

Attachment H

Planning Commission Resolution No. PC2022-022

RESOLUTION NO. PC2022-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING CITY COUNCIL APPROVAL OF AN ADDENDUM TO MITIGATED NEGATIVE DECLARATION NO. ND2010-008, GENERAL PLAN AMENDMENT, LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN AMENDMENT, PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT, AMENDMENT TO MAJOR SITE DEVELOPMENT REVIEW NO. SD2011-002, AMENDMENT TO COASTAL DEVELOPMENT PERMIT NO. CD2017-039, AMENDMENT TO VESTING TENTATIVE TRACT MAP NO. NT2005-003, AMENDMENT TO LIMITED TERM PERMIT NO. XP2011-004, AND SECOND AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA2008-001 FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Golf Realty Fund, Managing Owner ("Applicant"), with respect to property located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the "Tennis Club Site" or "Property").
2. On January 24, 2012, the City Council authorized the redevelopment of the Property to include a reconstruction of the 3,725-square-foot tennis clubhouse, a reduction of tennis courts from 24 to seven (7) courts, and a construction of 27-room boutique hotel with 9,700 square feet of ancillary uses, and five (5) single-family residential units. On November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment if the subject property consistent with the 2012 approval (commonly referred to as "Approved Project").
3. The Applicant is requesting land use approvals to amend the Approved Project which consists of the following:
 - a. Increase the number of future tennis courts from seven (7) to eight (8);
 - b. Increase the number of future hotel rooms from 27 to 41 rooms;
 - c. Increase the gross floor area of ancillary hotel uses by 4,686 square feet;
 - d. Provide three attached condominium units and two (2) single family residences in-lieu of five (5) single-family residences; and

- e. Amending the 2012 Development Agreement to account for the aforementioned changes to the Project along with extending the term of the 2012 Development Agreement for an additional 10 years ("Project").

The following approvals are requested or required in order to implement the Project:

- a. **General Plan Amendment ("GPA")** – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;
- b. **Local Coastal Program Implementation Plan Amendment ("LCPA")** – An amendment to NBMC Section 21.26.055.S.2 (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) to modify the permitted uses and development standards allowed on the Property;
- c. **Planned Community Development Plan Amendment ("PCDP Amendment")** – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- d. **Major Site Development Permit Amendment ("SDA")** – An amendment to the existing site development review in accordance with PC-47 and NBMC Section 20.52.80 (Permit Review Procedures, Site Development Reviews) for the construction of the Project;
- e. **Coastal Development Permit Amendment ("CDPA")** – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- f. **Tentative Vesting Tract Map Amendment ("VTMA")** – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the Newport Beach Municipal Code ("NBMC") for a lot reduction created for the Approved Project and inclusion of the condominium ownership;
- g. **Limited Term Permit Amendment ("XP")** – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to NBMC Section 20.52.040;
- h. **Development Agreement Amendment ("DA")** – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City, pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and 15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested right to

develop the Project for a term of ten years and provide negotiated public benefits to the City; and

- i. **Addendum to previously adopted Mitigated Negative Declaration No. ND-2010-008 (SCH2010091052)** (“Addendum”) – Pursuant to the California Environmental Quality Act (“CEQA”), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project.
4. The Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the General Plan Land Use Element and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District.
 5. The Property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) and it is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District.
 6. A public hearing was held on September 8, 2022 in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”), California Government Code Section 65867 and Section 15.45.050 (Public Hearing-Notice) of the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. On March 27, 2012, the Newport Beach City Council approved Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred to as “MND”) that addressed the potential environmental effects associated with the Approved Project. The MND was prepared in compliance with the California Environmental Quality Act as set forth in Section 21000 *et seq.* of the California Public Resources Code (“CEQA”), the State CEQA Guidelines set forth in Title 14, Division 6, Chapter 3 of the California Code of Regulations, (“CEQA Guidelines”), and City Council Policy K-3.
2. Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when a negative declaration adopted for a project, no subsequent negative declaration is required unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
 - a. Substantial changes are proposed in the project which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

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- b. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
 - c. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the negative declaration was adopted as complete, shows any of the following:
 - i. The project will have one or more significant effects not discussed in the previous negative declaration.
 - ii. Significant effects previously examined will be substantially more severe than shown in the adopted negative declaration.
 - iii. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - iv. Mitigation measures or alternatives which are considerably different from those analyzed in the previous negative declaration would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
3. Although the Project necessitates an amendment to the General Plan due to the increased number of hotel rooms and tennis courts, there are no proposed changes to the land uses permitted per the General Plan land use designation. Additionally, based on the changes associated with the Project, there are no conditions that would require the preparation of a subsequent or supplemental MND. As a result, an Addendum to the MND was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.
4. The following environmental topics were analyzed for the Project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population and Housing, Public Services, Recreation, Transportation, Utilities and Service Systems, and Wildfire. The Addendum includes analysis of new topics that were not included in the previous MND; specifically, it includes a new energy section and a new wildfire section. These additional analyses are appropriate for inclusion in the Addendum, but none result in new or increased significant impacts that would require preparation of a subsequent MND pursuant to Section 15162 of the CEQA Guidelines.

5. On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three (3) single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted MND is the appropriate environmental document for the Project. In taking action to approve any of the requested applications for the Project, the data presented in the MND, as augmented by the Addendum for this Project, are considered as part of the record.
6. The Addendum to the MND, is hereby recommended for adoption by the City Council given its analysis and conclusions. The Addendum to the MND and related referenced documentation, constitute the administrative record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.
7. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

General Plan Amendment

An amendment to the 2006 Newport Beach General Plan Land Use Element is a legislative act. Neither Title 20 (Planning and Zoning) nor California Government Code Section 65000 *et seq.*, set forth any required findings for either approval or denial of such amendments.

Finding and Facts in Support of Findings:

1. As part of the Approved Project, the City Council adopted Resolution No. 2012-10, which authorized the conversion of 17 tennis courts to 27 hotel rooms along with the redevelopment of the Property. The Approved Project included a 3,725-square-foot tennis clubhouse and seven (7) tennis courts, five (5) single-family residential units, and a 27-room boutique hotel with a 2,200 square-foot concierge and guest meeting facility and a 7,500 square-foot spa and fitness center. The City Council found that the

conversion of tennis courts to hotel rooms is consistent with the General Plan based on the following:

- a. The Project provides revitalization to Newport/Fashion Island area where the General Plan encourages additional hotel development and housing units; and
 - b. The conversion does not create traffic impacts. At the time of the conversion, the 17 tennis courts generated 658 average daily trips based upon ITE Trip Generation Rates (7th edition), while the 27 hotel rooms generated 221 average daily trips, resulting in a net decrease of 389 daily trips.
2. The Project includes a GPA to amend the development limits for Anomaly 46. The development limits will be updated to reflect 27 hotel rooms which has been approved by the conversion of 17 un-used tennis courts and seven (7) remaining tennis courts, as part of the Approved Project. The GPA will also include the proposed 14 additional hotel rooms and one tennis court. Together, a total of 41 hotel rooms (27+14=41 rooms) and eight tennis courts will be included in Anomaly 46. No change to the 3,725-square-foot tennis clubhouse is proposed. The GPA does not include a change in land use designation and would remain as Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR).
 3. The Project GPA is consistent with the following City of Newport Beach General Plan Land Use policies, applicable to the Project (additional policy analysis is included in the MND Addendum attached hereto as Exhibit "A"):

- a. ***Land Use Element Policy LU1.1 (Unique Environment).*** *Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds.*

The Project includes an amendment to the PC-47 District regulations on the Tennis Club site and reflects the proposed development on the Property. PC-47 will continue to guide development occurring within the Property. The development standards address building height, setbacks, landscaping, and architectural character. The standards are intended to ensure that the City's unique character is maintained through land use and architectural diversity.

- b. ***Land Use Element Policy LU1.2 (Citywide Identity).*** *While recognizing the qualities that uniquely define its neighborhoods and districts, promote the identity of the entire City that differentiates it as a special place within the Southern California region.*

The area in which the Property is located is characterized by a variety of residential, commercial, and recreational land uses that reflect a range of architectural styles, which contribute to the unique character of the City. The intensity and architectural character of the Project are compatible with the variety

of densities and styles within the area, which are consistent with the identity of the City. The architectural character of the Project, including the bungalow-style hotel rooms, detached residential units, and attached residential loft buildings, is consistent with the City's desire to differentiate Newport Beach from other coastal cities.

- c. **Land Use Element Policy LU2.1 (Resident-Serving Land Uses).** *Accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces.*

The Project will continue to provide residents with recreational opportunities, culture, entertainment, and civic engagement. The proposed amendment remains supportive of recreational uses by providing one additional tennis court to the previously approved seven (7) courts. The amendment also includes an additional 14 hotel rooms to the previously approved 27-unit hotel development with additional hotel amenities for club members such as a Performance Therapy Center and Yoga Pavilion.

- d. **Land Use Element Policy LU.2.6 (Visitor Serving Uses).** *Provide uses that serve visitors to Newport Beach's ocean, harbor, open spaces, and other recreational assets, while integrating them to protect neighborhoods and residents*

The Project provides visitors with an updated recreational facility as it includes a new tennis clubhouse and eight (8) tennis courts, which includes a stadium size court. The tennis club is adjacent to a golf course with amenities and is within 2,000 feet from the Newport Bay. The proposed 41 hotel rooms provide additional opportunities for visitors to enjoy the tennis club and nearby recreational activities.

- e. **Land Use Element Policy LU3.2 (Growth and Change).** *Enhance existing neighborhoods, districts, and corridors, allowing for reuse and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.*

The character of the tennis club, hotel development, and residential units are compatible with the existing land uses and development intensities of the surrounding area. Although the additional 14 hotel rooms and one (1) tennis court

requires amendments to adopted plans and regulations, the existing tennis club and hotel development that are the substance of the Approved Project are allowed under the existing General Plan. The Project has been designed to be compatible with the existing residential, commercial, and recreational uses located within the vicinity of the project site. In addition, the surrounding area is adequately served by existing infrastructure, including circulation, water, sewer, and storm drainage systems. As a result, the implementation of the Project will not adversely affect those systems or the provision of adequate service to nearby development.

- f. **Land Use Element Policy LU3.3 (Opportunities for Change).** *Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors, as specified in Policies 6.3.1 through 6.22.7: Fashion Island/Newport Center: expanded retail uses and hotel rooms and development of residential in proximity to jobs and services, while limiting increases in office development.*

The Project provides enhancement to the Property, which is currently being used exclusively as a tennis club, to include 41 hotel rooms and ancillary uses, and five residential units. The Project retains a total of eight tennis courts and the reconstruction of the Tennis Clubhouse. The Project will be utilized as a recreational facility for residents, guests, and club members.

- g. **Land Use Element Policy LU4.1 (Land Use Diagram).** *Accommodate land use development consistent with the Land Use Plan.*

The Project is consistent with the designation of the General Plan Land Use Element, which designates the Property as MU-H3/PR. The Property is located within Anomaly 46, which allocates 24 tennis courts with residential permitted in accordance with the MU-H3 designation. The GPA includes an amendment to the Development Limit (Other) of Anomaly 46, to reduce the number of tennis courts to eight (8) and to include 41 hotel rooms.

- h. **Land Use Element Policy LU5.1.2 (Compatible Interfaces).** *Require that the height of development in nonresidential and higher-density residential areas transition as it nears lower-density residential areas to minimize conflicts at the interface between the different types of development.*

Although the Property is not located adjacent to lower density residential development, the Project has been designed to respect the proximity of the existing residential development adjacent to the Property. The amended PC-47 prescribes maximum building heights and setback requirements for each of the development components to ensure land use compatibility. Building heights for the proposed structures will range from 46 feet for the attached residential loft buildings, 39 feet for the detached residential units, 31 feet for the hotel rooms, and 30 feet for the tennis clubhouse, which are within the maximum 50-foot building height allowed by PC-47.

- i. **Land Use Element Policy LU (5.3.3).** *Require that properties developed with a mix of residential and non-residential uses be designed to achieve high levels of architectural quality in accordance with Policies 5.1.9 and 5.2.1 and planned to assure compatibility among the uses and provide adequate circulation and parking. Residential uses should be seamlessly integrated with non-residential uses through architecture, pedestrian walkways, and landscape. They should not be completely isolated by walls or other design elements.*

The Project includes one additional tennis court to the tennis club, 41 hotel rooms, two (2) single family residences, and three (3) residential condominium units. The Project provides adequate parking for each of the proposed uses. Vehicular and pedestrian circulation has been designed to accommodate the residents, as well as guests and members of the tennis club and hotel development. The architectural character of the uses is defined in PC-47 to ensure that compatibility between proposed uses and the surrounding area is maintained.

- j. **Land Use Element Policy LU5.3.4 (Districts Integrating Residential and Nonresidential Uses).** *Require that sufficient acreage be developed for an individual use located in a district containing a mix of residential and non-residential uses to prevent fragmentation and assure each use's viability, quality, and compatibility with adjoining uses.*

Each of the uses has been designed to complement the overall Project. The uses are connected by the vehicular and pedestrian circulation system, including sidewalks and pedestrian pathways. Land use compatibility is achieved through a common landscape theme and design guidelines in PC-47 to ensure that the architectural integrity of the Project is not compromised.

- k. **Land Use Element Policy LU6.14.2 (Newport Center).** *Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2.*

The Project has a mix of land uses including single-family residential, attached residential condominiums, recreational tennis club facilities, and visitor-serving commercial uses. These uses are permitted in Table LU1 under the MU-H3/PR land use designation. The GPA proposes to amend the development limits of Table LU2 to include eight (8) tennis courts and 41 hotel rooms.

- l. **Land Use Element Policy LU6.14.6 (Pedestrian Connectivity and Amenity).** *Encourage that pedestrian access and connections among uses within the district be improved with additional walkways and streetscape amenities concurrent with the development of expanded and new uses.*

The Project provides for both pedestrian and vehicular access within the Property. Sidewalks and pedestrian pathways are incorporated into the circulation system that are intended to accommodate pedestrians utilizing the

tennis club, hotel facilities, and future residents. A landscape plan has been provided which includes plant materials that are intended to reflect and complement the existing character within the project area.

4. Pursuant to California Government Code Section 65352.3 (SB18), a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission ("NAHC") each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that twelve (12) tribal contacts should be provided notice regarding the proposed amendment. The tribal contacts were provided notice on June 9, 2022. California Government Code Section 65352.3 requires notification 90 days prior to Council action to allow tribal contacts to respond to the request to consult. The Project will not be heard by the City Council until the 90-day period expires on September 7, 2022.

423 Charter Analysis

Finding:

Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, increases traffic by more than 100 peak hour vehicle trips (AM/PM), or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding ten years.

Council Policy A-18 (Guidelines for Implementing Charter Section 423) requires that proposed amendments to the General Plan be reviewed to determine if a vote of the Newport Beach electorate would be required. This policy includes a provision that all General Plan amendments be tracked as "Prior Amendments" for ten (10) years to determine if minor amendments in a single Statistical Area cumulatively exceed the thresholds indicated above.

Facts in Support of Findings:

1. The Property is within Statistical Area L1. Prior amendments within the past ten (10) years are Vivante Senior Housing and Residences at Newport Center. Charter Section 423 counts 80 percent of prior increases, which results in a cumulative increase of 94 dwelling units, 23 AM trips, and 43 PM trips between both projects. There were no square footage increases.
2. The GPA results in an increase of 14,000 square feet (at the rate of 1,000 square feet per hotel unit) of non-residential floor area, 9.51 AM trips, and 12.42 PM trips. When combined with 80 percent of the prior increases, this results in cumulative increases of 14,000 square feet of non-residential floor area, 32.51 AM trips, and 55.42 PM trips. As

none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required if the City Council chooses to approve the GPA.

Local Coastal Program Amendment

Finding:

As set forth in Section 30500 of the California Public Resources Code, the California Coastal Act requires each county and city to prepare a local coastal program ("LCP") for that portion of the Coastal Zone within its jurisdiction. The California Coastal Commission effectively certified the City's LCP Implementation Plan on January 13, 2017, and the City of Newport Beach ("City") added Title 21 (Local Coastal Program Implementation Plan) ("Title 21") to the NBMC whereby the City assumed coastal development permit-issuing authority as of January 30, 2017.

Facts in Support of Findings:

An amendment to Title 21 is necessary to revise Section 21.26.055(S), specifically referring to the Newport Beach Country Club Planned Community (PC-47) development standards of the "Tennis Club", "The Villas", and "The Bungalows":

1. Tennis Club - The LCPA increases the density and intensity limit for the number of tennis courts from seven (7) to eight (8) courts. The additional tennis court increases the minimum required parking from 28 spaces to 32 spaces. There is no change to the 3,725-square-foot limit for the Tennis Clubhouse.
2. The Residential (Villas) - The number of residential units remains unchanged. However, the LCPA converts three (3) of the five (5) single-family residences to attached residential condominium units. Therefore, the amendment revises the density and intensity limit for The Villas from five (5) to two (2) single family residences and removes previous development standards for Villas C, D, and E. The LCPA also includes new development standards for attached residential condominiums, which have a density limit of three (3) units and maximum gross floor area of 15,035 square feet. The maximum height allowed for the attached residential buildings is 46 feet. The buildings are required to be set back five (5) feet from any property line. The remaining single-family residences require a minimum of two enclosed parking spaces and one guest parking space per unit, while the proposed attached condominiums require a minimum of three enclosed parking spaces and one guest parking space per unit.
3. The Hotel (Bungalows) - The LCPA revises the density and intensity limits for the bungalows from 27 to 41 short-term guest rental rooms. Additionally, the maximum allowable gross floor area increases from 28,300 to 47,484 square feet. Square footage for ancillary hotel uses are also included. A minimum of one (1) space per hotel unit is required.
4. The LCPA is consistent with other applicable land use policies of the Coastal Land Use Plan as provided below:

- a. **Coastal Land Use Element Policy 2.1.2-1 (District/Corridor Policies).** *Development in each district and corridor shall adhere to policies for land use type and density/intensity contained in Table 2.1.1-1, except as modified in Sections 2.1.3 to 2.1.8.*

The MU-H/PR designation allows horizontally-distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-servicing and marine-related uses, buildings that vertically integrate residential with commercial uses, and active public or private recreational uses, including parks, golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities.

The Project is consistent with the land use designation on the adopted Coastal Land Use Plan, which designates the subject property MU-H/PR (Mixed Use Horizontal/Parks & Recreation). The Project includes a mixture of uses which include a tennis club and eight (8) tennis courts, a 41-unit hotel development and ancillary uses, and five (5) residential units. All of these uses are intended to provide an updated recreational facility to serve the residents and visitors of the City. Additionally, the residential units will supplement the City's housing supply.

- c. **Coastal Land Use Element Policy 2.1.8-1 (Balboa Bay Tennis Club).** *Allow the horizontal intermixing of short-term rental units and single-family homes with the expanded tennis club faculties. Permitted uses include those permitted by the MU-H and PR categories.*

The Project includes the mix of 41 hotel rooms with five (5) residential units, which consists of two (2) single-family residences and three attached condominium units. The hotel and residential uses are consistent with both the MU-H and PR categories.

5. Pursuant to Section 13515 of the California Code of Regulations Title 14, Division 5.5, Chapter 8, drafts of the LCPA were made available and a Notice of Availability was distributed on August 1, 2022 at least six (6) weeks prior to the anticipated final action date.

Planned Community Development Plan Amendment

The Property has a zoning designation of PC-47, which was adopted in 1997 by Ordinance 97-10 as a part of the City-wide amendment to the districting maps in order to be consistent with the 1988 General Plan Land Use Element and Zoning Code. Development regulations through a Planned Community District Development Plan was not adopted when the PC District zoning designation was assigned to the Property.

On March 27, 2012, the City Council adopted a Planned Community Development Plan (PCDP), which is the zoning document to PC-47 to provide use regulations, density and intensity of the proposed uses, and very specific development regulations (building height,

square footage, setbacks, and parking standards). The PCDP included architectural styling and a complete internal vehicular and pedestrian circulation system for both the Golf and Tennis Club sites. PC-47 also includes site development review regulations to ensure new development proposals within the Newport Beach Country Club are consistent with the goals and policies of the General Plan, provisions of PC-47, and the approved Development Agreement.

Findings:

An amendment to PC-47, which is the zoning document for the Property, is a legislative act. Neither PC-47, Chapter 20.66 (Planning and Zoning, Amendments) and Chapter 20.56 (Planning and Zoning, Planned Community District Procedures) of Title 20 (Planning and Zoning) of NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments.

Facts in Support of Findings:

The proposed amendment to PC-47 to allow an additional 14 hotel rooms and ancillary uses, one tennis court, and the conversion of three of five single-family dwelling units to condominiums is consistent with the intent of PC-47 and the purpose of Planned Community Districts as specified in NBMC Section 20.56.010 (Planning and Zoning, Planning Community District Procedures, Purpose) for the following reasons:

1. The Project is consistent with the intent and purpose of PC-47 in that the tennis club, hotel, and residential uses and their development standards have already been allowed and in place on the Property. The proposed changes to the building height, setbacks, and parking standards in order to accommodate the Project are within the development standards in place for the Approved Project.
2. PC-47 provides guidelines for architectural design to include coordinated and cohesive architecture which exhibits quality that is keeping with the surrounding area in Newport Center. The Project includes additional hotel rooms and two (2) attached residential condominium loft buildings. The proposed additions have consistent architecture with the Approved Project, which has cohesive architectural features that include smooth plaster exterior siding, clay-tile roofs, and stone veneer exterior accent finishes.
3. PC-47 permits structures to be a maximum of 50 feet in height. The Project includes two (2) attached residential condominium loft buildings which features condominiums on the third level atop of a two (2)-level hotel building. The loft buildings are proposed at a maximum of 46 feet high and comply with the height limit. All other structures are consistent with the maximum heights prescribed in PC-47.

Site Development Review Amendment

On January 24, 2012, the City Council approved Site Development Review No. SD2011-002, which authorized the construction of Approved Project. The proposed changes to the Approved Project, necessitate the SDA.

In accordance with Section 4.0 of PC-47 (Site Development Review), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The Site Development Plan shall be in compliance with all other provisions of the Newport Beach Country Club Planned Community Development Plan.*

Facts in Support of Finding:

1. PC-47 requires that a site development review process to be completed for construction of any new major building structure located on the subject site and would require consideration and approval by the Planning Commission prior to the issuance of grading or building permits. An amendment to the previously approved site development review has been submitted for the Property and meets provisions stated in the draft PCDP and thereby meets the intent specified in Section 20.52.080 (Planning and Zoning, Permit Review Procedures, Site Development Reviews) of the NBMC.
2. The Project includes an amendment to the PC-47 to incorporate revisions to the Approved Project. These revisions include the addition of one (1) tennis court, the addition of 14 hotel rooms, and the conversion of three (3) single-family residences to residential condominium units. Should the PC-47 amendment be approved, the SDA complies with all provisions of the PC-47, as the proposed development complies with all development criteria specified in the PC-47 in order to provide a coordinated, cohesive, and comprehensive large-scale planning project.

Finding:

- B. *The Site Development Plan shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City.*

Fact in Support of Finding:

The architecture, landscaping components, circulation design, and all other project components reflected in the SDR are compatible with the character of the neighboring uses and surrounding sites. The additional 14 hotel rooms and attached residential condominium buildings are of similar architectural style to the Approved Project's bungalow-styled rooms. As a result, the Project is not detrimental to the orderly and harmonious development of the surroundings and the City.

Finding:

- C. *The Site Development Plan shall be sited and designed to maximize of aesthetic quality of the Newport Beach Country Club Planned Community Development Plan as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on East Coast Highway.*

Facts in Support of Finding:

1. The Property is separated from East Coast Highway by a commercial office plaza which comprises of three two-story office buildings (1200 Newport Center Drive). The office plaza includes landscaping along East Coast Highway with trees and various plantings. The Newport Beach Country Club golf clubhouse is located approximately 150 feet west of the Property. Additionally, the Property is approximately 250 feet from East Coast Highway and is not visible to motorists travelling on the street.
2. The Project is designed consistent with the Approved Project's architectural style with landscaping, circulation, signage and other components which visually connect the tennis clubhouse and attached residential structures to the smaller structures such as the hotel rooms and single-family residences. Therefore, the aesthetic quality of PC-47 is continued to be maximized as viewed from the surrounding roadways and properties.
3. The Project seeks to add additional hotel rooms, ancillary hotel uses, and attached residential buildings to the Property. However, the overall footprint of the Approved Project is not expanding and will not affect the mass of the Project as viewed from surrounding roadways and properties.

Finding:

- D. *Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.*

Facts in Support of Finding:

1. The site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping, and other site features maximizes the functionality of the proposed uses, while avoiding conflicts between uses and activities. The Project's multiple components (tennis club, residential, and hotel) have been designed and sited to function cohesively not only with each other, but also with the adjacent existing golf course uses.
2. The Project promotes additional functionality between residential and hotel components, as residential condominiums are attached to hotel rooms in two (2) separate loft buildings. Underground parking is provided in the loft buildings, with additional street parking and parking lots to serve hotel and tennis club guests. Each of the two (2) single-family residences provide a two (2)-car garage to serve its residents.

Coastal Development Permit Amendment

On April 10, 2013, the California Coastal Commission, which had permitting jurisdiction for coastal development permits at the time, issued a notice of intent to issue CDP No. 5-12-160 for the Approved Project. A one (1)-year extension was granted on June 2, 2015. However, the CDP subsequently expired. The City obtained CDP permitting authority in January of 2017. On November 20, 2018, the City's Zoning Administrator approved the CDP, which authorized the redevelopment of the Approved Project. The Project requires an amendment to the previously approved CDP.

In accordance with Section 21.52.015(F) (Local Coastal Program Implementation Plan, Coastal Development Review Procedures, Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

E. Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The Coastal Land Use Plan designates the Tennis Club site as Mixed-Use Horizontal/Parks and Recreation (MU-H/PR). Policy 2.1.8-1 of the Coastal Land Use Plan allows the horizontal intermixing of hotel rooms, single-family residences, attached residential condominiums, and tennis club facilities on the project site (formerly known/referenced as the Balboa Bay Tennis Club). Permitted uses include those permitted by the MU-H and PR land use designations. A complete consistency analysis of each of the applicable Coastal Land Use Plan policies is included in Table 11 of the Land Use and Planning Section of the previously adopted Mitigated Negative Declaration (MND), pages 82 through 87, as well as in Table 5-5 of the Land Use and Planning Section of Addendum to the MND. Furthermore, facts have been provided in this Resolution which support the proposed amendment to the Local Coastal Program Implementation Plan. In summary, the proposed project is consistent with the Coastal Land Use Plan.
2. The MU-H coastal land use designation identifies a maximum density/intensity limit of 1.5 floor area ratio ("FAR"), with a minimum FAR of 0.25 and a maximum FAR of 0.5 for retail uses and a maximum of 1.0 for residential. The Project proposes 65,595 square feet of nonresidential floor area (approximately 0.21 FAR) for the hotel rooms, concierge & guest center, and ancillary hotel uses which include a performance therapy center, yoga pavilion, office, common area, and a spa and fitness center. Additionally, five (5) residential dwelling units totaling 20,653 square feet (approximately 0.06 FAR). The proposed density/intensity of the hotel and single-family units comply with the FAR limitations identified in the Coastal Land Use Plan.
3. The PR category applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses,

marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The PR designation on this site is applicable to the existing and proposed private tennis club and tennis courts. The density/intensity limitations include incidental buildings, such as maintenance equipment sheds, supply storage, and restrooms, not included in determining intensity limits. The proposed tennis club and ancillary uses are consistent with this land use designation.

4. The Property is part of the 145-acre planned community (PC-47), which has been adopted to regulate developments within the Property and the adjacent Golf Club Site, and is in conformance with the Coastal Land Use Plan designation pursuant to Section 21.26.055(S)(2) of the Local Coastal Program Implementation Plan.
5. The Project conforms to all applicable development standards in the proposed amendment to PC-47, including density/intensity, setbacks, building heights, and parking.
6. The Property is not located in an area known for the potential of seismic activity or liquefaction. All projects are required to comply with the California Building Code ("CBC") and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of a building permit. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. Elevations on the Property range from 104 feet up to 120 feet North American Vertical Datum of 1988 (NAVD88) above mean sea level. These site elevations are well above projected sea level rise in Newport Bay for the next 75 years and the site is not subjected to other coastal hazards.
8. The Project is required to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") since the Project involves clearing, grading, and ground disturbance of more than one acre. Pursuant to Section 21.35.030 (Local Coastal Program Implementation Plan, Water Quality Control, Construction Pollution Prevention Plan) of the NBMC, when a SWPPP is required, a Construction Pollution Prevention Plan ("CPPP") is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been prepared and will be reviewed by the City's Engineer Geologist prior to issuance of grading/building permits for site grading. Construction plans and activities will be required to adhere to the approved CPPP/SWPPP.
9. A Water Quality and Hydrology Plan (WQHP) is required Pursuant to Section 21.35.050 (Local Coastal Program Implementation Plan, Water Quality Control, Water Quality and Hydrology Plan) of the NBMC since the Project is considered a development of water quality concern and includes the development of five dwelling units, more than 10,000 square feet of impervious surface area, and a parking area in excess of 5,000 square feet. The WQHP/WQMP will be reviewed and approved by the City's Engineer Geologist

prior to the issuance of building permits for site grading. The WQHP/WQMP includes a polluted runoff and hydrologic site characterization, a description of site design BMP's, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP/WQMP prior to building permit issuance.

10. An Analysis of the Fiscal and Economic Impacts was prepared on August 29, 2022, by Kosmont Companies to analyze the construction of new visitor accommodations in the coastal zone in accordance with the requirements of Section 21.48.025 (Local Coastal Program Implementation Plan, Standards for Specific Land Uses, Visitor Accommodations) of the NBMC. The report provides a feasibility analysis stating that the anticipated average daily room rate for all 41 rooms is approximately \$920 and the statewide average daily room rate is \$205.69. Therefore, the proposed accommodations are not considered lower cost accommodations. The report considers the specific location of the Property as an inappropriate location for low cost accommodations. Additionally, low cost accommodations are not feasible due to prohibitive land and construction costs. The Property does not currently provide accommodations of any kind and implementation of the Project would not impact low-cost accommodations. While the Project does not include any lower cost rooms, and the Local Coastal Program Implementation Plan defines it as an impact, there is no impact on the provision of lower-cost visitor accommodations in the Coastal Zone. The Project features larger guest facilities to accommodate a higher occupancy per room, kitchens in a majority of the hotel rooms, and separate living rooms with sofa beds, all which offset higher costs of accommodations.

Finding:

- F. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Fact in Support of Finding:

1. The Property is not located between the nearest public road and the sea or shoreline. The Property will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to Newport Bay is available via existing public access at 1601 Bayside Drive, which is located approximately 1,600 feet southwest of the subject property.
2. Coastal Land Use Plan, Policy 4.4.1-6 and Figure 4-3 (Coastal Views) identify the closest public view road as Newport Center Drive, located approximately 170 feet east of the Property and the closest public viewpoint as Irvine Terrace Park, located 525 feet south of the Property. Coastal views from these view corridors and viewpoints are directed toward the Newport Bay and the Pacific Ocean. Since the Property is located to the north of Irvine Terrace Park, the Project will not affect coastal views due to its orientation. From Newport Center Drive, there is a zero to 40-foot grade difference to the project area below. The maximum height allowed in PC-47 is 46 feet for the attached

condominium lofts, 39 feet for the two (2) single-family residences, 30 feet for the tennis clubhouse, and 31 feet for the hotel rooms. Therefore, the majority of the Project would sit below the existing grade elevations along Newport Center Drive, minimizing the visibility of the project site and would not obstruct public coastal views. During construction, construction equipment would be obscured by vegetation and the grade differential so it would not obstruct coastal views from motorists traveling along Newport Center Drive. The Project will not impact coastal views.

Vesting Tentative Tract Map Amendment

On January 24, 2012, the City Council approved Vesting Tentative Tract Map No. 15347, which authorized the creation of seven separate lots for the tennis club, 5 single-family residences, and 27 hotel rooms, and lettered lots for common areas and a private street. The Applicant proposes an amendment to the vesting tentative tract map to accommodate the Project, which consists of two (2) single-unit residential dwellings, three (3) residential condominiums, 41 hotel rooms, a tennis clubhouse, their common open space areas and a private street to support the proposed uses. The VTMA reflects the combination of two (2) previously divided lots which were intended for two (2) detached single-family residences. This results in the elimination of one lot for a total of six (6) separate lots. No changes to the lots created for common areas and a private street are proposed. The map of the VTMA has also been modified to include residential condominium portion of the Project.

In accordance with Section 19.12.070 (Subdivisions, Tentative Map Review, Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, and the following finding and facts in support of such findings are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Project is consistent with the MU-H3/PR General Plan designation of the site.
2. The Public Works Department has reviewed the proposed revisions to the approved vesting tentative tract map and determined it is consistent with the Title 19 and applicable requirements of the Subdivision Map Act.
3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The Property is entirely developed and does not support any environmental resources.
2. The Property is located in the Newport Center and Fashion Island area. The Property is currently improved with a private tennis club. Given its location, this site is ideal for the development of a recreation and mixed-use project as allowed by the General Plan Land Use Element.

Finding

- C. *That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Fact in Support of Finding:

An Addendum to the MND has been prepared and concludes that no significant environmental impacts will result with the Project development of the Property in accordance with the proposed subdivision map revision.

Finding:

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The VTMA is required for the subdivision of parcels in order to accommodate the development of the tennis club and courts, two (2) single-unit residential dwellings, and 41 hotel rooms on the Property. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the NBMC and Section 66411 of the Subdivision Map Act. Compliance with all ordinances of the City and all Conditions of Approval for the Project will ensure that the Project will not cause any serious health problems.
2. All mitigation measures will be implemented as outlined in the Addendum to the MND to ensure the protection of the public health.
3. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.

Finding:

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

1. The design of the Project will not conflict with any easements acquired by the public at large for access through or use of property within the Property.
2. An easement through the Property will be retained by the City to sewer and utilities purposes.
3. No other public easements for access through or use of the Property have been retained for use by the public at large.

Finding:

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Fact in Support of Finding:

The Property is not subject to the Williamson Act since the Property is not considered an agricultural preserve and is less than 100 acres.

Finding:

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. The Property is not a “land project” as defined in Section 11000.5 of the California Business and Professions Code.
2. The Property is not located within a specific plan area.

Finding:

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

The VTMA and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City’s residents and available fiscal and environmental resources.*

Facts in Support of Finding:

1. The proposed amendment to Vesting Tentative Tract Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need. The Project does not involve the elimination of residential rooms and therefore will not affect the City’s ability to meet its share of housing needs.
2. Public services are available to serve the Project and the Addendum to the MND prepared for the Project indicates that the project’s potential environmental impacts are properly mitigated.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

1. Waste discharge into the existing sewer system will be not violate Regional Water Quality Control Board (RWQCB) requirements.

2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

1. The Property is located in the Coastal Zone and subject to a coastal development permit.
2. The Property does not have access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails.
3. Facts in support of Findings E and F are hereby incorporated by reference.

Limited Term Permit

In accordance with Section 20.52.040 (Planning and Zoning, Permit Review Procedures, Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow two (2) temporary modular trailers and portable toilets. Both modular trailers are approximately 33 feet long and 13 feet wide. One (1) modular trailer is proposed to be used as a construction office located at the southwest portion of the Property and will be staged at this location through the entire duration of the Project. The second modular office is proposed to be used as a temporary office for tennis club operations and will be located on the easterly portion of the Property through the construction phase of the project (approximately 16 months after construction begins). The portable toilets are proposed to serve the temporary tennis club office and located nearby.

2. The operation of the temporary modular trailers is proposed to exceed 90 days from the date of the permit. The construction office is proposed to be staged for the duration of all construction activities, which is estimated to be approximately 20 months. The tennis club office is proposed to be staged for approximately 16 months, and will be removed upon completion of the Project.

Finding:

- B. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

The Property is approximately seven (7) acres in size. Based on the construction phasing plan, there is adequate area to accommodate the proposed modular trailers and portable toilets throughout the various phases of construction. The construction trailer will be located within an area which is fenced off from public view and access.

Finding:

- C. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. The Property has an existing parking lot with two (2) entrances currently taken from Clubhouse Drive, which has a westerly outlet to East Coast Highway and an easterly outlet to Granville Drive and Newport Center Drive.
2. During the various phases of construction, the easterly entrance to the parking lot will remain available to the public for parking and will provide direct access for the modular office trailer and portable toilets, while the westerly entrance will be for construction access only. The construction trailer is intended for construction use only and not for the public. There are no traffic issues anticipated.

Finding:

- D. *Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The proposed trailers will not create additional parking demand since it will be utilized as offices for construction activities and employees displaced during the renovation of the tennis clubhouse.
2. A portion of the existing parking lot will remain, with access available on the easterly side of the lot from Granville Drive and Newport Center Drive. The remaining parking lot provides adequate parking for employees and members of the tennis club.

Finding:

E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.

Facts in Support of Finding:

1. The temporary trailers are conditioned to comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
2. The Property is not located within a specific plan area.

Development Agreement Amendment

On March 27, 2012, the City Council of the City of Newport Beach ("City") adopted Ordinance No. 2012-3 approving Development Agreement No. DA2008-001 ("Agreement") between the City and the Applicant for the Approved Project. The Agreement was executed and recorded, as document number 2014000036369 on January 29, 2014, with a ten-year term.

On July 12, 2022, the City Council adopted Ordinance No. 2022-16, approving First Amendment to Agreement to extend the term of the Agreement by one (1) year.

Finding:

In accordance with Section 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreement, Development Agreement Required) of the NBMC, an amendment to the DA is required as the Project, which includes an amendment to PC-47 and a General Plan Amendment to increase the number of hotel rooms from 27 to 41 rooms, which is new non-residential development in Statistical Area L1 (Newport Center/Fashion Island). Additionally, the Applicant requests an additional 10-year term of Agreement, pursuant to Section 15.45.070 (Buildings and Construction, Development Agreement, Amendment/Cancellation) of the NBMC. The Second Amendment to the Agreement satisfies the requirements of Chapter 15.45 (Buildings and Construction, Development Agreements) of the NBMC as follows:

Facts in Support of Finding:

1. The Second Amendment provides assurance that the Applicant may proceed with the Project in accordance with existing policies, rules and regulations, and conditions of approval. Additionally, the Second Amendment to the Agreement helps the Applicant avoid a waste of resources and escalated costs of the Project while encouraging a commitment to private participation in comprehensive planning.
2. The Second Amendment to the Agreement specifies the term of Agreement to be extended for a period of ten (10) years, as well as the updated permitted uses, density and intensity, and maximum height and size of proposed buildings, consistent with the Approved Project. Additionally, the Second Amendment to the Agreement includes all mandatory elements, including public benefits that are appropriate to support conveying the vested development rights consistent with the City's General Plan, NBMC, and Government Code Sections 65864 *et seq.*
3. Public benefits include the payment of ninety-three thousand dollars (\$93,000) per each residential dwelling unit and ten dollars (\$10) per square foot of construction for the tennis clubhouse.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby recommends the followings to the City Council:
 - a. Adopt Mitigated Negative Declaration Addendum No. ND2022-001 to Mitigated Negative Declaration No. ND2010-008 and Errata to Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052), as depicted in Exhibit "A";
 - b. Approve General Plan Amendment, as depicted in Exhibit B;
 - c. Approved Local Coastal Program Implementation Plan Amendment; as depicted in Exhibit C
 - d. Approve Planned Community Development Plan Amendment, as depicted in Exhibit D;
 - e. Approve amendment to Major Site Development Review No. SD2011-002, with conditions of approval as depicted in Exhibit F;
 - f. Approve amendment to Coastal Development Permit No. CD2017-039 with conditions of approval as depicted in Exhibit F;
 - g. Approve amendment to Vesting Tentative Tract Map No. NT2005-003, with conditions of approval as depicted in Exhibit F

- h. Approve amendment to Limited Term Permit No. XP2011-004, with conditions of approval as depicted in Exhibit F; and
- i. Approve Second Amendment to Development Agreement No. DA2008-001, as depicted in Exhibit E.

PASSED, APPROVED, AND ADOPTED THIS 8TH DAY OF SEPTEMBER, 2022.

AYES: Ellmore, Harris, Kleiman, Lowrey, and Weigand

NOES: None

RECUSED: Weigand

ABSENT: Klaustermeier

BY: 

Lauren Kleiman, Chairman

BY: 

Mark Rosene, Secretary

EXHIBIT "A"

ADDENDUM TO MITIGATED NEGATIVE DECLARATION NO. ND2010-008 AND ERRATA TO
MITIGATED NEGATIVE DECLARATION NO. ND2010-008 (SCH NO. 2010091052)

Available separately due to bulk at:
www.newportbeachca.gov/ceqa

EXHIBIT "B"

GENERAL PLAN AMENDMENT TO ANOMALY NO. 46 OF TABLE LU2 OF THE 2006
NEWPORT BEACH GENERAL PLAN LAND USE ELEMENT

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
46	L1	MU-H3/PR	3,725	8 Tennis Courts 41 Hotel Rooms*	Residential permitted in accordance with MU-H3 *27 rooms converted from 17 tennis courts per Council Resolution 2012-10 and 14 rooms per General Plan Amendment PA2022-260

EXHIBIT "C"
LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN AMENDMENT

Local Coastal Program Implementation Plan Amendment Related to Development Standards of the Tennis Club portion within the Newport Beach Country Club Planned Community (PC-47) (PA2021-260)

Amend Section 21.26.055.S (Newport Beach Country Club) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to read as follows:

- S. Newport Beach Country Club (PC-47).
 - 2. Tennis Club.
 - a. Density/intensity limit: ~~seven~~ **eight (8)** tennis courts; and three thousand seven hundred twenty-five (3,725) square foot clubhouse.
 - b. Height: thirty (30) feet for clubhouse.
 - c. Parking: ~~twenty-eight (28) spaces~~ **thirty-two (32) spaces**

3. Residential.

a. Detached Residential (Villas)

i. Density/intensity limit: two single-family dwelling units.

ii. Development Standards:

Villa Designation	Villa A (TTM Lot #1)	Villa B (TTM Lot #2)
Lot Size	5,000 square feet minimum	
Lot Coverage (Maximum)	70%	65%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations	
Building Side Yard Setbacks	3 feet minimum	
Building Front and Rear Yard Setbacks	5 feet minimum	
Enclosed Parking Space for Each Unit	2	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed	

b. Attached Residential (Condominiums)

- i. Density/intensity limit: three (3) attached residential units.**
- ii. Setbacks: five (5) feet from any property line.**
- iii. Height: forty-six (46) feet (to be located atop of the 2-story hotel buildings).**
- iv. Parking: three (3) enclosed spaces and one guest space per dwelling unit.**

4. ~~(The Bungalows) Hotel~~

- a. Density/Intensity Limit: ~~forty-one (41) short-term guest rental units rooms.~~ The maximum **total** allowable gross floor area for the **hotel rooms** shall be ~~twenty-eight thousand three hundred (28,300)~~ **forty-seven thousand four hundred eighty-four (47,484)** square feet with a two thousand two hundred (2,200) square-foot concierge and guest center, **four thousand six hundred eighty-six (4,686)** square feet of ancillary hotel uses, and a seven thousand five hundred (7,500) square-foot spa facility.**
- b. Setbacks: five feet from any property line.**
- c. Height: thirty-one (31) feet.**
- d. Parking: ~~thirty-four (34) parking spaces.~~ **forty-one (41) parking spaces.****

EXHIBIT "D"

NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DEVELOPMENT PLAN
AMENDMENT

Newport Beach Country Club
Planned Community Development Plan

Adoption: March 27, 2012, Ordinance No. 2012-2

Amendment: ____, 2022, Ordinance No. __

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1.0 INTRODUCTION AND PURPOSE

The Newport Beach Country Club Planned Community District (the PCD) is composed of the Golf Club, Tennis Club, Bungalows and Villas facilities, totaling approximately 133 140 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with limited mixed uses, including the private ~~G~~golf ~~C~~club, ~~T~~tennis ~~C~~club, ~~27 short-term rental units~~ **41-room boutique hotel** called ~~the Bungalows~~ with a spa/fitness area **center and ancillary uses**, and 5 ~~semi-custom single-unit residential dwellings~~ **units** called ~~the Villas~~.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Alcoholic Beverage Consumption

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

2. Amplified Music

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

3. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

4. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

5. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

6. Exterior Storage Areas

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six-foot plastered block wall.

7. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

8. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

9. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

10. Height and Grade

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determining the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director

11. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, and tennis courts to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

12. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the

Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

13. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

14. Loading Areas for Non-Residential Uses

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

15. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

16. Property Owner Approval

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

17. Outdoor Paging

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees and at the Tennis Club to call points during tennis tournaments.

18. Sewage Disposal

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

19. Screening of Mechanical Equipments

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

20. Screening of the Villas residential units from tennis courts

Adequate buffering between the Villas residential units and tennis courts shall be provided and subject to the Site Development Review process. The exterior perimeter of the tennis courts facing Granville Condominiums, Granville Drive, and the Tennis Clubhouse parking lot shall be screened by a minimum ten-foot-high chain link fence covered by a wind screen. Wind screen shall be maintained in good condition at all time.

21. Screening of the Villas' Pool/Spa Equipment

All pool and/or spa equipment shall be enclosed by a minimum five-foot high block wall plastered or otherwise textured to match the building.

22. Special Events

Temporary special community events, such as such as PGA Senior Classic golf tournaments, Team Tennis, Davis Cup Matches, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

23. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

24. Trash Container Storage for Residential Dwellings

Trash container storage shall be out of view from public places, and may not be located in the required parking areas. If trash container storage areas cannot be located out of public view, they shall be screened from public view. Screening shall consist of fences, walls, and landscaping to a height at least 6 inches above the tops of the containers.

25. Trash Enclosures for Non-Residential Uses

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

26. Tennis Club Site Phasing Plan-

The phasing plan for the tennis club site which consists of the tennis club, ~~villas~~ **residential units** and ~~bungalows~~ **hotel rooms** shall be subject to a site development review process.

27. Water Service

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

B. Golf Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be 56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greens keeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms
- Golf Cart Parking Storage and Washing Area

- Separate Snack Bar
- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

The design of the parking lot and orientation of vehicular aisles and parking spaces shall be subject to the review and approval of the City Traffic Engineer and Community Development Director.

5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

3.2 Tennis Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the tennis courts and clubhouse.

A. **The Tennis Courts**

1. Number of courts

The maximum allowable tennis courts shall be ~~seven~~ **eight** lighted tennis courts (~~six~~ **seven** lighted championship courts and one lighted stadium-center court).

B. Tennis Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for the Tennis Clubhouse shall be 3,725 square feet.

2. Building Height

The maximum allowable building height for the Tennis Clubhouse shall be 30 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Tennis Shop
- Administrative Offices
- Concessions
- Restroom and Locker facilities
- Storage areas
- Spectator seating
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Tennis Clubhouse and Courts shall be a minimum of ~~28~~ **32** parking spaces.

3.3. The Villas Residential

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the **villas units**.

A. Detached Residential (The Villas)

1. Number of Units

The maximum allowable number of single-family residential units shall be ~~five (5)~~ **two (2)**.

2. Development Standards

The following development standards shall apply to the Villas:

The Villas Development Standards Table

Villa Designation	Villa A TTM Lot #1	Villa B TTM Lot #2
Lot Size	5,000 square feet minimum	
Lot Coverage (Maximum)	70%	65%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations	
Building Side Yard Setbacks	3 feet minimum	
Building Front and Rear Yard Setbacks	5 feet minimum	
Enclosed Parking Space for Each Unit	2	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed	

B. Attached Residential

1. Number of Units

The maximum allowable number of attached residential units shall be three (3).

2. Building Setbacks

The building setback shall be a minimum of five (5) feet from any property line.

3. Building Height

The maximum allowable building height for attached residential units to be located atop of the 2-story hotel buildings shall be 46 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations.

4. Parking

Parking for the attached residential units shall be a minimum of 3 enclosed parking spaces and one guest parking space per unit.

3.4. The Bungalows Hotel

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the bungalows, concierge and guest center, and spa facility.

1. Number of Units Rooms

The maximum allowable number of ~~the Bungalows~~ rooms shall be ~~27~~ 41, to be built in a clustered setting of single and two-story buildings.

2. Permitted Ancillary Uses

The following ancillary uses are allowed:

- **Administrative Offices**
- Concierge office and guest meeting facility
- **Performance Therapy Center**
- **Spa and Fitness Center**
- Swimming pool and Jacuzzi
- ~~Spa facility that includes treatment rooms, fitness areas, and snack bar serving drinks, snacks and light breakfast and lunch items~~

- **Yoga Pavilion**

3. Building Area

The maximum allowable gross floor area for the ~~bungalows~~ **hotel rooms** shall be ~~28,300~~ **47,484** square feet with a 2,200 square foot concierge & guest center, **4,686 square feet of ancillary hotel uses**, and a 7,500 square-foot spa facility.

4. Building Height

The maximum allowable building height for the ~~bungalows~~ **hotel rooms** shall be 31 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

5. Building Setbacks

The **building** setback requirement shall be a minimum of 5 feet from any property line.

6. Parking

Parking for the ~~bungalows~~ **hotel rooms** shall be a minimum of ~~34~~ **41** parking spaces located in proximity to the use.

3.5 Signs

A. **Sign Allowance**

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at Newport Beach Tennis Club's main entrance (Country Club Drive and Irvine Terrace). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
2. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's secondary entrance (Granville). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The

sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. One (1) single or double faced, ground-mounted identification sign shall be allowed at the entrance road to the Bungalows. Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height and fifteen (15) feet in length.

B. Sign Standards

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.
2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.
3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.
4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.
6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.
7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

4.0 SITE DEVELOPMENT REVIEW

4.1 Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

4.2 Application

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

4.3. Findings

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

4.4. Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

4.5 Public Hearing –Required Notice

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in

not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

4.6 Expiration and Revocation Site Development Review Approvals

1. **Expiration.** Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. **Violation of Terms.** Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. **Public Hearing.** The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

4.7. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

4.8 Minor Changes by the Director

1. The following minor changes to an approved site plan may be approved by the Director in compliance with Section 20.54.070 (Changes to an approved project) of the Newport Beach Municipal Code:
 - a) Minor relocation of any proposed structure.
 - b) Reduction in the square footage of any structure and a commensurate reduction in required parking, if applicable.
 - c) Reconfiguration of the golf clubhouse parking lot, including drive aisles and/or parking spaces, subject to review and approval of the City Traffic Engineer.
 - d) Reconfiguration of parking lot landscaping.
 - e) Modification of the approved architectural style.
 - f) Any other minor change to the site plan provided it does not

increase any structure area, height, number of units, number of hotel rooms, and/or change of use.

2. Any proposed changes that are not deemed minor shall be subject to review and approval by the Planning Commission.

Exhibit A

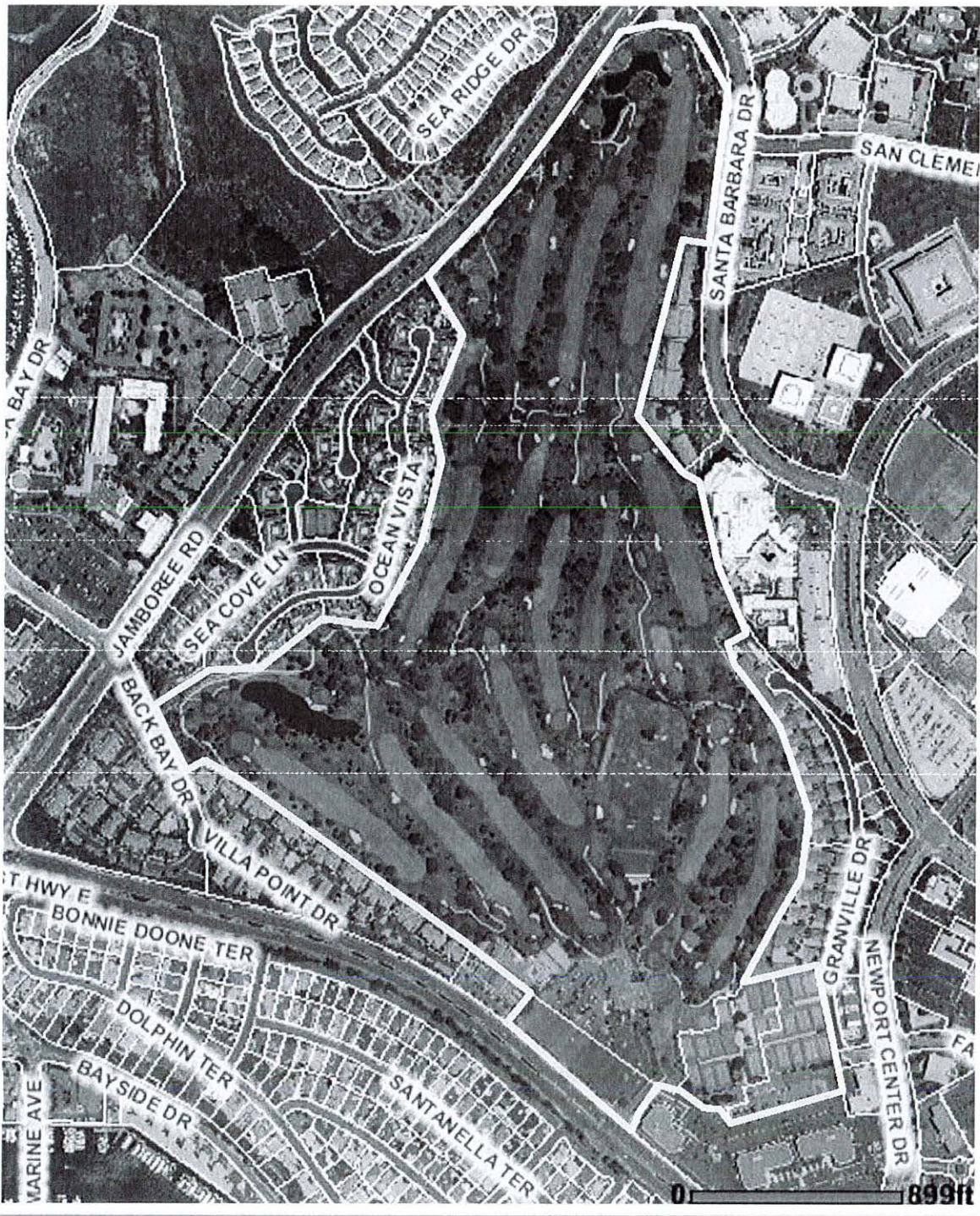


Exhibit B

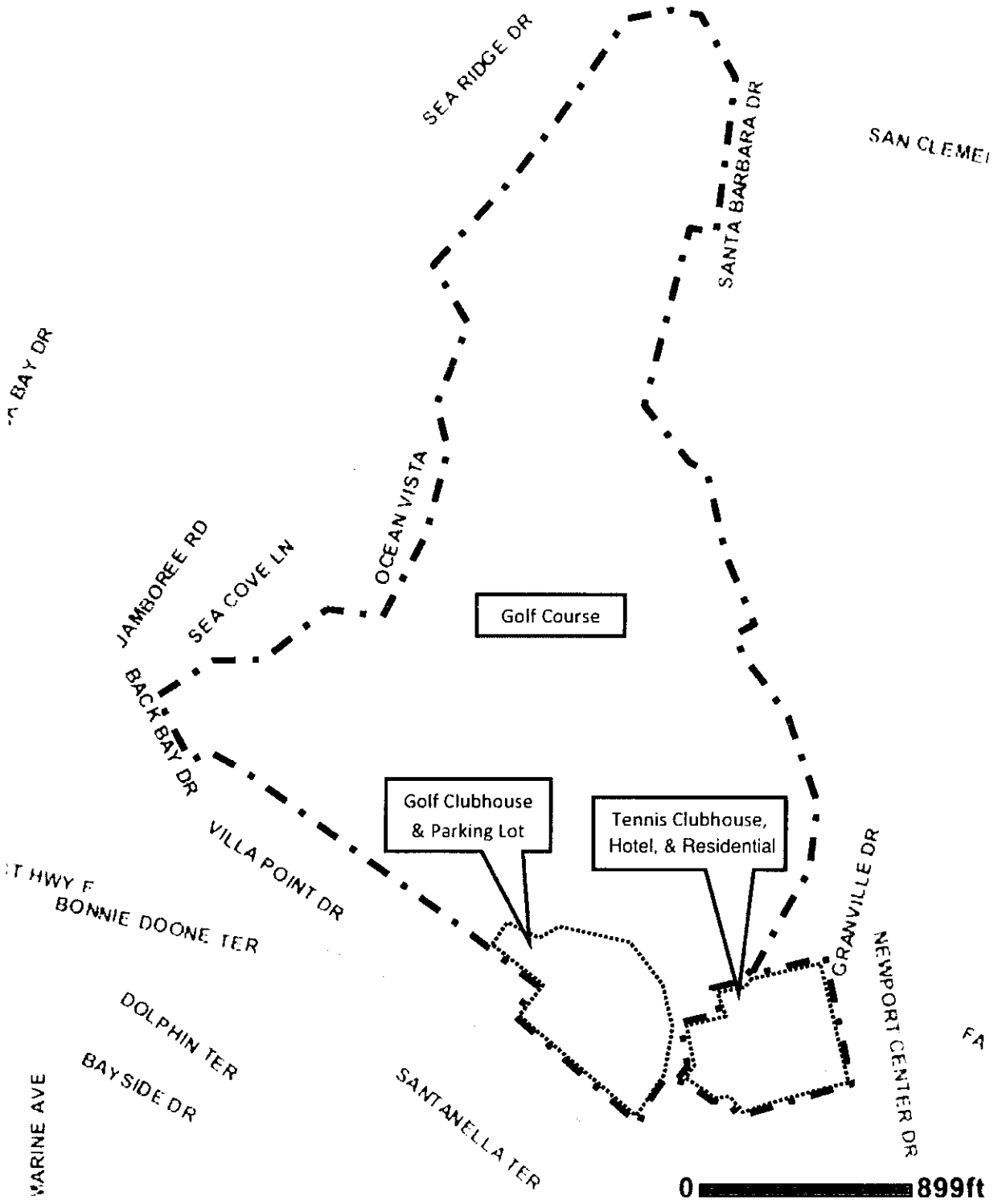


EXHIBIT "E"

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This First Amendment is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED AT TENNIS CLUB AT NEWPORT BEACH
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the “**Second Amendment**”) is entered into and effective on the date it is recorded with the Orange County Recorder (“**Effective Date**”) by and between the CITY OF NEWPORT BEACH (“**City**”), and GOLF REALTY FUND, a California limited partnership (“**Property Owner**”). **City** and **Property Owner** are sometimes collectively referred to in this **Second Amendment** as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. **Property Owner** is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“**Property**”). The **Property** consists of approximately seven (7) acres within the area shown on the City’s Zoning Map as the Newport Beach Country Club Planned Community District. The **Property** comprises the Tennis Club at Newport Beach site shown on Exhibit “B” which consists of The Villas Sub-Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. **City** and **Property Owner** entered into that certain Development Agreement between the City of Newport Beach and Golf Realty Fund dated March 27, 2012, and recorded in the Official Records of Orange County on January 29, 2014, as document number 2014000036369 (“**Agreement**”) attached hereto as Exhibit “C” and incorporated herein by reference for a term of ten (10) years.

C. On November 20, 2018, the City approved Coastal Development Permit No. CD2017-039 to allow the demolition of the eighteen (18) existing tennis courts and construction of the Tennis Club, Villas and Bungalows at the Tennis Property, however, the **Agreement** was not amended or modified.

D. **City** and **Property Owner** entered into the First Amendment to Development Agreement between the City of Newport Beach and Golf Realty Fund pursuant to Ordinance No. 2022-16 and recorded in the Official Records of Orange County on XX, XXXX, as document (“**First Amendment**”), attached hereto as Exhibit “D” and incorporated herein by reference.

E. The Parties now wish to enter into this Second Amendment to increase the number of tennis courts from seven (7) to eight (8), increase the number of hotel rooms from twenty-seven (27) to forty-one (41), increase the gross floor area of ancillary hotel uses by four thousand six hundred eight-six (4,686) square feet, and construct three (3) attached condominium units and two (2) single-family residences in lieu of five (5) single-family residences.

F. On September 8, 2022, the Planning Commission held the public hearing on the **Second Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2022-022, recommending the City Council approve the **Second Amendment**.

G. On September 27, 2022, the City Council held a noticed public hearing on the **Second Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. On October 13, 2022, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held the second reading and adopted Ordinance No. 2022-___ approving the **Second Amendment**.

H. This **Second Amendment** is consistent with the City of Newport Beach General Plan (“General Plan”), including without limitation the General Plan’s designation of the Property as “MU-H3/PR” (Mixed Use Horizontal /(Parks and Recreation) (Anomaly 46); Coastal Land Use Plan designation as “MU-H/PR (Mixed Use Horizontal / Parks & Recreation”); the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10, and amended in 2022 by Ordinance No. 2022-___ in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan; and Newport Beach Country Club Planned Community Development Plan No. PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2 and amended on October 13, 2022 by Ordinance No. 2022-___.

I. In recognition of the significant public benefits that this **Second Amendment** provides, the City Council finds that this **Second Amendment**: (i) is consistent with the City of Newport Beach General Plan as of the date of its adoption; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City’s police power; (iv) is consistent and has been approved consistent with the Addendum No. ND2022-001 to the previously adopted Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as “**MND**”) for the Newport Beach Country Club Planned Community District (PA2021-260 amending PA2005-002) approved by the City Council, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 City of Newport Beach Municipal Code (“**NBMC**”).

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Definitions. Section 1 of the Agreement is hereby amended to add or revise the following definitions. Unless added or revised, all other definitions set forth in Section 1 of the Agreement shall remain unchanged:

“Adopting Ordinance” shall mean City Council Ordinance No. 2022-___ approving and adopting this Second Amendment.

“Agreement” shall mean this Development Agreement, as the same may be amended from time to time including, the First Amendment and Second Amendment.

“Agreement Date” shall mean October 13, 2022 which date is the date the City Council adopted the Adopting Ordinance.

“Development Plan” shall mean the Newport Beach Planned Community Development Plan Amendment No. PC2021-001 adopted by Ordinance No. 2022-___ which amends Newport Beach Planned Community Development Plan No. PC2005-002; Vesting Tentative Tract Map Amendment No. NT2021-002 adopted by Resolution No. 2022-___ which amends Vesting Tentative Tract Map No. NT2005-003; Site Development Review Amendment No. SD2021-004 adopted by Resolution No. 2022-___ which amends Site Development Review No. SD2011-002; Limited Term Permit No. XP2022-007 adopted by Resolution No. 2022-___ which amends Limited Term Permit No. XP2011-004; General Plan Amendment No. GP2021-004; Coastal Development Permit No. CD2021-068 adopted by Resolution No. 2022-___ which amends Coastal Development Permit No. CD2017-039; and Local Coastal Program Implementation Plan Amendment No. LC2021-004 adopted by Ordinance No. 2022-___.

“Development Regulations” shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Property Owner’s rights set forth in this agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Property Owner in writing: the General Plan, the Coastal Land Use Plan, the Development Plan, the Local Coastal Program Implementation Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), Title 20 of the Municipal Code (planning and zoning) and Title 21 of the Municipal Code (local coastal program implementation plan), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance, the Development Plan, or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and the Development Regulations; or (iii) if a lawsuit is timely filed challenging the validity of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan and/or the applicable Development Regulations, which such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date

occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“Project” shall mean all on-site and off-site improvements that Property Owner is authorized and/or may be required to construct with respect to each parcel of the Property, as provided in this Second Amendment and the Development Regulations, as amended by this Second Amendment, and/or as the same may be modified or amended from time to time consistent with this Second Amendment and applicable law.

2. Term of Agreement. Section 2.4 of the Agreement is hereby amended in its entirety to read as follows:

The term of this Agreement (“Term”) shall commence on the Effective Date of Second Amendment and shall terminate on the “Termination Date.”

Notwithstanding any other provision set forth in this Agreement to the contrary, if any Party reasonably determines that the Effective Date of Second Amendment will not occur because (i) the Adopting Ordinance of Second Amendment or any of the Development Regulations approved on or before the Agreement Date of Second Amendment for the Project has/have been disapproved by City’s voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance of Second Amendment, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date of Second Amendment such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party’s rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Property Owner’s indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall be repealed by the City after delivery of said notice of termination except for the Development Regulations that have been disapproved by City’s voters at a referendum election and, therefore, never took effect.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Property Owner’s complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term “Lot Termination Date” for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year), individually or in a “bulk” of four or fewer lots, to a member of the public or other ultimate

user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefit Fee. Section 3.1 of the Agreement is hereby amended in its entirety to read as follows:

As consideration for City's approval and performance of its obligations set forth in this Agreement, Property Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the total sum of five hundred two thousand two hundred fifty dollars (\$502,250.00) broken down as follows: (i) ninety-three thousand dollars and 00/100 (\$93,000.00 per residential dwelling unit) for a sum of four hundred sixty-five thousand dollars and 00/100 (\$465,000.00) for the residential units; and (ii) ten dollars and 00/100 (\$10.00) per square foot of construction for the three thousand seven hundred twenty-five (3,725) square foot Tennis Clubhouse for a sum of thirty-seven thousand two hundred fifty dollars (\$37,250.00). with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Property Owner shall pay the Public Benefit Fee at the following time(s): (i) As to the residential dwelling units, prior to the issuance of the first building permit for any residential unit; and (ii) as to the tennis clubhouse, prior to the issuance of the first building permit. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement, City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. The Public Fee Benefit Fee shall be calculated based on the total square feet of construction for the tennis clubhouse. Property Owner shall not be entitled to any credit or offset to the Public Benefit Fee for any existing buildings or structures. Property Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Property Owner's vesting rights to be acquired hereunder, and that Property Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth

and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Property Owner's default, if Property Owner shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Development Plan.

4. Amendment or Cancellation of Agreement. Section 5 of the Agreement is hereby amended in its entirety to read as follows

This Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and Newport Beach Municipal Code Section 15.45.070 or by unilateral termination by City in the event of an uncured default of Property Owner.

5. Procedure. Section 7.3 of the Agreement is hereby amended in its entirety to read as follows:

The Zoning Administrator shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Property Owner has, for the period under review, complied with the terms of this Agreement. If the Zoning Administrator finds that Property Owner has so complied, the annual review shall be concluded. If the Zoning Administrator finds, on the basis of substantial evidence, that Property Owner has not so complied, written notice shall be sent to Property Owner by first class mail of the Zoning Administrator's finding of non-compliance, and Property Owner shall be given at least ten (10) calendar days to cure any noncompliance that relates to the payment of money and thirty (30) calendar days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) calendar days for reasons which are beyond the control of Property Owner, Property Owner must commence the cure within such thirty (30) calendar days and diligently pursue such cure to completion. If Property Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

6. General Provisions. Section 8.1 of the Agreement is hereby amended in its entirety to read as follows:

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (twenty (20) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured ("Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the

foregoing, the City is not required to give Property Owner notice of default and may immediately pursue remedies for a Property Owner Default that result in an immediate threat to public health, safety or welfare.

7. Full Force and Effect. Except as modified by this **Second Amendment**, the entire **Agreement**, First Amendment its exhibits, and the exhibits attached hereto, are incorporated herein to this **Second Amendment** and shall remain in full force and effect.

8. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

9. Recordation. The City Clerk shall record this **Second Amendment** in the Office of the County Recorder of the County of Orange within the period required by California Government Code Section 65858.5 and Section 15.45.100 of the NBMC.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

“PROPERTY OWNER”

GOLF REALTY FUND, a California
limited partnership

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH, a California
municipal corporation

By: _____
Kevin Muldoon, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

- Attachments: Exhibit A – Legal Description of Property
 Exhibit B – Depiction of Property
 Exhibit C – Development Agreement Recorded January 29, 2014
 Exhibit D – First Amendment to Development Agreement

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCELS A, B, C AND D OF PARCEL MAP 2016-151, LOCATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 402 PAGES 24 THROUGH 32 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXHIBIT B

DEPICTION OF PROPERTY

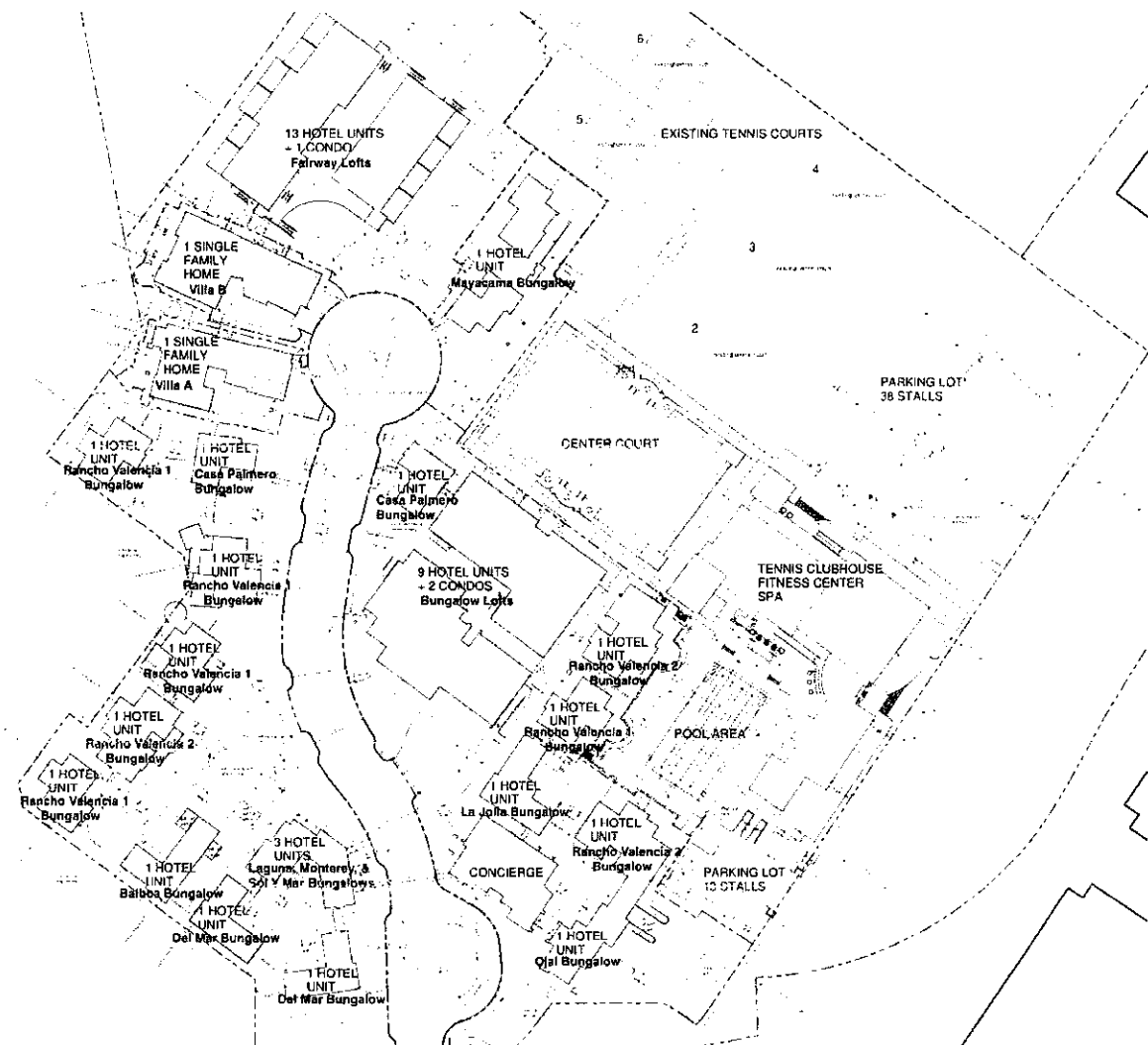


EXHIBIT C

**DEVELOPMENT AGREEMENT BETWEEN CITY OF NEWPORT BEACH AND
GOLF REALTY FUND RECORDED JANUARY 29, 2014**

Available separately due to bulk at:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/development-agreements>

EXHIBIT D

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN CITY OF
NEWPORT BEACH AND GOLF REALTY FUND**

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This First Amendment is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED AT TENNIS CLUB AT NEWPORT BEACH
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “**First Amendment**”) is entered into and effective on the date it is recorded with the Orange County Recorder (“**Effective Date**”) by and between the CITY OF NEWPORT BEACH (“**City**”), and GOLF REALTY FUND, a California limited partnership “**Property Owner**”). **City** and **Property Owner** are sometimes collectively referred to in this **First Amendment** as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. **Property Owner** is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“**Property**”). The Property consists of approximately seven (7) acres within the area shown on the City’s Zoning Map as the Newport Beach Country Club Planned Community District. The Property comprises the Tennis Club at Newport Beach site shown on Exhibit “B” which consists of The Villas Sub-Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. **City** and **Property Owner** entered into that certain Development Agreement between the City of Newport Beach and Golf Realty Fund dated March 27, 2012, and recorded in the Official Records of Orange County on January 29, 2014, as document number 2014000036369 (“**Agreement**”) attached hereto as Exhibit “C” with a ten (10) year term.

C. On November 20, 2018, the City approved Coastal Development Permit No. CD2017-039 to allow the demolition of the 18 existing tennis courts and construction of the Tennis Club, Villas and Bungalows at the Tennis Property, however, the **Agreement** was not amended or modified.

D. The Parties now wish to enter into that **First Amendment** extending the term for an additional year and updating certain provisions.

E. On May 12, 2022, the Planning Commission opened the noticed public hearing on this **First Amendment** and continued the item to May 26, 2022.

F. On May 26, 2022, the Planning Commission held the public hearing on this **First Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2022-008, recommending the City Council approve this **First Amendment**.

G. On June 28, 2022, the City Council held a noticed public hearing on this **First Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. On July 12, 2022, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held the second reading and adopted Ordinance No. _____ approving this **First Amendment**.

H. This **First Amendment** is consistent with the City of Newport Beach General Plan (“General Plan”), including without limitation the General Plan’s designation of the Property as “MU-H3/PR” (Mixed Use Horizontal /(Parks and Recreation) (Anomaly 46); Coastal Land Use Plan designation as “MU-H/PR (Mixed Use Horizontal / Parks & Recreation”); the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10 in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan; and Newport Beach Country Club Planned Community Development Plan No PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2.

I. The City Council finds that this **First Amendment**: (i) is consistent with the City of Newport Beach General Plan as of the date of this **First Amendment**; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City’s police power; (iv) is consistent and has been approved consistent with the Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as “**MND**”) for the Newport Beach Country Club Planned Community District (PA2005-002) approved by the City Council, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 City of Newport Beach Municipal Code (“**NBMC**”).

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Term of Agreement. Section 2.4 of the Agreement is hereby amended in its entirety to read as follows:

“The term of this Agreement (the “Term”) shall commence on the Effective Date and continue until _____ 2023, unless otherwise terminated or modified pursuant to its terms.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.”

2. Attorneys’ Fees. Section 8.10 of the Agreement is hereby amended in its entirety to read as follows:

“In any judicial proceeding, arbitration, or mediation (collectively, an “Action”) between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall not recover any of its costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include, but are not limited to, court costs, expert witness fees, attorneys’ fees, City staff costs (including overhead), and costs of investigation and preparation before initiation of the Action.”

3. Notices. Section 13.1 of the Agreement is hereby amended in its entirety to read as follows:

“Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Manager

With a copy to: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Attorney

TO PROPERTY OWNER: Golf Realty Fund
One Upper Newport Plaza
Newport Beach, CA 92660
Attn: Robert O’Hill

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter, notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.”

4. Full Force and Effect. Except as modified by this **First Amendment**, the entire **Agreement**, its exhibits, and the exhibits attached hereto, are incorporated herein to this **First Amendment** and shall remain in full force and effect.

5. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

6. Recordation. The City Clerk shall record this **First Amendment** in the Office of the County Recorder of the County of Orange within the period required by California Government Code Section 65858.5 and Section 15.45.100 of the NBMC.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

“PROPERTY OWNER”

GOLF REALTY FUND, a California
limited partnership

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH, a California
municipal corporation

By: _____
Kevin Muldoon, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

Attachments: Exhibit A – Legal Description of Property
 Exhibit B – Depiction of Property
 Exhibit C – Development Agreement Recorded January 29, 2014

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

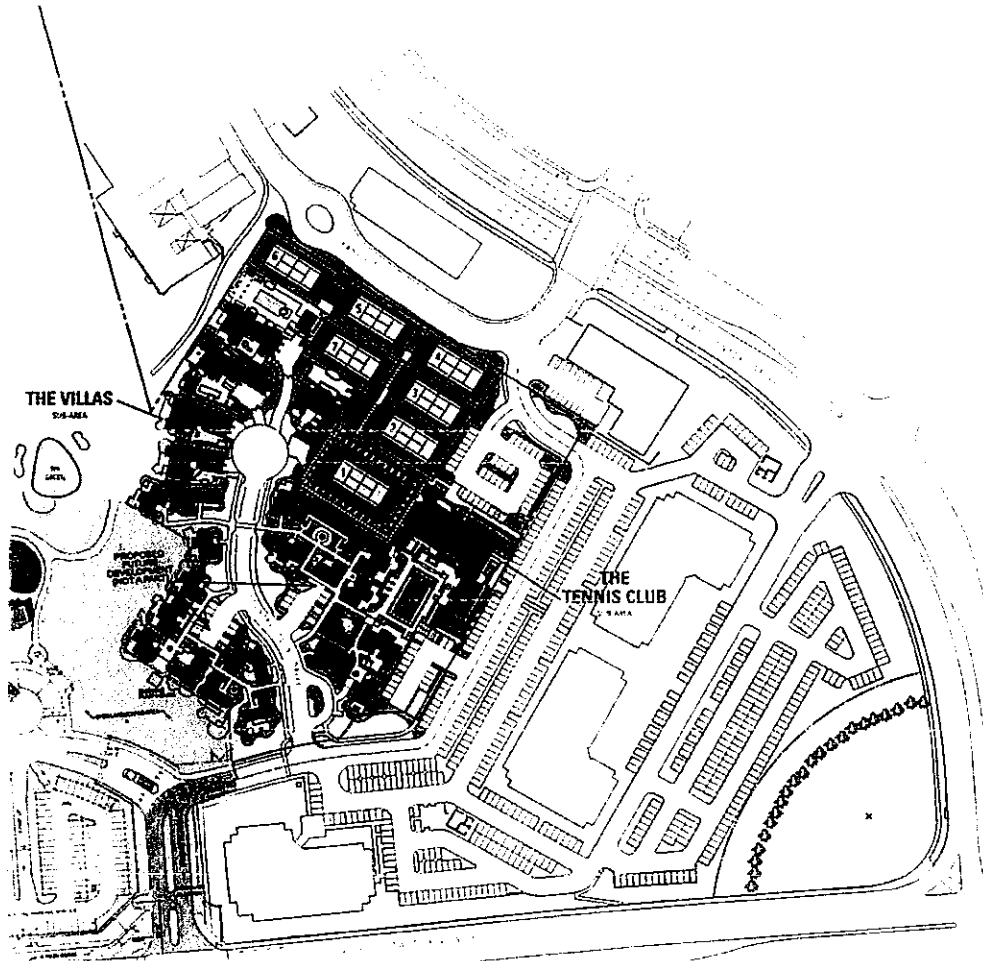
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1 and Parcel 2 of Parcel Map 94-102, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 316, Pages 3 to 6, inclusive, of Parcel Maps, in the office of the County Recorder of Orange County.

EXHIBIT B

DEPICTION OF PROPERTY



MASTER PLAN

- **THE TENNIS CLUB**
 - 1 new stadium court
 - Tennis Clubhouse
- **THE VILLAS**
 - 5 single family homes
- **THE BUNGALOWS**
 - 27 guest rental units
- **THE GOLF CLUB**

EXHIBIT “F”

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division

1. The project shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to compliance with all applicable submittals approved by the City of Newport Beach (“City”) and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *Notwithstanding the legislative actions (ie. General Plan Amendment, Planned Community Development Plan, and Local Coastal Program Amendment) activities reviewed under Planning Activity No. PA2021-260 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted by the City for a period of time provided for in the Development Agreement pursuant to the provisions of California Government Code Section 66452.6(a).*
4. *The Vesting Tentative Tract Map Amendment, as reviewed under Planning Activity No. PA2021-260, shall expire in accordance with the Subdivision Code, unless an extension is otherwise granted consistent with the Subdivision Code and Subdivision Map Act. The expiration date shall be extended for the unexpired term of the Second Amendment to Development Agreement between City of Newport Beach and Golf Realty Fund.*
5. *The project shall consist of the followings:*
 - a. *Tennis Club: A 3,725 square-foot tennis clubhouse and eight (8) tennis courts;*
 - b. *Hotel: Forty-one (41) hotel rooms of 47,484 square feet, a 2,200 square-foot concierge and guest meeting facility, a 7,500 square-foot spa/fitness center, and 4,686 square feet of ancillary uses; and*
 - c. *Residential: two (2) single-family units and three (3) condominium units*
6. *Pickleball courts shall not be permitted after the issuance of a Certificate of Occupancy for the Tennis Clubhouse and Spa and Fitness Center unless the property owner and/or pickleball facility operator follows any and all City of Newport Beach General Plan, Municipal Code, or other applicable requirements in order to continue the use of pickleball courts.*

7. *The project shall be subject to all applicable development standards prescribed in Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260, for the Tennis Club site, such as but not limited to, building height, building setbacks, parking, lighting, sign standards, etc.*
8. *Upon the effective date of Local Coastal Program Implementation Plan Amendment, as reviewed under Planning Activity No. PA2021-260, Site Development Permit No. SD2011-002, Limited Term Permit No. XP2011-004, and Vesting Tentative Map No. NT2005-003, approved for the Approved Project, shall be deemed of no further force.*
9. *The temporary modular building to accommodate on-going tennis club operation during the construction of new tennis clubhouse shall be located on the existing tennis courts, shall not interfere with the construction activities or parking, and shall be removed from the project site upon completion/occupancy of the new clubhouse.*
10. *Prior to the issuance of a building permit, the applicant shall pay all applicable development fees (i.e. school, park in-lieu, transportation corridor agency), unless otherwise addressed separately in the Development Agreement.*
11. *Prior to recordation of the Final Tract Map and the issuance of building permits, the Final Tract Map shall be signed by all of the current record owners of the property, which presently include: (1) Elliot Feuerstein as Managing Member of Mesa Shopping Center-West LLC; (2) Elliot Feuerstein as Managing Member of Mesa Shopping Center-East LLC; (3) Irving Chase as General Partner of Fainbarg III L.P.; and (4) Robert O Hill as Executive Director of Golf Realty Fund LP.*
12. Any substantial change to the approved plans, shall require an amendment to all non-legislative activities reviewed under Planning Activity No. PA2021-260, or the processing of new permits.
13. This Site Development Review, Coastal Development Permit, and Limited Term Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
14. A copy of the Resolution, including conditions of approval Exhibit "F" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
15. *Prior to the issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Site Development Review file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Site Development Review and shall*

highlight the approved elements such that they are readily discernible from other elements of the plans.

16. Prior to the issuance of a building permit, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.
17. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
18. *Prior to the final of issuance of a certificate of occupancy, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.*
19. Prior to the issuance of a building permit, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
20. *Lighting shall be in compliance with applicable standards of Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260 and Section 20.30.070 of the Newport Beach Municipal Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" and up-lighting type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.*
21. The entire project shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Newport Beach Municipal Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
22. *Prior to the final of issuance of a certificate of occupancy or final of building permits for each component of the project (i.e. residential, hotel, or tennis club), the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.*
23. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
24. All noise generated by the proposed use shall comply with the provisions of Chapter

10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

25. *The construction and equipment staging area for each phase of the project shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.*
26. *A screen and security fence that is a minimum of six feet high shall be placed around the construction site during construction for each phase of the project.*
27. *Construction equipment and materials shall be properly stored on the site when not in use for each phase of the project.*
28. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
29. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
30. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development.
31. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
32. *All proposed signs shall be in conformance with the provision of the Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260, and Chapter 20.42 of the Newport Beach Municipal Code and shall be reviewed and approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.*

33. *The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate vehicular sight distance is provided.*
34. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of ***The Tennis at Newport Beach Project Amendment*** including, but not limited to, ***General Plan Amendment, Local Coastal Land Use Plan Amendment, Planned Community Development Plan Amendment, Amendment to Major Site Development Review No. SD2011-002, Amendment to Coastal Development Permit No. CD2017-039, Amendment to Vesting Tentative Tract Map No. NT2005-003, Amendment to Limited Term Permit No. XP2011-004, & Second Amendment to Development Agreement No. DA2008-001 (PA2021-260)***. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department

35. An automatic fire sprinkler system shall be required for the residential and hotel components of the project.
36. A fire alarm system shall be required for the hotel component of the project.
37. A Fire Master Plan shall be submitted to the Fire Prevention Division for approval. The plan shall include information on the following (but not limited to) subjects: fire department vehicle access to the project site, secondary emergency vehicle access, firefighter access (hose pull) around structures, fire lane identification, location of fire hydrants and other fire department appliances, and the location and type of gates or barriers that restrict ingress/egress.
38. All portions of the perimeter of all structures shall be located within 150' of a fire lane as measured along an approved route. A portion of the proposed structure exceeding this distance is considered "out of access" and shall be corrected during plan check review by one of the following methods:
 - a. Provide additional fire lanes to bring the entire structure "in access", or

- b. Propose an alternate form of mitigation via the Alternate Methods and Materials provisions of the fire code for the Fire Marshal's review. There is no guarantee that the Alternate Methods and Materials proposal will be approved as proposed.
39. Fire department access roads shall comply with Newport Beach Fire Guidelines C.01 and C.02.
 40. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.
 41. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the premises. Fire-flow requirements for buildings or portions of buildings and facilities shall be determined by Appendix B of the 2019 California Fire Code.
 42. Fire hydrants shall be spaced along fire department access roads in compliance with the 2019 California Fire Code Appendix C.
 43. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided.
 44. Additional facilities or changes to the current facilities shall require submitted plans to the Newport Beach Fire Prevention Division for all changes, additions and modifications to existing or new fire protection systems.
 45. The use or storage of portable propane heaters shall be prohibited. Heaters for future outdoor areas shall be fixed and plumbed with natural gas.
 46. All fire hydrants and fire access road shall be installed and approved by the Fire Department prior to the delivery of combustible material on site.

Building Division

47. Pursuant to CBC Chapter 1, Division 1.9, all temporary construction trailers, modular office buildings, and safe pedestrian passageways around the construction sites shall be disabled accessible.
48. All temporary modular office buildings shall be approved by the State of California for the proposed use.

49. Foundations for temporary construction trailers and modular office buildings shall be designed to provide anchorage for these structures against seismic and wind loads; and provided with temporary utility connections.
50. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
51. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment.

Off-Site Impacts

- Encourage car-pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent (10%) soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

52. Prior to the issuance of a grading permit, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State

Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.

53. Prior to the issuance of a grading permit, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur, and must show amount of stormwater retained prior to going into the proprietary filtration system.
54. A list of "good housekeeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

Public Works Department

55. The Final Tract Map shall be legible, scaled, dimensioned, and complete with all necessary pertinent information and details such as easement limits and descriptions; annotated lot lines, centerlines, and boundary lines; signature certificates; curve and line tables; etc.
56. The Final Tract Map shall be prepared on the California coordinate system (NAD88). Prior to Map recordation, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said Map in a manner described in the Orange County Subdivision Code and Orange County Subdivision Manual. **The Final Tract Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
57. Prior to recordation, the Final Map boundary shall be tied onto the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the City Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
58. A hydrology and hydraulic study and a master plan of water, sewer and storm drain facilities for the on-site improvements shall be prepared by the applicant and approved by the Public Works Department prior to Final Tract Map recordation.

59. Easements for public emergency and security ingress/egress, weekly refuse service, and public utility purposes on all private streets shall be dedicated to the City.
60. No structures shall be constructed within the limits of any utility easements.
61. All easements shall be recorded as a part of the Final Tract Map.
62. All applicable fees shall be paid prior to the City approval of the Final Tract Map.
63. Construction surety in a form acceptable to the City, guaranteeing the completion of the various required public improvements, shall be submitted to the Public Works Department prior to the City approval of the Final Tract Map.
64. Street, drainage and utility improvements shall be submitted on City standard improvement plan formats. All plan sheets shall be sealed and signed by the California licensed professionals responsible for the designs shown on the Plans.
65. All improvements shall be designed and constructed in accordance with the current edition of the City Design Criteria, Standard Special Provisions, and Standard Drawings.
66. All storm drains and sanitary sewer mains shall be installed with MacWrap.
67. All runoff discharges shall comply with the City's water quality and on-site non-storm runoff retention requirements.
68. New concrete sidewalks, curbs, gutters, curb disabled access ramps, roadway pavement, traffic detector loops, traffic signal devices, and street trees shall be installed along the development's Coast Highway frontage.
69. Public improvements may be required along the development's Granville Drive frontage upon building permit plan check submittal.
70. All on-site drainage, sanitary sewer, water and electrical systems shall be privately owned, operated, and maintained. The water system shall be owned operate and maintained by the City.
71. All curb return radii shall be 5-feet (5') minimum.
72. Each detached residential dwelling unit or bungalow building shall be served with an individual water service and sewer lateral connection.
73. All overhead utilities serving the entire proposed development shall be made underground.
74. ADA compliant curb ramps shall be installed within the interior parking area.

75. The intersection of the public streets, internal roadways, and drive aisle shall be designed to provide adequate sight distance per City of Newport Beach Standard Drawing Standard 105. Slopes, landscaping, walls, signs, and other obstructions shall be considered in the sight distance requirements. Landscaping within the sight lines (sight cone) shall not exceed 24-inches in height and the monument identification sign must be located outside the line of sight cone. The sight distance may be modified at non-critical locations, subject to approval by the Traffic Engineer.
76. Any damage to public improvements within the public right-of-way attributable to on-site development may require additional reconstruction within the public right-of-way at the discretion of the Public Works Inspector.
77. The parking lot and vehicular circulation system shall be subject to further review and approval by the City Traffic Engineer. Parking layout shall be per City Standard 805. Parking layout shall be full dimensioned. On-street parking spaces shall be 8 feet wide by 22 feet long. Drive aisles to parking areas shall be 26 feet wide minimum. The one-way drive aisle adjacent to the hotel's concierge office and guest meeting building shall be 14 feet wide minimum with no parking, otherwise the drive aisle shall be widened to accommodate parking.
78. Cul-de-sacs shall comply with City Standards 102 and 103 and shall have a minimum diameter of 80 feet curb to curb.
79. County Sanitation District fees shall be paid prior to the issuance of any building permits.
80. Prior to the issuance of a building permit, a sewer and water demand study shall be submitted for review by the Public Works and Utilities Department.
81. Prior to the commencement of demolition and grading of the project, the applicant shall submit a construction management plan (CMP) to be reviewed and approved by the Community Development Director, City Fire Marshal, and City Traffic Engineer. The plan shall include discussion of project phasing, parking arrangements during construction, anticipated haul routes and construction mitigation. Upon approval of the CMP, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved CMP.
82. Prior to the issuance of a building permit, a sewer system management plan shall be submitted for review and approval by the Public Works and Utilities Department.
83. Prior to the issuance of a building permit, various water and sewer easement for City mains located on the adjacent properties shall be obtained and conveyed to the City.
84. A storm drain easement on behalf of the project shall be obtained from the adjacent property owner prior to issuance of a building permit. Provide documentation of said easement.

85. The City sewer manhole located within 1600 East Coast Highway shall be relocated to an area outside of the landscape and parking stalls. The manhole location shall be accessible at all time. A new sewer easement shall be provided for the sewer manhole and sewer main within the 1600 East Coast Highway property.
86. The public sewer connection to the OCSD main shall utilize the existing OCSD manhole located within East Coast Highway unless otherwise approved by OCSD and the City. Final design shall be approved by OCSD and the City.
87. The existing private sewer main from the proposed point of connection to the City's manhole located near East Coast Highway shall be video inspected and any damage repaired prior.
88. Utility easements shall be provided for all City water meters, fire hydrants, valves and back flow devices.