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FRIENDS OF SAN DIEGO, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DISTRICT

FRIENDS OF SAN DIEGO, INC., a California non-profit corporation, *Plaintiff,* v. CITY OF SAN DIEGO, a public entity; and DOES ONE through FIVE, inclusive, *Defendant,* LA JOLLA PACIFIC DEVELOPMENT GROUP, INC., a registered California Corporation; 301 UNIVERSITY, LLC, a registered California Limited Liability Company; and DOES SIX through TWENTY, inclusive, *Real Parties in Interest.*	**Case No.: GIC 874140** **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

I.

INTRODUCTION

1. This action involves a challenge of City of San Diego's ("City") decision made on September 12, 2006 to approve the development of a 12-story high-rise mixed use commercial and residential condominium project in a low-rise 1- to 3-story area in the Hillcrest neighborhood of the Uptown community. The proposed development, known as "Third and

University" or "301 University," will cause unmitigated adverse impacts to the surrounding neighborhood, streets, cafes, and public access due to its height, bulk, shadows, additional traffic and lack of committed public facilities (parks).

2. The proposed project will stand in stark contrast (being 9-stories taller) to the surrounding blocks and vicinity of the neighborhood, and will add many hundreds of additional vehicle trips to existing substandard traffic conditions immediately adjacent to the project.

3. By approving the high-rise development in the subject location, the City has improperly applied state environmental protection laws, the City's own community plan, zoning ordinances and development requirements which were enacted to ensure development uniformity, compatibility, and to ensure that public assets and resources would be protected and not adversely impacted.

4. Plaintiff alleges herein that the City has failed to proceed in a manner required by law, it has failed to adopt required findings, and /or its decisions and written findings are not supported by the substantial evidence. Plaintiff also alleges and seeks declaratory and injunctive relief to require and have this Court order City to cease a repeated pattern and practice of misinterpreting and misapplying its municipal code, zoning ordinances and other applicable state laws and principles.

5. This lawsuit seeks to overturn the decision and findings of City's approval of this high-rise project due to absent, deficient and/or unsupported findings, and improper application, analysis, mitigation and certification of a mitigated negative declaration under the California Environmental Quality Act ("CEQA").

II.

GENERAL ALLEGATIONS

6. Plaintiff and Plaintiff FRIENDS OF SAN DIEGO, INC. ("Plaintiff") is a California nonprofit corporation based in San Diego, California, along with its members and supporters, most of whom reside in the City of San Diego, which has collectively formed and united for the purpose of preserving neighborhood values, the sanctity of community, and ensuring strict and good faith compliance with the laws, regulations and ordinances adopted to

preserve the same. Plaintiff has standing to enforce such laws that are designed to protect against inappropriate development, degradation of community values, and unmitigated environmental impacts. The decision(s) of defendant City will have detrimental impacts on Plaintiff, its members, and agents, who reside in and around the City of San Diego and the project site or who visit the area of the proposed development. Plaintiff includes its members, agents and individuals who protested against defendant City's action preceding the filing of this complaint.

7. Defendant CITY OF SAN DIEGO ("Defendant" or "City") and DOES ONE through FIVE is a local government agency and subdivision of the State of California, by way of city charter, charged with complying with applicable provisions of state law, including the California Environmental Quality Act ("CEQA"), the general laws of this State, the City Charter, and Municipal Code of this local subdivision. The city council is the duly constituted legislative body and final decision-making administrative body in the City, and is charged with the duty of ensuring, among other things, that all applicable federal, state and local laws are fully and faithfully obeyed and implemented. For the purposes herein, the "City" includes all of its departments, officers, and appointed and elected representatives charged with the duties and obligations as alleged herein. Defendant, through its respective officers, departments, elected officials, and the final action of its city council, has adopted the resolution(s), ordinance(s), adopted findings, and is otherwise responsible for all conduct which is the subject of this litigation.

8. Real Parties in Interest, LA JOLLA PACIFIC DEVELOPMENT GROUP, INC. and 301 UNIVERSITY, LLC and DOES SIX through TWENTY ("Real Parties"), are registered California fictitious or other unknown businesses entities (including undisclosed persons) alleged and believed to be the current proponents, applicants and/or owners of the project or parcels which are the subject of this litigation, and whose rights and entitlements stand to be affected by this litigation. La Jolla Pacific Development Group, Inc. is alleged to have previously been recognized and named La Jolla Pacific Development, Inc. in many city files and records. Plaintiff is currently unaware of any other primary proponents, applicants

and/or landholders who stand to be directly affected by this litigation but will amend this complaint at a later time that such persons or entities become known, consistent with the laws of this State for adding DOE defendants.

9. This lawsuit has been commenced within the time limits imposed for actions under the California Code of Civil Procedure and California Public Resources Code, as made applicable to the City by its codes or ordinances or by the general laws of this State.

10. Venue and jurisdiction in this Court are proper pursuant to the California Code of Civil Procedure for a matter relating to subject property located within, and an administrative action decided within, the Court's jurisdiction.

11. Plaintiff, by and through itself, City staff, state agencies, residents, citizen groups and citizens living, residing or operating in the Hillcrest, Uptown, municipal and greater San Diego County areas, have made oral and written comments, and have been present, participated in the public hearings or have otherwise raised the legal deficiencies asserted in this petition for writ of mandate and complaint for declaratory and injunctive relief.

12. Plaintiff has performed all conditions precedent to filing this action by complying with all requirements of the California Public Resources Code, including the giving of prior written notice to Defendant prior to filing this action, and has no other remedy other than to bring this action. All other requests of Defendant, having been previously made, would be futile.

III.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND OTHER LAWS GIVING RISE TO THIS ACTION

13. In 1970, the California Legislature enacted the California Environmental Quality Act ("CEQA") (Public Resources Code §21000, et seq.; 14 Cal. Code Regs. § 15000 et seq.) as a means of requiring public agency decision-makers such as Defendant to document and consider the environmental implications of their actions. CEQA's fundamental goal is to fully inform the public and the decision makers as to the environmental consequences of its actions and to assure members of the public that their elected officials are making informed

decisions. CEQA requires governmental authorities, such as Defendant, to use all feasible means to reduce or avoid significant environmental damage that otherwise could result from its actions. CEQA forbids agencies from approving projects with significant adverse impacts when feasible alternatives can reduce, eliminate, or otherwise lessen such impacts.

14. The cornerstone of the CEQA process is the preparation of an environmental impact report which discloses the adverse environmental impacts which may result from the proposal or approval by a public agency. The primary function of the environmental impact report is to discuss the important environmental consequences and to inform decision-makers, responsible agencies and the general public of mitigation and alternatives to the project that would lessen adverse environmental consequences.

15. Under CEQA, where there is no reasonable probability (or "fair argument") that any adverse impacts may result from an agency action, the preparation of a *Negative Declaration* or *Mitigated Negative Declaration* is appropriate. However, the California Supreme Court and the Legislature have clearly spoken and ruled that where a project *may have* a significant effect on the environment, an EIR *must be* completed before the project is approved. (Cal. Public Res. Code §§ 21100, 21151; CEQA Guidelines § 15064, subds. (a)(1), (f)1)) When any question, doubt or uncertainty is present about potential significant effects, there is a strong presumption in favor of requiring preparation of an EIR.

16. The City has enacted by legislation, a general plan, community plan, along with general and more specific "Planned District" zoning ordinances in its Land Use Development Code which specifically govern development in the area that comprises the subject property. The City has a process for allowing a developer or applicant "variances" (which may also be known as "exceptions") which depart from the requirements of the zoning code where an application is submitted and where certain findings can be made and supported. (San Diego Municipal Code § 126.0801 et seq.)

17. The *Uptown Community Plan* is the specific and most precise element of City's general plan which sets forth and seeks to control intended goals, policies and anticipated development of the project site. The *Mid-City Communities Planned District* ordinance (San

Diego Municipal Code § 103.1501 et seq.) is the specific set of zoning ordinances and development regulations adopted to control all development at the project site. ("Mid-City Communities PDO" or "PDO") Most every other zoning requirement and development regulation set forth in City's land development and municipal code are also applicable to the subject project site, except that the PDO supersedes and resolves any conflict over those provisions unless expressly stated otherwise. (San Diego Municipal Code § 103.1504(c))

IV.

FACTUAL AND PROCEDURAL BACKGROUND GIVING RISE TO THIS ACTION

18. On or about February 1988, the City adopted the current version of the Uptown Community Plan, concurrent with review and certification of an Environmental Impact Report and Statement of Overriding Considerations (City No. EQD 87-0625) and (State Clearinghouse No. 87081917), and later approved the Mid-City Communities PDO on or about early 1989 in association with an Addendum to the EIR (City No. 88-0762). As part of the City's adoption of said plans, the PDO, and their requisite CEQA environmental review(s), the City recognized that development in accordance with such adoptions will require the implementation of mitigation measures to avoid some significant impacts, but that other significant adverse impacts will result in spite of efforts to mitigate.

19. On or about June through August of 2003 one or more of the Real Parties made an application to develop two owned legal parcels located at 301 University Avenue and 3845 Third Avenue, as a mixed use ground-floor commercial with a 51-unit residential condominium complex above. It was applied for as a non-discretionary Process Two application because the applicant was only seeking approval of a tentative map waiver.

20. On or about August of 2004, a representative of Real Parties realized he was not being allowed to develop the project as a mixed use 51-unit residential condominium project, and was disgruntled that staff was calculating the maximum allowable density for the project site as 37 units. It became apparent that Real Parties were going to withdraw, change, reconfigure the project, or do whatever necessary to increase the number of units (density).

21. On or about November 2004, the City prepared a draft for an update of its CEQA Significance Determination Thresholds. It is apparent the City has used and referenced this set of draft Thresholds as a basis for determining whether potential significant adverse impacts may result from approval and implementation of the subject project. The City has never approved these 2004 draft Thresholds according to resolution, regulation, or ordinance as required by state law. (Cal. Public Resources Code § 15064.7) Regardless, significance thresholds adopted pursuant to CEQA are not conclusive, do not substitute for an agency's judgment or obligation in determining whether significant impacts may occur, and an agency must look at other evidence presented regarding whether significant effects may result.

22. On or about January of 2005 an Initial Study and Initial Study Checklist were prepared and included in a Draft Mitigated Negative Declaration (MND) dated March 4, 2005 that was circulated to the public, other agencies, and the decision-makers regarding the 2003 development application. Written comments were submitted as part of a requisite statutory timeline.

23. On or about August of 2005, the Real Parties changed and expanded the project on a number of grounds including but not limited to, adding other legal parcels and land areas, making the project an entire block long, demanding a public-owned alley be vacated, abandoned and given to the applicant for his project, requesting not less than 5 zoning code exceptions, changing points of access, and demanding development of 96 units based on a density bonus from promising to sell 10% of the project's condominiums as affordable housing. No new or revised application was made or filed with the City regarding this new project, any requests for zoning code exceptions, or for the alley vacation/abandonment.

24. On or about March 2, 2006, public notice was given regarding a statutory comment period for a draft MND for the completely redesigned Third and University project. Included, attached and incorporated into the March 2, 2006 circulated draft MND was a purportedly new Initial Study Checklist that was circulated to the public, other agencies, and the decision-makers along with the draft MND. Written comments were submitted as part of a requisite statutory timeline. A final MND for the completely redesigned project was dated

March 28, 2006. The attached and circulated Initial Study Checklist in the March 28, 2006 final MND was the one prepared for the 51-unit project submitted in 2003.

25. On April 13, 2006, at a regularly scheduled meeting of the City's planning commission, two contradictory motions were made and unanimously approved (6-0) that: (1) recommended that the city council approve the new project as set forth in the commission staff report, but also ruled (2) the commission "take no action" on whether "to certify or not certify the Mitigated Negative Declaration No. 11896 based on the following reasons: 1) Concerns raised by the City Attorney during the hearing; 2) Adequate traffic analysis; 3) Infrastructure relating to the proposed density; and 4) Public parking amenity." The staff report to the planning commission described the project as requesting 6 zoning code exceptions (or "deviations"), including the 4 listed in the immediate paragraph below (nos. 1-4), along with 2 never previously disclosed - regarding and allowing (1) reduced corner setbacks or street visibility area from the required 25-feet to allow between 14-feet to 17-feet, and (2) a hammerhead turnaround in the project's blocked-off alley rather than the required cul-de-sac.

26. Sometime on or before July 7, 2006, the City caused to be prepared a "Second Update" Final MND dated July 7, 2006 for the revised project, which contained an updated version of the initial Study Checklist reflective of the "complete redesign" of the originally submitted application and project. Included in the discussion about the new project was disclosure of its intent to: (1) request to vacate the alley and allow Real Parties to build over it as part of their private project; (2) request a deviation from the required 15-foot setback above the 36-foot height that would allow anywhere from a zero-foot to a 12-foot setback; (3) request a deviation from the 60-foot height limit in the MR-800B zone to allow a 72-foot commercial parking garage; (4) request a deviation from the front yard 10-foot setback required in the MR-800B zone that would grant an exception allowing anywhere from a 2-foot to a 12.75-foot non-uniform setback; and (5) request a variance of city-wide restrictions to allow 2 curb-cuts at a substantially reduced separation distance (24 feet, 8 inches) instead of the required 45-feet. No public notice was given regarding the preparation of this Second Update MND, and it was not circulated to public or other agencies for review or comment.

27. On July 14, 2006, the City's office of the city attorney responded to the concerns of the planning commission by issuing a Memorandum of Law informing the City that the environmental review in the July 7, 2006 MND was not legally adequate and did not meet the statutory requirements of CEQA.

28. Sometime on or before August 8, 2006, the City caused to be prepared a "Third Update" Final MND dated August 8, 2006 for the revised project. Included in the discussion about the new project, was a number of buried requests for zoning code exceptions and the demand that the City abandon and grant its ownership rights to Real Parties for its private development. Once again, no public notice was given regarding the preparation of this Third Update MND, and it was not circulated to public or other agencies for review or comment.

29. On September 12, 2006, at a regularly scheduled meeting of City's city council, a public hearing was held and a decision was made to approve the new revised project by (1) certifying the Third Update - Final MND and a Mitigation and Monitoring Reporting Program (MMRP) via Resolution No. R-301900, (2) adopting a resolution (No. R-301902) and findings purportedly supporting the granting of the subdivision Tentative Map No. 323359 and abandonment of the public right-of-way via Public Right-of-Way No. 323355; (3) adopting a resolution (No. R-301903) with written findings purportedly supporting the granting of a Site Development Permit and Mid-City Communities PDO permit; and (4) granting the details of every such approval and project element in Site Development Permit No. 23948. Hereafter these approvals are collectively referred to as the "final approvals."

30. On September 18, 2006, the City prepared and caused to be filed with the San Diego County Clerk, a Notice of Determination setting forth that the CEQA decision that was made by the City on September 12, 2006.

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V.

FIRST CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE

Violation of the California Environmental Quality Act

(Cal. Public Resources Code § 21000 et seq.; 14 Cal. Code Regs. § 15000 et seq.)

31. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-30 above, and ¶¶ 36-87 below, as though fully set forth herein.

32. Defendant, in processing, circulating, analyzing baseline conditions, applying CEQA significance thresholds, adopting and certifying findings, and adopting a mitigation and monitoring reporting program for September 12, 2006 approved project ("Project") and its revised final mitigated negative declaration (purportedly the "Third Update" dated August 8, 2006) (hereafter, "Final MND"), constitutes a prejudicial abuse of discretion in that Defendant failed to proceed in a manner required by law, it did not adopt requisite findings, and its decisions and findings are not supported by substantial evidence.

33. Information and evidence in the record, as well as in the findings made by Defendant in its adoption of the Final MND, indicate the procedural and substantive deficiencies of CEQA, as follows:

a. Improper Use and Reliance on Unadopted Draft CEQA Significance Thresholds – The City has improperly utilized draft CEQA Thresholds (circa Nov. 2004) that have not been adopted in accordance with CEQA. The City used these draft Thresholds as a basis to find a lack of significant effects on some subjects (e.g., community character), but the City ignored the draft Thresholds when it came to analyzing other subjects (e.g., traffic and cumulative effects) where a finding of significance proves quite apparent. The City also changed the language found in its CEQA thresholds and placed different language and versions in the Initial Study. The selective and piecemeal application of adopted and/or draft CEQA thresholds to avoid findings of significance supports that the City used CEQA significance thresholds in an unfair, improper and non-uniform manner to determine whether significant environmental effects may arise from the final

approvals. Such use and application is a violation and not in accordance with CEQA, and substantially contributed to further CEQA non-compliance as alleged below.

b. Legally Deficient, Incomplete and Unsupported Initial Study and Initial Study Checklist – CEQA requires that an Initial Study must reasonably set forth the environmental setting, and identify potential adverse environmental effects that could arise from approval, implementation (construction) or operation of the proposed project. The circulated and adopted Initial Study of the MND fails to fully look at and analyze the potential environmental impacts from all phases of the project. The Initial Study fails to cite to the page or pages in the referenced documents where the information is found. The Initial Study fails to examine whether the proposed project is consistent with zoning plans, and other applicable land use controls, including obvious conflicts with goals, policies and objectives in the Uptown Community Plan. The Initial Study does not clearly or consistently set forth what zoning code exceptions or deviations are being requested, why they are requested, what adverse impacts result, or what legal basis and required findings may need to be made to support such zoning code exceptions. The Initial Study does not adequately disclose and address potential cumulative impacts. In addressing and disclosing potential adverse effects in the Initial Study Checklist, the City has selectively chosen those matters which contain facts which *support* the project while blatantly ignoring those matters which the project will conflict with and thus may cause potential unmitigated significant adverse impacts. The City has selectively included some CEQA Significance Thresholds which help it find "no significant impact," but excludes other Thresholds likely to show significant effects, and has altered language in the Thresholds to skew conclusions away from being potentially significant. Multiple conclusions are made in the Initial Study without support. The

City's discussions and disclosures in the Initial Study (including information in its Checklist) are not legally adequate, and are not an honest and good faith disclosure and treatment of *potential* impacts that may arise from City's final approvals;

c. Improper and Unsupported Finding There Will Be No Potential Adverse Impact to Community Character and/or Aesthetics – CEQA requires that an EIR must be prepared if there is substantial evidence supporting a fair argument that a potential adverse environmental effect may arise from approval, implementation or operation of a project. Plaintiff and others presented substantial evidence, personal observation, and/or expert testimony that there will be a dramatic change in the 1- to 3-story "main street" and old Hillcrest neighborhood character and ambiance if the modern and block-long 12-story highrise was constructed. Plaintiff and others also presented substantial evidence, personal observation, and/or used Real Parties' own expert testimony to show how the block-long building would not only tower over every other structure within many blocks of the core Hillcrest area and project site, but would cast almost a permanent shadow over stretches of University Avenue, and would darken and shade University Avenue for long periods during the days, in almost every season, and would be especially menacing in winter (when sun is most needed and appreciated). The City improperly discounted this evidence in violation of CEQA, instead relying on explanation of (1) its CEQA significance thresholds, (2) an expressed intention of the adopted plan and zoning to allow and place up to 200-foot skyscrapers in or near the project site, (3) a survey showing other tall buildings could be found blocks away in different neighborhoods and zones, and (4) a shadow study showing the positions of the sun during a few select dates of the year and instantaneous times of day. Due to conflicts and competing evidence regarding potential significant

adverse effects to neighborhood character, shading, and aesthetics, the City was required to prepare an EIR to evaluate and legally support its final approvals;

d. Improper and Unsupported Finding There Will Be No Potential Adverse Impact to Traffic – CEQA requires that an EIR must be prepared if there is substantial evidence supporting a fair argument that a potential adverse environmental effect may arise from approval, implementation or operation of a project. Plaintiff, members of the city council, the city attorney, City's community plan (and the EIR prepared and adopted therefore), and others referenced and presented substantial, evidence personal observation and/or expert reports that significant direct and cumulative impacts will occur to streets and roads adjacent to the site. The City improperly discounted this evidence in violation of CEQA instead (1) relying and utilizing a baseline of existing traffic based on conjectural traffic generation of the full operation of the project site's exiting uses, as opposed to actual vehicle trips and traffic conditions on the adjacent roads and intersections, (2) failing to count the additional trips generated from a 121-space commercial parking garage, (3) relying on a traffic letter/memo which did not address Level of Service (LOS) of applicable roadway segments or intersections that would be directly and/or cumulatively increased by the project, (4) ignoring and not applying quantitative standards in the City's CEQA Significance Determination Thresholds, (5) ignoring that its city council members recognized the potential traffic impacts and problem, but they stated they would just try to figure it out later, and (6) stating that a prior Statement of Overriding Considerations took care of the problem and the City is just not going to recognize or do anything about worsening conditions. Due to conflicts and competing evidence regarding potential direct and cumulative

significant adverse effects to traffic, the City was required to prepare an EIR to evaluate and legally support its final approvals;

e. Improper and Unsupported Finding There Will Be No Potential Adverse Impact to Park Facilities and Schools – CEQA requires that an EIR must be prepared if there is substantial evidence supporting a fair argument that a potential adverse environmental effect may arise from approval, implementation or operation of a project. Plaintiff presented substantial evidence that significant direct and/or cumulative impacts will occur to park facilities because the community is already park-deficient, and the introduction of hundreds of new residents will cumulatively impact an already park deficient neighborhood. The City improperly eliminated and ended all discussions regarding impacts to parks by stating that all potential impacts to parks will be mitigated by Real Parties' payment of a park fee. There is no substantial evidence supporting that the payment of park fees can or will mitigate the deficiency of required neighborhood and community parks. Unlike school fees, there is no conclusive determination that the mere payment of fees eliminates and cures all potential impacts. However, CEQA still requires there be some reasonable discussion about the potential impacts the project may have on schools, such as the number of students likely to be generated, the current capacity or if there is availability of seats in nearby classrooms. There is no support for blanket conclusion that "a limited number" could be generated and thus "there will be no impact." With almost 100 new residential units, there are a number of new students that may be forced into already overcrowded classrooms. Notwithstanding the inadequate disclosure and analyses regarding parks and school impacts, the City has violated CEQA and did not mitigate park or school impacts whatsoever by its failure to adopt a requirement or condition, as part of the

MMRP or other final approvals, that Real Parties are obligated to pay park or school fees;

f. Improper Disclosure, Analysis, and Unsupported Finding There Will Be No Potential Adverse (Short-Term) Impacts Arising from Construction – CEQA requires that an EIR must be prepared if there is substantial evidence supporting a fair argument that a potential adverse environmental effect may arise from approval, implementation or operation of a project. The MND failed to adequately disclose and address significant short-term adverse effects that are likely to arise from construction of the proposed project. With traffic and congestion at one or more adjacent intersection already exceeding City's CEQA's Threshold of being significantly impacted, the closure of lanes and/or presence of trucks and equipment for deliveries and construction of a high rise building could be devastating to movement and circulation at and around the project site. The City's MND contains no reasonable discussion on these potential adverse effects, and when it was brought to City's attention, the City improperly eliminated and ended all discussions by stating that City would look at this later as part of some "traffic plan." This deferral of discussion and analysis of potential impacts, along with examining and disclosing possible mitigation measures, is a violation of most basic tenet and purpose of CEQA. There is no substantial evidence supporting City's inference that some future *traffic plan* can or will reduce construction impacts to below a level of significance (according to CEQA). Notwithstanding the inadequate disclosure and analyses regarding unavoidable construction impacts, the City has violated CEQA and did not mitigate short-term construction impacts by its failure to adopt a requirement or condition as part of the MMRP, or other final approvals, as to how, why and to what extent Real Parties must mitigate short-term construction impacts;

g. Improper and Unstable Project Description -- An adequate and stable description of a development project has been termed the "sina qua non" of the CEQA process. The Project and its environmental review has changed numerous times in both intensity and configuration. No new application was filed as part of the applicant almost doubling the size of the original project by a "complete redesign" and inclusion of substantially more and different land area. An outdated and inapplicable CEQA environmental review Initial Study Checklist was circulated to the public. One or more zoning code exceptions and variances have appeared, disappeared, or not been disclosed at all in the Final MND, staff reports, and/or final approvals. The Real Parties have testified that one or more zoning code exceptions have been abandoned, but then it appears in the final approvals. The Real Parties described the project and its benefits by promising 10% of the project's units would be dedicated and committed to be affordable housing. Then, Real Parties promised 4 units would be sold as affordable housing units, and in the final approvals a mere 4 units are to be set aside as affordable housing rentals, and it will pay an in lieu fee instead for the rest. The Real Parties and City promised that park fees would be assessed as a mitigation measure, but there is no affirmative condition or commitment in the MMRP or other final approvals. The Real Parties and City promised that public access would be forever granted and allowed in the location where the City is abandoning and giving away its alley right-of-way, but there is no affirmative condition or commitment in the MMRP or any other final approval whatsoever to ensure this benefit or mitigate this loss. Many details and components of the project which serve to offset or mitigate impacts are complete moving targets that have defied a stable project definition, confusing the presentation and ability to distinguish the project that was applied for and what was approved;

h. Improper and Unsupported Cumulative Impact Analysis – The Final MND adopts and utilizes an improper and legally defective definition of cumulative impacts. The Final MND and City have determined that significant cumulative impacts could only arise where one or more of the project's impacts were significant and adverse. Based on this improper application, the City admits and determines that the project will cause "incremental and/or short term" impacts, but legally has determined that these cannot be significant. Prior environmental review for this subject area determined that such incremental increases in housing, traffic, construction, and/or noise would result in incremental significant cumulative effects. The final MND and its Initial Study do not address or analyze what cumulative impacts are required to – this and other projects adding the same type of incremental impacts. The City's conclusions regarding cumulative impacts are based on an improper definition, improper analysis and application, apply circular reasoning, and are mere conclusory statements, all of which is not supported by fact or law;

i. Failure to Recirculate the MND and Initial Checklist – The Initial Checklist and draft MND circulated to the public and other agencies for review and comment contained an initial checklist for a different and prior project; did not disclose the presence of hazardous/toxic wastes and the need for contamination cleanup activities, did not disclose the potential impacts and legal bases/standards the City was using to grant listed deviations and variances, did not disclose or present prior comments submitted, and did not circulate to a proper scope of potentially responsible agencies as required by CEQA. Individually and collectively, each of the above omissions, inaccuracies, and misstatements amount to new or important omitted information requiring recirculation under CEQA and City's own municipal code.

34. By approving the Project and not complying with CEQA, the City has failed to proceed in a manner required by law and/or the decision(s) and findings relating to City's purported CEQA compliance are not supported by the substantial evidence. A peremptory writ of mandamus is requested to be issued by this Court ordering the City to rescind its September 12, 2006 final approvals, and remand the matter to the City for preparation of an EIR, and reconsider the project consistent with requirements of CEQA.

VI.

SECOND CAUSE OF ACTION – COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Violation and Misapplication of Calculating Allowable Residential Density for Projects Overlying Two Separate Zones

(Cal. Code Civ. Proc. § 1060 et seq.; San Diego Municipal Code § 113.0222(a)(2))

35. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-34 above, and ¶¶ 43-87 below, as though fully set forth herein.

36. Plaintiff is beneficially interested in the issuance of a declaration of law and injunction by virtue of the proposition of facts and law set forth herein.

37. Plaintiff has a clear, present and beneficial right to the proper performance by City of its duties and compliance with the laws and legal principles as set forth herein. Plaintiff has no plain, speedy or adequate remedy in the ordinary course of the law other than the relief herein sought.

38. The declaratory relief requested herein is proper to delineate and clarify the parties' rights and liabilities or resolve, quiet, or stabilize an uncertain or disputed jural relation. Without the grant of declaratory relief, the granting of an injunction, and/or the issuance of a writ of mandate, the City will continue to proceed in a manner not allowed by law and will continue to take action outside of its authority resulting in harm to Plaintiff and the citizenry of the San Diego community for whom this litigation is brought.

39. The City has and continues to implement a regular unlawful pattern and practice of calculating the amount of allowable residential density for a project. The calculation method

employed by the City violates the letter and plain meaning of Municipal Code § 113.0222(a)(2) (and parallel language in the Mid-City Communities PDO) which directs density be determined by "the sum of the number of units permitted in each of the zones based on the area of the premises in each zone." The "area of the premises in each zone" is clear, unambiguous on its face, and not subject to reasonable dispute as to its meaning.

40. Instead, the City artificially inflates allowable density for properties overlying multiple zones by determining *the sum of the number of units permitted in each of the zones based on the area of the entire project site*, thereby ignoring and essentially striking out "~~area of the premises in each zone~~" and using the square footage of the whole project across and including "all the zones."

41. By this manner of improper calculation, the City has violated, and continues to violate, the amount of residential density it can lawfully allow according to legislated and adopted plans and zoning codes. A declaration of law and permanent injunction is necessary to require City to discontinue this unlawful practice.

VII.

THIRD CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE

The Project was Unlawfully Granted a Right to Develop an Excessive Number of Residential Units Based on Misapplication of the Calculation of Allowable Density Under the Mid-City Communities PDO; The Project Does not Provide the Minimal Amount of Required Commercial Square Feet

(Cal. Code Civ. Proc. § 1094.5; San Diego Municipal Code § 103.1505(c)(2), §103.1507(c)(4), and § 113.0222(a)(2))

42. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-41 above, and ¶¶ 51-87 below, as though fully set forth herein.

43. As part of the City's final approvals, it granted Real Parties a right to construct 96 units based on 80 units allowed under the base zones of the 2 separate zones (CN-1A and MR-800B) covering the entire project site, along with an additional 16 units based on a 20% bonus due to purportedly meeting some affordable housing incentive.

44. In granting Real Parties a right to construct 96 units, the City has improperly calculated the amount of allowable residential density for the subject project. The calculation method employed by the city violates the letter and plain meaning of Municipal Code § 113.0222(a)(2) (and parallel language in the Mid-City Communities PDO) which directs density be determined by "the sum of the number of units permitted in each of the zones based on the area of the premises in each zone." The "area of the premises in each zone" is clear, unambiguous on its face, and not subject to reasonable dispute as to its meaning.

45. By its unlawful, improper and miscalculation, the City has artificially inflated allowable density for Real Parties' two separate zones by determining *the sum of the number of units permitted in each of the zones based on the area of the entire project site*, thereby ignoring, obviating, and essentially striking the requirement to consider the "~~area of the premises in each zone~~."

46. The proper calculation of allowable maximum density according to the Mid-City Communities PDO, based on undisputed lot sizes for the land area in each zone, would be a right to construct 55 units based on the sum of the number of units allowed under each of the 2 separate base zones (CN-1A and MR-800B). The City could possibly grant Real Parties an additional 11 units should the laws and facts of City's final approvals support a 20% density bonus due to purportedly meeting some affordable housing incentive.

47. By calculating and approving the project to build 96 units, the City has failed to proceed in a manner required by law and/or the decision(s) and findings relating to City's calculation and determination of the allowable amount of units (density) are not supported by the substantial evidence. A peremptory writ of mandamus is requested to be issued by this Court compelling the City to rescind its September 12, 2006 final approvals and the matter should be remanded to the City to reconsider its final approval consistent with requirements of San Diego Municipal Code § 103.1505(c)(2), §103.1507(c)(4), and § 113.0222(a)(2) as alleged herein or as otherwise ordered by this Court after trial.

48. Commercial development in the CN-1A zone requires a minimum amount of square footage which is "calculated by multiplying the linear footage of all street frontage by

20." Based on the amount of either 527 or 542 feet of street frontage on Fourth, University and Third Avenues (including or excluding the 15-foot wide alley the applicant intends to take from the public for its private project), the minimum amount of commercial space required is either 10,540 or 10,840 square feet. Thus, there is no legal support for approving the proposed Project allowing and requiring only 10,304 square feet of ground floor commercial.

49. A peremptory writ of mandamus is requested to be issued by this Court compelling the City to rescind its September 12, 2006 final approvals and the matter should be remanded to the City to reconsider its final approval consistent with requirements of the Mid-City Communities PDO, San Diego Municipal Code § 103.1507(c)(1), which requires a mandatory amount of minimal commercial square feet for the proposed project.

VIII.

FOURTH CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE

Findings for Abandonment of the Alley is Not Supported by the Evidence and/or Constitutes an Unlawful Gift of Public Funds

(Cal. Government Code, Streets and Highways Code; San Diego Municipal Code)

50. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-49 above, and ¶¶ 58-87 below, as though fully set forth herein.

51. Defendant, in approving and adopting findings for abandonment of the alley between Third and Fourth Avenues located within the boundaries of the Tentative Map No. 323359 (Right-of-Way No. 323355), has done so in violation of state and local laws for abandoning public roads and thoroughfares, which requires a findings that "there is no present or prospective public use for the public right-of-way, either for the facility it was originally acquired or for any other public use of a nature than can be anticipated." This is a strict standard which prohibits the government whatsoever from giving or abandoning used or usable public access, roads, alleys, thoroughfares, or other right-of-ways.

52. Information and evidence in the record, as well as indicated in the findings made by Defendant (or the lack thereof) in its adoption of the Project indicate the procedural, substantive, and or evidentiary legal deficiencies in that Plaintiff, members of the public, the

Real Parties, and/or the City staff presented testimony and evidence recognizing the need, desire and intention that the public have continued and uninterrupted access through the proposed project at the location of the existing public alley.

53. By approving the abandonment of the alley in the final approvals, the City has failed to proceed in a manner required by law and/or the decision(s) and findings relating to such permanent abandonment are not supported by the substantial evidence. A peremptory writ of mandamus is requested to be issued by this Court compelling the City to rescind its September 12, 2006 final approvals and the matter should be remanded to the City to reconsider its final approvals consistent with the lawful and supporting findings for abandonment of public streets, roads, and alleys.

54. The abandonment and closure of a street or alley, along with giving the public land to a developer for a private development project (intended for commercial ground floor patio and above residential condominium uses), with no fee or cost charged, is an unlawful gift of public funds prohibited by California Constitution, article 16, section 6. In exchange for the City's and public's alley, Real Parties did not give any legal consideration or anything of value, including any exaction, deed restriction, or grant any type of continued right of public access or passage (other than a few feet to turn around at the end of the public alley once you reach Real Parties forced dead end).

55. There is no evidence whatsoever in any deed, legal description, county tax assessment, lot size calculation, or otherwise that the Real Parties own the underlying fee of the subject alley. The City and Real Parties incorrectly characterize the alley as being an easement to land which is wholly under "fee ownership" of the applicant. Contrary to the statement and contention by the City and Real Parties, the subject alley has been wholly owned and retained by the City since the time of the original underlying subdivision (Map 628).

56. The City's abandonment of the subject alley via an unencumbered grant of property to the Real Parties is an unlawful gift of public funds according the California Constitution. A peremptory writ of mandamus is requested to be issued by this Court compelling the City to rescind its September 12, 2006 final approvals and the matter should be

remanded to the City to reconsider the sale or gift of public land as required by law or as further ruled and ordered by this Court.

IX.

FIFTH CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE

Unsupported Findings for Final Approvals under the Subdivision Map Act and Requirements of the San Diego Municipal Code

(Cal. Government Code § 66474; San Diego Municipal Code § 125.0440)

57. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-56 above, and ¶¶ 62-87 below, as though fully set forth herein.

58. Defendant, in approving and adopting findings for the creation of a subdivision for the Project, has done so in violation of the State and City's laws which requires approval of a subdivision comply with: (a) the applicable zoning and development regulations of the San Diego Municipal Code and City's Land Development Code; and (b) not conflict with easements required for the public at large for access or use of the project site within the proposed subdivision.

59. Information and evidence in the record, as well as indicated in the findings made by Defendant (or the lack thereof) in its adoption of the Project indicate the procedural and substantive legal deficiencies in that the City's approvals for the Project are inconsistent with: (1) granting of not less than six zoning code variances, exceptions or deviations of the City's zoning and land development code; and (2) the abandonment of the City's and public's alley has been improperly granted within findings which are not legally supported (and no legitimate effort, commitment, or condition of approval has been adopted, secured or protected by any of the final approvals to ensure that the public has any continued right of access); and (3) the density of 96 units has been improperly calculated and allowed in violation of City's adopted and applicable PDO. As such, the Subdivision Map Act and the City's legislated ordinance for implementing the same have not been complied with and the findings for approval of the Map are not supported by law or the evidence in the record.

60. By approving the subdivision aspect of the final approvals without compliance with the above laws (with unsupported findings), the City has failed to proceed in a manner required by law and/or the decision(s) and findings relating to City's grant of a subdivision are not supported by the substantial evidence. A peremptory writ of mandamus is requested to be issued by this Court ordering the City to rescind its September 12, 2006 final approvals and the matter should be remanded to the City to reconsider its final approvals consistent with requirements of San Diego Municipal Code § 125.0440 and Cal. Government Code § 66474, as alleged herein or as otherwise ordered by the Court after trial.

X.

SIXTH CAUSE OF ACTION – COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE

Violation of the Public Records Act and City Charter for Failing to Timely Present Public Records, Project Files and Adopted Resolutions (Cal. Code Civ. Proc. § 1060 et seq.; Cal. Government Code § 6250 et seq.; San Diego Municipal Code § 22.0102; City Charter § 18)

61. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-60 above, and ¶¶ 75-87 below, as though fully set forth herein.

62. Plaintiff is beneficially interested in the issuance of a declaration of law and injunction by virtue of the proposition of facts and law set forth herein.

63. Plaintiff has a clear, present and beneficial right to the proper performance by City of its duties and compliance with the laws and legal principles as set forth herein. Plaintiff has no plain, speedy or adequate remedy in the ordinary course of the law other than the relief herein sought.

64. The declaratory relief requested herein is proper to delineate and clarify the parties' rights and liabilities and resolve, quiet, or stabilize an uncertain or disputed jural relation. Without the grant of declaratory relief, the granting of an injunction, and/or the issuance of a writ of mandate, the City will continue to proceed in a manner not allowed by law

and will continue to take action outside of its authority resulting in harm to Plaintiff and the citizenry of the San Diego community for whom this litigation is brought.

65. The City has and continues to implement a regular unlawful pattern and practice of not timely responding and not making documents readily available according to (1) the provisions of the California Public Records Act, and (2) the provisions of the City Charter and Municipal Code.

66. The California Public Records Act requires that the City "shall make the records promptly available"; can only extend under "unusual circumstances," and shall not specify "a date that would result in an extension for more than 14 days." Furthermore, the Act provides that "[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records."

67. San Diego Municipal Code and the City Charter require that final resolutions be prepared and published no more than 15 days after their final passage. A resolution becomes valid and effective immediately upon on its passage unless otherwise provided in its adoption.

68. The City does not comply with these timing requirements on a regular and continued basis. In this case, and particularly to the detriment and prejudice of Plaintiff, the City withheld ordinary documents for weeks (after a September 21, 2006 written request) notwithstanding their ready availability based on the facts that (1) such documents were part of the administrative record which the City used to make the subject September 12, 2006 decision and final approvals, and (2) the requested documents had previously been compiled for a prior Public Records Act request and thus did not require weeks of research or gathering.

69. The City wrote a response to Plaintiff that was unlawful and forbidden by the Public Records Act extending the time to respond and *possibly* produce documents after a period of 30 days. Plaintiff's requested documents were not made available for review by Plaintiff in a timely and legally compliant manner. As a result, on and before October 5, 2006, Plaintiff had to spend many hundreds of dollars in additional attorney's fees to research, write, call, visit, deliver and argue that the documents were being withheld in violation of law. Documents were withheld until and up and to a point that further and additional writings, demands, and legal threats were

made. Notwithstanding, upon review of some presented documents (October 6, 2006), it was determined they were incomplete and there was no disclosure, admission, or effort of the City to fully and in good faith comply with the entirety of the original request for documents.

70. The above-described delay and obstruction by the City is an additional injustice and abuse of process because City was aware that Plaintiff was under a strict statutory deadline to review the City's September 12, 2006 final approvals to determine what, if any, legal basis existed to file a legal action. Despite 2 Plaintiff phone calls to City officials regarding the need to timely comply, not one of them returned Plaintiff's call. The City's non-compliance with the Public Records Act and the withholding of public documents until a time at or near the running of Plaintiff's statute of limitation is capricious and amounts to an additional violation of due process.

71. In addition to not making the City's ordinary planning and environmental review records available, the City failed and refused to provide final versions of the resolutions that were drafted, prepared and circulated following the September 12, 2006 city council action. Plaintiff made multiple and repeated requests, but such written and verbal requests were continually put off, extended, ignored and handled in such a way that (1) Plaintiff had no opportunity to see or know what final versions had already been sent to the city clerk for final administrative processing. Meanwhile, multiple City departments and Real Parties had access and copies of the subject resolutions.

72. The resolutions were held and kept from Plaintiff until September 13, 2006 and only after (on October 12 and October 13) Plaintiff spent many hundreds of dollars in additional attorney's fees preparing and making further and additional writings, demands, and legal threats. The delay and obstruction by the City in providing Plaintiff the final versions of the resolutions is not only a violation of the Public Records Act and City Charter and Municipal Code, but also amounts to a substantial injustice and abuse of process under circumstances where the City knows Plaintiff was under a strict statutory deadline to review the City's September 12, 2006 final approvals to determine what, if any, legal basis existed to file a legal action. Under these

facts, the City's withholding of public documents until a time at or near the running of Plaintiff's statute of limitation is capricious and amounts to a violation of due process.

73 Plaintiff requests a declaratory judgment that the manner and conduct of City in impeding and obstructing Plaintiff's proper access to city records and documents was a violation of the aforementioned state law, municipal law, and principals of fair play and justice under notions of due process. A declaration of law and permanent injunction is necessary to require the City to discontinue such conduct and unlawful practice. According to the Public Records Act and private attorney general statutes, Plaintiff is entitled to all of its reasonable attorney's fees and litigation expenses in enforcing, condemning and further preventing improper conduct of the City.

XI.

SEVENTH CAUSE OF ACTION – COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Violation and Misapplication of Deviation, Exception, and Variance Laws

(Cal. Code Civ. Proc. § 1060 et seq.; San Diego Municipal Code § 126.0801)

74. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-73 above, and ¶¶ 85-87 below, as though fully set forth herein.

75. Plaintiff is beneficially interested in the issuance of a declaration of law and injunction by virtue of the proposition of facts and law set forth herein.

76. Plaintiff has a clear, present and beneficial right to the proper performance by City of its duties and compliance with the laws and legal principles as set forth herein. Plaintiff has no plain, speedy or adequate remedy in the ordinary course of the law other than the relief herein sought.

77. The declaratory relief requested herein is proper to delineate and clarify the parties' rights and liabilities and resolve, quiet, or stabilize an uncertain or disputed jural relation. Without the grant of declaratory relief and/or a writ of mandate, the City will continue to proceed in a manner not allowed by law and will continue to take action outside of its authority resulting in harm to Plaintiff and said citizens.

78. The City has a regular unlawful pattern and practice of granting development applicants (such as Real Parties) exceptions, deviations, and/or variances from adopted and legislated zoning ordinances without application, without an adopted or defined process, without limits, and without requisite findings.

79. Plaintiff alleges that it is a regularly practice of the City to exercise its administrative power and authority to approve any zoning code "deviation" for a project and applicant as long as it is beneficial for the project, not detrimental, and involves review through a Site Development Permit, and does not involve a change in use or increase in density.

80. The term "deviation" is not defined in the San Diego Municipal Code. The City is regularly handling and treating the loose and undefined term of "deviation" (as occasionally mentioned in its Municipal Code) as zoning code exceptions and variances in such a manner so as to obviate and undermine the purpose and strict limits of such exceptions as intended by state and national planning and zoning controls, and as explained by the California Supreme Court interpreting the same.

81. While it alleged and contended that sometimes the threshold for a "deviation" is a minor increase or decrease not exceeding 20% of the regulated quantitative subject, there is no codified limit to this "deviation" and the City regularly goes to whatever level of zoning code variation its wants.

82. By this manner of implementation and practice, the City has obviated and displaced the need of its codified and required "variance" procedure such that an applicant for a new development can have the zoning code requirements relaxed to whatever degree or extent it can convince an administrator without the application, formal review, and findings required by any codified, defined or called-out procedures.

83. By this manner of unlimited and undefined deviations, the City has violated, and continues to violate, the amount, extent, manner and process allowing zoning code exceptions and variances which make zoning code restrictions mere flexible planning tools that administrators can use to obviate carefully legislated and enacted laws. A declaration of law

and permanent injunction is necessary to require City to define, refine, and/or discontinue this unlawful practice as alleged herein, argued at trial, and as further ordered by this Court.

XII.

EIGHTH CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE

The Project was Unlawfully Granted Deviations and Variances Not in Compliance with Law and Without Adequate Notice, Disclosure, Environmental Review, and/or Findings (San Diego Municipal Code §§ 103.1501(g) & 126.0801)

84. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-83 above, as though fully set forth herein.

85. Information and evidence in the record, as well as indicated in the findings made by Defendant (or the lack thereof) in its final approvals for the project, indicate that the City unlawfully granted 6 separate zoning code deviations, exceptions, and/or variances without legally adequate application, disclosure, environmental review, administrative processing and/or findings.

86. Plaintiff alleges the following deviations were improperly applied for, processed and approved as follows:

a. The Mid-City Communities Planned District Ordinance, San Diego Municipal Code § 103.1705(c)(8)(A)(i) requires a 15-foot building setback above 36-feet (third floor). The Project was approved and granted setbacks as little as 2-feet, 4-feet and 8-feet, which clearly are greater than 20% from the adopted and required zoning controls. The City approved such violations of the zoning code under the purported legal authority of a "deviation." However, as a matter of law, deviations are not allowed for excesses greater (or less than) than 20% of the adopted zoning code regulation (San Diego Municipal Code § 103.1504(h)(1))

b. By granting approval of the Project, the City has unlawfully violated the applicable zoning control for rear and side yards in the MR-800B zoned portion of the Project site, as well as obviating the front yard 10-foot setback

required in the MR-800B with City now allowing an exception for anywhere from a 2-foot to a 12.75-foot, non-uniform setback;

c. The Mid-City Communities Planned District Ordinance, San Diego Municipal Code § 103.1505(c)(3) limits the height of any building or structure in the MR-800B zone to 50-feet unless it is "a building above enclosed parking." This development in the MR-800B zone is a stand-alone commercial parking garage. The Project was approved and granted the right to construct to 72-feet in the MR-800B zone. The City approved such violations of the zoning code under the purported legal authority of a "deviation." By granting approval of the Project, the City has unlawfully violated the applicable zoning control for building height in the MR-800B zone;

d. The citywide zoning code development regulations requires that 2 curb-cuts or driveways serving the same property be separated by 45-feet or more. The Project was approved and granted the right to construct 2 curb cuts with a separation of only 24 feet, 8 inches via the so-called "deviation" authority. The City first recognized and admitted that a variance would have to be requested and granted for such a zoning code exception. However, the City approved the project without any such variance application, process or required findings. No CEQA environmental review, analysis or discussion was conducted regarding potential impacts to vehicle traffic or pedestrian safety regarding the design and exception of this zoning control; and

e. A citywide zoning code development regulation requires that corner setbacks and/or street visibility areas are required to be a 25-foot distance for public safety reasons. The Project was approved and granted the right to reduce the requisite safety visual setback areas at locations ranging from 14-feet to 17-feet. Real Parties never applied for or disclosed that this exception or variance would be requested. The City approved the project without any variance application, process or required finding, but nonetheless substantially reduced

the street visibility area without any CEQA environmental review, analysis or discussion regarding potential impacts to vehicle or pedestrian traffic regarding the exception of this safety issue and otherwise important zoning control.

87. By approving the Project and not complying with codified and required "variance" procedure for exceptions and variances of adopted zoning codes, the City has failed to proceed in a manner required by law and/or the decision(s) and findings relating to City's grant of such zoning code exceptions are not supported by the substantial evidence. A peremptory writ of mandamus is requested to be issued by this Court ordering the City to rescind its September 12, 2006 final approvals and the matter should be remanded to the City to reconsider its final approvals consistent with requirements of application, review, processing and findings required for zoning code exceptions, as alleged herein or as otherwise ordered by this Court after trial.

XIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

1. That this Court find that by making the final approvals Defendant has not proceeded in a manner required by law, has not adopted requisite findings, and/or its decisions are not supported by the substantial evidence;

2. That this Court issue a peremptory writ of mandate declaring that one or more of the decision(s) rendered by Defendant on or about September 12, 2006, and any additional resolution of Defendant relating to, or dependent upon the same, are null and void and of no force and effect;

3. That this Court order Defendant to vacate and set aside each of the decisions made on or about September 12, 2006, and each of the resolutions, administrative approvals, permits, and quasi-judicial decisions of Defendant with respect thereto;

4. That there be issued a writ of mandate ordering Defendant to prepare an EIR within a reasonable date from the issuance of said writ of mandate, in the event the Real Parties wish to pursue the Project;

5. That until such time as Plaintiff's above claims can be adjudicated by this Court, Defendant and Real Parties be enjoined, restrained and/or Defendant's September 12, 2006 decisions be stayed from taking effect to preserve the status quo and prevent frustration of Plaintiff's and the public's rightful claims and right to judicial review.

6. For Plaintiff's claims for declaratory and injunctive relief, that this Court order, describe, and declare the proper interpretation and application of law(s) which are the subject of this lawsuit, and all other similar repeated City cases and instances, and grant an injunction and/or issue of a writ of mandate ordering the City abide by the same.

7. That Plaintiff be awarded its reasonable costs incurred in this action, including attorneys' fees under Cal. Code of Civil Procedure § 1021.5 for this matter brought in the public interest; and

8. For such other and further relief as the Court deems just and proper.

Dated: March 25, 2008

LAW OFFICE OF CRAIG A. SHERMAN

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CRAIG A. SHERMAN
Attorney for Plaintiff
FRIENDS OF SAN DIEGO, INC.

XIV.

VERIFICATION

I, THOMAS G. MULLANEY, as the authorized representative and president of the plaintiff organization, Friends of San Diego, Inc., hereby verify this *FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF* pursuant to California Code of Civil Procedure Section 446. The facts herein alleged are true of my own knowledge, except as to the matters which are based on information and belief, which I believe to be true. I declare under the penalty of perjury under the laws of California that the above foregoing is true and correct and that this verification was executed on the below stated date in San Diego County, California.

Dated: November __, 2006

By: _____
Thomas G. Mullaney, President
FRIENDS OF SAN DIEGO, INC.