

RESOLUTION NUMBER R-300349

ADOPTED ON APRIL 19, 2005

WHEREAS, Burgener-Clark, LLC, a California Limited Liability Company, Craig W. Clark, managing member, Owner/Permittee, filed an application with the City of San Diego for a permit to develop a shopping center, including retail commercial, restaurant and office uses (as described in and by reference to the approved Exhibit "A" and corresponding conditions of approval for the associated Site Development Permit No. 9100 and Planned Development Permit No. 179619), on portions of a 5.31-acre site; and

WHEREAS, the project site is located at 2509-2591 Clairemont Drive, within the CC-1-3 (Community-Commercial) Zone of the Clairemont Mesa Community Plan; and

WHEREAS, the project site is legally described as Lots 1 and 2 of West Clairemont Plaza Unit No. 1, Map No. 3780; and

WHEREAS, on January 27, 2005, the Planning Commission of the City of San Diego considered Site Development Permit No. 9100 and Planned Development Permit No. 179619, and pursuant to Resolution No. 3646-PC voted to recommend City Council approval of the Permit; and

WHEREAS, the matter was set for public hearing on April 19, 2005, 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 Site Development Permit No. 9100 and Planned Development Permit No. 179619:

**A. PLANNED DEVELOPMENT PERMIT SAN DIEGO MUNICIPAL CODE
[SDMC]/LAND DEVELOPMENT CODE SECTION 126.0604**

1. The proposed development will not adversely affect the applicable land use plan. The Bay View Plaza project is located east of Mission Bay, Interstate 5 and Morena Boulevard, north of Ingulf Street, west of Denver Street and south of Clairemont Drive, at 2509-2591 Clairemont Drive. It lies within the Clairemont Mesa Community Plan Area, and is designated in the community plan for general commercial land use. The property is zoned CC-1-3, the purpose of which is to accommodate community-serving commercial services, retail uses, and limited industrial uses of moderate intensity and small to medium scale. The intent of the CC-1-3 zone is to provide for a range of development patterns from pedestrian-friendly commercial streets to shopping centers and auto-oriented strip commercial streets, and may include residential development. The CC-1-3 zone is intended to accommodate development with an auto orientation. The Bay View Plaza project implements the goals and policies of the Clairemont Mesa Community Plan as well as the CC-1-3 zoning. The land use plan for this site calls for the type of development being proposed by the Bay View Plaza project which consists of community-serving commercial and retail, including grocery, restaurant and office uses. The project also complies with the City's TOD guidelines. The proposed Bay View Plaza project has been designed in harmony with the Clairemont Mesa Community Plan, implements its goals and policies and, therefore, will not adversely affect the applicable land use plan.

The project site is located within the Community Plan Implementation Overlay Zone for Clairemont Mesa (Land Development Code section 132.0401). The purpose of this Overlay Zone is to provide supplemental developmental regulations that are tailored to specific sites within community plan areas of the City. The intent of this Overlay Zone is to ensure that development proposals are reviewed for consistency with the use and development criteria that have been adopted for specific sites as part of the community plan update process.

The project site is located within the Clairemont Mesa Height Limit Overlay Zone (Land Development Code section 132.1301). The purpose of this Overlay Zone is to provide supplemental height regulations for western Clairemont Mesa. The intent of this Overlay Zone is to ensure that the existing low profile development in Clairemont Mesa will be maintained and that public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean are protected.

The project site is located within the Transit Area Overlay Zone (Land Development Code section 132.1001). The purpose and intent of this Overlay Zone are to provide supplemental parking regulations for areas receiving a high-level of transit service, and to identify areas with reduced parking demand and to lower off-street parking requirements accordingly.

The project site is located within the North Bay Redevelopment Plan and the North Bay Redevelopment Project (San Diego Municipal Code Ordinance No. O-18516 New Series). The objectives of the Plan which are applicable to this project include:

- a. Eliminate and prevent the spread of blight and deterioration, and conserve, rehabilitate and redevelop the proposed Redevelopment Project Area in accordance with the General Plan, specific plans, the Redevelopment Plan, and

local codes and ordinances including the Municipal and Land Development Codes;

- b. Improve, promote, and preserve the positive neighborhood characteristics in North Bay, while correcting physical and economic deficiencies in the community;
- c. Improve and attract the growth and vitality of the proposed Redevelopment Project Area's business environment and address the commercial, service and employment needs of the proposed Redevelopment Project Area;
- d. Encourage the expansion of existing commercial activities, the development of vacant properties and the rehabilitation of dilapidated structures through a coordinated parking program that could include structures or shared parking opportunities throughout all communities within the Project Area;
- e. Enhance the quality of pedestrian and vehicular mobility, and improve transportation facilities, which support the vitality, safety, and viability of North Bay;
- f. Improve the quality of non-vehicular transportation alternatives through the creation and expansion of non-vehicular routes throughout the Project Area;
- g. Enhance infrastructure facilities which improve the community and support public safety, health, and local vitality;
- h. Do such public improvements as needed to eliminate both physical and economic conditions of blight; and
- i. Encourage the growth and retention of small business.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed Bay View Plaza project has been designed to conform to the City of San Diego's codes, policies, and regulations, and the Uniform Codes, the primary focus of which is the protection of the public's health, safety and welfare. The Bay View Plaza project has been reviewed by staff, and determined to be consistent with the Clairemont Mesa Community Plan. A Mitigated Negative Declaration has been prepared for certification in accordance with the State of California Environmental Quality Act [CEQA] and the City's environmental regulations, the Fire Department's fire protection policies, and all other applicable regulations. Prior to commencing grading or construction activities on the site, City staff will review building permit plans for conformance with the Land Development Code and Uniform Codes including plumbing, mechanical, fire and building Codes to ensure that structural, mechanical, electrical, plumbing and access components of the project are designed to protect the public's health, safety and welfare. The project will conform to the development regulations of the Land Development Code for the CC-1-3 Zone established in 2000, which reflect the City's current standards. Deviations to setback and signage requirements have been reviewed and determined to be consistent with the purpose and intent of applicable policies and therefore appropriate.

3. The proposed development will comply with the regulations of the Land Development Code. The proposed Bay View Plaza project has been designed to comply with the regulations of the San Diego Municipal Code, including those related to bulk and scale, street design, open space, grading, landscaping, and parking. As provided by the Land Development Code, the Bay View Plaza project includes a deviation from a 20-foot setback that was established in a 1958 final map (the deviation is required to make the project compliant with the City's current zoning standards), and an exception to the 30-foot height limit of the Clairemont Mesa Height Limitation Overlay Zone. The deviation and exception will result in a more desirable project, as is further discussed in Finding 5 below.

4. The proposed development, when considered as a whole, will be beneficial to the community. The Bay View Plaza project proposes the phased development of a shopping center with retail commercial, restaurant and office uses, along with landscaping, parking and accessory improvements consistent with the land use and development standards applicable to the site. The project has been designed and developed in accordance with the Clairemont Mesa Community Plan to assure that the architectural character, development considerations and related policies of that plan are implemented. The Bay View Plaza project implements the Clairemont Mesa Community Plan in a manner consistent with the adopted zoning and therefore will be beneficial to the community as a whole.

5. Any proposed deviations pursuant to SDMC section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The Bay View Plaza project includes a deviation from a setback required on a 1958 final map that is inconsistent with current City zoning and standards, and an exception to the Clairemont Mesa Height Limitation Overlay Zone. Staff has reviewed the elevation plans and related exhibits and determined that the development as proposed will not adversely impact any public views that the Clairemont Mesa Height Limitation Overlay Zone was designed to protect. The deviation for setback and the exception to the height limitation are consistent with Land Development Code objectives for Planned Development and Site Development Permits, and the overall intensity of the development conforms to the underlying zoning. The project incorporates a variety of compatible uses, and a pedestrian-oriented environment. The project is designed to respond to the unique topographic, geometric, access, and regulatory constraints on the site. The proposed deviation permits building configurations and ground signs around the perimeter of the Bay View Plaza project to conform to zoning standards of the CC-1-3 zone, established in 2000, in lieu of setbacks established with a 1958 final map on the property. The setback deviation also allows for the creation of pedestrian-oriented sidewalks, and allows the project to comply with the City's Transit Oriented Design [TOD] guidelines. The TOD guidelines are designed to emphasize pedestrian orientation and urban character near existing or proposed transit facilities. The 20-foot setback required without a deviation, would not be inconsistent with the neighborhood surrounding the development. Deviating from the setback allows building entries and storefront windows to adjoin the public sidewalks and provides a development that is interesting and inviting to pedestrians and therefore consistent with the TOD guidelines. The deviation also allows screening of the lower level parking garage through the placement of perimeter buildings in closer proximity to the property lines. The exception from the 30-foot height limitation will not adversely impact any existing public views from western Clairemont Mesa to Mission Bay or the Pacific Ocean, and therefore would not impact the views the height

limit was designed to protect. The Bay View Plaza project is sensitively designed to conform to the topography of the site, which slopes downward from east to west toward Mission Bay. Views from major roads and public spaces are not impacted due to the significant topographic slope in the area near the Bay View Plaza project. The proposed deviation for setback and exception for height limitation will result in a more desirable project than otherwise would be achieved if designed in strict conformance with the underlying 1958 final map and the 30-foot height limitation.

**B. SITE DEVELOPMENT PERMIT – SDMC/LAND DEVELOPMENT CODE
SECTION 126.0504**

1. The proposed development will not adversely affect the applicable land use plan. The Bay View Plaza project is located east of Mission Bay, Interstate 5 and Morena Boulevard, north of Ingulf Street, west of Denver Street and south of Clairemont Drive, at 2509-2591 Clairemont Drive. It lies within the Clairemont Mesa Community Plan Area, and is designated in the community plan for general commercial land use. The property is zoned CC-1-3, the purpose of which is to accommodate community-serving commercial services, retail uses, and limited industrial uses of moderate intensity and small to medium scale. The intent of the CC-1-3 zone is to provide for a range of development patterns from pedestrian-friendly commercial streets to shopping centers and auto-oriented strip commercial streets, and may include residential development. The CC-1-3 zone is intended to accommodate development with an auto orientation. The Bay View Plaza project implements the goals and policies of the Clairemont Mesa Community Plan as well as the CC-1-3 zoning. The land use plan for this site calls for the very type of development being proposed by the Bay View Plaza project; namely, community-serving commercial and retail. The project also complies with the City's TOD guidelines. The proposed Bay View Plaza project has been designed in harmony with the Clairemont Mesa Community Plan, implements its goals and policies and, therefore, will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed Bay View Plaza project has been designed to conform to the City of San Diego's codes, policies, and regulations, the primary focus of which is the protection of the public's health, safety and welfare. The Bay View Plaza project has been reviewed extensively by City staff, and is consistent with the Clairemont Mesa Community Plan, the California Environmental Quality Act, the City's environmental regulations, the Multiple Species Conservation Program, landscaping and brush management policies, the Fire Department's fire protection policies, water and sewer study recommendations, and requirements for a healthy pedestrian environment, etc. In addition, prior to actual construction on the subject property, the City staff will review building permit plans against the Uniform Building Code to assure that structural, mechanical, electrical, plumbing and access components of the project are designed to protect the public's health, safety and welfare. The project will conform to contemporary zoning standards (C-1-3) established in 2000, which reflect the City's current standards.

3. The proposed development will comply with the applicable regulations of the Land Development Code. The proposed Bay View Plaza project has been designed to comply with the regulations of the San Diego Municipal Code, including requirements for density, bulk and scale, setbacks, street design, open space, grading, landscaping, brush management and

parking. As provided for in the Land Development Code, the Bay View Plaza project includes a deviation from certain regulations regarding a 20-foot setback that was established in a 1958 final map (the deviation is required to make the project compliant with the City's current zoning standards), and a minor exception to the Clairemont Mesa 30-foot height limit. The deviation and height limitation exception will result in a more desirable project.

C. SUPPLEMENTAL CLAIREMONT MESA HEIGHT LIMIT OVERLAY ZONE, SDMC/LAND DEVELOPMENT CODE SECTION 126.0504(J).

1. The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area. The granting of an exception will not significantly interfere with existing public views from western Clairemont Mesa (the only area that potentially could be impacted by the height limit exception at this location) to Mission Bay and the Pacific Ocean. Overviews from major roads and public spaces at higher elevations are not compromised due to the significant topographic slope in the area near the development. Moreover, the most significant views of Mission Bay and the Pacific Ocean in the area of the development are the public views available to travelers on Clairemont Drive. The only views in that area that potentially would be blocked by the development's exception from the height limit already have been blocked by the existing off-ramp on Interstate 5 just to the west of the development, as well as by the mature trees that exist in the area. Because the trees and freeway off-ramp already block any public views from Clairemont Drive to Mission Bay and the Pacific Ocean from low-lying areas that otherwise potentially may be blocked by the project, there is no existing public view being blocked solely as a result of the development's proposed height exception.

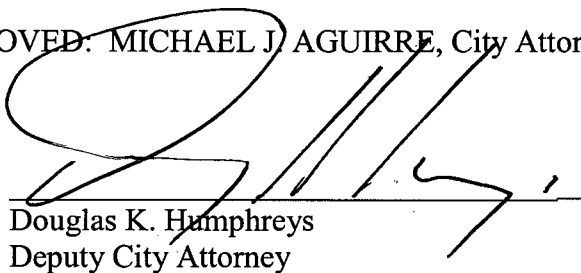
2. The granting of an exception is appropriate because there are existing structures over 30-feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area of the structure. The granting of an exception is appropriate because there are existing structures over 30-feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures. For example, the Best Western Motel in the Bay View complex, as well as two medical buildings at the corner of Gesner and Denver Streets, already has portions that exceed the height limit, and the proposed development is compatible with those existing buildings. The proposed two- and three-story development also would be compatible with the other surrounding one, two and three-story structures in the area, which vary in shape and size in a way that fits in well with the proposed project. The development's proposed grouping of smaller buildings would preserve intermediate vistas through the village complex that exists from places on the adjoining streets. In addition, the granting of an exception is appropriate because there are topographic constraints peculiar to the property at and near the proposed development. For example, there is more than 40 feet of fall from the intersection of Clairemont Drive and Denver Street to the intersection of Morena Boulevard and Ingulf Street. As a result, the buildings in the development were designed to step and terrace, to accommodate the slope to the maximum extent feasible. Moreover, the granting of the exception is needed to permit

roofline and façade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area of the structure.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Site Development Permit No. 9100 and Planned Development Permit No. 179619 is granted to Burgener-Clark, LLC, a California Limited Liability Company, Craig W. Clark, managing member, Owners/Permittees, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Douglas K. Humphreys
Deputy City Attorney

DKH:ai
05/24/05
Or.Dept:DSD
R-2005-1228
MMS# 1706

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR

RECORDER'S USE
JOB ORDER NUMBER: 42-1105

**SITE DEVELOPMENT PERMIT NO. 9100 AND
PLANNED DEVELOPMENT PERMIT NO. 179619
BAY VIEW PLAZA [MMRP]
PLANNING COMMISSION RECOMMENDATION**

This Site Development Permit No. 9100 and Planned Development Permit No. 179619 is granted by the City Council of the City of San Diego to Burgener-Clark, LLC, a California Limited Liability Company, Craig W. Clark, managing member, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0501 and 126.0601. The 5.31-acre site is located at 2509-2591 Clairemont Drive, within the CC-1-3 (Community-Commercial) Zone of the Clairemont Mesa Community Plan. The project site is legally described as Lots 1 and 2 of West Clairemont Plaza Unit No. 1, Map No. 3780.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to develop the site with a shopping center, including retail commercial, restaurant and office uses, described and identified by size, dimension, quantity, type, and location on the approved exhibits, April 19, 2005, on file in the Development Services Department.

The project or facility shall include:

- a. In Phase One 1) Major Retail Building, a single-level with mezzanine structure totaling 48,240 sq. ft.; 2) Building One, a three-level, restaurant, retail and office structure comprising 11,606 sq. ft.; 3) Building Two, a two-level retail and restaurant structure comprising 15,126 sq. ft.; 4) Building Three, a single-level with mezzanine retail structure comprising 2,998 sq. ft.; and 5) An upper-level, 89,686 sq. ft., and lower-level,

88,747 sq. ft. parking structure, which will provide a total of 483 off-street parking spaces;

- b. In Phase Two 1) A new, two-level, 8,800 sq. ft. office and/or retail commercial building, and 2) Expansion of the upper-level parking deck and/or lower-level parking garage;
- c. Off-street parking facilities;
- d. Accessory improvements including retaining walls, signs and lighting; 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 [CEQA] Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

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

6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 *et seq.*).

7. The Owner/Permittee shall secure all necessary building permits. The Applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

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

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

10. This Permit shall become effective with recordation of the corresponding final Parcel Map for and approval of the project site.

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 Site Development Permit No: 9100 and Planned Development Permit No. 179619, the mitigation measures specified in the MMRP, and outlined in the Mitigated Negative Declaration [MND] No. 5540 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 MND No. 5540 satisfactory to the City Manager and City Engineer. Prior to issuance of the first demolition permit, first grading permit, and/or first building permit, all conditions of the MMRP shall be adhered to. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Paleontological Resources, Human Health/Public Safety, Noise, Solid Waste and Traffic.

15. Prior to issuance of any construction permit, the applicant shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

GEOLOGY REQUIREMENTS:

16. Title Restrictions - Prior to issuance of any grading and/or building permit(s), the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the Director of the Development Services Department, or designated representative who shall provide:
(a) the Applicant unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its advisors relative to the City of San Diego's approval of the project and for any damage due to natural hazards. This Notice of Hazardous Conditions-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successor and assigns.

ENGINEERING REQUIREMENTS:

17. This/these Permit(s) shall comply with the provisions of Tentative Parcel Map No. 179620.

LANDSCAPE REQUIREMENTS:

18. No change, modification or alternation shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.

19. Prior to issuance of any engineering permits for grading, construction documents for hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to the Permit associated with this project (including environmental conditions) and Exhibit "A."

20. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way and median (if applicable) improvements shall be submitted to the City Manager for approval. Improvement plans shall include a Street Tree Location Plan, which identifies a station point for each street tree location that takes into account a 40-square-foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

21. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards (including planting and irrigation plans, details and specifications) shall be submitted to the City Manager for approval. The construction documents shall be in Substantial conformance with Exhibit "A" Landscape Development Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area'.

22. Prior to issuance of any construction permits for parking structures, the Permittee shall submit on the planting and irrigation plans a signed statement by a Registered Structural Engineer indicating that supporting structures are designed to accommodate the necessary structural loads and associated planting and irrigation.

23. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit 'A' Landscape Development Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area'.

24. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections.

25. A No-Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.

26. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or “topping” of trees is not permitted unless specifically noted in this Permit.

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

28. 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.

PLANNING/DESIGN REQUIREMENTS:

29. There shall be compliance with the regulations of the underlying zone(s) unless a deviation (for example - setbacks or signage), variance, or exception (for example – building height), 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, variance or exception 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(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, variance or exception to the height limit has been granted as a specific condition of this Permit.

31. 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.

32. 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.

33. All signs associated with this development shall be consistent with sign criteria established by the approved Sign Plan, identified as "Exhibit A."
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 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 on the property is directed to fall only onto the same premises as light sources are located.
35. 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.
36. All private outdoor lighting on the property shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the San Diego Municipal Code.
37. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
38. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences, or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.
39. 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 or otherwise screened by an architecturally

integrated structure whose sides may include grillwork, louvers, and latticework. The intent of this condition is to minimize view impacts to/from adjacent properties and to enhance aesthetics.

40. 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."

41. Signage shall not be located within driveway visibility areas, as restricted by the SDMC.

WASTEWATER REQUIREMENTS:

42. Prior to the issuance of any building or grading permits, the developer shall relocate all on-site public sewer mains to a public right-of-way, satisfactory to the Metropolitan Wastewater Department Director. Also, any associated on-site public easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.

43. Prior to the issuance of any building permits, the developer shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.

44. Prior to issuance of any building permits, the developer shall obtain an Encroachment Maintenance and Removal Agreement for all approved structures or landscaping installed in or over any public sewer access easement/right-of-way.

45. 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.

46. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

WATER REQUIREMENTS:

47. Prior to the issuance of the first building permit, the Owner/Permittee shall assure, by permit and bond, the design and construction of public 16-inch water facilities within the Morena Boulevard right-of-way, from Ingulf Street to the northerly project boundary, replacing the existing water facilities adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

48. Prior to the issuance of the first building permit, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s), including domestic, fire and irrigation, and the disconnection at the mains of all existing unused water services 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.

49. Prior to the issuance of any building permits, the Owner/Permittee shall apply for plumbing permit(s) for the installation of private back flow prevention device(s) on all 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. All backflow prevention devices shall be located above grade and outside of any private structures.

50. Prior to the issuance of the first certificates of occupancy, the Owner/Permittee shall install and/or replace fire hydrants at locations satisfactory to the Fire Marshal, the Water Department Director and the City Engineer. All on-site fire hydrants shall be private.

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

52. 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 Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities and easements, as shown on approved Exhibit "A," shall be modified at final engineering to comply with standards.

TRANSPORTATION DEVELOPMENT REQUIREMENTS:

53. No fewer than 465 (Phase 1) and 496 (Phase 2) off-street parking spaces shall be permanently maintained on the property within the approximate location shown on the project's Exhibit "A". Further, all on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code, and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the City Manager.

54. Prior to the issuance of the first building permit, the applicant shall assure by permit and bond the restriping of Denver Street from Clairemont Drive to Ingulf Street, to include one northbound lane, one southbound lane, and a two-way-left-turn-lane satisfactory to the City Engineer.

55. Prior to the issuance of the first building permit, the applicant shall assure by permit and bond the construction of a standard 30-foot wide driveway on Ingulf Street approximately 100 feet east of Morena Boulevard on the projects southerly boundary,

satisfactory to the City Engineer. The subject driveway construction shall include 10 feet of rolled curb immediately adjacent to each edge of the subject driveway, satisfactory to the City Engineer, to allow truck access without backing into the public right-of-way.

56. This project shall comply with all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer.

57. Prior to the issuance of the first building permit, the applicant shall provide a Mutual Access Agreement, between all affected tenants, satisfactory to the City Engineer.

58. Prior to the issuance of any building permits the applicant shall demonstrate the provision of an ability to maintain adequate visibility sight distance at all access points to the subject development, following the guidelines as set in the City's LDC section 113.0273 and AASHTO (Chapter 3, 2001 edition) guidelines as defined in the City of San Diego Street Design Manual dated November 2002 (Page 116, Intersections, Item number 8), as appropriate, satisfactory to the City Engineer.

**METROPOLITAN TRANSIT DEVELOPMENT BOARD (MTDB)
REQUIREMENT:**

59. The Applicant shall participate in discussions with the San Diego Association of Governments [SANDAG] regarding the possibility of providing shared transit parking at the shopping center as construction of the Mid-Coast light rail line approaches.

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 April 19, 2005 by Resolution No. R-300349.

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.

Burgener-Clark, LLC, A California Corporation
Owner/Permittee

By _____

By _____

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

PERMIT/OTHER – Permit Shell 11-01-04