessed based on topography, line of site, existing disturbances and proposed disturbance activities to determine an appropriate distance or temporal buffer.	Applicant	Prior to Grading Permit Issuance	
VI. Cultural Resources	Potential Subsurface Archaeological Deposits		CR-1 The project applicant shall provide archaeological monitoring for the significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area shall be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.	Applicant	Prior to Grading Permit Issuance	
VIII. Hazards and Hazardous Materials	On-Site Water Wells		HHM-1 Prior to grading, on-site water wells shall be abandoned or removed in accordance with applicable laws, and regulations.	Applicant	Prior to Grading	
VIII. Hazards and Hazardous Materials	Trash/Debris		HHM-2 Prior to grading, the trash/debris shall be removed from the site and disposed of in accordance with applicable laws and regulations.	Applicant	Prior to Grading	

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

APNs: 224-153-19 and 224-153-20

Recording Fees Exempt Per Government Code Section 27383

**DEVELOPMENT AGREEMENT
for North Avenue Estates**

between

CITY OF ESCONDIDO

and

NORTH AVENUE CAJ, LLC

_____, 2018

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the City and Owner.

RECITALS

WHEREAS, Government Code Sections 65864 through 65869.5 and Articles 58 and 68 of the City's Zoning Code authorize the City to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the purpose of establishing certainty in the development process for both the City and the property owner, and to enable specific terms regarding property development, to be negotiated and agreed upon; and

WHEREAS, the purposes of the Agreement are to eliminate uncertainty in the planning and development of the Project by assuring Owner that it may develop the Property, in accordance with existing laws, subject to the terms and conditions contained in the Agreement; assure the orderly installation of necessary improvements and the provision for public services appropriate for the development of the Project; and enable the City to obtain substantial public benefits by virtue of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

ARTICLE I

Definitions

1. **"Amendment"** refers to any written amendment to this Agreement approved by the City Council as provided in Article II, Section 3.
2. **"Annual Review"** refers to the Owner's demonstration of compliance with the terms of this Agreement every 12 months.
3. **"Assignee"** refers to an assignee of this Agreement in accordance with Article II, Section 2 and approved by the City in writing.
4. **"City"** refers to the City of Escondido, its City Council, its mayors and council members, past and present, and employees and agents.
5. **"Cure Period"** refers to the period of time in which a default may be cured, which will be 30 days.

6. **"Deficiency Fee"** refers to the fees established in Exhibit B for contributions towards facilities necessary to upgrade existing deficiencies in accordance with Article 68 of the Escondido Zoning Code.
7. **"Development Fees"** refers to the development related fees as provided in the City's Fee Guide and referred to as development fees.
8. **"Director"** refers to the Director of Community Development or designee.
9. **"Effective Date"** The effective date of the Agreement shall be the day that is 30 days after the City Council's adoption of an ordinance approving this Agreement.
10. **"Entitlements"** refers to all approvals and permits necessary or incidental to the development of the Project or any portion thereof, whether discretionary or ministerial, including but not limited to, specific plans, tentative or final tract map approvals, whether standard or vesting, conditional use permits, variances, project plans, grading permits, building permits, and this Agreement and includes all conditions of approval regarding any particular Entitlement.
11. **"Exaction"** refers to any fee, tax, requirement, condition, dedication, restriction, or limitation imposed by the City upon the development of the Property at any time in accordance with the Existing Laws.
12. **"Existing Laws"** refers to the ordinances, resolutions, codes, rules, regulations, general plan, stormwater regulations and official policies of the 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 this Agreement.

13. **"Future Exaction"** refers to Exactions imposed after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise.
14. **"Future Laws"** refers to all ordinances, resolutions, codes, rules, regulations, and official policies implemented by the City after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise. Future Laws includes changes to the Existing Laws.
15. **"General Fees"** refers to all general development fees which the City may levy pursuant to Government Code Sections 66000 et seq. ("the Mitigation Fee Act"), including, but not limited to, application fees, processing fees, utility connection fees, inspection fees, capital facilities fees, development impact fees, traffic impact fees, park fees and such other similar fees as may be enacted from time to time and generally applied throughout the City, excluding Development Fees.
16. **"General Plan"** refers to the City's General Plan in effect on the Effective Date.
17. **"Minor Modifications"** refers to minor modifications regarding the performance of this Agreement that are consistent with the Entitlements and have minimal impacts to the City's operations in terms of timing, performance, or value.
18. **"Modification"** refers to a modification approved by the City Council as provided in Article VI, Section 5.
19. **"Owner"** refers collectively to North Avenue CAJ, LLC who has legal or equitable interest in the real property which is the subject of this Agreement.
20. **"Operating Memorandum"** refers to addenda to this Agreement to document changes or adjustments in the performance of this Agreement as specified in Article III, Section 7.
21. **"Party"** City or Owner may be referred to individually as Party or collectively as Parties.

22. **"Project"** shall mean and refer to all improvements described in the Entitlements and this Agreement.
23. **"Property"** shall mean the certain real property located in the County of San Diego, State of California as described in the Exhibit A.
24. **"Public Benefits"** shall refer to the consideration given by Owner to the City, as described in Exhibit B attached hereto, in return for the City's good faith performance of all applicable terms and conditions in this Agreement.
25. **"Public Improvements"** refers to any public improvements required to be constructed as conditions of approval to the Entitlements or as additionally provided in this Agreement.
26. **"Review Letter"** refers to a letter from the City regarding a statement of Owner's compliance with this Agreement, following a positive Annual Review by the City.
27. **"Term"** shall refer to the term of this Agreement as provided in Article II, Section 1.

ARTICLE II

General Provisions

1. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue for (five) 5 years unless terminated, modified, amended or extended as permitted by this Agreement. After the expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect. This Agreement shall terminate with respect to any lot and such lot shall be released and no longer subject to the Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the building(s) on the lot.
2. **Assignment.** The rights and obligations of Owner under the Agreement may be assigned by Owner as part of an assignment of the Property, only after receiving written approval from the

City. Owner shall provide (thirty) 30 days advance written notice to the City of any requested assignment. The City shall have the right to ensure that the proposed assignee has the financial capability to complete and fulfill any uncompleted requirements relating to the Public Benefits. Any assignment agreement must be in writing and expressly provide that (a) the assignment shall be subject to this Agreement; and (b) the Assignee assumes all of Owner's rights and obligations with respect to the Property, or portion thereof, assigned.

3. **Amendment of Agreement.** The Agreement may be amended in writing by the mutual consent of the Parties in accordance with Article 58, Chapter 33 of the Escondido Zoning Code as well as any applicable state or federal law. The Agreement shall include any amendment properly approved and executed. Minor Modifications in the manner of performance shall not constitute an Amendment to the Agreement and may be accomplished through an Operating Memorandum.

4. **Enforcement.** Unless amended or terminated as provided herein, this Agreement is enforceable by either Party or its successors and assigns, notwithstanding any Future Laws, which alter or amend the Existing Laws.

5. **Defense and Indemnification.**

a. Owner agrees to defend, indemnify, and hold harmless, City, and provide and pay all costs for a defense of and judgment against the City, including any award for attorney's fees and litigation costs, in any legal action filed in a court of competent jurisdiction by a third party challenging the Project, or any component thereof, or this Agreement.

b. Owner shall further indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and

disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. R9-2015-0001) of the California Regional Water Quality Control Board Region 9, San Diego, as amended or extended, which the City might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project.

c. The City shall have no liability to the Owner or any other person for, and Owner shall indemnify, defend, protect and hold harmless the City from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, which the City may suffer or incur or to which the City may become subject as a result of or allegedly caused by the payment of prevailing wages for construction of any of the Public Benefits or Public Improvements.

d. If any action or proceeding is brought against the City by reason of any of the matters against which Owner has agreed to indemnify the City as provided above, Owner, upon notice from the City, shall defend the City at Owner's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. The City need not have first paid for any of the matters to which the City is entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

6. **Third Party Challenges.** In the event the validity, applicability, or implementation of the Agreement is challenged by means of legal proceedings by any party other than the City and Owner, it shall be the City's option, at its sole and absolute discretion, whether to undertake the defense of such challenge. If the City determines not to defend such challenge, it shall be the option of Owner, to defend the validity, applicability, or implementation of this Agreement in the

proceeding at Owner's sole expense. The City and Owner agree to cooperate in the defense of any such challenges.

7. **Notices.** All notices or communication between the City and Owner pursuant to the Agreement shall be in writing and shall be given by personal delivery, overnight delivery service, certified or registered mail, facsimile or telecopy to the addresses set forth below. The addresses may be changed by giving (ten) 10 days written notice.

A. City

City of Escondido
Attention: Director of Community Development
201 N. Broadway
Escondido, CA 92025

with a copy to:

City Attorney
201 N. Broadway
Escondido, CA 92025

B. Owner

North Avenue CAJ, LLC
Attention: Casey Johnson
PO Box 928257
San Diego, CA 92192

with a copy to:

David Ferguson, Esq.
Lounsbury, Ferguson, Altona & Peak
960 Canterbury Place, Suite 300
Escondido, Ca 92025

8. **Conflict of State or Federal Laws.** If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of this Agreement or require changes in any Entitlements, those laws or regulations shall be controlling and the Parties shall make a good

faith, reasonable attempt to modify this Agreement to comply both with the intent of the Agreement and with the new laws or regulations.

The City shall timely assist Owner in securing any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate courses of action.

ARTICLE III

Development of the Property

1. **Applicable Rules, Regulations, and Policies.** Owner shall have the vested right, to the fullest extent allowed by law, to develop the Property in accordance with the Entitlements, Existing Laws and this Agreement. During the Term, the Entitlements, Existing Laws and this Agreement shall control the overall design, development and construction of the Project. Notwithstanding the foregoing, nothing in this Agreement shall preclude the City from applying changes occurring from time to time in the uniform codes published in Title 24 of the California Code of Regulations and adopted by the City, including local amendments, in effect when the building permits are issued.
2. **Future Laws.** Future Laws shall not apply to the Project except as expressly provided in this Agreement. Future Laws may be applied to the Project if they are not in conflict with the Existing Laws. Owner may give the City written notice of its election to have any Future Law applied to the Property, in which case such Future Law will be considered an Existing Law for purposes of this Agreement.
3. **Future Discretionary Reviews.** Except as set forth in this Agreement, the City shall retain its discretionary rights in reviewing applications for Entitlements. Owner's applications for Entitlements and the City's review thereof, must comply with the Existing Laws and with the terms

and conditions of this Agreement. The City shall not impose any conditions upon Entitlements that are more restrictive than or inconsistent with the terms of this Agreement or the Existing Laws, except as required by state or federal law. The City may conduct, in accordance with CEQA and the Existing Laws, an environmental review for Entitlements. The City may impose, if required by CEQA, additional mitigation measures to mitigate significant adverse environmental effects that were not previously considered, or were found to be infeasible to mitigate at the time of approval of this Agreement. Nothing herein is intended to require or authorize additional CEQA environmental review or mitigation measures beyond that otherwise required by CEQA.

4. **Permitted Uses and Density.** The Agreement shall vest the right to develop the Property to the fullest extent allowed by law with respect to the permitted uses of land, density and intensity of uses, and the rate or timing and phasing of development as described in the Entitlements which are hereby incorporated as if fully set forth in this Agreement. The permitted uses, density, and intensity of use of the Project, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes, shall substantially conform to those specified in the Entitlements, Existing Laws and this Agreement. The permitted uses of the Property, including a plan of development, the density and intensity of use, the maximum height and size of proposed buildings are set forth in SUB 17-0007, PHG 17-0034, ENV 17-0011, and PHG 17-0034 as they be amended from time to time, and are hereby incorporated by reference. All other aspects of the Project that are not specified in the Entitlements shall be determined by the Existing Laws, except as expressly provided herein.

5. **Time for Construction and Completion of the Project.** Owner cannot predict when or the rate or the order in which the Property or the parcels will be developed, if at all. Such decisions depend upon numerous factors that are not within the control of the Owner, such as market

orientation and demand, interest rates, absorption, completion, and other similar factors. Therefore, Owner shall have the right to develop the Property in phases, in such order, at such rate, and at such times as Owner deems appropriate in Owner's business judgment, subject only to the provisions of this Agreement and the Entitlements. Owner shall be entitled to apply for and receive approval of permits, building permits, and other Entitlements for use at any time and for any or all portions or phases of the Project, provided that application is made in a manner consistent with this Agreement and the Entitlements.

The City may require, and will process, all customary plans and agreements generally applicable to developers in the City for similar works of onsite or offsite improvements.

6. **Moratorium.** No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of the City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within the City, or portions of the City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect the City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria, as established by the initiative process, or as otherwise established by law.

7. **Operating Memoranda.** The Parties acknowledge that the provisions of this Agreement require cooperation between the City and Owner, and that the refinements and further development of the Project hereunder may demonstrate that changes are appropriate with respect to the details

of performance of the Parties hereunder. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when, from time to time during the Term, the Parties find that such changes or adjustments are necessary or appropriate, they may effectuate such changes or adjustments through Operating Memoranda approved by the Parties, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by the City and Owner. No such Operating Memorandum shall require prior notice or hearing, or constitute an amendment or modification to this Agreement; and in the case of the City, such Operating Memorandum may be acted upon by the City Manager or his designee. Failure of the Parties to enter into any such Operating Memorandum shall not affect or abrogate any of the rights, duties or obligations of the Parties hereunder or the provisions of this Agreement. An Operating Memorandum may be recorded as an addendum to this Agreement.

8. **Term of Map(s) and Other Project Approvals.** Pursuant to California Government Code Section 66452.6(a), the term of the subdivision map that is processed on all or any portion of the Property and the term of each of the Entitlements shall be extended for a period of time through the Term of the Agreement. Should this Agreement be terminated, the Owner shall have thirty (30) days to submit an application for the extension of any portion of an approved tentative map.

9. **Infrastructure Capacity.** Subject to Owner's proportionate contribution to infrastructure and the Public Benefits provided by Owner, in accordance with the requirements of the Entitlements, the City hereby acknowledges that it will have sufficient capacity in its infrastructure services and utility systems, including, without limitation, traffic circulation, flood control, sanitation service and, except for reasons beyond the City's control, sewer collection, sewer treatment, water supply, treatment, distribution and service, to accommodate the Project. To the

extent that the City renders such services or provides such utilities, the 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 the City's control.

10. **Easements.** Easements dedicated for pedestrian use shall be permitted to include public easements for underground improvements, including but not limited to, drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities, so long as they do not unreasonably interfere with pedestrian use.

11. **Public Improvements.** Owner agrees to design and construct the improvements as provided in Exhibit B to this Agreement. The requirement to design and construct the improvements in Exhibit B shall survive the termination of this Agreement.

12. **Fees.** The Owner shall pay the Development Fees and General Fees in the amounts in effect at the time Owner submits payment of the fees unless otherwise explicitly provided in this Agreement.

ARTICLE IV

Provision of Public Benefits

1. **Description of Public Benefits.** Owner shall provide the City with the Public Benefits, as further described in Exhibit B, as consideration for the City's good faith performance of all applicable terms and conditions in this Agreement.

2. **Occupancy Contingent on Construction of Public Improvements.** Owner acknowledges that the City shall not grant a certificate of occupancy for any building constructed on the Property prior to the construction of all improvements at the times described in Exhibit B. This contingency for occupancy shall survive the termination of this Agreement.

3. **Recordation of Final Map Contingent on Security for Public Benefits.** Prior to recordation of the Final Map, Owner must enter into an improvement agreement or agreements

which will detail Owner's construction obligations for Public Improvements and the Public Benefits, and will require Owner to provide financial security for completion of construction, in a form or forms as approved by the City Attorney.

4. **Processing During Third Party Litigation.** The filing of any third party lawsuit(s) against the City or Owner relating to this Agreement, any Entitlements, or to other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of Entitlements, unless the third party obtains a court order preventing the activity.

ARTICLE V

Annual Review

1. **Owner Responsibilities.** At least every (twelve) 12 months during the Term, Owner shall demonstrate good faith substantial compliance with the major provisions of the Agreement and provide, to the best extent possible, the status and timing of development of the Project and related public improvements to the City for an Annual Review. If requested by the City, Owner shall provide any additional detail or information necessary to demonstrate good faith compliance with any particular provision of this Agreement identified by the City.

2. **Opportunity to be Heard.** Owner shall be permitted an opportunity to be heard orally and in writing at any noticed public hearing regarding its performance under this Agreement. Owner shall be heard before each appropriate board agency or commission and the City Council at any required public hearing concerning a review of performance under this Agreement.

3. **Information to be Provided to Owner.** The City shall mail to Owner a copy of staff reports and related exhibits concerning Agreement performance, a minimum of (ten) 10 calendar days prior to consideration and review by the City Council.

4. **Annual Review Letter.** If Owner is found to be in substantial compliance with this Agreement after the Annual Review, the City shall issue, upon written request by Owner, a Review Letter to Owner stating that, based upon information known or made known to the City Council, the City Planning Commission, and/or the City Manager, this Agreement remains in effect and Owner is in compliance. Owner may record the Review Letter in the Official Records of the County of San Diego.

5. **Failure of Annual Review.** The City's failure to perform an Annual Review of Owner's substantial compliance with the terms and conditions of the Agreement shall not constitute or be asserted as a default by Owner.

ARTICLE VI

Delay, Default, Remedies, and Termination

1. **Notice and Cure of Default.** In the event of a material default, the Party alleging a default shall give the defaulting Party a notice of default in writing. The notice of default shall specify the nature of the alleged material default. During the Cure Period, the Party charged shall not be considered in breach. If the default is cured within the Cure Period, then no breach shall be deemed to exist. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured.

2. **Waiver.** Failure or delay in giving notice of default shall not constitute a waiver of any other material default. Except as otherwise expressly provided in this Agreement, a failure or delay in asserting any rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute

and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

3. **Default by Owner.** The Director may recommend the review and termination of this Agreement to the City Council upon an occurrence of a material default that is not cured within the Cure Period. The foregoing does not limit any of the City's other remedies upon a material breach of this Agreement by the Owner.

4. **Default by the City.** Upon a material default by the City, that is not cured within the Cure Period, Owner, without limiting any of its other remedies, shall not be obligated to complete any of its obligations under this Agreement.

5. **Termination or Modification.** Any termination or modification of this Agreement shall be done in accordance with Article 58, Chapter 33 of the Escondido Zoning Code as well as any applicable state or federal law. Owner shall have sixty (60) days from the Effective Date to sign the Agreement or the Agreement shall automatically expire.

ARTICLE VII

Encumbrances and Releases on Property

1. **Discretion to Encumber.** This Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage. The City acknowledges that lenders providing financing may require modifications to this Agreement and the City agrees, upon request, from time to time, to meet with Owner and/or representatives of lenders to negotiate in good faith any lender request for modification provided any modification does not will not affect the timely completion or fulfillment of any requirements in the Entitlements or this Agreement relating to the Public Benefits.

ARTICLE VIII

Miscellaneous Provisions

1. **Rules of Construction.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.
2. **Severability.** If any non-material provision of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Agreement. If any material part of the Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the Parties shall take all steps necessary to modify the Agreement to implement the original intent of the Parties in a valid and binding manner. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, this Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefited by the material provision does not waive its rights under the unenforceable provision, the executory portions of the Agreement shall become void.
3. **Entire Agreement.** Except as expressly referred to herein, this Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all other negotiations and previous agreements between the Parties with respect to that subject matter.
4. **Waivers.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate agents of the City or of Owner.
5. **Recording.** The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of San Diego County, California within (ten) 10 days following the Effective Date. Upon the completion of performance of this Agreement or its revocation or

termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of Owner and the City shall be recorded in the Official Records of San Diego County, California.

6. **Project as a Private Undertaking.** It is specifically understood by the Parties that the Project is a private development and that Owner shall have the full power and exclusive control of the Property subject to the provisions of this Agreement. Any improvements completed remain the property of the Owner unless the City has explicitly accepted any improvement.

7. **Captions.** The captions of the Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of the Agreement.

8. **Consent.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be withheld unreasonably.

9. **The City's Ongoing Statutory Authority.** Except as expressly stated, nothing in this Agreement shall limit the City's authority and responsibility under the California Constitution and applicable California statutes to act in the best interests of the public health, safety, and welfare, and nothing in this Agreement is intended to limit in any way the legislative discretion otherwise afforded the Escondido City Council under state or federal law.

10. **Covenant of Cooperation.** The Parties shall cooperate with and assist each other in the performance of the provisions of the Agreement including assistance in obtaining permits for the development of the Property which may be required from public agencies other than the City. The covenant of cooperation shall include, to the maximum extent permitted by law, that the City shall use its best efforts to prevent any ordinance, measure, moratorium or other limitation from invalidating, prevailing over or making impossible any provision of the Agreement, and the City

shall cooperate with Owner to keep this Agreement in full force and effect. Owner reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.

11. **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of the Agreement or to evidence or consummate the transactions contemplated herein.

12. **Successors and Assigns.** Subject to Article II Section 2 above, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement inure to, all successors-in-interest and assigns of the Parties.

13. **Time of the Essence.** Time is of the essence of this Agreement and of each and every term and condition hereof.

14. **Applicable Laws.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. All statutory references are to California statutes.

15. **No Waiver of Existing Rights or Applicable Laws.** This Agreement shall not constitute a waiver of any of Owner's existing rights or applicable laws, nor shall it limit or expand Owner's right to challenge any General Fee as being contrary to applicable law or to challenge any existing or Future Exaction as being in excess of Exactions permitted by applicable law.

16. **Authorization.** Each person executing this Agreement hereby warrants and represents that he/she has the authority to enter into this Agreement and to bind his/her respective entity to the provisions hereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.

17. **No Third Party Beneficiaries.** This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Agreement:

CITY OF ESCONDIDO

CITY OF ESCONDIDO

By: _____
Sam Abed
Its: Mayor

By: _____
Diane Halverson
Its: Clerk

NORTH AVENUE CAJ, LLC

By: _____
Casey Johnson
Its: Managing Member

APPROVED AS TO FORM:

CITY OF ESCONDIDO

By: _____
Michael R. McGuiness
City Attorney

LOUNSBERY, FERGUSON, ALTONA & PEAK

By: _____
David Ferguson, Esq.
Attorney for Owner

Exhibit A

LEGAL DESCRIPTION

Real property in the City of Escondido, County of San Diego, State of California, described as follows:

APN224-153-20

That portion of Block 410 of Rancho Rincon Del Diablo, in the County of San Diego, State of California, according to Graham Map No. 723 filed in the Office of the County Recorder of San Diego County, August 13, 1892, and that portion of the unnamed street, 20.00 feet wide, lying easterly of and adjoining said Block 410 as vacated and closed to public use on July 1, 1927, by order of the Board of Supervisors of said County of San Diego, a certified copy of said order having been recorded in the Office of the County Recorder of said San Diego County on July 2, 1927 in Book 1336, page 7 of Deeds, lying easterly of Las Lomas Ranchos Unit No.1, according to map thereof No. 5151, filed in the Office of the County Recorder of San Diego County on April 5, 1963,

Excepting therefrom that portion thereof described as follows:

Commencing at the southeast corner of said Block 410: Thence along the easterly prolongation of the southerly line thereof, North 70°20'20" East, 20.00 feet to the easterly line of Rancho Rincon Del Diablo; thence along said easterly line north 19°39'45" west, 175.00 feet; thence south 70°20'20" west 302.32 feet; thence south 6°22'30" west 194.77 feet to the Southeasterly line of said Block 410; thence North 70°20'20" East 367.80 feet along said Southeasterly line to the true point of beginning.

Also excepting therefrom that portion thereof described as follows:

Beginning at the most Southeasterly corner of said Block 410; thence North 19°39'45" West 175.00 feet; thence North 70°20'20" East 20.00 feet to a point in the Easterly line of Rancho Rincon Del Diablo, being the true point of beginning, said true point of beginning also being the Northeasterly corner of the land described in Deed to Olen K. Hood, Et Ux recorded May 4, 1962 as Instrument No. 77035 of official records; thence South 70°20'20" West 282.32 feet along the Northwesternly line of said Hood land and its Southwesterly prolongation of the southwesterly corner of the land described in the deed to Carol Jane Crispin, an unmarried woman, recorded October 13, 1965 as Instrument No. 185349 of official records; thence North 6°22'30" East 325.31 feet along the Westerly line of said Crispin land and along the Westerly line of the land described in the Deed to Joel Frederick Friberg Et Ux, recorded March 6, 1969 as Instrument No. 39539 of official records to the Northwesternly corner of said Friberg land; thence continuing North 06°22'30" East 180.83 feet to the beginning of a tangent 20.00 foot radius curve, concave Southeasterly; thence clockwise along the arc of said curve through a central angle of 90°00'00" a distance of 31/12 feet; thence tangent to said curve South 83°37'30" East, 59.44 feet to the Northeasterly boundary of said Rancho Rincon Del Diablo; thence along said Northeasterly line South 19°39'45" East 442.16 feet to the true point of beginning.

Also excepting therefrom that portion thereof described as follows:

Beginning at the most Southeasterly corner of Lot 28 of Las Lomas Ranchos Unit No.1, according to Map thereof No. 5151, filed in the office of the County Recorder of said San Diego County, also being on the most northerly right of way of North Avenue 66.00 feet wide; thence north 19°39'40" West 95.00 feet; thence North 1°10'23" East 47.81 feet; thence South 88°49'37" East 83.45 feet; thence North 70°20'20" East 209.62 feet; thence North 6°22'30" East 159.70 feet, thence South 83°37'30" East 250.00 feet; thence South 6°22'30" West 160.00 feet to a point on the Northerly

right of way of said North Avenue which bears North 70°20'20" East from the true point of beginning; thence South 70°20'20" West 529.12 feet to the true point of beginning.

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That portion of Block 410 of Rancho Rincon Del Diablo, in the County of San Diego, State of California, according to the Graham Map No. 723 filed in the office of the County recorder of said County, August 13, 1892, described as follows:

Beginning at the most Southeasterly corner of Lot 28 of Las Lomas Ranchos Unit No. 1, according to Map thereof No. 5151 filed in the office of the County recorder of said San Diego county, also being on the most Northerly right of way of North Avenue, 66.00 feet wide; thence North 19°39'40" West 95.00 feet; thence North 1°10'23", East 47.81 feet; thence South 88°49'37" East, 83.45 feet; thence North 70°20'20" East, 209.62 feet; thence North 6°22'30" East, 159.70 feet; thence South 83°37'30" East, 250.00 feet to the Easterly line of the land described in the deed to Rincon Builders, Inc., recorded May 28, 1971 as file no. 112464; thence South 6°22'30" West 160.00 feet along said Easterly line to a point on the Northerly right of way of said North Avenue which bears North 70 °20'20" East from the true point of beginning; thence South 70°20'20" West, 529.12 feet to the true point of beginning.

Excepting that portion thereof lying Southwesterly of the Easterly line of the land described in the deed to Garold Herbert Carr, Jr., Et Ux, recorded March 6, 1972 as file no. 72-53694 of Official Records.

EXHIBIT B

I. PUBLIC BENEFITS AND IMPROVEMENTS

A. DRAINAGE IMPROVEMENTS. Owner shall design and construct the following Drainage Improvements:

1. **Culvert and Pipeline.** A combination of a 42" reinforced concrete pipe and a 3'x5' reinforced concrete box culvert together with drainage inlets and clean outs along North Avenue, as specified in the extension and revision of the tentative map, SUB 17-0007. To give the Developer flexibility regarding the location of the drainage, the Developer may shift the proposed location of the drainage culvert from the design shown as part of the tentative map if approved by the Director.
2. **Outlet Headwall.** The outlet headwall for the 3' x 5' reinforced concrete box culvert as specified in the extension and revision of the tentative map, SUB 17-0007. This includes any grading necessary for the headwall and re-establishment of landscaping and irrigation for areas disturbed by the grading and outlet headwall structure construction. To give the Developer flexibility regarding the location of the box culvert and headwall, the Developer may shift the proposed location of the box culvert and headwall from the design shown as part of the tentative map if approved by the Director.
3. **Relocation.** Owner shall relocate any dry or wet utilities in conflict with the proposed Drainage Improvements as determined by the Director.

B. TREES. Owner shall provide a minimum of 13 coast live oak trees and 178 ornamental trees at a size of at least a 24" box. The location of the trees will be approved by the City as part of the submission of a landscape plan.

II. DEFICIENCY FEES, CREDITS AND REIMBURSEMENTS

A. FEE CREDITS. In exchange for Owner's design and construction of the Drainage Improvements, City will provide Owner with fee credits towards the Deficiency Fees in the amount of the actual cost of the Drainage Improvements, not to exceed One Hundred Thousand Dollars (\$100,000.00). City will defer collection of any Deficiency Fees until Owner requests the first certificate of occupancy.

B. DEFICIENCY FEE PAYMENT. Owner shall pay the Deficiency Fees of \$12,500.00 for each of the 34 lots to be developed. Owner hereby agrees that the listed Deficiency Fee is an accurate representation of the its proportionate share towards neighborhood and citywide improvements for the facility deficiency area applicable to this Project. The obligation to pay these fees will survive the termination of the development agreement.

III. TIMING AND COOPERATION

A. The City and Owner agree to cooperate towards the requirements in this Agreement including a permitting and construction schedule.