

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-3804

PLANNED DEVELOPMENT PERMIT NO. 254753
SITE DEVELOPMENT PERMIT NO. 172879
UPPER VOLTAIRE MIXED USE [MMRP]
CITY COUNCIL

This Planned Development Permit No. 254753 and Site Development Permit No. 172879 are granted by the City Council of the City of San Diego to Voltaire Partners, LLC, pursuant to San Diego Municipal Code [SDMC] sections 126.0604 and 126.0504.

The 0.97-acre site is located between Whittier and Voltaire Streets at the Nimitz Boulevard overcrossing where Wabaska Drive and San Clement Streets join Voltaire Street. The project includes the following locations: 4105-4107 Whittier Street, 4104-4064 Voltaire Street. The site is within the CC-3-5 and RM-2-5 zones of the Peninsula Community Planning Area.

The project site is legally described as:

Parcel A: Lots 13 and 14, Block 6, Loma Alta No. 1, City of San Diego, County of San Diego, State of California, according to map thereof No. 1078, filed in the office of the County Recorder of San Diego County, August 28, 1907;

Parcel B: Parcel 1 of Parcel Map No. 18318, City of San Diego, County of San Diego, State of California, filed in the office of the County Recorder of San Diego County, August 6, 1999;

Parcel C: Lot 12 in Block 6 of Loma Alta Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to the partition map thereof No. 1078, filed in the office of the County Recorder of San Diego County, August 28, 1907.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to construct **28** residential condominium units and **6** commercial condominium units, as described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated June 15, 2006, on file in the Development Services Department.

The project or facility shall include:

- a. 23 two-bedroom units, and five three-bedroom units over underground parking, totaling 40,355 square feet gross floor area (GFA);
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities including 64 automobile, 4 accessible, 6 motorcycle spaces;
- d. As a component of this project, deviations to allow
 1. a 15 foot crib wall within the street side yard setback,
 2. balcony encroachments at 15 feet within the standard 20 foot front yard setback off of Whittier Street,
 3. a reduction in the side yard setback for the portion of the residential structures to observe a 5 foot setback where 10% of the lot width would be required in the RM-2-5 zone of the project site, and
 4. the private exterior open space to observe no setback from the property line off Voltaire Street where 9 feet would be required.
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.

3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the 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 utilization and 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 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 applicant 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. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," on file in the Development Services Department. 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. This Permit shall become effective with recordation of the corresponding final subdivision map for and approval of the project site.

11. At all bus stops within the project area, the applicant shall be responsible for installing sidewalk improvements where needed to comply with Americans with Disability Act (ADA) requirements and in accordance with standards contained in the City of San Diego Street Design Manual.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. 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.

13. As conditions of Site Development Permit No. 58800, the mitigation measures specified in the MMRP, and outlined in the Mitigated Negative Declaration No. 58800 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Mitigated Negative Declaration No. 52078 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for Noise, Historical Resources (Archaeological), and Paleontological.

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

16. Prior to demolition of the existing building, the applicant shall obtain approval from the Air Pollution Control District.

AFFORDABLE HOUSING REQUIREMENTS:

17. Prior to receiving the first residential building permit, the applicant shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code. The applicant has elected to meet these requirements by paying an in-lieu fee. Prior to receiving the first residential building permit, the applicant must enter into an agreement with the San Diego Housing Commission to assure that the restricted units are built and occupied.

ENGINEERING REQUIREMENTS:

18. Prior to the issuance of a certificate of occupancy, the applicant shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices (BMP) maintenance.

19. Prior to the issuance of any construction permit, the applicant 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.
20. Prior to the issuance of any construction permit the applicant shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.
21. Prior to the issuance of any construction permits the applicant shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, in accordance with the approved Water Quality Technical Report.
22. The Planned Development Permit shall comply with the conditions of the final map for Vesting Tentative Map No. 341372.
23. The drainage system proposed for this development is private and subject to approval by the City Engineer.
24. This project proposes to export 10,830 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 processing and sale of the export material. All such activities require a separate Conditional Use Permit.

LANDSCAPE REQUIREMENTS:

25. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.
26. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit 'A' Landscape Development Plan.
27. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within 30 days of damage or Certificate of Occupancy.
28. Prior to issuance of any grading permits, complete landscape construction documents, including an automatic permanent irrigation system, shall be submitted to the Development Services Department for approval. The plans shall be in substantial conformance to Exhibit 'A', on file in the office of Development Services.
29. Installation of slope planting and erosion control including seeding of all disturbed land consistent with the approved landscape and grading plans is considered to be in the public interest. The Permittee shall initiate such measures as soon as the grading has been

accomplished. Such erosion control/slope planting and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Standards.

30. Prior to issuance of any construction permits for structures, complete landscape and irrigation construction documents consistent with the Landscape Standards (including planting and irrigation plans, details and specifications) shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit 'A', Landscape Development Plan, on file in the Office of Development Services.

31. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the City Manager for approval. Improvement plans shall take into account a 40 square foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

32. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

33. All required landscape shall be maintained 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.

34. The Permittee or subsequent Owner(s) shall be responsible for the installation and maintenance of all landscape improvements consistent with the Landscape Regulations and Landscape Standards. Invasive species are prohibited from being planted adjacent to any canyon or native habitats within the city limits of San Diego. Invasive plants are those which rapidly self propagate by air born seeds or trailing as noted in section 1.3 of the Landscape Standards.

PLANNING/DESIGN REQUIREMENTS:

35. No fewer than 64 off-street parking spaces of which 4 spaces are accessible parking spaces, 6 motorcycle spaces and 16 bicycle spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," on file in the Office of the Development Services Department. Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

36. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit

establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

37. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.

38. 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 Permittee.

39. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

40. No building additions, including patio covers, shall be permitted unless approved by the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

41. All signs associated with this development shall be consistent with sign criteria established by the Citywide sign regulations.

42. The applicant shall post a copy of the approved Site Development Permit / Planned Development Permit and Tentative Map in the sales office for consideration by each prospective buyer.

43. 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.

43. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

44. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.

45. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC) to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," on file in the Development Services Department.

46. Public pedestrian access shall be maintained through the project site at all times to grant pedestrians and members of the public access through the project. Such access shall be compliant with Title 24 requirements.
47. Any subsequent conversion of uses outside of those permitted by right in the CC-4-2 zones shall require an amendment to this permit. At least 50 percent of the principal pedestrian level shall be used for retail sales and commercial services.
48. The project shall provide and maintain on-site a barbecue area with picnic tables and a shade structure. Trees may function as a shade structure.
49. Prior to the issuance of any building permits, the applicant shall grant to the San Diego County Regional Airport Authority an aviation easement for the purpose of maintaining all aircraft approach paths to the San Diego International Airport. This easement shall permit the unconditioned right of flight of aircraft in the federally controlled airspace above the subject property. This easement shall identify the easement's elevation above the property and shall include prohibitions regarding use of and activity on the property that would interfere with the intended use of the easement. This easement may require the grantor of the easement to waive any right of action arising out of noise associated with the flight of aircraft within the easement.
50. Prior to submitting building plans to the City for review, the applicant shall place a note on all building plans indicating that an aviation easement has been granted across the property. The note shall include the County Recorder's recording number for the aviation easement.
51. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences, or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.
52. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator, or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.
53. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC) to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," on file in the Development Services Department.

TRANSPORTATION REQUIREMENTS:

54. This project shall comply with all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer. This may require (but not be limited to) installation of new street light(s), upgrading light from low pressure to high pressure sodium vapor and/or upgrading wattage.
55. The project shall maintain 64 required parking spaces at all times in the approximate locations as shown on Exhibit A.
56. The project shall replace all abandoned driveways with full curb, gutter and sidewalk, satisfactory to the City Engineer.
57. Prior to the issuance of the first building permit the applicant shall assure by permit and bond the installation of a 10 foot wide two-way center turn lane along Famosa Boulevard between Whittier Street and Nimitz Boulevard, satisfactory to the City Engineer.
58. If the project does not have full access on Voltaire Street there shall be gates at both entrances to the underground residential parking garage such that all vehicular traffic associated with the project's commercial uses shall not be able to enter or exit the site via the Whittier Street access, satisfactory to the City Engineer.
59. Prior to the issuance of the first building permit the applicant shall assure by permit and bond the construction of a median on Voltaire Street for left-in only access to the project, satisfactory to the City Engineer.
60. Prior to the issuance of the first building permit the applicant shall enter into a Deferred Improvement Agreement for the removal of the signal and the channelizing island, and the installation of an all-way stop at the intersection of Voltaire Street and Wabaska Drive, satisfactory to the City Engineer.
61. Prior to the issuance of the first building permit the applicant shall enter into a Deferred Improvement Agreement for the removal of any median, and the striping of a center turn lane along Voltaire Street from Catalina Boulevard to Wabaska Drive, satisfactory to the City Engineer.
62. The traffic control plan for the project shall minimize construction traffic impacts to the adjacent residential neighborhood, satisfactory to the City Engineer.

FIRE REQUIREMENTS:

63. All buildings on site shall be equipped with a fire alarm system satisfactory to the Fire Marshal.
64. Provide a new fire hydrant on Whittier Street at a location satisfactory to the Fire Marshal roughly mid-block on Whittier Street between Catalina Boulevard / Famosa Boulevard and the project's entry on Whittier Street.

WASTEWATER REQUIREMENTS:

65. All on-site sewer facilities shall be private.
66. Prior to the issuance of any certificate of occupancy, the developer shall abandon onsite public sewer mains or they shall be converted to private, satisfactory to the Metropolitan Wastewater Department Director. All associated public easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.
67. Prior to the issuance of any certificate of occupancy, the applicant shall obtain an Encroachment Maintenance and Removal Agreement for all private sewer utilities located in the public right of way.
68. Prior to the issuance of any engineering or building permits, the developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium shall have its own sewer lateral or provide CC&Rs for the operation and maintenance of on site private sewer mains that serve more than one ownership.
69. The developer shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
70. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

WATER REQUIREMENTS:

71. 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 disconnection at the water main of the existing water service adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.
72. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s) on each water service serving the project, in a manner satisfactory to the Water Department Director and the City Engineer.

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

74. 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, as shown on approved Exhibit "A", shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

The proposed 28 residential dwelling units are subject to Development Impact Fees (DIF) of \$84,560. The proposed 6,646 square feet of retail space is subject to a Development Impact Fee of \$39,595 and a Housing Trust Fund Fee (HTF) of \$4,254, based on usage and square footage. These fees are payable at issuance of building permit.

APPROVED by the Council of the City of San Diego on _____ by Resolution
No. _____.

AUTHENTICATED BY THE CITY MANAGER

By _____

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

[NAME OF COMPANY]
Owner/Permittee

By _____

By _____

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