

RESOLUTION NUMBER R-292970

ADOPTED ON APRIL 11, 2000

WHEREAS, Garden Communities, RP., LLP, Owner/Permittee, filed an application with The City of San Diego for a permit to subdivide a 30.5-acre site into 88 lots for the development of 84 single-family residences, located at the westerly extension of Adobe Bluffs Drive between Donaker Street and Rotherham Avenue, and legally described as a portion of the southwest quarter of the northwest quarter of Section 12, and the west quarter of the southwest quarter of northwest quarter of Section 12, all of Township 14 South, Range 3 West, San Bernardino Meridian, and Lot 3 of Olive Grove Tract Recorded July 18, 1904, page 297 of Miscellaneous Records of San Diego County in the Torrey Highlands Subarea IV Plan area, in the existing A1-10 zone (to be rezoned to the R1-6000 zone); and

WHEREAS, on March 2, 2000, the Planning Commission of The City of San Diego considered Planned Residential Development [PRD]/Resource Protection Ordinance [RPO] Permit No. 96-7716, and pursuant to Resolution No. 2933-PC2 voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on April 11, 2000, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Planned Residential Development/Resource Protection Ordinance Permit No. 96-7716:

PLANNED RESIDENTIAL DEVELOPMENT (PRD)

- 1. The proposed use will fulfill a community need and will not adversely affect the City's Progress Guide and General Plan or the adopted community plan.** The subject 30.5-acre site is within the Torrey Highlands Subarea IV Plan area for North City Future Urbanizing Area Subarea IV and designated for LD Low Density (2-5 dwelling unit per gross acre) residential use. Table 4-3 of the Subarea Plan labels the subject site as Parcels G, I, and L for the development of 84-dwelling units will provide a mixture of single-family dwellings residential units on lots compatible in size to the adjacent neighborhood. The proposed 84 single-family residential dwelling units is consistent with the City of San Diego General Plan and the adopted Torrey Highlands Subarea IV Plan and will meet the community need for residential housing as designated for Parcels G, I, and L. The preservation of open space areas, contoured grading, varied slope ratios and project specific design guidelines are part of the project features.
- 2. The proposed use will not be detrimental to the health, safety, and general welfare of persons residing or working in the area and will not adversely affect other properties in the vicinity.** The development of this project as a 84-unit residential subdivision, is subject to a concurrent planned residential development and resource protection ordinance permit and rezone from A1-10 to R1-6000. The development is consistent to the adopted Torrey Highlands Subarea IV Plan and eliciting single-family residential development within the Rancho Penasquitos Community Plan area to the east and to other recently approved projects within the Subarea Plan area. All lots contain a minimum of 7,500 square feet of lot area. No deviations from the underlying proposed zone are requested. The development of the 84 single-family residences will not be detrimental to persons or property within the vicinity or area of the subject property.
- 3. The proposed use will fully comply with the relevant regulations of the Municipal Code in effect for this site.** The development of 84 single-family residential units on this 30.5-acre site is determined to be in compliance with the General and Torrey Highlands Subarea IV Plans of the City of San Diego, the Planned Residential Development Ordinance Purpose and Intent, the requirements of the State Subdivision Map Act, and local subdivision and rezoning regulations.
- 4. Resource Protection Ordinance/alternative compliance provision for substantial conformance determination** The subdivision of this 30.5 acre site into 84 single-family residential lots is being designed according to the provisions of the adopted Torrey Highlands Subarea IV Plan. Section 2.2 of the Subarea IV Plan [Resource Protection Ordinance] references City Council Policy 600-40 as to how RPO analysis was formulated for the entire Subarea IV Plan area. The Plan specifies that, "if future project or permit applications within Torrey Highlands are found to be consistent with the Torrey Highlands Subarea Plan, then future RPO permits may be approved using the substantial conformity determination referenced in the alternative compliance subsection of the RPO." The project has been sited and designed in substantial compliance with all elements of the Torrey Highlands Subarea Plan, including land use, circulation, and design guidelines. 7.5 acres, approximately 25% of the site, will be preserved and enhanced as permanent natural open space. The proposed subdivision and development of 84 residential units as indicated on "Exhibit A," dated April 11, 2000, is consistent with the RPO.

Multiple Species Conservation Program [MSCP], and Open Space provisions of the Plan. The impacts created are the minimum required in order to implement the project and mitigation measures have been included to reduce the impacts to a level of insignificance.

BRUSH MANAGEMENT FINDINGS:

5. The proposed brush management program, to the extent feasible, will not adversely affect floodplains, biologically-sensitive lands, hillsides, significant prehistoric sites and resources, and wetlands as defined in the Resource Protection Ordinance, San Diego Municipal Code section 101.0462. The proposed Brush Management Program, by providing the required brush management zones of the Landscape Regulation in the Land Development Code as referenced by the Biology Guidelines adopted by the City Council under Ordinance - 18451, and Landscape Technical Manual as shown on Exhibit "A," will modify the existing vegetation to the least practical extent while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code, appendix IIA. Plant materials in the Brush Management Zones One and Three will be selected to visually blend with the existing hillside vegetation and no invasive species shall be used.

6. The proposed brush management program, to the extent feasible, will minimize the alterations of vegetation and will not result in undue risks from erosional forces. The proposed Brush Management Program by using Alternative Compliance Provision (Section 6.2 of the Landscape Technical Manual) and provisions of the Land Development Code Landscape section 142.0412 (Brush Management), Ordinance - 18451, will alter the existing vegetation to the least practical extent while still providing an effective fire break consistent with the standards outlined in the Landscape Technical Manual. The alterations to existing vegetation is accomplished in order to increase the stability of the slope and all new plantings on the slopes will conform to the revegetation standards of the Landscape Technical Manual, Section seven, and will incorporate low precipitation irrigation systems to minimize runoff

7. The proposed brush management program will meet the purpose and intent of the Uniform Fire Code. The proposed development complies with the purpose and intent by providing an effective fire break while minimizing the potential for soil erosion by incorporating Zone Reduction and the Alternative Compliance provisions consistent with Landscape Technical Manual Section seven, and brush management zones of the Land Development Code section 142.0412, Ordinance - 18451.

8. The proposed brush management program, because of conditions that have been applied to it, will not be detrimental to the health, safety, and general welfare of persons residing or working in the area. Requirements incorporated into the permit provide an effective fire break and ensure minimal risk of erosional forces affecting hillsides by providing revegetation to all slopes per the Landscape Technical Manual, Section seven.

9. The provision as outlined in Section 6.6-2 of the document entitled "City of San Diego Landscape Technical Manual," (on file in the Office of the City Clerk as Document Number RR-274506) shall be satisfied and the proposed development shall not violate other

fire resistive features as required by the Fire Chief. The Architectural Features (Section 6.6-2 of the Landscape Technical Manual and Section 142.0412 of the Land Development Code, Ordinance - 18451) of the Landscape Technical Manual have been incorporated into the project per Exhibit "A." No other fire resistive features are required by the Fire Chief.

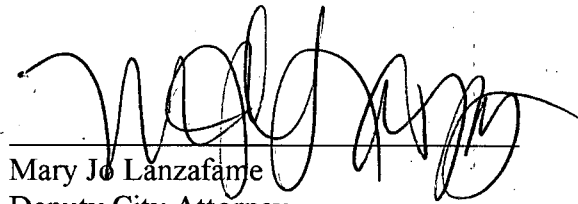
10. Compliance with the provision of this section in addition to any other applicable adopted plans or ordinances would preclude any reasonable development on the site. The site design complies with the Torrey Highlands Subarea Plan. However, site constraints, including the Multiple Habitat Planning Area [MHPA] of the MSCP, preclude literal compliance with the provisions of the Uniform Fire Code without encroachment into sensitive habitat. Therefore, the alternative compliance provision of the Landscape Technical Manual has been implemented to allow for reasonable development of this site while providing the necessary fire protection as required by the Uniform Fire Code on this site. An alternative compliance Brush Management Program is provided which supports the purpose and intent of other applicable adopted plans and ordinances including the Biology Guidelines Ordinance - 18451, which references the Brush Management requirements of Section 142.0412 of the Land Development Code.

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

BE IT FURTHER RESOLVED, that the decision of the Planning Commission is sustained, and Planned Residential Development/Resource Protection Ordinance Permit No. 96-7716 is hereby granted to Garden Communities, RP, LLP, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

MJL:pev
4/27/00
Or.Dept:Clerk
R-2000-1240
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RECORDING REQUESTED BY
CITY OF SAN DIEGO
PLANNING AND DEVELOPMENT REVIEW
PERMIT INTAKE, MAIL STATION 501

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PLANNED RESIDENTIAL DEVELOPMENT AND RESOURCE PROTECTION
ORDINANCE PERMIT NO. 96-7716 (MMRP)
GARDEN COMMUNITIES**

CITY COUNCIL

This permit is granted by the Council of The City of San Diego to Garden Communities RP, LLP, Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0901, 101.0462, and 111.0510. The 30.5-acre site is located on both sides of the westerly extension of Adobe Bluff Drive in the A1-10 zone (proposed R1-6000 zone) of the Torrey Highlands Subarea IV Plan. The project site is legally described as Portions of the Southwest Quarter of the Northeast Quarter of Section 12, Township 14, Range 3 West, San Bernardino Meridian.

Subject to the terms and conditions set forth in this permit, permission is granted to Garden Communities RP, LLP, Owner/Permittee to subdivide and construct a 84-unit, single-family detached development, affordable-housing complex through the Planned Residential Development [PRD] Ordinance described as, and identified by size, dimension, quantity, type, and location on the approved Exhibits "A," dated April 11, 2000, on file in the Office of Planning and Development Review. The facility shall include:

- a. Eighty-four detached, single-family residential lots subject to the Design Guidelines for Garden Communities dated January 2000 included herein; and
- b. Affordable units per Garden Communities RP Affordable Housing Program dated February 15, 2000; and
- c. Two miscellaneous open-space lots; and
- d. Landscaping (planting, irrigation, and landscape-related improvements); and
- e. Off-street parking facilities; and
- f. 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 Municipal Code in effect for this site.

1. Construction, grading, or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code 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 Planning and Development Review; 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 agencies.
6. The issuance of this permit by The City of San Diego does not authorize the applicant to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 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/or 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," dated April 11, 2000, on file in the Office of Planning and Development Review. No substantial change, modifications, or alterations shall be made unless appropriate applications or amendment of this permit shall 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 discretionary 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 special rights which the holder of the permit is obtaining as a result of this permit. It is the intent of the City that the Owner of the property which is the subject of this permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the Owner complies with all the conditions of the 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 new 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 new permit and the condition(s) contained therein.

10. The Planned Residential Development and Resource Protection Ordinance Permit shall comply with the conditions of the final map of Garden Communities, Tentative Map No. 96-7716.

11. All projects shall be in compliance with Maximum Height of a Building or Structure and Procedural Requirements for Determination of Structure Height of the Municipal Code.

12. All projects shall be in compliance with Topographical Survey Requirements of the Municipal Code and all building plans shall be predicated upon said concurrently submitted topographical survey. Said topographical survey (and accompanying grading plan) shall accurately depict both pre-existing grade and finished grade as set forth in the Municipal Code.

13. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program [MMRP] as specified in Mitigated Negative Declaration No. 96-7716 (LDR No. 96-7716), to the satisfaction of the City Manager and the City Engineer. Prior to the issuance of the first grading permit and/or recordation of the first final map, all mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- a. Biological Resources
- b. Hydrology/Water Quality
- c. Paleontological Resources

14. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], The City of

San Diego through the issuance of this permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this permit shall be altered in the future by The City of San Diego, USFWS or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this permit and of full satisfaction by Permittee of mitigation obligations required by this permit, as described in accordance with Section 17.1D of the IA.

PLANNING/DESIGN REQUIREMENTS:

15. No fewer than two off-street parking spaces per dwelling unit shall be maintained on each single family lot at all times. Parking spaces shall comply at all times with the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager.


16. 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 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.

17. 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.

18. A topographical survey conforming to the provisions of the Municipal Code 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.

19. 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.

20. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the Planning and Development Review Director. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

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21. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
22. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
23. This subdivision is located within the "Miramar Airport Influence Area," as identified in the Comprehensive Land Use Plan [CLUP] for Miramar and will be affected by sight and sound from aircraft and experience vibration and noise. The Owner/Permittee shall disclose these potential impacts to all initial and subsequent purchasers, lessees or other occupants through the CC&R's and contracts.
24. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
25. Rezoning of the subject property shall become effective with the recordation of the corresponding final subdivision map for the project site.
26. Development of this PRD shall be subject to the design criteria as contained in the Design Guidelines for Community Gardens, dated January 2000.
27. The Planned Residential Development and Resource Protection Ordinance Permit No. 96-7716 shall comply with the conditions of the final map for Tentative Map No. 96-7716.
28. This project shall conform to the Torrey Highlands Subarea IV Transportation Phasing Plan dated October, 1996, and the final EIR/Traffic Study dated June 1996.

LANDSCAPE REQUIREMENTS:

29. 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.
30. Prior to issuance of any construction permits for structures, complete landscape and irrigation construction documents consistent with the Landscape Technical Manual (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 Concept Plan, dated April 11, 2000, on file in the Office of Planning and Development Review.
31. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way and median (if applicable) improvements shall be submitted to the City Manager for approval. Improvement plans shall identify a 40 square foot water permeable planting area for each street tree in the right-of-way. This area shall be identified as a rectangle with an "X" through it and labeled "planting area for street tree." Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees. Location of street trees shall be identified and reserved during improvement activities and on all site plans prepared for subsequent building permit applications with actual installation taking place prior to issuance of a certificate of occupancy for a specific building permit. The construction documents shall be in substantial conformance with Exhibit "A," Landscape

Concept Plan, dated April 11, 2000, on file in the Office of Planning and Development Review.

32. Prior to issuance of any engineering permits for grading, construction documents for slope planting or revegetation and hydroseeding of all disturbed land including irrigation shall be submitted in accordance with the Landscape Technical Manual Section seven and to the satisfaction of the City Manager. All plans shall be in substantial conformance to Permit 96-7716 (including Environmental conditions) and Exhibit "A," dated April 11, 2000, on file in the Office of Planning and Development Review.

33. Installation of slope planting and erosion control including seeding of all disturbed land (slopes and pads) 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 Technical Manual.

34. 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, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.

35. 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 unless specifically noted in this permit.

36. The Permittee or subsequent Owner shall be responsible for the maintenance of all street trees and landscape improvements (right-of-way and median landscaping) consistent with the standards of the Landscape Technical Manual unless long-term maintenance of street trees, right-of-way and median landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

37. 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.

38. The Brush Management Program is based on the Fire Department's Fire Hazard Severity Classification of 'Moderate' and project location being East of I-805. The Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A," Brush Management Program/Landscape Concept Plan, dated April 11, 2000, on file in the Office of Planning and Development Review:

- a. Prior to issuance of any engineering permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A."

- b. Prior to issuance of any building permits, a complete set of brush management construction documents shall be submitted for approval to the City Manager and the Fire Marshall. The construction documents shall be in substantial conformance with Exhibit "A," on file in the Office of Planning and Development Review and shall comply with the Uniform Fire Code, M.C. 55.0889.0201, the alternative compliance provision of Section Six of the Landscape Technical Manual (Document number RR-274506) on file at the Office of the City Clerk and the Land Development Code section 142.0412 (Ordinance -18451).
- c. The Alternative Compliance Brush Management Program, using the Alternative Compliance provision, shall consist of two zones consistent with the Brush Management regulations of the Land Development Code section 142.0412 as follows:

Lot # [East of I-805]	Zone One	Zone Two
1, 2, 3, 4, 15, 16, 18, 19, 20 34, 35, 36, 37, and 38	55'	0'
17 (a 6' high masonry wall shall be provided if adjacent development to the South does not occur before this does)	25' to 55'	0'

- d. The Brush Management Zone Depths shall be as follows:

<u>Lot #</u>	<u>Hazard</u>	<u>Zone One</u>	<u>Zone Two</u>	<u>Zone Three</u>
21 through 33	Moderate	40'	0'	30'
31 (East side)	Moderate	55'	0'	0'
39 through 50	Moderate	55'	0'	0'
63 through 72	Moderate	55'	0'	0'

- e. Within Zone One combustible accessory structures with less than a one hour fire rating are not permitted (including, but not limited to decks, trellises, gazebos, etc) while non-combustible accessory structures and/or combustible accessory structures with a minimum fire rating of one hour or more may be approved within the designated Zone One area subject to Fire Marshall and the City Manager's approval.
- f. In zones One and Three plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section.
- g. Provide the following note on the Brush Management Construction Documents "It shall be the responsibility of the Permittee to schedule a pre-construction meeting on site with the contractor and the Planning and Development Review Department to discuss and outline the implementation of the Brush Management Program."

39. Prior to final inspection and the issuance of any Certificate of Occupancy for any building, the approved Brush Management Program shall be implemented.

40. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Technical Manual, Section Six and Appendix C.

AFFORDABLE HOUSING REQUIREMENTS.

41. Prior to the filing of the first final map, Subdivider shall comply with the requirements of the Torrey Highlands Subarea Plan for Affordable Housing (the "Affordable Housing Requirements") by satisfaction of the requirements of subparagraph A., below:

- a. Subdivider shall assure the construction and occupancy of an "Affordable Housing Project" consisting of 16 units to be constructed on Lots 34, 35 and 36, as shown on the Tentative Map. Subdivider shall execute an agreement [the Affordable Housing Agreement," subject to the approval of the Executive Director of the Housing Authority of the City of San Diego, or designee, and the City Manager of the City of San Diego, or designee, addressing the following issues:
 1. Performance Security for the construction of the Affordable Housing Project and dedication of land the Affordable Housing Site for the construction of the Affordable Units [Affordable Units] on site, in the form of bond(s), letter(s) of credit, lien(s) and/or other forms of security acceptable to the Executive Director of the Housing Authority of the City of San Diego, or designee [Executive Director];
 2. Approval of the timing of the construction and occupancy of the Affordable Housing Project, acceptable to the Executive Director, provided that the following timetable is incorporated into the Affordable Housing Agreement:
 - (a) Issuance of building permits for the Affordable Project shall occur on or before the earlier of:
 - (i) The issuance of building permits for construction of the 41st market rate dwelling unit (number of units which represents 50% of market rate units); or, (--date which is 18 months after the filing of the first final map--);
 - (ii) In no event shall the issuance of building permits for the construction of the 41st market rate unit occur until building permits are issued for construction of the 16 affordable units are authorized by the City and are obtained by the Subdivider. Further, if individual parcels are sold initially by Subdivider without first obtaining building permits for construction of market rate units, every such parcel sold shall nonetheless be included with the total number of the building permit

issued, in determining when the issuance of the building permit occurs for the 41st and 61st or greater, market rate unit.

- (b) Completion of construction of the Affordable Project shall occur upon the earlier of:
 - (i) Twelve months after the issuance of building permit for the Affordable Project as referenced in Paragraph 2a. hereof; or
 - (ii) (--date--) (Date shall be two and one-half years after the filing of the first final map).

Further, the issuance of building permits for the construction of the 61st market rate unit (number of units which represents seventy-five percent (75%) of market rate units) shall not occur until the completion of the 16 affordable units is authorized by the City.

- (c) Occupancy of the Affordable Project shall occur not later than 180 days after the completion of construction as referenced in Paragraph 2.b. above.
 - (d) For "good cause" shown to the satisfaction of the Executive Director, the dates referenced herein may be extended for one or more period(s) of up to 12 months, each. Good cause shall include, but not be limited to, Acts of God, labor strikes, war, riots, etc., as shall be determined by the Executive Director, in her sole discretion.
3. A Declaration of Covenants, Conditions and Restrictions (the "Declaration"), restricting the occupancy and affordability of the Affordable Project for a period of 55 years from the date of completion of the Affordable Project, which Declaration shall incorporate the Affordable Housing Agreement by reference, shall be recorded against the Affordable Housing Site, in a first priority position. All Affordable Units shall be for occupancy by and at rates affordable to, families earning no more than 65% of the Area Median Income, as adjusted for family size. However, in the case of affordable rental units, in which provisions of the State Density Bonus Statute [Government Code section 65915] applies, rental rates shall not exceed 60% of the Area Median Income, as adjusted for assumed family size and utilities
4. Additional security for the performance by the Subdivider of the Affordable Housing Requirements shall be provided by a deed of trust in favor of the Executive Director, recorded against the Affordable Housing Site, in second lien priority, (junior only to the Declaration)

assuring the timely performance of the Agreement referenced in Paragraph A, hereof. The deed(s) of trust in favor of the Housing Authority may be subordinated to construction deed(s) of trust and/or permanent financing deed(s) of trust in favor of institutional lenders, as approved by the Executive Director, in her/his sole discretion, if deemed essential to construction and/or operation of the Affordable Project, upon such terms and conditions as she/he may impose.

5. Such other and further conditions as may be reasonably required by the Executive Director to assure satisfaction of the Affordable Housing Requirements, and such modification of existing condition(s), as may be granted by the Executive Director in her/his sole discretion.
6. Subdivider, and their successors, heirs and assigns shall execute such other and further documents and shall perform such acts, as shall be requested by the Executive Director and the City Manager and as may, from time to time, be required to effectuate the provisions of Affordable Housing as contemplated by these condition(s) of approval.

OR

As an alternative to satisfying the requirements of subparagraph A above, the Subdivider shall, prior to the filing of the first final map, comply with the requirements of subparagraph B below:

- b. The approval by the Executive Director, or designee, and the City Manager, or designee, of the dedication (that is, the irrevocable setting aside of land for affordable housing purposes) of developable land within the Subarea and "Affordable Housing Plan(s)" that address, provide for and assure the construction and occupancy of Affordable Units within the Subarea on common site(s). Each Affordable Housing Plan must address the following issues concerning "Affordable Housing" to the satisfaction of the Executive Director and the City Manager, or designee:
 1. Siting, design, unit mix, appearance, architectural and floor plans, of the Affordable Units, as referenced on City approved tentative maps and City approved PRD exhibits;
 2. Security for timely performance by the Subdivider of the approved Affordable Housing Plan(s) and Affordable Housing Agreement(s);
 3. Execution and recordation of enforceable agreement(s), including the Affordable Housing Agreement, setting forth the requirements and timing of construction and occupancy of the Affordable Housing as referenced in the Affordable Housing Plan(s);
 4. Phasing of the construction and occupancy of the Affordable Units;

5. Recordation of a Declaration of Covenants, Conditions and Restrictions, as approved by the Executive Director, assuring affordability and occupancy of the Affordable Units for a period of 55 years from the date of completion of construction of the Affordable Units to families earning not more than 65% of Area Median Income and at rates affordable to these families, as adjusted for family size. However, in the case of affordable rental units, in which provisions of the State Density Bonus Statute applies, rental rates shall not exceed 60% of the Area Median Income, as adjusted for assumed family size and utilities.
 6. Security in the form of a lien with second priority, junior only to the Declaration, assuring dedication of the Affordable Housing Site and construction of the Affordable Units in a timely fashion, as set forth in the phasing element(s) of the Affordable Housing Plan(s). Subordination of the second lien priority security mentioned herein may be subordinated to construction and/or permanent financing deed(s) of trust in favor of institutional lender(s), as approved by the Executive Director, and as referenced in Paragraph 1.A.4., hereof; and
 7. Such other and further conditions as may be reasonably required by the Executive Director to assure satisfaction of the Affordable Housing Requirements, and such modification(s) of existing condition(s), as may be granted by the Executive Director in her/his sole discretion.
 8. Subdivider, and their successors, heirs and assigns shall execute such other and further documents and shall perform such acts, as shall be requested by the Executive Director and the City Manager and as may, from time to time, be required to effectuate the provisions of Affordable Housing as contemplated by these condition(s) of approval.
42. The Garden Communities RP Affordable Housing Program is attached to these Planned Residential Development conditions for reference as Exhibit "A," dated April 11, 2000. The provisions of the Affordable Housing Program Shall not in any way modify or change any provision of the affordable housing requirements. To the extent that there is any inconsistency between the two, the terms of the condition shall prevail.

Approved by City Council on April 11, 2000 by Resolution No. R-292470.

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.

Garden Communities, RP, LLP
Owner/Permittee


By _____

By _____

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

5/4/00

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