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(R-2008-586)
MEET

(B)
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RESOLUTION NUMBER R- 303402

DATE OF FINAL PASSAGE FEB 05 2008

WHEREAS, N & S Development, LC, Owner/Permittee, filed an application with the City of San Diego for a planned development permit/site development permit/conditional use permit and variance to construct a public charter school for grades 6th through 8th with deviations to the development regulations for the project to be known as the King/Chavez Middle School project, located within the 500 block of 30th Street at the northwest intersection of Island Avenue and 30th Street, one block south of Market Street, and legally described as Lots 7 through 10, Block 7, Hoitt's Addition Map No. 29, in the Southeastern San Diego Community Planning area, in the MF-3000 zone and the Special Character Multi-Family Neighborhood of the Southeastern San Diego Planned District, the Airport Environs Overlay Zone, and the Transit Area Overlay Zone; and

WHEREAS, on January 17, 2008, the Planning Commission of the City of San Diego considered Public Right-of-Way Vacation No. 512753, and Planned Development Permit [PDP] No. 448699/Site Development Permit [SDP] No. 448682/Conditional Use Permit [CUP] No. 448683/Variance No. 512752, and pursuant to Resolution No. 4362-PC voted to recommend City Council approval of the Permit; 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 FEB 05 2008, 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 Planned Development Permit No. 448699/Site Development Permit No. 448682/Conditional Use Permit No. 448683/Variance No. 512752:

A. PLANNED DEVELOPMENT PERMIT

1. The proposed development will not adversely affect the applicable land use plan. The site is designated Residential (10-15 du/ac) in the Southeastern Community Plan. With respect to design, the project incorporates the use of setback and façade variation to vary the design and break the building into smaller segments as recommended by the Urban Design Element of the community plan. City staff has worked with the applicant to minimize grading and the height of retaining walls as recommended by the Urban Design Element through a variety of techniques. These techniques include incorporating a modest slope of the parking lot toward the building and by lowering the building pad by 8 feet. The visual impact of the retaining walls will be reduced by mimicking the basic stucco color from the building on the retaining wall for that portion of the wall above the trellis structure, and, using the accent stucco color from the building on the lower portion of the wall. Horizontal reveals are also proposed. These features will serve to visually relate the wall to building and break up the wall's massing. Landscape features including the use of flowering and trailing vines at the trellis structure to soften the hard edges of the structure to help screen the parking area from adjacent homes. These changes enable the retaining walls at the northwesterly edge of the building to be reduced from 19'-0" high as originally designed to 16'-0" at its highest point located behind the northwest corner of the building, reducing the visual impact to the neighborhood.

The project also incorporates an art element at the southeast corner of the building with a three foot high monument wall reflecting the profiles of Dr. Martin Luther King and Cesar Chavez flanking the name of the school thus implementing the Urban Design recommendation to incorporate neighborhood art into major public and institutional buildings.

The proposed project will not adversely affect the Southeastern San Diego Community Plan given the conformance with land use and the implementation of applicable provisions of the Urban Design Element.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project is the construction of a public charter school for grades 6th through 8th at 30th Street and Island Avenue within the Southeastern San Diego Community. A maximum of 375 students is proposed at the school. Surrounding developments include single-family and multi-family developments to the east, west and south, commercial to

the north and two elementary schools east and west of the property. The King/Chavez Academy of Excellence elementary charter school is located three blocks to the east at 415 31st Street. The Jack Kimbrough Public Elementary School, a non-charter school for grades kindergarten through 5th, is one block to the west at 321 Hoitt Street. Schools are permitted in the MF-3000 zone of the Southeastern San Diego Planned District through the processing of a CUP. The permit prepared for this development includes various conditions (and referenced exhibits) of approval relevant to achieving project compliance with the regulations and applicable ordinance provisions of the San Diego Municipal Code [SDMC] in affect for this site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general public welfare. These conditions (and referenced exhibits) include limitations upon the extent and amount of density, lot coverage, minimum parking, landscaping, site access, and required public improvements. A Mitigated Negative Declaration was prepared for the project containing mitigation measures for potential impacts to paleontological resources which will reduce such impacts to below a level of significance. The environmental analysis included a review of a biology report, geology report, drainage study, and a cultural resource report. The environmental document concluded that the project would not pose a geological hazard, that site drainage would be in conformance with applicable standards for development, and, that there were no cultural resources found to exist at the site. The project will visually improve the site through the construction of the new building with enhanced landscaped areas and screened parking. A 3'-0" high monument wall proposed for public artwork, along with enhanced landscaping and a seating area, is proposed at the intersection of 30th Street and Island Avenue. The project will provide a community benefit through the construction of a public school at this location, increasing the educational opportunities for children in the community. Therefore, the project will not be detrimental to the health, safety and welfare of those in the community.

3. The proposed development will comply with the regulations of the land development code. The proposed project is the construction of a public charter school for grades 6th through 8th on 30th Street and Island Avenue within the Southeastern San Diego Community. The project was reviewed for conformance with the underlying zone requirements, traffic, engineering, water, sewer and landscape regulations and found to be consistent with the applicable regulations. The project includes minor deviations to the fence regulations, setback requirements, height limitation and hardscape requirements as allowed under a PDP and to the floor area ratio [FAR] regulation as allowed under a Variance. The project complies with all other requirements including parking, landscaping, and required public improvements therefore the proposed project will comply with the regulations of the Land Development Code as allowed under a PDP.

4. The proposed development, when considered as a whole, will be beneficial to the community. The proposed project is the construction of a public charter school for grades 6th through 8th on 30th Street and Island Avenue within the Southeastern San Diego Community. Surrounding developments include residential homes and multi-family units, an elementary school and commercial uses. The property is currently vacant and has been used for the illegal dumping of materials. The site will be visually enhanced through the placement of the new building and enhanced landscaped areas. The school is proposed at this location to facilitate the matriculation of students at the nearby Dr. Martin Luther King Chavez Academy which houses grades kindergarten through 5th , and according to the applicant, will enable students who

currently walk to school in this low-income neighborhood to continue doing so. Several project amenities have been incorporated into the site design including an auto court with enhanced paving in the parking lot area; use of additional landscape features and accent colors to the proposed retaining walls; the proposed 3'-0" high monument wall around the corner of the site to bear the profiles of Dr. Martin Luther King Jr. and Cesar Chavez, flanking the name of the school. The proposed development, when considered as a whole, will be beneficial to the community.

5. Any proposed deviations pursuant to 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 project requires a PDP for several deviations to the fencing/retaining wall regulations, setback requirements, hardscape requirements and building height. The proposed deviations will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the zone as described below. The deviations are the following:

- (1) Overheight free-standing fence (6'-0" high wrought iron rolling driveway gate, and 6'-0" high combination solid and open fence) within the driveway visibility area along 30th Street where 3'-0" is the permitted.
- (2) Overheight combination retaining wall and free standing fence within the street side yard and front yard along 30th Street - 16'-0" maximum height (retaining wall varies from 2'-6" to 10'-0" with 6'-0" high wrought iron on top) where 6'-0" is permitted.
- (3) Overheight retaining walls in the north rear yard and the west interior side yard - 16'-0" maximum height (varies from 6'-0" to 16'-0") where 12'-0" is permitted.
- (4) Eighty-eight percent hardscaped areas within the street side setback on 30th Street where 30 percent is the permitted.
- (5) An elevator shaft and parapet roof - 25'-6" and 24'-0" in height respectively, where 24'-0" is permitted.
- (6) Lunch court/shelter with trellis above, parking lot trellis structure and two parking spaces observing a 0'-0" street setback on 30th Street where 10'-0" is required.

The PDP ordinance states the following:

The purpose of the PDP is to provide flexibility in the application of development regulations for projects where strict application of the base zone regulations would restrict design options and result in a less desirable project. The intent of the regulations is to accommodate to the greatest extent possible, an equitable balance of development types, intensities, styles, site constraints, project amenities, public improvements, community and City benefits. Deviations shall be permitted only if it is shown that similar

situations exists within the surrounding neighborhood, or, that the deviations to the regulations are beneficial to the neighborhood because of unique circumstances pertaining to the subject property.

Staff recommends approval of the project deviations. The property is a remnant parcel of land surrounded by established subdivisions with several site constraints including the topography and its location on the street. The deviations are minor in scope and will be mitigated through the use of additional site design features. The deviations will facilitate the development of public school with project amenities and providing additional educational opportunities for the children in the community.

1. Fence/Retaining Wall Height/Hardscape Deviations (Nos. 1 through 4 above)

The project proposes overheight fencing and retaining walls within the setback areas and increased hardscape areas within the street side yard. A 6'-0" high combination solid and open fence and a 6'-0" high wrought iron rolling driveway gate are proposed within the driveway visibility area adjacent to the parking lot. Along both the 30th Street (street side yard) and Island Avenue (front yard) frontages, a retaining wall would vary in height from 2'-6" to 10'-0" with a 6'-0" of wrought iron fence on top, reaching an overall height of 16'-0". The maximum 10-foot high retaining wall functions as the foundation for the proposed lunch court. Number 6 above.

The placement of the gate and fence within the triangular visibility areas adjacent to the driveway would not inhibit pedestrian traffic on the street, nor create a traffic concern. The gate is 100 percent open and the wall is 50 percent open on top, allowing site visibility to pedestrians and individuals driving to or from the facility. On 30th Street, the curb-to-property line distance is 14'-0" where 10'-0" is the standard. This area includes a 4'-10" wide landscaped area next to the fence at the driveway, followed by a 5'-0" sidewalk, and a 4'-2" landscaped parkway next to the curb. This additional area provides increased pedestrian and vehicular visibility for vehicles entering or exiting the facility. The proposed free standing fencing will also assist in providing screening for the parking lot as well as a security measure as recommended by the San Diego Police Department.

Retaining walls are proposed within the parking lot on the north side of the property and behind the west side of the building varying in height from 6'-0" at the northwest corner of the site to 16'-0" within the parking lot area where 12'-0" is permitted within a setback. The wall was re-designed from its original height of 19'-0" with modifications to address visual quality issues, bulk, scale and height concerns. The applicant has indicated that, due to the site constraints and economic concerns, it was not feasible for the wall to be modified into two or more walls with horizontal separations. Modifications included adjusting the parking lot grade to lower the height of the wall, providing architectural and color elements to break up the wall's appearance, as well as increased landscaped areas. The wall as currently proposed utilizes the basic stucco color from the building above the trellis structure to lighten the wall. The use of the accent stucco color

with horizontal reveals from the main building is proposed to break up the wall's massing and to visually relate it to the building. Flowering and trailing vines at the trellis structure at the base of the wall, as well as landscaping within the slopes above the retaining wall are utilized to soften the hard edges of the structure and to help screen the parking area from adjacent homes. All of the walls on the site will be screened by increased landscaping, the trellis structure within the parking lot, the proposed building, or a combination thereof.

The SF zone requires no more than 30 percent hardscape materials (1,755 square feet) within a street yard setback. The project proposes 88 percent hardscaping within the street side yard on 30th Street (245 square feet) to support the lunch court area, providing an outdoor seating area for students. The purpose of the maximum hardscape requirement is to provide 70 percent landscaped areas within a street setback. The project proposes additional landscaping within the 14'-0" curb-to-property line distance, approximately, 9'-0" in width with a 5-foot wide sidewalk, achieving the intent of the hardscape regulation to provide increased landscaping. The hardscape requirement is being met within the front yard on Island Avenue.

2. *Building Height Deviation (No. 5 above)*

The proposed building is consistent with all other development regulations including setbacks, coverage and the supplemental design standards of the PDO including off-setting planes and the 2-story height limit. However, the parapet of the building will be 24'-6" in height and an elevator shaft will reach a height of 25'-6". This deviation accommodates the elevator shaft which is proposed within the interior of the roof. The 0'-6" increase in the roof parapet is minor in scope and the overheight condition should not be discernable, therefore no adverse visual height impact is created.

3. *Lunch Court/Trellis Structure and Parking Spaces Within the Street Setbacks (No. 6 above)*

The subject property is a corner lot with its front yard on Island Avenue and the street side yard on 30th Street. The lunch court with trellis above, a 10-foot portion of a second trellis proposed within the parking lot, and, two parking spaces, would observe a 0'-0" street side yard where 10'-0" is required. The lunch court is an open structure supported by columns with trellis above, the base of which is elevated approximately 10'-0" above street grade at the highest point. A total of twenty parking spaces are required and proposed for the development. A deviation to allow two spaces within the street side setback allows the development to meet the minimum parking requirement. The site is constrained as described above by its topography, location on the street, adjacent developments, as well as the restrictive regulations of a single-family zone. The encroachments are mitigated by landscaping around the perimeter of the site and the 14'-0" curb to property line distance, 4'-0" of which function as an additional visual setback where a 10'-0" curb-to-property line distance would normally exist.

The PDP Ordinance contains additional criteria for developments which require that the overall design of developments be comprehensive and demonstrate the relationship between on-site and off-site developments. Structures should avoid repetitious patterns that are inconsistent with the goals of the land use plan. The scale of the developments should be consistent with the neighborhood and should represent the dominant development pattern in the area or as called for in the community plan. Landscaping should be used to soften the appearance of blank walls and enhance the pedestrian scale of the development.

The proposed building and site design is consistent with each of these design criteria. The building is two stories which are consistent with other residential and commercial buildings in the area. Parking areas were placed north of the building behind existing commercial developments to maximize the screening of the vehicles from adjacent residential uses. Façade treatments including architectural off-setting plans, varied building colors, and retaining wall treatments to match the accent colors of the building, are elements that assist in providing a more pedestrian friendly design on the street facing facades. Enhanced landscaped parkways are proposed on both streets which provide additional screening for the site walls, building and parking areas. The site layout was re-designed to lower the heights of the retaining wall eliminating potential adverse visual impacts and, to be consistent with the recommendations of the *Urban Design Element of the plan*. The development is consistent with several goals and recommendations of the community plan as described above Planned Development Permit Finding No. 1.

B. SITE DEVELOPMENT PERMIT

1. Findings for all Site Development Permits:

a. **The proposed development will not adversely affect the applicable land use plan.** The proposed development will not adversely affect the applicable land use plan as described above in Planned Development Finding No. 1.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed development will not be detrimental to the public health, safety, and welfare as described above in Planned Development Permit Finding No. 2.

c. **The proposed development will comply with the applicable regulations of the land development code.** The proposed development will comply with the applicable regulations of the Land Development Code as described above in Planned Development Permit Finding No. 3.

C. SOUTHEASTERN SAN DIEGO PLANNED DISTRICT

1. The proposed use and project design meet the purpose and intent of this division, comply with the recommendations of the Southeastern San Diego Community Plan, and will not adversely affect the general plan or other applicable plans adopted by the City Council. The proposed development and project design will meet the purpose and

intent of this division, comply with the recommendations of the Southeastern San Diego Community Plan and will not adversely affect the General Plan or other applicant plans adopted by the City Council as described above in Planned Development Finding No. 1.

2. The proposed development shall be compatible with existing and planned land use on adjoining properties and shall not constitute a disruptive element to the neighborhood and community. In addition, architectural harmony with the surrounding neighborhood and community shall be achieved as far as practicable. The proposed development is the construction of a charter school for grades 6th through 8th at 30th Street and Island Avenue in the Southeastern San Diego Community. Surrounding developments across 30th Street and Island Avenue are 1- and 2-story, single-family homes and duplexes. Abutting the site to the north is a commercial retail establishment fronting on Imperial Avenue. The King/Chavez Public Elementary school for grades kindergarten through 6th, is one block to the west. The building would consist of stucco finish siding, painted earth tone colors, facade modulated accents, and aluminum windows with anodized finish. The structure would contain three levels consisting of a basement with an exercise room, computer lab, offices and restrooms. Schools are permitted at this location through the processing of a Conditional Use Permit. Hours of operation for the school are Monday through Friday, from 8:00 a.m. to 4:00 p.m. Three blocks east of the subject property is the King/Chavez Elementary School for grades kindergarten through 5th. The construction of the proposed middle school will facilitate the matriculation of students at nearby elementary school. Therefore, the proposed development shall be compatible with existing and planned land use on adjoining properties and shall not constitute a disruptive element to the neighborhood and community. Architectural harmony with the surrounding neighborhood and community shall be achieved as far as practicable as the building is consistent with other 2 story structures in the area.

3. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area, and will not adversely affect other property in the vicinity. The proposed use, because of conditions that have been applied to it, will not be detrimental to the public health, safety, and general welfare as described above in Planned Development Permit Finding No. 2.

4. The proposed use will comply with the relevant regulations of the Municipal Code. The proposed use will comply with the applicable regulations of the Municipal Code as described above in Planned Development Permit Finding No. 3.

D. VARIANCE FINDINGS:

1. There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations. The project is the construction of a public charter school for grades 6th through 8th on a 0.48-acre (20,885 square feet) vacant site. The site is designated and zoned for residential development. Unlike other public schools in the immediate area, the proposed charter school is not exempt from the zoning regulations as it is proposed on privately owner property. The property is also located within the Special Character Multi-Family Neighborhood area which is

an overlay which contains additional requirements, including a maximum FAR of 0.50 percent. The development includes a request to allow a FAR of 0.71 percent (14,787 square feet) where 0.50 percent (10,443 square feet) is the maximum allowed. The property is located at the northwest corner of Island Avenue and 30th Street. Adjacent to the site 30th street slopes downward in a southerly direction from Market Street which is located one block to the north. The property has a steeply sloping terrain and is elevated approximately 14'-0" to 20'-0" above both street grades. The geotechnical report prepared for the project concluded that the site's topography was likely created by the construction of the adjoining developments and public streets. The property is a remnant parcel of land surrounded by single-family homes adjacent to the west and a commercial center to the north. The unusual topography, lot area, location on the downhill portion of the street and the infill nature of the site, are conditions that are not of the making of the applicant and do not generally apply to other public school sites in the immediate area.

2. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises. The project is the construction of a public school on a vacant lot in the Southeastern San Diego community. Special conditions exist at this location including the property's varied terrain, lot size in relation to other school sites, location on the sloping portion of the street and building constraints associated with an infill development. The proposed public school is subject to the residential zone regulations including the provisions of the Special Character Multi-Family Neighborhood regulations which require conformance with certain SF-5000 zone regulations, including FAR. These conditions are such that strict adherence to all of the single-family zone regulations would deny the applicant reasonable use of the premises. The subject property contains 0.48 acres, or 20,885 square feet. The proposed building totals 18,497 square feet, including a basement which is exempt from FAR. The project would result in an FAR of 0.71 percent (14,787 square feet) where 0.50 percent (10,443 square feet) is permitted for this site. The property is zoned MF-3000, which allows an FAR of 1.0 percent, or 20,885 square feet for the site, however the property is restricted to 0.50 percent. Strict application of the development regulations would deprive the property of privileges enjoyed by other public school sites in the vicinity. The proposed development is an institutional use designed to be as consistent with all of the applicable residential zone regulations as feasible including building setbacks for the primary building, lot coverage, and off-setting planes. A public school building has additional structural, exiting, accessibility and functional space needs requirements compared to that of a residential structure, further limiting design flexibility. The 0.48-acre site is a relatively small site for a school use. The intent of the FAR regulation is to limit the bulk and scale of buildings in relation to the size of the lot. The building proposes several façade articulations, varied building colors and materials which also assist in breaking up the building mass in keeping with the purpose and intent of the FAR regulation. Therefore, the variance request to exceed the allowable FAR is the minimum variance necessary to allow reasonable use of the land and premise.

3. The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare. The project is the construction of a public charter school at 30th Street and Island Avenue for middle school grades 6th through 8th. The granting of the variance will be in

harmony with the general purpose and intent of the regulations. The purpose of the floor area regulation is to limit the bulk and scale of buildings. The property is subject to the 0.50 percent maximum allowable FAR required for residential buildings. The building proposes several façade articulations, varied building colors and materials which also assist in breaking up the building mass in keeping with the purpose and intent of the FAR regulation. The granting of the variance will be not be detrimental to the public health, safety, or welfare as described above in Planned Development Permit Finding No. 3.

4. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan. The project is the construction of a public charter school on a vacant lot within the Southeastern San Diego Community area. The property is not within the coastal zone. The granting of the variance will not adversely affect the applicable land use plan as described above in Planned Development Permit Finding No. 1.

E. CONDITIONAL USE PERMIT FINDINGS

1. The proposed development will not adversely affect the applicable land use plan. The proposed development will not adversely affect the applicable land use plan as described above in Planned Development Finding No. 1.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed use, because of conditions that have been applied to it, will not be detrimental to the public health, safety, and general welfare as described above in Planned Development Permit Finding No. 2.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code. The proposed use will comply to the maximum extent feasible with the regulations of the Municipal Code as described above in Planned Development Permit Finding No. 3.

4. The proposed use is appropriate at the proposed location. The proposed use is appropriate at this location as described above in Planned Development Finding No. 4.

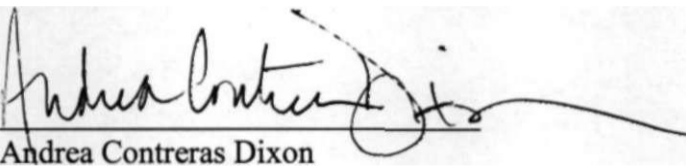
The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Planned Development Permit No. 448699/Site Development Permit No. 448682/Conditional Use Permit No. 448683/Variance No. 512752 is

(R-2008-586)

granted to N & S Development, L.C., Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

ACD:pev
01/18/08
Or.Dept:DSD
R-2008-586
MMS #5785

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 42-7833

PLANNED DEVELOPMENT PERMIT NO. 448699
SITE DEVELOPMENT PERMIT NO. 449682
CONDITIONAL USE PERMIT NO. 448683
VARIANCE NO. 512752
KING/CHAVEZ MIDDLE SCHOOL – PROJECT NO. 130159 [MMRP]
CITY COUNCIL

This planned development permit/site development permit/conditional use permit/variance is granted by the City Council of the City of San Diego to N & S Development, L.C., Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 143.0401, 126.0301, 126.0801 and 126.0501. The 0.48-acre site is located within the 500 block of 30th Street, at the northwest intersection of Island Avenue and 30th Street, one block south of Market Street in the MF-3000 zone and the Special Character Multi-Family Neighborhood of the Southeastern San Diego Planned District, the Airport Environs Overlay Zone and the Transit Area Overlay Zone of the Southeastern San Diego Community Planning area. The project site is legally described as Lots 7 through 10, Block 7, Hoitt's Addition Map No. 29.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct a 2-story charter school building for grades 6th through 8th for a maximum of 375 students, with deviations to the development regulations, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated FEB 05 2008, on file in the Development Services Department.

The project or facility shall include:

- a. Construction of a 2-story, 14,787-square-foot, school building which excludes a 3,710-square-foot basement exempt from floor area ratio, for grades 6th through 8th, for a maximum of 375 students with accessory improvements including a roofed lunch structure, 20-space parking lot, and trellis structure over the parking lot;

- b. A Public-Right-Of-Way Vacation of a 10-foot wide segment of Island Avenue as shown in Exhibits "A" and "B" and Drawing No. 20251-B;
- c. A Planned Development Permit to allow the following deviations:
1. Overheight free-standing fence (6'-0" high wrought iron rolling driveway gate, and 6'-0" high combination solid and open fence) within the driveway visibility area along 30th Street where 3'-0" is permitted;
 2. Overheight retaining walls in the north rear yard and the west interior side yard 16'-0" maximum height (varies from 6'-0" to 16'-0") where 12'-0" is permitted.
 3. Overheight combination retaining wall and free standing fence within the street side yard and front yard along 30th Street - 16'-0" maximum height (retaining wall varying in width from 2'-6" retaining wall to 10'-0", with 6'-0" high wrought iron fence on top) where 6'-0" is permitted;
 4. Eighty-eight percent hardscaped areas within the street side setback on 30th Street where 30 percent is the maximum allowed;
 5. An elevator shaft on the roof of the building, 25'-6" in height, and parapet roof 24'-6" in height, where 24'-0" is the maximum allowed;
 6. A lunch court/shelter with trellis above, a parking lot trellis structure and two parking spaces observing a 0'-0" street setback on 30th Street where 10'-0" is required;
- d. Variance to allow 0.71 floor area ratio (14,787 square feet) where 0.50 (10,443 square feet) is the maximum allowed (3,710-square-foot basement not included in floor area ratio);
- e. Landscaping (planting, irrigation and landscape related improvements);
- f. Off-street parking facilities; and
- g. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the 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 the 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. 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.
8. 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.
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" 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.

10. The applicant 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 applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant 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, applicant 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 applicant 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 applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. 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.

12. The mitigation measures specified in the MMRP, and outlined in Mitigated Negative Declaration No. 130159 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

13. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 130159. Prior to issuance of the first grading permit, 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 Paleontology.

14. 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.

LANDSCAPE REQUIREMENTS:

15. Prior to issuance of any construction permits for grading, the Permittee or Subsequent Owner shall submit landscape construction documents for the revegetation and hydroseeding of all disturbed land in accordance with the Land Development Manual 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."

16. Prior to issuance of any construction permits for public right-of-way improvements, the Permittee or Subsequent Owner shall submit complete landscape construction documents for right-of-way improvements to the City Manager for approval. Improvement plans shall take into account a 40 sq-ft 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.

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

18. Prior to issuance of any construction permits for buildings including shell, the Permittee or Subsequent Owner shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual Landscape Standards to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan.

19. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the 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.

20. The Permittee or Subsequent Owner shall maintain all landscape 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.

21. The Permittee or Subsequent Owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development

Manual 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.

22. 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, the Permittee or Subsequent Owner is responsible to repair and/or replace any landscape 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.

23. Prior to issuance of any construction permits for buildings, the Permittee or Subsequent Owner shall submit complete construction drawings and specifications for overhead trellis structure over parking area. Trellis structure shall serve to shade the parking surface and screen the area from adjacent residential. The trellis structure shall cantilever a minimum of 10 feet from the face of adjacent retaining walls. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan.

ENGINEERING REQUIREMENTS:

24. Prior to the issuance of any building permit, the applicant shall replace the existing curb with City standard curb and gutter, along the entire project frontage on 30th Street, per Standard Drawings G-2 and SDG-100, satisfactory to the City Engineer.

25. Prior to the issuance of any building permit, the applicant shall replace the existing pedestrian ramp with City standard pedestrian ramp with truncated domes, at the northwest corner of Island Avenue and 30th Street, satisfactory to the City Engineer.

26. Prior to the issuance of any building permit, the applicant shall construct a 24 foot wide City standard driveway, on 30th Street, per Standard Drawings G-14B, G-16 and SDG-100, satisfactory to the City Engineer.

27. Prior to the issuance of any building permit, the applicant shall obtain an Encroachment Maintenance and Removal Agreement for the private sidewalk underdrains, slopes, landscape and irrigation located within the City's right-of-way.

28. Prior to the issuance of any construction permit, the applicant shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP's] maintenance, satisfactory to the City Engineer.

29. Prior to the issuance of any construction permit, the applicant 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.

30. Prior to the issuance of any construction permit, the applicant shall incorporate and show the type and location of all post construction BMP's on the final construction drawings, consistent with the approved Water Quality Technical Report.

31. The drainage system for this project shall be private and will be subject to approval by the City Engineer.

32. Prior to the issuance of any building permits, the applicant shall obtain a bonded grading 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.

33. The development is subject to the provisions of Public-Right-Of-Way Vacation No. 512753, as shown on B-Sheet Number 20251-B.

WASTEWATER REQUIREMENTS:

34. The developer shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

35. 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:

36. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of a new 12-inch diameter water main in Island Avenue right-of-way adjacent to the project site from Dodson Street to 30th Street, in a manner satisfactory to the Water Department Director and the City Engineer.

37. 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) as needed, and the removal of any existing unused services, within the Island Avenue right-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

38. 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) within the development, in a manner satisfactory to the Water Department Director and the City Engineer.

39. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of a new fire hydrant(s) at locations satisfactory to the Fire Department Marshall and the City Engineer.

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

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

PARK AND RECREATION REQUIREMENTS:

42. Permittee is required to abide by City Ordinance No. O-17662, an agreement for construction, operation, and lease of turf field and recreation facilities at King Elementary School #6. District Use of Property, that states that the District shall have exclusive use of property Monday through Friday, on each and every day that school is in session except that City shall have the right of entry for maintenance purposes during regular school hours as mutually agreed upon by City and District for recreational use of King/Chavez Academy of Excellence."(located at 321 Hoitt Street) by the proposed King/Chavez Middle School.

TRANSPORTATION REQUIREMENTS:

43. No fewer than twenty off-street 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.

44. This project 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. This may require (but not be limited to) installation of new street light(s), upgrading light from low pressure to high pressure sodium vapor and/or upgrading wattage.

45. The proposed parking lot located on Lots 9 and 10, shall be used solely by the King/Chavez Middle School and cannot be sold or leased for any other purpose.

PLANNING/DESIGN REQUIREMENTS:

46. Prior to issuance of building permit the applicant shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration [FAA].

47. 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 Owner/Permittee.

48. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or Citywide sign regulations.

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 may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on FEB 05 2008,
by Resolution No. R- 303402.

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.

N & S DEVELOPMENT, L.C.
Owner/Permittee

By _____

By _____

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

PERMIT/OTHER - Permit Shell 11-01-04