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RESOLUTION NUMBER R-~~302788~~302788

DATE OF FINAL PASSAGE JUNE 26, 2007

WHEREAS, 52nd Street, a Joint Venture composed of Larry G. Mabee, an unmarried man as to the undivided 76 percent joint venture interest, and Philip A. Ward, a married man as his sole and separate property as to an undivided 24 percent joint venture interest; and the San Diego Housing Commission, Owners, and Housing Development Partners of San Diego, Permittee, filed an application with the City of San Diego for a Planned Development Permit/Conditional Use Permit to develop a phased project. The first phase consists of an 88-unit senior apartment complex and Phase II consists of a mixed-use development composed of 152 market-rate residential units and 54,000 square feet of commercial space to be known as the 52nd Street Seniors Project, located at 4310 Dawson Avenue, legally described as Parcel 1 and 2 of Parcel Map No.19670, according map thereof filed in the Office of the County Recorder of San Diego County March 9, 2005 as File No. 2005-0193470 of Official Records, in the Central Urbanized Planned District and the City Heights Redevelopment Project Area, within the City Heights neighborhood of the Mid-City Communities Plan in the CU-2-3 zone; and

WHEREAS, on April 26, 2007, the Planning Commission of the City of San Diego considered Planned Development Permit No 426991 and Conditional Use Permit No.469823 and pursuant to Resolution No. 4247-PC voted to approve the Permit; and

WHEREAS, the Chollas Restoration Enhancement and Conservancy appealed the Planning Commission's decision to the City Council; 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; and

WHEREAS, the matter was set for public hearing on June 26, 2007, testimony hearing being heard, evidence hearing being 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 adopts the following findings with respect to Planned Development Permit No. 426991 and Conditional Use Permit No.469823:

A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
[SDMC] SECTION 1260604

1. The proposed development will not adversely affect the applicable land use plan. The 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II). The 88-unit senior housing facility would consist of eighty-seven affordable, for-rent senior housing units including seventy-two 1-bedroom units, fifteen 2-bedroom units, and one 2-bedroom resident manager unit. The eighty-seven affordable units would be affordable to seniors earning no more than 60 percent the area median income [AMI], thereby exceeding the requirements of the City of San Diego Inclusionary Affordable Housing regulations.

The proposed project site is located in the City Heights neighborhood of the Mid-City Community. The site is designated Commercial and Mixed-Use in the Mid-City Communities Plan. This designation allows up to 35 dwelling units per acre [du/ac] or up to 43 du/ac when designed as a mixed-use project. Based on the higher mixed-use density limit, the land use designation of the community plan would allow a maximum of 178 residential units, when combined with commercial use as a mixed-use project.

The total development proposed on the site would include 240 residential units and 54,000 square feet of commercial space. The project would be allowed to exceed the community plan density by utilizing the State Affordable Housing Density Bonus provisions of Government Code section 69515-65918 which allow a maximum density bonus of 35 percent, or sixty-two units, within the project site. The applicant is proposing a density increase of 33 percent, or fifty-nine residential units.

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The Plan indicates new residential development should reflect neighborhood character relative to height, building setbacks, massing, landscaping, roofs, windows, street facade and other architectural details. The proposed project has included articulation of the building elevations and has set the building back from the property line to prevent an overly dominant appearance in the neighborhood. The use of varying color tones, materials and textures would be employed to create interest in the architectural elevations.

The affordable senior housing units would be proposed within a 4-story courtyard style apartment building. Street trees would frame both street frontages on 52nd Street and Dawson Avenue and additional trees would provide screening along the northern side of the building. Recreational amenities would be provided for residents in the form of an approximately 5,000 square foot central courtyard, sundeck, and community room. The Residential Element of the Plan encourages quality senior citizen housing projects and recommends subsidized housing be located along transportation corridors such as El Cajon Boulevard. Bus routes 1 and 15 serve the proposed project along El Cajon Boulevard, with the nearest stop on El Cajon Boulevard at 52nd Street. Therefore, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II). The proposed development includes minor improvements within the public right-of-way in the Mid-City community. The proposed development would construct necessary sewer and water facilities to serve the occupants of the development; would incorporate construction Best Management Practices [BMP's] necessary to comply with Chapter 14, Article 2, Division 1 of the San Diego Municipal Code; would prepare and implement a Water Pollution Control Plan in accordance with the guidelines in Appendix E of the City's Storm Water Standards; would enter into a Maintenance Agreement for the ongoing permanent BMP maintenance; and would comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758) Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity.

In compliance with the National Environmental Quality Act [NEPA] and the Department of Housing and Urban Development Environmental Review Procedures, and the California Environmental Quality Act [CEQA] as amended and the State CEQA Guidelines, the City of San Diego has conducted an Environmental Assessment pursuant to NEPA and an Initial Study pursuant to CEQA for the proposed project. Staff determined that the proposed project may potentially have a significant environmental effect in the following areas of concern: Transportation/Circulation, Historical Resources, Public Services and Paleontological Resources. Pursuant to NEPA and CEQA the project would include measures, as described in the Mitigation Monitoring and Reporting Program, to reduce to a level of insignificance those areas for which a potential substantial impact may result as an outcome of the development of the project. With the inclusion of these features, the project would avoid or mitigate those potentially significant environmental effects previously identified. Based upon the substantial evidence documented

for the proposal, which includes the Finding of No Significant Impact and Mitigated Negative Declaration No. 27958 prepared for the project, staff has determined the project would pose no adverse impacts upon the health and safety of the public or detriments to the physical environment.

All structures constructed will be reviewed prior to construction by professional staff for compliance with all relevant and applicable building, electrical, plumbing, mechanical and fire codes to assure the structures would meet or exceed the current regulations. Further, the construction will be monitored and inspected in the field by certified inspectors. As a result of this process the proposed development will not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the regulations of the Land Development Code. The 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II).

As allowed through the approval of a Planned Development Permit, the applicant is requesting two project design deviations. The Municipal Code allows one driveway per street frontage, and a minimum driveway separation of 45 feet. The project proposes to deviate from the SDMC regulations governing the number of driveways and spacing between those driveways on Dawson Avenue, and the number of driveways on 52nd Street. The first deviation is to allow two driveways each along the frontage of both 52nd Street and Dawson Avenue. The second deviation is to allow a proposed 38-foot wide separation between the two driveways on Dawson Avenue where a minimum separation of 45 feet is required.

The parking area directly off 52nd Street is a minimal lot of seven spaces. In order to maximize the number of parking spaces provided at that location, the applicant proposed one-way entry and exit drives, along with 45-degree angled parking stalls. This parking design was proposed to reduce the width of the drive aisle to accommodate the seven parking stalls. The Dawson Street access required two driveways in order to maximize the parking count inside the parking garage. In addition, a substantial grade difference exists between the garage parking bays which requires two entrances. Joining the two entrances would require elimination of a substantial number of parking spaces and would result in awkward circulation and maneuvering inside the garage. For the reasons discussed above, the proposed design with two entrances would be superior to, and provide a much more efficient circulation pattern than, a one-entrance design, pursuant to the regulations.

The applicant is requesting use of the Density Bonus regulations to allow for affordable housing incentives to modify the required setbacks, exceed the maximum height and provide fewer than the minimum number of parking spaces. On January 1, 2005, Senate Bill [SB] No.1818 became effective, which amended Government Code Section 65915 to make numerous changes relating to the provisions of affordable housing and density bonuses. Government Code Section 65915 requires local governments to provide residential developers with incentives or concessions if the developer agrees to construct affordable housing. The 52nd Street Seniors

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project proposes to construct eighty-eight for-rent residential dwelling units in Phase I and 152 market rate residential units and 54,000 square feet of commercial space in Phase II. Of the eighty-eight dwelling units developed as a part of Phase I, eighty-seven would be affordable to seniors earning not more than 60 percent of the AMI and one unit would be a manager's unit.

The underlying zoning of the property allows the development of 181 units. Government Code section 69515-65918 allows for a density bonus of up to 35 percent of the base density, per the underlying zone. The applicant is requesting a 33 percent density increase of fifty-nine additional units for a total of 240 units. In exchange for increased density, the applicant would provide twenty units (or 11 percent of the pre-density bonus units) with rents affordable to very low-income households (rents at 30 percent of 50 percent AMI) for a period of 55 years.

In addition, Government Code Section 65915 requires the granting of three concessions or incentives for projects that include at least 15 percent of the units for persons and families of very low income in a common interest development. Government Code Section 65915 also clarifies the definition of concession or incentive to mean those reductions in development standards, zoning code requirements, design requirements or regulatory incentives or concessions that result in identifiable, financially sufficient and actual cost reductions.

Pursuant to Government Code Section 65915 the City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- The concession or incentive is not required in order to provide for affordable housing costs; or
- The concession or incentive would have a specific adverse impact upon public health and safety of the physical environment.

The applicant is requesting three concessions (setbacks, height, and parking) from requirements of the CU-2-3 zone, as allowed by the Density Bonus regulations. Each of the incentives requested, as further described below, is necessary to ensure the number of affordable units and the feasibility of the project.

Setback - The required side yard setback in the CU-2-3 zone of the Central Urbanized Planned District Ordinance is 10 feet, with an option that the project can set development on the property line, or at a 0 foot setback. In simple terms, the San Diego Municipal Code allows either a 10 foot, or a 0 foot side yard setback in the CU-2-3 zone. The project proposes a 5-foot front yard setback. Providing a 10 foot side yard setback would result in a loss of a significant number of units and parking spaces as well as severely compromise the proposed internal courtyard. Building to the property line would require fire rated walls which prohibit window openings and balconies. Essentially, building to the property line would result in a solid wall which would be detrimental to the project's aesthetic appearance to the neighborhood.

Height - The required maximum height in the CU-2-3 zone of the Central Urbanized Planned District Ordinance is 50 feet. The project proposes a maximum height of 64 feet. The senior housing site has a significant grade change from the western portion of the site along 52nd Street and the eastern portion of the site along Dawson Avenue. As a result of this grade differential the height of the proposed structure measures approximately 45 feet along the 52nd Street frontage and 67 feet along the Dawson Avenue side. To achieve the proposed eighty-eight units of senior housing while maintaining site amenities, the senior building would be a 4-story structure. Due to the existing topography, the proposed structure would exceed the 50 foot height limit as the grade declines from the 52nd Street side of the site to the Dawson Avenue side. The proposed financing for the project is the highly competitive 9 percent tax credit financing program. The number of proposed units is a key factor in determining the competitiveness of this project for tax credits. Furthermore, tax credit financing is a critical component to maintaining the units as affordable for seniors earning 60 percent of the area median income and less. Compliance with the 50 foot height limit would result in a significant reduction in the number of units, thereby making the project financially infeasible.

Parking - The required minimum number of parking spaces for the proposed senior housing project is eighty-eight spaces, and the project is proposing eighty-one spaces, or 0.92 spaces per dwelling unit. The proposed parking is being accommodated in a one level subterranean parking structure. The proposed parking plan has maximized the number of spaces within the parking structure, as well as the number of spaces located on the surface of the site. Building a second level of structured parking for the additional spaces is economically infeasible. Furthermore, reducing the number of units would impact the financial viability of the project as an affordable housing project.

Other than the proposed deviations and incentives described, as allowed through the Planned Development Permit process and Government Code Section 65915, the proposed development would comply with the applicable regulations of the SDMC, and be consistent with the recommended land-use, design guidelines, and development standards if effect for this site. Based upon substantial evidence documented for the proposal, which includes the Finding of No Significant Impact and Mitigated Negative Declaration No. 27958 prepared for the project, staff has determined the deviations and concessions would pose no adverse impacts upon the health and safety of the public or detriments to the physical environment. The requested deviations and concessions are required to provide the eighty-seven affordable housing units. Without the deviations and concessions the project would lose a substantial number of units and parking spaces and would make the project economically infeasible. Therefore, proposed development will comply with the regulations of the Land Development Code.

4. The proposed development, when considered as a whole, will be beneficial to the community. The 52nd Street Seniors project would consist of a 2 phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II). The 88-unit senior housing facility would consist of eighty-seven affordable, for-rent senior housing units including seventy-two

1-bedroom units, fifteen 2-bedroom units, and one two-bedroom resident manager unit. The eighty-seven affordable units would be affordable to seniors earning no more than 60 percent the AMI, thereby exceeding the requirements of the City of San Diego Inclusionary Affordable Housing regulations.

The proposed project site is located in the City Heights neighborhood of the Mid-City Community. The site is designated Commercial and Mixed-Use in the Mid-City Communities Plan. This designation allows up to 35 du/ac or up to 43 du/ac when designed as a mixed-use project. Based on the higher mixed-use density limit, the land use designation of the community plan would allow a maximum of 178 residential units, when combined with commercial use as a mixed-use project.

The total development proposed on the site would include 240 residential units and 54,000 square feet of commercial space. The project would be allowed to exceed the community plan density by utilizing the State Affordable Housing Density Bonus provisions of Government Code section 69515-65918 which allow a maximum density bonus of 35 percent, or sixty-two units, within the project site. The applicant is proposing a density increase of 33 percent, or fifty-nine residential units.

The Plan indicates new residential development should reflect neighborhood character relative to height, building setbacks, massing, landscaping, roofs, windows, street facade and other architectural details. The proposed project has included articulation of the building elevations and has set the building back from the property line to prevent an overly dominant appearance in the neighborhood. The use of varying color tones, materials and textures would be employed to create interest in the architectural elevations.

The affordable senior housing units would be proposed within a 4-story courtyard style apartment building. Street trees would frame both street frontages on 52nd. Street and Dawson Avenue and additional trees would provide screening along the northern side of the building. Recreational amenities would be provided for residents in the form of an approximately 5,000 square foot central courtyard, sundeck, and community room. The Residential Element of the Plan encourages quality senior citizen housing projects and recommends subsidized housing be located along transportation corridors such as El Cajon Boulevard. Bus routes 1 and 15 serve the proposed project along El Cajon Boulevard, with the nearest stop on El Cajon Boulevard at 52nd Street.

The project would provide several significant features, amenities and improvements in the Mid-City community. The project would provide eighty-eight additional senior housing units in a community which currently has a very low vacancy rate. As the community is almost completely developed, this project will not cause the construction of more housing than is needed or shift growth from other areas to this one. Increasing the housing supply would be particularly beneficial in the Mid-City Community due to the present need for affordable housing in the community. Therefore, proposed development, when considered as a whole, will be beneficial to the community.

5. Any proposed deviations pursuant to SDMC section 126.0602(b)(1) 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 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II).

As allowed through the approval of a Planned Development Permit, the applicant is requesting two project design deviations. The Municipal Code allows one driveway per street frontage, and a minimum driveway separation of 45 feet. The project proposes to deviate from the SDMC regulations governing the number of driveways and spacing between those driveways on Dawson Avenue, and the number of driveways on 52nd Street. The first deviation is to allow two driveways each along the frontage of both 52nd Street and Dawson Avenue. The second deviation is to allow a proposed 38-foot wide separation between the two driveways on Dawson Avenue where a minimum separation of 45 feet is required.

The parking area directly off 52nd Street is a minimal lot of seven spaces. In order to maximize the number of parking spaces provided at that location, the applicant proposed one-way entry and exit drives, along with 45-degree angled parking stalls. This parking design was proposed to reduce the width of the drive aisle to accommodate the seven parking stalls. The Dawson Street access required two driveways in order to maximize the parking count inside the parking garage. In addition, a substantial grade difference exists between the garage parking bays which requires two entrances. Joining the two entrances would require elimination of a substantial number of parking spaces and would result in awkward circulation and maneuvering inside the garage. For the reasons discussed above, the proposed design with two entrances would be superior to, and provide a much more efficient circulation pattern than, a one-entrance design, pursuant to the regulations.

The applicant is requesting use of the Density Bonus regulations to allow for affordable housing incentives to modify the required setbacks, exceed the maximum height and provide fewer than the minimum number of parking spaces. On January 1, 2005, SB No. 1818 became effective, which amended Government Code Section 65915 to make numerous changes relating to the provisions of affordable housing and density bonuses. Government Code Section 65915 requires local governments to provide residential developers with incentives or concessions if the developer agrees to construct affordable housing. The 52nd Street Seniors project proposes to construct eighty-eight for-rent residential dwelling units in Phase I and 152 market rate residential units and 54,000 square feet of commercial space in Phase II. Of the eighty-eight dwelling units developed as a part of Phase I, eighty-seven would be affordable to seniors earning not more than 60 percent of the AMI and one unit would be a manager's unit.

The underlying zoning of the property allows the development of 181 units. Government Code section 69515-69518 allows for a density bonus of up to 35 percent of the base density, per the underlying zone. The applicant is requesting a 33 percent density increase of fifty-nine additional units for a total of 240 units. In exchange for increased density, the applicant would

provide twenty units (or 11 percent of the pre-density bonus units) with rents affordable to very low-income households (rents at 30 percent of 50 percent AMI) for a period of 55 years.

In addition, Government Code Section 65915 requires the granting of three concessions or incentives for projects that include at least 15 percent of the units for persons and families of very low income in a common interest development. Government Code Section 65915 also clarifies the definition of concession or incentive to mean those reductions in development standards, zoning code requirements, design requirements or regulatory incentives or concessions that result in identifiable, financially sufficient and actual cost reductions.

Pursuant to Government Code Section 65915 the City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- The concession or incentive is not required in order to provide for affordable housing costs; or
- The concession or incentive would have a specific adverse impact upon public health and safety of the physical environment.

The applicant is requesting three concessions (setbacks, height, and parking) from requirements of the CU-2-3 zone, as allowed by the Density Bonus regulations. Each of the incentives requested, as further described below, is necessary to ensure the number of affordable units and the feasibility of the project.

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proposed financing for the project is the highly competitive 9 percent tax credit financing program. The number of proposed units is a key factor in determining the competitiveness of this project for tax credits. Furthermore, tax credit financing is a critical component to maintaining the units as affordable for seniors earning sixty percent of the area median income and less. Compliance with the 50 foot height limit would result in a significant reduction in the number of units, thereby making the project financially infeasible.

Parking - The required minimum number of parking spaces for the proposed senior housing project is eighty-eight spaces, and the project is proposing eighty-one spaces, or 0.92 spaces per dwelling unit. The proposed parking is being accommodated in a one level subterranean parking structure. The proposed parking plan has maximized the number of spaces within the parking structure, as well as the number of spaces located on the surface of the site. Building a second level of structured parking for the additional spaces is economically infeasible. Furthermore, reducing the number of units would impact the financial viability of the project as an affordable housing project.

Other than the proposed deviations and incentives described, as allowed through the Planned Development Permit process and Government Code Section 65915, the proposed development would comply with the applicable regulations of the SDMC, and be consistent with the recommended land-use, design guidelines, and development standards if effect for this site. Based upon substantial evidence documented for the proposal, which includes the Finding of No Significant Impact and Mitigated Negative Declaration No. 27958 prepared for the project, staff has determined the deviations and concessions would pose no adverse impacts upon the health and safety of the public or detriments to the physical environment. The requested deviations and concessions are required to provide the eighty-seven affordable housing units. Without the deviations and concessions the project would lose a substantial number of units and parking spaces and would make the project economically infeasible. 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.

B. CONDITIONAL USE PERMIT – SDMC SECTION 126.0305

1. The proposed development will not adversely affect the applicable land use plan. The 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an eighty-eight-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II). The eighty-eight unit senior housing facility would consist of eighty-seven affordable, for-rent senior housing units including seventy-two 1-bedroom units, fifteen 2-bedroom units, and one two-bedroom resident manager unit. The eighty-seven affordable units would be affordable to seniors earning no more than 60 percent the AMI, thereby exceeding the requirements of the City of San Diego Inclusionary Affordable Housing regulations.

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3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code. The 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II).

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parking garage. In addition, a substantial grade difference exists between the garage parking bays which requires two entrances. Joining the two entrances would require elimination of a substantial number of parking spaces and would result in awkward circulation and maneuvering inside the garage. For the reasons discussed above, the proposed design with two entrances would be superior to, and provide a much more efficient circulation pattern than, a one-entrance design, pursuant to the regulations.

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- The concession or incentive is not required in order to provide for affordable housing costs; or
- The concession or incentive would have a specific adverse impact upon public health and safety of the physical environment.

The applicant is requesting three concessions (setbacks, height, and parking) from requirements of the CU-2-3 zone, as allowed by the Density Bonus regulations. Each of the

incentives requested, as further described below, is necessary to ensure the number of affordable units and the feasibility of the project.

Setback - The required side yard setback in the CU-2-3 zone of the Central Urbanized Planned District Ordinance is 10 feet, with an option that the project can set development on the property line, or at a 0 foot setback. In simple terms, the San Diego Municipal Code allows either a 10 foot, or a 0 foot side yard setback in the CU-2-3 zone. The project proposes a 5-foot front yard setback. Providing a 10 foot side yard setback would result in a loss of a significant number of units and parking spaces as well as severely compromise the proposed internal courtyard. Building to the property line would require fire rated walls which prohibit window openings and balconies. Essentially, building to the property line would result in a solid wall which would be detrimental to the project's aesthetic appearance to the neighborhood.

Height - The required maximum height in the CU-2-3 zone of the Central Urbanized Planned District Ordinance is 50 feet. The project proposes a maximum height of 64 feet. The senior housing site has a significant grade change from the western portion of the site along 52nd Street and the eastern portion of the site along Dawson Avenue. As a result of this grade differential the height of the proposed structure measures approximately 45 feet along the 52nd Street frontage and 67 feet along the Dawson Avenue side. To achieve the proposed eighty-eight units of senior housing while maintaining site amenities, the senior building would be a 4-story structure. Due to the existing topography, the proposed structure would exceed the 50 foot height limit as the grade declines from the 52nd Street side of the site to the Dawson Avenue side. The proposed financing for the project is the highly competitive 9 percent tax credit financing program. The number of proposed units is a key factor in determining the competitiveness of this project for tax credits. Furthermore, tax credit financing is a critical component to maintaining the units as affordable for seniors earning 60 percent of the AMI and less. Compliance with the 50 foot height limit would result in a significant reduction in the number of units, thereby making the project financially infeasible.

Parking - The required minimum number of parking spaces for the proposed senior housing project is 88 spaces, and the project is proposing eighty-one spaces, or 0.92 spaces per dwelling unit. The proposed parking is being accommodated in a one level subterranean parking structure. The proposed parking plan has maximized the number of spaces within the parking structure, as well as the number of spaces located on the surface of the site. Building a second level of structured parking for the additional spaces is economically infeasible. Furthermore, reducing the number of units would impact the financial viability of the project as an affordable housing project.

Other than the proposed deviations and incentives described, as allowed through the Planned Development Permit process and Government Code Section 65915, the proposed development would comply with the applicable regulations of the SDMC, and be consistent with the recommended land-use, design guidelines, and development standards if effect for this site. Based upon substantial evidence documented for the proposal, which includes the Finding of No Significant Impact and Mitigated Negative Declaration No. 27958 prepared for the project, staff

has determined the deviations and concessions would pose no adverse impacts upon the health and safety of the public or detriments to the physical environment. The requested deviations and concessions are required to provide the eighty-seven affordable housing units. Without the deviations and concessions the project would lose a substantial number of units and parking spaces and would make the project economically infeasible. Therefore, the proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location. The 52nd Street Seniors project would consist of a 2-phased, mixed-use development on a vacant 4.15-acre site. The applicant proposes the construction of an 88-unit senior housing facility (Phase I) and the development of 152 market-rate residential units and approximately 54,000 square-feet of commercial (Phase II).

As allowed through the approval of a Planned Development Permit, the applicant is requesting two project design deviations. The Municipal Code allows one driveway per street frontage, and a minimum driveway separation of 45 feet. The project proposes to deviate from the SDMC regulations governing the number of driveways and spacing between those driveways on Dawson Avenue, and the number of driveways on 52nd Street. The first deviation is to allow two driveways each along the frontage of both 52nd Street and Dawson Avenue. The second deviation is to allow a proposed 38 foot wide separation between the two driveways on Dawson Avenue where a minimum separation of 45 feet is required.

The 52nd Street parking is a minimal lot of seven spaces, which are at a 45-degree angle and have a one-way entry drive. Because of the one-way entry, and entrance and exit are not required. The design was implemented to reduce the parking lot depth. The proposed minimal lot of seven parking spaces should have minimal impact on traffic flow. The Dawson Street access required two driveways in order to maximize the parking count inside the parking garage. In addition, a substantial grade difference exists between the garage parking bays which requires two entrances. Joining the two entrances would require elimination of a substantial number of parking spaces and would result in awkward circulation and maneuvering inside the garage. The proposed design would be superior and provide a benefit to the City of San Diego rather than one which only complies with the regulations.

The applicant is also requesting three concessions (setbacks, height, and parking) from requirements of the CU-2-3 zone, as allowed by the Density Bonus regulations. The required front yard setback in the CU-2-3 zone of the Central Urbanized Planned District Ordinance is either zero or 10 feet. The project proposes a 5-foot front yard setback. The required maximum height in the CU-2-3 zone of the Central Urbanized Planned District Ordinance is 50 feet. The project proposes a maximum height of 64 feet. The required minimum number of parking spaces for the proposed project is eighty-eight spaces. The project proposes eighty-one spaces. Each of the incentives requested is necessary to ensure the number of affordable units and the feasibility of the project. Additionally, the applicant has stated that meeting the SDMC requirements governing setbacks, maximum height and parking spaces would render the project financially infeasible due to the increase costs associated with a reduction in the square footage of the buildings and construction of a second level of underground parking. Other than the proposed


deviations and incentives described, as allowed through the Planned Development Permit process and Government Code Section 65915, the proposed development would comply with the applicable regulations of the SDMC, and be consistent with the recommended land-use, design guidelines, and development standards in effect for this site.

Based upon the substantial evidence documented for the proposal, which includes the Finding of No Significant Impact and Mitigated Negative Declaration No. 27958 prepared for the project, staff has determined the deviations and concessions would pose no adverse impacts upon the health and safety of the public or detriments to the physical environment. The requested deviations and concessions are required to provide the eighty-seven affordable housing units. Other than these specific deviations and incentives, the conditions of approval in the Planned Development Permit No. 426991 and Conditional Use Permit No.469823 require the continued compliance with all other relevant regulations of the City of San Diego effective for this site and have been written as said permits. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project. Therefore, the proposed is appropriate for this location.

BE IT FURTHER RESOLVED that, the above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the appeal of the Chollas Restoration Enhancement and Conservancy is denied; the decision of the Planning Commission is sustained, and Planned Development Permit No. 426991 and Conditional Use Permit No.469823 is granted to 52nd Street, a joint venture composed of Larry G. Mabee, an unmarried man as to the undivided 76 percent joint venture interest, and Philip A. Ward, a married man as his sole and separate property as to an undivided 24 percent joint venture interest; and the San Diego Housing Commission, Owner and Housing Development Partners of San Diego, Permittee.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Alex W. Sachs
Deputy City Attorney

AWS:mm
08/10/07
Or.Dept:DSD
R-2008-44
MMS#5102

R-302788

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
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: 422423

PLANNED DEVELOPMENT PERMIT NO. 426991
CONDITIONAL USE PERMIT NO. 469823
52nd STREET SENIORS [MMRP] – PROJECT NO. 27958
CITY COUNCIL

This Planned Development Permit No. 426991/Conditional Use Permit No. 469823 is granted by the Council of the City of San Diego to 52nd Street, a Joint Venture composed of Larry G. Mabee, an unmarried man as to an undivided 76 percent Joint Venture Interest, and Philip A. Ward, a married man as his sole and Separate Property as to an undivided 24 percent Joint Venture Interest; and the San Diego Housing Commission, Owners and Housing Development Partners of San Diego, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0600 and 126.0300. The 4.15-acre site is located at 4310 Dawson Avenue in the CU-2-3 Zone of the Central Urbanized Planned District of the Mid-City Communities Plan area, and within the City Heights Redevelopment Project Area. The project site is legally described as Parcel 1 and 2 of Parcel Map No. 19670, according to map thereof filed in the Office of the County Recorder of San Diego County March 9, 2005 as File No. 2005-0193470 of Official Records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to develop a phased development project. The first phase of the project consists of an 88-unit senior apartment complex and Phase II consists of a mixed-use development composed of 152 market-rate residential units and 54,000 square feet of commercial space. Both phases are described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated June 26, 2007, on file in the Development Services Department.

The project shall include:

- a. Development of a mixed-use project in two phases. Phase I shall consist of a 4-story 80,971 square-foot affordable senior apartment complex above a 1-story 23,576 square-foot partially subterranean parking garage on the southern 0.83-acre portion of a 4.15-

acre lot. Phase II of the project, which includes design guidelines, shall consist of the construction of a mixed-use development composed of 152 market rate residential units and 54,000 square feet of commercial space, on the northern, 3.32-acre portion of the project site. All Phase II applications shall require a subsequent approval at a noticed public hearing and would include any required environmental review;

- b. Eighty-seven rental units (as a part of Phase I), affordable to persons earning no more than 60 percent Area Median Incomes [AMI];
- c. Density Bonus incentives for required setbacks, maximum height and parking and deviations from the SDMC regulations governing the number of driveways serving the site on 52nd Street and Dawson Avenue, and the distance between the driveways on Dawson Avenue.
- d. Deviation tabulation shown on Title sheet of Exhibit "A" includes a deviation for the proposed two driveways on 52nd street and Dawson Avenue, where one driveway is allowed, and a deviation for a 38- foot separation between the proposed two driveways on Dawson Avenue, when a 45-foot separation is required
- e. Landscaping (planting, irrigation and landscape related improvements);
- f. Off-street parking;
- g. Phase I of the project will satisfy the inclusionary housing requirement for both phases I and II. Phase I will provide the affordable housing component and Phase II will provide commercial/retail and market rate residential; and
- h. 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. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect 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 Owner/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 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.
 5. The 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 Owner/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. Prior to the issuance of any construction permit for the Phase Two portion of this development, a subsequent discretionary action at a noticed public hearing and any required environmental review shall be approved by the City of San Diego.
 8. 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 site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
 9. Construction 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.
 10. 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" conditions(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.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A."

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. The mitigation measures specified in the MMRP, and outlined in Finding of No Significant Impact/Mitigated Negative Declaration, No. 27958, 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 Finding of No Significant Impact/Mitigated Negative Declaration, No. 27958 satisfactory to the City Manager and the City Engineer. Prior to issuance of the first construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Transportation/Circulation,
Historical Resources (Archaeology),
Public Services (Solid Waste), and
Paleontological Resources

15. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

AFFORDABLE HOUSING REQUIREMENTS:

16. Prior to receiving the first residential building permit, the applicant shall enter into an Affordable Housing Agreement with the San Diego Housing Commission to provide the affordable units on-site in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code) and the Density Bonus Program (California Government Code Sections 65915-65918 and Chapter 14, Article 3, Division 7 of the Land Development Code).

ENGINEERING REQUIREMENTS:

17. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practice [BMP's].

18. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction BMP's 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. Prior to the issuance of any construction permit the Owner/Permittee shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.

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

22. All driveways and curb openings shall comply with City Standard Drawings G14A, G-16 and SDG-100 on 52nd Street and City Standard Drawings G14B, G-16 and SDG-100 on Dawson Avenue.

23. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an engineering permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

24. Prior to issuance of a certificate of occupancy, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement for sidewalk underdrains in the public

right-of-way on 52nd Street and Dawson Avenue and enhanced sidewalk paving in the public right-of-way on 52nd Street.

LANDSCAPE REQUIREMENTS:

25. Prior to issuance of any engineering permit for right-of-way improvements, 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 feet 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.

26. Prior to issuance of any engineering permit for grading, landscape construction documents for temporary erosion control, including hydroseeding shall be submitted to the City Manager for approval. The plans shall be in substantial conformance to Exhibit "A."

27. Prior to issuance of any construction permits for structures, complete landscape construction documents consistent with the Landscape Standards, including planting and irrigation plans, details and specifications, shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan.

28. 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. Trellis for vines on the south side of the building shall be permanently installed and maintained for the life of the permit.

29. If any required landscape, including existing or new plantings, hardscape, landscape features, etcetera, 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 and prior to final inspection or issuance of Certificate of Occupancy.

30. Prior to final inspection or 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. A No Fee Street Tree Permit shall be obtained for the installation, establishment and on-going maintenance of all street trees.

PLANNING/DESIGN REQUIREMENTS:

31. No fewer than eighty-one automobile spaces in Phase I, of which six spaces shall be accessible parking spaces, shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A." Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

32. All signs associated with this development shall be consistent with sign criteria established by the City-wide sign regulations.

33. 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.

TRANSPORTATION REQUIREMENTS

34. Should the project transition to a non-senior housing use at the time of the expiration of the 55 year agreement with the Housing Commission, the project must comply with the non-senior housing parking regulations in effect at that time. Complying with parking regulations in effect at that time may require modification of the building which may include reduction in number of units and number of bedrooms per unit in order to meet the parking requirement.

35. Prior to the issuance of the first building permit for phase I, consisting of eighty-seven senior housing units, Owner/Permittee shall assure, by permit and bond, the construction of a raised median along El Cajon Boulevard from 52nd Street to 54th Street, including a prohibition of left turns at the intersections of El Cajon Boulevard/Project Access and El Cajon Boulevard/Dawson Avenue, satisfactory to the City Engineer.

36. Prior to the issuance of the first building permit for phase II, consisting of 152 units and 54,000 square feet commercial space, Owner/Permittee shall contribute a 2.71 percent fair share toward the intersection improvement of El Cajon Boulevard/54th Street, including construction of additional left turn lanes in the southbound, eastbound, and westbound directions and an additional right turn lane in the northbound direction, satisfactory to the City Engineer.

37. Prior to the issuance of the first building permit for phase II, consisting of 152 units and 54,000 square feet commercial space, Owner/Permittee shall upgrade the existing signal at the intersection of El Cajon Boulevard/52nd Street including a new signal controller, new controller cabinet, new electrical and loop detection and other signal components that need upgrade or contribute 2.63% fair share to the El Cajon Boulevard/54th Street improvement identified above, satisfactory to the City Engineer.

WASTEWATER REQUIREMENTS:

38. Prior to the submittal of any public improvement drawings, the Owner/Permittee shall submit calculations, satisfactory to the Metropolitan Wastewater Department Director, for sizing of the sewer lateral(s) from the property line to its connection with a public sewer main.

39. The Owner/Permittee shall design all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

40. 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:

41. 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 all existing unused services adjacent to the site, in a manner satisfactory to the Water Department Director and the City Engineer.

42. 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 (domestic, fire, and irrigation), in a manner satisfactory to the Water Department Director and the City Engineer.

43. Prior to the issuance of any certificate 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.

44. 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 shall be modified at final engineering to comply with standards.

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.
- This Development is subject to Development Impact Fees and Housing Trust Fund Fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego by Resolution No. R-302788, on June 26, 2007.

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

52nd STREET, Owner

By _____
LARRY G. MABEE
Owner

52nd STREET, Owner

By _____
PHILIP A. WARD
Owner

SAN DIEGO HOUSING COMMISSION
Owner

By _____
Cissy Fisher
Director Housing Finance and Development

**HOUSING DEVELOPMENT PARTNERS OF
SAN DIEGO**
Permittee

By _____
Permittee

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