

ORDINANCE NO. 2023-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING THE TERM OF A PREVIOUSLY EXECUTED DEVELOPMENT AGREEMENT FOR THE 661 BEAR VALLEY PARKWAY DEVELOPMENT

The City Council of the City of Escondido, California does ordain as follows:

SECTION 1. The City Council makes the following findings:

a) The intent and purpose of a Development Agreement is to grant vested rights for a period of time that guarantees a project's approval; and

b) The City is assured certain public benefits by the developer that includes construction of off-site improvements, or other commitments that the City ordinarily cannot require of the developer;

c) A verified application was submitted to, and processed by, the Planning Division of the Development Services Department as Planning Case No. PL23-0270, and seeks approval of an Extension of Time to amend the terms of a previously executed Development Agreement for the 661 Bear Valley Parkway Development for the property at 661 Bear Valley Parkway, and is all the real property described in Exhibit "A". The amendment will amend the Development Agreement to extend it for two years; and

d) Said application was processed in accordance with the rules and regulations of the Escondido Municipal and Zoning Code, 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 210000 et. seq); and

e) The Planning Division of the Development Services Department completed its review and scheduled and held a public hearing regarding the Extension of Time before the Planning Commission on

August 22, 2023. Following the public hearing on August 22, 2023, the Planning Commission adopted Resolution No. 2023-14, which recommended that the City Council approve the Extension of Time and amend the term of the Development Agreement.

SECTION 2: Proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 3. The City Council did on September 13, 2023, 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 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, September 13, 2023, 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. Upon consideration of the Findings of Fact, attached as Exhibit "B" and incorporated herein by this reference as though fully set forth, the September 13, 2023, City Council staff report, and the Planning Commission recommendation, based on the totality of the record and evidence described and referenced in this Ordinance, the City Council desires to extend the term of the Development Agreement by two years.

SECTION 5. ENVIRONMENTAL REVIEW. On August 15, 2018, the City Council adopted Resolution No. 2018-120 for certification of a Final Environmental Impact Report (FEIR) and adoption of a Mitigation and Monitoring Reporting Program. The Project would not exceed the parameters outlined for requiring a subsequent EIR. A Notice of Determination will be filed with the County of San Diego per CEQA Guidelines Section 15075.

SECTION 6. The City Council hereby approves the amendment to the Development Agreement, attached as Exhibit "C" hereto and incorporated herein by this reference as though fully set forth herein.

SECTION 7. SEVERABILITY. 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 8. As of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9. The City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation for the City of Escondido.

SECTION 10. This 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 11<sup>th</sup> day of OCTOBER, 2023 by the following vote to wit:

AYES : Councilmembers: GARCIA, GARCIA, MORASCO, MARTINEZ, WHITE

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

DocuSigned by:

*Dane White*

19FFEE5DB8C3B409...  
DANE WHITE, Mayor of the  
City of Escondido, California

ATTEST:

DocuSigned by:

*Zack Beck*

A58535D0BDC1430...  
ZACK BECK, City Clerk of the  
City of Escondido, California

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

I, Zack Beck, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2023-12 passed at a regular meeting of the City Council of the City of Escondido held on the 13<sup>th</sup> day of September, 2023, after having been read at the regular meeting of said City Council held on the 11<sup>th</sup> day of October, 2023.

DocuSigned by:

*Zack Beck*

A58535D0BDC1430...  
ZACK BECK, City Clerk of the  
City of Escondido, California

ORDINANCE NO. 2023-12

**EXHIBIT "A"****LEGAL DESCRIPTION**

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

PARCEL 1: (APN 237-131-01-00)

LOTS 2, 3 AND 4 IN BLOCK 257 OF THE RANCHO RINCON DEL DIABLO, ACCORDING TO MAP THEREOF NO. [648](#), FILED ON NOVEMBER 20, 1890, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO THAT PORTION OF THE UNNAMED STREET BOUNDED ON THE WEST BY SAID LOTS 2 AND 3 AND ON THE EAST BY SAID LOT 4 IN SAID BLOCK 257, VACATED AND ABANDONED TO PUBLIC USE MAY 29, 1939, BY THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, A COPY OF SAID VACATION RECORDED JUNE 05, 1939 IN [BOOK 901, PAGE 449](#) OFFICIAL RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOTS 2 AND 3, LYING NORTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 3 DISTANT THEREON SOUTH 14°15' EAST 853.5 FEET FROM THE MOST WESTERLY CORNER OF SAID LOT 3, RUNNING THENCE NORTH 75°45' EAST 163.0 FEET; THENCE NORTH 3°32' EAST 247.6 FEET; THENCE NORTH 37°41' EAST 277.3 FEET; THENCE NORTH 52°07' EAST 293 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 2 WHICH IS DISTANT THEREON SOUTH 40°05' WEST 1157 FEET FROM THE ANGLE POINT IN SAID SOUTHEASTERLY LINE LYING IMMEDIATELY WEST OF THE MOST NORTHERLY CORNER OF LOT 4 IN SAID BLOCK 257.

ALSO EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOTS 3 AND 4 AND OF THE SAID VACATED STREET LYING BETWEEN SAID LOTS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 4; THENCE NORTH 8°39' EAST ALONG THE EASTERLY LINE OF SAID LOT 4, 1120 FEET; THENCE NORTH 79°37' WEST 352.9 FEET; THENCE SOUTH 34°05' WEST 331.7 FEET; THENCE SOUTH 50°49' WEST 104.3 FEET; THENCE SOUTH 34°58' WEST 592.1 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE SOUTH 14°15' EAST ALONG THE SOUTHWESTERLY LINE OF LOT 3 AND ALONG THE SOUTHWESTERLY LINE OF THE VACATED UNNAMED STREET ABOVE REFERRED TO, 184.2 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 4; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 4 TO THE POINT OF BEGINNING.

PARCEL 2: (APN 237-131-02-00)

THOSE PORTIONS OF LOTS 3 AND 4 IN BLOCK 257 OF RANCHO RINCON DEL DIABLO, ACCORDING TO MAP THEREOF NO. [648](#), FILED ON NOVEMBER 20, 1890, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND OF THE UNNAMED STREET LYING BETWEEN SAID LOTS 3 AND 4, VACATED AND ABANDONED TO PUBLIC USE MAY 29, 1939, BY THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY A COPY OF SAID VACATION RECORDED JUNE 05, 1939 IN [BOOK 901, PAGE 449](#) OFFICIAL RECORDS. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 4; THENCE NORTH 8°39' EAST ALONG THE EASTERLY LINE OF SAID LOT 4, 1120 FEET; THENCE NORTH 79°37' WEST 352.9 FEET; THENCE SOUTH 34°52' WEST, 331.7 FEET; THENCE SOUTH 50°49' WEST 104.3 FEET; THENCE SOUTH 34°58' WEST, 591.1 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE SOUTH 14°15' EAST

ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3 AND ALONG THE SOUTHWESTERLY LINE OF THE VACATED UNNAMED STREET ABOVE REFERRED TO, 184.2 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 4; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 4 TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS GRANTED TO THE COUNTY OF SAN DIEGO BY DOCUMENT RECORDED OCTOBER 29, 1969 AS DOCUMENT NUMBER [198728](#) OF OFFICIAL RECORDS.

**EXHIBIT "B"****PLANNING CASE NO. PL23-0270****FACTORS TO BE CONSIDERED/ FINDINGS OF FACT****Environmental Determinations:**

In accordance with Public Resources Code section 21166 and California Environmental Quality Act (CEQA) Guidelines section 15162, the City Council finds and determines as follows:

1. The potential environmental effects of the actions described in the original Project have been analyzed, considered and mitigated through an Initial Study and a Final Environmental Impact Report ("FEIR") (SCH: 2016111060) prepared and certified on August 15, 2018, pursuant to CEQA. See City Council Resolution No. 2018-120.
2. The City has evaluated and considered the changes that would be implemented by the Project, as amended or modified. These changes do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. The City has evaluated and considered the changes with respect to the circumstances under which the actions identified in revised Details of Request, as amended by the Project, are being undertaken. The changes with respect to these circumstances do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
4. The City is not aware of any new information of substantial importance that discloses that the actions described in the Project, as amended or modified, will have other or more severe significant environmental effects not previously discussed or that previously rejected or other mitigation measures or alternatives are now feasible and effective.
5. Therefore, the Final Environmental Impact Report remains adequate and no further CEQA environmental analysis is required for Project as amended or modified.

**Development Agreement Findings (Escondido Zoning Code Section 33-1138)**

The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, Special Planning Area provisions, and Improvement standards adopted by the City as described below.

1. *The project is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;*

The Project is for an Extension of Time for a previously executed Development Agreement. The Project is in substantial conformance with previous approvals related to SUB15-0002, PHG15-0004, and ENV15-0001. The Project is consistent with policies related to Development Agreements as outlined in the City's 2012 General Plan.

2. *The project is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located and all other provisions of Chapter 33 of this code;*

The Project is related to SUB15-0002, PHG15-0004, and ENV15-0001, which is for a residential development. Residential uses are permitted within the Planned Development – Residential (PD-R) zone. The Project has been previously analyzed for conformance with the regulations contained in Chapter 33 (Escondido Zoning Code). No changes are proposed as a part of this Project's request.

3. *The project is in conformity with public convenience, general welfare and good land use practices;*

The Project substantially conforms to approvals associated with SUB15-0002, PHG15-0004, and ENV15-0001. The Project conforms with the public convenience, general welfare and good land use practices. The Extension of Time will allow for the Applicant to implement the original Project's approvals.

4. *The project will not be detrimental to the health, safety and general welfare;*

The Project is for an Extension of Time for a previously executed Development Agreement. The Extension of Time will not be detrimental to the health, safety and general welfare.

5. *The project will not adversely affect the orderly development of property or the preservation of property values;*

The Project is for an Extension of Time that would allow the Applicant to substantially implement the orderly development of the subject property.

6. *The project is consistent with the provisions of [Government Code](#) Section 65864 et seq*

The Project will extend a previously executed Development Agreement for another two years so that the Applicant may finalize post-entitlement permits. The amended Development Agreement will continue to be consistent with the provisions of Government Code Section 65864.

**EXEMPT FROM FEES** pursuant to  
Gov't Code §§ 6103, 27383, and 27388.1  
(filing requested/executed by municipality)

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

Planning Division  
City of Escondido  
201 North Broadway  
Escondido, California 92025-2798

*This Space for Recorder's Use Only*

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("**First Amendment**") is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2023 ("**Effective Date**"), by and between by and between the City of Escondido, a California municipal corporation ("**City**"), and TH Bear Valley Escondido LLC ("**Owner**"). (The City and Owner each may be referred to herein as a "**Party**" and collectively as the "**Parties**")

WHEREAS, the City and prior owner, Spieth & Wohlford, Inc., previously entered into that certain Development Agreement for 661 Bear Valley Parkway recorded in the Official Records of San Diego County, California, on November 5, 2018, as Instrument No. 2018-0462661 ("**Development Agreement**"), pertaining to that certain real property designated as Assessor's Parcel Nos. (APNs) 237-131-01 and 237-131-02, as more particularly described in the Development Agreement (the "**Property**"); and

WHEREAS, subsequent to the execution of the Development Agreement, the Property was sold and ownership is now vested in Owner; and

WHEREAS, the Parties desire to amend the Development Agreement to extend its term;

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements, and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Extension of Term of Development Agreement. The Term of the Development Agreement is hereby extended by a period of two years, commencing on September 21, 2023 and expiring on September 21, 2025.
2. Counterparts. This First Amendment may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document.
3. Effective Date. Unless a different date is provided in this First Amendment, the

effective date of this First Amendment shall be the latest date of execution set forth by the names of the signatories below.

IN WITNESS WHEREOF, this First Amendment is executed by the Parties or their duly authorized representatives as of the Effective Date:

**CITY OF ESCONDIDO,**  
a California municipal corporation

By: \_\_\_\_\_  
Dane White  
Its: Mayor

Date: \_\_\_\_\_

**TH BEAR VALLEY ESCONDIDO LLC**  
a California Limited Liability Company

By: \_\_\_\_\_  
Gregg A. Nelson  
Its: Manager

Date: \_\_\_\_\_

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

Approved as to Form:

OFFICE OF THE CITY ATTORNEY  
Michael R. McGuinness, City Attorney

\_\_\_\_\_  
M. Dare DeLano, Senior Deputy City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA ]

COUNTY OF \_\_\_\_\_ ]

On \_\_\_\_\_, before me,

\_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

City

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA ]

COUNTY OF \_\_\_\_\_ ]

On \_\_\_\_\_, before me,

\_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**Owner**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA ]

COUNTY OF \_\_\_\_\_ ]

On \_\_\_\_\_, before me,

\_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

City