

ORDINANCE NO. 2018-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ADOPTING AN AMENDMENT TO THE CITYWIDE ZONING MAP TO CHANGE THE DESIGNATION OF THE 40.62-ACRE PROJECT SITE FROM RE-20 TO PD-R, A MASTER DEVELOPMENT PLAN, AND A DEVELOPMENT AGREEMENT TO SUPPORT THE WOHLFORD RESIDENTIAL PROJECT PROPOSAL

APPLICANT: Speith & Wohlford, Inc.
CASE NOS.: SUB 15-0002, PHG 15-0004, and ENV 15-0001

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

SECTION 1. The City Council makes the following findings:

a) Speith & Wohlford, Inc. ("Applicant") submitted a verified land use development application on property located in the southeast portion of the City, along the east side of Bear Valley Parkway, across from Encino Drive. The Project site is approximately 40.62 acres in size and currently has an address of 661 Bear Valley Parkway, Escondido CA 92025, legally described as Exhibit "D" to City Council Resolution No. 2018-120, which is incorporated herein by this reference as though fully set forth herein. Said verified application was submitted to, and processed by, the Planning Division of the Community Development Department as Planning Case Nos. SUB 15-0002, PHG 15-0004, and ENV 15-0001 and seeks approval of a Rezone, Master Development Plan, Development Agreement, Tentative Subdivision Map, Grading Exemptions, and Specific Alignment Plan relating to the Project site.

b) The Planning Division of the Community Development Department completed its review and scheduled a public hearing regarding the application before

the Planning Commission for June 26, 2018. Following the public hearing on June 26, 2018, the Planning Commission adopted Resolution No. 6122, which recommended that the City Council, among other things, approve the Project's Rezone, Master Development Plan, and Development Agreement.

SECTION 2. An original copy of the proposed Rezone, Master Development Plan, and Development Agreement 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 August 15, 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 posted on the project website.
- b) Oral testimony from City staff, interested parties, and the public.
- c) The City Council staff report, dated August 15, 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. Pursuant to the California Environmental Quality Act, a Final Environmental Impact Report (SCH No. 2016111060) relative to the Project was prepared and the City Council has certified it, along with adopting the CEQA Findings of Fact and the Mitigation Monitoring and Reporting Program per City Council Resolution No. 2018-120.

SECTION 5. That, upon consideration of the Findings of Fact, attached as Exhibit "A", 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 August 15, 2018, City Council staff report, and is incorporated herein by this reference as though fully set forth herein.

SECTION 6. The Zone District Map of the City of Escondido is hereby amended to change the zoning on the subject site from RE-20 (Residential Estates – 20,000 square foot minimum lot size) to Planned Development-Residential (PD-R), as set forth in Exhibit "B" and incorporated herein by reference as though fully set forth herein.

SECTION 7. The Planning Division of the Community Development Department provided a process for review and consideration of the Development Agreement in accordance with state law, California Government Code sections 65864 – 65869.5, and Planning Commission and the City Council reviewed the proposed Development Agreement for compliance with technical requirements and consistency with the applicable city policies. Upon consideration of the staff report; Planning Commission recommendation; Findings of Fact, attached as Exhibit "A" to this Ordinance and incorporated herein by this reference as though fully set forth herein, 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 "C," and incorporated herein by this reference as though fully set forth herein.

SECTION 8. 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 of assigns own, control, or otherwise have development authority for all, a portion, or portions of that property included within the Project site.

SECTION 9. 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 10. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 11. Concurrently with this Ordinance, the City Council is taking a number of actions in furtherance of the Project, as generally described by the August 15, 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 Nos. 2018-120 and 2018-122 are approved.

SECTION 12. The City Council authorizes all subsequent action to be taken by City Officials consistent with this Ordinance.

SECTION 13. 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 14. 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 22nd day of August, 2018 by the following vote to wit:

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

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

DocuSigned by:
Sam Abed
6C713A0D961E4F1...

SAM ABED, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Eva Heter
8EE60D9386884A3...

EVA HETER, Assistant City Clerk of the
City of Escondido, California

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

I, EVA HETER, Assistant City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2018-17 passed at a regular meeting of the City Council of the City of Escondido held on the 22nd day of August, 2018, after having been read at the regular meeting of said City Council held on the 15th day of August, 2018.

DocuSigned by:
Eva Heter
8EE60D9386884A3...

EVA HETER, Assistant City Clerk of the
City of Escondido, California

ORDINANCE NO. 2018-17

EXHIBIT "A" TO ORDINANCE NO. 2018-17

FINDINGS OF FACT

Rezone Determinations:

1. The proposed Rezone would not be detrimental to the public health, safety, or welfare of the City because the development standards and building requirements allowed under the Rezone would be subject to all local and State regulations including, but not limited to, Air Pollution Control District regulations, Public Works Department regulations, Health Department regulations, Zoning Code standards, Fire Department standards, and Building and Safety Division regulations. The proposal meets the purpose of the Municipal and Zoning Codes as it would be consistent with the established rules of the proposed zoning districts. The Project site has been thoroughly analyzed for applicable environmental impacts related to this proposed development (Environmental Impact Report, State Clearinghouse #2016111060), and as appropriate, the Final EIR recommends measures to mitigate potential impacts.
2. The property involved is suitable for the uses permitted by the proposed zone. The proposed Rezone would change the zoning of the subject property from RE-20 (Residential Estates; 20,000-SF minimum lot size) to PD-R (Planned Development-Residential). The change of zone is proposed in conjunction with a Preliminary and Master Development Plan that would allow clustering of 55 single-family residential lots ranging from 10,005 SF to 24,557 SF in size, as well as approximately 20.02 acres of open space. No General Plan Amendment is necessary for the project, since the density of the residential development conforms to the standards of the existing E2 (Estate II) land use designation, and the E2 land use designation is consistent with the proposed PD-R zone per Land Use Zoning Policy 2.3 and Figure II-32 of the General Plan.
3. The uses proposed for the subject property would not be detrimental to surrounding properties since the site is located in an established residential area containing a range of similar residential uses at a relatively similar size. All public services and utilities to serve the Project would remain as identified in the General Plan or applicable Municipal and Zoning Codes. The open space system serves as a natural physical barrier, which provides ample distances from adjacent residential areas and proposed residential land uses, and protects slopes, biological resources, and fuel modification zones. Proposed development standards and design guidelines provide a clear design concept and are compatible with the character of buildings on adjoining and nearby properties.
4. The proposed change is consistent with the adopted General Plan. The proposed residential density does not exceed the maximum allowed for the E2 land use designation. The purpose of the Planned Development (PD) zone is to encourage development of parcels with comprehensive site planning and building design; provide a flexible regulatory procedure by which the basic public purposes of the General Plan and development policies may be accomplished for specific parcels; encourage creative approaches to land use through variation in siting of buildings and appropriate mixing of various uses and design of facilities; promote and create public and private open space as an integral part of land development design; encourage private development of older areas of the City or areas which are not conducive to development under traditional zoning designations; and enhance and preserve property with unique features, such as historical significance, biological resources, or unusual topography and landscape features. Upon approval of the proposed Rezone, zoning for the entire property would be PD-R and the proposed Master Development Plan would be consistent with the intent of the General Plan and Municipal Code. The project site has

a unique set of design challenges and spatial complexities with regard to lot orientation, circulation, and transitional areas from adjacent properties. The Master Development Plan provides an opportunity to address these complexities while also promoting the design and creation of new housing with neighborhood compatibility for consistency with General Plan policies and addressing site organization and urban form, setbacks, and building transitions.

5. The proposed Rezone does not establish a residential density below 70 percent of the maximum permitted density of any lot or parcel of land previously zoned R-3, R-4, or R-5.
6. The relationship of the proposed changes is not applicable to any specific plans.

Planned Development Determinations:

1. The location, design, and residential density of the proposed Planned Development is consistent with the goals and policies of the Escondido General Plan and any applicable specific plan or with any policies adopted by, or being considered by the Escondido city council, or in the process of being prepared and adopted. The proposed project would create 55 single-family lots with net sizes ranging from 10,005 SF to 24,557 SF, with an average net lot size of 11,645 SF or 0.27 acre. While the General Plan designation of Estate II (E2) requires a minimum lot size of 20,000 SF, this minimum lot size may be reduced to 10,000 SF when the project site is included within a planned development or specific plan, per General Plan Residential Clustering Policy 5.1. The project includes 20.04 acres of open space to protect slopes, sensitive biological habitat, and fuel modification zones, and to provide recreational amenities and stormwater management facilities; per Residential Clustering Policy 5.7, these are acceptable uses for permanent open space in a planned development. Per Residential Clustering Policy 5.9, the reduction in residential lot sizes proposed under this Planned Development does not exceed the open space provided. The project does not exceed the density allowed for the E2 designation, since it proposes 55 units, while the E2 designation allows 73 units.
2. The proposed location allows the Planned Development to be well integrated with its surroundings. The project site is surrounded by residential neighborhoods characterized by single-family homes on lots ranging from roughly a quarter-acre to several acres in size. Proposed development standards are largely consistent with those assigned to the City's R-1 (Single Family Residential) zone. While the applicant has chosen to defer application for a Precise Development Plan to a later date, some general design guidelines have been provided which state that the new homes would incorporate a balance of single-story elements and feature natural colors and materials to coordinate with the surrounding environment.
3. All vehicular traffic generated by the Planned Development will be accommodated safely and without causing undue congestion upon adjoining streets. A traffic impact analysis was prepared for the project and a mitigation measure has been proposed in the EIR to require the applicant to make a fair-share contribution toward the signalization and realignment of the Encino/Bear Valley intersection. The project also proposes a Specific Alignment plan to add a second northbound lane and other improvements to the portion of Bear Valley Parkway between Sunset/Ranchito Drive and the north end of the development site, and signalization the project entry has been proposed as a project feature.
4. The proposed location and design allows residents within the zone to be adequately serviced by existing or proposed public facilities and services and does not provide an undue or negative impact on existing public facilities and services. All utilities intended for the site are already in place or can be extended to serve the site. Police and fire services are available and sufficient for the development, as described in the June 26 2018 staff report.

5. The overall design of the proposed Planned Development produces an attractive, efficient and stable environment. Design guidelines have been proposed to require single-story elements, with the use of decorative accents and natural colors and materials in the new residences. Recreational amenities have been proposed for the development, including a pocket park and walking trail. A conceptual landscape plan has been provided that includes attractive and regionally-appropriate plantings for fuel modification zones, HOA areas, bioretention basins, the pocket park, and along interior streets.
6. The Planned Development is well integrated with its settings, does not require excessive earthmoving or grading, or destruction of desirable natural features, nor is visually obstructive or disharmonious with surrounding areas and facilities, and does not substantially harm major views from adjacent properties. While grading will be necessary to construct the project, the development has been designed to coordinate with the existing topography of the site, and the project's effects on views from surrounding streets and residences has been analyzed within the project's EIR.
7. The uses proposed have a beneficial effect not obtainable under existing zoning regulations, and any departure from existing ordinance requirements shall be warranted by the design and the amenities incorporated in the Planned Development in accord with adopted city policy. While the site's existing RE-20 zoning does allow construction of single-family residences, the proposed Planned Development would allow a development of the same overall density as an RE-20 development, but with clustered lots that avoid constraints such as steep slopes and sensitive biological habitat. The Planned Development would include permanent open space for protection of a majority of these slopes and habitat, as well as for recreational amenities to benefit the development's residents.

Development Agreement Determinations:

1. The proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan. The Project site is located within the Estate II (E2) land use designation of the General Plan, where density is limited to two dwelling units per acre for slopes under 25 percent, one dwelling unit per acre for slopes between 25 and 35 percent, and one dwelling unit per acre for slopes over 35 percent. The topography of the site would allow for 73 units under the above ratios. The project proposes to build 55 units, and therefore is consistent with the maximum density permissible for the E2 land use designation. The purpose of the Development Agreement is to define terms for completion and funding of street improvements to Bear Valley Parkway, as shown in a Specific Alignment Plan proposed in conjunction with this residential development. The Project development proposal promotes amenities beyond those expected under a conventional development, and achieves greater flexibility in design and context-sensitive use of land. General Plan Street Network Policy 7.2 allows for Specific Alignment Plans for unique situations when standard road widening is not adequate for future needs, or when special conditions/constraints exist which require a detailed implementation plan. The applicant has proposed to install several improvements to Bear Valley Parkway along the east side of the road between Sunset/Ranchito Drive and the north end of the development site, to include a second northbound travel lane, sidewalk, curb, gutter, and relocation of an existing bicycle lane; however, the proposed road width would not conform to Major Road standards as defined by the General Plan and the City of Escondido Design Standards and Standard Drawings so approval of a Specific Alignment Plan is required.
2. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located all other provisions of Chapter 33. As described above, the project proposes to build 55 units, and therefore is consistent with the maximum density permissible for the E2 land use designation. The project also proposes a Rezone to PD-R and a Master Development Plan to allow for residential lot clustering. In conjunction with these proposals, a Specific Alignment Plan would install several improvements to Bear Valley Parkway along the east side of the road between Sunset/Ranchito

Drive and the north end of the development site, to include a second northbound travel lane, sidewalk, curb, gutter, and relocation of an existing bicycle lane. The proposed Development Agreement would define terms for acquisition of right-of-way for improvements located off the development site (i.e., between Sunset/Ranchito Drive and the southern boundary of the residential development), as well as reimbursement of costs for these off-site improvements.

3. The proposed Development Agreement is in conformity with public convenience, general welfare, and good land use practices. New street improvements outlined in the Specific Alignment Plan include one additional northbound vehicle lane on Bear Valley Parkway between Sunset/Ranchito Drive and Choya Canyon Road, as well as curb, gutter, sidewalk, and stormwater management features such as vegetated swales and tree wells. An existing bicycle lane would be retained, though it would be shifted to the east to accommodate the widened road right-of-way. These improvements would benefit all users of Bear Valley Parkway, and per the Development Agreement, the portion along the frontage of the development site would be provided by the applicant or developer at no public cost.
4. The proposed Development Agreement will not be detrimental to the health, safety, and general welfare of the City. An additional northbound lane on Bear Valley Parkway will increase the capacity of the road in this area, and a new sidewalk on the east side of the road will provide pedestrian access in an area that does not currently enjoy it, and will provide connectivity to an existing sidewalk south of Sunset/Ranchito Drive. The Specific Alignment Plan includes stormwater features, such as vegetated swales and tree wells, to prevent runoff from the road from damaging neighboring properties.
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 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.
6. The proposed Development Agreement would not adversely affect the orderly development of property or the preservation of property values since the project would be developed in conformance with the existing E-2 designation of the General Plan, and in conformance with the General Plan's policies for planned developments. In addition, the agreement does not allow a use that would not be permitted by the Zoning Code. The agreement specifies the duration of the agreement, the terms of the agreement, responsibility for obtaining right-of-way for off-site SAP improvements, and reimbursement for these improvements.

EXHIBIT "B" TO ORDINANCE NO. 2018-17

REZONE

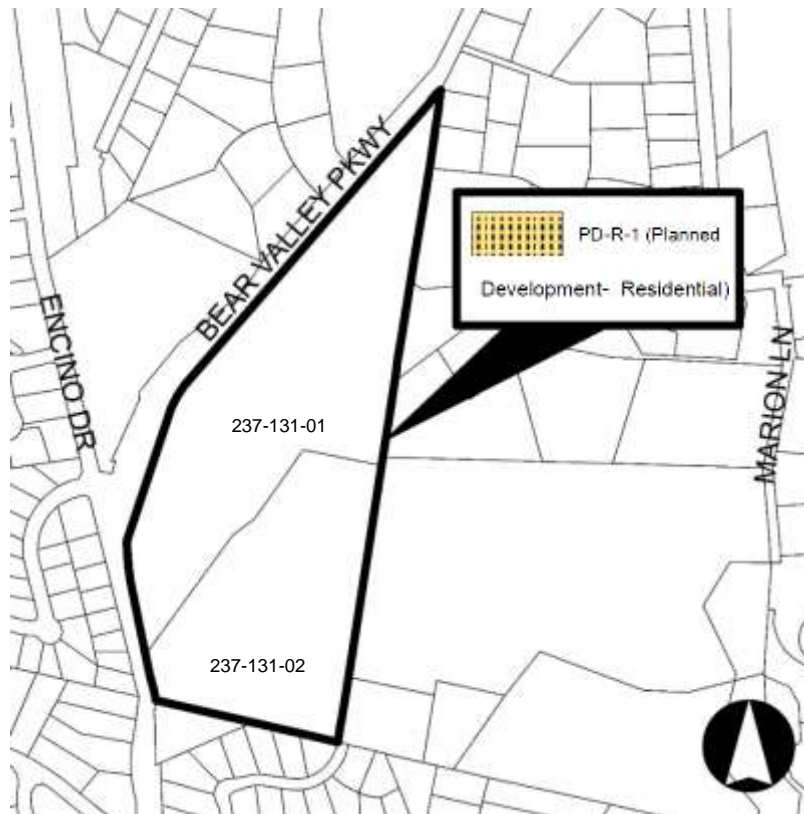
CHANGE OF ZONING AT 661 BEAR VALLEY PARKWAY, ESCONDIDO, CA SUB 15-0002 / PHG 15-0004 / ENV 15-0001

Each parcel associated with the proposed Rezone:

APNs	Existing Zone	Proposed Zone
237-131-01	RE-20	PD-R
237-131-02	RE-20	PD-R

I. Official Zoning Map

That the Official Zoning Map, also known as the Zoning Map of the City, is amended as shown. All parcels will carry the Planned Development-Residential (PD-R) Zoning Designation. The existing, complete Map being amended is on file with the Office of the City Clerk.



II. **Clerical Tasks**

The City Clerk be hereby authorized and directed to change any chapter numbers, article numbers, and section numbers in the event that the codification of this Rezone reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repeal of existing provisions.

EXHIBIT "C" TO ORDINANCE NO. 2018-17

DEVELOPMENT AGREEMENT

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

APN: XXX-XXX-XX

**Recording Fees Exempt Per Government Code Section 27383
DEVELOPMENT AGREEMENT
for 661 Bear Valley Parkway**

between

CITY OF ESCONDIDO

and

[Entity]

_____, 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. "**Director**" refers to the Director of Community Development.
5. "**CEQA**" refers to the California Environmental Quality Act.
6. "**City**" refers to the City of Escondido, its City Council, its mayors and council members, past and present, and employees and agents.
7. "**Cure Period**" refers to the period of time in which a default may be cured, which will be 30 days.
8. "**Development Fees**" refers to the development related fees as provided in the City's Fee Guide and referred to as development fees.

9. **"Differing Site Condition"** means unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
10. **"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.
11. **"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.
12. **"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.
13. **"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.
14. **"Future Exaction"** refers to Exactions imposed after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise.
15. **"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.
16. **"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.
17. **"General Plan"** refers to the City's General Plan in effect on the Effective Date.
18. **"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.

19. "**Modification**" refers to a modification approved by the City Council as provided in Article VI, Section 5.
20. "**Offsite Improvements**" refers to the Public Benefit offsite improvements as defined in Section I.B of Exhibit B to this Agreement.
21. "**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.
22. "**Owner**" refers to [entity], who has legal or equitable interest in the real property which is the subject of this Agreement.
23. "**Party**". City or Owner may be referred to individually as Party or collectively as Parties.
24. "**Project**" shall mean and refer to all improvements described in the Entitlements and this Agreement.
25. "**Property**" shall mean the certain real property located in the County of San Diego, State of California as described in the Exhibit A.
26. "**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.
27. "**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.
28. "**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.
29. "**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 and Public Improvements. 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

[Entity]
Attention: [Name]
[Address]

with a copy to:

[Name]
[Address]

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. 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 Minor Modifications are necessary or appropriate, they may effectuate such Minor Modifications 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. The extension pursuant to Government Code Section 66452.6(a) shall be in addition to any other available extensions pursuant to applicable law. 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 Owner's requirement to design and construct the improvements and the City's obligation to reimburse Owner, in Exhibit B, shall survive the termination of this Agreement, provided that notwithstanding any other provision in this Agreement, the Parties' obligations under this Section 11 shall terminate upon the expiration of the tentative subdivision map.

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 described in Exhibit B. This contingency for occupancy shall survive the termination of this Agreement, provided that the contingency for occupancy shall terminate upon expiration of the tentative subdivision map.

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

[entity]

By: [entity]

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

CITY OF ESCONDIDO

By: _____
Michael R. McGuiness
City Attorney

[entity]

By: _____
name, 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:

DRAFT

Exhibit B

I. PUBLIC BENEFITS AND IMPROVEMENTS

- A. BEAR VALLEY PARKWAY FRONTAGE.** Owner shall design and construct a 2,937-foot stretch of Bear Valley Parkway by adding one north-bound lane along the project frontage together with construction of curb and gutter and a 5-foot-wide concrete sidewalk.
- B. CONTRIBUTION.** The Owner shall deposit \$215,000 ("Contribution") with the City for its use not later than the date upon which security must be posted for the Offsite Improvements. The Contribution shall be adjusted as set forth herein to reflect the annual increase, if any, in the Los Angeles Construction Cost Index ("CCI") when compared to the previous year. The adjustments shall commence on the third anniversary of the Effective Date hereof to reflect any increase in the CCI between the third and fourth anniversaries of the Effective Date, and continue annually thereafter until the Offsite Improvements are complete. Owner shall deposit with the City appropriate CCI adjustment payments concurrently with the posting of security for the Offsite Improvements, and annually thereafter until the Offsite Improvements are complete. The CCI adjustment payments, if any, shall be added to the Contribution for purposes of this Section I.B and Section II.A, below. The Contribution shall be subject to any reductions as provided in Section II.A. Any reduction in the Contribution, as set forth in Section II.A, below, will be refunded to Owner upon completion of the Offsite Improvements.
- C. OFFSITE IMPROVEMENTS.** Owner shall design and construct a 528 - foot stretch of Northbound Bear Valley Parkway from the south edge of the residential development to Ranchito Drive in accordance with the BVP Specific Alignment Plan, which includes but is not limited to storm water improvements in accordance with green street designs, curb, gutter and a 5-foot-wide concrete sidewalk. Owner shall ensure necessary storm water improvements in accordance with the USEPA Green Streets guidelines and handbooks are established to full growth to perform as designed as determined by the City Engineer, prior to turning over the maintenance responsibility to an HOA to be maintained in perpetuity and contained in the Project's CC&Rs. Should the adjacent parcel, APN No. XXX-XX-XXX, be developed the HOA shall have no further maintenance responsibility, and the City will assign such responsibility for maintenance to the property owner in accordance with City standards and policies.
- D. RIGHT OF WAY.** The Owner and City recognize that certain additional right of way is needed for construction of these Offsite Improvements. Owner shall prepare the plats and legal descriptions for the necessary right of way for the Offsite Improvements, which must be approved by the City. Owner shall use its best efforts to acquire the right of way. If Owner is unable to acquire the right of way despite its best efforts, Owner must give the City written notice of the Owner's inability to acquire the right of way before the Owner's submission of improvement plans and

securities for the Public Improvements. The City may seek to acquire the right of way after receiving said notice from the Owner. If the City elects to do so, the City will have nine (9) months to acquire the necessary right of way after approval of the improvement plans and the posting of security for the Public Improvements.

II. FEE CREDITS AND REIMBURSEMENTS

- A. REIMBURSEMENT FOR OFFSITE IMPROVEMENTS.** The City will reimburse the Owner for the Reimbursable Costs as provided in this Section II.A. The Owner shall publically bid the offsite improvement project to qualified contractors. The City will confirm the lowest responsible and responsive bid price ("Bid Price"). In addition to the Bid Price, the City will also reimburse Owner for permit fees and engineering, design, and mitigation costs on a pro rata basis for the Offsite Improvements ("Other Costs"). Collectively, the Bid Price and the Other Costs make up the Reimbursable Costs. Upon substantial completion of the Offsite Improvements, the City will reimburse Owner \$98,000 within thirty (30) days of a written request from Owner. The remaining Reimbursable Costs will be paid by the City on or before 4 years from the notice of completion for the Offsite Improvements. Reimbursable Costs must be incurred after the Effective Date. The Contribution provided above shall be reduced, and any excess refunded to Owner, as set forth in Section I.B above, to the extent that the Contribution exceeds fifty percent (50%) of the Reimbursable Costs.

By way of example only, in the event the Reimbursable Costs are \$450,000, and the Contribution amounts to \$230,000 (original \$215,000 Contribution plus \$15,000 CCI adjustment), then the Contribution would be reduced to \$225,000 (50% of the Reimbursable Costs) and the City would reimburse Owner an additional \$5,000 pursuant to Section I.B, above. Using the preceding example, in the event Reimbursable Costs were \$470,000 rather than \$450,000, there would be no reduction in the Contribution (Contribution does not, in this example, exceed 50% of Reimbursable Costs).

- B. REIMBURSEMENT FOR RIGHT OF WAY.** The City will reimburse the Owner for the actual costs of acquisition for the right of way acquired by the Owner, in an amount not to exceed the appraised value of the necessary right of way. Any reimbursable costs in this Section II B must be incurred after the Effective Date and are separate and apart from the limits on reimbursements contained in Section II A.

III. TIMING AND COOPERATION

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