

RESOLUTION NUMBER R- 301532  
DATE OF FINAL PASSAGE JUN 12 2006

WHEREAS, 1858 San Diego Avenue, LLC, Owners/Permittees, filed an application with the City of San Diego for a site development permit and public right-of-way use permit, to demolish an existing auto repair services to construct a mixed-use development containing eleven for-sale residential condominiums and two commercial condominiums, and to reconfigure and landscape the traffic island at the intersection of San Diego Avenue and California Street for the project known as the Vista Diego project, located at 1858 and 1866 San Diego Avenue, and legally described as Lots 2, 3, and 4, Block 193 of the Mid-City Communities Planned District within the Uptown Community Planning Area in the CL-6 zone; and

WHEREAS, on March 30, 2006, the Planning Commission of the City of San Diego considered Site Development Permit [SDP] No. 177769 and Public Right-Of-Way Use Permit [ROW] No. 305646, and pursuant to Resolution No. 3985-PC voted to recommend City Council approval of the permits; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented;

WHEREAS, the matter was set for public hearing on JUN 12 2006, 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 it adopts the following findings with respect to SDP Permit No. 177769 and Public ROW Use Permit No. 305646:

**A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0504(a)**

**1. Findings for all Site Development Permits:**

**a. The proposed development will not adversely affect the applicable land use plan.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5, in the Planned Urbanized Development Area as cited in the Progress Guide and General Plan. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the Airport Approach Overlay Zone [AAOZ]. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one unit per 1,500 square foot of lot area. The project site could accommodate ten dwelling units based on the zoning designation, and between 5 and 10 dwelling units based on the Uptown Community Plan designation for the site at 15-29 dwelling units/per acre [du/ac]. However, the project contains an Affordable Housing Density Bonus component and could accommodate eleven dwelling units based on the zoning designation and the community plan.

The project would also not adversely affect the Progress Guide and General Plan as one of the goals in the General Plan encourages in-fill development and revitalization. The proposed project would accommodate in-fill development by allowing additional housing in the community. The plan also discusses the importance of improving the neighborhood environment to increase personal safety, comfort, pride and opportunity. The proposed project would also not adversely affect the Housing Element of the Progress Guide and General Plan as the proposed use would be ensuring the development of new housing to help meet the City's housing needs for a variety of household sizes. The project would also include at least 10 percent affordable housing units on the site for households with an income at or below 100 percent of the Area Median Income [AMI] (\$63,400 for a family of four). This in turn would address another goal of the Housing Element to increase affordable housing opportunities. Therefore, no adverse impacts to the applicable land use plan would occur as a result of project implementation

**b. The proposed development will not be detrimental to the public health, safety, and welfare.** The project proposes to demolish the existing auto repair services office, the auto repair garage, and two existing carports, and consolidate the three parcels into one lot for the construction of a mixed-use development containing eleven for-sale residential units and two commercial retail spaces. The project required the preparation of an Initial Study to identify the potential for significant environmental impacts which could be associated with the

project pursuant to Section 15063 of the State CEQA Guidelines. Analysis concluded that a Mitigated Negative Declaration would be required with mitigation measures for reducing potentially adverse impacts from Noise, Paleontological Resources, and Historical Resources (Archaeology) to below a level of significance.

The project proposes deviations to the development standards of the City of San Diego Land Development Code [LDC] for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to Government Code section 65915. Based upon substantial evidence, which includes a FAA determination of "No Hazard to Air Navigation" and the Mitigated Negative Declaration that has been prepared for the project; it has been determined that the request poses no adverse impact upon public health and safety or the physical environment. In addition, the existing structures located on the site have been determined not to be of historical significance and are not listed in the California Register of Historical Resources.

The permit for the project will include various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the LDC in effect for this project. Such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety and general welfare of persons residing or working in the surrounding area. The project will comply with the development conditions in effect for the subject property as described in Site Development Permit No. 177769 and Public Right-Of-Way Use Permit No. 305646, and other regulations and guidelines pertaining to the subject property per the LDC. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

**c. The proposed development will comply with the applicable regulations of the Land Development Code.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the AAOZ. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one unit per 1,500 square foot of lot area. The project site could accommodate ten dwelling units based on the zoning designation, and between 5 and 10 dwelling units based on the Uptown Community Plan designation for the site at 15-29 du/ac. However, the project contains an Affordable Housing Density Bonus component and could accommodate eleven dwelling units based on the zoning designation and the community plan.

The project site is a triangular lot with frontage on San Diego Avenue and California Street. The majority of the site is relatively flat; however, steep slopes occur along the northeastern edge of the site. These slopes descend from California Street down to the flat portion of the site at inclinations ranging from approximately 2:1 to near vertical. The slopes vary from approximately 5 feet high at the southeastern corner of the site to nearly 35 feet high at the northwestern corner of the site. The surrounding character of the community is composed of primarily multi-family development to the east, single-family development to the north, and commercial to the west. The single-family development along the western portion of California Street contains reduced front yards due to the constraints of the site and the slopes

The project proposes deviations to the development standards of the LDC for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to Government Code section 65915. The requested deviations for yard setbacks allows for the reduction in bulk and scale, and design features that are more architecturally in harmony with the surrounding neighborhood. In direct response to the Uptown Planners and the community issue regarding the height, the building height was reduced by 10-feet 8-inches by omitting one floor located at the northern property line and revising the setbacks. Therefore, other than the requested deviations, the proposed mixed-use development complies with the applicable regulations of the LDC.

**2. Supplemental Findings – SDMC Section 126.0504(m) – Deviation for Affordable/In-Fill Housing Projects:**

**a. The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the AAOZ. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one unit per 1,500 square foot of lot area. The project site could accommodate ten dwelling units based on the zoning designation, and between 5 and 10 dwelling units based on the Uptown Community Plan designation for the site at 15-29 du/ac. However, the project contains an Affordable Housing Density Bonus component and could accommodate eleven dwelling units based on the zoning designation and the community plan.

The proposal to construct a mixed-use development containing eleven for-sale residential units and two commercial retail spaces is subject to and meets the requirements of the City's Inclusionary Housing Ordinance. The developer will enter into an agreement with the San Diego Housing Commission to ensure the construction and occupancy of the on-site affordable housing unit (s), to be sold at prices affordable to households earning at or below 100 percent AMI; therefore, the proposed development will material assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.

**b. The development will not be inconsistent with the purpose or the underlying zone.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the AAOZ. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one unit per 1,500 square foot of lot area. The project site could accommodate ten dwelling units based on the zoning designation, and between 5 and 10 dwelling units based on the Uptown Community Plan designation for the site at 15-29 du/ac. However, the project contains an Affordable Housing Density Bonus component and could accommodate eleven dwelling units based on the zoning designation and the community plan.

As an incentive for providing affordable housing, the LDC (Section 143.0920 governing Deviation Requirements for Affordable/In-Fill Housing) allows a developer of an affordable housing project to request deviations from the applicable development regulations of the underlying zone pursuant to a Site Development Permit providing that the required findings can be made.

The project proposes deviations to the development standards of the LDC for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to Government Code section 65915. The requested deviations for yard setbacks allows for the reduction in bulk and scale, and design features that are more architecturally in harmony with the surrounding neighborhood. In direct response to the Uptown Planners and the community issue regarding the height, the building height was reduced by 10-feet 8-inches by omitting one floor located at the northern property line and revising the setbacks. The proposed development has otherwise been designed and conditioned to ensure conformance to the requirements of the LDC. Therefore, the development will not be inconsistent with the purpose or the underlying zone.

**c. Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** The project site is a triangular lot with frontage on San Diego Avenue and California Street. The majority of the site is relatively flat; however, steep slopes occur along the northeastern edge of the site. These slopes descend from California Street down to the flat portion of the site at inclinations ranging from approximately 2:1 to near vertical. The slopes vary from approximately 5 feet high at the southeastern corner of the site to nearly 35 feet high at the northwestern corner of the site. The surrounding character of the community is composed of primarily multi-family development to the east, single-family development to the north, and commercial to the west. The single-family development along the western portion of California Street contains reduced front yards due to the constraints of the site and the slopes.

The project proposes deviations to the development standards of the LDC for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to Government Code section 65915. The requested deviations for yard setbacks allows for the reduction in bulk and scale, and design features that are more architecturally in harmony with the surrounding neighborhood. In direct response to the Uptown Planners and the community issue regarding the height, the building height was reduced by 10-feet 8-inches by omitting one floor located at the northern property line and revising the setbacks. The proposed development has otherwise been designed and conditioned to ensure conformance to the requirements of the LDC. Therefore, the proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

### **3. Findings for Mid-City Communities Planned District – Section 103.1501:**

**a. The proposed use and project design meet the purpose and intent of the Mid-City Communities Planned District (SDMC Section 103.1501), and the following documents, as may be applicable to the project site: the Mid-City Community Plan, the**

**Greater North Park Community Plan, the State University Community Plan, the Uptown Community Plan, the Mid-City Design Plan, design manual for the Normal Heights Demonstration area and the City Heights Demonstration area, the design study for the Commercial Revitalization of El Cajon Boulevard, the North Park Design Study, Volume 1, Design Concept and Volume 2, Design Manual, Sears Site Development Program; and will not adversely affect the Mid-City Community Plan, the Greater North Park Community Plan, the State University Community Plan, the Uptown Community Plan or the City's Progress Guide and General Plan.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5, in the Planned Urbanized Development Area as cited in the Progress Guide and General Plan. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the AAOZ. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one unit per 1,500 square foot of lot area. The project site could accommodate ten dwelling units based on the zoning designation, and between 5 and 10 dwelling units based on the Uptown Community Plan designation for the site at 15-29 du/ac. However, the project contains an Affordable Housing Density Bonus component and could accommodate eleven dwelling units based on the zoning designation and the community plan.

The project would also not adversely affect the Progress Guide and General Plan as one of the goals in the General Plan encourages in-fill development and revitalization. The proposed project would accommodate in-fill development by allowing additional housing in the community. The plan also discusses the importance of improving the neighborhood environment to increase personal safety, comfort, pride and opportunity. The proposed project would also not adversely affect the Housing Element of the Progress Guide and General Plan as the proposed use would be ensuring the development of new housing to help meet the City's housing needs for a variety of household sizes. The project would also include at least 10 percent affordable housing units on the site for households with an income at or below 100 percent of the AMI (\$63,400 for a family of four). This in turn would address another goal of the Housing Element to increase affordable housing opportunities. Therefore, the project would meet the purpose and intent of the Mid-City Communities Planned District and no adverse impacts to the applicable land use plan would occur as a result of project implementation.

**b. The proposed development will be compatible with existing and planned land uses on adjoining properties and will not constitute a disruptive element to the surrounding neighborhood and community.** In addition, architectural harmony with the surrounding neighborhood and community will be achieved as far as practicable. The subject property is immediately surrounded by commercial/retail development to the north and west along San Diego Avenue, a single-family residence to the north along California Street, and a 2 and 3-story multi-family development over parking that is directly to the east along California Street. Land use designations for the areas adjacent to the site are predominantly commercial/mixed-use (CL-6) and multi-family residential (MR-1500) along San Diego Avenue, multi-family residential (MR-1500) to the east and single-family residential (R-1-7) to the north along California Street.

The project proposes deviations to the development standards of the LDC for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to

Government Code section 65915. The requested deviations for yard setbacks allows for the reduction in bulk and scale, and design features that are more architecturally in harmony with the surrounding neighborhood. In direct response to the Uptown Planners and the community issue regarding the height, the building height was reduced by 10-feet 8-inches by omitting one floor located at the northern property line and revising the setbacks. The proposed development has otherwise been designed and conditioned to ensure conformance to the requirements of the LDC. Therefore, the proposed development has been designed to be architecturally in harmony with the surrounding neighborhood and community as far as practicable.

**c. The proposed use, because of conditions hat 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 of the project site.** The project proposes to demolish the existing auto repair services office, the auto repair garage, and two existing carports, and consolidate the three parcels into one lot for the construction of a mixed-use development containing eleven for-sale residential units and two commercial retail spaces. The project required the preparation of an Initial Study to identify the potential for significant environmental impacts which could be associated with the project pursuant to Section 15063 of the State CEQA Guidelines. Analysis concluded that a Mitigated Negative Declaration would be required with mitigation measures for reducing potentially adverse impacts from Noise, Paleontological Resources, and Historical Resources (Archaeology) to below a level of significance.

The project proposes deviations to the development standards of the LDC for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to Government Code section 65915. Based upon substantial evidence, which includes a FAA determination of "No Hazard to Air Navigation" and the Mitigated Negative Declaration that has been prepared for the project; it has been determined that the request poses no adverse impact upon public health and safety or the physical environment. In addition, the existing structures located on the site have been determined not to be of historical significance and are not listed in the California Register of Historical Resources.

The permit for the project will include various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the LDC in effect for this project. Such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety and general welfare of persons residing or working in the surrounding area. The project will comply with the development conditions in effect for the subject property as described in Site Development Permit No. 177769 and Public Right-Of-Way Use Permit No. 305646, and other regulations and guidelines pertaining to the subject property per the LDC. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

**d. For residential and mixed residential/commercial projects within park-deficient neighborhoods as shown on Map Number B-4104 that are not exempted by SDMC Section 103.1504(h)(1)(A)(i) or Section 103.1504(h)(1)(A)(ii), the proposed development provides a minimum of 750 square feet of on-site usable recreational open space area per dwelling unit. The on-site usable recreational open space area shall not be located within any area of the site used for vehicle parking, or ingress and egress, and shall**

**be configured to have a minimum of 10 feet in each dimension. The area will be landscaped and may also include hardscape and recreational facilities.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5, within the Middletown neighborhood of the Uptown Community Plan. The project site for the mixed-use development is not within a park-deficient neighborhood as shown on Map Number B-4104.

**e. In the absence of a street light within 150 feet of the property, adequate neighborhood-serving security lighting consistent with the San Diego Municipal Code is provided on-site.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, and currently contains street light within 150 feet of the property. The permit for the project does include a condition that all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141).

**f. The proposed use will comply with the relevant regulations of the San Diego Municipal Code in effect for this site.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5, in the Planned Urbanized Development Area as cited in the Progress Guide and General Plan. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the AAOZ. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one-unit per 1,500 square foot of lot area. The project site could accommodate ten dwelling units based on the zoning designation, and between 5 and 10 dwelling units based on the Uptown Community Plan designation for the site at 15-29 du/ac. However, the project contains an Affordable Housing Density Bonus component and could accommodate eleven dwelling units based on the zoning designation and the community plan.

The project site is a triangular lot with frontage on San Diego Avenue and California Street. The majority of the site is relatively flat; however, steep slopes occur along the northeastern edge of the site. These slopes descend from California Street down to the flat portion of the site at inclinations ranging from approximately 2:1 to near vertical. The slopes vary from approximately 5 feet high at the southeastern corner of the site to nearly 35 feet high at the northwestern corner of the site. The surrounding character of the community is composed of primarily multi-family development to the east, single-family development to the north, and commercial to the west. The single-family development along the western portion of California Street contains reduced front yards due to the constraints of the site and the slopes.

The project proposes deviations to the development standards of the LDC for height, front yard setback, interior side yard setback, and street yard setback. The applicant is requesting a concession or incentive to the 30-foot height limit regulation pursuant to Government Code section 65915. The requested deviations for yard setbacks allows for the reduction in bulk and scale, and design features that are more architecturally in harmony with the surrounding neighborhood. In direct response to the Uptown Planners and the community issue regarding the height, the building height was reduced by 10-feet 8-inches by omitting one floor located at the northern property line and revising the setbacks. Therefore, other than the requested deviations, the proposed mixed-use development complies with the applicable regulations of the LDC.

**B. PUBLIC RIGHT-OF-WAY USE PERMIT – SDMC SECTION 126.0905**

**1. Findings for Public Right-of-Way Permit**

**a. The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant permission to maintain the encroachment on their property.** The traffic island at the intersection of San Diego Avenue and California Street would be reconfigured and landscaped, and the existing San Diego Transit bus stop at the corner would be relocated to the corner of San Diego Avenue and Pringle Street. The area is located within the public right-of-way and no portion of the encroachment will be located within or on private property.

**b. The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel.** The traffic island at the intersection of San Diego Avenue and California Street would be reconfigured and landscaped, and the existing San Diego Transit bus stop at the corner would be relocated to the corner of San Diego Avenue and Pringle Street. The encroachment complies with the City of San Diego Street Design Manual and provides for new street signage and stripping. The landscape complies with the LDC for visibility area and the City's Land Development Manual-Landscape Standards.

**c. The proposed encroachment is not detrimental to the public health, safety or welfare.** The traffic island at the intersection of San Diego Avenue and California Street would be reconfigured and landscaped, and the existing San Diego Transit bus stop at the corner would be relocated to the corner of San Diego Avenue and Pringle Street. The encroachment complies with the City of San Diego Street Design Manual and provides for new street signage and stripping. The landscape complies with the City of LDC for visibility area and the City's Land Development Manual-Landscape Standards. Therefore, the proposed encroachment will not be detrimental to the public health, safety or welfare.

**d. The proposed encroachment does not interfere with the record owners' use of enjoyment of their property.** The area is located within the public right-of-way and no portion of the encroachment will be located within or on private property.

**e. The proposed encroachment does not adversely affect the land use plan.** The 0.336-acre site is located on the corner of California Street and San Diego Avenue, east of Interstate 5, in the Planned Urbanized Development Area as cited in the Progress Guide and General Plan. The site is located within the Middletown neighborhood of the Uptown Community Plan, the CL-6 zone of the Mid-City Communities Planned District, and the AAOZ. The zoning designation provides for automobile oriented commercial districts in which residential or mixed-use development is also encouraged and allows for one unit per 1,500 square foot of lot area. The proposed encroachment is designed to improve the traffic flow at the intersection of San Diego Avenue and California Street.

**f. The proposed encroachment is not harmful to the aesthetic character of the community.** The proposed encroachment is immediately surrounded by commercial/retail development to the north and west along San Diego Avenue, a single-family residential development to the north along California Street, and a 2 and 3-story multi-family development

over parking that is directly to the east along California Street. Land use designations for the areas adjacent to the encroachment are predominantly commercial/mixed-use (CL-6) and multi-family residential (MR-1500) along San Diego Avenue, multi-family residential (MR-1500) to the east and single-family residential (R-1-7) to the north along California Street. The proposed encroachment is designed to improve the traffic flow at the intersection of San Diego Avenue and California Street.

**g. The proposed encroachment does not violate any other San Diego Municipal Code provisions or other local, state or federal law.** The reconfigured and landscaped traffic island at the intersection of San Diego Avenue and California Street is an approved encroachment within the public right-of-way. The proposed encroachment does not violate any other Municipal Code provisions or other local, state or federal law.

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

BE IT FURTHER RESOLVED, that Site Development Permit No. 177769 and Public Right-Of-Way Use Permit No. 305646 is granted to 1858 San Diego Avenue, LLC, Owners/Permittees, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon M. Thomas  
Shannon M. Thomas  
Deputy City Attorney

SMT:als  
04/21/06  
Or.Dept:DSD  
R-2006-904  
MMS#3235

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**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT  
PERMIT INTAKE, MAIL STATION 501

**WHEN RECORDED MAIL TO**  
**CITY CLERK**  
**MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 423860

**SITE DEVELOPMENT PERMIT NO. 177769**  
**PUBLIC RIGHT-OF-WAY USE PERMIT NO. 305646**  
**VISTA DIEGO – PROJECT NO. 59986 [MMRP]**  
**CITY COUNCIL**

This Site Development Permit No. 177769 and Public Right-of Way Use Permit No. 305646, is granted by the Council of the City of San Diego to 1858 San Diego Avenue, LLC, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] sections 126.0504 and 126.0505. The 0.336-acre site is located at 1858 and 1866 San Diego Avenue in the CL-6 zone of the Mid-City Communities Planned District within the Uptown Community Planning Area. The project site is legally described as Lots 2, 3, and 4, Block 193 of Middletown according to the map made by J.E. Jackson, Map No. CC1-1874.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct a new mixed-use development containing eleven for-sale residential units and two commercial retail spaces, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated **JUN 12 2006**, on file in the Development Services Department.

The project or facility shall include:

- a. The project proposes to demolish an existing auto repair services office, repair garage, and two existing carports to construct a new 35,813 square-foot, 4-story, mixed-use development containing eleven for-sale residential condominium and two commercial condominiums, and would remove the existing four on-street parallel parking spaces and construct twelve on-street angle parking spaces with five landscaped islands on San Diego Avenue.

- b. The traffic island at the intersection of San Diego Avenue and California Street would be reconfigured and landscaped, and the existing San Diego Transit bus stop at the corner would be relocated to the corner of San Diego Avenue and Pringle Street;
- c. The project includes deviations from the regulations for height, front yard setback, interior side yard setback, and street yard setback;
- d. The project will meet the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code) requirements by selling at least 10 percent of the units to, and at prices affordable to, households earning no more than 100 percent Area Median Income [AMI];
- e. Landscaping (planting, irrigation and landscape related improvements);
- f. Off-street parking facilities;
- 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 SDMC in effect for this site.

**STANDARD REQUIREMENTS:**

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. 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 the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder
3. 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.

4. This Permit is a covenant running with the subject property and shall be binding upon the 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.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. 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." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. 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 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 the special rights which the holder of the Permit is entitled as a result of obtaining this 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 proposed 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 permit and the condition(s) contained therein.

10. Prior to issuance of any grading permits for this project, a final subdivision map shall be recorded on the subject property.

11. This Permit shall become effective with recordation of the corresponding final subdivision map for and approval of the project site.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

12. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project.

13. As conditions of Site Development Permit No. 177769, Tentative Map No. 177770, and Public Right-Of-Way Use Permit No. 305646, the mitigation measures specified in the MMRP, and outlined in the Mitigated Negative Declaration, LDR NO. 59986 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in the Mitigated Negative Declaration, LDR NO. 59986 satisfactory to the City Manager and City Engineer. Prior to the issuance of any building permits, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Noise
- Paleontological Resources
- Historical Resources (Archaeology)

**AFFORDABLE HOUSING REQUIREMENTS:**

15. Prior to the issuance of any building permits, the Owner/Permittee shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code). The applicant has elected to meet these requirements by selling at least 10 percent of the units to, and at prices affordable to, households earning no more than 100 percent AMI.

16. Prior to receiving the first residential building permit, the Owner/Permittee must enter into an agreement with the San Diego Housing Commission to assure that the restricted units are built and occupied by the appropriate households

**ENGINEERING REQUIREMENTS:**

17. Prior to building occupancy, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP] maintenance.

18. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction BMP necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

19. Prior to the issuance of any construction permit, the Owner/Permittee shall submit a Water Pollution Control Plan [WPCP]. The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

20. The drainage system proposed for this development is private and subject to approval by the City Engineer.

21. All driveways and curb openings shall comply with City Standard Drawings G-14B, G-16 and SDG-100.

22. This project proposes to export material from the project site. All export material shall be discharged into a legal disposal site. The approval of this project does not allow the onsite processing and sale of the export material unless the underlying zone allows a construction and demolition debris recycling facility with an approved Neighborhood Use Permit or Conditional Use Permit per Land Development Code [LDC] section 141.0620(i).

23. The Owner/Permittee shall construct a bus slab in accordance with SDG-102 at the relocated bus stop location to the satisfaction of the City Engineer. The bus stop location shall be as determined by the Metropolitan Transit System.

24. The Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement, for planter areas and street furniture in San Diego Avenue right-of-way.

25. The Site Development Permit shall comply with the conditions of the final map for Tentative Map No. 177770.

26. Prior to building occupancy, the Owner/Permittee shall reconstruct the sidewalk along the project frontage satisfactory to the City Engineer.

27. Prior to building occupancy, the Owner/Permittee shall construct a City Standard curb ramp to the satisfaction of the City Engineer.

**LANDSCAPE REQUIREMENTS:**

28. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A."

29. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the City Manager for approval. Improvement plans shall take into account a 40 square-foot area around each tree which is unencumbered by utilities. Driveways,

utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

30. In the event that a foundation only permit is requested by the Owner/Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Concept Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."

31. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan. Construction plans shall take into account a 40 square-foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC section 142.0403(b)5.

32. Prior to issuance of any Certificate of Occupancy or the performance of a Final Inspection, it shall be the responsibility of the Owner/Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

33. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

34. The Owner/Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

35. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or prior to a Certificate of Occupancy or a Final Inspection.

#### **PLANNING/DESIGN REQUIREMENTS:**

36. 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 a 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.

37. 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) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.

38. A topographical survey conforming to the provisions of the SDMC 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 regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

39. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

40. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

41. The Owner/Permittee shall post a copy of the approved discretionary permits or Tentative Map in the sales office for consideration by each prospective buyer.

42. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Development Services Department, 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 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 City Manager.

43. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

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

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

46. All uses, except storage and loading, shall be conducted entirely within an enclosed building. 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.

47. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, 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.

48. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials [SDMC] 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."

#### **TRANSPORTATION REQUIREMENTS:**

49. No fewer than twenty-seven off-street parking spaces (including two accessible spaces), as well as four motorcycle parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

50. Prior to the issuance of any building permits, Owner/Permittee shall assure by permit and bond the construction of a raised landscaped island at the intersection of San

Diego Avenue and California Street with the associated signage and striping as shown on Exhibit "A," satisfactory to the City Engineer.

51. Prior to the issuance of any building permits, Owner/Permittee shall assure by permit and bond the construction of diagonal parking along property frontage on San Diego Avenue with the associated signage and striping as shown on Exhibit "A," satisfactory to the City Engineer.

52. The Owner/Permittee shall comply with all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer. Satisfying Council Policy 200-18 may require, but not be limited to, the removal/modification of existing and/or the installation of new/additional street light facilities (bulbs, fixtures, poles, etc.).

**WASTEWATER REQUIREMENTS:**

53. Prior to the issuance of any building permits, the Owner/Permittee shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of on site private sewer facilities that serve more than one ownership.

54. The Owner/Permittee shall design and construct all proposed public sewer facilities in accordance with established criteria in the most current edition of the City of San Diego Sewer Design Guide.

55. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

**WATER REQUIREMENTS:**

56. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

57. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s) on each water service serving the project, in a manner satisfactory to the Water Department Director and the City Engineer.

58. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.

59. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, as shown on approved Exhibit "A," shall be modified at final engineering to comply with standards.

**GEOLOGY REQUIREMENTS:**

60. A geotechnical investigation report will be required as grading plans are developed for the project. The geotechnical consultant must review, sign and stamp the grading plans as part of the plan review and grading permit issuance process. A Final As-Built Report is required within fifteen days of completion of grading operations.

61. Additional geotechnical information such as verification of as-graded or existing soil conditions needed for design of structure foundations will be subject to approval by Building Development Review prior to issuance of building permits.

**FACILITIES FINANCING REQUIREMENTS:**

62. Prior to building permit issuance, the Owner/Permittee shall be required to pay a Development Impact Fee [DIF] and a Housing Trust Fund [HTF]. The Owner/Permittee will be subject to the fees in effect at the time of the building permit issuance.

**INFORMATION ONLY:**

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the City Council of the City of San Diego on JUN 12 2006, 2006,  
and Resolution No. R-301532

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.

**1858 SAN DIEGO AVENUE, LLC**  
Owners/Permittees

By \_\_\_\_\_

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

PERMIT/OTHER – Permit Shell 11-01-04

Passed by the Council of The City of San Diego on JUN 12 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 12 2006

AUTHENTICATED BY:

JERRY SANDERS  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Manuel E. Kestelman, Deputy

Office of the City Clerk, San Diego, California
Resolution Number <u>R- 301532</u>