

RESOLUTION NUMBER R- 306256

DATE OF FINAL PASSAGE OCT 19 2010

A RESOLUTION GRANTING SITE DEVELOPMENT PERMIT
NO. 589770 FOR POINT PLAZA – PROJECT NO. 164585.

WHEREAS, Habib A. Jaboro and Wafa J. Jaboro, Co-Trustees, Habib A. and Wafa Jaboro Family Trust, dated February 24, 2005, Wisam Naeim Aziz, an unmarried man, and Thaeir Aziz, as his sole and separate property, Owners and Voltaire & Nimitz, LLC, Permittee, filed an application with the City of San Diego for a Site Development Permit No. 589770 to demolish an existing two-story commercial building and construct three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space with two deviations and two density bonus development incentives known as the Point Plaza project, located at 3903 Voltaire Street, and legally described as Lot 1 of Nimitz Center, according to Map No. 4854, filed July 11, 1960, in the Peninsula Community Plan area, in the CC-3-5 and CP-1-1 Zones which are to be rezoned to the CC-3-5 Zone; and

WHEREAS, on September 2, 2010, the Planning Commission of the City of San Diego considered Site Development Permit No. 589770, and pursuant to Resolution No. 4624-PC voted to recommend approval of the Permit; and

WHEREAS, the matter was set for public hearing on OCT 19 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 Site Development Permit No. 589770:

A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [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 project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space. The site is designated for Neighborhood Commercial on the Peninsula Community Plan Land Use Map. Properties in the immediate neighborhood are designated for higher density residential uses in the ranges of 29 dwellings per acre and 44 dwellings per acre. Voltaire Street, the main street in the neighborhood is designated for neighborhood commercial, higher density residential and public uses, such as a public library.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)]. Without the requested deviations these two units would not be provided and be available to persons whose income is at the very low income range of fifty percent of area median income.

The project will meet the objectives of the Peninsula Community Plan by developing a property designated for Neighborhood Commercial uses which allows mixed-use projects; will simplify the commercial zones on the subject site from two zones to one zone; by facilitating the redevelopment of the property which is located in the North Bay Redevelopment Area; and by providing rental dwelling units and affordable dwelling units. Therefore, in consideration of these facts, the proposed development will not adversely affect the applicable land use plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space. All infrastructure improvements will be constructed and operationally complete prior to occupancy of any structures to assure water, wastewater, electrical, gas, and telephone services will be provided to the development.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].

Prior to construction all permits will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical, fire and plumbing codes to assure the structures will meet or exceed the current regulations. The project will meet all relevant codes and regulations for new construction as required by the building, mechanical, electrical, fire and plumbing codes, in effect at the time of application. 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 project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)]. All other development regulations will be met by the proposed project.

2. Supplemental Findings – Deviation for Affordable Housing

a. The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City. The project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].

By approving the project with the two deviations and two development incentives the City Council will encourage creative design solutions compatible with the existing development patterns in the neighborhood and consistent with the purpose and intent of the Land Development Code regulations, will encourage the inclusion of affordable housing units into development projects and will provide additional affordable housing units in the neighborhood at a time when the City Council has resolved to increase affordable housing during a declared housing emergency in the City of San Diego. The deviations are very minor and will not adversely affect the neighborhood, community or city as a whole, nor negatively impact the community by setting a precedent. The deviations are deemed by the City Council to be appropriate in consideration of the facts, the existing conditions at the site and in the neighborhood, and in consideration of the positive benefits brought to the community as a result of proposed project and will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.

b. The development will not be inconsistent with the purpose of the underlying Zone. The project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable

housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].

The proposed project, with the deviations, is consistent with the purpose and intent of the CC-3-5 Zone which is to provide for the opportunity for mixed use projects within a regulatory framework of development restrictions necessary for the thoughtful, safe and sane development of properties for the economic, social and physical benefit of the community.

c. The deviation is necessary to make it economically feasible for the applicant to utilize a density bonus authorized for the development pursuant to Section 143.0730. The project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].

The proposed project, with the deviations, is consistent with the purpose and intent of the CC-3-5 Zone which is to provide for the opportunity for mixed use projects within a regulatory framework of development restrictions necessary for the thoughtful, safe and sane development of properties for the economic, social and physical benefit of the community. Without the density bonus authorized for the development the project would be limited to eighteen dwelling units and six additional housing units would not be realized on the site at a time when the City Council has resolved to increase affordable housing during a declared housing emergency in the City of San Diego. The deviations are very minor and will not adversely affect the neighborhood, community or city, nor negatively impact the community by setting a precedent. The deviations, 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L], are deemed by the City Council to be appropriate in consideration of the facts, the existing conditions at the site and in the neighborhood, and in consideration of the positive benefits brought to the community as a result of proposed project which includes twenty-four apartment units two of which will be affordable to persons at the very low income range of fifty percent of area median income as

affordable housing units. Without the deviations, 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L], the site is so constrained that the proposed project would be required to provide fewer dwelling units and the affordable housing units and density bonus units would not be provided. The site is of an irregular triangular geometry with two long sides of the triangle not allowing access to the site. All access rights from Nimitz Boulevard have been relinquished and access from Voltaire Street would interrupt the building design with a driveway or driveways and present a less desirable elevation to the street. The architectural design and the twenty-four dwelling units contained therein, with the deviations, is more efficient than without the deviations and is the preferred solution given the limitations of the site. Without the deviation being granted the subterranean parking garage would be redesigned to meet the development regulation which would result in a loss of parking spaces and in fewer dwelling units. In a real way the project will be economically feasible for the applicant without a density bonus authorized for the development only with the approval of the deviations.

3. 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. The project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].

The proposed project, with the deviations, is consistent with the purpose and intent of the CC-3-5 Zone which is to provide for the opportunity for mixed use projects within a regulatory framework of development restrictions necessary for the thoughtful, safe and sane development of properties for the economic, social and physical benefit of the community. Without the density bonus authorized for the development the project would be limited to

eighteen dwelling units and six additional housing units would not be realized on the site at a time when the City Council has resolved to increase affordable housing during a declared housing emergency in the City of San Diego. The deviations are very minor, 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L], and will not adversely affect the neighborhood, community or city, nor negatively impact the community by setting a precedent. The deviations are deemed by the City Council to be appropriate in consideration of the facts, the existing conditions at the site and in the neighborhood, and in consideration of the positive benefits brought to the community as a result of proposed project which includes twenty-four apartment units two of which will be affordable to persons at the very low income range of fifty percent of area median income as affordable housing units. Without the deviations the site is so constrained that the proposed project would be required to provide fewer dwelling units.

Granting the development permit and adopting the zoning ordinance will allow the developer to build six additional rental dwelling units on the site as allowed by the state density bonus regulations. In return for these additional six units, two dwelling units will be rented to persons whose income is at the very low income range of fifty percent of area median income as affordable housing units through an Affordable Housing Agreement with the San Diego Housing Commission to provide the 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) and the Density Bonus Program (California Government Code Sections 65915-65918 and Chapter 14, Article 3, Division 7 of the Land Development Code). Without the requested deviations these two units would not be provided and be available to persons whose income is at the very low income range of fifty percent of area median income.

As mixed-use project, a project which provides residential, commercial retail and office space opportunities on the same site in the same building, the potential of the project to reduce the consumption of fossil fuel energy may occur. The design of the project may potentially include sustainable features such as drought tolerant plantings, low flow plumbing fixtures, recycled content building materials, utilization of local material suppliers, low E glass, reduction of car trips, and if possible photovoltaic panels for the generation of electricity on site.

b. The development will not be inconsistent with the purpose of the underlying zone. The project will demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

The proposed project, with the deviations, is consistent with the purpose and intent of the CC-3-5 Zone which is to provide for the opportunity for mixed use projects within a regulatory framework of development restrictions necessary for the thoughtful, safe and sane development of properties for the economic, social and physical benefit of the community. For additional information, see 2. Supplemental Findings-Deviation for Affordable Housing, Finding No. b, above.

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 demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space.

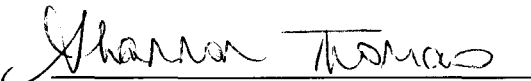
The project proposes two deviations and two density bonus development incentives. The deviations include: 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L]. Two density bonus incentives are allowed by state law to gain the two proposed very low income affordable housing units. The density bonus incentives are: 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].

The proposed project, with the deviations, is consistent with the purpose and intent of the CC-3-5 Zone which is to provide for the opportunity for mixed use projects within a regulatory framework of development restrictions necessary for the thoughtful, safe and sane development of properties for the economic, social and physical benefit of the community. Without the density bonus authorized for the development the project would be limited to eighteen dwelling units and six additional housing units would not be realized on the site at a time when the City Council has resolved to increase affordable housing during a declared housing emergency in the City of San Diego. The deviations are very minor and will not adversely affect the neighborhood, community or city, nor negatively impact the community by setting a precedent. The deviations are deemed by the City Council to be appropriate in consideration of the facts, the existing conditions at the site and in the neighborhood, and in consideration of the positive benefits brought to the community as a result of proposed project which includes twenty-four apartment units two of which will be affordable to persons at the very low income range of fifty percent of area median income as affordable housing units. Without the deviations the site is so constrained that the proposed project would be required to provide fewer dwelling units. The proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

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 Site Development Permit No. 589770 is granted to Habib A. Jaboro and Wafa J. Jaboro, Co-Trustees, Habib A. and Wafa Jaboro Family Trust, dated February 24, 2005, Wisam Naeim Aziz, an unmarried man, and Thaeir Aziz, as his sole and separate property, Owners and Voltaire & Nimitz, LLC, Permittee, under the terms and conditions set forth in the attached permit which is made part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Shannon Thomas
Deputy City Attorney

ST:als
09/23/10
Or.Dept:DSD
R-2011-217
PL#2010-02427

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 43-1567

SITE DEVELOPMENT PERMIT NO. 589770
POINT PLAZA – PROJECT NO. 164585 [MMRP]
CITY COUNCIL

This Site Development Permit No. 589770 is granted by the Council of the City of San Diego to Habib A. Jaboro And Wafa J. Jaboro, Co-Trustees, Habib And Wafa Jaboro Family Trust, dated February 24, 2005, Wisam Naeim Aziz, an unmarried man, and Thaeir Aziz, as his sole and separate property, Owners and Voltaire & Nimitz, LLC, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The 0.61 acre site is located at 3903 Voltaire Street within the CP-1-1 and CC-3-5 Zones (proposed CC-3-5 Zone), Airport Approach Overlay Zone, Airport Environs Overlay Zone, Coastal Height Limit Overlay Zone, Community Plan Implementation Overlay Zone Type B in the Peninsula Community Plan Area. The project site is legally described as Lot 1 of Nimitz Center, according to Map thereof No. 4854, filed July 11, 1960.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space with two deviations and two development incentives known as the Point Plaza project, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated **OCT 19 2010**, on file in the Development Services Department.

The project shall include:

The project or facility shall include:

- a. Demolish an existing two-story commercial building and construct a three-story mixed-use development consisting of twenty-four apartment units (twenty-two market rate apartment units and two affordable apartment units) and approximately 12,004 square feet of commercial space;

- b. Two deviations; 1) Reducing the minimum required width of parking stalls adjacent to columns from 9 feet to 8 feet 11 inches [LDC Section 142.0560(b) and Table 142-05J]; and 2) Reduce the minimum width of drive aisles in the lower level of the parking garage from 24 feet to 23 feet [LDC Section 142.0560(j)(1) and Table 142-05L];
- c. Two density bonus development incentives; 1) Reducing the minimum required distance between driveways along Las Lomas Street from 45 feet to 22 feet [LDC Section 142.0560(j)(6)]; and 2) Reducing the amount of private exterior space required from the required 75 percent of dwelling units or 18 decks to 59 percent or 14 decks and from a nine foot setback to three feet to align with the commercial space below [LDC Section 131.0455(c)].
- d. Landscaping (planting, irrigation and landscape related improvements);
- e. Off-street parking; and
- f. 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 Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (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 affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms

and conditions set forth in this Permit unless otherwise authorized by the 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, 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 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.

11. Prior to issuance of any occupancy permit for residential units, such units shall be sound attenuated to the 45 dB CNEL interior noise level or lower.

12. Prior to the issuance of building permits, an aviation easement for aircraft noise and height shall be recorded with the San Diego County Recorder for the land uses for which sound attenuation is required.

13. Prior to issuance of any building permit, the Owner/Permittee shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration.

14. This Permit may be developed in phases. Each phase shall be constructed prior to lease to individual tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A."

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

15. 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

16. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Mitigated Negative Declaration No. 164585, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

17. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Mitigated Negative Declaration No. 164585, 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:

Transportation/Circulation;
Historical Resources;
Noise; and
Paleontological Resources

18. 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:

19. Prior to receiving the first residential building permit, the Owner/Permittee shall enter into an Affordable Housing Agreement with the San Diego Housing Commission to provide the 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) and the Density Bonus Program (California Government Code Sections 65915-65918 and Chapter 14, Article 3, Division 7 of the Land Development Code).

ENGINEERING REQUIREMENTS:

20. Prior to the issuance of any construction permits, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.

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

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

23. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate and show the type and location of all post-construction Best Management Practices on the final construction drawings, in accordance with the approved Water Quality Technical Report, satisfactory to the City Engineer.

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

25. Prior to the issuance of any construction permits, the Owner/Permittee shall dedicate and improve an additional three feet of right-of-way, adjacent to the site on Las Lomas Street, satisfactory to the City Engineer.

26. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the Owner/Permittee to 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.

27. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the replacement of damaged sidewalk, maintaining the existing sidewalk scoring pattern and preserving any contractor's stamp, adjacent to the site on Las Lomas Street and Voltaire Street, satisfactory to the City Engineer.

28. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the replacement of existing curb with City Standard curb and gutter, adjacent to the site on Las Lomas Street and Voltaire Street, satisfactory to the City Engineer.

29. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the construction of a new City Standard curb ramp, at the Las Lomas Street and Voltaire Street intersection adjacent to the site, satisfactory to the City Engineer.

30. This project proposes to export 53,000 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 the approval of a Neighborhood Use Permit or Conditional Use Permit, per LDC Section 141.0620(i).

31. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the installation of two City Standard street lights; one on Voltaire Street and one on Las Lomas Street, adjacent to the site, satisfactory to the City Engineer.

32. Prior to issuance of an occupancy permit, the Owner/Permittee agrees to participate in a maintenance assessment district for decorative street lighting if such a district is in existence at this time. In the event the Owner/Permittee participates in this maintenance assessment district, the requirement for City-standard street lights may be waived or modified by the City Engineer, in consideration of lighting levels that would be achieved by using decorative lights.

33. The Owner/Permittee shall enter into an agreement with the City waiving the right to oppose a maintenance assessment initiated for the installation of decorative street lights and their perpetual maintenance.

LANDSCAPE REQUIREMENTS:

34. 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.

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

36. Prior to issuance of an occupancy permit, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

37. 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.

38. 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.

39. If any required landscape, including existing or new plantings, hardscape, landscape features, or other improvements, indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee is responsible to 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.

PLANNING/DESIGN REQUIREMENTS:

40. A minimum of 61 automobile spaces, including 3 van accessible spaces, 2 motorcycle spaces and 14 bicycle spaces are required by the Land Development Code. Seventy-four spaces, including 3 van accessible spaces, 8 motorcycle spaces, and 10 bicycle spaces are shown on Exhibit "A," although fourteen bicycle spaces shall be provided. Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

41. 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.

42. Approval and utilization of this Site Development Permit shall rescind Permit Nos. C-4279, C-5198 and Resolution No. 167765.

43. Prior to the issuance of any building permits, the Owner/Permittee shall grant an avigation easement to the San Diego County Regional Airport Authority as required by the Airport Land Use Compatibility Plan for San Diego International Airport. The Owner/Permittee shall obtain the required avigation easement language from the San Diego County Regional Airport Authority.

44. Prior to submitting building plans to the City for review, the Owner/Permittee shall place a note on all building plans indicating that an avigation easement has been granted across the property to the airport operator. The note shall include the County Recorder's recording number for the avigation easement.

45. All signs associated with this development shall be consistent with the sign design and material criteria established by the Peninsula Community Plan CPIOZ for Voltaire Street and the City-wide sign regulations.

46. 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.

47. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall provide private sub-meters to measure the water use of each apartment unit and commercial lease space, in a manner satisfactory to the Director of Development Services Department.

48. Prior to the issuance of any building permits, the Owner/Permittee shall indicate on construction documents the installation of photovoltaic panels for the on-site generation of electricity capable of providing, at a minimum, the electricity needed for all on-site common areas, in a manner satisfactory to the Director of Development Services Department. Common areas shall include fixtures in common corridors, courtyards, hallways, patios, subterranean parking garages, and other such areas generally accessible to persons and not private interior lease or rental spaces.

TRANSPORTATION REQUIREMENTS

49. Prior to issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of twenty-four-foot wide commercial driveway and a second twenty-foot wide residential driveway on Las Lomas Street, satisfactory to the City Engineer.

50. Prior to issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of a raised median along the project's frontage on Voltaire Street between Sea Colony Drive and Las Lomas Street, satisfactory to the City Engineer.

51. Prior to issuance of any building permits, the Owner/Permittee shall assure by permit and bond the re-striping of Voltaire Street between Las Lomas Street and Worden Road as a two-lane collector street with two-way-left-turn lane, satisfactory to the City Engineer.

52. The Owner/Permittee shall provide and maintain a ten foot visibility area along the front setback on both sides of both the commercial and residential driveways on Las Lomas Street. No obstacles higher than thirty-six inches shall be located within this area, including yet not limited to walls, landscaping or other improvements.

53. The Owner/Permittee shall provide and maintain a twenty-five foot visibility area along the front setback at the corner of the intersection of Voltaire Street and Las Lomas Street. No obstacles higher than thirty-six inches shall be located within this area, including yet not limited to walls, landscaping or other improvements.

54. The Owner/Permittee shall install a "no parking" red zone between the two driveways along the project's frontage on Las Lomas Street.

WASTEWATER REQUIREMENTS:

55. Prior to issuance of any building permits, the Owner/Permittee shall verify that the existing lateral can handle the flow generated from the site or size a new lateral to accommodate the flow.

56. Prior to connecting to any existing sewer lateral, it shall be closed circuit television inspected by a California licensed Plumbing Contractor to verify lateral is in good working condition and free of all debris.

57. All onsite sewer facilities shall be private.

58. 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.

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

60. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer facilities.

WATER REQUIREMENTS:

61. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) outside of any driveway, and the removal of all existing unused services, within the right-of-way adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.
62. Prior to the issuance of any building permits, the Owner/Permittee shall apply for and obtain a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Director of Public Utilities and the City Engineer.
63. Prior to the issuance of any certificates of occupancy, all public water facilities shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.
64. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

GEOLOGY REQUIREMENTS:

65. Prior to issuance of any construction permits, the Owner/Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section and shall be to the satisfaction of the Geology Section 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 City Council of the City of San Diego on OCT 19 2010, by Resolution No. R-306256.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Mike Westlake
Program Manager

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

**HABIB AND Wafa JABORO FAMILY
TRUST, dated February 24, 2005**
Owner/Permittee

By _____
HABIB A. JABORO, CO-TRUSTEE

**HABIB AND Wafa JABORO FAMILY
TRUST, dated February 24, 2005**
Owner/Permittee

By _____
Wafa J. JABORO, CO-TRUSTEE

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

WISAM NAEIM AZIZ, an unmarried man
Owner

By _____
WISAM NAEIM AZIZ

THAEIR AZIZ, as his sole and separate
Property Owner

By _____
THAEIR AZIZ

VOLTAIRE & NIMITZ, LLC
Permittee

By _____
BRIAN RUCKER, Managing Member

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