

RESOLUTION NUMBER R-306158

DATE OF FINAL PASSAGE SEPTEMBER 21, 2010

A RESOLUTION GRANTING THE APPEAL AND
APPROVING SITE DEVELOPMENT PERMIT NO. 352760,
FOR THE 5TH & THORN PROJECT – PROJECT NO. 105703.

WHEREAS, 4th & Thorn, LLC, a California Limited Liability Company, and 5th & Thorn, LLC, a California Limited Liability Company, Owners, J Behar, LLC, Owner, and The Barrett Family Trust of 1986, Permittee (collectively, Owners and Permittee), filed an application with the City of San Diego for a site development permit to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development (as described in and by reference to the approved Exhibits “A,” and corresponding conditions of approval for the associated Permit No. 352760), on portions of a 0.92-acre site known as the 5th & Thorn Project (Project); and

WHEREAS, the project site is located on the south side of Thorn Street, between Fourth and Fifth Avenues (including addresses: 403 Thorn Street, 3251 Fourth Avenue, 3225 Fourth Avenue, 3230 Fifth Avenue and 3252 Fifth Avenue; as well as historic structure addresses of 3235 and 3255 Fourth Avenue) in the NP-1 and CV-1 zones of the Mid-City Communities Planned District, the Residential Tandem Parking Overlay Zone and the Transit Area Overlay Zone, within the Uptown Community Plan area; and

WHEREAS, the project site is legally described as Lots A thru D and I thru L, Block 385, Horton’s Addition, according to Map thereof made by L. L. Lockling; and

WHEREAS, on June 24, 2010, the Planning Commission of the City of San Diego (Planning Commission) considered Site Development Permit (SDP) No. 352760, and pursuant to Resolution No. 4605-PC voted 4-3 to deny the project; and

WHEREAS, on June 30, 2010, Owners and Permittee filed an appeal with the City to appeal the Planning Commission decision; and

WHEREAS, the matter was set for public hearing on September 21, 2010, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; 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; 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. 352760:

A. SITE DEVELOPMENT PERMIT APPROVAL – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0504

1. Findings for all Site Development Permits SDMC section 126.0504(a).

a. The proposed development will not adversely affect the applicable land use plan. The Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as a Tentative Map (TM) to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The Uptown Community Plan designates the proposed 0.92-acre project site for Office/Commercial at 44 to 73 dwelling units per acre (0.46 acres) and Commercial/Residential at 73 to 110 dwelling units per acre (0.46 acres). According to the Residential and Commercial Elements of the community plan, either office, commercial, or residential uses could be allowed on site. The project, consisting of multi-family residential units and “shopkeeper” type commercial uses would be consistent with the existing land use designations. Based on the project acreage and recommended residential density for the project site, 54 to 84 dwelling units would be allowed on site. However, the project would seek a 20 percent affordable housing density bonus for the provision of 5 dwelling units affordable to very low-income households.

The provision of affordable units would implement goals and objectives in the Housing Element of the General Plan for the creation and promotion of affordable housing.

The proposed project would also meet the objective in the Transportation Element of the community plan for development of off-street parking facilities by providing four levels of underground parking which would be accessed from an existing drive way located on Thorn Street, and also promoting bicycling as an alternative form of transportation by including forty-four bicycle spaces for residents and patrons.

According to the Urban Design Element of the community plan, new construction and improvements to existing structures should be compatible with the existing architectural detail and overall appearance of the quality development in the neighborhood. The proposed project uses architectural details similar to those found in existing buildings within the neighborhood. The Urban Design Element guidelines recommend that patios, balconies, courtyards, pools or other recreational amenities should be required for all residential projects to maximize usable open space. The proposed project would meet this design guideline by including balconies on multiple floors of the proposed development and a roof top pool deck with raised tree planters, enhanced paving, cabana, and outdoor fireplace. Additionally, the community plan states as a design guideline that large flat rooftops should be considered as usable outdoor space which can be designed to accommodate recreational activities. The project would meet this guideline by proposing private rooftop terraces on the 5th and 6th floors of development located on the corner of Thorn Avenue and 4th Street. These private roof terraces would feature tables, seating, raised tree planters, and overhead trellis structures. Design guidelines in the Urban Design Element of the community plan also recommend articulating the design of buildings so that they relate to the form and scale of surrounding structures through the use of compatible setbacks, building coverage and floor area ratios. The proposed project would utilize varying colors, building materials, offsetting planes, and building height variations to minimize the project's visual impact upon the neighborhood.

A design guideline of the Urban Design Element calls for restoring and adaptively reusing existing structures either by themselves or as elements of larger development projects. Additionally, the Conservation, Cultural and Heritage Resources Element of the community plan states the objective of preserving historic structures at their original location as well as in their historic context whenever possible. The proposed project would implement these policies by preserving two historically designated bungalows located on site. Previously, these structures were use for commercial purposes and would be converted to residential uses as part of the proposed project.

The project proposes deviations to the development regulations pertaining to traffic visibility areas, street wall heights, street yard requirements, offsetting planes proportions, and transparency requirements. Although the community plan does not provide specific development/design regulations, the proposed project would incorporate several features that would address building bulk, scale, and design to a level that would not conflict with community plan goals, objectives, and recommendations. Accordingly, the proposed project would not adversely affect the Uptown Community Plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The proposed development is on an existing developed site. The site has been studied for potential historical resource (buildings), archaeological resource and paleontological resource impacts.

Mitigated Negative Declaration (MND) No. 105703 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA). A Mitigation, Monitoring and Reporting Program (MMRP) has been prepared and would be implemented which would reduce, to a level below significance, some of the potential impacts identified in the environmental review process.

The project would comply with the development regulations in effect for the subject property as described in SDP No. 352760, and other regulations and guidelines pertaining to the subject property per the SDMC and the Subdivision Map Act. The proposed development would be required to obtain building permits and process all mapping actions to show that all construction would comply with all applicable building and fire code requirements. The project proposes to incorporate sustainable design practices including energy-efficient windows, lighting motion sensors, native landscaping, and energy-efficient mechanical units. The siting of residential infill adjacent to existing transit access and commercial infrastructure encourages walking and reduces the automobile trips that are detrimental to public health and safety.

Therefore, proposed development would 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 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The proposed redevelopment would comply with the applicable regulations of the NP-1 and CV-1 zones of the Mid-City Communities Planned District. The intent of the Commercial Village (CV) zones is to provide for pedestrian-oriented districts for either commercial, residential, or mixed-use development. It is normally applied in linear areas between commercial nodes. The standards encourage pedestrian activity through the design and location of building frontages and of parking and vehicle access. Incentives are provided for mixed-use development in these areas where transit and services are generally available. The Neighborhood Professional (NP) zones are intended to provide for business and professional

offices, certain allied services normally associated with such offices, and residential user. They will generally be located near hospitals or adjacent to major concentrations of commercial activities. The standards are designed to ensure compatibility between office development and existing or new residential development by providing for appropriate setbacks and limitations on floor area and signage. The NP-1 zone encourages a mixture of office and residential use at a high density.

Deviations from development regulations for projects as allowed through the SDP process are consistent with the LDC portions of the SDMC. Strict application of the development regulations regarding street wall, street yard, offsetting plans and transparency would restrict the ability to meet Fire Department requirements, maintain historic designation requirements, provide superior design supported by the community, and conform with additional code requirements regarding transparency. Further, when considering the project as a whole these deviations are minor in scope and the proposed modifications provide for a more attractive design than would be achieved through the strict application of the development regulations.

Therefore, proposed subdivision complies with the applicable zoning and development regulations of the LDC.

2. **Supplemental Site Development Permit Findings - Historical Resources**
Deviation for Relocation of a Designated Historical Resource SDMC
section 126.0504(h)

a. **There are no feasible measures, including maintaining the resource on site, that can further minimize the potential adverse effects on historical resources.** The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the

0.92- acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The purpose of the Historical Resources Regulations, as stated in LDC section 143.0201, is to protect, preserve and, where damaged, restore the historical resources of San Diego, which include historical buildings, historical structures or historical objects, important archaeological sites, historical districts, historical landscapes, and traditional cultural properties. These regulations are intended to assure that development occurs in a manner that protects the overall quality of historical resources. "It is further the intent of these regulations to protect the educational, cultural, economic, and general welfare of the public, while employing regulations that are consistent with the sound historical preservation principles and the right of private property owners."

The proposed project has been designed to permit the development of this private property, in accordance with its current zoning and community plan designation, while also providing for the rehabilitation and reuse of two historical structures on their original site. The site contains two designated historic structures (HRB Site No. 828; 3235 and 3255 4th Avenue).

The project includes the temporary removal of these two designated historic buildings. An initial Environmental Initial Study (EIS) was conducted for the proposed subdivision in accordance with CEQA that determined the project could have potential adverse impacts to historical resources (buildings), historical resources (archaeology), and paleontological resources. An MMRP has been created for the project with measures that would reduce the potential adverse impacts to below a level of significance. As documented within the MMRP, these structures are proposed to be removed from the site while subterranean parking is created, then relocated back to the site and incorporated into the full project design as residential units. Additional mitigation requirements are incorporated into the project to reduce potential adverse impacts to archaeological and paleontological resources.

The temporary relocation of the two structures is a mechanism that will allow them to be incorporated into the new development on the site while preserving their historical integrity, content and appearance. The temporary relocation of the two historic structures, during construction on the site, serves two purposes. It protects the historic structures from damage during construction and it allows the construction of underground parking underneath to serve the two structures once they are returned to their original sites. Not only will this project protect the historic structures, it will rehabilitate them in accordance with the Secretary of the Interior's Standards for Rehabilitation, making them suitable for reuse for many more decades to come. They will retain their status as designated historical landmarks of the City of San Diego. And, since they will have been rehabilitated, brought up to all applicable codes and incorporated into a new development, they will be immune from future adverse impacts motivated by development pressures. The only other option would be to maintain these structures on site during the construction of the surrounding project and to construct the underground parking underneath while they remain in place. This course of action would likely generate adverse effects on the historical resources. The proposed project was designed to protect the structures, avoid adverse effects and maintain them on their original site, as protected historical resources, for decades to come. Therefore, there is no feasible measure that can further minimize the potential adverse effects on historical resources.

b. The proposed relocation will not destroy the historical, cultural, or architectural values of the historical resource, and the relocation is part of a definitive series of actions that will assure the preservation of the designated historical resource. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The project applicant has agreed to implement the measures identified in the MMRP prepared for this project, including the temporary relocation, rehabilitation and reuse of the designated historical resources, #828, the Dr. Charles Tanner Office Bungalow Court. The project applicant prepared the Historical Assessment of the property and submitted it to the City of San Diego's Historical Resource Board, which designated the two structures as Historical Landmark #828 in August of 2007. On June 6, 2007, the project applicant presented the proposed project to the Design Assistance Subcommittee of the Historical Resources Board. At

that meeting, the Subcommittee made several recommendations pertaining to the treatment of the resources that were subsequently incorporated into the project. It was the consensus of the Subcommittee that, with the incorporation of their recommendations, the proposed project would meet the Secretary of the Interior's Standards for Rehabilitation. The Subcommittee's views on the project were discussed during the August designation hearing as was the fact that the proposed project would be returning to the Historical Resources Board, for their recommendations, as part of the SDP process. At the conclusion of the designation hearing, the Board designated the two front structures on the property but not the two rear structures on the property.

The project applicant has agreed to comply with all rules, regulations and ordinances pertaining to the designation status and the SDP for the temporary relocation, rehabilitation and reuse of the two designated structures as required by the SDMC. The project applicant has prepared a Historical American Building Survey of the property. The project applicant will stabilize the two structures as follows. Certain building elements will be protected and remain in place during the temporary relocation and other elements will be removed for safe storage and later returned to the structures after they have been restored to their original locations. The structures will be internally braced and externally protected for relocation, after which they will be severed from their existing foundations below their bottom floor plate, supported by steel beam stretchers, lifted on to transport vehicles and moved to a temporary storage site where they will be set on storage blocks and protected until the on-site construction has created raised pads on the new foundation at the original site. The structures will then be returned to their new foundation and anchored in place. Permanent structural bracing will be installed, the elements removed for protection will be reinstalled and the buildings will be rehabilitated in accordance with the Secretary of the Interior's Standards for Rehabilitation. A qualified historical architect monitor will supervise the temporary relocation and rehabilitation projects. The structures' status as a designated historical resource will be retained and they will remain subject to the jurisdiction of the Historical Resources Board. These measures ensure that the proposed relocation and reuse will not destroy the historical, cultural, or architectural values of the historical resource and the temporary relocation will be part of a definitive series of actions to ensure the preservation of the designated historical resources.

b. There are special circumstances or conditions apart from the existence of historical resources, applying to the land that are peculiar to the land and are not of the applicant's making, whereby the strict application of the provisions of the historical resources regulations would deprive the property owner of reasonable use of the land. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The proposed project would demolish existing commercial/office structures, temporarily relocate two designated historic structures, construct a new mixed-use development and return the historic structures to their original locations for rehabilitation in accordance with the Secretary of the Interior's Standards for Rehabilitation and reuse as part of the new

development. The proposed project is within the Uptown Community Plan area. The Summary of Recommendations from the Uptown Community Plan includes the following: "The overall concept of the plan is to shift higher residential density away from the more isolated, lower scale neighborhoods and focus development instead on the major transportation corridors. Mixed-use development is encouraged in selected areas with residential use over street level retail use." In terms of Development Intensity, the plan identifies the project site as within the High Density Node Corridor of Fourth, Fifth and Sixth Avenues north of Maple Street, permitting Mid to High Rise structures of 4 to 12 stories in height. The zoning of the project site is split between the eastern, CV-1 zone allowing a height up to 150 feet and the western, NP-1 zone, allowing a height up to 60 feet. The project site is 0.92 acres and its permitted development, per the Community Plan and existing zoning, is consistent with that proposed by the project. This permitted level of development is peculiar to the land and not of the applicant's making and the strict application of the historical resources regulations, that would not allow the temporary relocation of the designated structures in order to permit the development of the property in accordance with the Community Plan and existing zoning, would deprive the property owner of reasonable use of the land and a deviation is warranted.

3. **Mid-City Communities Development Permit - Land Development Code section 1512.0204(a)**

a. **The proposed use and project design meet the purpose and intent of the Mid-City Communities Plan District Ordinance and will not adversely affect the Uptown Community Plan.** The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The Uptown Community Plan designates the proposed 0.92-acre project site for Office/Commercial at 44 to 73 dwelling units per acre (0.46 acres) and Commercial/Residential at 73 to 110 dwelling units per acre (0.46 acres). According to the Residential and Commercial Elements of the community plan, either office, commercial, or residential uses could be allowed on site. The project, consisting of multi-family residential units and "shopkeeper" type commercial uses would be consistent with the existing land use designations. Based on the project acreage and recommended residential density for the project site, 54 to 84 dwelling units would be allowed on site. However, the project would seek a 20 percent affordable housing density bonus for the provision of 5 dwelling units affordable to very low-income households. The provision of affordable units would implement goals and objectives in the Housing Element of the General Plan for the creation and promotion of affordable housing.

The proposed project would also meet the objective in the Transportation Element of the community plan for development of off-street parking facilities by providing four levels of underground parking which would be accessed from an existing drive way located on Thorn Street, and also promoting bicycling as an alternative form of transportation by including 44 bicycle spaces for residents and patrons.

According to the Urban Design Element of the community plan, new construction and improvements to existing structures should be compatible with the existing architectural detail and overall appearance of the quality development in the neighborhood. The proposed project uses architectural details similar to those found in existing buildings within the neighborhood. The Urban Design Element guidelines recommend that patios, balconies, courtyards, pools or other recreational amenities should be required for all residential projects to maximize usable open space. The proposed project would meet this design guideline by including balconies on multiple floors of the proposed development and a roof top pool deck with raised tree planters, enhanced paving, cabana, and outdoor fireplace. Additionally, the community plan states as a design guideline that large flat rooftops should be considered as usable outdoor space which can be designed to accommodate recreational activities. The project would meet this guideline by proposing private rooftop terraces on the 5th and 6th floors of development located on the corner of Thorn Avenue and Fourth Street. These private roof terraces would feature tables, seating, raised tree planters, and overhead trellis structures. Design guidelines in the Urban Design Element of the community plan also recommend articulating the design of buildings so that they relate to the form and scale of surrounding structures through the use of compatible setbacks, building coverage and floor area ratios. The proposed project would utilize varying colors, building materials, offsetting planes, and building height variations to minimize the project's visual impact upon the neighborhood.

A design guideline of the Urban Design Element calls for restoring and adaptively reusing existing structures either by themselves or as elements of larger development projects. Additionally, the Conservation, Cultural and Heritage Resources Element of the community plan states the objective of preserving historic structures at their original location as well as in their historic context whenever possible. The proposed project would implement these policies by preserving two historically designated bungalows located on site. Previously, these structures were use for commercial purposes and would be converted to residential uses as part of the proposed project.

The project proposes deviations to the development regulations pertaining to traffic visibility areas, street wall heights, street yard requirements, offsetting planes proportions, and transparency requirements. Although the community plan does not provide specific development/design regulations, the proposed project would incorporate several features that would address building bulk, scale, and design to a level that would not conflict with community plan goals, objectives, and recommendations.

The proposed use of the site is consistent with the purpose and intent of the Mid-City Communities Planned District in that the project provides an appropriately located, attractive, residential project. The proposed use and design would be compatible with the existing and current development occurring within this area of the Uptown Community Plan.

Therefore, the use and project design do meet the purpose and intent of the Mid-City Communities Plan District Ordinance and would not adversely affect the Uptown Community Plan.

b. The proposed development will be compatible with existing and planned land use on adjoining properties and will not constitute a disruptive element to the neighborhood and community. In addition, the proposed development will achieve architectural harmony with the surrounding neighborhood and community to the extent possible. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

According to the Urban Design Element of the Uptown Community Plan, new construction and improvements to existing structures should be compatible with the existing architectural detail and overall appearance of the quality development in the neighborhood. The proposed project uses architectural details similar to those found in existing buildings within the neighborhood. The townhome component of the project located at the corner of Fifth Avenue and Thorn Street would incorporate brick and white masonry trim similar to the existing Park Manor building located across Fifth Avenue to the southeast. Additionally, the project's proposed tower element utilizes horizontal offsets and surface elevations similar to the existing residential high-rise and commercial developments within the vicinity of the project, which have been contributing to the growing and changing character along Fifth Avenue within Bankers Hill/Park West neighborhood of the Uptown community.

As described in Finding 1, above, the proposed project would incorporate several other objectives of the Urban Design Element of the Uptown Community Plan. Therefore, the proposed project would not constitute a disruptive element and would achieve architectural harmony with the surrounding neighborhood and community to the extent possible.

c. 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 properties in the vicinity. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The proposed development is on an existing developed site. The site has been studied for potential historical resource (buildings), archaeological resource and paleontological resource impacts.

MND No. 105703 has been prepared for the project in accordance with the State CEQA. An MMRP has been prepared and would be implemented which would reduce, to a level below significance, some of the potential impacts identified in the environmental review process.

The project would comply with the development regulations in effect for the subject property as described in SDP No. 352760, and other regulations and guidelines pertaining to the subject property per the SDMC and the Subdivision Map Act. The proposed development would be required to obtain building permits and process all mapping actions to show that all construction would comply with all applicable building and fire code requirements. The project proposes to incorporate sustainable design practices including energy-efficient windows, lighting motion sensors, native landscaping, and energy-efficient mechanical units. The siting of residential infill adjacent to existing transit access and commercial infrastructure encourages walking and reduces the automobile trips that are detrimental to public health and safety.

Therefore, proposed development would not be detrimental to the public health, safety, and welfare.

d. Adequate Public Facilities (Park deficient neighborhoods). The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.

The project is not located in a park deficient neighborhood; therefore, this finding does not apply to this project. The Mid-City Communities Planned District identifies facility deficient neighborhoods as those neighborhoods that are shown on Map No. B-4104. The Central Urbanized Planned District now incorporates all neighborhoods that are shown on Map No. B-4101 and those neighborhoods are no longer within the Mid-City Communities Planned District.

e. Adequate Lighting. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots. The project has been conditioned to conform to all Municipal Code requirements, which would include current street lighting standards according to the adopted City of San Diego Street Design Manual and Council Policy 200-18. Implementation and review of these requirements will occur during the construction permit stage of this project.

f. The proposed use will comply with the relevant regulations in the San Diego Municipal Code. The 5th & Thorn Project proposes to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development on the 0.92-acre project site. The project includes an SDP for the historic buildings and for deviations to the development regulations, as well as an TM to create 100 condominium units (97 residential and 3 commercial/residential) on three lots.


The proposed project complies with all applicable development regulations of the NP-1 and CV-1 zones of the Mid-City Communities Planned District, except for the four proposed deviations, which are allowed through the SDP process and in accordance with the Mid-City Communities Planned District. Strict application of the development regulations regarding street wall, street yard, offsetting plans and transparency would restrict the ability to meet Fire Department requirements, maintain historic designation requirements, provide superior design supported by the community, and conform with additional code requirements regarding transparency. Further, when considering the project as a whole these deviations are minor in scope and the proposed modifications provide for a more attractive design than would be achieved through the strict application of the development regulations.

Therefore, proposed subdivision complies with the applicable zoning and development regulations of the LDC.

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

BE IT FURTHER RESOLVED, that the appeal of Owners and Permittee is granted, and based on the findings hereinbefore adopted by the City Council of the City of San Diego (City Council), Site Development Permit No. 352760 is hereby granted to the referenced Owners/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 352760, a copy of which is attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By: 
Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
11/02/10
12/27/10 COR.COPY
05/04/11 COR.COPY 2
Or.Dept:DSD
PL: #2010-01770

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

INTERNAL ORDER NUMBER: 23426582

SITE DEVELOPMENT PERMIT NO. 352760
5TH & THORN, PROJECT NO. 105703 - MMRP
CITY COUNCIL

This Site Development Permit (SDP) Approval No. 352760 is granted by the City Council of the City of San Diego to 4th & Thorn, LLC, a California Limited Liability Company and 5th & Thorn, LLC, a California Limited Liability Company, Owners and Permittees (Permittees), The Barrett Family Trust of 1986, and J.Behar, LLC, Owners, pursuant to San Diego Municipal Code (SDMC) section 126.0504. The 0.92-acre site is located on the south side of Thorn Street, between Fourth and Fifth Avenues (including addresses: 403 Thorn Street, 3251 Fourth Avenue, 3225 Fourth Avenue, 3230 Fifth Avenue and 3252 Fifth Avenue; as well as historic structure addresses of 3235 and 3255 Fourth Avenue) in the NP-1 and CV-1 zones of the Mid-City Communities Planned District, the Residential Tandem Parking Overlay Zone, the Transit Area Overlay Zone, within the Uptown Community Plan. The project site is legally described as: Lots A thru D and I thru L, Block 385, Horton's Addition, according to Map thereof made by L. L. Lockling.

Subject to the terms and conditions set forth in this Permit, permission is granted to Permittees to demolish existing commercial/office structures, temporarily relocate two designated historic structures, and construct a mixed-use development, described and identified by size, dimension, quantity, type, and location on the approved exhibits (Exhibit "A") dated June 24, 2010, on file in the Development Services Department (DSD).

The project shall include:

- a. The demolition of existing commercial/office structures;
- b. The temporary relocation of two designated historic structures;
- c. The construction of a mixed-use development, including 100 residential condominium units and approximately 1,754 square feet of new commercial use, a community room, and subterranean parking;

- d. Two existing commercial buildings will remain as part of the project, for a total of approximately 15,154 square feet of commercial development;
- e. Deviations for the proposed project more fully described in Condition No. 40 include: street wall height, street yards, offsetting plans, and transparency.
- f. Landscaping (planting, irrigation and landscape related improvements);
- g. Off-street parking;
- h. Public and private accessory improvements determined by the DSD to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC;
- i. The transfer of residential density from Lot I, Block 385, Horton's Addition; 3230 5th Avenue (the lot owned by J Behar, LLC) to Permittees as is described on Exhibit A.
- j. The transfer of residential density from Lot D, Block 385, Horton's Addition; 3225 4th Avenue (the lot owned by The Barrett Family Trust of 1986) to Permittees as is described on Exhibit A.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the thirty-six month period, this permit shall be void unless an Extension of Time (EOT) has been granted. Any such EOT 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. All Owners and Permittees sign and return the Permit to the DSD; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

4. This Permit is a covenant running with the subject property. All of the conditions of this Permit and related documents shall be binding upon Permittees and any successor(s) in interest. J Behar LLC shall be obligated to transfer residential development rights as described in Exhibit A.
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 Owners or Permittees 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. Permittees shall secure all necessary construction permits. Permittees are informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited 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 were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owners or Permittees 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 Owners/Permittees 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 Owners/Permittees 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, relating to the issuance of this permit including, but not limited 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 Owners/Permittees of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owners/Permittees 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, Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees shall not be required to pay or perform any settlement unless such settlement is approved by Owners/Permittees.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program (MMRP) shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

12. The mitigation measures specified in the MMRP and outlined in MITIGATED NEGATIVE DECLARATION NO. 105703 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

13. The Owners/Permittees shall comply with the MMRP as specified in MITIGATED NEGATIVE DECLARATION NO. 105703 to the satisfaction of the DSD and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

**Historical Resources (buildings 3235 and 3255 Fourth Avenue, Historic Site No. 828),
Historical Resources (archaeology), and Paleontological Resources**

HISTORICAL RESOURCES BOARD STAFF REQUIREMENTS:

14. Permittees shall notify the Historical Resources Board staff of any damage to the historical resource during relocation and rehabilitation and shall obtain approval by Historical Resources Board staff regarding any further necessary mitigation measures.

15. Permittees shall comply with the U.S. Secretary of the Interior's Standards and Guidelines for any further mitigation for any damage as a result of relocation and rehabilitation of the historical resource.

AFFORDABLE HOUSING REQUIREMENTS:

16. Prior to receiving the first residential building permit, Permittees shall pay 50 percent of the Inclusionary In-Lieu fees and shall enter into an Affordable Housing Agreement with the San Diego Housing Commission (Housing Commission) to provide 5 affordable units in compliance with the affordable housing requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code (LDC)) and the Density Bonus Program (California Government Code sections 65915-65918 and Chapter 14, Article 3, Division 7 of the LDC).

AIRPORT REQUIREMENTS:

17. Prior to issuance of grading and/or construction permits, Permittees shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration (FAA).

ENGINEERING REQUIREMENTS:

18. The SDP shall comply with the conditions of the final map for "Thorn Street Condominiums" Tentative Map (TM) No. 352761.

19. Prior to the issuance of any construction permits, Permittees shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practice (BMP) maintenance, satisfactory to the City Engineer.

20. Prior to the issuance of any construction permits, Permittees shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications, satisfactory to the City Engineer.

21. Prior to the issuance of any construction permits, Permittees 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, satisfactory to the City Engineer.

22. Prior to the issuance of any construction permits, Permittees shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report, satisfactory to the City Engineer.

23. This project proposes to export 20,400 cubic yards of material from the project site. All export material shall be discharged into a legal disposal site. The approval of this project does not allow the onsite processing and sale of the export material unless the underlying zone allows a construction and demolition debris recycling facility with an approved Neighborhood Use Permit or Conditional Use Permit per LDC section 141.0620(i).

24. Prior to the issuance of any construction permits, Permittees shall assure by permit and bond the replacement of the existing curb with City standard curb and gutter, adjacent to the site on Fourth Avenue, Fifth Avenue, and Thorn Street, satisfactory to the City Engineer.

25. Prior to the issuance of any construction permits, Permittees shall assure by permit and bond the replacement of sidewalk, maintaining the existing sidewalk scoring pattern and preserving any contractor's stamp, adjacent to the site on Fourth Avenue, Fifth Avenue, and Thorn Street, satisfactory to the City Engineer.

26. Prior to the issuance of any construction permits, Permittees shall assure by permit and bond the reconstruction of the 2 existing curb ramps to current City Standards, 1 at the southeast corner of the Fourth Avenue and Thorn Street intersection and 1 at the southwest corner of the Fifth Avenue and Thorn Street intersection, satisfactory to the City Engineer.

27. Prior to the issuance of any construction permits, Permittees shall assure by permit and bond the closure of the non-utilized driveway with full height curb, gutter, and sidewalk, adjacent to the site Fifth Avenue, satisfactory to the City Engineer.
28. Prior to the issuance of any building permits, Permittees shall obtain an Encroachment Maintenance and Removal Agreement, for the building footings, balcony, concrete awning, and architectural features in the Fourth Avenue, Fifth Avenue, and Thorn Street rights-of-way, satisfactory to the City Engineer.
29. The drainage system proposed for this development is private and subject to approval by the City Engineer.
30. Prior to the issuance of any building permits, Permittees shall obtain an Encroachment Maintenance and Removal Agreement, for the modified D-25 curb outlet and landscaping in the Fourth Avenue, Fifth Avenue, and Thorn Street rights-of-way, satisfactory to the City Engineer.
31. Prior to the issuance of any construction permits, Permittees shall assure by permit and bond the removal and replacement of the existing driveways with 16 feet wide and 24 feet wide City Standard driveways, adjacent to the site on Fourth Avenue and Thorn Street, respectively, satisfactory to the City Engineer.

LANDSCAPE REQUIREMENTS:

32. Prior to issuance of Public Right-of-Way Permits; Permittees shall submit complete landscape construction documents demonstrating the right-of-way improvements to the DSD for approval. Improvement plans shall indicate an area equal to 40 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.
33. In the event that a foundation only permit is requested by Permittees; a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan, on file in the Office of the DSD. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'
34. Prior to issuance of Building Permits; Permittees shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the DSD for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the DSD.
35. Prior to issuance of a Certificate of Occupancy, it shall be the responsibility of Permittees 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.
36. Permittees 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.

37. Permittees shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards.

38. 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, Permittees is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the DSD within thirty days of damage or prior to issuance of a Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

39. 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 Permittees.

40. The following deviations are approved with this SDP:

- a. Street wall - SDMC 1512.0310(b)(7)(B) requires structures to have a setback of 15 feet from the base of the street wall. Deviations as specified on Exhibit "A" allow a range of 0- to 11-foot setbacks from the street wall along Thorn and 5th are approved with this project. This applies only in the CV-1 zoned portion of the site.
- b. Street yard - SDMC 1512.0311(b)(2)(A) requires a street yard of a minimum 3,000 square feet in area (20 feet x 150 feet lot frontage) where no structures may be located. A deviation to allow 2,810 square feet as specified on Exhibit "A" is approved with this project. This applies only in the NP-1 portion of the site.
- c. Offsetting planes - SDMC 1512.0312(a)(3) requires minimum and maximum proportions for each required offsetting plane. The project has the number of required planes, but does not meet the proportion requirement. Sheets 30 and 32 of Exhibit "A" contain the permitted articulation calculations for the affected elevations.
- d. Transparency - SDMC 1512.0312(b)(2) allows no more than a combined total of 50 percent of the facades to be vision glass or reflective spandrel construction. A deviation to provide in excess of 50 percent, as specified on Exhibit "A," is approved with this project.

41. Once relocated back to the site per the adopted MMRP, the two designated historic structures (3235 and 3255 Fourth Avenue, Historic Site No. 828) shall be preserved consistent with the Historic Regulations of the LDC.

42. All new shopkeeper units shall provide ADA accessible entrances into the commercial space directly from Fifth Avenue. The finish floor of the commercial units shall be at

approximately the same elevation as the sidewalk so as to not require ramps from the right-of-way or within the commercial unit.

43. The materials, textures, and architectural projections shown on the approved Exhibit "A" are the minimum requirements to ensure compliance with the purpose and intent of the Mid-City PDO. Any changes during the building permit shall either meet or exceed what is shown in the Exhibit "A" in terms of variety, quantity and quality.

44. The project's design shall maintain the use of brick veneer along the elevations of the "townhomes" component of the overall project located at the corner of Thorn Street and Fourth Avenue as shown on approved Exhibit "A." Any substitutions in material and texture shall add to the varied design of the project and exceed the quality of those materials shown on approved Exhibit "A."

45. Awnings that are architecturally consistent with the main mixed-use building shall be provided above each commercial entrance along Fifth Avenue.

46. For that portion of all facades above the ground floor, no more than a combined total of 50 percent of each of the facades shall be vision glass or reflective spandrel construction.

47. All vision glass and reflective spandrel construction shall be of material which is no more than 30 percent in reflectivity.

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

49. Permittees shall post a copy of each approved discretionary Permit or an TM in its sales office for consideration by each prospective buyer.

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

TRANSPORTATION REQUIREMENTS:

51. No fewer than 185 off-street parking spaces (with 203 on-site parking spaces provided) shall be permanently maintained on the property within the approximate location shown on the project's Exhibit "A." As per Exhibit "A," a minimum of 16 motorcycle and 53 bicycle spaces shall also be maintained. Further, all on-site parking stalls and aisle widths shall be in compliance with requirements of the City's LDC, and shall not be converted and/or utilized for any other purpose, unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

52. Shared Parking Agreement: A signed Shared Parking Agreement shall be provided, and recorded on all affected properties, prior to the issuance of the first building permit, identifying the 13, of the 203, on-site parking spaces that will be shared with the adjacent 9,200 square-foot office use, satisfactory to the DSD Director.

53. A minimum of one off-street loading space, with minimum dimensions of 12 feet in width, 35 feet in length, and a vertical clearance of 14 feet, shall be provided and maintained at all times as shown in Exhibit "A," satisfactory to the City Engineer.

WASTEWATER REQUIREMENTS:

54. Permittees shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

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

WATER REQUIREMENTS:

56. Prior to the issuance of any building permits, Permittees shall assure, by permit and bond, the design and construction of new water service(s) outside of any vehicular use area and the removal of all unused services, within the rights-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

57. Prior to the issuance of any building permits, Permittees shall apply for plumbing permit(s) for the installation of appropriate private back flow prevention device(s) on all existing and proposed water services to the development, including all domestic, fire and irrigation services, in a manner satisfactory to the Cross Connection Control Group, the Water Department Director and the City Engineer.

58. Prior to the issuance of any Certificates of Occupancy, the Permittees shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director and the City Engineer. Fire hydrants shall be located a minimum of five feet from any structures above, at or below grade.

59. Prior to the issuance of any Certificates of Occupancy, all 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.

60. Permittees shall have sole responsibility 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, Permittees shall reconstruct any damaged public water facility in a manner satisfactory to the Water Department Director and the City Engineer.

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

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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 September 21, 2010, by Resolution No. 306158.

Site Development Permit No. 352760
Date of Approval: September 21, 2010

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Michelle Sokolowski
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

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

**4th & Thorn, LLC, a California Limited
Liability Company
Owner/Permittee**

By _____
Lyda Cohen, its Manager

5th & Thorn, LLC, a California Limited
Liability Company
Owner/Permittee

By _____
Bruce Leidenberger, President of La
Jolla Pacific Development Group, Inc.,
its Manager

The Barrett Family Trust of 1986
Owner

By _____
NAME _____
TITLE _____

J. Bejar LLC
Owner

By _____
Jan Bejar, Member

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**