

RESOLUTION NUMBER R-299540

ADOPTED ON AUGUST 3, 2004

WHEREAS, American Properties Enterprises, Owner/Permittee, filed an application with the City of San Diego for a planned commercial development permit and a resource protection ordinance permit to develop 161 multi-family residential dwelling units for sale as condominiums known as the Fashion Walk Project [Project], located at 7148 Friars Road, and legally described as:

PARCEL 1:

Lots 1 and 2 of Fashion Ridge, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11871, filed in the Office of the County Recorder of San Diego County, July 31, 1987.

PARCEL 2:

Those portions of Lots 3 and 5 in Pueblo Lot 1174 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Licensed Surveyor's Map thereof No. 141, filed in the Office of the County Recorder of San Diego County, described as follows:

Beginning at a point on the Northwesterly line of that parcel of land described in deed to State of California recorded January 19, 1942 in Book 1299, Page 224 of Official Records, distant thereon North 47°12'30" East 3.84 feet from a 2 inch iron pipe and tag marked "R.E. 1534" set for the most Northerly corner of that portion of said Parcel of land described in deed from said State to Warren H. Harrington recorded June 2, 1955 in Book 5665, Page 194 of said Official Records; thence along said Northwesterly line, North 47°12'30" East, 622.7 feet to a point on the Southwesterly line of Sixth Street Extension, 80 feet wide, which is the most Northerly corner of said parcel of land conveyed to said State; thence along said Southwesterly line, South 42°47'30" East, 350.58 feet; thence leaving said Southwesterly line, South 77°29'41" West, 518.87 feet; thence South 74°10'45" West, 196.03 feet to the Point of Beginning;

in the Linda Vista Community Plan area, in the CO-1-2 (Commercial Office) zone; and

WHEREAS, on April 22, 2004, the Planning Commission of the City of San Diego considered Planned Commercial Development [PCD] Permit No. 80170/Resource Protection Ordinance [RPO] Permit No. 80579 and Vesting Tentative Parcel Map No. 80580, and pursuant to Resolution No. 3502-PC voted to approve the Permit; and

WHEREAS, Mark Polinsky and Michael Shames appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, the matter was set for public hearing on August 3, 2004, 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 it adopts the following findings with respect to Planned Commercial Development Permit No. 80170 and Resource Protection Ordinance Permit No. 80579:

A. **PLANNED COMMERCIAL DEVELOPMENT PERMIT (SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 101.0910.1.2**

1. **The proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or Community Plan.** The 8-acre site of the proposed development was zoned for commercial-office (CO) use in 1983. This zone allows residential development of one dwelling unit per 1,500 square-feet of lot area, which would provide for up to 232 dwelling units where 161 dwelling units are proposed. The project fulfills a community need by providing additional housing where vacancy rates are low and demand remains high. The project is superior in design and follows the goals and recommendations of the Linda Vista Community Plan (Page 118) and the Progress Guide and General Plan by clustering the development in a small portion of the site. This preserves sensitive environmental resources and respects the adjacent hillsides. The project also provides adequate parking, screening and landscaping on the site.

The project has been reviewed for compliance with the California Environmental Quality Act [CEQA] and potential impacts to the environment have been reviewed and considered. It has been determined that these potential impacts can be reduced to a level below significance through the incorporation of mitigation measures. These mitigation measures have been

incorporated into the project as conditions of the draft permit and will be implemented through a Mitigation, Monitoring and Reporting Program.

Therefore, due to these efforts it has been concluded that the proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or Community Plan.

2. The proposed use, 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 and will not adversely affect other properties in the vicinity. The project is sensitive to the site and surrounding properties and complements the existing commercial and residential development located to the north, west and south. The project has been designed to occupy a small 1.8-acre portion of the 8-acre site and to preserve the existing steep slopes and sensitive environmental resources located on the remaining 6.2-acres. This remaining portion of the site will be preserved through an open space easement, or other acceptable means. The structures are placed at the bottom of the slope and do not adversely impact the views or light and air of the neighboring residential properties. Access to the property is controlled via an existing traffic signal and second driveway, and will not significantly impede the traffic flow along Friars Road.

Prior to construction, the project plans will be submitted and reviewed by staff for compliance with all applicable Uniform Building Codes, including plumbing, mechanical, electrical and fire codes. In addition, staff will ensure that the project plans accurately depict the project approved by the decision maker at a noticed public hearing.

Therefore it has been determined that the proposed use, 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 and will not adversely affect other properties in the vicinity.

3. The proposed use will comply with the relevant regulations of the Municipal Code. The proposed use of the property for development of a multi-family residential use is consistent with the community plan land use designation of the site for commercial-office and open space uses, which allow for residential development and preservation of open space and environmentally sensitive resources. The zone designation of the property for commercial-office development also allows for residential development of the site at a density of twenty-nine dwelling units per acre, which would allow for a total of up to 232 units on the 8.0-acre site. Although the Municipal Code requires incorporation of a commercial use component on one-half of the ground floor, the Code provides for a deviation from this requirement.

The project is designed to comply with the development regulations for Planned Commercial Developments with the exception of one deviation which is required due to the entirely residential development in lieu of mixed residential and commercial development. Separate findings have been made to permit the deviation and are noted below.

The project has been reviewed for compliance with applicable regulations of the Municipal Code in effect prior to January, 2000. Staff review has determined that with the exception of the deviation as noted, the project as proposed complies with the provisions of the Code pertaining to Planned Commercial Developments and the Resource Protection Ordinance. Conditions have

been imposed on project implementation and are noted in the Permit. These Conditions will ensure that the project, when implemented, further complies with relevant regulations of the Municipal Code, including those pertaining to the provision of affordable housing. Prior to building permit issuance, the project will be assessed fees to address affordable housing issues in the community.

Based on the aforementioned, it has been determined that the project and proposed use will comply with the relevant regulations of the Municipal Code.

B. DEVIATIONS FROM MINIMUM STANDARDS (SDMC SECTION 101.0910.M.2)

The minimum development standards for Planned Commercial Development permits require that a minimum of 50% of all gross ground floor area be used for retail commercial and personal service uses. Because this project is entirely residential, findings must be made in order to deviate from the minimum standards. Deviation findings are provided below:

1. Because of special circumstances applicable to the property, including but not limited to size, shape, topography, location or surroundings, the strict application of the requirements deprives such property of privileges enjoyed by other property in the vicinity

under identical zone classification. The property is approximately 8-acres in size and irregularly shaped. Most of the site is covered by steep slopes and sensitive biological resources. Northerly portions of the property are constrained by a 100-foot wide utility easement and a 20-foot wide drainage easement. Easterly portions of the site are constrained by an irregularly shaped slope easement. In addition, vehicular access rights have been waived for the entire easterly frontage of the property and a significant easterly portion of the Friars Road frontage due to their proximity to Ulric Street and SR-163. A small flat portion of property of approximately ½-acre in size exists on the westerly portion of the site. This flat portion of the lot is elevated approximately 12 feet above the adjacent roadway along Friars Road. This flat portion of the lot is also very narrow.

The unique shape, topography, and location of this lot make it unsuitable for commercial retail uses. Such uses require easy access and parking for drivers familiar with the development and a high visibility from the street. The small size of the developable portion of the lot limits the access and parking configurations for commercial uses. In addition, the elevation difference between the building site and the street limits the visibility to any ground floor commercial use from the street. The project is also located across the street from Fashion Valley, a major regional shopping center with good access and high visibility. Any commercial business use on the project site would be in direct competition with Fashion Valley. These combined conditions severely reduce the commercial viability of the site and warrant a deviation from the ground floor commercial requirement.

In addition, commercial uses on this site would result in higher trip generation rates and increased traffic volumes along this segment of Friars Road (beyond the number of vehicle trips/traffic which would be generated by the proposed residential project). Commercial uses on the site would also be incompatible with existing residential development to the north. It is also economically infeasible to retain viable commercial uses on-site due to direct competition with

the existing regional shopping center (Fashion Valley) located across the street from the project site.

Therefore, because of these special circumstances, the strict application of these requirements would otherwise deprive the property of privileges enjoyed by other property in the vicinity under identical zone classification, and therefore relief from this provision of the Municipal Code is justified.

2. Any deviation granted will assure that the adjustment thereby authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which property is situated because of the conditions imposed. The deviation allows reasonable development to occur on the site while preserving the steep slopes and sensitive environmental resources. Commercial uses are not only incompatible with adjacent residential uses, but are also potentially non-viable because of the location across from a full-service regional shopping center. Traffic impacts would be exacerbated by commercial development. In addition, the project is consistent with the goals and recommendations of the Linda Vista Community Plan which allow residential only development in areas designated for commercial offices and promote the preservation of hillsides and

environmental resources. The Planned Commercial Development Permit is the identified permitting procedure for accommodating these proposals.

Therefore, it is determined that the deviation being granted to allow residential only development on the site, in lieu of a requirement for inclusion of a commercial component on the ground floor, does not constitute a grant of special privileges inconsistent with limitations on other properties in the vicinity and zone in which the property is situated due to the conditions imposed.

3. The granting of the deviation does not adversely affect the Progress Guide and General Plan for the City of San Diego, or any adopted community or precise plan of the City or the adopted plan of any other appropriate governmental agency. The granting of the deviation enhances conformance with the Linda Vista Community Plan. The project overall respects the adjacent hillsides on the property by clustering development on the flat portion of the property. Minimal encroachment into steep slopes preserves sensitive resources. Construction is sited downslope from the adjacent residential project above, minimizing potential adverse view impacts and offering a large natural buffer between the two residential developments. The residential only project conforms to the Linda Vista Community Plan which specifically allows residential only development to locate within areas designated for office commercial designations, subject to approval of a Planned Commercial Development Permit.

Based on staff review and analysis, it is determined that the granting of this deviation will not have an adverse affect on the Progress Guide and General Plan for the City of San Diego, or the Linda Vista or Mission Valley Community Plans.

C. RESOURCE PROTECTION ORDINANCE (SDMC SECTION 101.0462.K.)

1. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan. The project conforms to the requirements of the Linda Vista

Community Plan. It is clustered on a small flat portion of the slope thereby preserving the majority of steep slopes and sensitive environmental resources on the site. The residential only project is also in conformance with the Linda Vista Community Plan which specifically allows residential only development to locate within areas designated for office commercial developments.

The General Plan and the Linda Vista Community Plan designates the site for commercial-office and residential uses. The zoning of the property provides for residential development of one dwelling unit per 1,500 square-foot of lot area which would allow up to 232 units on the site. The proposed project of 161 dwelling units is below this maximum and provides for needed medium density residential development in the community.

Based on staff review and analysis of the proposal with the adopted plans, it is determined that implementation of the project will not have an adverse affect on the City of San Diego's Project Guide and General Plan, nor the adopted community plan for the area.

The project complies with the applicable development regulations for Planned Commercial Developments and the Resource Protection Ordinance with the exception of one deviation for which special findings can be made. The unique shape, topography, and location of this lot constitute special circumstances which require a deviation from the standard development regulations. In order to preserve as much of the steep slopes and sensitive environmental resources as possible, development on this site is limited to that area around the flat and narrow portion of the lot. This project is also entirely residential and does not contain the required 50% ground floor commercial retail. The shape, topography, and location of this lot make it unsuitable for commercial retail uses. The difference in elevation between the building pad and the street makes commercial access difficult and degrades the ability of any business to be seen from the street. The site is located across the street from the regional shopping center at Fashion Valley. Competition from the shopping center which has good access and visibility would further impair the ability to do any kind of retail business on the site.

The project is clustered on a section of flat land at the western end of the lot and is designed to avoid steep slopes and sensitive vegetation. The development will encroach into no more than 13.4% of the steep slope area where 14% is the maximum encroachment allowed, and is within the allowable thresholds of the Resource Protection Ordinance.

The project is located on the flattest, most disturbed portion of the site. The vast majority of the site will remain untouched by the development. The proposed development is consistent with the Multiple Species Conservation Program [MSCP] in that it minimizes impacts upon sensitive biological resources and provides for necessary mitigation of adverse impacts. This project requires mitigation for impacts to coastal sage scrub, southern willow scrub, and a documented pair of California gnat-catchers. Proposed mitigation includes off-site acquisition of additional habitat or payment of a mitigation fee into the Habitat Acquisition Fund calculated to alleviate the proposed negative impacts.

2. The proposed development will conform to the community plan for the area and any other applicable plans, policies and ordinances. The 8-acre site of the proposed development is zoned for commercial-office (CO) use, which allows residential development of

one dwelling unit per 1,500 square-feet of lot area. This would provide for up to 232 dwelling units where 161 dwelling units are proposed. The project fulfills a community need by providing additional housing where vacancy rates are low and demand remains high. The project is superior in design and follows the goals and recommendations of the Linda Vista Community Plan (Page 118) and the Progress Guide and General Plan by clustering the development in a small portion of the site. This preserves sensitive environmental resources and respects the adjacent hillsides. The project also provides adequate parking, screening and landscaping on the site.

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and potential impacts to the environment have been reviewed and considered. It has been determined that these potential impacts can be reduced to a level below significance through the incorporation of mitigation measures. These mitigation measures have been incorporated into the project as conditions of the draft permit and will be implemented through a Mitigation, Monitoring and Reporting Program.

Therefore, due to these efforts it has been concluded that the proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or Community Plan.

3. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands. The project is clustered on a small flat portion of the slope thereby preserving the majority of steep slopes and sensitive environmental resources on the site. The residential only project is also in conformance with the Linda Vista Community Plan which specifically allows residential only development to locate within areas designated for office commercial developments.

The project is clustered on a section of flat land at the western end of the lot and is designed to avoid steep slopes and sensitive vegetation. The development will encroach into no more than 13.4% of the steep slope area where 14% is the maximum encroachment allowed, and is within the allowable thresholds of the Resource Protection Ordinance.

The project is located on the flattest, most disturbed portion of the site. The vast majority of the site will remain untouched by the development. The proposed development is consistent with the MSCP in that it minimizes impacts upon sensitive biological resources and provides for necessary mitigation of adverse impacts. This project requires mitigation for impacts to coastal sage scrub, southern willow scrub, and a documented pair of California gnat-catchers. Proposed mitigation includes off-site acquisition of additional habitat or payment of a mitigation fee into the Habitat Acquisition Fund calculated to alleviate the proposed negative impacts.

The majority of the site is not suitable for development and will be preserved through open space easement, dedication or other suitable instrument. The site is further constrained from development by significant utility, drainage and slope easements in the mid, north and easterly portions of the site. These constraints also act to preserve environmentally sensitive lands and natural steep slopes and therefore preclude adverse impacts on environmentally sensitive lands.

4. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources. Staffs review of the project and a site visit to the area has determined that there are neither parks nor public open-space areas adjacent to the site. Therefore there is no need to site or design the project to provide adequate buffer areas to protect such nonexistent conditions. However, the project is proposed to be developed on the flattest portion of the 8-acre site, in an area closest to Friars Road from which vehicular access will be provided. The vast majority of the site will remain untouched by the development.

5. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and /or flood and fire hazards. The project will be sited on the flattest portion of the site in close proximity to Friars Road, and will avoid the vast majority of steep slopes and sensitive vegetation on the 8-acre site. The project pad is comprised of approximately 1.8-acres located on the flattest and most westerly portion of the site. The structure will be imbedded into a portion of the hillside which will minimize and reduce unnecessary landform alteration.

Prior to issuance of any grading or building permits, staff review of submitted grading and building plans will determine suitability of the development for the geology of the site. Implementation of appropriate conditions and construction methods will be required to minimize undue risks from geological and erosional forces. A drainage easement will be utilized to convey site drainage into appropriate discharge areas. Due to the site being on a portion of a steep hillside, no risks of flooding are present. Site drainage will be directed into existing drainage basins within Friars Road. A brush management program will be implemented consisting of Brush Management Zones 1, 2 and 3 which will partially extend off-site. If the off-site condition is determined to be unacceptable, alternative compliance will be implemented which will reduce risks from fire hazards.

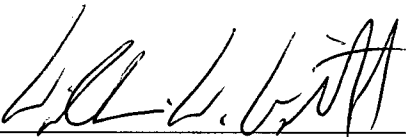
Based on these provisions, it has been determined that the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and /or flood and fire hazards.

6. Feasible measures, as defined in this section, to protect and preserve the special character or the special historical, architectural, archaeological or cultural value of the affected significant prehistoric or historic site or resource have been provided by the applicant. A site analysis has been conducted and it has been determined that impacts to the paleontological resources may occur as a result of project implementation. Pursuant to the California Environmental Quality Act, mitigation measures have been made conditions of approval and will be fulfilled with project implementation. Implementation of these measures has been agreed to be the Applicant. Site evaluation and analysis has determined that the site has no special character, or special historical, architectural, archaeological, cultural or historic value. Mitigation monitoring of site grading activities will ensure that any paleontological/prehistoric resources discovered during construction will be appropriately preserved. Further, appropriate procedures are contained in the MMRP requiring pre-construction, during construction, and post-construction efforts to adequately implement mitigation measures.

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 Mark Polinsky and Michael Shames is denied; the decision of the Planning Commission is sustained; and Planned Commercial Development Permit No. 80170/Resource Protection Ordinance Permit No. 80579 is granted to American Property Enterprises, Owner/ Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: CASEY GWINN, City Attorney

By 
William W. Witt
Deputy City Attorney

WWW:pev
10/4/04
Or.Dept:Clerk
R-2005-182
MMS#442

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PLANNED COMMERCIAL DEVELOPMENT PERMIT NO. 80170
RESOURCE PROTECTION ORDINANCE PERMIT NO. 80579
FASHION WALK - MMRP

CITY COUNCIL

This Planned Commercial Development [PCD] Permit No. 80170, and Resource Protection Ordinance [RPO] Permit No. 80579, is granted by the Council of the City of San Diego to American Properties Enterprises, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0910, 101.0462 and 111.1010. The 8-acre site is located at 7148 Friars Road, west of SR-163, north of Friars Road, and east of Fashion Valley Road in the CO-1-2 Commercial Office zone of the Linda Vista Community Plan Area. The project site is legally described as:

PARCEL 1:

Lots 1 and 2 of Fashion Ridge, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11871, filed in the Office of the County Recorder of San Diego County, July 31, 1987.

PARCEL 2:

Those portions of Lots 3 and 5 in Pueblo Lot 1174 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Licensed Surveyor's Map thereof No. 141, filed in the Office of the County Recorder of San Diego County, described as follows:

Beginning at a point on the Northwesterly line of that parcel of land described in deed to State of California recorded January 19, 1942 in Book 1299, Page 224 of Official Records, distant thereon North 47°12'30" East 3.84

feet from a 2 inch iron pipe and tag marked "R.E. 1534" set for the most Northerly corner of that portion of said Parcel of land described in deed from said State to Warren H. Harrington recorded June 2, 1955 in Book 5665, Page 194 of said Official Records; thence along said Northwesterly line, North 47°12'30" East, 622.7 feet to a point on the Southwesterly line of Sixth Street Extension, 80 feet wide, which is the most Northerly corner of said parcel of land conveyed to said State; thence along said Southwesterly line, South 42°47'30" East, 350.58 feet; thence leaving said Southwesterly line, South 77°29'41" West, 518.87 feet; thence South 74°10'45" West, 196.03 feet to the Point of Beginning.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners/Permittees to construct a 161-unit multi-family, residential development, intended to be sold as condominiums, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated August 3, 2004, on file in the Development Services Department. The exhibits, referred to as Exhibit "A," are identified as follows:

- A-1: Site Plan
- A-2: First Level Parking Plan
- A-3: Second Level Parking Plan
- A-4: First Level Floor Plan
- A-5: Floors Two Thru Five Plan
- A-6: Roof Plan
- A-7: Unit Plans, 1 of 3
- A-8: Unit Plans, 2 of 3
- A-9: Unit Plans, 3 of 3
- A-10: Site Sections, 1 of 2
- A-11: Site Sections, 2 of 2
- A-12: Project Elevations (South/West)
- A-13: Project Elevations (North/East)
- A-14: Circulation Plan

- C-1: Tentative Map Site Plan
- C-2: Grading Plan
- C-3: Utility Plan
- C-4: Topographic Plan
- C-5: Slope Analysis
- C-6: Disability Access Plan
- C-7: Disabled Access Plan Details
- C-8: Permanent Storm Water Best Management Practices Plan

- L-1: Landscape/Brush Management Plan; and any revised plans as may be approved by the Planning Commission.

The project or facility shall include:

- a. One, 5-story, maximum 181,500 square-foot building, containing a total of 161 condominium units including:
 - i eleven 1-bedroom units;
 - ii 140 2-bedroom units; and
 - iii ten 3-bedroom units

Said units shall range in size from 732 to 1,421 square-feet. Open south-facing courtyards are to be located between each wing of the residential building to allow for passive recreation. Patios and fenced balconies with minimum areas of 36 square-feet are to be provided for at least eighty-two of the units. A minimum of 100 cubic feet of storage space shall be included with each individual unit;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities within a partially subterranean 114,650 square foot parking garage;
- d. Private recreational facilities (35,000 square-feet) including a clubhouse with fitness/exercise facilities, pool and spa; and
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to the Development Services Department; and

- b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. 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.
8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
9. 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." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/ Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

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

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project.

13. As conditions of Planned Commercial Development Permit No. 80170 and Resource Protection Ordinance Permit No. 80579, and Vesting Tentative Parcel Map No. 80580, the mitigation measures specified in the MMRP, and outlined in Mitigated Negative Declaration, LDR NO. 99-1356 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in the Mitigated Negative Declaration, LDR NO. 99-1356 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Biological Resources
- Paleontological Resources
- Geotechnical
- Noise and Traffic

15. The MMRP shall require a deposit of \$900 to be collected prior to the issuance of grading permit(s) to cover the City's costs associated with implementation of the MMRP.

16. A Job Order number open to the Land Development Review Division of the Development Services Department shall be required to cover the Land Development Review Division's cost associated with the implementation of the MMRP.

AFFORDABLE HOUSING REQUIREMENTS:

17. Prior to the issuance of any building permits, the developer shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code). These require that the developer pay an in-lieu fee, currently estimated to be \$1.75 per square-foot of residential use, July 2004.

ENGINEERING REQUIREMENTS:

18. Prior to issuance of any building permits, the Applicant shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

19. The drainage system for this project shall be private and will be subject to approval by the City Engineer.

20. Prior to the issuance of any construction permit, the Subdivider shall incorporate and show the type and location of all post-construction Best Management Practices [BMP's] on the final construction drawings, consistent with the approved Water Quality Technical Report.

21. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said Permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

22. A copy of the acknowledgement from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 99-08-DWQ.

23. This project proposes to export 29,800 cubic yards of material from the project site. All export material shall be discharged into a legal disposal site. The approval of this project does not allow the processing and sale of the export material. All such activities require a separate Conditional Use Permit.

24. Prior to building occupancy, the Applicant shall conform to SDMC section 62.0203, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the Owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

25. Prior to issuance of any permits, Applicant shall assure by permit and bond the provision of curb, gutter and sidewalk along the project frontage at Friars Road satisfactory to the City Engineer.

26. An updated geotechnical report shall be required as part of the grading permit process for this project. The geotechnical report shall include a detailed evaluation of site stability based on the final grading plans, and must contain specific recommendations with details for debris fencing required to mitigate the effects of possible surficial instability and erosion from materials generated on-site as well as from adjacent off-site slopes. The geotechnical report shall include an evaluation of the stability of fills and excavations adjacent to the public right-of-way or neighboring properties. The geotechnical report must be prepared in accordance with the City's Technical Guidelines for Geotechnical Reports.

LANDSCAPE REQUIREMENTS:

27. Prior to issuance of any grading or building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A." No change, modification, or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

28. Prior to issuance of any building permit, the Applicant shall submit revised landscaping plans indicating modifications (shortening) the existing retaining wall located behind the existing bus stop on Friars Road in front of the project site, and the enhancement of the area with landscaping, including the provision of shade trees to the satisfaction of the Development Services Director.

29. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydro seeding of all disturbed land (all slopes and pads), shall be submitted to the satisfaction of the City Manager (including the City's Environmental Analysis Section) and City Engineer. All plans shall be in substantial conformance to Exhibit "A," and all other applicable conditions of related permits.

30. 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 Land Development Manual.

31. 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.

32. 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 shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Land Development Manual.

33. If any required landscape (including, but not limited to, existing or new plantings, hardscape, landscape features) indicated on the approved plans is damaged or removed during demolition, it shall be repaired or replaced in kind and equivalent size per the approved plans within thirty days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available or an increased number) to the satisfaction of the City Manager.

PLANNING/DESIGN REQUIREMENTS:

34. No fewer than 334 off-street parking spaces of standard and compact configuration, eight accessible spaces, nineteen motorcycle spaces, and 113 bicycle spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

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

36. 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.

37. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

38. 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.

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

40. 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 50 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.

41. 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 City Manager.

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

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

44. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator, or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed structure whose top and sides may include grillwork, louvers, and latticework.

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

46. Prior to issuance of any grading and/or building permits, an open space easement shall be granted on all remaining portions of Lots 1 and 2 not being developed, to the satisfaction of the Development Services Director. This easement shall remain on the site and be maintained by the property owner/homeowner's association.

47. Prior to issuance of any grading and/or building permit(s) revised plans shall be submitted which depict the extension of the sidewalk along Friars Road, to the west and east of the project site, connecting to the existing sidewalk(s).

WASTEWATER REQUIREMENTS:

48. All on-site sewers shall be private.

49. The Developer shall provide, satisfactory to the Metropolitan Wastewater Director, CC&R's for the operation and maintenance of on-site private sewer facilities that serve more than one ownership.

50. 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.

51. No private sewer facilities shall be installed in or over any public right-of-way prior to the Applicant obtaining an Encroachment Maintenance and Removal Agreement.

52. The Developer shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide.

WATER REQUIREMENTS:

53. The Subdivider shall provide a letter, to the Development Project Manager, agreeing to prepare CC&R's for the operation and maintenance of all private water facilities that serve or traverse more than a single condominium unit.

54. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) and the removal of all existing unused water services within the Friars Road right-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer. All on-site water facilities shall be private.

55. Prior to the issuance of any building permits, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department

Director and the City Engineer. Fire hydrants shall be located a minimum of five feet from any structures above, at, or below grade.

56. Prior to the issuance of any Certificates of Occupancy, the Owner/Permittee shall apply for plumbing permits for the installation of private back flow prevention device(s) on all existing and proposed water services to the development, including all domestic, fire and irrigation services, in a manner satisfactory to the Water Department Director and the City Engineer.

57. Prior to the issuance of any Certificates of Occupancy, the public water facilities, necessary to serve this development, shall be completed and operational in a manner satisfactory to the Water Department Director and City Engineer.

58. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, as shown on approved Exhibit "A," shall be modified at final engineering to comply with standards.

TRANSPORTATION DEVELOPMENT REQUIREMENTS:

59. Prior to the issuance of the first building permit, applicant shall provide an Irrevocable Offer of Dedication [IOD] to accommodate the half-width, of 66 feet from the Friars Road centerline, for the future widening of Friars Road including necessary pavement, curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance, satisfactory to the City Engineer. Since the right-of-way deviates from the centerline of Friars Road, the IOD will be variable from approximately 2.5 feet to 6 feet.

60. Prior to the issuance of the first building permit, applicant shall assure by permit and bond the modification of the existing Friars Road/Avenida de las Tiendas traffic signal as necessary to construct the north leg to that intersection. Provision of a 40-foot driveway (16 feet inbound, 4 feet median, and 20 feet outbound) will be required. North/south left-turn signal phasing should be permissive. It will be the project applicant's responsibility to reconfigure the northbound approach of the Friars Road/Avenida de las Tiendas intersection and make all necessary modifications to the existing traffic signal to add the fourth leg as the main access to the project site, satisfactory to the City Engineer.

61. The westerly vehicular access point, on Friars Road, shall be constructed with signage restricting access to right-in and right-out circulation only.

62. Prior to issuance of any building permit, the Applicant shall assure by permit and bond, the implementation of; the extension of a 5-foot wide sidewalk along the north side of Friars Road from the project's westerly boundary approximately 380-feet to the west, across the adjacent property (developed with office buildings), to connect with the existing sidewalk at Fashion Valley Road, to the satisfaction of the City Engineer.

63. Prior to issuance of any permits, the Applicant shall submit revised plans, Exhibit "A," indicating a note which indicates the provision of enhanced paving at the

main (easterly) driveway entrance to the building and on the sidewalks from the crosswalk to the lobby entrance, in an effort to provide a more attractive entrance to the building for pedestrians, to the satisfaction of the Development Services Director.

64. Prior to issuance of any building permit, revised plans shall be submitted indicating the provision of a new entrance lobby at street level with an elevator that will take visitors and residents to the first level of the building, and which shall provide seating, an intercom and a canopy for shade at the new entrance.

65. Prior to issuance of any building permit, the Applicant shall assure by permit and bond, the installation of 5-foot wide non-contiguous sidewalks from the project's western driveway to the northeastern property line (located northerly on Ulric Street), providing Gold Medallion Trees (a City and community approved street tree), installed every thirty-foot adjacent to the curb, to the satisfaction of the City Engineer.

CONDITIONS ADDED BY CITY COUNCIL ON AUGUST 3, 2004

66. Prior to issuance of any building permit(s) the Owner/Permittee has agreed to and shall pay for additional improved signage on westbound Friars Road, intended to improve access into Fashion Valley Center.

67. Prior to issuance of any grading or building permit(s), the Owner/Permittee has agreed to and shall complete the westerly extension of the sidewalk on the north side of Friars Road across the adjacent property owner's land, to improve pedestrian accessibility into Fashion Valley Center.

68. Upon occupancy of each dwelling unit, the Owner/Permittee has agreed to and shall provide free of charge, twelve month passes for bus and trolley use to each resident of the development, to encourage residents to use public transit options.

69. Prior to issuance of any building permit(s), the Owner/Permittee has agreed to and shall contribute the amount of \$1,000,000.00 into a Friars Road/Ulric Street traffic congestion mitigation fund, to be used only toward the completion of Hazard Center Drive.

70. Upon occupancy of each dwelling unit, the Owner/Permittee has agreed to and shall provide a new bicycle to each homebuyer to encourage alternative means of transportation.

INFORMATION ONLY:

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

APPROVED by the Council of the City of San Diego on August 3, 2004, by Resolution No. R-299582.

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.

American Property Enterprises
Owner/Permittee

By _____

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

MMS#442

R- 299540