

RESOLUTION NUMBER R- 304440

DATE OF FINAL PASSAGE NOV 18 2008

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO GRANTING SITE DEVELOPMENT PERMIT
NO. 524637 FOR THE PALLADIUM AT AERO PROJECT NO.
148904.

WHEREAS, Westcore Sandrock, LLC, Owner/Permittee, filed an application with the City of San Diego for site development permit [SDP] No. 524637 to subdivide and develop 412 residential units and approximately 5,190 square feet of retail development known as the Palladium at Aero Project [Project], located at 8655 Aero Drive in the Kearny Mesa Community Plan area, in the IP-2-1 zone (rezoned to the RM-3-9 zone) and legally described as Lots 3, 4, and 5 of Research Park Subdivision Addition, in the City of San Diego, County of San Diego, State of California, according to Map No. 6386, filed in the Office of the County Recorder of San Diego County, June 12, 1969, and

WHEREAS, on October 23, 2008, the Planning Commission of the City of San Diego considered SDP No. 524637 and pursuant to Resolution No. 4460-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 required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on November 18, 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 SDP No. 524637:

A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL COSE [SDMC] SECTION 126.0504

1. Findings for all Site Development Permits

a. The proposed development will not adversely affect the applicable land use plan. The Palladium at Aero Project will develop 7.52 acres within the Kearny Mesa community with 412 multiple-family dwelling units and approximately 5,190 square feet of commercial development. The proposed uses on the site will be consistent with the Kearny Mesa Community Plan, with the concurrent approval of the rezone and community plan amendment associated with the permit. The proposed 412 dwelling unit project implements the land use plan by developing a high density development consistent with the RM-3-9 zone and Kearny Mesa Community Plan land use designation of high density residential within the density range of 45 to 74 dwelling units per acre [du/ac]. The project also includes a commercial element of 5,190 square-feet consistent with the accessory uses allowed by the RM 3-9 zone. The Project will assist in the preservation and enhancement of the Kearny Mesa community as an employment center by removing outdated and functionally obsolete buildings and developing a feasible and marketable residential development, which will provide affordable and workforce housing consistent with the zone and land use plan. The project will also pay its fair share fees for fire services and park facilities.

Being determined the project is consistent with the General Plan and Kearny Mesa Community Plan, the proposed development will not adversely affect the General Plan or Kearny Mesa Community Plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The Palladium at Aero project will develop 7.52 acres within the Kearny Mesa community with 412 multiple-family dwelling units and approximately 5,190 square feet of retail development. The proposed development requires a Site Development Permit and will contribute its fair share cost towards construction of improvements in the Kearny Mesa community and also make contributions to the Serra Mesa community. The proposed development will enter into a maintenance agreement for the ongoing permanent Best Management Practices [BMP] maintenance; will 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), and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity; and will provide a geotechnical report in accordance with the City of San

Diego's Technical Guidelines for Geotechnical Reports for the review and approval by the City Engineer. All structures constructed on the 7.52 acre property will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. The Project will also pay its fair share fees for fire services and park facilities. As such the proposed development will not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with the applicable regulations of the Land Development Code. The Palladium at Aero Project will develop 7.52 acres within the Kearny Mesa community with 412 multiple-family dwelling units and approximately 5,190 square feet of retail development. The proposed development complies with the regulations of the RM-3-9 zone and site-specific development regulations for the Palladium at Aero parcels, as allowed through the approval of three deviations with a Site Development Permit. Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site and have been written as such into Site Development Permit No. 524637. Development of the property will meet all requirements of all relevant regulations. 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. In these ways the proposed development will comply with the applicable and relevant regulations of the Land Development Code.

2. Supplemental Findings--Deviations for Affordable/In-Fill Housing Projects and Sustainable Buildings

a. The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City, and/or the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants. With the approval and construction of proposed project for 412 apartment units, forty-two apartment units, or 10 percent of the total dwelling units provided, would be set aside as affordable to persons earning no more than 65 percent of the average median income [AMI] through the imposition of conditions of approval and an affordable housing agreement between the owner and the San Diego Housing Commission. In addition to the 370 apartment units available for rent at market rates, the forty-two apartments restricted through the agreement with the Housing Commission will add to the availability of affordable work-force housing in the community and in the City at large. The affordability of work-force housing is a critical issue affecting the long-term health of the local and regional economy. The addition of forty-two new housing units at terms and prices affordable to those persons within the economic range of 65 percent AMI will assist the City to remain economically healthy and vibrant. Further, the addition of the remaining 370 apartment units rented at market rates will also assist in achieving the goal of economic health and provide much needed housing at a time when the City Council has declared there to be a housing crisis. Furthermore, the project will construct solar canopy structures with photovoltaic panels capable of generating electricity on the roof deck of the parking structure. These photovoltaic panels will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources.

b. The development will not be inconsistent with the purpose of the underlying zone. The proposed project will be consistent with the purpose of the RM-3-9 zone which allows for residential development at the proposed density, building height, parking ratio, site improvements, and landscaping together with the approximately 5,190 square feet of commercial retail space as an accessory use. The deviations required to approve the architectural and site design for the proposed project will result in a better design by allowing for additional architectural features, site design and an alternative to trees on the top level of a parking garage to create a positive effect in the neighborhood, community, and City at large. The deviations which allow an alternative to the tree spacing requirement on the top level of a parking structure roof deck and the minimum street side yard setback will be superior than by meeting the exact requirement of the zoning regulations, see finding 2.c. below.

c. Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The project will include two deviations: (1) to allow solar trees as an alternative to the landscape requirement of planting trees on the roof deck of the parking structure in the vehicle use area; and (2) to allow the building to observe a street side setback along Aero Drive less than required by the RM-3-9 zone. The deviation on the parking structure is to allow the construction of solar tree structures for all parking spaces located on the top deck of the parking structure rather than providing trees in raised containers to meet the tree distribution in parking lots required by the City-wide Landscape Regulations. The purpose of providing trees within parking lots is to shade the pavement and thereby reduce the heat island effect of large expanses of pavement and to improve the aesthetics of parking lots by including living trees. Solar trees are a canopy structure with photovoltaic panels capable of generating electricity and will provide a superior quantity of shading on the parking structure deck when compared to living trees in this location. Trees installed in containers on the top deck of the parking structure will not attain a height and or breadth capable of providing an equivalent amount of shade as will be permanently provided by solar tree structures. The solar tree structures will also reduce the water consumption necessary to support the project by not requiring the water necessary to support living landscaping on the roof deck of the parking structure. The RM-3-9 zone requires a street side yard setback along Aero Drive of ten percent of the lot width or a minimum of 46 feet 6 inches. The project will provide a minimum of 30 feet. The street side yard setback along Aero Drive is consistent with other existing buildings on Aero Drive at a minimum setback of 30 feet. In addition, a significant portion of the building will be setback substantially more than 46 feet 6 inches. The project is required to provide a third eastbound travel lane on Aero Drive and increase the curb to property line distance from the existing 10 feet to 15 feet. These project requirements create the need for a set back deviation. In addition, the project will observe a 50-foot side yard setback on the southern property line which is 45 feet above the minimum required by the RM-3-9 zone. This increase of side yard setback will serve as a physical and visual buffer from the adjacent single-family homes. The setback deviation along Aero Drive will inject additional visual and pedestrian interest to the streetscape and results in a shift of the building further to the north of the existing single-family neighbors. The RM-3-9 zone requires a front yard setback along Sandrock Road of 20 feet for 50 percent of the building face and the remainder of the building may be setback at 10 feet. The project proposes a 20-foot front yard setback along 49 percent of the frontage and less than 20 feet for the remaining 51 percent of the frontage. The setback

deviation along Sandrock Road would increase the visual interest of the streetscape and results in greater articulation of the building on the site.

In addition to the 370 apartment units available for rent at market rates, the 42 apartments restricted through the agreement with the Housing Commission will add to the availability of affordable work-force housing in the community and in the City at large. The affordability of work-force housing is a critical issue affecting the long-term health of the local and regional economy. The addition of 42 new housing units at terms and prices affordable to those persons within the economic range of 65 percent AMI will assist the City to remain healthy and vibrant economically. Further, the addition of the remaining 370 apartment units rented at market rates will also assist in achieving the goal of economic health. As a result of the approved deviations and other design features of the project, the proposed project will conform to the overall policies, regulations and purpose and intent of the Site Development regulations. The design will result in a more desirable project for the City and the community than would be realized through the strict application of the RM-3-9 zone development regulations at this location.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Site Development Permit No. 524637 is granted to Westcore Sandrock, LLC, Owner/Permittee, under the terms and conditions set forth in the permit which is made a part of this resolution.

APPROVED AS TO FORM: MICHAEL J. AGUIRRE, City Attorney

By 

Nina M. Fain
Deputy City Attorney

NMF:mm
11/21/08
Or.Dept:DSD
R-2009-602
MMS#9671

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: 430078

SITE DEVELOPMENT PERMIT NO. 524637
PALLADIUM AT AERO – PTS NO. 148904 [MMRP]
CITY COUNCIL

This Site Development Permit No. 524637 is granted by the Council of the City of San Diego to WESTCORE SANDROCK, LLC, a Delaware limited liability company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The 7.52 acre site is located at 8655 Aero Drive within the RM-3-9 Zone (formerly IP-2-1 Zone) of the Kearny Mesa Community Plan. The project site is legally described as Lots 3, 4, and 5 of Research Park Subdivision Addition, in the City of San Diego, County of San Diego, State of California, according to Map No. 6386, filed in the Office of the County Recorder of San Diego County, June 12, 1969.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to subdivide and develop 412 apartment units and 5,190 square feet of retail development for eating and drinking establishments, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated November 18, 2008, on file in the Development Services Department.

The project shall include:

- a. The subdivision and development of 412 apartment units and approximately 5,190 square feet of retail development as accessory uses to the primary use;
- b. The project is approved with two deviations: (1) to allow the construction of solar tree structures with photovoltaic panels for electricity generation for all parking spaces located on the top deck of the parking structure rather than providing trees in raised containers to meet the tree distribution in parking lots required by the City-wide Landscape Regulations; and (2) to allow a minimum street side yard setback of thirty feet along Aero Drive;

- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking;
- e. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act, 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 (36) 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 effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The 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 Development Services Department.
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" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. 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.

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 [MND] No. 148904 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 MND No. 148904, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading 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:

- Health and Public Safety**
- Public Utilities (Waste Management)**

- 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.

AFFORDABLE HOUSING REQUIREMENTS:

- 15. Prior to issuance of the first residential building permit, the Owner/Permittee shall enter into an Agreement with the San Diego Housing Commission to ensure compliance with the affordable housing requirements of the City's Inclusionary Affordable Housing Regulations and associated Procedures Manual.

ENGINEERING REQUIREMENTS:

- 16. Prior to the building occupancy, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMPs] maintenance.
- 17. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate any construction BMPs necessary to comply with Chapter 14, Article 2, Division 1, Grading Regulations, of the San Diego Municipal Code, into the construction plans or specifications.
- 18. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate and show the type and location of all post-construction BMPs on the final construction drawings in accordance with the approved Water Quality Technical Report.
- 19. The Site Development Permit shall comply with the conditions of Vesting Tentative Map No. 524641.

20. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the replacement of existing curb and gutter with City Standard curb and gutter adjacent to the site on Aero Drive and Sandrock Road, satisfactory to the City Engineer.
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 G-14B, G-16, and SDG-100.
23. Prior to building occupancy, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement, for enhanced pavement and curb outlets.
24. Prior to the issuance of a building permit the Owner/Permittee shall obtain a 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.
25. Development of this project shall 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 accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.
26. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.
27. Whenever street rights-of-way are required to be dedicated, the Owner/Permittee shall provide the right-of-way free and clear of all encumbrances and prior easements. The Owner/Permittee must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
28. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the construction of non-contiguous sidewalk adjacent to the site on Aero Drive and Sandrock Road, satisfactory to the City Engineer.

29. Prior to the issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's Account Number and Drawing Number. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.

30. Prior to building permit issuance, the Owner/Permittee shall dedicate additional right-of-way as needed to achieve a 15-foot parkway on Sandrock Road along the subdivision's frontage, satisfactory to the City Engineer.

31. Prior to building permit issuance, the Owner/Permittee shall dedicate 14 feet along the subdivision's frontage on Aero Drive, to the satisfaction of the City Engineer.

32. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the installation of a 250-watt high-pressure sodium [HPS] street light along the property frontage on Sandrock Road and the relocation and upgrading of the existing street lights to 250-watt HPS on the Aero Drive frontage to conform to the City's Street Design Manual, satisfactory to the City Engineer.

33. In the event that the existing street light poles, luminaries, and appurtenances cannot be satisfactorily relocated, as determined in the sole discretion of the City Engineer, new street lights may be required and shall be the responsibility of the Owner/Permittee.

34. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the installation of City Standard curb ramps, along the Project frontage at the corner of Aero Drive and Sandrock Road, satisfactory to the City Engineer.

LANDSCAPE REQUIREMENTS:

35. Prior to issuance of construction permits for public right-of-way improvements, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall indicate an area equal to forty square feet 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.

36. Prior to issuance of any construction permits for any buildings, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A."

37. Prior to issuance of any Certificate of Occupancy, the Owner/Permittee shall 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.

38. The Owner/Permittee 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.

39. The Owner/Permittee 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.

40. If any required landscape, including existing or new plantings, hardscape, landscape features, or other landscape improvements, indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to issuance of a Certificate of Occupancy.

PARK AND RECREATION REQUIREMENTS:

41. Prior to issuance of any building permits, the Owner/Permittee shall make a contribution of \$4,503,050 in lieu of the park portion of the Kearny Mesa Development Impact Fee to satisfy the project's 2.03 acre population-based park requirement. These funds shall be placed into an interest bearing account for parks in the Kearny Mesa/Serra Mesa area.

PLANNING/DESIGN REQUIREMENTS:

42. No fewer than 763 parking spaces (742 required) shall be permanently maintained on the site within the approximate location shown on the project's Exhibit "A," which includes 14 disabled accessible spaces (10 required) per CBC Chapter 11A, Section 1118A. Additionally, a minimum of 48 motorcycle (41 required) and 196 bicycle spaces (185 required) shall be provided on site. Additionally, a minimum of three (3) off-street loading spaces shall be provided on site. Further, all on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose unless otherwise authorized in writing by the Director of Development Services Department.

43. 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.

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

45. 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.
46. Prior the issuance of any building permits, the Owner/Permittee shall submit construction plans indicating all first floor patios include open fencing if the fence is over four feet high.
47. Prior to issuance of any building permits, the Owner/Permittee shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration [FAA].
48. Prior to the issuance of building permits, construction documents shall fully illustrate the incorporation of a roof-mounted parking structure photovoltaic system consisting of solar panels atop of a structural system which also creates shade on the roof deck of the parking structure to generate electricity and create shade on the roof deck.
49. Prior to the issuance of occupancy permits, the Owner/Permittee shall assure, by permit and bond, the construction of a new gateway sign within the median of the Sandrock Road public right-of-way, the cost of which shall not exceed \$20,000.00, to the satisfaction of the City Engineer.

WASTEWATER REQUIREMENTS:

50. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.
51. All proposed on-site sewer facilities shall be private.
52. No structures or landscaping, including private sewer facilities and enhanced paving, shall be installed in or over any easement prior to the Owner/Permittee obtaining an Encroachment Maintenance and Removal Agreement.
53. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.
54. All proposed private sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.

WATER REQUIREMENTS:

55. The Owner/Permittee shall install a water service or services, including backflow prevention devices, outside of any driveway or drive aisle and remove any existing unused water services within the Aero Drive right-of-way adjacent to the Project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

56. Prior to the issuance of any building permits, the Owner/Permittee shall apply for plumbing permits for the installation of appropriate private back flow prevention devices on all proposed water services to the development, including all domestic, fire, and irrigation services, in a manner satisfactory to the Cross Connection Control Group, the Director of Public Utilities and the City Engineer.

57. Prior to the issuance of any Certificates of Occupancy, public water facilities necessary to serve the development, including water meters, services, and backflow prevention devices, shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.

58. All on-site water facilities shall be private including domestic, fire, and irrigation systems.

59. The Owner/Permittee shall provide a letter to the Development Project Manager agreeing to prepare CC&Rs for the operation and maintenance of all private water facilities that serve or traverse more than a single unit or lot.

60. The Owner/Permittee shall design and construct all proposed public water facilities, including fire hydrants, 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. Water facilities as shown on the approved plans shall be modified at final engineering to comply with standards.

61. The Owner/Permittee is solely responsible for any damage caused to or by public water facilities adjacent to the project site due to the construction activities associated with this development. In the event any such facility loses integrity, then, prior to the issuance of any Certificates of Occupancy, the Owner/Permittee shall reconstruct any damaged public water facility in a manner satisfactory to the Director of Public Utilities and the City Engineer.

GEOLOGY REQUIREMENTS:

62. Prior to the issuance of any construction permits, the Owner/Permittee shall provide additional geotechnical information for the review and approval of the City Geologist, satisfactory to the City Geologist and Development Services Department.

FIRE REQUIREMENTS:

63. Prior to the issuance of any building permits, the Owner/Permittee shall pay the fire portion of the Development Impact Fee at a rate of \$137 per dwelling unit and \$137 per every 1,000 square feet of non-residential development. This fee is assessed as the fair share contribution toward fire services in the Kearny Mesa community.

CITY COUNCIL REQUIREMENTS:

64. Prior to the issuance of any building permits, the Owner/Permittee shall submit for review and approval building plans which indicate no less than fifty percent (50%) of the building's useable roof area shall be dedicated to the installation of photovoltaic panels for the generation of electricity supplying power to the project common areas, to the satisfaction of the Development Services Department.

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 §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego on November 18, 2008, by
Resolution No. 304440.

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Kelly Broughton
Director
Development Services

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

The undersigned Owner/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.

Westcore Sandroock, LLC,
a Delaware limited liability company

By: Westcore Sandroock Investors, LLC,
a Delaware limited liability company
its Managing Member

By: WP Sandroock, LLC,
a Delaware limited liability company,
its Managing Member

By: MRB Manager, LLC,
a Delaware limited liability company,
its Manager

By: _____

Name: _____

Title: _____

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