

RESOLUTION NUMBER R- 311018

DATE OF FINAL PASSAGE APR 04 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING CENTRE CITY DEVELOPMENT
PERMIT/SITE DEVELOPMENT PERMIT/CENTRE CITY
PLANNED DEVELOPMENT PERMIT/NEIGHBORHOOD USE
PERMIT NO. 2014-76 FOR THE 1122 4TH AVENUE
(COMMONLY KNOWN AS THE CALIFORNIA THEATRE)
PROJECT.

WHEREAS, Sloan Capital Partners, LLC, Owner, and 1122 4th Avenue, LLC, Permittee ("Owners/Permittee"), filed an application with Civic San Diego to allow for the demolition of the existing California Theatre building and the construction of a mixed-use development containing 40 story tower (up to 422 feet tall) containing 282 residential dwelling units (DU), including indoor and outdoor amenity spaces, approximately 11,000 square feet (SF) of commercial space, and a minimum of 284 automobile parking spaces, commonly referred to as 1122 4th Avenue ("Project"); and

WHEREAS, the project site is located on a 25,000 square foot premises located on the north side of C Street between Third and Fourth avenues in the Civic/Core neighborhood of the Downtown Community Plan area; and

WHEREAS, the property is legally described as Lots E, F, G, H, and I in Block 16 of Horton's Addition in the City of San Diego, County of San Diego, State of California, according to partition map thereof, made by L.L. Lockling, filed in the Office of the County Recorder of San Diego County; and

WHEREAS, on January 18, 2017, the Downtown Community Planning Council considered Centre City Development Permit / Site Development Permit / Centre City Planned

Development Permit / Neighborhood Use Permit (CCDP/SDP/CCPDP/NUP) No. 2014-76 and voted 19-1 to recommend approval of Permit No. 2014-76; and

WHEREAS, on January 25, 2017, the Civic San Diego Board of Directors considered CCDP/SDP /CCPDP/NUP No. 2014-76 and voted 8-1 to recommend approval of Permit No. 2014-76; and

WHEREAS, on January 26, 2017, the Historic Resources Board considered Site Development Permit No. 2014-76 and voted 5-3 to recommend disapproval of Site Development Permit No. 2014-76; and

WHEREAS, on March 16, 2017, the Planning Commission of the City of San Diego held a duly noticed public hearing, considered a staff report and public testimony for Centre City Development Permit / Site Development Permit / Centre City Planned Development Permit / Neighborhood Use Permit No. 2014-76 and voted to recommend to City Council approval of Permit No. 2014-76; and

WHEREAS, on April 4, 2017, the City Council held a duly notice public hearing and considered a staff report and public testimony for CCDP/SDP/CCPDP/NUP No. 2014-76; 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 City Council of the City of San Diego, that it adopts the following findings with respect to Centre City Development Permit/Site Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2014-76:

CENTRE CITY DEVELOPMENT PERMIT (CCPDO §156.0304(e)(1)(D))

1. The proposed development is consistent with the Downtown Community Plan, Centre City Planned District Ordinance, Civic San Diego Land Development Manual, San Diego Municipal Code, and all other adopted plans and policies of the City of San Diego pertaining to the Centre City Planned District.

The proposed development is consistent with the Downtown Community Plan (DCP) (subject to the proposed amendment), CCPDO (subject to the proposed amendments), San Diego Municipal Code (SDMC), and all other adopted plans and policies of the City of San Diego pertaining to the Centre City Planned District (CCPD) as the development advances the goals and objectives of the DCP and CCPD by:

- Providing for an overall balance of uses;
- Adding to the range of Downtown housing opportunities;
- Contributing to the vision of Downtown as a major residential neighborhood;
- Increasing the Downtown residential population;
- Providing the production of affordable housing; and,
- Creating an intense district with large and tall buildings reflecting Civic/Core's character as San Diego's business and political center, while promoting a mix of uses;

In addition, with approval of the Amendments to the Employment Overlay Zone and CCDP/SDP/CCPDP/NUP No. 2014-76, this Project will be consistent with the requirements of the SDMC and CCPDO. Subject to the proposed Employment Overlay Amendments to the DCP and CCPDO, the proposed project would be consistent with the land uses allowed by the Core Land Use of District of the CCPDO and the Commercial Street Overlay of the CCPDO that applies to the C Street frontage. The Core Land Use District allows residential uses as a permitted use and requires 40 percent of the ground-floor street frontages to contain 40 percent active commercial uses. The residential mixed-use project containing 282 residential units will exceed the 40 percent ground-floor active commercial use requirement of the Core District, and will contain active commercial uses on C Street exceeding the 60 percent requirement.

The proposed development will be consistent with the development standards of the SDMC and the CCPDO with the exception of the requested deviations for maximum east-west tower dimension, maximum street wall height, and streetwall setback. These development standards include minimum building setbacks, building heights, building bulk, building base, ground floor heights, maximum tower lot coverage and residential development regulations. A total of 314 complying parking spaces meeting minimal dimensional requirements of the SDMC will be provided to meet the minimum off-street vehicle parking requirement of 284 spaces required by the CCPDO, while each residential unit will be provided a residential storage space meeting the minimum area and dimensions stipulated by the SDMC. The proposed project would meet and exceed the Residential Common Indoor and Outdoor Space requirement, as well as the Residential Private Open Space requirements and the Pet Open Space requirements. The proposed floor area ratio of 15.6:1 will comply with the maximum floor area ratio allowed by the CCPDO, which is a floor area ratio of 23.5:1 (inclusive of the affordable housing bonus and other floor area ratio bonuses allowed by the CCPDO).

SITE DEVELOPMENT PERMIT (SDMC § 126.0504(a)(i))

The following three findings are required for all Site Development Permits:

1. The proposed development will not adversely affect the applicable land use plan;

With approval of the Employment Overlay (EO) removal amendments to the DCP and CCPDO, which are being processed concurrently with the permit approvals, the proposed Project would be consistent with the objectives of the DCP, CCPDO, and the Downtown Design Guidelines (DDGs) in that the Project provides a mixed-use development that is consistent with the orderly growth and scale of the neighborhood and would have a negligible impact on the surrounding neighborhood and would not affect the applicable land use plan.

The goals and policies of the DCP generally stipulate that National Register of Historic Places (NRHP) and California Register of Historic Resources (CRHR) eligible buildings should be retained on-site, and furthermore, any improvements, renovation, rehabilitation and/or adaptive reuse should facilitate preservation consistent with the Secretary of the Interior's Standards. While the DCP's policies call for the preservation and rehabilitation of NHRP and CRHR eligible buildings, it also encompasses economic development, improvement to neighborhoods, and the development of the Core neighborhood as goals and policies. The Project site plays a role in the continued challenges that face the C Street corridor due the Project site's vacant status of the last 25-plus years. Implementation of the Project would promote the following goals and policies of the DCP and not adversely affecting the DCP by:

- Providing for an overall balance of uses;
- Adding to the range of Downtown housing opportunities;
- Contributing to the vision of Downtown as a major residential neighborhood;
- Increasing the Downtown residential population;
- Providing the production of affordable housing; and,
- Creating an intense district with large and tall buildings reflecting Civic/Core's character as San Diego's business and political center, while promoting a mix of uses.

In addition, with approval of the Amendments to the Employment Overlay Zone and CCDP/SDP/CCPDP/NUP No. 2014-76, this Project will be consistent with the requirements of the SDMC and CCPDO. Subject to the proposed Employment Overlay Amendments to the DCP and CCPDO, the proposed project would be consistent with the land uses allowed by the Core Land Use of District of the CCPDO and the Commercial Street Overlay of the CCPDO that applies to the C Street frontage. The Core Land Use District allows residential uses as a permitted use and requires 40 percent of the ground-floor street frontages to contain 40 percent active commercial uses. The residential mixed-use project containing 282 residential units will exceed the 40 percent ground-floor active commercial use requirement of the Core District, and will contain active commercial uses on C Street exceeding the 60 percent requirement.

The proposed development will be consistent with the development standards of the SDMC and the CCPDO with the exception of the requested deviations for maximum east-west tower dimension, maximum street wall height, and streetwall setback. These development standards include minimum building setbacks, building heights, building bulk, building base, ground floor heights, maximum tower lot coverage and residential development regulations. A total of 314 complying parking spaces meeting minimal dimensional requirements of the SDMC will be provided to meet the minimum off-street vehicle parking requirement of 284 spaces required by the CCPDO, while each residential unit will be provided a residential storage space meeting the minimum area and dimensions stipulated by the SDMC. The proposed project would meet and exceed the Residential Common Indoor and Outdoor Space requirement, as well as the Residential Private Open Space requirements and the Pet Open Space requirements. The proposed floor area ratio of 15.6:1 will comply with the maximum floor area ratio allowed by the CCPDO, which is a floor area ratio of 23.5:1 (inclusive of the affordable housing bonus and other floor area ratio bonuses allowed by the CCPDO).

2. The proposed development will not be detrimental to the public health, safety, and welfare; and,

The granting of the Site Development Permit and approval of the Project will not negatively impact the public health, safety, and general welfare through compliance with the applicable development regulations of the CCPDO and SDMC as outlined in Finding No. 1 above, as well as through compliance with California Building Code and the Mitigation, Monitoring, and Reporting Program proposed under the proposed project's Supplemental Environmental Impact Report. Overall, the proposed development is consistent with the plans for this neighborhood and will contribute to its vitality by providing a contextual development and demolishing a structurally unsound building.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed development will comply with the regulations of the CCPDO and City of San Diego Land Development Code with approval of the SDP, including obtaining all additional applicable permits as required by the City of San Diego Development Services Department. The proposed project will comply with the applicable CCPDO requirements as outlined in the above Finding No. 1. These requirements include regulations pertaining to minimum building setbacks, building heights, building bulk, building base, ground floor heights, and residential development regulations. It will also comply with the CCPDO's Urban Design Regulations pertaining to building orientation, façade articulation, street level design, pedestrian entrances, transparency, blank walls, glass and glazing, rooftops, encroachments into public rights-of-way, building identification, and regulations pertaining to historical resources requiring an SDP.

In addition to the above findings, the SDMC requires the following findings for *substantial* alterations of a designated historical resource:

1. There are no feasible measures, including a less environmentally damaging alternative, that can further minimize the potential adverse effects on the designated historical resource or historical district;

The original Base Project proposed to removing all existing improvements on the site with the demolition of the existing California Theatre building and construction of a mixed-use development comprised of a 40-story tower (approximately 422 feet tall) and podium located on a 25,000 square-foot site on the north side of C Street between Third and Fourth avenues in the Civic/Core neighborhood of the Downtown Community Plan area. The original Base Project comprised of 282 dwelling units (DU), approximately 11,000 SF of retail space, and 325 automobile parking spaces. Project Alternative 1 (described below) is the proposed project rather than the originally proposed Base Project.

Five project alternatives have been analyzed. The Project alternatives range in scope from demolition and replication of select facades to a complete rehabilitation consistent with the Secretary of the Interior's Standards for reuse. More specifically, the project alternatives are as follows:

1. Project Alternative 1 would remove all existing improvements on the site as proposed in the Base Project, construct the Base Project's 40-story mixed-use tower, and construct a connected new nine-story tower with two reconstructed facades replicating the Fourth Avenue and C Street facades of the existing office tower. Project Alternative 1, the currently proposed Project, consists of 282 dwelling units (DU), approximately 11,000 SF of retail space, and 314 automobile parking spaces.
2. Project Alternative 2 would remove all existing improvements on the theater portion of the site, construct the Base Project's 40-story mixed-use tower at the location of the demolished theater portion of the building, and retain and rehabilitate the nine-story office tower building.
3. Project Alternative 3 would remove all existing improvements on the theater portion of the site with the exception of the ground floor C Street facade and the decorative elements above it, which would be rehabilitated. This alternative would also construct the Base Project's 40-story mixed-use tower at the location of the demolished theater portion of the building, and retain and rehabilitate the nine-story office tower building.
4. Project Alternative 4 would remove all existing improvements on the theater portion of the site with the exception of the ground floor C Street facade and the decorative elements above it, which would be rehabilitated. This alternative would also construct the Base Project's 40-story mixed-use tower at the location of the demolished theater portion of the building, and retain and rehabilitate the nine-story office tower building. This alternative differs from Alternative 3 by creating a 20-foot-wide galleria running north-south between the nine-story tower and any new construction to the west of the galleria, creating an open space from the ground level through the ninth floor.
5. Project Alternative 5 would rehabilitate all existing improvements on the site in accordance with the Secretary of the Interior's Standards for adaptive re-use as a theater

and office building and would maintain the 5,000 SF parking lot. No additional area would be added and no changes in the building's massing would occur.

As outlined in Finding No. 3 below, the Base Project and Project Alternative 1 (the proposed project) are the only projects that are feasible and would not result in an economic hardship to the owner. Given these circumstances, there are not feasible measures, including a less environmentally damaging alternative, which can further minimize the potential adverse effects on the designated historical resource. In the Applicant's economic analysis of the Project alternatives, only the original Base Project and Project Alternative 1 (the proposed project) were able to achieve a minimum 10% margin on gross revenue, which according to the report, is typically the minimum needed to be demonstrated to lenders to obtain financing. A peer review of the Applicant's economic analysis of the Project alternatives yielded results that were less optimistic. The peer review analysis estimated Project Alternative 1 (the proposed project) will only result in a 5.7% margin as a percentage of value; thus, questioning the proposed project's economic viability. However, the peer review confirmed that Project Alternatives 2-5 were not economically viable. Given the margin on gross revenue numbers that were generated in both reports, only the Base Project and Project Alternative 1 (proposed project) appear economically viable.

The Base Project was based on a faux re-creation of the office tower portion, while Alternative 1 would feature a true replication of the office tower facades on C Street and Fourth Avenue, based on Historic American Buildings Survey drawings prepared by a historical architect. Although the Alternative 1 (the proposed project) is equivalent to the Base Project, Alternative 1 is preferable to Base Project as it will offer a better historic representation of the California Theatre Office Building.

2. The deviation is the minimum necessary to afford relief and accommodate the development and all feasible measures to mitigate for the loss of any portion of the historical resource have been provided by the applicant; and

The deviation proposed is the minimum necessary to afford relief and accommodate the development of the site in accordance with the allowable development regulations of CCPDO. The proposed project, Project Alternative 1, as described above, is the most preferential project as it will offer the most desirable project design while also providing enough predicted margin on gross revenue to make the project financeable. In its current condition, the property cannot be used since it has been deemed structurally unsafe by the City of San Diego and is in a dilapidated state of repair. Furthermore, the other analyzed project alternatives (Alternatives 2-5) that proposed an array of mitigation measures would not result in a Project that would yield a margin on gross revenue that would be eligible for financing.

The applicant has agreed to implement all measures identified in the Mitigation, Monitoring and Reporting Program (MMRP) found in the Final Supplemental Environmental Impact Report (FSEIR) for the 1122 4th Avenue Redevelopment Project. The applicant has provided Historic American Building Survey documentation of the existing property which includes a photo survey of the property and measured drawings of the exterior features. Additionally, mitigation required as part of the Supplemental FEIR includes architectural salvage of any architectural material for

donation to museums, archives curation facilities, the public and nonprofit organizations prior to demolition; and an interpretive display and material that could be in a brochure format and will also be installed at the site. As such, the deviation is the minimum necessary to afford relief and accommodate the development and all feasible measures to mitigate for the loss of any portion of the historical resource have been provided by the applicant.

3. The denial of the proposed development would result in economic hardship to the owner. For purposes of this finding, “economic hardship” means there is no reasonable beneficial use of a property and it is not feasible to derive a reasonable economic return from the property.

Due to the dilapidated and structurally unsafe state of the property, there is no reasonable beneficial use of the property and it is not feasible to derive a reasonable economic return from the property. The property cannot be used in its existing as the City of San Diego deemed the structure unsafe for occupancy. In 1990, the City of San Diego determined that the structure was not a seismically sound structure. Since that time, the building has remained unoccupied due to the structurally unsafe building condition. The current nonuse of the vacant property is not a reasonable use of the property. In addition, denial of the proposed development (either the original Base Project or Project Alternative 1) would result in economic hardship to the owner as the existing state of the property would preclude the owner from deriving a reasonable economic return from the property as it cannot be occupied or used in its current state. Project Alternatives 2-5 are not economically feasible as they do not provide 10% or higher margin on gross revenue to allow the project to be financed. In addition, as analyzed under Project Alternative 5, the cost of rehabilitating the California Theatre and the office tower substantially exceeds any value or income from the rehabilitation. A full rehabilitation of both the California Theatre and the existing 9-story office tower would result in approximately \$40.8 million in total restoration and construction costs. The economic analysis determined that the value of the California Theatre and office tower following the restoration would be around \$7.0 million resulting in a loss of negative \$33.8 million. Therefore, the denial of the proposed development would result in an economic hardship to the owner.

CENTRE CITY PLANNED DEVELOPMENT PERMIT
(SDMC §156.0304(f)(2))

1. The proposed development will not adversely affect the applicable land use plan;

Three deviations to the development standards of the CCPDO have been proposed as follows:

- o CCPDO 156.0310(d)(3)(B) Maximum Tower Dimensions – Allowing the East-West Tower Floor Plate Dimension to exceed 130 feet. The proposed East-West Tower Floor Plate Dimension is 150 feet.
- o CCPDO 156.0310(d) (1)(C) Streetwall Setback: Allowing a portion of the 4th Avenue street wall to be located greater than five feet from the property line adjoining the street. A 31-foot-wide portion of the streetwall setback has been proposed at a depth of eight feet.

- o CCPDO 156.310(d)(1)(E) Streetwall Height – Allowing a portion of the streetwall to exceed 85 feet in height. The streetwall height of the re-created office tower portion of the proposed project measures 90 feet in height.

With approval of the EO removal amendments to the DCP and CCPDO, the proposed Project would be consistent with some objectives of the DCP, CCPDO, and the DDGs in that the Project provides a mixed-use development that is consistent with the orderly growth and scale of the neighborhood, and furthermore, would allow for economic development and improvements to the C Street corridor and the surrounding Core neighborhood. The requested deviation for the maximum east-west tower dimension will allow development that is of similar size to other developments in the neighborhood, including a number of surrounding high-rise developments. The 150-foot-wide east-west tower dimension will allow a contextual tower to maximize its development potential at a site that is envisioned by the DCP to have a tall, intense development with high a floor ratio of up to 23.5:1 as allowed by the CCPDO. The streetwall setback and streetwall height deviations will allow for the re-creation of the historic office building. The 90-foot tall streetwall height will allow the re-created building to replicate the height of the existing building. The surrounding streetwall heights vary greatly in the Project vicinity with streetwalls ranging between two stories and 12 stories plus. Given the varied streetwall heights of the Project vicinity, the proposed streetwall heights are consistent with the neighborhood and will not adversely affect the vision of the built environment for the neighborhood. Additionally, the streetwall area with the eight-foot, ground-floor setback recessed will allow for the approximate re-creation of the recessed entry area on 4th Avenue. These requested deviations would provide relief from the strict application of the development standards, would have a negligible impact on the surrounding neighborhood and would not adversely impact the land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare;

The granting of the deviations and approval of the Project will not negatively impact the public health, safety, and general welfare. Overall, the proposed development is consistent with the plans for this neighborhood by providing a tall, intense contextual development that will activate the C Street corridor and will contribute to its vitality at a project site that has been underutilized for over 25 years. Additionally, the building currently represents a structurally unsound building that would be demolished under the Project.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Centre City Planned District Ordinance, except for any proposed deviations which are appropriate for this location and will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of the Centre City Planned District Ordinance; and,

The proposed development will meet all of the requirements of the SDMC and CCPDO with the approval of the deviations, which are allowable under a Centre City Planned District Permit. In addition, approval of the Project and related permits also requires approval of an amendment to the Downtown Community Plan and the CCPDO to remove the EO from the project site. . The maximum east-west tower dimension deviation at 150 feet in width will allow development that is of similar size to other high-rise developments found in the immediate project vicinity. As

previously stated in Finding No. 1, the 150-foot tower width deviation will allow a contextual tower to maximize its development potential at a site that is envisioned by the DCP. The streetwall setback and streetwall height deviations will allow for the re-creation of the historic office building by re-creating the approximate height and entryway depth of the California Theatre office building and will provide for a contextual streetwall design as described in above Finding No. 1.

4. The development is consistent with the Downtown Design Guidelines and exhibits superior architectural design.

Approval of the requested deviations will result in a mixed-used development consistent with the surrounding area and the DDGs. The mixed-use Project exhibits appropriate massing in scale with the long-term development plans for the Core neighborhood. The development will provide a tower design that features an upper tower design, tower glazing and tower lighting that are consistent with the DDGs. Blank podium walls and property line walls have been appropriately designed and enhanced with architectural detailing, material texture, and ornamentation consistent with the DDGs. The ground-floor, particularly the C Street frontage, will provide highly activated retail spaces with gracious ground-floor heights that are consistent with the DDGs. Furthermore, the DCP envisions the Core neighborhood having a rich mix of the uses and large, tall, intense developments. Overall, the Project will result in a distinctive development compatible with the surrounding neighborhood that exhibits superior architectural design.

NEIGHBORHOOD USE PERMIT - COMPREHENSIVE SIGN PLAN **(SDMC § 141.1103)**

1. That the proposed sign, as a whole, is in conformance with the intent of the sign regulations and any exceptions result in an improved relationship among the signs and building facades on the premises;

The proposed signs include the replicated California Theatre projecting sign located at the corner of Fourth Avenue and C Street and the faux movie marquee that will be located above the recessed entry on the re-created office tower. As a whole each sign is in conformance with the intent of the sign regulations, suitable for the location, and do not interfere with the design of the building. The requested sign areas and placements are proportional to the heights and widths of the building and will also help re-create historic signs that were once located on the property. The blade sign (extending 83 feet above the sidewalk, projecting eight feet from the corner of the building, and containing six hundred total square feet of sign area) will approximate the dimensions and design of the historic blade sign found the southwest corner of the California Theatre office building. The movie marquee will approximate the location and size of the movie marquee on the Fourth Avenue frontage. The proposed signage is designed in a fashion that maintains a balanced relationship with the architecture of the building so as to not detract from the Project design.

2. That the proposed use will not adversely affect the applicable land use plan;

The proposed Comprehensive Sign Plan is located within the Core Land Use District of the DCP area. The re-created historic signage are permitted within this land use district through a Comprehensive Sign Plan with approval of an NUP. Therefore, the proposed Comprehensive

Sign Plan does not adversely affect the applicable land use plan as the proposed use with approval of an NUP is consistent with the regulations of the CCPDO.

3. That the proposed use will not be detrimental to the public health, safety and welfare; and,

The proposed Comprehensive Sign Plan will not be detrimental to the public health, safety, and welfare of the community when installed in compliance with the recommended conditions of approval. The conditions of the NUP include conditions that stipulate that the proposed signs may not be utilized for tenant signage, and furthermore, that the signs may only be used to re-create the historic signage dimensions, materials, and sign copy.

4. That the proposed use will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed use will comply with the regulations of the CCPDO and City of San Diego Land Development Code, including obtaining all additional applicable permits as required by the City of San Diego Development Services Department.

**NEIGHBORHOOD USE PERMIT - OUTDOOR SEATING ASSOCIATED
WITH AN EATING AND DRINKING ESTABLISHMENT
(CCPDO § 156-0308-A)**

1. The proposed use or development will not adversely affect the applicable land use plan;

The outdoor use area for the proposed project will not adversely affect the applicable land use plan as it is consistent with the CCPDO and DCP. Outdoor use areas are permitted within the downtown with the approval of an NUP. Shopping, dining and gathering in the neighborhood are part of the vision in the DCP for the Civic/Core and the Applicant's proposed use is consistent with that vision, providing outdoor seating, facilitating a mixed-use neighborhood, and activating the C Street corridor. The use is compatible with the surrounding neighborhood and land uses, providing additional street-level active commercial and pedestrian-oriented activity. In addition, conditions are being put in place that will mitigate noise and other impacts of the outdoor use area and avoid any adverse effects on the land use plan.

2. The proposed use or development will not be detrimental to the public health, safety, and welfare; and,

The proposed uses will not be detrimental to the public health, safety, and welfare as the permit will include the standard and Project-specific conditions of approval including, but not limited to, conditions related to hours of operations, activity restrictions, and sound and security measures to ensure that the use is compatible with the surrounding neighborhood.


3. The proposed use or development will comply to the maximum extent feasible with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed uses are permitted uses in the CCPDO and Land Development Code with approval of a NUP, and will comply to the maximum extent feasible with the regulations of SDMC and

the CCPDO with approval of a NUP and will not require deviations to the Land Development Code.

BE IT FURTHER RESOLVED, that based on the findings hereinbefore adopted by the City Council, Centre City Development Permit/Site Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2014-76 is hereby granted to the referenced Owner/Permittee, in the form, exhibits, terms, and conditions set forth in Permit No. 2014-76, a copy of which is attached hereto and made a part hereof, contingent upon final passage of the R- 311017 approving amendments to the General Plan and Downtown Community Plan and O- 20814 amending the Centre City Planned District Ordinance.

APPROVED: MARA W. ELLIOTT, City Attorney

By  _____
Corrine L. Neuffer
Deputy City Attorney

CLN:dkr
March 17, 2017
April 5, 2017 Rev. Copy
Or.Dept:Civic San Diego
Doc. No.: 1463105_3

ATTACHMENT: Centre City Development Permit/Site Development Permit/ Centre City
Planned Development Permit/Neighborhood Use Permit No. 2014-76

RECORDING REQUESTED BY: |

Civic San Diego
Planning Department
401 B Street, Suite 400
San Diego, CA 92101

AND WHEN RECORDED MAIL TO: |

Civic San Diego
Planning Department
401 B Street, Suite 400
San Diego, CA 92101

| *THIS SPACE FOR RECORDER'S USE ONLY*

*NOTE: COUNTY RECORDER, PLEASE RECORD AS
RESTRICTION ON USE OR DEVELOPMENT OF
REAL PROPERTY AFFECTING THE TITLE TO OR
POSSESSION THEREOF*

**DRAFT CENTRE CITY DEVELOPMENT PERMIT
SITE DEVELOPMENT PERMIT
PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2014-76**

**1122 4th AVENUE
ASSESSOR PARCEL NUMBER
533-521-04-00, 05-00 AND 08-00**

**CENTRE CITY PLANNED DISTRICT
DRAFT CENTRE CITY DEVELOPMENT PERMIT
SITE DEVELOPMENT PERMIT
PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2014-76**

**1122 4th AVENUE
ASSESSOR PARCEL NUMBER
535-112-521-00, 05-00 AND 08-00**

This Centre City Development Permit / Site Development Permit / Planned Development Permit / Neighborhood Use Permit (CCDP/SDP/PDP/NUP) No. 2014-76 is granted by Civic San Diego (“CivicSD”) to Sloan Capital Partners, LLC, Owner, and 1122 4th Avenue, LLC, Permittee, to allow the demolition of the California Theatre building and construction of a mixed-use development containing a 40-story tower (approximately 422 feet tall) comprised in total of approximately 282 dwelling units (DU) including indoor and outdoor amenity space, approximately 10,900 SF of retail space, and 325 automobile parking spaces on a 25,103 square-foot (SF) premises on the north side of C Street between Third and Fourth avenues in the Civic/Core neighborhood of the Downtown Community Plan (DCP) area and within the Centre City Planned District (CCPD); and more particularly described as Lots E, F, G, H, & I in Block 16 of Horton’s Addition in the City of San Diego, County of San Diego, State of California, according to partition map thereof, made by L.L. Lockling, filed in the Office of the County Recorder of San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner and/or Permittee to construct and operate a development and uses as described and identified by size, dimension, quantity, type, and location as follows and on the approved Basic Concept / Schematic Drawings and associated Color and Materials Boards dated December 7, 2016, on file at CivicSD.

1. General

The Owner and/or Permittee shall construct, or cause to be constructed on the site, a 40-story tower (approximately 422 feet tall) comprised in total of approximately 282 dwelling units (DU) including indoor and outdoor amenity space and approximately 10,900 SF of retail space. The development shall not exceed a height of 422 feet above average grade level, measured to the top of the parapet of the uppermost floor, with roof equipment enclosures, elevator penthouses, mechanical screening, and architectural elements above this height permitted per the Centre City Planned District Ordinance (CCPDO).

2. Site Development Permit

The City of San Diego City Council hereby grants SDP #2014-76 allowing for the Demolition of the California Theatre located at 1122 Fourth Avenue, City of San Diego HRB Site No. 291, having made the SDP findings in San Diego Municipal Code (SDMC) Section 126.0504(a) & (i).

The Mitigation, Monitoring, and Reporting Program prepared for the Supplement Environmental Impact Report for the 1122 4th Avenue Redevelopment Project must be fully implemented per Condition No. 22 of SDP #2014-76.

3. Centre City Planned Development Permit

The City Council hereby grants a Centre City Planned Development Permit (CCPDP) pursuant to Sections 156.0304(d) and (f) of the CCPDO for deviations to the following development regulations within the CCPDO:

- a. CCPDO 156.0310(d)(3)(B) Maximum Tower Dimensions – Allowing the East-West Tower Floor Plate Dimension to exceed 130 feet up to a maximum East-West Dimension of 150 feet.
- b. CCPDO 156.0310(d) (1)(C) Streetwall Setback: Allowing a portion of the 4th Avenue street wall to be located greater than five feet from the property line adjoining the street up to eight feet in depth for a width of 31 feet.
- c. CCPDO 156.310(d)(1)(E) Streetwall Height – Allowing a portion of the streetwall to exceed 85 feet in height up to a streetwall height of 90 feet.

4. Neighborhood Use Permit for Comprehensive Sign Plan

The City Council hereby grants a Comprehensive Sign Plan pursuant to San Diego Municipal Code (SDMC) Chapter 14, Article 1 Division 11 and Section 156.0314 (a)(4) of the CCPDO subject to the following criteria:

CSP Signage Criteria for Re-Created Blade Sign	
Location	Southeast corner of the site on the re-created office building
Overall Area	Blade sign area not to exceed 600 SF (300 SF per blade sign face)
Maximum Dimensions	50' in height 6' in width
Maximum Projection	8' from the corner of the building
Sign Copy	Limited to "California" as per historic sign. No on-site tenant or off-site signage is allowed on the blade sign.
Letter Height	Not to exceed the height of the historic letter height of the blade sign.
Logos	Not permitted
Materials	Painted metal
Lighting	Remotely illuminated, halo-lit or backlit

CSP Signage Criteria for Re-Created Marquee Sign	
Location	Ground floor of east elevation on the re-created office building

Overall Area	Overall marquee signage not to exceed 342 SF
Maximum Dimensions	33 feet in width, 6 feet in height, 12 feet in depth
Sign Copy	Limited to historic sign copy and/or sign copy for the residential component of the project. No commercial tenant signage or off-site signage is allowed on the marquee sign.
Logo Height	Limited to maximum allowed by Chapter 14 of the SDMC for any signage related to the residential component of the Project. Logo heights may match logo heights of the historic sign if the marquee is re-created.
Letter Height	Limited to maximum allowed by Chapter 14 of the SDMC for any signage related to the residential component of the Project. Letter heights may match letter heights of the historic sign if the marquee is re-created.
Materials	Painted metal or Plexiglass face, no box signs permitted
Lighting	Remotely illuminated, halo-lit or backlit
Design	The replicated marquee sign shall be based on historic photographs

- a. All other signs on the site and building shall comply with the City Signage Regulations outlined in Chapter 14 of the SDMC and the CCPDO.
- b. Before issuance of any sign permits, the signage plans shall be submitted to Civic SD for approval. Plans shall be in substantial conformity to the approved Basic/Concept Plans for the project.

5. Neighborhood Use Permit – Outdoor Use Area

The development shall include a sidewalk cafe encroaching into the Public Right-Of-Way (ROW) along C Street. The intended uses must be in conformance with permitted uses outlined in the CCPDO and all other relevant regulations in the SDMC. Any proposed change in use or expansion shall be reviewed and approved by CivicSD prior to initiating such changes.

Conditions

- a. The sidewalk cafe shall be surrounded by a black wrought iron barrier not to exceed three feet in height as shown in the approved drawings. A clear path shall be maintained of no less than eight feet from the cafe barrier to the edge of any obstruction (including the edge of the tree grate). Any proposed change or expansion of the sidewalk cafe shall be reviewed by CivicSD to determine the appropriate process for approval.
- b. The sidewalk cafe may exist only in conjunction with the adjacent street level eating and drinking establishment at the project site. The sidewalk cafe shall only be used for dining, drinking, and circulation, and utilized by patrons during the hours allowed under this

Permit. Any change in utilization and/or hours of operation shall be reviewed by CivicSD to determine the appropriate process for approval.

- c. The hours of operation for the sidewalk cafe shall be limited to no later than 12:00 a.m. (midnight) seven days a week.
- d. Smoking shall not be permitted within the sidewalk cafe at any time.
- e. The Owner and/or Permittee shall be responsible for maintaining the sidewalk within, and adjacent to, the sidewalk cafe enclosure clean and free of litter at all times.
- f. No live entertainment, musical instruments, or sound reproduction devices shall be allowed within the sidewalk cafe.
- g. The Owner and/or Permittee shall obtain and provide CivicSD with an approved copy of an Encroachment Maintenance and Removal Agreement (EMRA) and a Building Permit from the City of San Diego Development Services Department (DSD) prior to the installation of the sidewalk cafe.
- h. No tables, chairs, A-frame signs, or any other furnishings or decorative displays shall be located in the ROW in front of or adjacent to the sidewalk cafe.
- i. The sidewalk cafe shall meet all applicable disable-accessibility codes.
- j. No signs (including banners and/or pennants, and/or off-site advertising signs) are permitted on or within the sidewalk cafe.
- k. A point of contact from the Owner and/or Permittee shall be kept on file with CivicSD in case any complaints arise. Complaints shall be responded to by the Owner and/or Permittee within 48 hours.

6. Floor Area Ratio (FAR) Bonus

- a. Green Building FAR – An increase in the Floor Area Ratio (FAR) by a factor of 1.0 is hereby granted under CCPDO Section 156.0309(e)(8): FAR Green Building Program. The development is entitled to 1.0 FAR for the provision of Centre City Green (CCG) Building Incentive Program awards development incentives for buildings that exceed the California Green Building Standards Code (CALGreen). The Applicant shall construct a LEED-Certified Silver building in accordance with the US Green Building Council (USGBC) standards for new construction. Covenants, Conditions and Restrictions (CC&R) shall be recorded on the property to ensure the LEED Certification level for construction of building. Such CC&Rs shall be in a form approved by CivicSD and the City Attorney's Office and shall be recorded prior to issuance of a building permit.

Prior to the issuance of any building permits, the Permittee shall provide a financial surety, deposit, or other suitable guarantee approved by the Civic San Diego President and the City Attorney's Office to ensure that the applicant completes the LEED certification for the development as proposed to obtain a FAR Bonus under this Section.

LEED certification must be demonstrated through an independent report provided by the USDBC that confirms achievement of a LEED Silver (or higher) level of performance. The financial surety, deposit, or other suitable guarantee shall be in an amount equivalent to the values which would be required to purchase an equivalent amount of FAR under the FAR Payment Bonus Program, including any subsequent amendments in effect at the time of the development permit application. Within 180 days of receiving the final Certificate of Occupancy for a development, the Owner and/or Permittee shall submit documentation that demonstrates achievement of the applicable LEED rating as proposed under this Section.

If the Owner and/or Permittee fails to submit a timely report or demonstrate LEED certification, payment shall be deducted against the financial security, deposit, or other suitable guarantee and deposited in the FAR Bonus Fund established under the FAR Payment Bonus Program. The amount of payment shall be calculated according to the following formula:

$$P = \text{FAR } \$ \times ((\text{LCP} - \text{CPE}) / \text{LCP})$$

P = the payment amount shall be paid to the FAR Bonus Fund

FAR \$ = the amount of money which would be required to purchase FAR under the FAR Payment Bonus Program

LCP + LEED Certification Points needed to achieve the proposed LEED certification level (Silver or higher)

CPE = LEED Certification Points actually earned by the development as certified by the USGBC

All funds provided by the applicant for the LEED certification surety, deposit, or other suitable guarantee that are not paid to the FAR Bonus Fund shall be refunded to the Owner and/or Permittee. In the event that the Applicant or Owner and/or Permittee submits a timely report and demonstrates the necessary level of LEED certification for the applicant's desired FAR Bonus, the entire amount of the surety, deposit, or other suitable guarantee shall be refunded to the applicant.

- b. Three-Bedroom Units – The Project is entitled up to a 1.0 FAR bonus for the provision of 29 three-bedroom units, equivalent to 10 percent of the total amount of dwelling units, within the development. Eligible three-bedroom units shall not exceed 1,300 square feet with each bedroom in a dwelling unit used to earn the FAR bonus containing a minimum of 70 square feet (with additional area for enclosed closet). CC&Rs shall be recorded on the property to ensure the number of bedrooms in the units used to earn the FAR is not reduced. Such CC&Rs shall be in a form approved by CivicSD and the City Attorney's Office and shall be recorded prior to issuance of a building permit.
- c. Eco Roof – The project qualifies for a Bonus of 0.56 FAR under Section 156.0309(e)(4) of the CCPDO, equivalent to 14,058 square feet of gross floor area. The developer shall provide a minimum of 31% of the roof area above a height of 30 feet planted as an eco-

roof. The eco-roof area shall be accessible to residents of the development through pathways and seating areas as shown on the Basic Concept/Schematic Drawings. CC&Rs shall be recorded on the property providing for the development and on-going maintenance, and replacement, if necessary, of the eco-roof to City standards for the life of the project. Such CC&Rs shall be in a form approved by CivicSD and the City Attorney's Office. All vegetation must be maintained in perpetuity.

- d. Affordable Housing Bonus – The development is entitled to an additional 3.5 FAR (87,860.5 square feet). The Owner/Permittee shall provide a minimum of 18 affordable units restricted to 51% -80% of Area Median Income (AMI) for a minimum of 55 years. The Project will provide a total of 22 units on-site. An agreement with the San Diego Housing Commission shall be executed to enforce and monitor the affordability restrictions prior to issuance of any building permit for construction of any residential unit.

7. Affordable Housing Density Bonus Development Incentive

Per SDMC Section 143.0740, a development incentive shall be utilized to allow the off-street parking areas to contain drive aisles less than 24 feet adjacent to perpendicular parking spaces throughout the off-street parking areas. The drive aisles for the off-street parking areas allowed under the incentive shall be a minimum dimension of 22 feet. All applicable requirements of SDMC Sections 143.0720 and 143.0725 shall be met and incorporated herein.

8. Parking

- a. The development includes approximately 325 automobile parking spaces. A minimum of 269 spaces (or an equivalent number based on the exact number of DU) shall be dedicated to the development's market-rate residential component and 15 spaces (or an equivalent number based on the exact number of DU) shall be dedicated to visitors and guests of the residents; and all shall be designed to meet City Standards. These automobile parking spaces shall be allocated for exclusive use by the development's residential units. All guest parking should be located near the garage entrance. If any additional parking spaces are designed with dimensions less than the City Standards, future buyers (if converted to condominium) of the residential units shall be informed of the dimensional size of their parking spaces prior to the sale of such units. All tandem parking spaces must be for residential units within the Project with the exception of select hotel tandem parking spaces. Additional parking spaces above the minimum requirements for the project may be made available to the public.
- b. A minimum of 15 spaces (or an equivalent number based on the exact number of affordable DU) shall be dedicated to the development's affordable residential component. An additional eight spaces (or an equivalent number based on the exact number of affordable DU) shall be provided for the visitors and staff of affordable residential component of the Project and shall be designed to meet City Standards. These automobile parking spaces shall be allocated for exclusive use by the development's affordable residential units.

- c. A minimum of 14 motorcycle parking spaces and secured storage space for a minimum of 56 bicycles shall be provided (or an equivalent number based on the exact number of DU and/or use areas).

9. Loading

A minimum of one off-street loading space shall be required for the residential component of the development with minimum dimensions of 35 feet in depth, 13 feet in width, and 13 feet in height (measured from the inside walls).

PLANNING AND DESIGN REQUIREMENTS

10. Residential Amenities and Facilities

The development includes the following residential amenities and facilities as illustrated on the approved Basic Concept/Schematic Drawings on file at CivicSD, which shall be required to be maintained within the development in perpetuity:

- a. Common Outdoor Open Space – A minimum of 3,765 SF of common outdoor space shall be provided. The dimensions of the common outdoor open space(s) must not be reduced for the life of the development. A minimum of 10% of each common outdoor open space area must be planted area and each area must be accessible to all residents of the development through a common accessway.
- b. Common Indoor Space – A minimum of 500 SF of common indoor amenity space shall be provided. The space(s) shall be maintained for use by residents of the development and must be accessible through a common corridor. The area may contain active or passive recreational facilities, meeting space, computer terminals, or other activity space.
- c. Private Open Space - At least 50 percent of all dwelling units shall provide private open space on a balcony, patio, or roof terrace, with a minimum area of 40 square feet (SF) each and an average horizontal dimension of 6 feet. Balconies should be proportionately distributed throughout the development in relationship to floor levels and sizes of units. Living unit developments are exempt from this requirement.
- d. Pet Open Space – A minimum of 200 SF of pet open space shall be provided and improved for use by pets and clearly marked for such exclusive use. Such areas shall include permeable surfaces, a hose bib, and be drained to the public sewer system (except for at-grade lawn areas).

11. Urban Design Standards

The proposed development, including its architectural design concepts and off-site improvements, shall be consistent with the CCPDO and Centre City Streetscape Manual (CCSM). These standards, together with the following specific conditions, will be used as a basis for evaluating the development through all stages of the development process.

- a. Architectural Standards – The architecture of the development shall establish a high quality of design and complement the design and character of the Core/Civic neighborhood as shown in the approved Basic Concept/Schematic Drawings on file with CivicSD. The development shall utilize a coordinated color scheme consistent with the approved Basic Concept/Schematic Drawings. The design and materials of the re-created office building portion of the California Theatre shall be based on historic building plans.
- b. Form and Scale – The development shall consist of a mixed-use development containing with a maximum height of 40 stories (up to 422 feet tall) measured to the top of the roofline, with roof equipment enclosures, elevator penthouses, and mechanical screening above this height permitted per the CCPDO and the Federal Aviation Administration (FAA). All building elements shall be complementary in form, scale, and architectural style.
- c. Building Materials – All building materials shall be of a high quality as shown in the Basic Concept/Schematic Drawings and approved materials board. All materials and installation shall exhibit high-quality design, detailing, and construction execution to create a durable and high quality finish. The base of the buildings shall be clad in upgraded materials and carry down to within one inch of finish sidewalk grade, as illustrated in the approved Basic Concept/Schematic Drawings on file with CivicSD. Any plaster materials shall consist of a hard troweled, or equivalent, smooth finish. Any stone materials shall employ larger modules and full-corner profiles to create a substantial and non-veneer appearance. Any graffiti coatings shall be extended the full height of the upgraded base materials or up to a natural design break such a cornice line. All downspouts, exhaust caps, and other additive elements shall be superior grade for urban locations, carefully composed to reinforce the architectural design. Reflectivity of the glass shall be the minimum reflectivity required by Title 24 of the California Code of Regulations (“Title 24”).

All construction details shall be of the highest standard and executed to minimize weathering, eliminate staining, and not cause deterioration of materials on adjacent properties or the public right of way. No substitutions of materials or colors shall be permitted without the prior written consent of the CivicSD. A final materials board which illustrates the location, color, quality, and texture of proposed exterior materials shall be submitted with 100% Construction Drawings and shall be consistent with the Materials Board approved with the Basic Concept/Schematic Drawings.

- d. Art Feature for Above-Grade Parking Screening – The Permittee shall retain an artist to provide an enhanced design to the above-grade parking screening on both the south and west elevations of the project paying homage to Historic California Theatre Building. The Civic San Diego Board of Directors shall review and approve the art concept for the above-grade parking screening prior to the issuance of Building Permits.
- e. Street Level Design – Architectural features such as awnings and other design features which add human scale to the streetscape are encouraged where they are consistent with the design theme of the structure. Exit corridors including garage/motor-court entrances shall provide a finished appearance to the street with street level exterior finishes

wrapping into the openings a minimum of 10 feet. The garage door shall provide an upgraded architectural design and/or finish.

All exhaust caps, lighting, sprinkler heads, and other elements on the undersides of all balconies and surfaces shall be logically composed and placed to minimize their visibility, while meeting code requirements. All soffit materials shall be high quality and consistent with adjacent elevation materials (no stucco or other inconsistent material), and incorporate drip edges and other details to minimize staining and ensure long-term durability.

- f. Utilitarian Areas – Areas housing trash, storage, or other utility services shall be located in the garage or otherwise completely concealed from view of the ROW and adjoining developments, except for utilities required to be exposed by the City or utility company. The development shall provide trash and recyclable material storage areas per SDMC sections 142.0810 and 142.0820. Such areas shall be provided within an enclosed building/garage area and shall be kept clean and orderly at all times.
- g. Mail and Delivery Locations – It is the Owner’s and/or Permittee’s responsibility to coordinate mail service and mailbox locations with the United States Postal Service and to minimize curb spaces devoted to postal/loading use. The Owner and/or Permittee shall locate all mailboxes and parcel lockers outside of the ROW, either within the building or recessed into a building wall. Individual commercial spaces shall utilize a centralized delivery stations within the building or recessed into a building wall, which may be shared with residential uses sharing a common street frontage address.
- h. Access – Vehicular access to the development’s parking shall be limited to one driveway on Fourth Avenue with a curb cut not exceeding 24.5 feet in width and one driveway on Third Avenue with a curb cut not exceeding 21 feet in width. Access to the development’s off-street loading bay shall be through the Fourth Avenue access driveway.
- i. Circulation and Parking – The Owner and/or Permittee shall prepare a plan which identifies the location of curbside parking control zones, parking meters, fire hydrants, trees, and street lights to the satisfaction of Civic San Diego. Such plan shall be submitted in conjunction with an application for construction permits.

All on-site parking shall meet the requirements of the City Building Official, Fire Department, and Engineer. All parking shall be mechanically ventilated. The exhaust system for mechanically ventilated structures shall be located to mitigate noise and exhaust impacts on residential units, adjoining properties, and the ROW according to applicable building codes.

- j. Open Space and Development Amenities – A landscape plan that illustrates the relationship of the proposed on and off-site improvements and the location of water and electrical hookups to the satisfaction of Civic San Diego shall be submitted with 100% Construction Permit Drawings.

- k. Roof Tops – A rooftop equipment and appurtenance location and screening plan shall be prepared and submitted to the satisfaction of Civic San Diego with 100% Construction Drawings. Any roof-top mechanical equipment shall be grouped, enclosed, and screened from surrounding views (including views from above).
- l. Signage – All signs shall comply with the City Sign Regulations and the CCPDO with the exception of the re-created blade sign and the re-created ground-floor marquee sign approved under the Comprehensive Sign Program.
- m. Noise Control – All mechanical equipment, including but not limited to, air conditioning, heating and exhaust systems, shall comply with the City Noise Ordinance and California Noise Insulation Standards as set forth in Title 24. Owner and/or Permittee shall provide evidence of compliance at 100% Construction Permit Drawings.
- n. Street Address – Building address numbers shall be provided that are visible and legible from the public right-of-way.

12. On-Site Improvements

All off-site and on-site improvements shall be designed as part of an integral site development. An on-site improvement plan shall be submitted at the time of submittal of 100% Construction Permit Drawings to the satisfaction of Civic San Diego with the 100% Construction Permit Drawings.

13. Removal and/or Remedy of Soil and/or Water Contamination

The Owner/Permittee shall (at its own cost and expense) remove and/or otherwise remedy as provided by law and implementing rules and regulations, and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the project site. Such work may include without limitation the following:

- a. Remove (and dispose of) and/or treat any contaminated soil and/or water on the site (and encountered during installation of improvements in the adjacent public rights-of-way which the Owner/Permittee is to install) as necessary to comply with applicable governmental standards and requirements.
- b. Design and construct all improvements on the site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.
- c. Prepare a site safety plan and submit it to the appropriate governmental agency, CivicSD, and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the site. Such site safety plan shall assure workers and other visitors to the site of protection from any health and safety hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors and/or the effect thereof.

- d. Obtain from the County of San Diego and/or California Regional Water Quality Control Board and/or any other authorities required by law any permits or other approvals required in connection with the removal and/or remedy of soil and/or water contamination, in connection with the development and construction on the site.
- e. If required due to the presence of contamination, an impermeable membrane or other acceptable construction alternative shall be installed beneath the foundation of the building. Drawings and specifications for such vapor barrier system shall be submitted for review and approval by the appropriate governmental authorities.

PUBLIC IMPROVEMENTS, LANDSCAPING AND UTILITY REQUIREMENTS

14. Off-Site Improvements

The following public improvements shall be installed in accordance with the Centre City Streetscape Manual (CCSM). The CCSM is currently being updated and the Owner and/or Permittee shall install the appropriate improvements according to the latest requirements at the time of Building Permit issuance:

	C Street	Fourth Avenue	Third Avenue
Paving	Terra Cota Tile Paving	CCDC Standard Paving	CCDC Standard Paving
Street Trees	Carrot Wood	Fern Pine	Fern Pine
Street Lights	Special per MTS	CCDC Standard	CCDC Standard

- a. Street Trees – Street tree selections shall be made according to the CCSM. All trees shall be planted at a minimum 36-inch box size with tree grates provided as specified in the CCSM, and shall meet the requirements of Title 24. Tree spacing shall be accommodated after street lights have been sited, and generally spaced 20 to 25 feet on center. All landscaping shall be irrigated with private water service from the subject development.

No trees shall be removed prior to obtaining a Tree Removal Permit from the Development Services Department per City Council Policy 200-05.

- b. Street Lights – All existing lights shall be evaluated to determine if they meet current CivicSD and City requirements, and shall be modified or replaced if necessary.
- c. Sidewalk Paving – Any specialized paving materials shall be approved through the execution of an Encroachment Removal and Maintenance Agreement (EMRA) with the City at the time of construction permit issuance.
- d. Litter Containers – The development shall provide a minimum of two litter receptacles and shall be located as specified in the CCSM.
- e. Landscaping – All required landscaping shall be maintained in a disease, weed and litter free condition at all times. If any required landscaping (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction

documents is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent in size per the approved documents and to the satisfaction of the CivicSD within 30 days of damage or Certificate of Occupancy, whichever occurs first.

- f. Planters – Planters shall be permitted to encroach into the right-of-way (ROW) a maximum of two feet for sidewalk areas measuring at least twelve feet and less than fourteen feet in width. For sidewalk areas fourteen feet or wider, the maximum permitted planter encroachment shall be three feet. The planter encroachment shall be measured from the property line to the face of the curb to the wall surrounding the planter. A minimum six foot clear path shall be maintained between the face of the planter and the edge of any tree grate or other obstruction in the ROW.
- g. On-Street Parking – The Owner and/or Permittee shall maximize the on-street parking wherever feasible.
- h. Public Utilities – The Owner and/or Permittee shall be responsible for the connection of on-site sewer, water and storm drain systems from the development to the City utilities located in the ROW. Sewer, water, and roof drain laterals shall be connected to the appropriate utility mains within the street and beneath the sidewalk. The Owner and/or Permittee may use existing laterals if acceptable to the City, and if not, Owner and/or Permittee shall cut and plug existing laterals at such places and in the manner required by the City, and install new laterals. Private sewer laterals require an EMA.

If it is determined by the City Engineer or CivicSD that existing water and sewer services are not of adequate size to serve the proposed development, the Owner and/or Permittee will be required to abandon any unused water and sewer services and install new services and meters. Service abandonments require an engineering permit and must be shown on a public improvement plan. All proposed public water and sewer facilities, including services and meters, must be designed and constructed in accordance with established criteria in the most current edition of City's Water and Sewer Facility Design Guidelines and City regulations standards and practices pertaining thereto.

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. If and when the Owner and/or Permittee submits for a tentative map or tentative map waiver, the Water Department will require Covenants, Conditions, and Restrictions ("CC&Rs") to address the operation and maintenance of the private on-site water system serving the development. No structures or landscaping of any kind shall be installed within ten feet of water facilities.

All roof drainage and sump drainage, if any, shall be connected to the storm drain system in the public street, or if no system exists, to the street gutters through sidewalk underdrains. Such underdrains shall be approved through an Encroachment Removal Agreement with the City. The Owner and/or Permittee shall comply with the City's Storm Water Management and Discharge Control Ordinance and the storm water

pollution prevention requirements of Chapter 14, Article 2, Division 1 and Chapter 14, Article 2, Division 2 of the SDMC.

- i. Franchise Public Utilities – The Owner and/or Permittee shall be responsible for the installation or relocation of franchise utility connections including, but not limited to, gas, electric, telephone and cable, to the development and all extensions of those utilities in public streets. Existing franchise utilities located above grade serving the property and in the sidewalk ROW shall be removed and incorporated into the adjoining development. All franchise utilities shall be installed as identified in the Basic Concept Drawings. Any above grade devices shall be screened from view from the ROW.
- j. Fire Hydrants – If required through the construction permit review, the Owner and/or Permittee shall install fire hydrants at locations satisfactory to the City’s Fire Department and DSD.
- k. Water Meters and Backflow Preventers – The Owner and/or Permittee shall locate all water meters and backflow preventers in locations satisfactory to the Public Utilities Department and CivicSD. Backflow preventers shall be located outside of the ROW adjacent to the development’s water meters, either within the building, a recessed alcove area, or within a plaza or landscaping area. The devices shall be screened from view from the ROW. All items of improvement shall be performed in accordance with the technical specifications, standards, and practices of the City’s Engineering, Public Utilities, and Building Inspection Departments and shall be subject to their review and approval. Improvements shall meet the requirements of Title 24.

15. Storm Water Compliance

- a. Prior to issuance of any construction permit, the Owner and/or Permittee shall enter into a Maintenance Agreement for the on-going permanent Best Management Practices (BMP) maintenance, satisfactory to the City Engineer.
- b. Prior to the issuance of any Construction Permit, the Owner and/or Permittee shall incorporate any construction BMP necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
- c. Prior to issuance of any construction permits, the Owner and/or 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.
- d. Prior to the issuance of any construction permit, the Water Quality Technical Report will be subject to final review and approval by the City Engineer.

SUSTAINABILITY

16. A combination of cool/green roofs must be utilized in the development including the following:

- a. Roofing materials with a minimum three-year aged solar reflection and thermal emittance or solar reflection index equal to or greater than the values specified in the voluntary measures under the California Green Building Standards Code must be implemented.
- b. The project roof construction must have a thermal mass over the roof membrane, including areas of vegetated (green) roofs, weighing at least 25 pounds per square foot as specified in the voluntary measures under the California Green Building Standards Code.

Compliance with this measure must be demonstrated prior to the issuance of the building permit.

17. The development must include, at a minimum, the following fixtures:

- a. Residential Buildings
 - Kitchen faucets: maximum flow rate not to exceed 1.5 gallons per minute at 60 psi;
 - Standard dishwashers: 4.25 gallons per cycle;
 - Compact dishwashers: 3.5 gallons per cycle; and
 - Clothes washers: water factor of 6 gallons per cubic feet of drum capacity
- b. Non-Residential Buildings
 - Plumbing fixtures and fittings that do not exceed the maximum flow rate specified in Table A5.303.2.3.1 (voluntary measures) of the California Green Building Standards Code; and
 - Appliances and fixtures for commercial applications that meet the provisions of Section A5.303.3 (voluntary measures) of the California Green Building Standards Code.

Compliance with this measure must be demonstrated prior to the issuance of the building permit.

18. The development must be designed to have an energy budget that meets or exceeds a 10% improvement with both indoor lighting and mechanical systems when compared to the Title 24, Part 6 Energy Budget for the proposed design building as calculated by Compliance Software certified by the California Energy Commission (percent improvement over current code). The demand reduction may be provided through on-site renewable energy generation, such as solar, or by designing the project to have an energy budget that meets the above-mentioned performance standards, when compared to the Title 24, Part 6 Energy Budget for the Proposed Design Building (percent improvement over current code). Compliance with this measure must be demonstrated prior to the issuance of the building permit.

19. A minimum of 3% of the total required parking spaces must be provided with a listed cabinet, box or enclosure connected to a conduit linking the parking spaces with the electrical service, in a manner approved by the building and safety official. Of the total listed cabinets, boxes or enclosures provided, at least 50% must have the necessary electric vehicle supply equipment installed to provide active electric vehicle charging stations ready for use by residents. Compliance with this measure must be demonstrated prior to the issuance of the building permit.

20. The development must contain more short- and long-term bicycle parking spaces than required in SDMC Chapter 14, Article 2, Division 5 at all times. Compliance with this measure must be demonstrated prior to the issuance of the building permit.
21. Changing/shower facilities must be provided for the non-residential component of the development. With 11-50 tenant occupants, the project must provide one shower stall plus two two-tier personal effects lockers. Compliance with this measure must be demonstrated prior to the issuance of the building permit.

STANDARD REQUIREMENTS

22. Environmental Impact Mitigation Monitoring and Reporting Program

The development shall comply with all applicable Mitigation Monitoring and Reporting Program (MMRP) measures from the Final Supplemental Environmental Impact Report for the 1122 4th Avenue Redevelopment Project (FSEIR) and all applicable MMRP measures (Measures HR-1 through HR-3) from the FSEIR that were prepared for the project.

23. Development Impact Fees

The development will be subject to Centre City Development Impact Fees. The fee shall be determined in accordance with the fee schedule in effect at the time of building permit issuance, and in accordance with the SDMC. The Owner and/or Permittee shall provide to the City's Facilities Financing Department the following information at the time of application for building permit plan check: 1) total square footage for commercial lease spaces and all areas within the building dedicated to support those commercial spaces including, but not limited to: loading areas, service areas and corridors, utility rooms, and commercial parking areas; 2) applicable floor plans showing those areas outlined for verification; and, 3) the total number of residential units. In addition, it shall be responsibility of the Owner and/or Permittee to provide all necessary documentation for receiving any "credit" for existing buildings to be removed.

24. Inclusionary Affordable Housing Ordinance

As required by SDMC Chapter 14, Article 2, Division 13, the development shall comply with all applicable regulations of the City's Inclusionary Housing Ordinance. The Owner and/or Permittee shall provide documentation of such compliance to CivicSD prior to issuance of any building permits.

25. Construction Fence

Owner and/or Permittee shall install a construction fence pursuant to specifications of, and a permit from, the City Engineer. The fence shall be solid plywood with wood framing, painted a consistent color with the development's design, and shall contain a pedestrian passageway, signs, and lighting as required by the City Engineer. The fencing shall be maintained in good condition and free of graffiti at all times. The construction fence, any construction staging area, any pedestrian passageway associated with the project construction, or any similar construction-related feature may not encroach into Third Avenue beyond the existing curb

line on the east side of the street. All aforementioned construction features must be located within the extant Third Avenue sidewalk area.

26. Development Identification Signs

Prior to commencement of construction on the site, the Owner and/or Permittee shall prepare and install, at its cost and expense, one sign on the barricade around the site which identifies the development. The sign shall be at least four feet by six feet and be visible to passing pedestrian and vehicular traffic. The signs shall at a minimum include:

- o Color rendering of the development
- o Development name
- o Developer
- o Completion Date
- o For information call _____

Additional development signs may be provided around the perimeter of the site. All signs shall be limited to a maximum of 160 SF per street frontage. Graphics may also be painted on any barricades surrounding the site. All signs and graphics shall be submitted to the CivicSD for approval prior to installation.

27. Tentative Map

The Owner and/or Permittee shall be responsible for obtaining all map approvals required by the City prior to any future conversion of the residential units and/or commercial spaces to condominium units for individual sale.

28. 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 Civic San Diego; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

29. This permit must be utilized within thirty-six (36) 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 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

30. 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.

31. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

32. 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.).
33. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner and/or Permittee and any successor(s) in interest.
34. This development shall comply with the standards, policies, and requirements in effect at the time of approval of this development, including any successor(s) or new policies, financing mechanisms, phasing schedules, plans and ordinances adopted by the City.
35. No permit for construction, operation, or occupancy of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until this Permit is recorded in the Office of the San Diego County Recorder.
36. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is 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.
37. 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.
38. The Owner and Permittee shall defend, indemnify, and hold harmless CivicSD and the City (collectively referred to as "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.
39. 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 Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained there.

40. Airport Approach Overlay Zone

The Owner/Permittee shall comply with any conditions established by the City of San Diego Airport Approach Overlay Zone (and any successor or amendment thereto). The Project shall receive a Determination of Consistency with the San Diego International Airport Land Use Compatibility Plan from the Airport Land Use Commission prior to this Permit becoming effective.

This CCDP/SDP/CCPDP/NUP is granted by the City Council on April 4, 2017.

CIVIC SAN DIEGO:

OWNER:

Aaron Hollister Date
Senior Planner

Faramarz Yousefzadeh Date
Sloan Capital Partners, LLC

**Note: Notary acknowledgment
must be attached per Civil Code
Section 1189 et seq**

PERMITTEE:

Cyrus Sanandaji Date
1122 4th Avenue, LLC

Passed by the Council of The City of San Diego on APR 04 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 04 2017.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Linda Bruen, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311018