

RESOLUTION NUMBER R- 303785

DATE OF FINAL PASSAGE MAY 27 2008

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 Planned Development Permit No. 525776, amending Planned Development Permit No. 179619/ Site Development Permit No. 525777, amending Site Development Permit No. 9100 to demolish existing buildings and develop a shopping center, including retail commercial, restaurant and office uses on portions of a 4.43-acre site to be known as the Bay View Plaza project, located at 2509-2591 Clairemont Drive, and legally described as Lots 1 and 2 of West Clairemont Plaza Unit No. 1, Map No. 3780, in the Clairemont Mesa Community Plan area, in the CC-1-3 (Community Commercial) zone; and

WHEREAS, on April 3, 2008, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 525776/Site Development Permit [SDP] No. 525777, and pursuant to Resolution No. 4394-PC voted to recommend City Council approval of the Permit; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on MAY 27 2008, 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 Development Permit No. 525776/Site Development Permit No. 525777:

**A. PLANNED DEVELOPMENT PERMIT SAN DIEGO MUNICIPAL CODE  
[SDMC] 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 Transit Oriented Design [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, et seq.). 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 (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. An Addendum to the certified Mitigated Negative Declaration has been prepared 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 construction activities for buildings 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 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 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 be inconsistent with the neighborhood surrounding the development. Deviating from the setback allows building entries and storefront windows more proximate to the public sidewalks and provides a development that is interesting

and inviting to pedestrians and therefore consistent with the TOD guidelines. 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 SECTION 126.0504**

**1. Findings for all Site Development Permits:**

**a. 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.

**b. 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, CEQA, 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 of buildings 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.

c. **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.

2. **Supplemental Findings – Clairemont Mesa Height Limit**

a. **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, and the billboard on the north east corner of the project site. Because the billboard, 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. The proposed project will improve the situation by removing the existing billboard on the northeast corner as part of Phase One.

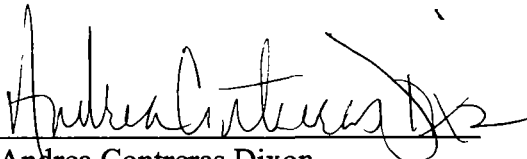
b. **The granting of an exception is appropriate because there are existing structures over 30 feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures; or the granting of an exception is appropriate because there are topographic constraints 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 1-, 2-, or 3-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 2- and 3-story development also would be compatible with the other surrounding 1-, 2-, and 3- 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.

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

BE IT FURTHER RESOLVED, that Planned Development Permit No. 525776/Site Development Permit No. 525777 is granted to Burgener-Clark, LLC a California Limited Liability Company, Craig W. Clark, Managing Member, Owner/Permittee, 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   
Andrea Contreras Dixon  
Deputy City Attorney

ACD:pev  
04/30/08  
05/13/08 COR.COPY  
Or.Dept:DSD  
R-2008-990  
MMS #6451

**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

JOB ORDER NUMBER 43-0260

PLANNED DEVELOPMENT PERMIT NO. 525776 (AMENDING PDP NO. 179619)  
SITE DEVELOPMENT PERMIT NO. 525777 (AMENDING SDP NO. 9100)  
**BAY VIEW PLAZA [MMRP] – PROJECT NO. 149101**  
CITY COUNCIL

This Planned Development Permit [PDP] No. 525776/Site Development Permit [SDP] No. 525777 (Amending PDP No. 179619 and SDP No. 9100) is granted by the 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 in 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 [Exhibit "A"] dated MAY 27 2008, on file in the Development Services Department.

The project or facility shall include:

- a. Demolition of existing buildings and construction in two phases. Phase I consists of 14,400 square-foot of office space, 49,100 square-foot of retail space (to include some restaurants), and 3,000 square-foot of quality restaurant. Phase II will consist of 8,400 square-foot of retail to be added;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- 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. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC 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 Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental 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 Owner/Permittee 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. Construction 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 be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

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

10. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

11. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A."

**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 Development Permit No. 525776/Site Development Permit No. 525777 (amending PDP No. 179619 and SDP No. 9100), the mitigation measures specified in the MMRP, and outlined in Addendum No. 149101 to 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 Addendum No. 149101 MND No. 5540 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Human Health/Public Safety/Solid Waste and Traffic

15. Prior to issuance of any construction permit, the Owner/Permittee 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.

**LONG RANGE PLANNING REQUIREMENTS:**

16. The three major "Public Plaza" areas identified on sheet L-1 shall each include a minimum of two amenities from the following list: benches, seatwalls, community kiosks, fountains, public art, or urban furniture. Additionally, several bicycle racks shall be included on the project site. The amenities shall be installed prior to the issuance of occupancy permits.

**ENGINEERING REQUIREMENTS:**

17. This Permit shall comply with the provisions of Tentative Map No. 525789.

**LANDSCAPE REQUIREMENTS:**

18. Prior to issuance of construction permits for grading, the Permittee or Subsequent Owner shall submit landscape construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the Land Development Manual Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A."

19. Prior to issuance of construction permits for public right-of-way improvements, the Permittee or Subsequent Owner shall submit complete landscape construction documents for right-of-way improvements to the City Manager for approval. Improvement plans shall take into account a 40 sq-ft 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.
20. Prior to issuance of any construction permits for buildings; the Permittee or Subsequent Owner shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan.
21. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or Subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.
22. The Permittee or Subsequent Owner shall maintain all landscape in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.
23. The Permittee or Subsequent Owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.
24. 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, the Permittee or Subsequent Owner is responsible to repair or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or prior to Certificate of Occupancy.
25. A Substantial Conformance Review [SCR] shall be required for the future development of Phase 2 in accordance with Information Bulletin 500 and the City of San Diego's Land Development Code [LDC]. The SCR shall reflect all revisions to the Phase 1, "Landscape Development Plan," [Amendment to SDP# 9100 and PDP# 179619] as part of the Phase 2 proposal and shall be consistent with the Land Development Manual, Landscape Standards.

**PLANNING/DESIGN REQUIREMENTS:**

26. No fewer than 362 (phase 1) and 398 (phase 2) off-street parking 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.
27. 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.
28. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A;" or Citywide sign regulations.
29. Signage shall not be located within driveway visibility areas, as restricted by the Land Development Code.
30. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations of the SDMC.

**GEOLOGY REQUIREMENTS:**

31. 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.

**TRANSPORTATION REQUIREMENTS**

32. Phase I of the project shall consist of a maximum of 14,400 square feet of office, 49,100 square feet of retail (including a market with a maximum square footage of 14,000 square feet and a drug store with a maximum 15,000 square feet), and a 3,000 square feet quality restaurant,
33. Phase II shall consist of a retail building with a maximum of 8,400 square feet. The entire project may include a high turnover restaurant with a maximum of 3,300 square feet, a fast food restaurant with a maximum of 1,400 square feet, and at most one ATM.

34. No fewer than 362 off-street automobile, four carpool parking spaces, ten accessible spaces including two van accessible spaces, two loading spaces, seven bicycle spaces with racks, and seven motorcycle parking spaces shall be provided for Phase I. No fewer than 398 off-street automobile, seven carpool parking spaces, ten accessible including two van accessible spaces, two loading spaces, seven bicycle spaces with racks, and eight motorcycle parking spaces shall be provided in Phase II. These 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 the 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.

35. 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 2-way-left-turn-lane, satisfactory to the City Engineer.

36. 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.

37. 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 point to the subject development, following the guidelines as set in the City Land Development Code 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.

**WASTEWATER REQUIREMENTS:**

38. 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.

39. Prior to the issuance of any grading or building permits, the developer shall relocate all onsite public sewer mains located in the west portion of this site to the public right of way, satisfactory to the Metropolitan Wastewater Department Director. All associated onsite public easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director. The onsite 10-inch public sewer main that traverses this site from east to west is excluded from this requirement.

40. Prior to the issuance of any public improvement or building permits, the developer shall obtain an Encroachment Maintenance and Removal Agreement for all approved structures or landscaping, including private sewer facilities, grading, and enhanced paving installed in or over the public sewer easement.

41. No structures or landscaping shall be installed in or over any sewer easement that would inhibit vehicular access to replace a section of main or provide access to any manhole or isolated section of main.

42. No trees shall be installed within ten feet of any sewer facilities or in any sewer access easement. No shrubs exceeding three feet in height at maturity shall be installed within 10 feet of any public sewer main or within access easements.

43. No other utilities, including gas, electric, telephone and fiber optic cable, shall be located within 10 feet of any public sewer main when these utilities are installed parallel to the sewer main. General Utility Easements [GUE] in private roads and driveways shall be sized with sufficient width to provide for other agencies facilities. In side yards or other non street areas, a GUE must be dedicated for the exclusive use of the City of San Diego or the Metropolitan Wastewater Department. Other agencies will require separate easements.

44. 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.

45. All proposed onsite sewer facilities shall be private.

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.

47. Prior to the issuance of any public improvement or building permits, the developer shall grant a private easement to the adjacent hotel lot to the east for their private sewer lateral.

#### **WATER REQUIREMENTS:**

48. 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.

49. 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.

50. 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.

51. 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.

52. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall design and construct new public water facilities, into acceptable alignments and rights-of-way, in the event any public water facility in the vicinity of the project site loses integrity due to the construction and grading activities associated with this development, in a manner satisfactory to the Water Department Director and the City Engineer.

53. 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.

54. 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.

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

55. The applicant shall participate in discussions with the San Diego Association of Government [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.
- This development may be subject to impact fees at the time of construction permit issuance

APPROVED by the City Council of the City of San Diego on     MAY 27 2008    ,  
by Resolution No. R- 303723.



AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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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 Limited Liability Company  
Owner/Permittee

By \_\_\_\_\_  
Craig W. Clark, Managing Member  
By \_\_\_\_\_

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

PERMIT/OTHER – Permit Shell 11-01-04