

(R-2000-884)

RESOLUTION NUMBER R-292244

ADOPTED ON SEPTEMBER 28, 1999

WHEREAS, Jacobs Center for Nonprofit Innovation, a California General Corporation, Owner/Permittee, submitted an application with The City of San Diego for a permit to develop and construct a mixed use project (the Market Creek Plaza project) which would include a neighborhood shopping center of approximately 95,171 square feet anchored by a super market, retail shops, and an office building complex of approximately 224,511 square feet with conference center, parking garage for 528 vehicles and on-site parking, community support buildings, child care center, recreation center/multi-purpose room, youth mall plaza, and a 400 seat outdoor amphitheater with outdoor movie screen, flood control improvements to South Las Chollas Creek, landscaping, on and off-site public improvements located on two parcels, on portions of a 19.56 acre site; and

WHEREAS, the project site is located at 4981 Market Street and 310 Euclid Avenue in the Lincoln Park Neighborhood in the I-1 and I-2 zones (proposed CT-2 zone) of the Southeastern San Diego Community Plan area; and

WHEREAS, the project site is legally described as Parcel 1, a portion of Lot 41, Map No. 283, filed March 9, 1878; and Parcel 2, Lot 1, Map No. 4562, filed June 115, 1960, excepting a portion described in the deed to San Diego, Cuyamaca and Eastern Railway Company, dated February 5, 1889, recorded November 13, 1914, Book 669, Page 155 of Deeds; and

WHEREAS, on September 2, 1999, the Planning Commission considered amendments to the San Diego Progress Guide and General Plan, a rezone, and Southeast San Diego Development Permit/Resource Protection Ordinance Permit No. 99-0156 pursuant to San Diego Municipal Code [SDMC] sections 101.0462 and 103.1707, and pursuant to Resolution No. 2842-PC, recommended Council approval of the permit and related land use actions; and

WHEREAS, the matter was set for public hearing on September 28, 1999, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Southeast San Diego Development Permit/Resource Protection Ordinance Permit No. 99-0156:

SOUTHEAST SAN DIEGO FINDINGS:

1. The proposed use and project design meet the general purpose and intent of this Division of the Municipal Code, complies with the recommendations of the Southeast San Diego Planned District for this site, and will not adversely affect the Southeast San Diego Community Plan, the City's Progress Guide and General Plan or other applicable plans adopted by the Council in effect for this site. The proposed project is designed to achieve consistency with the Southeast San Diego Planned District, Purpose and Intent, which calls for a wide range of commercial facilities to serve the surrounding neighborhood. Further, the project is consistent with the urban design element of the community plan which requires new development at this site to provide a park-like interface between and orientation of the retail center with the South Las Chollas Creek, improvements to Market Street and Euclid Avenue, and other on-site improvements. These features are included in the design of the project.

The proposed project is consistent with the Southeastern San Diego Community Plan. The proposed design of the development would be consistent with the desired relationship between South Las Chollas Creek and the project as required by the community plan. The proposed uses; placement, design, and orientation of buildings; design and integration of open spaces into the project; creation of park-like features including an urban plaza and amphitheater; and site landscaping contribute specific project features which achieve consistency with the recommendations and goals of the community plan for this site. In achieving consistency with the community plan and the Progress Guide and General Plan, the proposed project will not adversely affect these policy documents.

2. The proposed development shall be compatible with existing and planned land uses on adjoining properties and shall not constitute a disruptive element to the surrounding neighborhood and community. Architectural harmony with the surrounding neighborhood and community shall be achieved as far as practicable. The design and use of the site as a commercial office and retail center is consistent with the requirements of the Southeast San Diego Planned District and the recommendations of the Southeastern San Diego Community Plan. The surrounding land uses adjacent to the Market Creek Plaza property are a mix of commercial and multi-family uses to the south and east, and a mix of commercial, industrial, and residential uses to the north and west. The proposed project is designed to achieve compatibility with the surrounding land uses by locating objectionable functions, such as deliveries and back store operations in areas least sensitive to land use adjacency concerns. As required by the planned district, the project will provide screening features and landscaping in areas adjacent to residential uses.

The Market Creek Plaza project is designed to achieve architectural compatibility and integrity within the site internally and outwardly to the surrounding existing developments. The proposed project would provide opportunities for creative architectural expressions as future buildings are designed and constructed. These features to allow for and include architecture creativity to allow future buildings the ability to reflect the theme and pulse of the community in a pro-active approach and will include input from the community in the design of these future buildings. The development of this site with a commercial office and retail center would (1) add business establishments, services, and jobs within the community; (2) create an urban park relationship between the South Las Chollas Creek and the commercial center; (3) harmonize architecturally by means of a consistent, balanced, harmonious and diverse theme within the development; and (4) through the conditions of approval, not present a disruptive element to the surrounding neighborhood.

3. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area, and will not adversely affect other property in the vicinity. The Southeast San Diego Development Permit/Resource Protection Ordinance Permit, which controls the continued operation and development of the commercial office and retail center, contains conditions to protect the health, safety, and general welfare of persons residing or working in the area. These conditions have been written to protect those persons working and residing in and around the site. Conditions of approval have been included to preclude any adverse affects from occurring to other properties in the vicinity.

4. The proposed use will comply with the relevant regulations of the Municipal Code in effect for this site. The proposed permit will govern the proposed use and require compliance with the relevant regulations of the Municipal Code for this use. No deviations or variances have been requested or are being approved for the proposed project.

RESOURCE PROTECTION ORDINANCE [RPO] PERMIT FINDINGS FOR IMPACTS TO SENSITIVE BIOLOGICAL RESOURCES:

5. The proposed development will not adversely affect the applicable land use plan. With the adoption of the community plan amendment and rezone, the site will be identified by the Southeastern San Diego Community Plan and the City's Progress Guide and General Plan for development with commercial uses. The proposed uses on this site, which are consistent with the land use policy documents guiding development in the community, will not adversely affect the community or City and will yield a significant value and provide needed services to the community and City.

The proposed project would provide an infill development in a central area of the community which is currently vacant; would add a usable urban park-like setting in a highly urbanized area that is deficient in open space; would develop a multi-use open space linkage designated in the Southeastern San Diego Community Plan implementing a part of the City-wide open space system; and would protect flood-prone areas against loss of life, property damage, and disruption of traffic or utility services by implementing flood control improvements. The improved channel would be designed with a natural cobble bottom and natural slopes, all of which would be hydroseeded with native species to retain the natural appearance of drainage areas to the greatest extent feasible. The proposed project would implement habitat conservation goals by locating development outside of designated Multiple Habitat Planning Area [MHPA] areas as identified in the City's Multiple Species Conservation Program [MSCP] Subarea Plan; would provide an attractive, quality community commercial facility offering a variety of goods and services; would increase employment opportunities to improve the social and economic well-being of the community; would provide increased opportunities for the public enjoyment of open space area, including limited access to South Las Chollas Creek; would increase the aesthetic quality of the street corridors to encourage pedestrian activity by implementing landscaping and streetscape improvements to Euclid Avenue and Market Street along the project frontage; would help to revitalize and improve the economic environment of the community by providing a development that would increase opportunities for employment, the property tax base, and in turn provide additional funding sources to complete other infill development activities throughout the community.

Therefore, the Market Creek Plaza project achieves many City of San Diego goals and objectives that are identified in applicable adopted land use plans and would not adversely affect applicable land use plans. The proposed development would conform with the Progress Guide and General Plan, the Southeastern San Diego Community Plan, the relevant policies and Municipal Code regulations of the City of San Diego. The proposed development would be consistent with the relevant regulations of the Municipal Code, as allowed by a discretionary decision.

6. The proposed development will not be detrimental to the public health, safety and welfare. The development of the project site would remove public health and safety hazards from the project area and improve the welfare of the community. In addition, the proposed project includes several specific features to improve public health, safety, and welfare in the community. Conditions of approval included within Southeast San Diego Development Permit/Resource

Protection Ordinance Permit No. 99-0156 address the health, safety, and general welfare of persons residing or working the area and properties in the vicinity to preclude detrimental effects from the development of the project and its continued operation. Compliance with all building, electrical, plumbing, and zoning regulations, as allowed through a Southeast San Diego Development Permit/Resource Protection Ordinance Permit, will be achieved by the proposed development at this site.

7. The proposed development will comply with the applicable regulations of the Municipal Code. As allowed through a Southeast San Diego Development Permit/Resource Protection Ordinance Permit, the proposed development will comply with all relevant regulations of the Municipal Code. Except for impacts to sensitive biological resources, as allowed by the Municipal Code through Deviation Findings, additional variances or deviations to the Municipal Code are not required for the approval of the proposed project, as allowed by a discretionary decision through a Southeast San Diego Development Permit/Resource Protection Ordinance Permit. The project would be consistent with the proposed CT-2 zoning for the site, which is intended to accommodate a wide variety of community shopping and business needs and services. The proposed project will comply with the Southeast San Diego Planned District development standards for new commercial development to assure quality development at this site. These standards address building heights; lot coverage and floor area ratios; signage; walls; outdoor storage areas; off-street parking; off-street loading facilities; screening of residential areas from commercial activities; site landscaping; and special regulations to address the hours of operation, lighting, offsetting planes and building facade variation.

8. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to sensitive biological resources. Based upon general development practices, the prevailing standard of care within the land development industry, and the known on-site physical attributes of soils, geology, absence of earthquake faults or other known subsurface hazards, the proposed site has been determined to be suitable to support the proposed development.

The proposed development is not located in the City's MSCP (or MHPA) as an area to be protected or preserved. The Biology Report prepared for the Market Creek Plaza project concluded that the project would have a significant direct impact to 3.28 acres of maritime succulent scrub, 3.42 acres of disturbed coastal sage scrub, 0.25 acres of riparian scrub, and 3.31 acres of non-native grasslands on the proposed site. There will be temporary impacts to 1.69 acres of creek bed and riparian scrub shall be restored after construction. However, impacts to sensitive species and habitats identified on the site will be minimized and mitigated to a level below significance by implementation of the Mitigation Monitoring and Reporting Program [MMRP] as required in the conditions of approval.

9. The proposed development will be sited and designed to prevent adverse impacts on any adjacent sensitive biological resources. The areas surrounding the project site are urbanized and contain no sensitive biological resources. The surrounding land uses adjacent to the Market Creek Plaza property are a mix of commercial and multi-family uses to the south and east and a mix of commercial, industrial, and residential uses to the north and west.

The proposed project is designed to avoid, minimize, and preclude adverse impacts on adjacent sites where sensitive biological resources may be present. The analysis for the project concluded that potential impacts to adjacent sites where sensitive biological resources may be present would not occur as a result of site development .

Geotechnical information indicates the site is physically suitable for the grading design and the future building locations indicated on the Site Plan. Due to the conditions of approval, revegetation of all manufactured slopes, and the placement and design of proposed buildings, the proposed design of the project will minimize the alterations of natural landforms and will not result in risks from geological and erosional forces and/or flood and fire hazards.

All slopes will be revegetated with plants possessing deep rooting characteristics for added slope stability and will be low spreading varieties to provide erosion control and slope protection. The planting and continued maintenance of these slopes will prevent soil erosion, silting of topographically lower areas which would affect health, safety and general welfare by covering the manufactured slopes with living, deep rooted, low spreading shrubs. Flooding or severe scarring will not occur as a result of grading operations and will be assured by conditions of approval requiring all operations to the satisfaction of the City Engineer. Conditions included within Southeast San Diego Development Permit/Resource Protection Ordinance Permit No. 99-0156 require the timely planting of all slopes to prevent erosion and to provide additional slope stability. The design of the proposed project will avoid and preclude adverse impacts on adjacent downstream properties where sensitive biological resources may be present.

10. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program [MSCP] Subarea Plan. The site has been confirmed by City staff to be outside the City of San Diego MSCP Subarea Plan. The proposed project would not impact any critical biological resource area or corridor targeted for preservation under the City's MSCP Subarea Plan. The site is not designated for preservation and is not adjacent to or connecting as a corridor to other environmentally sensitive areas. Mitigation proposed for impacts to sensitive vegetation and habitat will occur through the creation and restoration of a permanent preservation of on-site and offsite lands as required in the Mitigation Monitoring and Reporting Program adopted for the project. The project proposes to mitigate upland impacts to maritime succulent scrub (Tier I Habitat) and disturbed coastal sage scrub (MSCP Tier II Habitat). The Owner/Permittee also proposes to mitigate upland impacts to non-native grassland (Tier III Habitat).

The proposed project is consistent with the City's MSCP program by developing outside of the MHPA and fully mitigating upland habitat impact in accordance with the City's Biology Guidelines within the MHPA. Therefore, the nature and extent of mitigation required for the Market Creek Plaza is reasonably related to, and calculated to alleviate, negative upland habitat impacts created by the proposed development.

11. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. The Mitigated Negative Declaration has identified significant impacts to biological

resources. Mitigation has been identified at appropriate ratios as required to offset the impacts to biologically sensitive resources. These mitigation measures will be implemented through the MMRP to assure that impacts to biological resources have been appropriately mitigated. Implementation by the applicant of the mitigation measures identified in the MMRP and enforced through conditions of approval will reduce potential adverse impacts resulting from development of the site. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. The impacts from developing the site would be fully mitigated by the proposed mitigation plan.

DEVIATIONS FROM SENSITIVE BIOLOGICAL RESOURCES REGULATIONS

12. There are no feasible measures that can further minimize the potential adverse effects on sensitive biological resources. The 19.61 acre site is located within the Southeast San Diego Community Plan area, and with the adoption of the proposed community plan amendment and rezone, is designated for commercial uses. The site is located south of Market Street and west of Euclid Avenue. The project will be required to construct flood control improvements. A wetlands delineation indicates that 1.69 acres of Resource Protection Ordinance-defined wetlands (under the United States Army Corps of Engineers jurisdiction) is located within the existing channel of South Las Chollas Creek and will be disturbed by the project. To reduce the flood plain fringe areas on the site to yield an area for suitable development, any development of this site would be required to construct similar flood control improvements. To yield a project acreage sufficient to create a self sustaining project, Federal Emergency Management Act [FEMA] flood control regulations are required to the South Las Chollas Creek in this area temporarily impacting existing habitat. These requirements result in direct temporary impacts to the wetlands and the natural flood channel. Only by a "no project" alternative is it possible to avoid temporary impacts to these resources. Temporary impacts to the 1.69 acres of wetlands will be mitigated within the site in generally the location of the original impact pursuant to a MMRP plan to replace the function and habitat values. A minimum 1.69 acres of wetland creation and restoration would occur to achieve no net loss of wetlands function or value.

Deviations to the development regulations of the Resource Protection Ordinance, as provided for within the RPO, allow the Owner/Permittee to develop the site in a manner consistent with the intent of the community plan and zoning for the property.

An alternative development plan at this site would have similar direct impacts to the wetlands. Due to the presence of South Las Chollas Creek, it is only through the deviation process that the development would allow substantial benefits of the project to accrue to the community.

13. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land not of the Owner/Permittee's making. The temporary impact at this site on the wetland area is considered to be the minimum necessary to allow development of the proposed project and would be mitigated in function and value in an acceptable location to assure the success criteria. Avoidance of the 1.69 acres of wetland cannot be achieved without a no project alternative because the project would not be of a scale

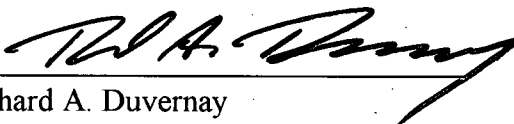
sufficiently large enough to be successful and self sustaining. Therefore, the disturbance is the minimum necessary to afford relief from these special circumstances to allow development of the site.

The temporary impacts to wetlands will be mitigated on-site. The quality of the habitat to be created in the mitigation area would exceed that of the habitat to be impacted on the project site. The proposed enhancements within the site required for the implementation of the proposed project as described in the Mitigation Monitoring and Reporting Program, Revegetation Plan, represent a valuable contribution to the City.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the decision of the Planning Commission is sustained, and Southeast San Diego Development Permit/Resource Protection Ordinance Permit No. 99-0156 is granted to Jacobs Center for Nonprofit Innovation, a California General Corporation, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

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Or.Dept:Clerk
R-2000-884
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Reviewed by John Fisher

RECORDING REQUESTED BY
CITY OF SAN DIEGO
PLANNING AND DEVELOPMENT REVIEW
PERMIT INTAKE, MAIL STATION 501

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Southeast San Diego Development Permit/Resource Protection Ordinance
Permit No. 99-0156 [MMRP]
Market Creek Plaza

City Council

This permit is granted by the Council of The City of San Diego [Council] to Jacobs Center for Nonprofit Innovation, a California General Corporation, Owner/Permittee pursuant to San Diego Municipal Code [SDMC] sections 101.0462 and 103.1700 through 103.1708. The 19.56 acre site is located at 4981 Market Street in the CT-2 zone of the Southeast San Diego Community Plan. The project site is legally described as Parcel 1; A portion of Lot 41, Map No. 283, filed March 9, 1878 and Parcel 2; Lot 1, Map No. 4562, filed June 15, 1960, excepting a portion described in the deed to San Diego, Cuyamaca and Eastern Railway Company, dated Feb. 5, 1889, recorded November 13, 1914, Book 669, Page 155 of Deeds.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop and construct a mixed use project including a neighborhood shopping center approximately 95,171 square feet anchored by a super market, retail shops, and an office building complex of approximately 224,511 square feet with conference center, parking garage for 528 vehicles, community support buildings, child care center, recreation center/multi-purpose room, youth mall plaza, and a 400 seat outdoor amphitheater with outdoor movie screen, on and off-site public improvements described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated September 28, 1999, on file in the Office of Planning and Development Review. The facility shall include:

- a. Retail Building Areas: Pad 1 at 4,702 square feet, Pad 2 at 3,715 square feet, Pad 3 at 3,504 square feet, Shops 4 at 11,047 square feet, Shops 5 at 6,413 square feet, Kiosks (7) at 1,372 square feet, Market at 57,590 square feet, Youth Mall at 1,800 square feet, Child Care at 5,028 square feet; and
- b. Office Building Area which totals 224,411 square feet; and
- c. Community Building Area: Multipurpose/Recreation Center at 12,406 square feet; and
- d. Landscaping (planting, irrigation and landscape related improvements); and

- e. Off-street parking facilities; and
- f. 400 seat amphitheater, vehicular/pedestrian bridge, and underpass beneath the trolley rail; and
- g. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. Rezoning of the subject property shall become effective 30 days after the second reading of the ordinance by the Council.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:
 - a. The Permittee signs and returns the permit to Planning and Development Review; and
 - b. The permit is recorded in the office of the San Diego County Recorder.
4. Unless this permit has been revoked by The City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.
5. This permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
6. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
7. The issuance of this permit by The City of San Diego does not authorize the applicant to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by

the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], The City of San Diego through the issuance of this permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement (IA), executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this permit shall be altered in the future by The City of San Diego, USFWS or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this permit and of full satisfaction by Permittee of mitigation obligations required by this permit, as described in accordance with Section 17.1D of the IA.

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

10. The Owner/Permittee shall provide and maintain a total of 1,231 parking spaces on the property at the completion of all construction all times in the approximate location shown on the approved Exhibit "A," dated September 28, 1999, on file in the Office of Planning and Development Review. Parking spaces shall comply at all times with the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager. The project is to be phased. All phases shall provide and maintain the necessary parking for each phase.

11. The Owner/Permittee is proposing structures within the flood way. These structures are not allowed unless authorized by Federal Emergency Management Agency [FEMA] per flood plain conditions.

12. Prior to the issuance of any building permits, the Owner/Permittee shall assure the construction of a standard 30-foot wide commercial driveway width with 6-foot flare aprons or two 20-foot wide directional driveway with a 10-foot wide median for the proposed right-turn in/out driveway on Euclid Avenue, satisfactory to the City Engineer.

13. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated September 28, 1999, on file in the Office of Planning and Development Review. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

14. All of the conditions contained in this permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary

permit. It is the intent of the City that the holder of this permit be required to comply with each and every condition in order to be afforded special rights which the holder of the permit is obtaining as a result of this permit. It is the intent of the City that the Owner of the property which is the subject of this permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the Owner complies with all the conditions of the permit.

In the event that any condition of this permit, on a legal challenge by the Owner/ Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the permit for a determination by that body as to whether all of the findings necessary for the issuance of the new permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed new permit and the condition(s) contained therein.

15. This permit may be developed in phases. Each phase shall ensure that all development is consistent with the conditions and exhibits approved for each respective phase, per the approved Exhibits "A," dated September 28, 1999, on file in the Office of Planning and Development Review.

16. **ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

The Owner/Permittee shall comply with the Mitigation Monitoring and Reporting Program [MMRP] as specified in Mitigated Negative Declaration, LDR No. 99-0156, satisfactory to the City Manager and the City Engineer. Prior to the issuance of any building permit, all mitigation measures specifically outlined in the MMRP shall be implemented for the following issue areas:

- a. Archaeological Resources
- b. Biological Resources
- c. Noise
- d. Transportation/Circulation
- e. Human Health/Public Safety

17. Prior to the issuance of a grading permit, the geotechnical consultant must evaluate the stability of the existing slopes and their potential impact to the project. Where retaining walls are proposed at the toe or encroaching on ascending slopes, recommended provisions for drainage, slough debris catchment and clean out of accumulated debris behind the walls must be shown on the grading plans.

18. Prior to the issuance of any building permit, Development Impact Fees and Housing Trust Fund fees may be required.

19. Prior to the issuance of the first certificate of occupancy, the Chollas Trail as shown on the Site Plan shall be dedicated as a non-motor vehicle pedestrian public right-of-way.

20. Prior to the issuance of the first certificate of occupancy, Chollas Creek must have an open space easement, excluding the area of the Amphitheater.
21. Prior to the issuance of a grading permit, the geotechnical consultant must review and sign the grading plan.
22. All export material shall be discharged into a legal disposal site. The approval of this project does not allow processing and sale of this material.
23. Prior to the issuance of the first certificate of occupancy, encroachment permits are required for the pedestrian bridge and the vehicle and pedestrian bridge.
24. All landscaping and lighting shall be maintained by the Owner/Permittee, including all areas within the creek and trail.
25. Prior to issuance of any building permits, the Owner/Permittee shall assure either:
A. The installation of a traffic signal at the intersection of Euclid Avenue and SR-94 westbound-ramps, satisfactory to the City Engineer, or B. Provide full funding for the design and construction of a traffic signal at the intersection of Euclid Avenue and SR-94 westbound-ramps, satisfactory to the City Engineer.
26. Prior to issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the installation of a traffic signal at the intersection of Euclid Avenue and Naranja Street including a raised median along the project's frontage on Euclid Avenue, all improvements shall be constructed to the satisfaction of the City Engineer.
27. The operating hours for the 400 seat outdoor amphitheater are proposed as follows: Monday - Friday 9:00 AM to 3:00 PM and after 6:30 PM, daily on Saturday, Sunday and Holidays. The school children may be using the amphitheater during the Monday - Friday 9:00 AM to 3:00 PM period. All performances at the amphitheater shall end no later than twelve midnight, seven days a week. No performances shall be allowed between twelve midnight and 9:00 AM.
28. Due to reduced sight distance either the project's access to Market Street be limited to right-turn in/out or a traffic signal with advanced flashing beacon be installed at this location, the improvements shall be constructed to the satisfactory of the City Engineer.
29. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, installation of fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants are located on a dead-end main, then the developer shall install a redundant water system of adequate capacity to provide appropriate fire flows to this development.
30. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the relocation of the Encanto Trunk Sewer in a manner satisfactory to the Metropolitan Wastewater Department Director. The trunk sewer shall be located within a 30-foot-wide sewer easement with vehicular access to all existing and proposed manholes located on-site.

31. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall provide CC&R's for the operation and maintenance of on-site private water and sewer facilities that serve more than one lot.

32. The Owner/Permittee agrees to design all proposed public water and sewer facilities in accordance with the criteria established in the most current edition of the "City of San Diego Water & Sewer Design Guide." Proposed facilities that do not meet the current standards shall be redesigned or private.

33. The Owner/Permittee shall grant adequate water, sewer, and/or access easements, including vehicular access to each appurtenance (meters, blow offs, air valves, manholes, etc.), for all public water and sewer facilities that are not located within fully improved public rights-of-way, satisfactory to the Water and Metropolitan Wastewater Departments' Directors. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the appropriate Department Manager. Minimum easement widths: water mains with services or fire hydrants - 24 feet, sewer mains with manholes - 20 feet. The easements shall be located within single lots. No structures or trees shall be installed in or over any easement prior to the applicant obtaining an encroachment removal agreement. No structures or landscaping of any kind shall be installed in or over any access easement.

The private water system, on-site, will have public meters within the rights-of-way where connecting to existing public mains. Three-inch meters, or larger, are above ground installations.

The sewer lateral from Building 3 cannot connect to the trunk sewer. This lateral connection shall be extended and connect to the private sewer system.

34. Prior to the issuance of any building permits, the Owner/Permittee shall obtain a bonded grading permit from the City Engineer for the grading proposed for this project. All grading shall conform to requirements of the Municipal Code, satisfactory to the City Engineer.

35. The drainage system proposed with this development shall be private and is subject to approval by the City Engineer.

36. Prior to building occupancy, the Owner/Permittee shall conform to the Municipal Code requirements for "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the Owner/Permittee shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

37. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an encroachment removal agreement, from the City Engineer, for the 36-inch RCP encroaching in the South Las Chollas Creek.

38. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be

developed and implemented concurrently with the commencement of grading activities, and a complete and accurate Notice of Intent (NOI) shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with The City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with The City of San Diego when received.

In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 92-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 92-08-DWQ.

39. Portions of the project are located in the floodplain of South Las Chollas Creek, as delineated on Panel 1904 of the Flood Insurance Rate Map [FIRM] for The City of San Diego. These maps are prepared by FEMA. In connection with approval of this permit:

- a. The Owner/Permittee shall submit a Hydraulic and Hydrologic Study of the area within the floodway for approval by the City Engineer.
- b. Any development within the floodplain fringe area will require either the property to be graded to an elevation two feet above the 100-year frequency flood elevation or provide floodproofing of all structures to that same elevation.
- c. The Owner/Permittee shall grant a flowage easement, satisfactory to the City Engineer, over the property within the floodway.
- d. The Owner/Permittee shall enter into an agreement with the City waiving the right to oppose a special assessment initiated for the construction of flood control facilities and their perpetual maintenance.
- e. The Owner/Permittee shall denote on the final map and the improvement plans "Subject to Inundation" for those areas at an elevation lower than the 100-year frequency flood elevation plus one foot.
- f. The Owner/Permittee shall provide slope protection, as required by the City Engineer, where the flow velocity exceeds 5 FPS.
- g. The Owner/Permittee shall provide safety fencing where required by the City Engineer.
- h. Permits or exemptions must be obtained from the California Department of Fish and Game and the U.S. Army Corps of Engineers before City permits will be issued for work within the floodplain fringe areas.
- i. The Owner/Permittee shall grant drainage easements, satisfactory to the City Engineer.
- j. No permits shall be issued for grading or other work in the floodplain of South Las Chollas Creek until the developer obtains a Conditional Letter of Map Amendment [Conditional LOMA] or Conditional Letter of Map Revision

[Conditional LOMR] from FEMA. The request for the Conditional LOMA or Conditional LOMR must be submitted through the Floodplain Management Section of the City of San Diego's Planning and Development Services. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

k. When as-built grading and public improvement plans are available, the developer must submit a request for a Final LOMA or Final LOMR to FEMA via the Floodplain Management Section, Planning and Development Review. The Owner/Permittee must provide all documentation, engineering calculations, and fees which are required by FEMA.

l. The bond for this project will not be released until the Final LOMA or Final LOMR is issued by FEMA. The Floodplain Management Section, Public Works/Engineering and Capital Projects will notify Planning and Development Review of such issuance as soon as it is informed by FEMA.

m. Notes provided by the Floodplain Management Section, Public Works/Engineering and Capital Projects concerning work in designated floodplains shall be included in all grading and improvement plans.

40. Prior to issuance of any building permit, the Owner/Permittee shall submit, to the satisfaction of the City Manager, construction plans and documents which indicate compliance with the following:

The required 15-foot building setback adjacent to Market Street and all other relevant setback requirements of the Municipal Code for this site; and

Revised Design Guidelines that are both objective and measurable by City staff; and

Provide consistency between all plans and indicate the improvements within the right-of-way of Market Street and Euclid Avenue adjacent to this site.

41. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

42. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits, including, but not limited to, elevations and cross sections.

43. A topographical survey conforming to the provisions of SDMC section 101.0216 may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or a

regulations of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

44. All signage associated with this development shall be consistent with sign criteria established by the approved Market Creek Plaza Signage Guidelines.

45. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Planning and Development Review, Land Development Review Division for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of 50 feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than three footcandles. Light levels throughout the planned development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding eight footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this permit during the night inspection. Night inspections may be required additional fees as determined by the Planning and Development Review Manager.

46. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

47. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.

48. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.

49. No merchandise, material or mechanical equipment, tank, duct, elevator enclosure, cooling tower or mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed architecturally integrated structure whose top and sides may include grillwork, louvers and latticework.

50. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable

Materials to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," dated September 28, 1999, on file in the Office of Planning and Development Review.

51. Prior to issuance of any grading, or building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated September 28, 1999, on file in the Office of Planning and Development Review. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

52. Prior to the issuance of a building permit, the Owner/Permittee shall provide a separation between the vehicular use area and the street curb by a landscape area other than hardscape of a depth totaling no less than eight feet measured perpendicular to the curb in accordance with the City Manager. This area must contain an effective visual screen for a minimum of 80% of the VUA frontage. The screen must be at least 30 inches in height. The screen may be achieved through the use of berms, walls or plant material. This landscape area may be reduced to a depth of three feet if a site wall measuring at least three feet in height is provided.

53. Street trees along Euclid Avenue shall consist of either or both *Platanus acerifolia* or *Tristania conferta*.

54. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land (all slopes and pads), shall be submitted to the satisfaction of the City Manager (including the Environmental Section) and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated September 28, 1999, on file in the Office of Planning and Development Review and all other applicable conditions of related permits.

55. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Permittee shall initiate such measures within 45 days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Technical Manual.

56. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

57. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this permit. The Owner/Permittee, or subsequent owner,

shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

58. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days of completion of construction by the Owner/Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

59. Prior to the issuance of a building permit for any fast food restaurant, the Owner/Permittee shall provide building plans which include state of the art exterior speaker systems for placing food orders to avoid noise impacts to adjacent land uses. After 10 P.M., drive-through customers shall place orders by either an exterior phone system or at an order window.

60. The Owner/Permittee acknowledges the project design and implementation will not preclude the pedestrian walk way on the north side of South Las Chollas Creek when the property to the west is developed or redeveloped.

61. The Owner/Permittee acknowledges the site contains toxic material and when the property was purchased there was and continues to be an indemnification clause from the previous owner.

62. Operation of any fast food restaurants on site shall be monitored by the Owner/Permittee and the City to determine if hours of operation should be restricted based on the incidence of problems associated with those hours of operation.

63. The Owner/Permittee shall take any and all reasonable actions to encourage the accommodation of an African American History Museum, of approximately 10,000 square feet in size, to be located within one of the project buildings if such a tenant is forthcoming.

APPROVED by the Council of The City of San Diego by Resolution No. R-292244, on September 28, 1999.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

**JACOBS CENTER FOR NONPROFIT
INNOVATION**
Owner/Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

3/15/00
LADUVERNAYPERMITS\99-0156.wpd

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