

Mira Mesa Shopping Center - West, LLC Item No.15

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September 23, 2022

DELIVERED VIA EMAIL ONLY: citycouncil@newportbeachca.gov

Newport Beach City Council
City of Newport Beach
100 Civic Center Drive
P.O. Box 1768
Newport Beach, CA 92658-8915

**Re: September 27, 2022, City Council Agenda
Objection to Agenda Item No. 15
Project No. PA2021-260**

Dear Honorable City Council Members:

We write to you today to express our objection to Agenda Item No. 15. As you may know, we own 50% of the property at 1602 East Coast Highway (“Tennis Property”), where The Tennis Club at Newport Beach is located. Our co-owner Golf Realty Fund, LP (“GRF”) owns the other 50% of the Tennis Property; Robert O Hill represents GRF. We and GRF hold our ownership interests in the Tennis Property as tenants in common, not as an LLC or partnership, which means the individual owners retain significant rights.

Our families have lived in the City of Newport Beach (“City”) since the 1920s, and we own and operate a number of commercial, residential, and recreational properties throughout the City. For example, one our families’ patriarchs, Alan Fainbarg, operated one of the first beach rental shops on Bay Avenue on the Balboa Peninsula in the 1930s. We have the interests of the City at heart, and as generational families with deep roots here we see it as our duty to be involved with and to give back to this community, which we have done and continue to do, including through our philanthropic work.

As you may know, we are engaged in an arbitration with GRF to establish rights and obligations of the owners under our private Owners in Common Agreement¹ for the Tennis Property (“OIC Agreement”). A central issue in the arbitration proceeding is whether GRF has the authority to unilaterally apply for the plans and entitlements for the Tennis Property that are before the City Council on September 27, 2022. It is our position that GRF does not have the authority under the OIC Agreement to apply for the plans and entitlements without our consent. That said, we recognize this is a private dispute between private parties, and we are not seeking to involve the City in our private dispute. Instead, we are giving you this background information to help you understand our objection to the proposed planning application and its approvals and entitlements, which is further explained in the attached Arbitration Demand.

¹ A copy of the OIC Agreement is attached as Exhibit A to the Arbitration Demand from the pending arbitration, and a copy of the Arbitration Demand is enclosed with this correspondence as Exhibit 1 and is hereby incorporated by reference as if fully set forth herein.

Also, we attended the City's Planning Commission hearing on September 8, 2022, where we expressed to City staff and commissioners (among other things) our long-term commitment to pickleball at the Tennis Club. We recognize the explosion of pickleball as a sport and realize its growing popularity in our community and the club members' desire for pickleball. In fact, we have been working on a lease with a prominent Newport Beach business operator that would: preserve the club, preserve the pickleball courts, preserve the tennis courts and significantly upgrade the club's facilities. The lease would be for 10 years and can be extended for an additional 10 years should the tenant so desire – making the total possible term 20 years. We sent this lease to Mr. O Hill and we hope he gives it fair consideration.

We also expressed at the September 8th Planning Commission hearing our concern that the plans and entitlements for which GRF is applying do not provide for pickleball courts or reflect pickleball as a future use at the Tennis Club. We also understood the City staff and commissioners to say at the September 8th hearing that not only does GRF's plans not provide for pickleball at the Tennis Club but if GRF's project were to be approved and constructed that pickleball would be eliminated as a use at the Tennis Club. We hope that we could all agree that elimination of pickleball would not be good for the pickleball members nor the future of the Tennis Club.

We were likewise very concerned to hear a statement read at the September 8th Planning Commission hearing on behalf of an apparently large contingency of club members who oppose GRF's project but did not attend the hearing out of fear because Mr. Abdali allegedly threatened to kick such members out of the Tennis Club if they did attend and oppose the project. We have heard that, unlike the Planning Commission hearing and despite the alleged threats against them, members from the Tennis Club may appear at the City Council hearing to express their dissatisfaction with GRF's project.

Thank you for your consideration of our letter. We appreciate the service you perform for our shared community.

Sincerely,

Brett Feuerstein

Brett Feuerstein
as Manager of
Mesa Shopping Center-East, LLC
and Mira Mesa Shopping Center-West, LLC

Ryan Chase

Ryan Chase
as Manager of Fainbarg III, LP

cc: Grace K. Leung, City Manager (gleung@newportbeachca.gov)
Seimone Jurjis, Community Development Director (sjurjis@newportbeachca.gov)
Robert O Hill, Golf Realty Fund (roh@golfrealtyfund.com)

Enclosures: **Exhibit 1**: March 25, 2022, Arbitration Demand from the Pending Arbitration with Exhibit A only; Exhibits B to H to the Arbitration Demand can be provided upon request

Exhibit 1

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9

10 Attorneys for Claimants
MESA SHOPPING CENTER-EAST, LLC
11 MIRA MESA SHOPPING CENTER-WEST, LLC and
FAINBARG III, LP
12

13 **JUDICIAL ARBITRATION AND MEDIATION SERVICES**
14 **ARBITRATION PROCEEDING – ORANGE COUNTY OFFICE**
15

16 MESA SHOPPING CENTER-EAST, LLC, a
California limited liability company; MIRA
17 MESA SHOPPING CENTER-WEST, LLC, a
California limited liability company; and
18 FAINBARG III, LP, a California limited
partnership,
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20 Claimants,

21 v.

22 GOLF REALTY FUND LP, a California
limited partnership fka O HILL PROPERTIES,
23 a California limited partnership,
24

Respondent.

JAMS Case No. 5200000090

**CLAIMANTS' DEMAND FOR
ARBITRATION AND STATEMENT OF
CLAIMS FOR:**

- 25 **(1) DECLARATORY AND
INJUNCTIVE RELIEF;**
- 26 **(2) BREACH OF CONTRACT;**
- 27 **(3) BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR
DEALING;**
- 28 **(4) ACCOUNTING; AND**
- (5) DECLARATORY RELIEF**

26 Claimants Mesa Shopping Center-East, LLC, Mira Mesa Shopping Center-West, LLC,
27 and Fainbarg III, LP (collectively "**Co-Owners**" or "Claimants"), hereby allege as follows:
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1 **I. INTRODUCTION**

2 1. The parties, tenant in common owners of the approximate 7-acre Newport Beach
3 tennis club property commonly known as 1602 E. Coast Highway, Newport Beach, CA 92660
4 (the “**Tennis Property**”), are no strangers to arbitration. This action marks their fifth such
5 proceeding. In 2013, Respondent obtained an arbitration award that allowed him to complete a
6 few remaining discretionary entitlements, which he had been pursuing for almost 15 years, for his
7 so-called “master plan” to redevelop the Tennis Property. In 2020, Co-Owners obtained an
8 arbitration award finding they had not consented, and were not required to consent, to
9 Respondent’s master plan to redevelop the Tennis Property. It was also established at the 2020
10 arbitration that Respondent had finished processing the few remaining discretionary entitlements
11 for his master plan. Thus, any right Respondent had under the 2013 award to process his
12 discretionary entitlements had run its course.

13 2. Co-Owners were surprised to learn in late November 2021 that Respondent was
14 applying for new entitlements for the Tennis Property without their knowledge or consent.
15 Respondent submitted new entitlement applications to the City of Newport Beach (the “**City**”)
16 over Co-Owners’ instructions that he did not have their consent—express or implied—to process
17 any more entitlements or to spend ownership funds doing so. Respondent concealed from Co-
18 Owners that he had submitted new applications, and when Co-Owners finally learned of the new
19 entitlement applications, they made multiple requests to Respondent in writing to stop and to
20 provide them with information about his entitlement applications. Respondent ignored Co-
21 Owners’ requests.

22 3. Co-Owners also learned in December 2021 that Respondent had allowed a new
23 operator to start a restaurant at the Tennis Property without obtaining the Co-Owners’ consent as
24 required under the parties’ written agreement for the Property, and that Respondent had submitted
25 a liquor license application purportedly on behalf of the Property ownership along with that
26 operator without notifying Co-Owners. Co-Owners then discovered in February 2022 that alcohol
27 was being sold at the Tennis Property without a liquor license. Co-Owners asked Respondent in
28 writing for basic information about the new operator at the Tennis Property, including to be

1 provided any purported lease with the operator, and that Respondent stop the unlawful sale of
2 alcohol. Respondent ignored their request for information and Co-Owners are informed and
3 believe, and thereon allege, that alcohol continues to be sold at the Tennis Property without a
4 license.

5 4. Respondent is ignoring Co-Owners' rights and his duties to them by treating the
6 Tennis Property as though it is his to do with as he pleases. Respondent has spent significant
7 ownership funds while failing to respond to Co-Owners' requests for basic information and
8 running afoul of his limited duties as managing owner. Rather than cooperate and seek to work
9 toward a consensus with Co-Owners, Respondent is attempting to present them with a *fait*
10 *accompli* for his development project for the Tennis Property while exposing them to real liability
11 by placing an operator at the Property without Co-Owners' consent and allowing that operator to
12 unlawfully sell alcohol. Co-Owners bring this arbitration to remove Respondent as managing
13 owner or, alternatively, to enjoin him from further breaches of his agreement with Co-Owners.

14 **II. THE PARTIES**

15 5. Claimant Mesa Shopping Center-East, LLC ("Mesa East"), is a California limited
16 liability company with its principal place of business in the City of San Diego.

17 6. Claimant Mira Mesa Shopping Center-West, LLC ("Mesa West"), is a California
18 limited liability company with its principal place of business in the City of San Diego.

19 7. Claimant Fainbarg III, LP ("Fainbarg III"), is a California limited partnership with
20 its principal place of business in the City of Costa Mesa.

21 8. Co-Owners are informed and believe, and thereon allege, that Respondent Golf
22 Realty Fund, LP ("GRF" or "Respondent"), is a California limited partnership, which is managed
23 by Robert O Hill, with its principal place of business in the City of Newport Beach.

24 **III. VENUE AND JURISDICTION**

25 9. This action stems from the Agreement Between Real Property Owners – Balboa
26 Bay Club Racquet Club of March 8, 1994 (the "**OIC Agreement**"), for the Tennis Property, the
27 legal description of which is set forth in Exhibit A to the OIC Agreement. **Exhibit A** attached
28 hereto is a copy of the OIC Agreement.

1 the Tennis and Golf Properties. As both Properties were under long-term triple net leases to
2 tenants, the fundamental job of O Hill was to collect rents, pay the minimal expenses associated
3 with overseeing the Properties, and then pay distributions to all the tenant in common owners.

4 15. The OIC Agreement provides the managing owner with only limited authority
5 over the Tennis Property, as most decisions are reserved to the tenant in common owners or
6 require at least a majority vote. For example, before O Hill (as the managing owner) could make a
7 material expenditure for a capital improvement at the Tennis Property he must first obtain the
8 written consent of at least one of the Co-Owners. *See* OIC Agreement § 7(d). Similarly, any
9 conveyance of an interest in the Tennis Property, including a leasehold interest, must be in a
10 writing signed by all the owners. *Id.* § 3. Aside from the limited powers given to the managing
11 owner to collect rents and pay ordinary expenses, the OIC Agreement expressly provides that
12 each tenant in common owner retains the right to deal with his interest in the Tennis Property as
13 such owner sees fit. *Id.* § 1.

14 **B. History of Problems with O Hill's Management**

15 **1. Past Problems with Tennis Property**

16 16. Early on, in the 1990s, O Hill explored ways to redevelop the Tennis Property. He
17 sought to rezone the Tennis Property from open space recreational to a mixed use, which would
18 allow commercial and residential development. Co-Owners were supportive of O Hill's initial
19 efforts to obtain an upzoning of the Tennis Property from open space to mixed use and had no
20 objection to his use of limited ownership funds for that purpose. O Hill developed several ideas
21 for possible site plans but spent relatively modest amounts of ownership funds doing so.

22 17. In around 2007, however, O Hill started spending considerable amounts of
23 ownership funds, prompting Co-Owners to begin asking questions and requesting information to
24 better understand both what O Hill planned, and the underlying economics of a possible Tennis
25 Property redevelopment. O Hill only reluctantly turned over information for his development plan
26 for the Tennis Property, which O Hill referred to as his "**Master Plan**," which involved obtaining
27 discretionary entitlements for the Tennis Property for the following three specific uses: 5 single
28 family residential units (referred to as the villas), 7 tennis courts with a new tennis clubhouse/spa

1 building, and a hotel with 27 rooms (referred to as the bungalows).

2 18. Within a year or so of initiating their fact-finding process, it became apparent to
3 Co-Owners that O Hill's proposed Master Plan did not maximize the Tennis Property's value for
4 all the tenant in common owners, or that O Hill at least had not provided Co-Owners with
5 meaningful information to support his proposed Master Plan's economics. It was also apparent
6 that O Hill's Master Plan was really about his personal interests in developing the Tennis
7 Property even though those interests were not shared by Co-Owners, and he was pursuing those
8 interests at Co-Owners' expense. On February 20, 2008, Co-Owners asked O Hill in writing to
9 stop – formally objecting to his further processing discretionary entitlements for his Master Plan.
10 Rather than stop, O Hill ramped up his spending of ownership funds on his discretionary
11 entitlements for his proposed Master Plan.

12 2. 2011-13 Arbitration with Judge Fromholz

13 19. In April 2011, the Co-Owners commenced a JAMS arbitration proceeding with
14 Hon. Judge Hayley Fromholz (Ret.) to enjoin O Hill from further processing his discretionary
15 entitlements for his Master Plan. Judge Fromholz issued his decision in May 2013. **Exhibit B**
16 attached hereto is a true and correct copy of Judge Fromholz' May 17, 2013, Final Award.

17 20. Judge Fromholz found the OIC Agreement did not expressly give O Hill (as
18 managing owner) expansive powers, and that the Agreement was ambiguous in that it neither
19 clearly authorized nor restricted O Hill from pursuing the discretionary entitlements for his
20 Master Plan: "The Agreements do not expressly give the Managing Owner expansive powers. For
21 example, Recital C of the Agreements states merely that the 'Owners ... believe it necessary and
22 appropriate to have one Owner be the managing Owner for purposes of accounting and
23 administration.' (Fromholz Award at 8, underline added.)

24 21. In addition to finding the OIC Agreement was ambiguous, Judge Fromholz
25 concluded that Co-Owners had sat on the sidelines and waited too long to protest the few
26 remaining discretionary entitlements O Hill was processing for his Master Plan. Judge Fromholz
27 found that O Hill could finish the limited work left to complete the discretionary entitlements for
28 his Master Plan since he had purportedly been pursuing them for almost 15 years and very little

1 remained for O Hill to do (hereinafter, “**2012 Discretionary Entitlements**”): “At the time that
2 [Co-Owners] voiced their objection in February 2008, O Hill had been actively pursuing the
3 discretionary entitlements for nearly fifteen years. Voters approved the general amendment and
4 the only remaining [discretionary] entitlements were the development standards such as height
5 limits, landscaping, vehicle access, and parking. Thus, very little remained to complete the NBCC
6 Plan.” (*Id.* at 9, underline added.)

7 22. Judge Fromholz found that, as of May 2013, the only items that remained for O
8 Hill to complete his 2012 Discretionary Entitlements were ministerial development standards:
9 “Currently, the development standards for the NBCC Land such as height limits, landscaping,
10 vehicle access, and parking, are still undetermined. The development standards are the final
11 discretionary entitlements for the NBCC Land. Proceedings are continuing to be held before the
12 City to determine the development standards.” (*Id.* at 4, underline added.)

13 3. 2015-16 Arbitration with Justice Sonenshine

14 23. Following the conclusion of the parties’ arbitration with Judge Fromholz, and for
15 almost two years, Co-Owners made multiple written requests to O Hill asking to be provided
16 meaningful information about his 2012 Entitlements and Master Plan. O Hill ignored Co-Owners’
17 requests. Thus, in April 2015, Co-Owners initiated another arbitration against O Hill, this time
18 with the Hon. Justice Sheila Prell Sonenshine (Ret.), to obtain an order allowing them to access
19 information concerning the work-product resulting from the hundreds of thousands of dollars of
20 ownership funds spent by O Hill on his 2012 Discretionary Entitlements and Master Plan, and to
21 enforce their contractual right to have an audit performed concerning those expenditures.

22 24. In August 2016, Co-Owners prevailed in the parties’ arbitration with Justice
23 Sonenshine and obtained the audit they were seeking, information concerning O Hill’s
24 expenditure of ownership funds on his Master Plan and O Hill’s stipulation to provide annual
25 written status and financial reports as required under section 7 of the OIC Agreement. Justice
26 Sonenshine also awarded Co-Owners their attorneys’ fees and costs as the prevailing parties.

27 4. 2017-20 Arbitration with Justice King

28 25. In 2017, O Hill sued Co-Owners seeking to force them to go along with the

1 development of his 2012 Discretionary Entitlements and Master Plan – i.e., the construction of a
2 27-room hotel, 5 villa residences, and a new tennis clubhouse and 7 courts. In March and May
3 2019, an evidentiary hearing was held with the Hon. Justice Jeffrey King (Ret.) at JAMS, and on
4 April 8, 2020, Justice King issued his Final Award. **Exhibit C** attached hereto is a true and
5 correct copy of Justice King’s April 8, 2020 Final Award, which was confirmed and entered as a
6 Judgment on March 26, 2021, in Orange County Superior Court Case No. 30-2020-01159790-
7 CU-PA-CJC.

8 26. By his Final Award, Justice King denied all of O Hill’s claims against the Co-
9 Owners and found in favor of the Co-Owners on all of their cross-claims against O Hill,
10 determining, among other things, that:

- 11 • Co-owners had not already consented, were not estopped from withholding
12 their consent, and had no duty to consent, under the OIC Agreement (or
13 otherwise) to the sale, lease or improvement of the Tennis Property as part of
14 O Hill’s 2012 Discretionary Entitlements and Master Plan.
- 15 • Under the OIC Agreement each owner has the unfettered right to refuse for any
16 reason to sell its interest the Tennis Property or any portion thereof.
- 17 • Relative to the leasing of the Tennis Property or portions thereof, no owner
18 may refuse to lease the Tennis Property or portions thereof for an objectively
19 unreasonable reason.
- 20 • The Co-owners’ refusal to consent to the sale or lease of, or construction of
21 improvements on, the Tennis Property as part of O Hill’s 2012 Discretionary
22 Entitlements and Master Plan was not objectively unreasonable.

23 (Justice King Final Award at 32-33.)

24 27. Also, O Hill acknowledged in the arbitration with Justice King that as of
25 November 2018, he had completed his 2012 Discretionary Entitlements (which, in 2013, Judge
26 Fromholz said he could finish processing since very little remained to complete them). Indeed,
27 Justice King made it a point to say in his Final Award that O Hill had **finally** completed his 2012
28 Discretionary Entitlements:

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Judge Fromholz states at page 4 of his decision, “[c]urrently, the development standards for the NBCC Land such as height limits, landscaping, vehicle access and parking are still undetermined. The development standards are the final discretionary entitlements for the NBCC Land. Proceedings are continuing to be held before the City to determine the development standards.” To a reader it somewhat leaves the impression that he believed the process of entitlements was near completion. Entitlements were not **completed** until about five and one-half years later.

(King Final Award at 5, fn. 3, emphasis added.)

* * * *

The master plan has three elements: there are 27 bungalows, 5 villas and the tennis club/spa. The tennis/spa building is an amenity for the bungalows and villas. The entity. By November 2018 he had: the Newport Beach Country Club Planned Community text, a zone change, site plan approval, state Water Quality Control Board approval, grading plan, storm drain plan, dry utility plans and street improvement plans, through plan check. They had all the entitlement approvals necessary to do the “bake-off.”

(*Id.* at 10, underline added.)

28. Thus, any right O Hill had to process his few remaining 2012 Discretionary Entitlements under Judge Fromholz’ award had run its course as of November 2018.

C. Ongoing Issues with O Hill’s Management

1. In November 2021, Co-Owners Learned O Hill Was Applying for and Processing New Entitlements for the Tennis Property with the City

29. Co-Owners prevailed in the 2015-16 arbitration with Justice Sonenshine because O Hill was spending significant ownership funds on his Master Plan while refusing to provide Co-Owners with information about such expenditures. Co-Owners prevailed in the 2017-2020

1 arbitration with Justice King because, after O Hill had finally completed his 2012 Discretionary
2 Entitlements, it was determined that under the OIC Agreement O Hill could not compel Co-
3 Owners to go along with the development of the Tennis Property as part of O Hill’s Master Plan,
4 and Co-Owners were not estopped from, nor being unreasonable, in withholding their consent to
5 O Hill’s Master Plan.

6 30. After Justice King issued his Final Award, Co-Owners sent O Hill a series of
7 letters on November 13, 2019, June 9, 2020 and July 28, 2020, putting him on notice that any
8 right he had to process his few remaining 2012 Discretionary Entitlements under Judge
9 Fromholz’ 2013 award (since O Hill had completed them) had run its course and that award did
10 not support O Hill processing new entitlements for the Tennis Property, that he did not have Co-
11 Owners’ consent to seek new entitlements and that he was not to spend ownership funds doing so.

12 31. Yet, in November 2021, Co-Owners discovered that O Hill, without their
13 knowledge or consent and over their objections, was seeking City approval for a new project he
14 had devised without Co-Owners’ input, which, Co-Owners are informed and believe, and thereon
15 allege, would significantly change his Master Plan by, without limitation, increasing the number
16 of hotel rooms from 27 to 41 (hereinafter the “**2021 Project**”).

17 32. Co-Owners are further informed and believe, and thereon allege, that for his 2021
18 Project, O Hill is applying for and processing, or that he intends to apply for and process, with the
19 City, the following new entitlements for the Tennis Property: General plan amendment, PC text
20 amendment, development agreement amendment, amendment to tract map, major site
21 development review amendment, limited term permit amendment, coastal development permit
22 amendment, traffic study and compliance with CEQA (hereinafter “**New 2021 Entitlements**”).

23 **Exhibit D** attached hereto are copies of O Hill’s Community Development Planning Permit
24 Application that Co-Owners are informed and believe, and thereon allege, O Hill submitted to the
25 City in November 2021 and the NBCC Tennis Property Entitlement Amendment & Project
26 Description that Co-Owners are informed and believe, and thereon allege, O Hill submitted to the
27 City in February 2022.

28 33. On November 23, 2021, Co-Owners sent O Hill a letter expressing surprise that he

1 was processing his New 2021 Entitlements and reminding O Hill that he did not have their
2 consent to process any more entitlements for the Tennis Property and was not to spend ownership
3 funds doing so. Co-Owners asked O Hill in writing to stop, and to provide them with copies of
4 the submittals he made to the City for his 2021 Project and his New 2021 Entitlements as well as
5 for meaningful economic data he believed supported his 2021 Project. O Hill ignored Co-
6 Owners' requests.

7 34. On December 6, 2021, Co-Owners sent O Hill another letter again asking to be
8 provided the information requested in their November 23 letter regarding his 2021 Project and his
9 New 2021 Entitlements, and that he stop processing his New Entitlements. O Hill again ignored
10 Co-Owners' requests.

11 35. On January 21, 2022, Co-Owners again sent O Hill a letter asking that he provide
12 them with copies of his submissions to the City for his 2021 Project and New 2021 Entitlements,
13 and that he stop processing his New Entitlements. O Hill once more ignored Co-Owners'
14 requests.

15 36. O Hill has refused to comply with Co-Owners' requests that he provide them with
16 copies of his submittals to the City regarding his 2021 Project and his New 2021 Entitlements,
17 and that he stop processing his New Entitlements, and it is clear that O Hill will only comply if
18 ordered to do so and enjoined from taking further action in connection with his New 2021
19 Entitlements and from spending ownership funds on them.

20 **2. In December 2021, Co-Owners Learned O Hill Is Processing a Liquor**
21 **License for a Tenant at the Tennis Property He Never Disclosed**

22 37. In October 2014, Grand Slam Tennis and its manager Sean Abdali (hereinafter
23 collectively "Abdali"), started operating the tennis club at the Tennis Property without a written
24 lease, apparently based upon a purported oral month-to-month agreement with O Hill calling for a
25 \$7,000 monthly license fee. Co-Owners are informed and believe, and thereon allege, the purported
26 month-to-month arrangement with Abdali continues today, and the fee/rent Abdali is paying is well
27 below market.

28 38. When Co-Owners learned Abdali was operating the tennis club, they asked O Hill

1 to get a basic written lease in place with Abdali that would provide for the monthly rent to be paid,
2 length of the term, and Abdali's obligation to pay the property taxes and maintain liability insurance
3 covering all the owners. In response to Co-Owners' request for a basic written lease with Abdali,
4 O Hill apparently purported to promise Abdali, without Co-Owners' knowledge or consent, that he
5 could operate the tennis club for 25 years.

6 39. At the arbitration with Justice King, O Hill testified that he intentionally did not
7 involve Co-Owners when making purported promises to Abdali regarding the tennis club, nor did
8 O Hill seek Co-Owners' approval before making such purported promises. Abdali testified Co-
9 Owners never made any promises to him, and that he knew he needed Co-Owners to sign (as
10 owners) any lease for the tennis club.

11 40. As part of the arbitration with Justice King, O Hill sought a declaration that Co-
12 Owners had to sign a 22-year proposed lease with Abdali that O Hill had prepared and given to
13 Abdali without Co-Owners' knowledge or consent. Yet, O Hill also testified at the arbitration that
14 "[u]nder the [OIC] agreement each owner must consent to any grant of a leasehold interest" and
15 that "a majority [of owners] must agree as it relates to a lease." (King Final Award at 11.) O Hill's
16 testimony is consistent with section 3 of the OIC Agreement, stating: "The Owners acknowledge
17 and agree that...any leasehold interest [in the Tennis Property] ... may be granted, conveyed or so
18 encumbered by the execution of the applicable instrument by each Owner." (Underline added.)

19 41. Justice King denied O Hill's claim, and agreed with Co-Owners, finding that Co-
20 Owners had acted reasonably in declining to sign the proposed lease O Hill negotiated with Abdali.
21 (King Final Award at 25-26.)

22 42. After Justice King issued his Final Award, Co-Owners sent O Hill letters on June 9,
23 2020, and July 28, 2020, again asking that he get a basic written lease in place for the tennis club
24 setting forth the tennis club operator's obligations to pay rent, taxes and insurance, and with a
25 reasonable lease term in the range of one to three years. O Hill ignored Co-Owners' requests.

26 43. In late November 2021, Co-Owners learned from reviewing the tennis club
27 website (<https://thetennisclubnb.com>) that the club had 31 new pickleball courts. Apparently,
28 several of the tennis courts at the club had been converted to pickleball courts, but O Hill had not

1 informed Co-Owners about the new pickleball courts. Thus, on November 23, 2021, Co-Owners
2 once again sent O Hill a letter asking (1) for an update on the status of a basic, straightforward
3 written lease with Abdali, and (2) for an accounting of the tennis club’s operations so they could
4 understand how the 31 new pickleball courts at the club were impacting its membership and
5 revenues. O Hill ignored Co-Owners’ requests.

6 44. On or about December 8, 2021, Co-Owners learned that without their knowledge
7 or consent, a liquor license application was being processed for the Tennis Property with the City,
8 and that the applicant for the liquor license was Clubhouse ATP, LLC—an entity Co-Owners had
9 not heard of—and the application had been executed by O Hill on behalf of the Tennis Property
10 ownership. Co-Owners are informed and believe, and thereon allege, that **Exhibit E** attached
11 hereto is a copy of an application for a liquor license at the Tennis Property submitted by O Hill
12 and Clubhouse ATP to the City on or about August 8, 2021.

13 45. Co-Owners also learned that Clubhouse ATP was, concurrent with its application
14 with the City, also applying for a liquor license with the California Department of Alcoholic
15 Beverage Control (“ABC”). **Exhibit F** attached hereto is a copy of an ABC website printout of
16 December 9, 2021, showing Clubhouse ATP’s pending application for a liquor license.

17 46. On December 10, 2021, Co-Owners sent O Hill a letter expressing surprise that
18 Clubhouse ATP (an entity about which he had not informed them) and O Hill were seeking a
19 liquor license for the Tennis Property. Co-Owners were concerned about, among other things,
20 potential exposure and liability as property owners should alcohol be sold at the Tennis Property.
21 Co-Owners asked O Hill to halt the liquor license application until they could understand what
22 protections against liability and exposure would be in place, including insurance, along with
23 asking O Hill to provide them with copies of the submittals made to the City and ABC as part of
24 the use permit and liquor license applications as well as any purported lease agreement made with
25 Clubhouse ATP for the Tennis Property. O Hill ignored Co-Owners’ requests.

26 47. On December 16, 2021, the City Zoning Administrator approved O Hill’s and
27 Clubhouse ATP’s use permit application for a liquor license at the Tennis Property. In response to
28 the Co-Owners’ objections, including that O Hill did not have the authority to sign the use permit

1 application on behalf of the ownership, the Zoning Administrator informed Co-Owners that it
2 viewed their objections as pertaining to matters between the Tennis Property's owners in which
3 the City did not want to get involved. The City also told Co-Owners they should take whatever
4 action they believed appropriate to stop O Hill from proceeding with the use permit application.
5 Co-Owners are informed and believe, and thereon allege, that as a condition for the Zoning
6 Administrator agreeing to approve the use permit application, the City required O Hill to sign an
7 agreement to indemnify and defend the City against any legal challenges to the use permit.

8 48. On January 3, 2022, Co-Owners filed an appeal of the Zoning Administrator's
9 approval of the use permit for a liquor license, and informed the City of their intent to commence
10 this arbitration seeking, among other things, a legal determination and declaration that O Hill did
11 not, and does not, have the authority to sign and submit the use permit application for a liquor
12 license on behalf of the Tennis Property ownership, and before he could do so he was required to
13 get the Co-Owners' consent (which he did not have). Pursuant to Newport Beach Municipal Code
14 (NBMC) section 20.64.030-B.1.a., a use permit approval by the City Zoning Administrator that is
15 appealed has no force or effect as of the day the appeal is filed.

16 49. At the time of the submission of this Arbitration Demand to JAMS, Co-Owners'
17 appeal of the Zoning Administrator's approval of the use permit had not yet been heard by the
18 City's Planning Commission.

19 50. Because O Hill refused to respond to—let alone acknowledge—Co-Owners'
20 requests for information about Clubhouse ATP, including their requests for copies of the submittals
21 to the City and ABC for the use permit and liquor license O Hill and Clubhouse ATP were seeking
22 along with any purported lease agreement with Clubhouse ATP, Co-Owners submitted a public
23 records request to the City for documents relating to the use permit. In January 2022, the City
24 produced responsive documents, including correspondence involving O Hill, that made it apparent
25 that O Hill had purported to convey a leasehold interest in the tennis property to Clubhouse ATP,
26 or he allowed Abdali to do so, without Co-Owners' knowledge or written consent as required under
27 section 3 of the OIC Agreement. For example, the City produced the following:

28 (a) November 10, 2021, email from Patrick Rolfes of Clubhouse ATP to Liz

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Westmoreland at the City regarding the use permit, stating: “We subleased the space on July 7, 2021 and we are hopeful we can get through this process so we can start doing business.”

(b) November 18, 2021, email from Liz Westmoreland at the City to O Hill stating that if the City grants the use permit and the ABC issues the liquor license to Clubhouse ATP that “it will be on the applicant [i.e., Clubhouse ATP] to comply with his private agreements including lease terms, etc.” O Hill responded on November 19, 2021, saying: “Understood.”

51. Co-Owners are also informed and believe, and thereon allege, that as part of the application for a liquor license at the Tennis Property that a written agreement was submitted to the ABC purporting to show Clubhouse ATP had a right to tenancy at the Tennis Property. Again, any such agreement purporting to convey a leasehold interest to Clubhouse ATP was made without Co-Owners’ knowledge or consent and in violation of their rights under the OIC Agreement.

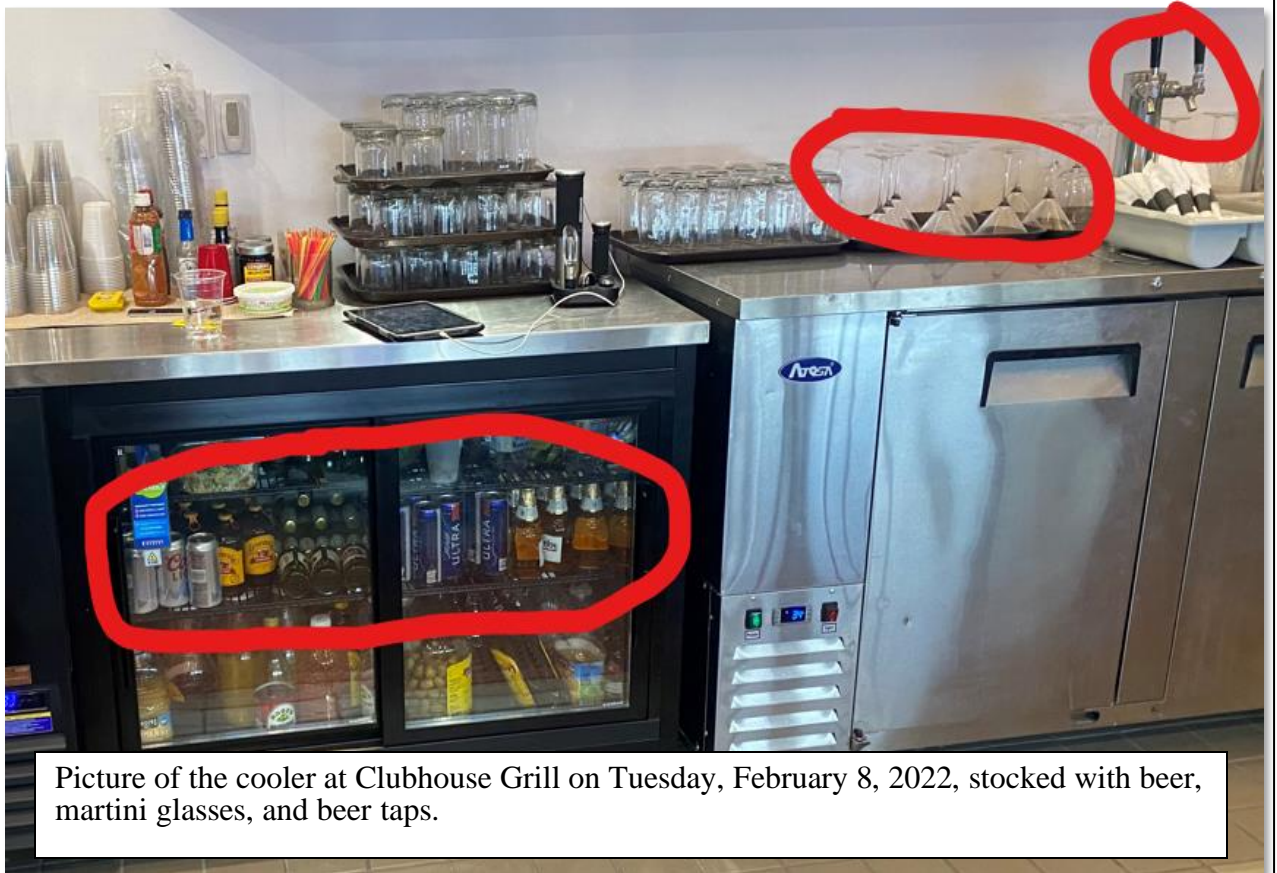
3. In February 2022, Co-Owners Learned O Hill Was Allowing Alcohol to Be Sold at the Tennis Property Without a License

52. The Alcoholic Beverage Control Act requires an establishment to be licensed before it can sell alcohol and any person violating the statute is guilty of a misdemeanor. Cal. Bus. Prof. Code §§ 23300, 23301.

53. In February 2022, Co-Owners were surprised to learn alcohol was being sold at the Tennis Property without a liquor license apparently at a restaurant called the Clubhouse Grill being operated by Clubhouse ATP. O Hill had failed to inform Co-Owners a restaurant was open and operating at the Tennis Property, let alone selling alcohol without a license.

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1 54. Below are pictures of alcohol being sold at the Clubhouse Grill on *February 8,*
2 *2022:*



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Thank you for your order. Below is a receipt for your recent visit to ClubHouse Grill.
[trouble viewing this email?](#)

Picture of receipt from Clubhouse Grill showing IPA draft beer purchased on Tuesday, February 8, 2022, for \$7.00.



ClubHouse Grill
11 Clubhouse Drive
Newport Beach, CA 92660

Server: [REDACTED]
Check: [REDACTED]
Guest Count: [REDACTED]
Ordered:

2/8/22 [REDACTED]

How was your visit?



1 IPA



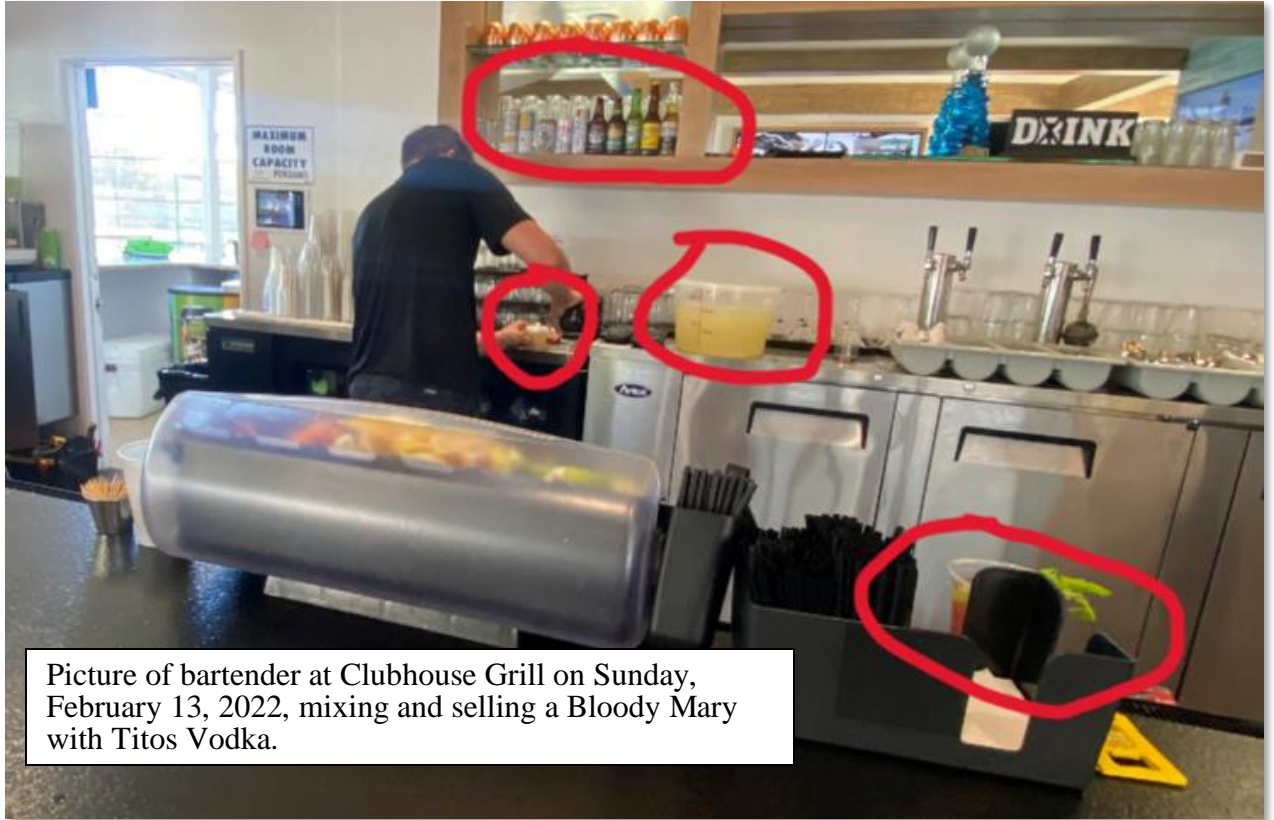
\$7.00

55. Below are pictures of alcohol being sold at the Clubhouse Grill on *Sunday, February 13, 2022*:

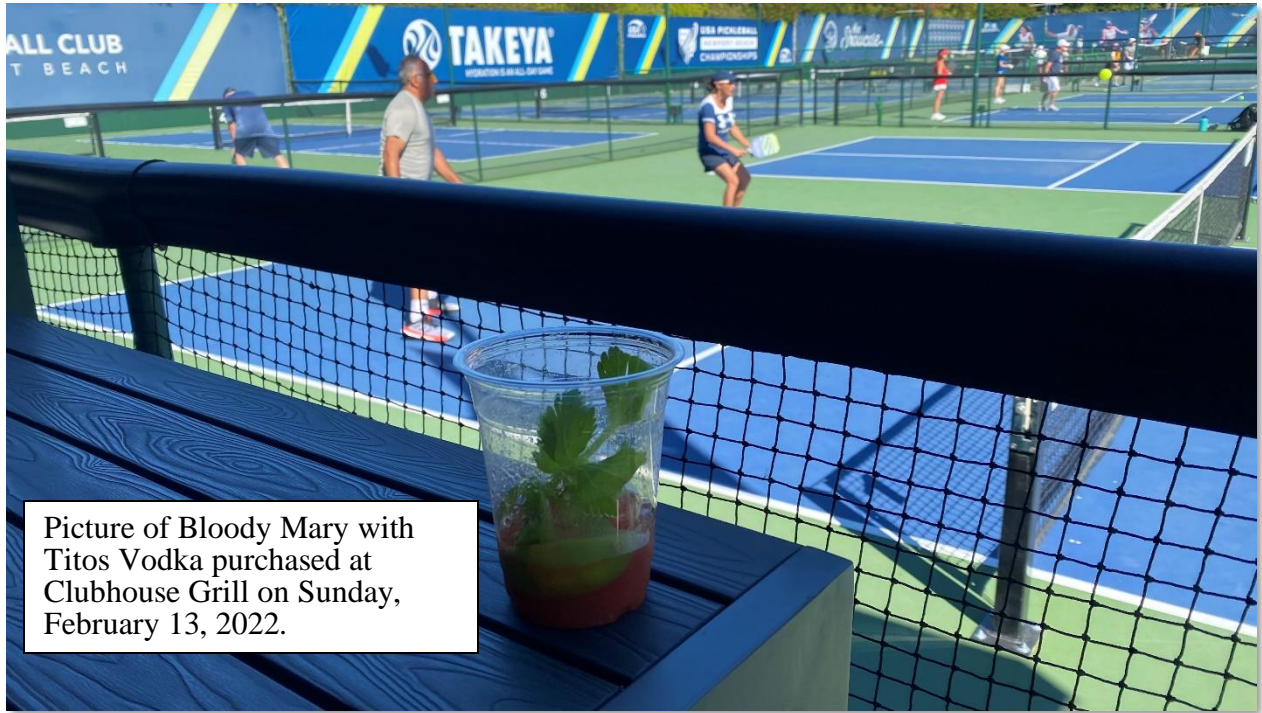


Picture of the bar at Clubhouse Grill on Sunday, February 13, 2022, stocked with alcohol.

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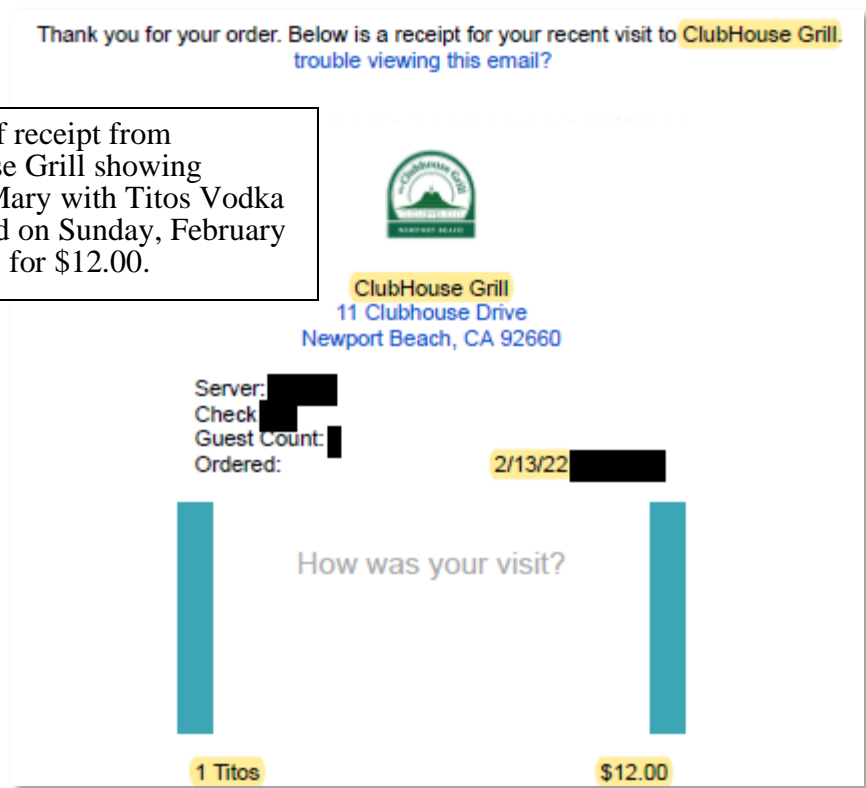


Picture of bartender at Clubhouse Grill on Sunday, February 13, 2022, mixing and selling a Bloody Mary with Titos Vodka.



Picture of Bloody Mary with Titos Vodka purchased at Clubhouse Grill on Sunday, February 13, 2022.

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Picture of receipt from Clubhouse Grill showing Bloody Mary with Titos Vodka purchased on Sunday, February 13, 2022, for \$12.00.

56. Below are pictures of alcohol being sold at the Clubhouse Grill on *Sunday, February 20, 2022*:



Picture of Clubhouse Grill mixed drink specials on Sunday, February 20, 2022, including an Espresso Martini and Skinny Margarita.

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Picture of bartender at Clubhouse Grill on Sunday, February 20, 2022, preparing and selling a mixed drink with Titos Vodka.

Picture of receipt from Clubhouse Grill showing a mixed drink with Titos Vodka purchased on Sunday, February 20, 2022 for \$12.00.



1 57. On February 22, 2022, Co-Owners sent O Hill (as managing owner) a letter asking
2 that he take whatever action necessary to cause anyone unlawfully selling alcohol at the Tennis
3 Property—including Clubhouse ATP and Abdali—to immediately cease and desist doing so. Co-
4 Owners expressed to O Hill that in addition to exposing them to substantial financial liability by
5 allowing alcohol to be sold at the Tennis Property, selling alcohol without a license was a crime.

6 58. On March 3, 2022, O Hill responded to Co-Owners’ February 22, 2022, letter. He
7 did not agree to stop the unlawful sale of alcohol at the Tennis Property nor deny it was taking
8 place. Rather, O Hill somewhat bewilderingly stated that alcohol had been served at the Tennis
9 Property “at tournaments and special events with a special catering permit for over 50 years” and
10 that a “special permit” had been obtained by the Orange County Youth Sports Foundation for a
11 January 29, 2022, event at the Tennis Property.

12 59. Co-Owners are informed and believe, and thereon allege, that even after O Hill
13 received Co-Owners’ February 22, 2022, cease and desist letter, alcohol continues to be sold at the
14 Tennis Property without a liquor license and, thus, unlawfully.

15 **4. In January 2022, O Hill Recommended His Efforts to Interfere with Co-**
16 **Owners’ Exploration of a Tennis Property Redevelopment Opportunity**

17 60. In the past, when Co-Owners have tried to explore redevelopment opportunities for
18 the Tennis Property, O Hill has taken the position that his Master Plan is the only project that could
19 get approved and any alternative opportunities were unworkable and not worth considering. O
20 Hill’s modus operandi is to hijack the process by not only refusing to cooperate in exploring
21 redevelopment alternatives to his Master Plan but to block their fair consideration by attempting to
22 manufacture community opposition to any such alternative project.

23 61. For example, in 2012 and unbeknownst to Co-Owners, O Hill hired the Chatten
24 Brown law firm to file a lawsuit against the City in the name of the no-growth group “Friends of
25 Good Planning”, seeking to enjoin the City from processing the adjacent Golf Property tenant’s
26 plan to construct a new \$40 million clubhouse because it was at odds with O Hill’s Master Plan and
27 despite the fact that the Golf Property lease plainly gave that right to the tenant. In March 2012, O
28 Hill attended a City Council meeting and represented that he was in no way supporting or

1 sponsoring the Friends of Good Planning lawsuit. In March 2017, Chatten Brown sued O Hill
2 personally for unpaid legal fees it had incurred at his direction for the Friends of Good Planning
3 lawsuit in 2012. In June 2017, O Hill paid Chatten Brown \$15,000 using Tennis Property ownership
4 funds to settle that lawsuit – without informing Co-Owners.

5 62. In 2019, upon learning that Co-Owners were trying to obtain a redevelopment
6 proposal for the Tennis Property from the ownership group operating the adjacent Golf Property,
7 O Hill and Abdali (the tennis club operator) launched the website savethetennisclub.org seeking to
8 spread misinformation about the potential redevelopment project and circulating a petition
9 opposing it. Their website called out the Co-Owners’ principals by name, Elliot Feuerstein and Irv
10 Chase, claiming they “want to upend the General Plan approved by the voters of Newport Beach
11 and eliminate the Tennis Club and the promised enhancements all together.”

12 63. Thus, on January 5, 2021, when Co-Owners learned the City was updating its
13 Housing Element to address the state mandate for more housing and was accepting proposals for
14 projects that may help meet the housing need, and that Ryan Co. (an established developer) was
15 interested in entering into a long-term ground lease for the Tennis Property and constructing a
16 multifamily redevelopment project there that could pay the owners millions in rent each year, Co-
17 Owners sent O Hill a letter asking that he have an open mind, and to not interfere, as they attempted
18 to meaningfully explore a lease proposal with Ryan Co.

19 64. On January 19, 2021, Co-Owners sent O Hill a copy of a letter they informed him
20 they intended to send to the City letting it know they were in discussion with a few developers
21 interested in redeveloping the Tennis Property and these projects would seem to be good candidates
22 for participation in the City’s Housing Element Update, and Co-Owners hoped to share details
23 about the projects with the City soon and to start exploratory discussions. O Hill did not object to
24 Co-Owners sending their letter to the City.

25 65. On December 6, 2021, Co-Owners sent O Hill a letter letting him know they had
26 negotiated and were in the process of drafting a proposed lease with Ryan Co. and expected to be
27 able to share that lease with him for discussion within 30-60 days. Co-Owners also restated their
28 request to O Hill that he not interfere with their efforts to secure a lease proposal from Ryan Co.

1 66. On or about January 13, 2022, Co-Owners learned that a petition was being
2 circulated at the tennis club and to its members to drum-up opposition to a Ryan Co. project at the
3 Tennis Property. Co-Owners are informed and believe, and thereon allege, that petition was
4 generated by the current tennis club operator Abdali and O Hill, or at least with O Hill’s knowledge.
5 **Exhibit G** attached hereto is a copy of the Petition to Stop the Massive Development Proposed to
6 Replace the Tennis Club at Newport Beach.

7 67. Co-Owners also learned of a new website—savethetennisclub.com/tennis-club/—
8 further seeking to solicit opposition to Ryan Co. which Co-Owners are informed and believe, and
9 thereon allege, was generated by Abdali and O Hill, or with O Hill’s knowledge. **Exhibit H** attached
10 hereto is a copy of the savethetennisclub.com/tennis-club/ webpage. This is the same type of
11 interference O Hill and Abdali engaged in 2019 when they created the website savethetenniclub.org
12 upon learning of Co-Owners’ efforts to solicit a proposal for a long-term ground lease for the Tennis
13 Property from the operators of the adjacent Golf Property.

14 68. On January 21, 2022, Co-Owners sent O Hill a letter stating that the petition being
15 circulated at the tennis club and the savethetennisclub.com website opposing Co-Owners’ efforts
16 regarding Ryan Co., which at that point merely consisted of obtaining a proposal, were acts of
17 interference that needed to stop, and if it was shown that O Hill was involved as Co-Owners
18 suspected that his conduct constituted a breach of his fiduciary duties and raised questions about
19 his suitability to act as managing owner. Co-Owners asked that O Hill stop his efforts to incite
20 opposition to a potential Ryan Co. project and that he instruct Abdali in writing to do the same.

21 69. On January 28, 2022, O Hill responded claiming to have no knowledge of the
22 savethetennisclub.com website, but also saying he would not instruct Abdali to stop with his efforts
23 to drum-up opposition to a potential Ryan Co. project, while taking an “I told you so” position and
24 saying he was not surprised activists were mobilizing to oppose the project – at the same time
25 conceding he had discussed the Ryan Co. project with those activists. O Hill’s behavior once more
26 shows the lengths he will go to prevent any consideration of alternatives to his Master Plan.

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1 **IV. CO-OWNERS' ARBITRATION CLAIMS AGAINST O HILL**

2 **FIRST CLAIM FOR RELIEF**

3 **(Declaratory and Injunctive Relief)**

4 70. Co-Owners incorporate by reference as though set forth in full, each and all the
5 allegations set forth in Paragraphs 1 through 69, above.

6 71. Despite Co-Owners' November 23, 2021, December 6, 2021, and January 21, 2022,
7 letters asking O Hill to confirm in writing he had stopped processing his New 2021 Entitlements,
8 and Co-Owners' December 10, 2021, letter to O Hill asking that he stop processing the use permit
9 for a liquor license at the Tennis Property, O Hill has failed to acknowledge the requests in Co-
10 Owners' letters and continues to process such applications. As such, Co-Owners bring this
11 arbitration to seek a legal determination and declaration that O Hill does not, and did not, have the
12 authority to process his New 2021 Entitlements or the use permit for a liquor license.

13 72. An actual controversy has arisen and now exists between Co-Owners and O Hill
14 concerning their respective rights and obligations under the OIC Agreement. Co-Owners contend
15 that in November 2018 O Hill finished processing his few remaining 2012 Discretionary
16 Entitlements, and, thus, any right he had to process his Discretionary Entitlements ran its course
17 and O Hill cannot continue to spend ownership money further entitling his already fully entitled
18 Master Plan – especially since he cannot compel Co-Owners to consent to his Master Plan as
19 Justice King determined, and that he was required to disclose any new entitlements or
20 development plan to Co-Owners (and to continue to provide them with meaningful information
21 regarding the same) and to obtain their consent before he could spend ownership funds and
22 process his New 2021 Entitlements and the use permit for a liquor license at the Tennis Property,
23 and that he does not have the Co-Owners' consent to seek them.

24 73. An additional actual controversy has arisen and now exists between Co-Owners
25 and O Hill under the OIC Agreement, in that Co-Owners are informed and believe, and thereon
26 allege, that O Hill is purporting to convey a leasehold interest in the Tennis Property, or is
27 allowing Abdali to do so with O Hill's knowledge, including to Clubhouse ATP, without Co-
28 Owners' knowledge or written consent as required under section 3 of the OIC Agreement.

1 has persisted in processing them.

2 79. Section 3 of the OIC Agreement states that any conveyance of a leasehold interest
3 in the Tennis Property must be in a writing signed by all the owners. *Id.* § 3. Co-Owners are also
4 informed and believe, and thereon allege, that, in breach of section 3 of the OIC Agreement, O
5 Hill has purported to convey a leasehold interest in the Tennis Property without Co-Owners’
6 knowledge or consent, including to Clubhouse ATP.

7 80. Section 7 of the OIC Agreement sets forth the duties of the managing owner, and
8 section 7(e) provides that the managing owner is paid “an asset management fee” for performing
9 those duties. Co-Owners are informed and believe, and thereon allege, that O Hill breached
10 section 7 of the OIC Agreement by allowing alcohol to be sold at the Tennis Property without a
11 liquor license and, thus, unlawfully and/or is being grossly negligent in performing his duties as
12 managing owner by not preventing the unlawful sale of alcohol there.

13 81. Co-Owners have performed their obligations under the OIC Agreement except
14 those which they have been excused or prevented from performing.

15 82. As a direct and proximate result of O Hill’s breaches of the OIC Agreement, Co-
16 Owners have suffered, and will continue to suffer, direct and foreseeable damages, including but
17 not limited to, O Hill’s improper and unauthorized expenditure of material sums of ownership
18 money, in an amount to be determined at the arbitration hearing.

19 **THIRD CLAIM FOR RELIEF**

20 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

21 83. Co-Owners incorporate by reference as though set forth in full, each and all the
22 allegations set forth in Paragraphs 1 through 82, above.

23 84. The OIC Agreement is subject to an implied covenant of good faith and fair
24 dealing that all parties would act in good faith and with reasonable efforts to perform their
25 contractual duties—both explicit and fairly implied—and not to impair the rights of other parties
26 to receive the rights, benefits, and reasonable expectations under the Agreement.

27 85. O Hill breached the implied covenant of good faith and fair dealing by:

28 (a) processing his New 2021 Entitlements and use permit with the City and

- 1 spending ownership funds doing so without Co-Owners' consent;
- 2 (b) purporting to convey a leasehold interest in the Tennis Property—or
- 3 allowing Abdali to do so with his knowledge, including to Clubhouse
- 4 ATP—without Co-Owners' consent;
- 5 (c) interfering with Co-Owners' efforts to obtain a lease proposal from Ryan
- 6 Co.; and
- 7 (d) allowing alcohol to be sold at the Tennis Property without a liquor license.

8 86. Co-Owners have performed their obligations under the OIC Agreement except
9 those which they have been excused or prevented from performing.

10 87. O Hill's failure to act in good faith has denied Co-Owners the full benefit of their
11 bargain under the OIC Agreement.

12 88. As a result of O Hill's breach of the covenant of good faith and fair dealing, Co-
13 Owners have suffered, and will continue to suffer, direct and foreseeable damages, in an amount
14 to be determined at the arbitration hearing.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Accounting)**

17 89. Co-Owners incorporate by reference as though set forth in full, each and all the
18 allegations set forth in Paragraphs 1 through 88, above.

19 90. Co-Owners are unaware of the exact amount of ownership funds spent by O Hill
20 on his New 2021 Entitlements or the use permit for a liquor license at the Tennis Property. The
21 information necessary to ascertain those amounts is strictly within O Hill's control. Accordingly,
22 Co-Owners seeks a forensic accounting of those amounts.

23 91. Co-Owners are unaware of the financial impact the new pickleball courts (see
24 paragraph 41 above) have had on the tennis club's operation, and whether Clubhouse ATP or any
25 other purported tenant is paying to, or sharing with, O Hill any income being generated by or at
26 the tennis club other than the monthly rent O Hill reflects on the distribution summaries he
27 provides to Co-Owners. The information necessary to ascertain those amounts is strictly within O
28 Hill's control. Accordingly, Co-Owners seek a forensic accounting of those amounts and the

1 tennis club's operations.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Declaratory Relief)**

4 92. Co-Owners incorporate by reference as though set forth in full, each and all the
5 allegations set forth in Paragraphs 1 through 91, above.

6 93. Section 7(b) of the OIC Agreement provides that the owners of a majority of
7 ownership interests in the Tennis Property not owned by the managing owner may elect to
8 remove the managing owner for "cause" and appoint a new managing owner. Section 7(b) defines
9 "cause" as "fraud, gross negligence or material default of a material obligation by Managing
10 Owner."

11 94. An actual controversy has arisen and now exists between Co-Owners and O Hill
12 concerning their respective rights and obligations under the OIC Agreement. Co-Owners are
13 informed and believe, and based thereon allege, that cause exists, including based on O Hill's
14 conduct alleged herein, to remove him as managing owner under the OIC Agreement.

15 95. Co-Owners have no adequate remedy at law and will suffer irreparable damage
16 unless O Hill is enjoined from taking any further action purportedly on the basis that he is the
17 managing owner. Co-Owners therefore seek a temporary restraining order, preliminary injunction
18 and permanent injunction restraining O Hill, and his agents, representatives, successors and
19 assigns, from taking any further action as the managing owner (including prohibiting him from
20 spending Tennis Property funds, submitting entitlement applications purportedly on behalf of the
21 Tennis Property owners, or purporting to convey a leasehold interest in the Tennis Property), and
22 that O Hill and any other person or entity (including NBCC Land or NBCC L&I) with
23 possession, custody or control of property of, or records relating to, the Tennis Property
24 (including any bank account(s) and/or books and records), shall by personal service or otherwise
25 fully cooperate with and assist the succeeding managing owner in taking and maintaining
26 possession, custody, or control of such property and records and immediately transfer or deliver
27 them to the succeeding managing owner.

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1 **WHEREFORE**, Co-Owners pray for an Arbitrator's Award on their claims as follows:

2 **ON THE FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**

3 1. For a determination and declaration that O Hill was required to disclose to and
4 obtain Co-Owners' consent before he could spend ownership funds on and process his New 2021
5 Entitlements and the use permit for a liquor license, and that he does not have the Co-Owners'
6 consent to seek his New 2021 Entitlements or the use permit for a liquor license and he must halt
7 their processing and withdraw them from the City.

8 2. For a temporary restraining order, preliminary injunction and permanent injunction
9 restraining O Hill, and his agents, representatives, successors and assigns, from taking any further
10 action processing his New 2021 Entitlements or the use permit for a liquor license, or spending
11 ownership funds thereon, without first obtaining the consent of one or more of the Co-Owners.

12 3. For a determination and declaration that, under section 3 of the OIC Agreement, O
13 Hill was required to disclose to Co-Owners and obtain their written consent prior to purporting to
14 convey a leasehold interest in the Tennis Property, including to Clubhouse ATP.

15 4. For a temporary restraining order, preliminary injunction and permanent injunction
16 restraining O Hill, and his agents, representatives, successors and assigns, from taking any further
17 action purporting to convey a leasehold interest in the Tennis Property, including to Clubhouse
18 ATP.

19 5. For a determination and declaration that O Hill must take any and all action
20 necessary to cause anyone unlawfully selling alcohol at the Tennis Property to immediately cease
21 and desist doing so.

22 6. For a temporary restraining order, preliminary injunction and permanent injunction
23 restraining O Hill, and his agents, representatives, successors and assigns, and any alleged tenant
24 or licensee to whom O Hill has purported to convey a tenancy or other right to occupy or operate
25 at the Tennis Property, from engaging in the unlawful sale of alcohol at the Tennis Property
26 without a liquor license.

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1 **ON THE SECOND AND THIRD CLAIMS FOR BREACH OF CONTRACT AND**
2 **BREACH OF THE IMPLIED COVENANT**

3 7. For damages in an amount to be proven at trial.

4 **ON THE FOURTH CLAIM FOR AN ACCOUNTING**

5 8. For a forensic accounting (1) of the exact amount of ownership funds spent by O
6 Hill on the 2021 Project, 2021 New Entitlements and the use permit for a liquor license at the
7 Tennis Property, and (2) of the tennis club’s operations and revenues.

8 **ON THE FIFTH CLAIM FOR DECLARATORY RELIEF**

9 9. For a determination and declaration that cause exists under the OIC Agreement to
10 remove O Hill as managing owner.

11 10. For a temporary restraining order, preliminary injunction and permanent injunction
12 restraining O Hill, and his agents, representatives, successors and assigns, from taking any further
13 action purportedly on the basis as managing owner (including prohibiting him from spending
14 Tennis Property funds, submitting entitlement applications purportedly on behalf of the Tennis
15 Property owners, or purporting to convey a leasehold interest in the Tennis Property), and that O
16 Hill and any other person or entity (including NBCC Land or NBCC L&I) with possession,
17 custody or control of property of, or records relating to, the Tennis Property (including any bank
18 account(s) and/or books and records), shall by personal service or otherwise fully cooperate with
19 and assist the succeeding managing owner in taking and maintaining possession, custody, or
20 control of such property and records and immediately transfer or deliver them to the succeeding
21 managing owner.

22 **ON ALL CLAIMS:**

23 11. For attorneys’ fees incurred in this action pursuant to section 27 of the OIC
24 Agreement.

25 12. For costs of suit and out-of-pocket expenses.

26 13. For such other relief as the Arbitrator deems just and proper.

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Dated: March 25, 2022

MICHAEL YODER
O'MELVENY & MYERS LLP

JACOB C. GONZALES
jcg | law

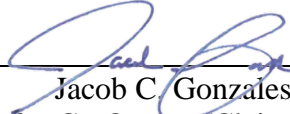
By: 
Jacob C. Gonzales
Attorneys for Co-Owners/Claimants
Mesa Shopping Center-East LLC,
Mira Mesa Shopping Center-West LLC, and
Fainbarg III LP

Exhibit A

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

O Hill Properties
One Upper Newport Plaza
Newport Beach, CA 92660

(Space Above for Recorder's Use)

AGREEMENT BETWEEN REAL PROPERTY OWNERS

BALBOA BAY CLUB RACQUET CLUB

Newport Beach, California

This Agreement Between Real Property Owners ("Agreement") is entered into by and between O Hill Properties, a California limited partnership ("O Hill"), The Fainbarg Trust dated April 19, 1982 ("TFT"), Mesa Shopping Center-East, a California general partnership (Mesa-East), Mira Mesa Shopping Center-West, a California general partnership ("Mira Mesa-West"), and Newport Beach Country Club, a California limited partnership ("NBCC Ltd"). O Hill, TFT, Mesa-East, Mira Mesa-West, and NBCC Ltd are sometimes referred to singularly as an "Owner" or "party" or collectively as the "Owners" or "parties".

RECITALS

A. The Owners desire to own, lease, manage, maintain, refinance, encumber and hold for investment, as tenants in common, that certain real property comprising approximately 6.099 acres with improvements thereon, commonly identified as Balboa Bay Club Racquet Club located at 1602 East Pacific Coast Highway, in Newport Beach, California and legally described in Exhibit "A" attached (the "Property").

B. The Owners have discussed the co-ownership of the Property and have concluded that to avoid conveyancing and ownership problems created by death, marital or other dissolution, bankruptcy or insolvency, disputes and the like, it is in the best interest of each Owner that the holding of the Property be governed by an agreement which defines the rights and duties of each Owner in the form of this Agreement.

C. The Owners also believe it necessary and appropriate to have one Owner be the managing Owner for purposes of accounting and administration.

6/10/93

NOW, THEREFORE, in consideration of the foregoing Recitals and the conditions and covenants hereinafter contained, the Owners hereby agree as follows:

1. **AGREEMENT AS TENANTS IN COMMON.** The Owners agree to hold title to the Property as tenants in common to own, manage, maintain, lease, finance, refinance, and/or hold the Property for investment in accordance with the terms of this Agreement. The Owners may conduct such other activities with respect to the Property as are related to or compatible with the ownership of real estate. Subject to the provisions of this Agreement, each Owner retains the right to deal with his Interest in the Property (as defined in Section 3 below) as such Owner sees fit.

2. **TERM.** This Agreement shall become effective on the acquisition of the Property by the Owners, and shall continue thereafter until terminated pursuant to Section 13 below.

3. **TITLE TO THE PROPERTY; CONVEYANCES AND LIENS.** Concurrently with the recordation hereof, title to the Property shall be acquired by, and in the name of, the Owners as their interests appear in Exhibit "B" attached (each an "Interest") and shall thereafter be held in the name of the Owners as tenants in common. The Owners acknowledge and agree that the Property, or any interest therein, including any leasehold interest, any deed of trust granted or other encumbrances or liens placed thereon, may be granted, conveyed or so encumbered by the execution of the applicable instrument by each Owner, or if an Owner is obligated to convey, lease or encumber its interest in accordance with the terms of Section 4 of this Agreement and fails to do so within the time limits set forth herein, by the Managing Owner and the Additional Owner (both as defined in Section 7 below) in accordance with the powers of attorney granted to the Managing Owner and the Additional Owner as described in Section 7(c) below. Such conveyance or encumbrance by the Managing Owner and the Additional Owner under such powers of attorney shall be binding upon each Owner.

4. **FINANCING, REFINANCINGS, SALE AND LEASING.**

(a) The Owners acknowledge that concurrently with the acquisition of the Property, the Owners shall place financing on the Property which may have a balloon payment at the due date thereof (the "Acquisition Financing"). Each Owner acknowledges that there will be refinancings of the Acquisition Financing from time to time. The Managing Owner shall have the right to obtain such refinancing for the Property on then market rates and terms. Each Owner shall have a duty to fully cooperate and not interfere or impede, in any manner,

in such refinancings including but not limited to signing appropriate documentation (e.g. notes, deeds of trust, assignments of rents and leases, guarantees and the like) within ten (10) days after being requested to do so by Managing Owner. Each Owner shall be responsible for its respective share, as determined by its pro rata ownership Interest in the Property, of the payments of principal and interest and other costs owing under the Acquisition Financing and refinancings. The Acquisition Financing and refinancings, however, may be a joint and several obligation of the Owners. Refinancing shall only be permitted within two (2) years of the due date of the financing which then encumbers the Property and the amount shall not materially exceed the remaining principal balance of the then existing loan balance plus refinancing related costs, unless the new loan is non-recourse to the Owners and is approved by sixty-five percent (65%) or more of the ownership Interests in the Property.

(b) The Managing Owner shall list the Property for sale and convey or otherwise transfer the Property if such transaction is approved by seventy percent (70%) or more of the ownership Interests in the Property. Each Owner shall have a duty to fully cooperate and not interfere or impede in any manner with such sale approved by seventy percent (70%) or more of the ownership Interests in the Property, including but not limited to the signing of a grant deed, sale agreements, assignment of leases and escrow instructions within ten (10) days after being requested to do so by Managing Owner. Any Owner who desires an exchange of its equity in the Property under Section 1031 of the Internal Revenue Code shall have the right to arrange for such exchange of its undivided ownership Interest, provided that under no circumstances shall the inability of any Owner to consummate such an exchange delay the sale of the Property. The other Owners, at no cost or expense shall cooperate in such exchange, however, no Owner shall be required to take title to an exchange or other property as a part of such duty to cooperate.

(c) Managing Owner may amend, terminate or extend the ground lease of the Property only with the prior written consent of the Owners of a majority of the ownership Interests in the Property. Each Owner shall execute any such amendment, termination or extension approved by a majority of the ownership Interests in the Property within ten (10) days after being requested to do so by Managing Owner.

(d) Any Owner who has a duty to execute any refinancing, sale or lease documentation and fails or refuses to do so shall be liable for all costs, liabilities, damages, claims and expenses including attorney's fees and legal costs which results to the other Owners from such failure or refusal.

5. LIMITATION OF OWNERS. Each Owner shall be subject to the following limitations:

(a) Each Owner hereby irrevocably waives any and all rights that such Owner may have to withdraw from the terms of this Agreement, maintain an action for the partition of the Property (unless Owners of 65% or more of the Interests in the Property join or consent to such action), or otherwise force a sale of the Property during the term hereof, except as expressly provided herein.

(b) No Owner shall be entitled to interest on such Owner's contribution toward the purchase of the Property. No Owner shall have the right to withdraw or reduce such Owner's contribution toward the purchase of the Property. No Owner shall have the right to demand property other than cash in return for such Owner's contribution toward the purchase of the Property. No Owner shall have priority over any other Owner either as to the return of contributions toward the purchase of the Property or as to other distributions.

6. CASH CALLS. Each Owner shall pay (i) such Owner's share of losses and negative cash flow necessary to cover the costs of owning the Property in proportion to such Owner's respective Interest in the Property and (ii) any involuntary lien which encumbers an Owner's Interest (such as a tax, judgment or execution lien or an attachment) (a "Cash Call"). If an Owner fails to pay its Cash Call within twenty (20) days from the date set for such payment in a written notice that such amount must be paid from the Managing Owner (or any other Owner if the Managing Owner fails to send out a written notice when such Cash Call is necessary), such failure shall automatically constitute a granting by such Owner (a "Defaulting Owner") to the other Owners of the following alternative options in addition to all other remedies available at law: (i) the other Owners may advance the Defaulting Owner's required Cash Call, in the proportions agreed upon by such other Owners, and absent such an agreement, in the proportion which the Interest of an Owner desiring to make such advance bears to the Interests of all Owners desiring to make such advance, and the Defaulting Owner shall convey (or if necessary, the Managing Owner and any Additional Owner under the powers of attorney granted in Section 7(c) below shall convey) by grant deed a portion of Defaulting Owner's Interest in the Property in the proportion in which such advance bears to the Defaulting Owner's equity in the Property (the "Transferred Portion"). The determination of equity in the Property shall be based upon a ten percent (10%) capitalization rate of the preceding twelve (12) months net operating income, less the Defaulting Owner's prorata share of liens entered into by, or which encumber the Interests of, all of the Owners (the "Collective Liens") and outstanding or reasonably projected extraordinary expenses for the next one (1) year period. The Defaulting Owner shall remove liens from the title to the Transferred Portion so that the Transferred Portion conveyed to the Owners making such advance shall be free and clear of liens (except the Collective Liens). If the Defaulting Owner is unable to

deliver free and clear title to the Transferred Portion, the other Owners may purchase, at the same price paid for the Transferred Portion so much of the Interest of the Defaulting Owner (the "Additional Portion") so that enough cash is generated to allow for the delivery of the Transferred Portion and the Additional Portion by the Defaulting Owner to the other Owners free and clear. If the Property is not subject to a long term ground lease or long term ground leases (of if any such leases are then in default beyond any curative period), the equity in the Property of the Defaulting Owner shall be 90% of the appraised value of the entire Property subject to all non monetary encumbrances thereof, based upon the highest and best use reasonably available for the Property, as determined by an independent MAI appraiser selected by a majority of the ownership Interests owned by the Non Defaulting Owners (the cost of which appraisal shall be charged to the Defaulting Owner) times the percentage Interest of the Defaulting Owner in the Property, and the Defaulting Owner's prorata share of the Collective Liens shall be subtracted therefrom; (ii) the other Owners may admit an additional owner upon the terms and conditions of this Agreement, which additional owner shall advance the Defaulting Owner's required Cash Call and receive a portion of the Defaulting Owner's Interest in the Property on the same basis as preceding subparagraph (i); (iii) the Managing Owner may borrow in the name of or on behalf of the Defaulting Owner the amount of the Cash Call and pledge or otherwise encumber the Interest in the Property of the Defaulting Owner to secure the loan, or (iv) the other Owners may advance to the Defaulting Owner the amount of such unpaid Cash Call owing by Defaulting Owner in which case a Promissory Note shall be executed by Defaulting Owner in favor of the other Owners who have advanced the Cash Call of the Defaulting Owner, a copy of which Promissory Note is attached as Exhibit "C" hereto and incorporated herein by this reference ("Promissory Note"). At the election of the Owners who make an advance to the Defaulting Owner, the Promissory Note shall be secured by a deed of trust upon the Defaulting Owner's entire interest in the Property, and the Defaulting Owner shall execute all documents reasonably necessary to effectuate such encumbrance.

If an expense, loss or damages are incurred by the Owners as the result of a Defaulting Owner not making a Cash Call on or before the date set for the Cash Call in the written notice sent out by the Managing Owner (or the other Owners, as applicable), the Defaulting Owner shall immediately pay such expense or loss in addition to any other damages caused by such failure.

7. MANAGING OWNER.

(a) The Owners hereby appoint O Hill and its successors and assigns as Managing Owner. The duties of Managing Owner shall be as follows:

(i) Managing Owner shall perform all of the duties of Managing Owner

as set forth in this Agreement.

(ii) Managing Owner is authorized to take actions which are consistent with the terms of this Agreement, to carry out this Agreement including but not limited to the right to hire and/or retain on behalf of the Owners accountants, lawyers, appraisers, mortgage brokers, insurance agents and consultants which Managing Owner deems appropriate in its reasonable discretion.

(iii) Managing Owner shall approve and coordinate the payment of the expenses of the ownership of the Property.

(iv) Managing Owner shall maintain the books and records of the Owners at the principal business office of Managing Owner.

(v) Managing Owner shall have a fiduciary duty to prepare a written status and financial report for the Property and provide copies to each Owner within ninety (90) days after request from another Owner, and within seventy-five (75) days after the end of each calendar year.

(b) The Owners of a majority of the ownership Interests in the Property shall have the right to select a new Managing Owner in place of O Hill, its successors and assigns if Robert O Hill is no longer the person primarily responsible for the overall management of the entity which constitutes the Managing Owner. In the event a Managing Owner sells its entire interest in the Property or resigns as Managing Owner, the Owners by election of the Owners who own a majority of the Interests in the Property shall appoint a new Managing Owner. At any time, Managing Owner may be removed with cause by the written election of the Owners of a majority of the ownership Interests in the Property not owned by the Managing Owner, and a new Managing Owner shall be appointed by the Owners who own a majority of the ownership Interests in the Property. The votes cast by the Managing Owner in favor of a new Managing Owner may not be cast for the removed Managing Owner or any transferee of the removed Managing Owner's interests. If the removed Managing Owner does not vote to appoint a new Managing Owner within ten (10) days of being requested to do so by the other Owners, then the new Managing Owner shall be appointed by Owners of a majority of the ownership Interests in the Property not owned by Managing Owner. Such resignation or removal, and the new appointment shall be recorded in the office of the Orange County Recorder. In the event there is no Managing Owner, all actions of the Owners with respect to the Property shall require the unanimous written consent of the Owners. "Cause" as used herein shall mean fraud, gross negligence or a material default of a material obligation by Managing Owner. The reasons for removal of a Managing Owner shall be material and specifically stated in the written notice of removal.

(c) Managing Owner is hereby appointed as attorney in fact for each Owner for the purpose of taking all actions which are approved in writing by the requisite percentage

of ownership Interests in the Property or which the Managing Owner is otherwise allowed or authorized to take hereunder, including execution of deeds, deeds of trusts, notes, assignment of leases, assignments of rents and leases, guarantees, lease amendments, extensions or terminations, all in the name, place and stead and on behalf of each Owner with the same validity and effect as if such Owner had executed same. Each Owner specifically agrees to be bound by all actions validly taken under such power of attorney. This power of attorney is coupled with an interest and is irrevocable. Each Owner also hereby appoints each other Owner as attorney in fact for such Owner for purposes of acting as an additional signatory to any action undertaken by Managing Owner pursuant to the provisions of Section 4 hereof, and of the power of attorney granted Managing Owner herein (each, an "Additional Owner").

(d) Except for the protection of the Property or in the case of an emergency, no material sums shall be expended for capital improvements without the prior written consent of Owners who hold a majority of the Interests in the Property.

(e) As compensation for the duties of Managing Owner under this Agreement, Managing Owner shall be reimbursed reasonable out of pocket costs incurred and paid to unaffiliated third parties and shall receive an asset management fee which shall be equal to one-half percent ($\frac{1}{2}\%$) of the gross receipts from the operations of the Property, payable monthly. Managing Owner may deduct such amounts due Managing Owner or third parties from revenue received from the Property, but shall identify amounts charged to the Owners, on at least a quarterly basis.

(f) The Managing Owner shall not have the right to retain counsel at the Owner's expense for a dispute between the Owners, unless the dispute results from a breach or default under the terms of this Agreement by an Owner or the Owners, other than the Managing Owner.

8. DISTRIBUTIONS. Distributions of cash to the Owners shall be made as follows:

(a) Cash from operations shall be distributed to the Owners in accordance with their respective Interests in the Property on a monthly basis; provided, however, that the Managing Owner shall be entitled to maintain reasonable reserves for any future anticipated expenditures related to the ownership of the Property.

(b) Refinancing proceeds shall be distributed to the Owners in accordance with their respective Interests in the Property; provided, however, the Managing Owner shall be entitled to retain on behalf of the Owners the following refinancing proceeds: (i) such portion of the refinancing proceeds as the Owners of a majority of the Interests in the Property deem necessary for capital improvements to the Property, and (ii) such portion of the refinancing proceeds as may be necessary to establish reasonable reserves for anticipated future

expenditures of the Owners.

(c) Net proceeds from the sale of the Property shall be distributed to the Owners in accordance with their respective Interests in the Property. Net proceeds from the sale of the Property shall be defined as the gross proceeds from the sale of the Property, less (i) all costs associated with such sale, (ii) payment of any encumbrance against the Property (unless assumed by the buyer with seller released from liability thereon), (iii) payment of any other expenses related to ownership of the Property, and (iv) reasonable reserves for the payment of any future expenses related to the Property anticipated by the Managing Owner, during the one (1) year following the sale of the Property. The Managing Owner shall account for and distribute such reserve to the Owners within one (1) year following the sale of the Property, except to the extent that such reserve is still required to be maintained for a specific, then readily identifiable reasonably anticipated future expense. In the event the Managing Owner retains such reserves for a period in excess of 12 months for such specific purpose, such reserve shall be accounted for and distributed as soon as reasonably possible following satisfaction or elimination of the obligation for which the reserve was created.

(d) Notwithstanding Section 8(a), Section 8(b) and Section 8(c) to the contrary, (i) cash that would otherwise be distributed to an Owner shall instead be distributed to the other Owners to the extent provided in the Promissory Note, or to otherwise discharge all obligations of a Defaulting Owner under Section 6 above and (ii) the reserves retained under Section 8(a), Section 8(b) and Section 8(c) above shall not exceed \$100,000 in the aggregate, without the prior written consent of the Owners of a majority of the Interests in the Property.

9. BOOKS AND RECORDS. Such books of account and records as are maintained by or for the Property shall be kept at the principal business office of the Managing Owner and be open to inspection by any Owner or accredited representative of any Owner, at a reasonable time upon reasonable advance notice. Each Owner shall have the right to make a separate audit of such books and records of the Property at such Owner's own expense; provided, however, if the audit is requested by Owners of at least fifty percent (50%) of the Interests in the Property, the audit shall be at the expense of all of the Owners.

10. CONTINUATION. The bankruptcy, foreclosure, tax lien, attachment or execution of judgment or other involuntary lien, insanity, disability, distribution, death or dissolution of or against an Owner shall not terminate the effects of this Agreement. Upon such an occurrence, the Interest in the Property of such Owner shall become vested in the guardian, administrator, executor, trustee, other legal representative or person or entity entitled to the Interest in the Property of such Owner, who shall acquire all of the rights and

obligations provided in this Agreement and shall be subject to and bound by all of the terms and conditions of this Agreement; provided, however, in the case of involuntary liens, attachments, judgments or executions that such legal representative or person or entity shall be entitled only to receive distributions on account of such Interest in the Property as provided for in Section 8 above and shall have no management or other decision making authority.

11. INCOME TAX CONSEQUENCES. Each Owner acknowledges that the tax consequences of an investment in the Property is a matter upon which such Owner's own personal tax adviser must conclude. Each Owner shall bear the income tax consequences of such Owner's interest in the Property, which may be different than (i) such Owner's pro rata share of the purchase price of the Property as a result of the effects of a carryover basis in the Property, or (ii) such Owner's actual share of the cash distributions from the Property.

12. TENANCY IN COMMON - NOT A PARTNERSHIP. Each Owner agrees that the Ownership of the Property is a tenancy in common and not a partnership. Each Owner agrees to remain excluded from all of the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended. Each Owner hereby covenants and agrees that each Owner shall report on such Owner's respective Federal and State income tax return, such Owner's respective share of items of income, deduction and credit which results from holding of its Interest in the Property, in a manner consistent with a tenancy in common commencing with the taxable year of the acquisition of the Property. No Owner shall notify the Commissioner of Internal Revenue (the "Commissioner") that such Owner desires that the Owners be treated as a partnership and that Subchapter K of the Code applies. Each Owner hereby agrees to indemnify and hold each other Owner free and harmless from all cost, liability, tax consequence and expense, including attorneys fees, which results from any Owner so notifying the Commissioner.

13. TERMINATION.

This Agreement shall be immediately terminated upon the happening of any of the following events:

- (a) The sale or other disposition of all of the Property.
- (b) The unanimous decision of the Owners that this Agreement be terminated, in which event the Owners shall hold the Property as tenants in common and shall be governed by the laws of the State of California.
- (c) The purchase by one Owner of all the Interests of the other Owners in the Property.

14. OPTION TO PURCHASE.

(a) If an Owner desires to sell its Interest in the Property or a portion of its Interest in the Property, O Hill and its successors, as consideration for its role in the acquisition of the Property, shall have a first right to purchase all or a portion of such Interest in the Property. A selling Owner shall notify O Hill in writing of the portion of the Interest selling Owner desires to sell and selling Owner's desired price for such Interest. O Hill shall have thirty (30) days from the date it receives proper written notice to notify selling Owner that it will purchase all or a specific portion of the Interest being offered for sale by selling Owner. O Hill and selling Owner shall meet and try to agree on a purchase price. If, after thirty (30) days, O Hill and selling Owner are unable to agree on a purchase price then, at their expense, each will retain an MAI appraiser to appraise the entire Property without discount for partial ownership subject to all non monetary encumbrances thereof, including but not limited to any ground lease of the Property, based upon the highest and best use reasonably available for the Property. Such appraisals shall be completed within sixty (60) days and exchanged between the parties. If the values of the two MAI appraisals are within five percent (5%) of each other, using the larger number as the denominator, the appraised value of the entire Property shall be an average of the two appraisals, less three percent (3%). If the two MAI appraisals are not within five percent (5%) of each other then the two (2) designated appraisers shall agree upon and retain a third appraiser who will be given the completed appraisals and all appropriate back-up valuing information and such third appraiser shall first attempt to mediate a compromise value between the three (3) appraisers. If the compromise value cannot be reached between the three (3) appraisers within thirty (30) days then the third appraiser shall reach a conclusion as to value (which shall be not less than the lower of the two (2) appraisals, and no greater than the higher of the two appraisals) and the two closest conclusions as to value shall be averaged and the average, less three percent (3%) shall be deemed the appraised value of the entire Property. The purchase price shall be such appraised value times the ownership Interest percentage being sold, less the selling Owner's prorata share of any Collective Liens. The purchase shall be completed on or before one hundred and twenty (120) days after the purchase price is finally determined. The Interest being sold shall be delivered free and clear of all liens (except the Collective Liens). Any Interest of the selling Owner not purchased by O Hill may be purchased on the same basis by the other Owners. Such other Owners shall elect to purchase such interest within ten (10) days after being advised in writing of the amount of the above determined purchase price. If the other Owners elect to purchase in the aggregate more than the Interest being offered, each Owner may purchase the portion of the Interest so offered as agreed upon by the other Owners desiring to purchase a portion of the offered Interest, and absent an agreement reached between them, each may purchase a percentage of the remainder of the Interest which the

amount offered to be purchased by an Owner bears to the amount offered to be purchased by all Owners, but not less than that portion of the remainder of the Interest offered which the then Interest of such Owner bears to the then Interests of all Owners electing to purchase such remainder. Any interest not purchased by an Owner may be sold to a third party reasonably approved by the Managing Owner. If such sale does not occur within one (1) year after the purchase price is determined, the sale shall again be subject to the above provision.

(b) The following transfers ("Permitted Transferee") shall not be subject to the provisions of Section 14(a) above:

(i) A transfer to any lineal descendent of a current trustee or general partner of one of the Owners;

(ii) A transfer to a trust for the benefit of any lineal descendent of a current trustee or current general partner of any of the Owners;

(iii) A transfer to any successor trustee or distribution to a beneficiary, where one of the current Owners is a trust; and

(iv) A transfer to any partner or group of partners who consist of one of the current existing partners of an Owner, where such Owner is a partnership.

(c) The rights of O Hill and its successors under Section 14(a) above shall expire upon the sale of the Interest of O Hill to a person or entity in which O Hill, or a Permitted Transferee of O Hill, has no interest.

15. NOTICES. All notices under this Agreement must be in writing and shall be deemed to have been duly given if delivered personally or mailed, postage prepaid, by certified United States mail, return receipt requested, addressed to the Owner to be notified. Such notice shall be deemed to have been given as of the date so delivered, if delivered in person, or upon deposit thereof in the United States mail. For the purposes of notice, the addresses of the Owners until changed as hereinafter provided, shall be as set forth in Exhibit "B" attached hereto. Each Owner shall have the right to change the address to which notice to such Owner is to be given by giving written notice thereof to all other Owners. Managing Owner shall maintain a current list of each recognized Owner of the Property (as described in Section 19 below), and the address and percentage interest owned by each such Owner. Managing Owner shall provide such information to any Owner upon written request to do so.

16. UNENFORCEABLE TERMS. In the event that any provision of this Agreement shall be unenforceable or inoperative as a matter of law, the remaining provisions shall remain in full force and effect.

17. TIME OF ESSENCE. Time is the essence of this Agreement and the

provisions contained herein and each and every provision hereof.

18. **AMENDMENTS.** This Agreement may be amended only by a written amendment signed by all Owners whose signatures shall be notarized and recorded in the County of Orange. Any amendment or modification of this Agreement shall be dated, and if any conflict arises between the provisions of said amendment or modification and provisions incorporated in earlier documents, the most recent provisions shall be controlling.

19. **BINDING EFFECT.** This Agreement shall inure to the benefit of and shall be binding upon the Property and the Owners and their respective heirs, successors, legal representatives and assigns. Each subsequent Owner of a portion of the Property shall be bound by the provisions hereof as if such subsequent Owner had assumed this Agreement. No subsequent Owner need be recognized as such until such subsequent Owner has given each other Owner written notice of the acquisition of such interest in the Property by such subsequent Owner pursuant to the notice provisions of Section 15 above, which each Owner and each subsequent Owner agrees to do or cause to be done.

20. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Owners and supersedes any prior or concurrent written or oral agreement between said parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Owners relating to the subject matter contained in this Agreement, which are not fully expressed herein.

21. **GENDER.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

22. **CAPTION HEADINGS.** Captions at the beginning of each numbered Section of the Agreement are solely for the convenience of the parties and shall not be deemed part of the context of this Agreement.

23. **NEGOTIATED TRANSACTION.** The provisions of this Agreement were negotiated by all of the parties hereto and said Agreement shall be deemed to have been drafted by all of the parties thereto.

24. **FURTHER ASSURANCES.** Each Owner hereby agrees to promptly sign any

additional instruments or documents which are necessary or appropriate to carry out the intent and purpose of this Agreement.

25. **SPOUSES.** Some of the Owners are married and may in the future take title to an Interest in the Property with their respective spouses (the "Married Owners"). For the protection of the remaining Owners, any interest in the Property held by Married Owners shall be deemed to be held by the husband, as to an undivided one-half (1/2) interest and by the wife, as to an undivided one-half (1/2) interest. For the purpose of voting upon any issue upon which the Owners may vote pursuant to the terms and conditions of this Agreement, the husband and wife shall each be deemed to own an undivided one-half (1/2) interest in the interest of such Married Owners. Each Married Owner acknowledges and agrees that he/she shall do nothing to impede or impair the rights of the other Owners in an attempt to gain leverage upon his/her spouse. In the event an Owner takes title to an Interest in the Property solely in their name, they shall obtain and record a quitclaim deed from their respective spouses so that the Owner in whose name the Interest in the Property is held shall have the right, power and authority to deal with the Property alone and without the consent of his/her spouse. In the event that any such Owner fails to obtain such quitclaim deed and damages result to the remaining Owners, such Owner who so fails to obtain such quitclaim deed shall be liable for the resulting damages.

26. **ARBITRATION OF DISPUTES:** ALL DISPUTES ARISING UNDER THIS AGREEMENT WILL BE RESOLVED BY SUBMISSION TO ARBITRATION AT THE ORANGE COUNTY OFFICES OF JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS") FOR BINDING ARBITRATION. THE PARTIES MAY AGREE ON A RETIRED JUDGE FROM THE JAMS PANEL. IF THEY ARE UNABLE TO AGREE, JAMS WILL PROVIDE A LIST OF THREE AVAILABLE JUDGES AND EACH PARTY MAY STRIKE ONE. THE REMAINING JUDGE WILL SERVE AS THE ARBITRATOR AT THE ARBITRATION HEARING. THE PARTIES AGREE THAT ARBITRATION MUST BE INITIATED WITHIN ONE YEAR AFTER THE CLAIMED BREACH OCCURRED AND THAT THE FAILURE TO INITIATE ARBITRATION WITHIN THE ONE-YEAR PERIOD CONSTITUTES AN ABSOLUTE BAR TO THE INSTITUTION OF ANY NEW PROCEEDINGS. THE AGGRIEVED PARTY CAN INITIATE ARBITRATION BY SENDING WRITTEN NOTICE OF AN INTENTION TO ARBITRATE BY REGISTERED OR CERTIFIED MAIL TO THE OTHER PARTY AND TO JAMS. THE NOTICE MUST CONTAIN A DESCRIPTION OF THE DISPUTE, THE AMOUNT INVOLVED, AND THE REMEDY SOUGHT. IF AND WHEN A DEMAND FOR ARBITRATION IS MADE BY EITHER PARTY, THE PARTIES AGREE TO

EXECUTE A SUBMISSION AGREEMENT, PROVIDED BY JAMS, SETTING FORTH THE RIGHTS OF THE PARTIES IF THE CASE IS ARBITRATED AND THE RULES AND PROCEDURES TO BE FOLLOWED AT THE ARBITRATION HEARING. THE ARBITRATOR SHALL, AT THE MOTION OF A PARTY, PERMIT AND ORDER SUCH DISCOVERY ON THE PART OF SUCH PARTY AS HE DETERMINES TO BE REASONABLE AND APPROPRIATE TO THE DISPUTE BEFORE HIM. NOTWITHSTANDING THE ABOVE, AT LEAST TWO WEEKS PRIOR TO THE ARBITRATION, EACH PARTY MUST MAKE A FULL DISCLOSURE TO THE OTHER PARTY OF (i) ALL DOCUMENTS TO BE PRESENTED BY SUCH PARTY AND (ii) ANY WITNESSES TO BE CALLED BY SUCH PARTY.

NOTHING IN THIS PARAGRAPH SHALL IN ANY WAY LIMIT OR OTHERWISE RESTRICT A PARTY'S RIGHT OR ABILITY TO OBTAIN INJUNCTIVE RELIEF OR APPOINTMENT OF A RECEIVER THROUGH THE COURT SYSTEM.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS PROVIDED HEREIN, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

O Hill: [~~SMH~~] TFT: [03] [57] Mesa-East: [454] [EF]
Mira Mesa-West [018] [EF] NBCC Ltd: [~~SMH~~]

27. **COST OF ENFORCEMENT.** Should any dispute arise between the parties hereto or their legal representatives, successors or assigns concerning any provision of this

Agreement or the rights and duties of any person in relation thereto, the party prevailing in such dispute shall be entitled, in addition to such other relief that may be granted, to reasonable attorneys fees and legal costs in connection with such dispute. For purposes of this Paragraph, a dispute shall include, but not be limited to, an arbitration proceeding or a court action for injunctive relief.

28. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California and the venue for any dispute shall be Orange County, California.

EXECUTED as of March 8th, 1994, at Newport Beach, California.

Owners:

**O Hill Properties, a
California limited partnership**

By: [Signature]
Robert O Hill,
its General Partner

**The Fainbarg Trust,
dated April 19, 1982**

By: Allan Fainbarg, Trustee
Allan Fainbarg, Trustee

**Newport Beach Country Club,
a California limited partnership**

By: O Hill Properties,
a California limited partnership
Its General Partner

By: [Signature]
Robert O Hill
General Partner

**Mesa Shopping Center-East
A California General Partnership**

By: Arnold D. Feuerstein
Arnold D. Feuerstein
Managing General Partner

By: Elliot Feuerstein
Elliot Feuerstein
Managing General Partner

**Mira Mesa Shopping Center-West
A California General Partnership**

By: Arnold D. Feuerstein
Arnold D. Feuerstein
Managing General Partner

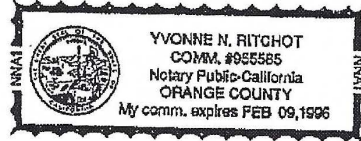
By: Elliot Feuerstein
Elliot Feuerstein
Managing General Partner

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On March 9, 1994, before me a Notary Public in and for said County and State, personally appeared Robert O Hill, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

Yvonne N. Ritchot
Notary Public in and for said County and State

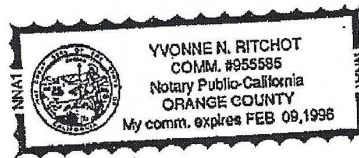


STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On March 9, 1994, before me a Notary Public in and for said County and State, personally appeared Allan Fainbarg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

Yvonne N. Ritchot
Notary Public in and for said County and State



STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On March 9, 1994, before me a Notary Public in and for said County and State, personally appeared Robert O Hill, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

Yvonne N. Ritchot
Notary Public in and for said County and State



STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On March 8, 1994, before me a Notary Public in and for said County and State, personally appeared Arnold D. Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

M. Priscilla Harvelt
Notary Public in and for said County and State

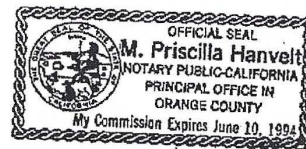


STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On March 8, 1994, before me a Notary Public in and for said County and State, personally appeared Elliot Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

M. Priscilla Harvelt
Notary Public in and for said County and State



STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On _____, before me a Notary Public in and for said County and State, personally appeared Arnold D. Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said County and State

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On _____, before me a Notary Public in and for said County and State, personally appeared Elliot Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said County and State

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1:

That portion of Block 93 of Irvine's Subdivision in the City of Newport Beach, County of Orange, State of California, as per Map recorded in Book 1 Page 88 of Miscellaneous Maps in the Office of the County Recorder of said County described as follows:

Lot A as shown on that certain Parcel Map filed October 10, 1967 in Book 10 Page 20 of Parcel Maps in the Office of the County Recorder of said County, and Parcels 1, 2 and 3 as shown on that certain Parcel Map filed February 11, 1977 in Book 92 Pages 13 and 14 of Parcel Maps, in the Office of the County Recorder of said County.

Parcel 2:

As easement for ingress and egress over the most Southerly 190.00 feet of Parcel 1, in the City of Newport Beach, County of Orange, State of California, as shown on that certain Parcel Map filed October 10, 1967 in Book 10 Page 20 of Parcel Maps, in the Office of the County Recorder of said County.

EXHIBIT "B"
OWNERSHIP INTEREST IN THE PROPERTY

Name and Address of Owner	Interest in Property
Allan and Sara Fainberg, Trustees of The Fainberg Trust dated April 19, 1982 890 W. Baker Costa Mesa, CA 92626	25 %
Mesa Shopping Center-East c/o Arnold Feuerstein 2293 W. Ball Road Anaheim, CA 92805	15 %
Mira Mesa Shopping Center-West c/o Arnold Feuerstein 2293 W. Ball Road Anaheim, CA 92805	10 %
With a copy of any notices to: Mesa Shopping Center-East c/o Elliot Feuerstein 8294 Mira Mesa Blvd. San Diego, CA 92126	
Newport Beach Country Club One Upper Newport Plaza Newport Beach, CA 92660 Attn: Robert O Hill	25 %
O Hill Properties One Upper Newport Plaza Newport Beach, CA 92660 Attn: Robert O Hill	25 %

PROMISSORY NOTE

\$ _____

Newport Beach, California

FOR VALUE RECEIVED, _____ ("Maker") hereby promises to pay to _____, or order ("Holder"), at _____, or such other place or places as may be designated by Holder from time to time, the sum of _____ (\$ _____), payable as specified herein. This Promissory Note ("Note") shall bear interest at the prime commercial lending rate of Bank of America, plus two and one half percent (2½%) per annum but not to exceed the maximum rate allowed by law. This Note shall be due and payable on or before the date which is two (2) years from the date of this Note.

Maker and Holder intend that this Note shall be recourse to Maker. However, it is Maker's and Holder's intention that Holder's first recourse shall be against the proceeds that would be otherwise payable to Maker as a result of Maker's ownership of an undivided _____% interest in certain real property commonly known as The Newport Beach Country Club, and legally defined in any Deed of Trust with Assignment of Rents encumbering such real property as security for this Note ("Property").

As a credit against sums owed by Maker to Holder, Holder shall be entitled to receive 100% of the cash distributions which would otherwise be distributed to Maker as a result of its ownership interest in the Property, up to an aggregate sum equal to the principal amount of this Note (\$ _____) plus accrued interest.

Maker hereby agrees to pay all costs and expenses, including reasonable attorneys fees, incurred by Holder and arising out of or related to the collection of any amounts due hereunder or the enforcement of any rights provided for herein, or in any other instrument now or hereafter securing Maker's obligations under this Note, whether or not suit is filed.

Maker waives all rights of set-off, deduction and counter claim with respect to this Note. Any amount which Maker contends are owed by Holder shall be sought by independent action. To the extent permitted by applicable law, the defense of any statute of limitations is hereby waived by Maker.

This Note shall be governed by and construed in accordance with the laws of the State of California.

This Note is secured by a Deed of Trust with Assignment of Rents, encumbering Maker's ownership interest in the Property, executed by Maker for the benefit of Holder.
