

RESOLUTION NUMBER R-295383

ADOPTED ON AUGUST 7, 2001

WHEREAS, Shea Homes Limited Partnership, LLC, Owner, and Shea Properties, Permittee, filed an application with the City of San Diego for Planned Commercial Development Permit and Conditional Use Permit [PCD/CUP] No. 99-1341 for the Scripps Gateway Freeway Center which will include a four-story, 137 room hotel; a four-story, 97 room hotel; a gasoline station/carwash/minimart; a restaurant; a drive-through restaurant; retail space; a park and ride lot; and landscaping and improvements in the public right-of-way, located at the northern side of Scripps Poway Parkway, east of Interstate 15, and legally described as Lots 1, 2, 3, 4, 5, 6 and 12 of Map No. 14063 in the Miramar Ranch North Community Plan area, in the CC-1-3 zone (previously referred to as the CA zone); and

WHEREAS, on December 7, 2000, the Planning Commission of the City of San Diego considered PCD/CUP Permit No. 99-1341, and pursuant to Resolution No. 3061-PC voted to deny the permit; and

WHEREAS, Schulman, Hecht, Solberg, Robinson & Goldberg, LLP, attorneys for the applicant, appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, on February 13, 2001, the Council of the City of San Diego considered the matter, and sustained the decision of the Planning Commission by denying the permit; and

WHEREAS, on July 24, 2001, the Council considered and approved a motion to waive the permanent rules of the Council and a motion for reconsideration of the denial of the permit which was part of a proposed settlement to pending litigation; and

WHEREAS, the matter was set for public hearing on August 7, 2001, testimony having been heard, evidence having been submitted, and the 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 it adopts the following findings with respect to PCD/CUP Permit No. 99-1341:

I. PLANNED COMMERCIAL DEVELOPMENT FINDINGS

A. 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 proposed project, Scripps Gateway Freeway Center, will provide a benefit to the City of San Diego by developing a commercial project in a neighborhood which anticipates this type of development in the Miramar Ranch North Community Plan. The proposed project will be consistent with the development pattern established by the approved master planned development described as the Scripps Gateway project (Permit No. 92-0466) within the neighborhood. The design of the proposed structures will be compatible in bulk and scale with planned structures within the master planned neighborhood. The proposed project is consistent with the Miramar Ranch North Community Plan. The proposed project will be consistent with the City of San Diego's Progress Guide and General Plan and will not cause adverse affects to these policy documents or to the City of San Diego.

B. 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 permit controlling the development and continued use of the commercial development proposed for this site contains conditions addressing the project compliance with the San Diego Municipal Code [SDMC] and other regional, state and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and the SDMC regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

C. The proposed use will fully comply with the relevant regulations of the San Diego Municipal Code in effect for this site.

Specific conditions of approval require the continued compliance with all relevant regulations of the SDMC effective for this site and have been written as such into the Planned Commercial Development Permit No. 99-1341. Development of the commercial project shall meet the requirements of the CC-1-3 (formerly referred to as CA) zoning development criteria, as allowed through a Planned Commercial Development permit. Concept plans for the project identify all other development criteria in effect for the site.

II. CONDITIONAL USE PERMIT FINDINGS FOR SERVICE STATIONS

A. The proposed use will not adversely affect the neighborhood, the City's Progress Guide and General Plan, or the Community Plan, and, if conducted in conformity with the conditions provided by the permit, will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

The proposed project, Scripps Gateway Freeway Center, will provide a benefit to the City of San Diego by developing a commercial project in a neighborhood which anticipated this type of development in the Miramar Ranch North Community Plan. The proposed project will be consistent with the development pattern established by the approved master planned development as described by the Scripps Gateway project (Permit No. 92-0466) within the neighborhood. The design of the proposed structures will be compatible in bulk and scale with planned structures within the master planned neighborhood. The proposed project is consistent with the Miramar Ranch North Community Plan. The proposed project will be consistent with the City of San Diego's Progress Guide and General Plan and will not cause adverse affects to these policy documents or to the City of San Diego.

The permit controlling the development and continued use of the commercial development proposed for this site contains conditions addressing the project compliance with the SDMC and other regional, state and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and the SDMC regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

B. The proposed use will comply with all the relevant regulations in the San Diego Municipal Code.

Specific conditions of approval require the continued compliance with all relevant regulations of the SDMC effective for this site and have been written as such into the Conditional Use Permit No. 99-1341. Development of the commercial project shall meet the requirements of

the CC-1-3 zone (formerly referred to as the CA zone) development criteria as allowed through a Planned Commercial Development permit. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project.

III. CONDITIONAL USE PERMIT FINDINGS FOR ALCOHOL OUTLETS

A. The proposed use is consistent with the policies, goals and objectives of the applicable Land Use Plan or Local Coastal Program.

The proposed retail alcohol sales establishment is consistent with the Miramar Ranch North Community Plan which identifies this site for commercial development through a Planned Commercial Development process. The proposed project will be consistent with the City's Progress Guide and General Plan and will not cause adverse affects to the continued fair application of these policies or to the City of San Diego.

B. The proposed use will not be detrimental to the health, safety and general welfare of persons living or working in the area.

The permit controlling the development and continued use of the commercial development proposed for a retail alcohol sales establishment contains conditions addressing the project compliance with the SDMC and other regional, state and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and the SDMC regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

C. The proposed use is consistent with the purpose and intent of the zone.

The proposed retail alcohol sales establishment is consistent with the purpose and intent of the CC-1-3 zone (formerly referred to as the CA zone) which is to accommodate community and regional shopping centers. The purpose and intent of the CC-1-3 zone (formerly referred to as the CA zone) is further to encourage development of this type and to minimize any adverse effects of the center on nearby properties, and to provide for safe and efficient operation of the shopping centers and the retail uses within these centers. The purpose and intent of the CC-1-3 zone (formerly referred to as the CA zone) also provides that this zone should be applied only on the basis of comprehensive plans for the community development.

The Scripps Gateway Freeway Center is proposed in the location designated by the master planned project, Scripps Gateway, TM/PID/PCD/PRD/HRP Permit No. 92-0466, for commercial development. This site is identified as the major commercial element of the Scripps Gateway project. The Scripps Gateway Freeway Center has been designed to operate in a safe and efficient

manner. Pedestrian and vehicular circulation, emergency vehicular access, location of uses, orientation of buildings to enhance security, lighting of the site, and landscaping have all been considered in the design of the site to assure a safe and effective commercial operation. The site is adjacent to the Scripps Gateway Townhomes condominium project, Scripps Poway Parkway (a six lane primary arterial roadway), Interstate 15, and open space owned by the City of San Diego. The proposed use of the site for the intended commercial center will not present a disruptive influence on the adjacent properties. The most sensitive of the adjacent properties, the open space and the condominium project, will have the least active, least intensive uses located nearby, while the most intense and active uses will be located closer to Interstate 15 and Scripps Poway Parkway. The Scripps Gateway Freeway Center is consistent with the regulations of the CA zone, as allowed by the Planned Commercial Development, as required to develop a community commercial development serving a wide area of influence within the City of San Diego.

D. The proposed use as may be conditioned is appropriate at this location.

The permit controlling the development and continued use of the commercial development proposed for this site contains conditions addressing the project compliance with the SDMC and other regional, state and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and the SDMC regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity

E. The proposed use will serve a public convenience or necessity.

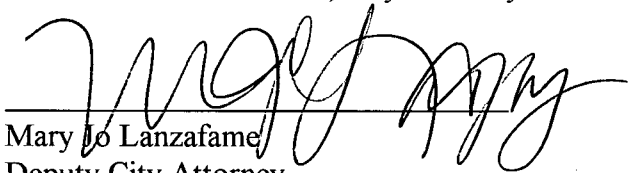
The Scripps Gateway master planned project allows for the commercial center which will include hotels, restaurants, and a service station, the residential element which includes the condominium project of 135 dwelling units and the single family element of 309 dwelling units, and an industrial element composed of six lots for manufacturing industrial park development. Persons living or working in the immediate vicinity of the Scripps Gateway project and those living or working within the master planned project will benefit by the convenience of the planned commercial development to provide alcoholic beverages and may benefit due to necessity as there are no other locations in the immediate vicinity permitted to sell alcoholic beverages.

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 appeal of Schulman, Hecht, Solberg, Robinson & Goldberg, LLP, attorneys for the applicant, is granted; the decision of the Planning Commission is overruled; and Planned Commercial Development Permit No. 99-1341 and Conditional Use

Permit No. 99-1341 are granted to Shea Homes Limited Partnership, LLC, Owner and Shea Properties, Permittee, under the terms and conditions set forth in the permits attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Mary Jo Lanzafame
Deputy City Attorney

MJL/mdw/lc
10/12/01
12/19/01 (CUP attached)
Or.Dept:Clerk
R-2002-408
Form=permitr.frm
Reviewed by John Fisher

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

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PLANNED COMMERCIAL DEVELOPMENT
PERMIT NO. 99-1341
SCRIPPS GATEWAY FREEWAY CENTER (MMRP)
City Council

This Planned Commercial Development Permit is granted by the Council of the City of San Diego to Shea Homes Limited Partnership, LLC, Owner, and Shea Properties, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0910, 101.0510 and 101.0515. The 20.3 acre site is located on the northern side of Scripps Poway Parkway, east of Interstate 15 in the CC-1-3 zone (previously referred to as the CA zone) of the Miramar Ranch North Community Plan area. The project site is legally described as Lots 1, 2, 3, 5, 6, and 12, Map No. 14063, filed November 1, 2000 in the City of San Diego, County of San Diego, State of California.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop two hotels (one four-story, 137 room hotel with approximately 73,925 square feet; one four-story, 97 room hotel with approximately 69,000 square feet), one restaurant with approximately 5,530 square feet, one drive-through restaurant with approximately 3,200 square feet, two retail spaces with approximately 5,000 and 4,000 square feet each, surface parking, a park and ride lot and landscaping and improvements in the public right-of-way described and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated August 7, 2001 on file in the Development Services Department. The project shall include:

- a. Six buildings at an approximate maximum 162,373 square feet: two hotels (one four-story, 137 room hotel with approximately 73,925 square feet; one four-story, 97 room hotel with approximately 69,000 square feet), one sit down restaurant with approximately 5,530 square feet, one drive-through restaurant with approximately 3,200 square feet, two retail buildings with approximately 5,000 and 4,000 square feet each;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. 345 off-street parking spaces (overall site total including ten for Conditional Use Permit [CUP] No. 99-1341);
- d. 120 parking spaces for a park and ride facility;

- e. Sign Program which includes tenant walls signs, ground mounted signs, regulatory signs, directional signs; 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 SDMC in effect for this site.
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 Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
 5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
 6. Issuance of this permit by the City of San Diego does not authorize the Owner/Permittee for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
 7. 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.
 8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable Building, Fire, Mechanical and Plumbing codes and state law requiring access for disabled people may be required.

9. No change, modification or alteration shall be made to the project unless appropriate application or amendment to this Permit has been granted by the City.
10. 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 August 7, 2001, on file in the Office of Development Services Department.
11. Architectural design of Buildings 6 and 8 shall be consistent with the design of Buildings 4, 5, and 7 regarding materials, detailing and articulation.
12. Before issuance of any building permits, the Owner/Permittee shall submit plans indicating bicycle racks with a capacity of ten parking stalls shall be installed for use at the Park-and-Ride facility.
13. 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 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.

MSCP REQUIREMENTS:

14. The development shall conform with the applicable Land Use Adjacency Guidelines (Section 1.4.3) of the Multiple Species Conservation Program [MSCP] Subarea Plan. In particular, lighting, drainage, landscaping, grading, access and noise must not adversely affect the MHPA:
 - a. Lighting should be directed away from the Multiple Habitat Planning Area [MHPA], and shielded if necessary. Any proposed lighting at the rear of the buildings or for the areas of the parking lot on the northern boundary of the project shall be minimized, shielded and directed downward to avoid spill into the preserve.
 - b. Drainage shall be directed away from the MHPA or not drain directly into the MHPA. The design of the project shall utilize sedimentation basins, grassy swales or mechanical trapping devices to control and reduce pollution into the MHPA. The proposed drainage control system shall be adequate to filter and slow storm flow velocities generated by the project before discharge into the MHPA.

- c. No invasive, non-native plant species shall be planted in or adjacent to the MHPA.
- d. Due to the site's proximity to coastal sage scrub within the MHPA, noise impacts related to construction shall be avoided, if possible, during the breeding season of the California gnatcatcher (3/1-8/15). If construction is proposed during the breeding season a survey to determine the presence of California gnatcatchers shall be required. If no gnatcatchers are identified within the MHPA no additional measures will be required. If present, measures to minimize noise impacts will be required and should include temporary noise walls/berms. If a survey is not conducted and construction is proposed during the breeding season, presence would be assumed and a temporary wall/berm shall be required. Noise levels from construction activities during the CA gnatcatcher breeding season should not exceed 60 dBA hourly LEQ at the edge of the MHPA or the ambient noise level if noise levels already exceed 60 dBA hourly LEQ.

ENGINEERING REQUIREMENTS:

- 15. Prior to issuance of any building permits, the Owner/Permittee shall provide a shared parking agreement.
- 16. Prior to issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of a traffic signal at the intersection of Scripps Poway Parkway and Scripps Highland Drive, satisfactory to the City Engineer.

WATER REQUIREMENTS:

- 17. Prior to the issuance of any building or grading permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of a system of twelve inch water mains connecting to 712 HGL water facilities in Scripps Highlands Drive and Scripps Poway Parkway in a manner satisfactory to the Director of the Water Department and the City Engineer.
- 18. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the installation of fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants are located on a dead-end main then the Owner/Permittee shall design and construct appropriate facilities to provide a redundant water supply.
- 19. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of the Scripps Poway Parkway Water Pump Station, in a manner satisfactory to the Director of the Water Department and the City Engineer.
- 20. Prior to the issuance of any building permits, the Owner/Permittee shall grant appropriate water or access easements, including vehicular access to each appurtenance (meters, blow offs, air valves, manholes, etc.), for all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Director of the Water Department and the City Engineer. The minimum easement widths for water mains with services or fire hydrants is 24-feet and fully paved. No structures or landscaping of any kind shall be installed in or over any easement utilized for vehicular access.
- 21. The Owner/Permittee shall provide evidence, satisfactory to the Director of the Water Department indicating that each lot will have its own water service or provide Covenants,

Conditions and Restrictions [CC&Rs] for the operation and maintenance of on-site private water facilities that serve more than one lot.

22. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current editions of the City of San Diego Water and Sewer Design Guides.

23. All common areas and/or open spaces that require irrigation shall be irrigated with reclaimed water as specified in City Council Ordinance No. O-17327. The Owner/Permittee shall design and install a reclaimed water irrigation system within the development in accordance with "Rules and Regulations for Reclaimed Water Use and Distribution within the City of San Diego" satisfactory to the Director of the Water Department.

SEWER REQUIREMENTS:

24. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of public sewer facilities, necessary to serve the proposed development.

25. The Owner/Permittee shall design all proposed sewer facilities in accordance with established criteria in the most current edition of the City of San Diego's Sewer Design Guide. Proposed facilities that do not meet the current standards shall be private or redesigned.

26. The Owner/Permittee shall provide evidence, satisfactory to the Director of the Metropolitan Wastewater Department indicating that each unit will have its own sewer lateral or provide CC&Rs for the operation and maintenance of on-site private sewer facilities that serve more than one ownership.

27. 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. In addition, the Owner/Permittee shall submit calculations, satisfactory to the Director of the Metropolitan Wastewater Department, for sizing of the proposed sewer lateral from the property line to its connection with the public sewer main.

PLANNING/DESIGN REQUIREMENTS:

28. No fewer than 465 (including the 120 park and ride spaces) off-street parking spaces or the number required by a shared parking analysis acceptable to the Development Services Department, Land Development Review Division, whichever is less, shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A," dated August 7, 2001, on file in the Development Services Department. Parking spaces shall comply at all times with SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

29. 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.

30. The height 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.

31. A topographical survey or pad certification 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. The cost of any such survey or certification shall be borne by the Owner/Permittee.

32. No building additions shall be permitted unless approved by the City Manager.

33. All signage associated with this development shall be consistent with sign criteria established by the approved Sign Program, Exhibit "A," dated August 7, 2001, on file in the Development Services Department.

34. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Development Services Department, Land Development Review Division for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of fifty feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than three footcandles. Light levels throughout the development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding eight footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this permit during the night inspection. Night inspections may be required additional fees as determined by the Director of the Development Services Department.

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

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

37. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or 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.

38. No merchandise, material or equipment shall be stored on the roof of any building.

39. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials 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," dated August 7, 2001, on file in the Development Services Department.

LANDSCAPE REQUIREMENTS:

40. In the event that a foundation only permit is requested by the Owner/Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Concept Plan, dated August 7, 2001, on file in the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as landscaping area.

41. 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 August 7, 2001, on file in the Development Services Department.

42. 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 7 and to the satisfaction of the City Manager. All plans shall be in substantial conformance to Exhibit "A," dated August 7, 2001, on file in the Development Services Department.

43. The Owner/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.

44. 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 thirty days of damage or Certificate of Occupancy.

45. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land shall be submitted to the satisfaction of the City Manager and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated August 7, 2001, on file in the Development Services Department and all other applicable conditions of related permits.

46. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Owner/Permittee shall initiate such measures within forty five days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Technical Manual.

47. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

48. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or topping of trees is not permitted unless specifically noted in this Permit. The Owner/Permittee, or subsequent Owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

APPROVED by the Council of the City of San Diego on August 7, 2001, by Resolution No. R-295383.

10/12/01

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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.

Shea Homes Limited Partnership, LLC,
Owner

By _____

By _____

Shea Properties,
Permittee

By _____

By _____

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

10/12/01

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

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 99-1341
SCRIPPS GATEWAY FREEWAY CENTER
City Council

This Conditional Use Permit is granted by the Council of the City of San Diego to Shea Homes Limited Partnership, LLC, Owner, and Shea Properties, Permittee, pursuant to San Diego Municipal Code [SDMC] section 101.0510. The 20.3 acre site is located on the northern side of Scripps Poway Parkway, east of Interstate 15 in the CC-1-3 zone (previously referred to as the CA zone) of the Miramar Ranch North Community Plan area. The project site is legally described as Lot 4, Map No. 14063, filed November 1, 2000, in the City of San Diego, County of San Diego, State of California.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop one gasoline station/car wash/mini mart, including the sale of beer and wine, of approximately 2,948 square feet with surface parking and landscaping described and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated August 7, 2001, on file in the Development Services Department. The facility shall include:

- a. One gasoline station/car wash/mini mart of approximately 2,948 square feet;
- b. Operation of the gas station shall be allowed twenty-four hours daily and the sale of alcohol shall be limited according to the laws of the State of California and by the conditions of this permit;
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Ten off-street parking spaces;
- e. Sign Program which includes tenant walls signs, ground mounted signs, regulatory signs, directional signs; 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 SDMC in effect for this site.

1. This Conditional Use Permit issued for the service station, sale of alcohol and other related uses, shall be valid for twenty years from the date of approval by the decision maker. The Owner/Permittee, prior to the end of this term, may apply for an extension of this permit for an equal period of twenty years. The current operation of the use may continue until a decision has been rendered by the appropriate decision maker. If after a complete review of the State of California, Department of Alcohol Beverage Control records and any records that the City may have regarding this site, it is determined that the operator and Owner have conducted business in compliance with all conditions imposed by the Department of Alcohol Beverage Control and those contained herein, staff shall schedule a public hearing in compliance with the decision process identified by the current regulations at that time. A recommendation to approve or deny the extension of this permit shall be made by City staff based on the review of the aforementioned records. If approved, a new permit for an additional twenty years shall be recorded on the property with all conditions included herein.

2. This Conditional Use Permit for the sale of alcoholic beverages shall expire three years from the date of final approval unless this condition is subsequently modified to extend the effective period of the permit or this condition is removed as result of action taken at a public hearing. If this condition is not modified or removed prior to the expiration of the three year period, the sale of all alcoholic beverages shall cease. This condition shall not be applicable to the Conditional Use Permit pertaining to the establishment and operation of the automobile service station.

3. As a condition of this permit, the Owner/Permittee has established two requirements for this site which include the following:

a. Training Program

A state approved training program will be put into place at all of the corporate owned locations. All sales associates will be trained on the state regulations in regards to the responsible sales of alcohol prior to working at any location that sells alcohol. In addition to this training program, the LEAD Program representative will provide a detailed state approved training program to all employees at each work site.

b. Voluntary penalties for illegal sales to minors

If the Owner/Permittee is convicted of three violations by the Department of Alcoholic Beverage Control for the illegal sale of alcohol to minors during a six year period, the Owner/Permittee will voluntarily relinquish their alcohol license for sale during the rest of their tenancy at this site. The Owner/Permittee will adhere to any incident conviction finding from the investigation noted by the Department of Alcoholic Beverage Control, only. After the initial six year period, the same voluntary agreement will be initiated for each subsequent six year period during the entire tenancy.

4. No wine shall be sold in containers of less than 750 milliliters.
5. No beer or malt beverage products shall be sold in less than four-pack or six-pack quantities as packaged by the manufacturer per sale.
6. No keg beer or malt beverage product shall be sold in less than six gallon containers.
7. No wine shall be sold with an alcoholic content greater than 15 percent by volume.
8. Quarterly gross sales of alcoholic beverages shall not exceed 20 percent of the quarterly gross sales of the establishment.
9. All graffiti on all the buildings, storage sheds, and trash receptacles shall be removed within forty-eight hours.
10. No pool or billiard tables, video, or electronic games or coin operated devices shall be located on the premises.
11. Public telephones located on the exterior of the premises and property shall not be able to receive incoming calls.
12. Hours of operation for the sale of alcoholic beverages shall be limited between 8:00 A.M. and 11:00 P.M.
13. No alcoholic beverage advertising shall be visible from the exterior of the establishment.
14. No alcoholic beverages shall be consumed on the premises or adjacent parking lots.
15. The Owner/Permittee shall post a permanent sign, visible to the general public, stating: "No loitering, consumption, or open alcoholic containers are allowed inside the premises, in the parking areas, or on sidewalks in the public right-of-way adjacent to this premises."
16. The Owner/Permittee shall list the business address and telephone number in the San Diego telephone directory.
17. The Owner/Permittee shall place at least one 13-gallon trash receptacle inside the business and one 32-gallon receptacle outside the business for use by customers.
18. To adequately illuminate the exterior of the business, sidewalks, and areas under the control of the business to a minimum level of 0.4 footcandles per square foot. The Owner/Permittee shall also ensure the lighting is shielded and directed so the light falls only on the property.
19. The Owner/Permittee agrees to maintain the premises, including parking areas and sidewalks, in a litter free and graffiti free condition at all times. Litter shall be removed on a daily basis and graffiti shall be removed within 48 hours.

20. The Owner/Permittee shall insure that no more than 33 percent of transparent doors or windows will be obscured by advertising or signs.
21. The Owner/Permittee shall insure that no more than 630 square inches of signage referencing or pertaining to the sale of alcoholic beverages shall be visible from the public right-of-way adjacent to the business.
22. 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.
23. 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.
24. 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.
25. This permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
26. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
27. Issuance of this permit by the City of San Diego does not authorize the Owner/Permittee for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 *et seq.*).
28. 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.
29. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building or site

improvements to comply with applicable Building, Fire, Mechanical and Plumbing codes and state law requiring access for disabled people may be required.

30. No substantial 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.

31. Before issuance of any building or grading permits, complete construction drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated August 7, 2001, on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate applications or amendment to this permit have been granted.

32. 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 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.

WATER REQUIREMENTS:

33. Prior to the issuance of any building or grading permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of a system of twelve inch water mains connecting to 712 HGL water facilities in Scripps Highlands Drive and Scripps Poway Parkway in a manner satisfactory to the Director of the Water Department and the City Engineer.

34. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the installation of fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants are located on a dead-end main then the Owner/Permittee shall design and construct appropriate facilities to provide a redundant water supply.

35. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of the Scripps Poway Parkway Water Pump Station, in a manner satisfactory to the Director of the Water Department and the City Engineer.
36. Prior to the issuance of any building permits, the Owner/Permittee shall grant appropriate water or access easements, including vehicular access to each appurtenance (meters, blow offs, air valves, manholes, etc.), for all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Director of the Water Department and the City Engineer. The minimum easement widths for water mains with services or fire hydrants is 24-feet and fully paved. No structures or landscaping of any kind shall be installed in or over any easement utilized for vehicular access.
37. The Owner/Permittee shall provide evidence, satisfactory to the Director of the Water Department indicating that each lot will have its own water service or provide Covenants, Conditions and Restrictions [CC&Rs] for the operation and maintenance of on-site private water facilities that serve more than one lot.
38. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current editions of the City of San Diego Water and Sewer Design Guides.
39. All common areas and/or open spaces that require irrigation shall be irrigated with reclaimed water as specified in City Council Ordinance No. O-17327. The Owner/Permittee shall design and install a reclaimed water irrigation system within the development in accordance with Rules and Regulations for Reclaimed Water Use and Distribution within the City of San Diego satisfactory to the Director of the Water Department.

SEWER REQUIREMENTS:

40. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of public sewer facilities, necessary to serve the proposed development.
41. The Owner/Permittee shall design all proposed sewer facilities in accordance with established criteria in the most current edition of the City of San Diego's Sewer Design Guide. Proposed facilities that do not meet the current standards shall be private or redesigned.
42. The Owner/Permittee shall provide evidence, satisfactory to the Director of the Metropolitan Wastewater Department indicating that each unit will have its own sewer lateral or provide CC&Rs for the operation and maintenance of on-site private sewer facilities that serve more than one ownership.
43. 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. In addition, the Owner/Permittee shall submit calculations,

satisfactory to the Director of the Metropolitan Wastewater Department for sizing of the proposed sewer lateral from the property line to its connection with the public sewer main.

PLANNING/DESIGN REQUIREMENTS:

44. No fewer than ten off-street parking spaces or the number required by a shared parking analysis acceptable to the Development Services Department, whichever is less, shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated August 7, 2001, on file in the Development Services Department. Parking spaces shall comply at all times with SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

45. 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.

46. The height 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.

47. A topographical survey or pad certification 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. The cost of any such survey or certification shall be borne by the Owner/Permittee.

48. All signage associated with this development shall be consistent with sign criteria established by the approved Sign Program, Exhibit "A", dated August 7, 2001, on file in the Development Services Department.

49. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Development Services Department, Land Development Review Division for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of fifty feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than

three footcandles. Light levels throughout the development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding eight footcandles anywhere within the site, except immediately under the canopy of the gasoline station which shall be limited to a maximum of twenty-eight footcandles. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this permit during the night inspection. Night inspections may be required additional fees as determined by the Director of the Development Services Department.

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

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

52. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or 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. No merchandise, material or equipment shall be stored on the roof of any building.

54. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials 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," dated August 7, 2001, on file in the Development Services Department.

LANDSCAPE REQUIREMENTS:

55. In the event that a foundation only permit is requested by the Owner/Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Concept Plan, dated August 7, 2001, on file in the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as landscaping area.

56. 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 August 7, 2001, on file in the Development Services Department.

57. 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 7 and to the satisfaction of the City Manager. All plans shall be in substantial conformance to Exhibit "A", dated August 7, 2001, on file in the Development Services Department.

58. The Owner/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.

59. 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 or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or Certificate of Occupancy.

60. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land shall be submitted to the satisfaction of the City Manager and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated August 7, 2001, on file in the Development Services Department and all other applicable conditions of related permits.

61. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Owner/Permittee shall initiate such measures within forty five days from the date that the grading of the site is deemed to be complete. Such erosion control 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.

62. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

63. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or topping of trees is not permitted unless specifically noted in this Permit. The Owner/Permittee, or subsequent Owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

APPROVED by the Council of the City of San Diego on August 7, 2001, by Resolution No. R-295383.

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.

Shea Homes Limited Partnership, LLC,
Owner

By _____

By _____

Shea Properties,
Permittee

By _____

By _____

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

10/12/01
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