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**FRIENDS OF SAN DIEGO, INC.**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO – CENTRAL DISTRICT**

10  
11 FRIENDS OF SAN DIEGO, INC., a )  
California non-profit corporation, )

12 *Plaintiff,* )

13 v. )

14 CITY OF SAN DIEGO, a public entity; and )  
15 DOES ONE through FIVE, inclusive, )

16 *Defendant,* )

17 LA JOLLA PACIFIC DEVELOPMENT )  
18 GROUP, INC., a registered California )  
Corporation; 301 UNIVERSITY, LLC, a )  
19 registered California Limited Liability )  
Company; and DOES SIX through )  
20 TWENTY, inclusive, )

21 *Real Parties in Interest.* )  
22 )

Case No.: GIC 874140

**FIRST AMENDED VERIFIED  
PETITION FOR WRIT OF  
MANDATE AND COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

23 **I.**

24 **INTRODUCTION**

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

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

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

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

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

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

## 22 II.

### 23 GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

### 20 III.

#### 21 THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND 22 OTHER LAWS GIVING RISE TO THIS ACTION

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

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

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

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

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

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

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

7 **IV.**

8 **FACTUAL AND PROCEDURAL BACKGROUND GIVING RISE TO THIS ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

21           30.     On September 18, 2006, the City prepared and caused to be filed with the San  
22 Diego County Clerk, a Notice of Determination setting forth that the CEQA decision that was  
23 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

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

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

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

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

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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

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

3 e. Improper and Unsupported Finding There Will Be No Potential Adverse  
4 Impact to Park Facilities and Schools – CEQA requires that an EIR must be  
5 prepared if there is substantial evidence supporting a fair argument that a  
6 potential adverse environmental effect may arise from approval,  
7 implementation or operation of a project. Plaintiff presented substantial  
8 evidence that significant direct and/or cumulative impacts will occur to park  
9 facilities because the community is already park-deficient, and the  
10 introduction of hundreds of new residents will cumulatively impact an  
11 already park deficient neighborhood. The City improperly eliminated and  
12 ended all discussions regarding impacts to parks by stating that all potential  
13 impacts to parks will be mitigated by Real Parties’ payment of a park fee.  
14 There is no substantial evidence supporting that the payment of park fees  
15 can or will mitigate the deficiency of required neighborhood and community  
16 parks. Unlike school fees, there is no conclusive determination that the mere  
17 payment of fees eliminates and cures all potential impacts. However, CEQA  
18 still requires there be some reasonable discussion about the potential impacts  
19 the project may have on schools, such as the number of students likely to be  
20 generated, the current capacity or if there is availability of seats in nearby  
21 classrooms. There is no support for blanket conclusion that “a limited  
22 number” could be generated and thus “there will be no impact.” With  
23 almost 100 new residential units, there are a number of new students that  
24 may be forced into already overcrowded classrooms. Notwithstanding the  
25 inadequate disclosure and analyses regarding parks and school impacts, the  
26 City has violated CEQA and did not mitigate park or school impacts  
27 whatsoever by its failure to adopt a requirement or condition, as part of the  
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1 MMRP or other final approvals, that Real Parties are obligated to pay park  
2 or school fees;

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

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

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

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



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

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

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

## 15 VII.

### 16 **THIRD CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

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

21 **(Cal. Code Civ. Proc. § 1094.5; San Diego Municipal Code § 103.1505(c)(2),**  
22 **§103.1507(c)(4), and § 113.0222(a)(2))**

23 42. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-41 above, and ¶¶  
24 51-87 below, as though fully set forth herein.

25 43. As part of the City’s final approvals, it granted Real Parties a right to construct  
26 96 units based on 80 units allowed under the base zones of the 2 separate zones (CN-1A and  
27 MR-800B) covering the entire project site, along with an additional 16 units based on a 20%  
28 bonus due to purportedly meeting some affordable housing incentive.

1           44. In granting Real Parties a right to construct 96 units, the City has improperly  
2 calculated the amount of allowable residential density for the subject project. The calculation  
3 method employed by the city violates the letter and plain meaning of Municipal Code §  
4 113.0222(a)(2) (and parallel language in the Mid-City Communities PDO) which directs  
5 density be determined by “the sum of the number of units permitted in each of the zones based  
6 on the area of the premises in each zone.” The “area of the premises in each zone” is clear,  
7 unambiguous on its face, and not subject to reasonable dispute as to its meaning.

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

13           46. The proper calculation of allowable maximum density according to the Mid-  
14 City Communities PDO, based on undisputed lot sizes for the land area in each zone, would be  
15 a right to construct 55 units based on the sum of the number of units allowed under each of the  
16 2 separate base zones (CN-1A and MR-800B). The City could possibly grant Real Parties an  
17 additional 11 units should the laws and facts of City’s final approvals support a 20% density  
18 bonus due to purportedly meeting some affordable housing incentive.

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

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

1 20.” Based on the amount of either 527 or 542 feet of street frontage on Fourth, University and  
2 Third Avenues (including or excluding the 15-foot wide alley the applicant intends to take from  
3 the public for its private project), the minimum amount of commercial space required is either  
4 10,540 or 10,840 square feet. Thus, there is no legal support for approving the proposed  
5 Project allowing and requiring only 10,304 square feet of ground floor commercial.

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

## 11 VIII.

### 12 **FOURTH CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

#### 13 **Findings for Abandonment of the Alley is Not Supported by the**

#### 14 **Evidence and/or Constitutes an Unlawful Gift of Public Funds**

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

16 50. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-49 above, and ¶¶  
17 58-87 below, as though fully set forth herein.

18 51. Defendant, in approving and adopting findings for abandonment of the alley  
19 between Third and Fourth Avenues located within the boundaries of the Tentative Map No.  
20 323359 (Right-of-Way No. 323355), has done so in violation of state and local laws for  
21 abandoning public roads and thoroughfares, which requires a findings that “there is no present  
22 or prospective public use for the public right-of-way, either for the facility it was originally  
23 acquired or for any other public use of a nature than can be anticipated.” This is a strict  
24 standard which prohibits the government whatsoever from giving or abandoning used or usable  
25 public access, roads, alleys, thoroughfares, or other right-of-ways.

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

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

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

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

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

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

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

3 **IX.**

4 **FIFTH CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

5 **Unsupported Findings for Final Approvals under the Subdivision Map Act**  
6 **and Requirements of the San Diego Municipal Code**  
7 **(Cal. Government Code § 66474; San Diego Municipal Code § 125.0440)**

8 57. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-56 above, and ¶¶  
9 62-87 below, as though fully set forth herein.

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

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



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

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

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

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

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

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

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

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

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

20 72. The resolutions were held and kept from Plaintiff until September 13, 2006 and  
21 only after (on October 12 and October 13) Plaintiff spent many hundreds of dollars in additional  
22 attorney's fees preparing and making further and additional writings, demands, and legal threats.  
23 The delay and obstruction by the City in providing Plaintiff the final versions of the resolutions  
24 is not only a violation of the Public Records Act and City Charter and Municipal Code, but also  
25 amounts to a substantial injustice and abuse of process under circumstances where the City  
26 knows Plaintiff was under a strict statutory deadline to review the City's September 12, 2006  
27 final approvals to determine what, if any, legal basis existed to file a legal action. Under these  
28

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

3 73 Plaintiff requests a declaratory judgment that the manner and conduct of City in  
4 impeding and obstructing Plaintiff's proper access to city records and documents was a violation  
5 of the aforementioned state law, municipal law, and principals of fair play and justice under  
6 notions of due process. A declaration of law and permanent injunction is necessary to require  
7 the City to discontinue such conduct and unlawful practice. According to the Public Records Act  
8 and private attorney general statutes, Plaintiff is entitled to all of its reasonable attorney's fees  
9 and litigation expenses in enforcing, condemning and further preventing improper conduct of the  
10 City.

11 **XI.**

12 **SEVENTH CAUSE OF ACTION – COMPLAINT FOR DECLARATORY**  
13 **AND INJUNCTIVE RELIEF**

14 **Violation and Misapplication of Deviation, Exception, and Variance Laws**  
15 **(Cal. Code Civ. Proc. § 1060 et seq.; San Diego Municipal Code § 126.0801)**

16 74. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-73 above, and ¶¶  
17 85-87 below, as though fully set forth herein.

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

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

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

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

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

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

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

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

24           83.     By this manner of unlimited and undefined deviations, the City has violated, and  
25 continues to violate, the amount, extent, manner and process allowing zoning code exceptions  
26 and variances which make zoning code restrictions mere flexible planning tools that  
27 administrators can use to obviate carefully legislated and enacted laws. A declaration of law  
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1 and permanent injunction is necessary to require City to define, refine, and/or discontinue this  
2 unlawful practice as alleged herein, argued at trial, and as further ordered by this Court.

3 **XII.**

4 **EIGHTH CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

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

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

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

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

17 a. The Mid-City Communities Planned District Ordinance, San Diego  
18 Municipal Code § 103.1705(c)(8)(A)(i) requires a 15-foot building setback  
19 above 36-feet (third floor). The Project was approved and granted setbacks as  
20 little as 2-feet, 4-feet and 8-feet, which clearly are greater than 20% from the  
21 adopted and required zoning controls. The City approved such violations of the  
22 zoning code under the purported legal authority of a “deviation.” However, as a  
23 matter of law, deviations are not allowed for excesses greater (or less than) than  
24 20% of the adopted zoning code regulation (San Diego Municipal Code §  
25 103.1504(h)(1))

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

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

3 c. The Mid-City Communities Planned District Ordinance, San Diego  
4 Municipal Code § 103.1505(c)(3) limits the height of any building or structure  
5 in the MR-800B zone to 50-feet unless it is “a building above enclosed  
6 parking.” This development in the MR-800B zone is a stand-alone commercial  
7 parking garage. The Project was approved and granted the right to construct to  
8 72-feet in the MR-800B zone. The City approved such violations of the zoning  
9 code under the purported legal authority of a “deviation.” By granting approval  
10 of the Project, the City has unlawfully violated the applicable zoning control for  
11 building height in the MR-800B zone;

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

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

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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;



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**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.**