

Attachment B

Planning Commission Resolution No. PC2023-047

RESOLUTION NO. PC2023-047

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING CITY COUNCIL ADOPTION OF A GENERAL PLAN AMENDMENT, PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT, SITE DEVELOPMENT REVIEW, VESTING TENTATIVE TRACT MAP, AFFORDABLE HOUSING IMPLEMENTATION PLAN, DEVELOPMENT AGREEMENT AND AN ENVIRONMENTAL IMPACT REPORT ADDENDUM FOR THE RESIDENCES AT 1401 QUAIL PROJECT LOCATED AT 1401 QUAIL STREET (PA2023-0040)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Intracorp Homes (“Applicant”), with respect to the property located at 1401 Quail Street, and legally described as Parcel 1 of Resubdivision No. 341 (“Property”).
2. The Applicant is requesting an approval for the demolition of an existing office building and the development of 67 for-sale condominium units, including a 146-space parking structure (“Project”). The following approvals are requested or required in order to implement the Project as proposed:
 - **General Plan Amendment (GPA)** – A request to amend the General Plan Land Use Designation of the Property from General Commercial Office (CO-G) to Mixed-Use Horizontal (MU-H2);
 - **Planned Community Development Plan Amendment (PCDP Amendment)** – An amendment to the Newport Place Planned Community (PC11) Development Plan to include the Property within the Residential Overlay;
 - **Major Site Development Review (SDR)** - A site development review in accordance with the Newport Place Planned Community and Section 20.52.80 (Site Development Reviews) of the Newport Beach Municipal Code (“NBMC”), for the construction of the Project;
 - **Tentative Vesting Tract Map (VTM)** – A Vesting Tentative Tract Map No. 19261 pursuant to Title 19 (Subdivisions) of the NBMC for 67 condominium dwelling units;
 - **Affordable Housing Implementation Plan (AHIP)** - A program specifying how the Project would meet the City’s affordable housing requirements, in exchange for a request of 27.5% increase in density. The Applicant seeks four development standard waivers including two waivers related to park land dedication required by

General Plan Land Use Policy LU 6.15.13 and Section 19.52.040 (Parkland Standard) of the NBMC, one waiver related to building setbacks, and one waiver related to building height, pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915 (Density Bonus Law). The Applicant also seeks two development concessions related to the mix of affordable units and a partial payment of the park in-lieu fee, pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915;

- **Development Agreement (DA)** – A Development Agreement, between the Applicant and the City, pursuant to Section 15.45.020 (Development Agreement Required) of the NBMC, which would provide the Applicant with vested right to develop the Project for a term of ten years and provide negotiated public benefits to the City; and
 - **Addendum to the 2006 General Plan Update Program Environmental Impact Reports (Addendum)** - Pursuant to the California Environmental Quality Act (“CEQA”), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project.
3. The Property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and located within the Newport Place Planned Community (PC-11) Zoning District in the Industrial Site 3A sub-area.
 4. The Property is not located within the coastal zone.
 5. A public hearing was held on December 21, 2023 in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with Government Code Section 54950 *et seq.* (Ralph M. Brown Act), and Chapter 15.45 (Development Agreements), Chapter 19.20 (Vesting Tentative Map), Chapter 20.56 (Planned Community District Procedures), and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. On July 25, 2006, the City Council adopted Resolution No. 2006-75, thereby certifying the adequacy and completeness of the Environmental Impact Report (“EIR”) for the General Plan Update (SCH No. 2006011119). The EIR was prepared in compliance with CEQA Guidelines set forth in the California Public Resources Code Section 21000 *et seq.* and its implementing State regulations set forth in the California Code of Regulations Title 14, Division 6, Chapter 3 (CEQA Guidelines) and City Council Policy K-3. Additionally, in accordance with Section 15168(a) of the CEQA Guidelines, the City prepared the EIR as a Program Environmental Impact Report (PEIR). This PEIR analyzed the potential impacts of a citywide land use plan, and the goals and policies of 10 general plan elements.
2. Additionally, on November 22, 2011, the City Council adopted General Plan Amendment No. GP2008-003, thereby approving the City of Newport Beach Housing Element Update (2008-2014) and its associated Housing Element and Initial Study/Negative Declaration

under CEQA. The PEIR and Initial Study/Negative Declaration are collectively referred to herein as the PEIR.

3. Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when an EIR has been certified for a project, no subsequent EIR is required unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
 - a. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - b. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
 - c. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
 - i. The project will have one or more significant effects not discussed in the previous EIR;
 - ii. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - iii. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - iv. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
4. An Addendum to the PEIR was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.
5. The following environmental topics were analyzed for the Project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation, Tribal and Cultural Resources, Utilities and Service Systems, and Wildfire. The Addendum includes analysis of new topics that were

not included in the previous EIRs; specifically, it includes a new energy section and a new wildfire section. These additional analyses are appropriate for inclusion in the Addendum, but none result in new or increased significant impacts that would require preparation of a subsequent EIR pursuant to Section 15162 of the CEQA Guidelines.

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

SECTION 3. REQUIRED FINDINGS.

General Plan Amendment

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

Finding and Facts in Support of Findings:

1. The request is to amend the General Plan Land Use designation from General Commercial Office (CO-G) to Mixed-Use Horizontal (MU-H2). The Mixed-Use Horizontal (MU-H2) designation applies to properties located in the Airport Area. It provides for a horizontal intermixing of uses that may include regional commercial office, multifamily

residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.

2. The GPA and the resulting land use change are compatible with the existing surrounding uses and planned land uses identified by the General Plan because the Project would introduce additional residential land uses in the Airport Area which includes a diverse mix of land uses including the gradual development of residential multifamily dwellings. Additionally, even with the conversion from General Commercial Office (CO-G) to Mixed-Use Horizontal (MU-H2), the building will be compatible with adjacent commercial properties architectural style and pedestrian connectivity. Additional residential development would support commercial properties within the Airport Area.
3. The requested GPA from General Commercial Office (CO-G) to Mixed-Use Horizontal (MU-H2) does not eliminate existing or future land uses to the overall detriment of the community given the Property's size, location, and surrounding uses. The existing office buildings were built in the 1970's and there are sufficient office facilities in the Airport Area to support the business needs of the community. The proposed change to allow residential uses would increase the City's housing stock including the provision of eight units that will be affordable to lower incomes.
4. The Property is located in an area of the City that has sufficient utilities systems to serve the Project once the Applicant completes a necessary upgrade to an off-site sewer line. As conditioned, applicant shall be responsible for their fair share of replacing the existing 10-inch vitrified clay pipe (VCP) pipe with a 12-inch sewer main, which is located near the intersection of Newport Place and Dove Street. This off-site improvement would result in approximately 435 linear feet of sewer line replacement. No other off-site improvements other than typical utility connections are proposed or required as part of the project.
5. The Project is consistent with the following City of Newport Beach General Plan policies that establish fundamental criteria for the formation and implementation of new residential villages in the Airport Business Area (additional policy analysis is included in the EIR Addendum attached hereto as Exhibit "A"):

- a. ***Land Use Element Policy LU 1.1 (Unique Environment): Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds.***

The Project enhances the distinct, urban character of the Airport Area by providing a means for replacing parking lots and an office building with attractive and functional residential development, in line with the General Plan goal of transitioning the Airport Area to a mixed-use community. The Property is not in or near any of the City's areas featuring the harbor, unique topography, or view sheds. The proposed project would introduce residential units to the Property consistent with the uses and urbanized character of the Airport Area and the proposed Mixed-Use Horizontal (MU-H2) designation.

- b. ***Land Use Element Policy LU 2.3 (Range of Residential Choices).*** *Provide opportunities for the development of residential units that respond to community and regional needs in terms of density, size, location, and cost. Implement goals, policies, programs, and objectives identified within the City's Housing Element.*

The Project establishes 67 multi-family residential units, including 8 affordable units for families of low and very-low income. The Project responds to market needs and diversifies the City's housing stock by adding additional dwelling units to the Airport Area.

- c. ***Land Use Element Policy LU 3.8 (Project Entitlement Review with Airport Land Use Commission)*** - *Refer the adoption or amendment of the General Plan, Zoning Code, specific plans, and Planned Community development plans for land within the John Wayne Airport planning area, as established in the JWA Airport Environs Land Use Plan (AELUP), to the Airport Land Use Commission (ALUC) for Orange County for review, as required by Section 21676 of the California Public Utilities Code. In addition, refer all development projects that include buildings with a height greater than 200 feet above ground level to the ALUC for review.*

The Project is within the boundaries of the Airport Environs Land Use Plan (AELUP), therefore, the overseeing agency, ALUC, must review the proposed GPA and PCDP Amendment pursuant to Government Code Section 65302.3 and Public Utilities Code Section 21676. The purpose of ALUC's review is to determine whether the Project is consistent with the AELUP prior to the City Council taking action on the Project. The Project is consistent with the noise and safety standards of the AELUP. With respect to noise, the City adopted noise-related amendments to the General Plan Noise and Land Use Elements, the Newport Place Planned Community (PC-11) and Title 20 (Planning and Zoning) contours to implement the 6th Cycle Housing Element. The Project is located partially within the updated 60 decibel (dBA) community noise equivalent level (CNEL) contour as shown in Figure N5 of the Noise Element of the General Plan, where residential development is allowed. As a result, the Project will be required to comply with the development standards set forth in Section 20.30.080(F) (Noise - Airport Environs Land Use Plan) of the NBMC. The Project sites outside of any safety zones set forth in the AELUP, therefore, is consistent with the noise standards of the AELUP.

- d. ***Land Use Element Policy 6.15.3 (Airport Compatibility).*** *Require that all development be constructed in conformance with the height restrictions set forth by the Federal Aviation Administration (FAA), Federal Aviation Regulations (FAR) Part 77, and Caltrans Division of Aeronautics, and that residential development shall be allowed only on parcels with noise levels of less than John Wayne Airport 65 dBA CNEL noise contour area as shown in Figure N5 of the Noise Element of the General Plan, unless and until the City determines, based on substantial evidence, that the sites wholly within the 65 dBA CNEL noise contour shown in Figure N5 are needed for the City to satisfy its Sixth Cycle RHNA mandate. Nonresidential uses are,*

however, encouraged on parcels located wholly within the 65 dBA CNEL contour area.

The Project is located at 1401 Quail Street and is approximately 81 feet in height. The Federal Aviation Administration (FAA) conducted an aeronautical study of the Project pursuant to applicable Federal regulations and has determined no hazard to air navigation for the Project.

The Project is located partially within the updated 60 dBA CNEL contour as shown in Figure N5 of the Noise Element of the General Plan, where residential development is allowed, subject to the development standards set forth in Section 20.30.080(F) (Noise - Airport Environs Land Use Plan).

- e. ***Land Use Element Policy LU 6.15.5 (Residential and Supporting Uses).*** *Accommodate the development of a maximum of 2,200 multi-family residential units, including work force housing, and mixed-use buildings that integrate residential with ground level office or retail uses, along with supporting retail, grocery stores, and parklands. Residential units may be developed only as the replacement of underlying permitted nonresidential uses. When a development phase includes a mix of residential and nonresidential uses or replaces existing industrial uses, the number of peak hour trips generated by cumulative development of the site shall not exceed the number of trips that would result from development of the underlying permitted nonresidential uses. However, a maximum of 550 units may be developed as infill on surface parking lots or areas not used as occupiable buildings on properties within the Conceptual Development Plan Area depicted on Figure LU22 provided that the parking is replaced on site.*

General Plan Land Use Policy 6.15.5 established a development limit of 2,200 maximum dwelling units for the Airport Area. Of the 2,200 residential units allowed, 1,650 units may be developed as replacement of existing office, retail, and/or industrial uses. The remaining 550 units are classified as additive units meaning they are not required to replace other units and they may be constructed as “in-fill” units to existing commercial or office development within the Conceptual Development Plan Area (CDPA) of the Airport Area. Any eligible density bonus allowed by Government Code Sections 65915 (Density Bonus Law) and Chapter 20.32 (Density Bonus) of the NBMC are not included in the 2,200-unit allowance.

The 550 additive units have been previously allocated to the Uptown Newport and Residences at 4400 Von Karman projects. The Property is developed with an existing one-story commercial office building totaling 22,956 square feet. Since the Project can be developed only as the replacement of the underlying nonresidential use (office), and the number of peak hour trips generated by cumulative development of the Property shall not exceed the number of trips that would result from development of the underlying permitted nonresidential uses, a conversion rate of 2.29 dwelling units per 1,000 square feet of commercial floor area is required. This results in a total of 52 dwelling units. With a 27.5% density bonus or 15 dwelling units request, a total of 67 (52+15) dwelling units are proposed for the Project.

Presently, there are a total of 353 remaining and available dwelling units in the Airport Area. Considering the dwelling unit sum of the previously approved projects and the proposed Project, the remaining development allocation within the Airport Area would be 301 (353-52) dwelling units (exclusive of density bonus units). A separate project, Residences at 1400 Bristol, is under review to allow 64 units (exclusive of any density bonus). Assuming the 1400 Bristol project is approved, the remaining development allocation would be reduced to 212 (301-89=212) dwelling units.

- f. ***Land Use Element Policy LU 6.15.6 (Size of Residential Villages).*** Allow development of mixed-use residential villages, each containing a minimum of 10 acres and centered on a neighborhood park and other amenities (as conceptually illustrated in Figure LU23). The first phase of residential development in each village shall encompass at least 5 gross acres of land, exclusive of existing rights-of-way. This acreage may include multiple parcels provided that they are contiguous or face one another across an existing street. At the discretion of the City, this acreage may also include part of a contiguous property in a different land use category, if the City finds that a sufficient portion of the contiguous property is used to provide functionally proximate parking, open space, or other amenity. The “Conceptual Development Plan” area shown on Figure LU22 shall be exempt from the 5-acre minimum, but a conceptual development plan described in Policy LU 6.15.11 shall be required.

The Property is 1.71 acres in size. The Residential Overlay of PC-11 allows residential development on sites containing less than 10-acres if housing units affordable to lower income households are provided. The proposed project includes eight dwelling units that will be affordable for low and very low-income households. If the Planned Community Development Plan is amended to include the Project within the Residential Overlay, as requested by the Applicant, the Project will be exempt from General Plan Policy 6.15.6 (Size of Residential Villages).

- g. ***Land Use Policy LU 6.15.7 (Overall Density and Housing Types).*** Require that residential units be developed at a minimum density of 30 units and maximum of 50 units per net acre averaged over the total area of each residential village. Net acreage shall be exclusive of existing and new rights-of-way, public pedestrian ways, and neighborhood parks. Within these densities, provide for the development of a mix of building types ranging from townhomes to high-rises to accommodate a variety of household types and incomes and to promote a diversity of building masses and scales.

The Project has a base density of 30 units per acre (52 units on 1.71 acres) which is consistent with the 30 to 50 dwelling units per acre allowed range. The base density does not include the 27.5% density bonus of 15 units that is allowed by the State Bonus Density law which includes eight units set aside for affordable housing. Altogether, the Project has an overall density of 39 dwelling units per acre, which is exclusive of rights-of-ways, public pedestrian ways, and neighborhood parks.

The Project is a for-sale development with 67 condominium units, which provides residents with an ownership option that differs from surrounding apartment projects. There is a mixture of unit types, ranging from two-bedroom to three-bedroom units, accommodating a variety of household types and incomes. Of the 67 units, eight units will be affordable to low and very low-income households and 59 units will be market-rate housing.

- h. **Land Use Policy LU 6.15.8** (*First Phase Development Density*). *Require a residential density of 45 to 50 units per net acre, averaged over the first phase for each residential village. This shall be applied to 100 percent of properties in the first phase development area whether developed exclusively for residential or integrating service commercial horizontally on the site or vertically within a mixed-use building. On individual sites, housing development may exceed or be below this density to encourage a mix of housing types, provided that the average density for the area encompassed by the first phase is achieved.*

The Project would be developed in one phase on an individual site with a density of 39 units per acre. The Project provides a mixture of residential unit types that include eight units of affordable housing to low and very low-income households. The proposed density is below the required minimum of 45 units per acre since the applicant is providing a lower density to accommodate larger individual units for residents.

- i. **Land Use Policy LU 6.15.9** (*Subsequent Phase Development Location and Density*). *Subsequent phases of residential development shall abut the first phase or shall face the first phase across a street. The minimum density of residential development (including residential mixed-use development) shall be 30 units per net acre and shall not exceed the maximum of 50 units per net acre averaged over the development phase.*

See finding LU 6.15.9 First Phase Development Density above.

- j. **Land Use Policy LU 6.15.13** (*Neighborhood Parks Standards*). *To provide a focus and identity for the entire neighborhood and to serve the daily recreational and commercial needs of the community within easy walking distance of homes, require dedication and improvement of at least 8 percent of the gross land area (exclusive of existing rights-of-way) of the first phase development in each neighborhood, or ½ acre, whichever is greater, as a neighborhood park. This requirement may be waived by the City where it can be demonstrated that the development parcels are too small to feasibly accommodate the park or inappropriately located to serve the needs of local residents, and when an in-lieu fee is paid to the City for the acquisition and improvement of other properties as parklands to serve the Airport Area.*

In every case, the neighborhood park shall be at least 8% of the total Residential Village Area or one acre in area, whichever is greater, and shall have a minimum dimension of 150 feet. Park acreage shall be exclusive of existing or new rights-of-way, development sites, or setback areas. A neighborhood park shall satisfy some

or all of the requirements of the Park Dedication Ordinance, as prescribed by the Recreation Element of the General Plan.

The Project includes a waiver from Land Use Policy LU 6.15.13, as is allowed by the policy, due to a 1.71-acre parcel size that is too small to feasibly accommodate a park. As a part of the Development Agreement, the Applicant is proposing to use an incentive or concession allowed under Government Code Section 65915-65918 (State Density Bonus Law) to waive a portion of the required in-lieu fee.

- k. ***Land Use Policy LU 6.15.14 (Location).*** *Require that each neighborhood park is clearly public in character and is accessible to all residents of the neighborhood. Each park shall be surrounded by public streets on at least two sides (preferably with on-street parking to serve the park), and shall be linked to residential uses in its respective neighborhood by streets or pedestrian ways.*

See finding LU 6.15.13 Neighborhood Park Standards above.

- l. ***Land Use Policy LU 6.15.16 (On-Site Recreation and Open Space Standards).*** *Require developers of multi-family residential developments on parcels 8 acres or larger to provide on-site recreational amenities. For these developments, 44 square feet of on-site recreational amenities shall be provided for each dwelling unit in addition to the requirements under the City's Park Dedication Ordinance and in accordance with the Parks and Recreation Element of the General Plan. On-site recreational amenities can consist of public urban plazas or squares where there is the capability for recreation and outdoor activity. These recreational amenities may also include swimming pools, exercise facilities, tennis courts, and basketball courts. Where there is insufficient land to provide on-site recreational amenities, the developer shall be required to pay cash in-lieu that would be used to develop or upgrade nearby recreation facilities to offset user demand as defined in the City's Park Dedication Fee Ordinance.*

The acreage of on-site open space developed with residential projects may be credited against the parkland dedication requirements where it is accessible to the public during daylight hours, visible from public rights-of-way, and is of sufficient size to accommodate recreational use by the public. However, the credit for the provision of on-site open space shall not exceed 30% of the parkland dedication requirements.

The Project is located on a 1.71-acre site and is not subject to Policy LU 6.15.16, as the policy only applies to properties consisting of 8-acres or larger. However, the Project exceeds the 2,948-square-foot (44 square feet x 67 units) on-site recreational amenities by providing a total of 7,597 square feet or approximately 113 square feet per unit which include a pool deck with swimming pool and spa, a clubroom, an outdoor seating area, and a lounge area.

- m. ***Land Use Policy LU 6.15.17 (Street and Pedestrian Grid).*** *Create a pattern of streets and pedestrian ways that breaks up large blocks, improves connections*

between neighborhoods and community amenities, and is scaled to the predominantly residential character of the neighborhoods.

The Project is a podium style development with an internal driveway for vehicular circulation to the lobby and garage entry, accessed from Spruce Street. Pedestrian connections are provided to public sidewalks along Spruce Street and Quail Street. The Project retains the curb-to-curb dimension of both Quail Street and Spruce Street.

- n. **Land Use Policy 6.15.18 (Walkable Streets).** *Retain the curb-to-curb dimension of existing streets but widen sidewalks to provide park strips and generous sidewalks by means of dedications or easements. Except where traffic loads preclude fewer lanes, add parallel parking to calm traffic, buffer pedestrians, and provide short term parking for visitors and shop customers.*

See finding *Land Use Policy 6.15.17 Street and Pedestrian Grid* above.

- o. **Land Use Policy 6.15.19 (Connected Streets).** *Require dedication and improvement of new streets as shown on Figure LU23. The illustrated alignments are tentative and may change as long as the routes provide the intended connectivity. If traffic conditions allow, connect new and existing streets across Macarthur Boulevard with signalized intersections, crosswalks, and pedestrian refuges in the median.*

See finding *Land Use Policy 6.15.17 Street and Pedestrian Grid* above.

- p. **Land Use Policy 6.15.20 (Pedestrian Improvements).** *Require the dedication and improvement of new pedestrian ways as conceptually shown on Figure LU23. The alignment is tentative and may change as long as the path provides the intended connectivity. For safety, the full length of pedestrian ways shall be visible from intersecting streets. To maintain an intimate scale and to shade the path with trees, pedestrian ways should not be sized as fire lanes. Pedestrian ways shall be open to the public at all times.*

The Project includes conditions of approval requiring the reconstruction of all broken and/or damaged curb, gutter, and sidewalk along Spruce and Quail Street frontages to preserve all existing sidewalks for pedestrian access.

- q. **Land Use Policy LU 6.15.22 (Building Massing).** *Require that high-rise structures be surrounded with low- and mid-rise structures fronting public streets and pedestrian ways or other means to promote a more pedestrian scale.*

The Project is approximately 81 feet in height and is compatible with nearby properties located in the Airport Area. The adjacent property at 1451 Quail Street is developed with an approximately 37-foot-tall office building. The 1400 Quail Street property, located directly across Quail Street, is developed with an approximately 30-foot-tall office building. This is consistent with the policy as there are lower structures surrounding the Project, which is taller. Furthermore, a 78-foot-tall

residential apartment building has been approved to be constructed at 1300 Bristol Street, which is located across Spruce Street. Finally, 1400 Bristol, which is the adjacent property, is proposing a 229-unit apartment project that is 85 feet in height. The Project includes pedestrian connectivity to public sidewalks along Bristol Street and Spruce Street and pedestrian-scale landscaped areas around the apartment building.

- r. ***Land Use Policy LU 6.15.23 (Sustainability Development Practices).*** *Require that development achieves a high level of environmental sustainability that reduces pollution and consumption of energy, water, and natural resources. This may be accomplished through the mix and density of uses, building location and design, transportation modes, and other techniques. Among the strategies that should be considered are the integration of residential with jobs-generating uses, use of alternative transportation modes, maximized walkability, use of recycled materials, capture and re-use of storm water on-site, water conserving fixtures and landscapes, and architectural elements that reduce heat gain and loss.*

The Project is required to comply with the provisions of the Building and Energy Efficiency Standards (CCR, Title 24, Parts 6 and 11) and the Green Building Standards Code (CCR, Title 24, Part 11 - CALGreen). Additionally, the Project would implement water-efficient landscaping, water quality best management practices to treat surface runoff from the Property, and low impact development practices.

The Project is also adjacent to office developments in the Airport Area and would provide housing near employment opportunities. The Project includes pedestrian linkage to public sidewalks that would provide connections throughout the site and to adjacent and surrounding uses, thereby providing an alternative mode of public transportation for the residents and their visitors. The Project would also provide alternative forms of transportation to residents by locating close to the existing Orange County Transportation Authority (OCTA) bus routes provided along Bristol Street and Birch Street.

Tribal Consultation (SB18)

- 6. Pursuant to California Government Code Section 65352.3 (SB18), a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that 12 tribal contacts should be provided notice regarding the proposed amendment. The tribal contacts were provided notice on March 15, 2023. California Government Code Section 65352.3 requires notification 90 days prior to Council action to allow tribal contacts to respond to the request to consult. The Project will not be heard by the City Council until after the 90-day period, which expired on June 13, 2023. The City participated in consultations with two tribes: the Gabrieleno Band of Mission Indians – Kizh Nation and the Juaneno Band of Mission Indians, Acjachemen Nation-Belardes. Based on consultation with the participating Native American Tribes,

conditions of approval have been included to ensure that a proper monitoring program is in place during the Project's construction.

423 Charter Analysis

Finding:

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

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

Fact in Support of Findings:

The Property is within Statistical Area L4. There are no prior GPAs in Statistical Area L4 in the past 10 years, besides the currently proposed 64 additional dwelling units resulting in a net increase of 24 a.m. peak hour trips and 25 p.m. peak hour trips for the Residences at 1400 Bristol Street. The GPA would change the land use designation only and not result in an increase in development. The 52 base dwelling units are already included in the Mixed-Use Horizontal (MU-H2) development capacity of 2,200 units and no increase in allowed floor area is proposed. Additionally, there is no increase in AM or PM peak hour trips pursuant to the Institute of Transportation Engineers (ITE) trip rates included as Exhibit B of Council Policy A-18. As a result, the amendment is not classified as a major amendment requiring a vote of the electorate should the City Council choose to approve the GPA.

Planned Community Development Plan Amendment

An amendment to the Newport Place Planned Community Development Plan (PC-11), which is the zoning document of the Property, is a legislative act. Neither PC-11, Chapter 20.66 (Amendments), and 20.56 (Planned Community Development District Procedures) of Title 20 (Planning and Zoning) of the NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments to the NBMC.

However, the proposed amendment complies with the intent of Part III Residential Overlay of PC-11 as follows:

1. The Project allocates 15% of the base units (eight dwelling units) as affordable units. Of the eight units, six are restricted to very-low-income households and two are restricted to low-income households.
2. Given the location of the Property in the Airport Area which includes a mixture of service uses, hotels, Airport and commercial support services, professional offices, and new residential developments that cumulatively contain the ingredients of a planned community, the proposed PC Amendment would not disrupt the existing uses within the Planned Community and would add to this diversity of uses, assisting the City in larger scale community planning and the provision of additional housing opportunities.
3. The Property is located within 85 feet of the Residential Overlay. The property nearest to the site within the Residential Overlay is 1300 Bristol Street, across Spruce Street. The property at 1300 Bristol has been approved but not yet constructed as a residential apartment project. The Project would be consistent with the anticipated future development of 1300 Bristol and the proposed Residences at 1400 Bristol Project as well other adjacent properties within the Residential Overlay of PC-11.
4. The Project would be subject to the appropriate site and project specific setbacks, density, and height limits for this urban location. All required parking is provided on-site. The Project complies with the development standards identified for the Residential Overlay, except as modified by the allowed development standard waivers identified in the Affordable Housing Implementation Plan. The Residential Overlay provides a density range for proposed projects and references the Section 20.32 (Density Bonus) of the NBMC that prescribes the maximum density bonus and incentives allowed. The Project includes a density bonus of 27.5%, where the PCDP Amendment references a maximum density bonus of 35%. Therefore, the proposed project is consistent with the intent of the density bonus assumptions in the Residential Overlay.
5. The PCDP Amendment requires a site development review in accordance with Section 20.52.080 (Site Development Reviews) of the NBMC. The Project includes a site development review, and all required findings are addressed below (Findings A through C below).
6. The PCDP Amendment requires the density for a residential development to be between 30 and 50 dwelling units per acre. The Project includes 52 base units, not including density bonus units. Since the Property is 1.71 acres in size, there is a base density of 30 dwelling units per acre. With density bonus, there is a total of 67 dwelling units, which results in 39 units per acre. Both the density with and without the density bonus units are consistent with the PCDP Amendment density requirement.
7. The Property is located near existing office buildings within the Airport Area and is not negatively impacted by noise, dust, smoke, vibration, odor, toxic or noxious matter that may be generated by existing commercial or industrial uses nearby.

8. Residential dwellings are to be permitted as replacement of existing nonresidential uses, and the number of peak hour trips generated by the Project is not to exceed the number of trips of the underlying permitted nonresidential use. The Property is developed with an existing one-story commercial office building totaling 22,956 square feet. A standardized conversion rate of 2.29 dwelling units per 1,000 square feet of commercial floor area, as provided by the City Traffic Engineer, is required. This results in a total of 52 dwelling units, which is the proposed based density of the Project. With a 27.50% density bonus or 15 dwelling units request, a total of 67 (52+15) dwelling units are proposed for the Project.
9. The Property is fully developed and does not support any natural resources and all potential environmental impacts associated with the project are appropriately addressed through standard building permit procedures, conditions of approval, and the General Plan Policies identified in the 2006 General Plan EIR and summarized in Exhibit "A" (EIR Addendum).

Major Site Development Review

In accordance with Section 20.52.080(F) (Site Development Reviews – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth as follows:

Finding:

- A. *The proposed development is allowed within the subject zoning district.*

Fact in Support of Finding:

The Property is located within Industrial Site 3 of Newport Place Planned Community (PC-11). The Project includes a request to amend Property's land use designation and inclusion as a part of the Residential Overlay of PC-11. The Residential Overlay allows for residential development consistent with the requested Mixed-Use Horizontal (MU-H2) land use designation and subject to site development review.

Finding:

- B. *The proposed development is in compliance with all of the following applicable criteria:*
 - i. *Compliance with this section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;*
 - ii. *The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent developments; and whether the relationship is based on standards of good design;*
 - iii. *The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;*

- iv. *The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;*
- v. *The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and*
- vi. *The protection of significant views from public right(s)-of-way and compliance with NBMC Section 20.30.100 (Public View Protection).*

Facts in Support of Finding:

1. Refer to Fact 5 under *General Plan Amendment* and Facts 1 through 9 under *Planned Community Development Plan Amendment* above, that discuss the Project's consistency with the proposed Mixed Use Horizontal 2 (MU-H2) General Plan land use designation and the PC-11 (Newport Place Planned Community Development Plan) Zoning District including the proposed inclusion in the Residential Overlay.
2. The proposed six-story residential building would be approximately 81 feet in height inclusive of architectural elements and screened rooftop mechanical equipment. The Project is designed with a darker grey stucco finish on the podium and first floor levels and a white stucco finish for the floors above. The contrast in colors reduces the visual mass and bulk of the building and creates variations in the aesthetic design. Additionally, various units on each elevation are constructed with walkable decks with glass railings, adding additional aesthetic treatment to the building. The Project's building mass is compatible with the surrounding office and residential developments.
3. The Project includes a variety of enhanced amenities such as private residential balconies, a large pool deck, an outdoor seating area, a clubroom, and enclosed lounge.
4. The Project includes 146 onsite parking spaces located on a podium level parking structure which includes a subterranean gated parking structure underneath. The Project includes adequate onsite parking exceeding the minimum required residential standard pursuant to Density Bonus Law.
5. The Property is generally flat and bordered by existing office buildings and developed roadways. The City's General Plan does not identify any scenic vistas or view points on or proximate to the Property. The nearest public view point to the Property identified in the City's General Plan is approximately 3,000 feet to the south at Bayview Park. The nearest coastal view designated portion of Jamboree Road is approximately 3,000 feet south of the site. Due to the distance and highly urbanized nature of the Project area, public coastal views along this view corridor would not be impacted by the Project.

Finding:

- C. *The proposed development is not detrimental to the harmonious and orderly growth of the City, nor will it endanger, jeopardize, or otherwise constitute a hazard to the public*

convenience, health, interest, safety, or general welfare of person residing or working in the neighborhood of the proposed development.

Facts in Support of Finding:

1. The Project has been designed to ensure that potential conflicts with surrounding uses are minimized to the extent possible to maintain a healthy environment for both surrounding businesses and residents by providing an architecturally pleasing project with articulation and building modulations to enhance the urban environment.
2. The proposed residential building has been designed to accommodate and provide safe access for emergency vehicles, delivery trucks, and refuse collections vehicles, as determined by the City Traffic Engineer. Refuse collection is accommodated via an on-site staging area along the private driveway to ensure safe maneuvering by refuse vehicles. Emergency vehicles will have access via Bristol Street and Spruce Street.
3. The Property is located approximately 0.57 mile east of the southernmost John Wayne Airport runway and is within the notification area of the AELUP for John Wayne Airport. However, the Project is below the maximum transitional imagery surface heights, and thus the Project is within the building height limits of the AELUP. The property is located partially within the updated 65dBA CNEL noise contours for John Wayne Airport and Safety Zone 6 (Traffic Pattern Zone), where the likelihood of an accident is low. Consistent with the residential overlay, the Project shall be required to comply with conditions specified in Section 20.30.080(F) (Noise - Airport Environs Land Use Plan), including provisions of noise study, sound attenuation design features, and notice to all future residents of potential annoyances or inconveniences associated with residing in proximity to airport operations.
4. The Project will comply with all Building, Public Works, Fire Codes, City ordinances, and all conditions of approval.

Vesting Tentative Tract Map

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

Finding:

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

Facts in Support of Finding:

1. The Project is consistent with the proposed Mixed-Use Horizontal (MU-H2) General Plan designation of the Property, which provides for a horizontal intermixing of uses that include multi-family residential development.
2. The Public Works Department has reviewed the proposed vesting tentative tract map and determined it is consistent with the Title 19 and applicable requirements of the Subdivision Map Act.
3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

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

Facts in Support of Finding:

1. The Property is entirely developed and does not support any environmental resources.
2. The Property is located in the John Wayne Airport area. The Property is currently improved with a 22,956-square-foot office building. Given its location, this site is ideal for the development of a residential project as it is identified as a housing inventory site of the City's adopted and certified Sixth Cycle Housing Element.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The Vesting Tentative Tract Map is required for the subdivision of parcels for the separate sale of 67 condominium units. All construction for the Project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the Applicant per Section 19.28.010 (General Improvements Requirements) of the NBMC and Section 66411 of the Subdivision Map Act. Compliance with all ordinances of the City and all Conditions of Approval for the Project will ensure that the Project will not cause any serious health problems.
2. All mitigation measures will be implemented as outlined in the Addendum to the PEIR to ensure the protection of the public health.
3. No evidence is known to exist that would indicate that the separate sale of condominiums will generate any serious public health problems.

Finding:

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

Facts in Support of Finding:

1. The design of the Project will not conflict with any easements acquired by the public at large for access through or use of property within the Property.
2. No other public easements for access through or use of the Property have been retained for use by the public at large.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The proposed Vesting Tentative Tract Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need. The Project does not involve the elimination of residential rooms and therefore will not affect the City’s ability to meet its share of housing needs. On the contrary, the Property is identified as a housing opportunity site by the adopted and certified Sixth Cycle Housing Element and proposes includes 67 dwelling units, eight of which are considered affordable housing for families that qualify as low income.

2. Public services are available to serve the Project and the Addendum to the PEIR prepared for the Project indicates that the project's potential environmental impacts are properly mitigated.

Finding:

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

Facts in Support of Finding:

1. Waste discharge into the existing sewer system will be not violate Regional Water Quality Control Board requirements.
2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

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

Facts in Support of Finding:

The Property is not located in the Coastal Zone and is not subject to a coastal development permit.

Affordable Housing Implementation Plan

The proposed Affordable Housing Implementation Plan (AHIP) is consistent with the intent to implement affordable housing goals within the City pursuant to Government Code Sections 65915-65918 (State Density Bonus Law), and Title 20, Chapter 20.32 (Density Bonus) of the NBMC for the following reasons:

1. Consistent with the requested 27.5% density bonus, eight units of the Project's base units (52) would be set aside as affordable units. Of the eight units, six are restricted to very-low-income households and two are restricted to low-income households. Low-income households are defined as households 80% or less of the area median income, while very-low-income households are defined as households 50% or less of the area median income, both adjusted for family size. Since the Project is for-sale condominiums, the affordable units are subject to an equity sharing agreement without expiration, unless sold to a nonprofit housing corporation.

-
2. Government Code Section 65915 (Density Bonus Law) and Chapter 20.32 (Density Bonus) of the NBMC provide for an increase in the number of units above General Plan and zoning limits for projects that include a minimum of 15% of the base units affordable to low and very low-income households. The Project's inclusion of 8 affordable units (6 very low-income units and 2 low-income), which is 15% of the base unit count of 52 units, makes the Project eligible for 15 density bonus units. The Project total is 67 units.
 3. In addition to the 15 density bonus units and parking reductions, the Project is entitled to receive up to two incentives or concessions under California Government Code Section 65915(d) and Section 20.32.070 (Allowed Incentives or Concessions) of the NBMC that would result in identifiable, financially sufficient, and actual cost reductions. The Project includes the following concessions the first of which the Project is entitled to and the second, which is at the City Council's discretion:
 - a. Affordable Unit Mix: Section 20.32.110 (Design and Distribution of Affordable Units) of the NBMC requires affordable units in a density bonus project reflect the same range of unit types in the residential development as a whole. In this case, the Project provides all eight affordable units as two-bedroom units, whereas, the overall unit mix includes 27 two-bedroom units and 40 three-bedroom units. Granting an incentive from the unit-mix will result in identifiable, financially sufficient, and actual cost reductions for the Project.
 - b. Partial Payment of In-Lieu Park Fee: General Plan Land Use Element Policy 6.15.13 requires residential development to provide a public park equal to 8% of the gross land area of the development, or a minimum one-half acre, whichever is greater, to be provided. Since the 1.71-acre Property is too small to feasibly accommodate the physical dedication of the park, the Policy requires an in-lieu fee paid to the City for the acquisition and improvement of other properties as parklands to serve the Airport Area. The Applicant is requesting to use a second incentive to waive a portion of the fee in order to provide cost reductions and make the Project financially feasible.
 4. In addition to the density bonus units, parking reductions, and the financial concession, the Project is entitled to receive waivers or reductions of development standards under California Government Code Section 65915(e), Section 20.32.080 (Waivers or Reductions of Development Standards), and recent caselaw if the development standard would physically prevent the Project from being built at the permitted density. In this case, the Project is entitled to waivers of the following development standards:
 - a. Park dedication requirements (two waivers):
 - i. General Plan Land Use Policy LU 6.15.13 requires a public park equal to eight percent of the gross land area of the development, or a minimum one-half acre, whichever is greater, be provided. The Applicant proposes to waive the one-half acre requirement and a partial park in-lieu fee.
 - ii. Section 19.52.040 (Parkland Standard) of the NBMC requires the City's park dedication standard to be five acres per thousand population due to the proposed vesting tentative tract for residential condominium purposes. Per

the latest census data, the average persons per household is 2.2 persons, which results in 147.4 persons and a 0.74-acre park dedication requirement. Regardless of any requirements, the Property is 1.71 acres in size which is too small to feasibly accommodate a park of minimum one-half acre in size.

- b. Street setbacks. The Newport Place Planned Community (PC-11) requires street setbacks of 30 feet from property lines. In this case, 30-foot setbacks along Quail Street and Spruce Street would substantially decrease the development of the footprint of the Project. The Project is designed with a 11-foot setback from Spruce Street and a 10-foot setback to Quail Street.
- c. Building height. The Newport Place Planned Community (PC-11) Residential Overlay limits building height to 55 feet from established grade. In this case, a higher building height is necessary to accommodate 67 residential units. The Project is designed with a height of approximately 81 feet from established grade.

Development Agreement

In accordance with Section 15.45.020(A)(2)(a) (Development Agreement Required) of the NBMC, a development agreement is required as the project requires an amendment to the General Plan and PC-11 that includes the development of more than 50 residential units, in this case the Project has a total of 67 residential units. The proposed DA satisfies the requirements of Chapter 15.45 (Development Agreements) of the NBMC as follows:

1. A DA is requested by the Applicant, as the Project would include a total of 67 residential units. The DA includes all the mandatory elements including a term of 10 years and public benefits that are appropriate to support conveying the vested development rights consistent with the City's General Plan, the NBMC, and Government Code Sections 65864 *et seq.*
2. Public benefits include the payment of a public safety fee to satisfy any obligation the Project could have to provide new emergency response services or Fire Department equipment to serve the Airport Area whether a Community Facilities District is formed or not. The Applicant has also agreed to pay a separate public benefit fee to be used by the City Council as it deems appropriate.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach hereby recommends the following to the City Council:

- a. Adopt Environmental Impact Report Addendum to the 2006 General Plan Update (SCH2006011119), which is attached hereto as Exhibit "A" and incorporated by reference;
- b. Approve a General Plan Amendment to change the General Plan Land Use Designation of the Property from General Commercial Office (CO-G) to Mixed-Use

Horizontal (MU-H2) which is attached hereto as Exhibit "B" and incorporated by reference;

- c. Adopt a Planned Community Development Plan Amendment to include the Property in the Residential Overlay of PC-11 which is attached hereto as Exhibit "C" and incorporated by reference;
- d. Adopt a Development Agreement, which is attached hereto as Exhibit "D," and incorporated by reference;
- e. Approve Affordable Housing Implementation Plan, which is attached hereto as Exhibit "E," and incorporated by reference;
- f. Approve a Major Site Development Review, with conditions of approval which are attached hereto as Exhibit "F" and incorporated by reference; and
- g. Approve Vesting Tentative Tract Map No. 19261 pursuant to Title 19 (Subdivisions) of the NBMC) for 67 condominium dwelling units, with conditions of approval which are attached hereto as Exhibit "G," and incorporated by reference.

PASSED, APPROVED, AND ADOPTED THIS 21ST DAY OF DECEMBER, 2023.

AYES: Ellmore, Harris, Langford, Lowrey, Rosene, and Salene

NOES: None

RECUSED: None

ABSENT: Barto

BY: _____



Curtis Ellmore, Chairman

BY: _____



Tristan Harris, Secretary

Attachment(s): Exhibit A – Addendum to the 2006 General Plan Update
(SCH NO. 2006011119)
Exhibit B – General Plan Amendment
Exhibit C – Planned Community Development Plan Amendment
Exhibit D – Development Agreement
Exhibit E – Affordable Housing Implementation Plan
Exhibit F – Major Site Development Review Conditions of Approval
Exhibit G – Vesting Tentative Tract Map No. 19261

EXHIBIT “A”

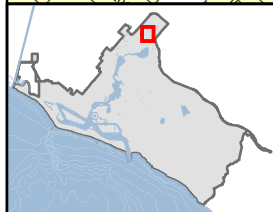
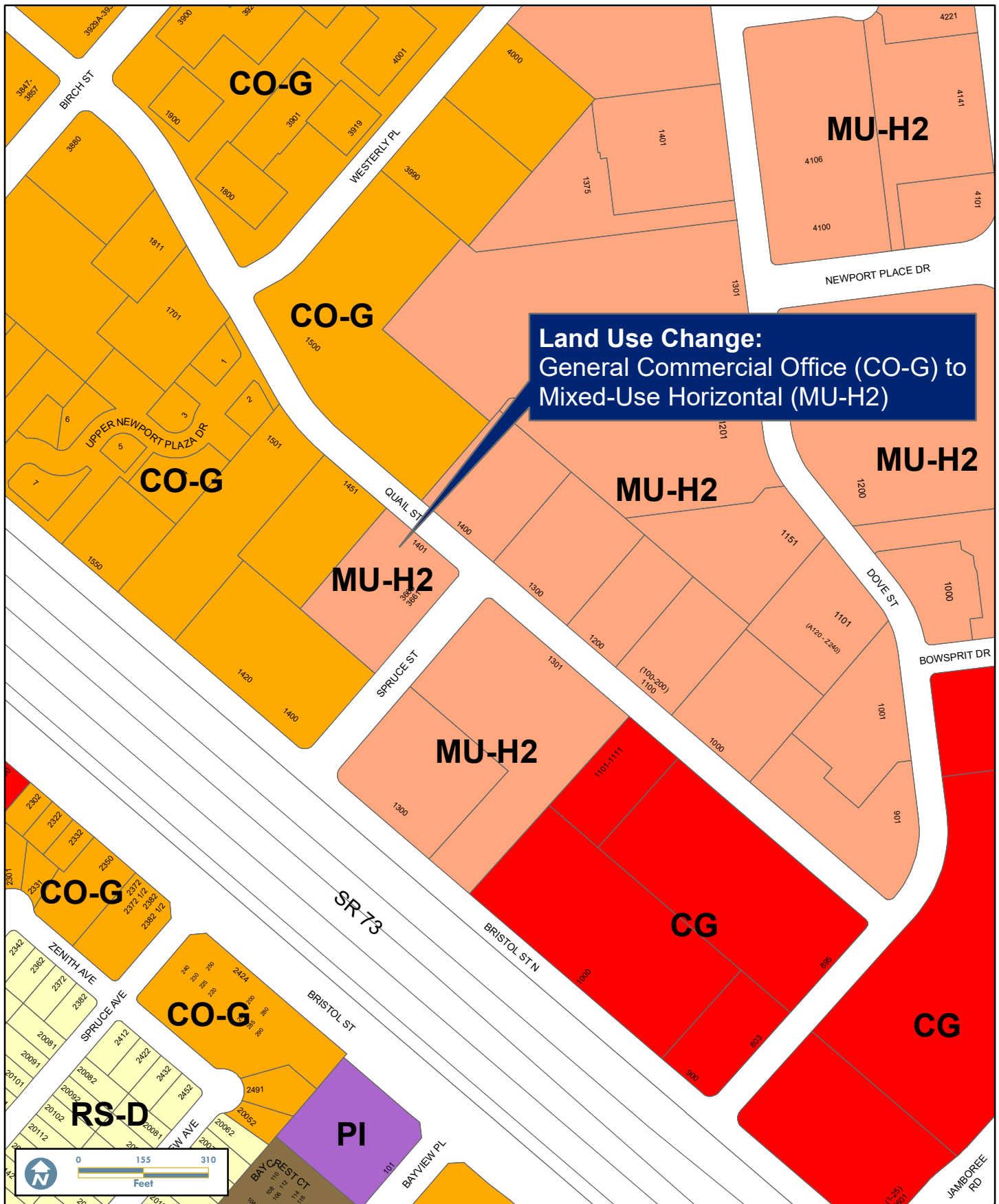
ADDENDUM TO THE 2006 GENERAL PLAN UPDATE (SCH NO. 2006011119)

Available separately due to bulk at:

www.newportbeachca.gov/ceqa

EXHIBIT “B”

GENERAL PLAN AMENDMENT



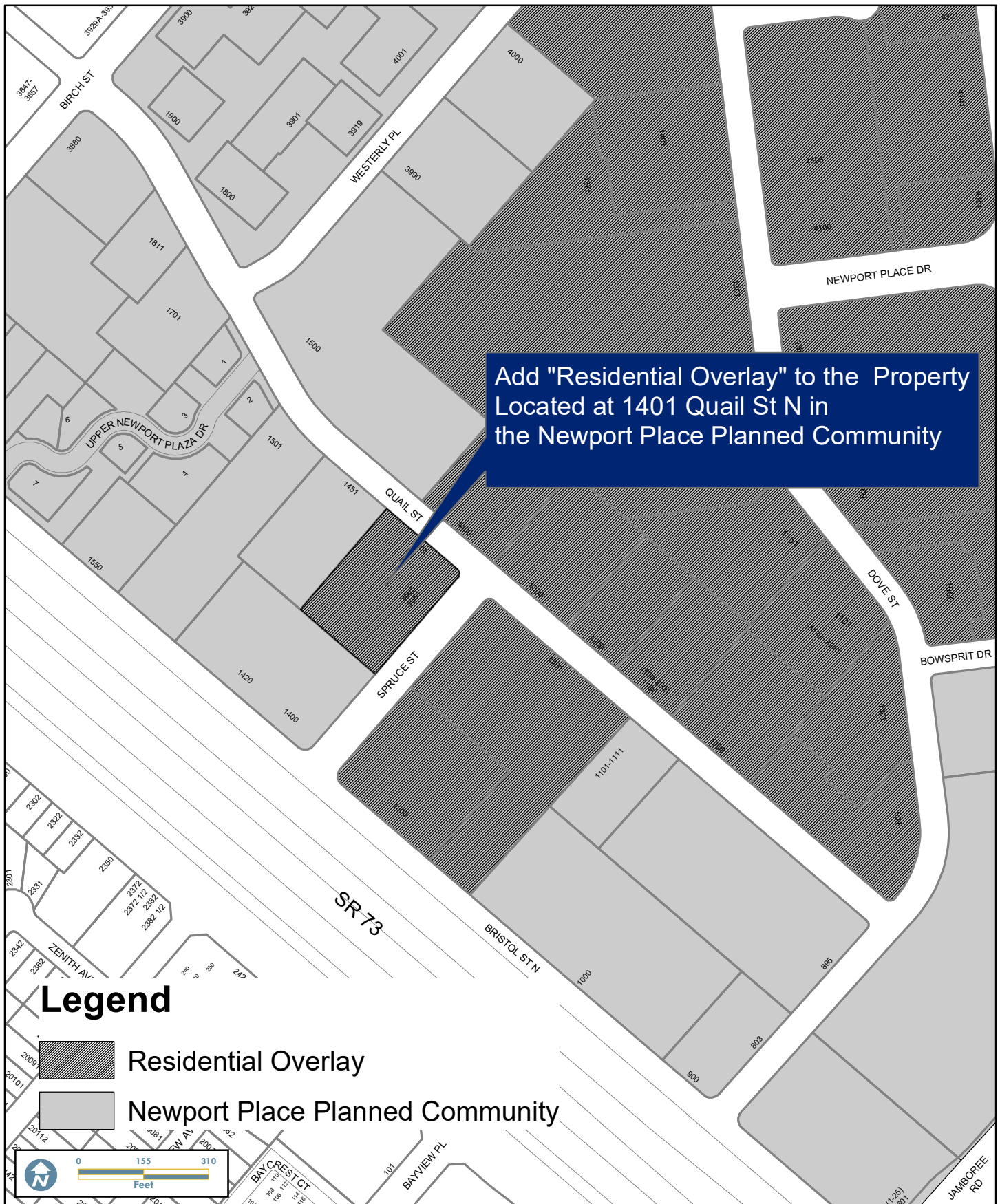
PA2023-0040 General Plan Amendment 1401 Quail St



City of Newport Beach
GIS Division
November 22, 2023

EXHIBIT “C”

PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT



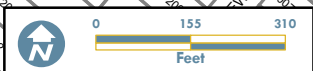
Legend



Residential Overlay



Newport Place Planned Community



PA2023-0040 PC-11 Newport Place Amendment 1401 Quail St



City of Newport Beach
GIS Division
November 22, 2023

EXHIBIT “D”

DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

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

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

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

INTRACORP SOCAL-1, LLC

CONCERNING

“THE RESDENCES AT 1401 QUAIL STREET”

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the “Agreement”) is dated for reference purposes as of the _ day of _____, 2024 (the “Agreement Date”), and is being entered into by and between the City of Newport Beach (“City”), and Intracorp Social-1, LLC, a Delaware limited liability company “Property Owner”). City and Property Owner are sometimes collectively referred to in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. Property Owner is the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 1401 Quail Street and more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“Property”). The Property consists of approximately 2.38 acres and is a part of the Newport Place Planned Community shown on the City’s Zoning Map.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the “Development Agreement Statute”) authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled “Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements” (the “Development Agreement Ordinance”). This Agreement is consistent with the Development Agreement Ordinance.

D. The Parties wish to enter into Agreement for the construction of a multi-unit residential project consisting of 67 condominium units (including affordable units) atop of 146-space parking structure.

E. As detailed in Section 3 of this Agreement, Property Owner has agreed to provide the following significant public benefits as consideration for this Agreement: INSERT PUBLIC BENEFITS.

F. This Agreement is consistent with the City of Newport Beach General Plan (“General Plan”), including without limitation the General Plan’s designation of the Property as “MU-H2” (Mixed Use Horizontal 2) which provides for a horizontal intermixing of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses and the Newport Place Planned Community that was adopted in 1970 by Ordinance No. 1369, and amended from time to

time, in order to establish appropriate zoning to regulate land use and development of property within the general boundaries of the Newport Place Planned Community.

G. In recognition of the significant public benefits that this Agreement provides, the City Council finds that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) Project's Addendum to the Environmental Impact Report (SCH# 20060111119) ("PEIR") that was certified by the City Council on July 25, 2006 for the 2006 General Plan Update and the Initial Study/Negative Declaration prepared in accordance with CEQA for the Newport Beach Housing Element Update (General Plan Amendment No. GP2008-003) adopted by the City Council on November 22, 2011 (the PEIR and Initial Study/Negative Declaration are collectively referred to herein as the "PEIR"), all of which analyze the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code Section 65867 and City of Newport Beach Municipal Code chapter 15.45.

H. On December 21, 2023, City's Planning Commission held a public hearing on this Agreement, and made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

I. On [INSERT DATE], the City Council held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Property Owner, and members of the public. On [INSERT DATE], consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. 2024-____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

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

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. 2024-____ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean INSERT DATE which date is the date the City Council adopted the Adopting Ordinance.

“CEQA” shall mean the California Environmental Quality Act (California Public Resources Code Sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, Section 15000 *et seq.*) (“CEQA Guidelines”), as the same may be amended from time to time.

“City” shall mean the City of Newport Beach, a California charter city.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor, Bureau of Labor Statistics for all urban consumers (all items) for the Los Angeles-Long Beach-Anaheim, California Area, All Urban Consumers, All Items, Base Period (1982-84=100), or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code Sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals and

permits include, without limitation, the following: (1) the Development rights as provided under this Agreement; (2) the amendment to the Newport Place Planned Community (PC-11) adopted pursuant to Ordinance No. 1369 and as amended by Ordinance No. 2024-___; (3) General Plan Amendment adopted pursuant to Resolution No. 2024-___; (4) Major Site Development Review adopted pursuant to Resolution No. 2024-___; (5) Affordable Housing Implementation Plan adopted pursuant to Resolution No. 2024-___; and Tentative Tract Map adopted pursuant to Resolution No. 2024-___.

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

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

“Environmental Laws” means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and

regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended (“RCRA”); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, as amended through the Agreement Date but excluding any amendment after the Agreement Date that impairs or restricts Property Owner’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by Property Owner. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” or “Parties” shall mean either City or Property Owner or both, as determined by the context.

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

“Property” is described in Exhibit “A” and generally depicted on Exhibit “B”.

“Property Owner” shall mean Intracorp Socal-1, a Delaware limited liability company and any successor or assignee to all or any portion of the right, title, and interest in and to ownership of all or a portion of the Property.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Property Owner is permitted to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” and “Lot Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property are consistent with the General Plan and the Newport Place Planned Community Development Plan (PC-11) as amended by the approvals in the Development Plan adopted concurrently herewith (including but not limited to the amendment to the General Plan and Newport Place Planned Community Development Plan (PC-11)).

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Property Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Property Owner and each person executing this Agreement on behalf of Property Owner hereby represents and warrants to City as follows: (i) Property Owner or any co-owner comprising Property Owner is a legal entity and that such entity is duly formed and existing and is authorized to do business in the State of California; (ii) if Property Owner or any co-owner comprising Property Owner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iii) that all actions required to be taken by all persons and entities comprising Property Owner to enter into this Agreement have been taken and that Property Owner has the legal authority to enter into this Agreement; (iv) Property Owner’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Property Owner or any person or entity comprising Property Owner has to any third party; (v) that neither Property Owner nor any co-owner comprising Property Owner is the subject of any voluntary or involuntary petition in bankruptcy; and (vi) Property Owner has the authority and ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the “Term” shall commence on the Effective Date and continue until _____ 20__, unless otherwise terminated or modified pursuant to its terms.

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

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

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 14.11 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City’s approval and performance of its obligations set forth in this Agreement, Property Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject to (herein, the “Public Benefit Fee”) in the total sum of One Million Six Hundred Twenty Eight Thousand and Four Hundred Dollars and 00/100 (\$1,628,400.00) which shall be due and payable prior to the issuance of the first building permit for the Project.

The City has not designated a specific project or purpose for the Public Benefit Fee. Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee and that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Owner's vested rights to be acquired hereunder, and that Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of the Public Benefits identified in this Section 3.1 on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Owner's default, if Owner shall fail to timely pay any portion of the Public Benefits identified in this Section 3.1 when due, City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

3.2 Consumer Price Index (CPI) Increases. Any fee provided in this Section 3 (Public Benefits) shall be increased based upon percentage increases in the CPI Index as provided herein. The first CPI adjustment shall occur on the first anniversary of the City Council's adoption of the Adopting Ordinance (the first "Adjustment Date") and subsequent CPI adjustments shall occur on each anniversary of the first Adjustment Date thereafter until expiration of the Term of this Agreement (each, an "Adjustment Date"). The amount of the CPI adjustment on the applicable Adjustment Date shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date.

3.2 Other Public Benefits. In addition to the Public Benefit Fee, the direct and indirect benefits City expects to receive pursuant to this Development Agreement are as follows:

3.2.1 Park In-Lieu Fee. The Property Owner shall pay a park land dedication in-lieu fee pursuant to the City General Plan Land Use Policy 6.15.13 in the amount of Five Hundred Thirteen Thousand Three Hundred Dollars and 00/100 (\$513,300.00), for the purpose of acquisition and improvement of other properties as parklands to serve the Airport Area. The fee shall be due and payable prior to the issuance of the first building permit for the Project.

3.2.2 Public Safety Fee. The Property Owner shall pay a public safety fee in the amount of One Hundred Forty-One Thousand Six Hundred Dollars and 00/100 (\$141,600) to be used, at the City's discretion, to fund the cost of staffing, services, and equipment necessary for fire related public safety purposes. The fee shall be due and payable prior to the issuance of the first building permit for the Project.

4. Development of Project.

4.1 Applicable Regulations; Property Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Property Owner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals applied for by Property Owner, or that are required, for Development of the Project as of the Agreement Date provided that all such actions are consistent with the Development Regulations, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Property Owner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Property Owner has expended and will continue to expend substantial amounts of time and money in the planning and entitlement process to permit Development of the Project in the future. Property Owner represents and City acknowledges that Property Owner would not make these expenditures without this Agreement, and that Property Owner is and will be making these expenditures in reasonable reliance upon obtaining vested rights to Develop the Project as set forth in this Agreement.

Property Owner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that unless this Agreement also is amended, the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic. In addition, Property Owner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code Section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Agreement Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Property Owner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Property Owner deems appropriate within the exercise of Property Owner's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Agreement Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Property Owner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Property Owner shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Property Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the

Development Regulations, or with respect to such regulations that do conflict, where Property Owner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Property Owner shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Property Owner and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date, City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Property Owner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Property Owner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Chapter 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Property Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Property Owner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Property Owner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Property Owner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Property Owner agree to preserve the terms of this Agreement and the rights of Property Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Property Owner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Property Owner. City also agrees to process in a prompt manner Property Owner's proposed changes to this Agreement, the Project and any of the Development Regulations as may be necessary to comply with such

overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Property Owner's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Property Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Property Owner or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

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

6. Enforcement. Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code Section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Property Owner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government

Code Section 65865.1. Property Owner (including any successor to the Property Owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Property Owner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Property Owner is required to demonstrate good faith compliance with the terms of the Agreement. Property Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

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

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Property Owner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Property Owner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions. In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured ("Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as

quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the foregoing, the City is not required to give Property Owner notice of default and may immediately pursue remedies for a Property Owner Default that result in an immediate threat to public health, safety or welfare.

8.2 Default by Property Owner.

If Property Owner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Property Owner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Property Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Property Owner's appeal the City Council concludes that Property Owner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Property Owner's appeal is communicated to Property Owner in writing.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Property Owner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Property Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Property Owner timely appeals any Notice of Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Property Owner. Any such judicial challenge must be brought within thirty (30) days of service on Property Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If Property Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Property Owner may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Property Owner's performance hereunder shall neither be a Property Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Property Owner's option (and provided Property Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Property Owner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Property Owner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Property Owner or City for such efforts. For the above reasons, City and Property Owner agree that damages would not be an adequate remedy if either City or Property Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Property Owner if City fails to carry out its obligations under this Agreement or to compensate City if Property Owner fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Property Owner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Property Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10. In no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement. Owner expressly agrees that the City, any City agencies and their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 8.7, "City") shall not be liable for any monetary damage for a Default by the City or any claims against City arising out of this Agreement. Owner hereby expressly waives any such monetary damages against the City. The sole and exclusive judicial remedy for Owner in the event of a Default by the City shall be an action in mandamus, specific performance, or other injunctive or declaratory relief.

8.8 Additional City Remedy for Property Owner's Default.

In the event of any Default by Property Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Property Owner's Default without recourse from Property Owner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

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

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Property Owner’s obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Property Owner.

10.1 Indemnity Arising From Acts or Omissions of Property Owner.

Property Owner shall indemnify, defend, and hold harmless City and City’s officials, employees, agents, attorneys, and contractors (collectively, the “City’s Affiliated Parties”) from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys’ fees and costs) (collectively, a “Claim”) that may arise, directly or indirectly, from the acts, omissions, or operations of Property Owner or Property Owner’s agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Property Owner relating to the Property or pursuant to this Agreement. City shall have the right, in its sole discretion, to select and retain counsel to defend any Claim filed against City and/or any of City’s Affiliated Parties, and Property Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Property Owner shall indemnify, defend, and hold harmless City and City’s Affiliated Parties from and against any Claim against City or City’s Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney’s fees, expert witness fees, City staff costs, and court costs. City shall promptly notify Property Owner of any such

Claim and City shall cooperate with Property Owner in the defense of such Claim. If City fails to promptly notify Property Owner of such Claim, Property Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Property Owner is so notified and if City fails to cooperate in the defense of a Claim Property Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Property Owner's indemnity obligation, provided that such counsel shall reasonably cooperate with Property Owner in an effort to minimize the total litigation expenses incurred by Property Owner. In the event either City or Property Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Property Owner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Property Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Property Owner in connection with Property Owner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Property Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Property Owner's interest in or fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "Property Owner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 *et seq.*) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of Property Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Property Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Property Owner (as

transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Property Owner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Property Owner assigns to the successor Property Owner and the successor Property Owner assumes from the transferring Property Owner all of the rights and obligations of the transferring Property Owner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor Property Owner's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Owner under this Agreement with respect to the portion of, or interest in, the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property, or interest in the Property, no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the Owner with respect to the balance of the Property, without Owner's written consent.

Notwithstanding any Transfer, the transferring Property Owner shall continue to be jointly and severally liable to City, together with the successor Property Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless the transferring Property Owner is given a release in writing by City, which release shall be only with respect to the portion of the Property so Transferred in the event of a partial Transfer. City shall provide such a release upon the transferring Property Owner's full satisfaction of all of the following conditions: (i) the transferring Property Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Property Owner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Property Owner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Property Owner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Property Owner to City to secure performance of the successor Property Owner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Property Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Property Owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project. Any determination by the City in regards to the second paragraph of Section 11 subpart (iv) (A) and/or (B) shall be documented in writing.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Property Owner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Property Owner or other affirmative covenants of Property Owner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Property Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Property Owner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

14. Miscellaneous Terms.

14.1 Reserved.

14.2 Notices.

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

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

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

TO PROPERTY OWNER:

With a copy to:

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

14.3 Project as a Private Undertaking.

Any future Development of the Project is a private undertaking. Neither Party will be acting as the agent of the other in any respect, and each Party will be an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner or user of the Property.

14.4 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

14.5 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorney's fees incurred by the City in furnishing an estoppels certificate.

14.6 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

14.7 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

14.8 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

14.9 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one (1) and the same agreement.

14.10 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

14.11 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is

the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Property Owner shall not receive any of the benefits of this Agreement if any of Property Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Property Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Property Owner's obligations under this Agreement. The provisions of this Section 14.11 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

14.12 Construction.

This Agreement has been drafted after negotiation and revision. Both City and Property Owner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Property Owner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Property Owner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning and applicable principle or presumptions of contract construction or interpretation, if any, shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

14.13 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 14.13 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

14.14 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Property Owner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

14.15 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

14.16 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

14.17 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property

14.18 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

“OWNER”

Intracorp Socal-1, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

“CITY”

CITY OF NEWPORT BEACH, a municipal corporation and charter city

, Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons 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, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1 OF RESUBDIVISION NO. 341

EXHIBIT B

DEPICTION OF PROPERTY

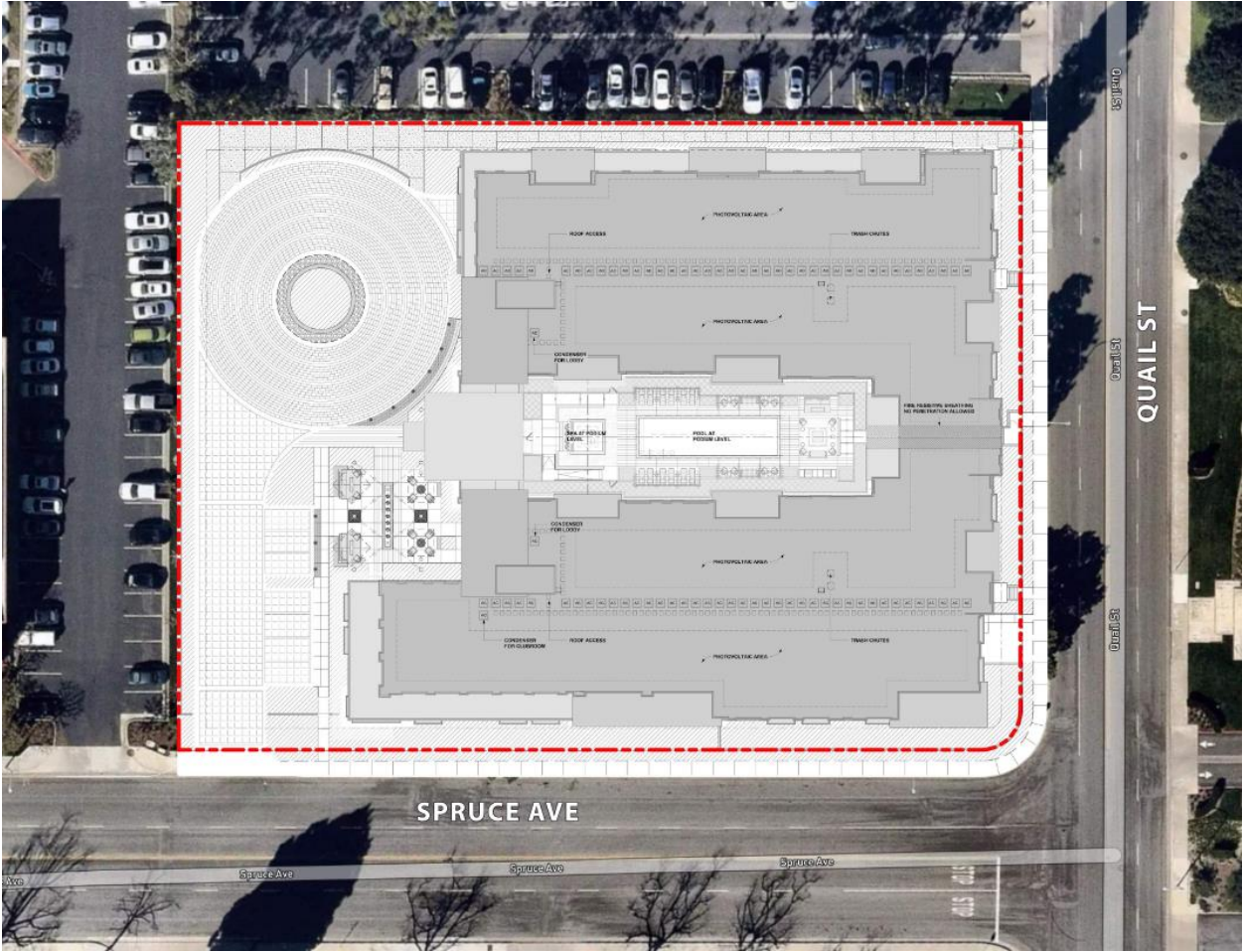


EXHIBIT “E”

AFFORDABLE HOUSING IMPLEMENTATION PLAN

1401 QUAIL STREET, NEWPORT BEACH, CA 92660

AFFORDABLE HOUSING IMPLEMENTATION PLAN AND DENSITY BONUS APPLICATION

SUBMITTED NOVEMBER 28, 2023

Project Description & Affordability Level

The developer, Intracorp Homes (“Developer”) is proposing the 1401 Quail Street residential development (described herein as “1401 Quail Street”) on a 1.71 net acre site located in the Newport Place area. The site is located west of the intersection of Quail Street and Spruce Avenue. The project site is governed by the Newport Place Specific Plan, which has a 30 du / acre minimum in the Planned Community Residential Overlay. The site is currently not under the Residential Overlay, but the application includes an amendment to the Planned Community text to include it. The Residential Overlay requires a minimum of 15% of the base units be set aside as affordable to lower-income households. Lower-income households are defined as those making less than 80% of the area median income, as adjusted for family size by the United States Department of Housing and Urban Development.

The Developer is proposing a for-sale development consisting of 67 residential condominium units. Of the 67 units, 52 are Base Units and 15 are Density Bonus units. To comply with the 15% affordability requirement of the Residential Overlay, 6 units will be set aside for Very Low-Income households and 2 units will be set aside for Low Income households (15 percent of 52 Base Units).

Eligibility for Density Bonus

The 1401 Quail Street development will provide 6 units affordable to Very Low-Income households, 10% of the Base Units as outlined in Table 1. As a result, the project is eligible for a 32.5% density bonus pursuant to the provisions of Government Code Section 65915. Homes Prices for the income-restricted units will be computed in accordance with Health and Safety Code Sec. 50053, as required by Government Code Section 65915(c)(2).

Density Bonus Computation and Term of Affordability

The density bonus computation for the project per Government Code Section 65915 is shown in Table 1:

Table 1

DENSITY BONUS COMPUTATION	
Project Area (acres)	1.71
Allowable Density (du/ac)	30
Allowable Residential Units Before Density Bonus (Base Units)	52
Very Low Income Units Set Aside (10% of base)	6
Eligible Density Bonus (32.5%)	17
Total Allowable Units with Density Bonus	69
Total Units Proposed	67

The Developer intends to build the project as a for-sale residential condominium community. The income-restricted units will have affordability restrictions on the sale and conveyance of the units under an equity sharing agreement, per Government Code Section 65915(c)(2).

Reduction in Parking

The 1401 Quail Street development meets the criteria of subdivision (b) of Government Code Sec. 65915 and Section 20.32.030 of the City's Zoning Code by providing more than ten percent (10%) of the total units of a housing development (excluding any units permitted by the density bonus awarded pursuant to that section) for Low Income households.

Government Code Section 65915(p) and Section 20.32.060 of the City's Zoning Code provides the following:

(1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

- a. Zero to one bedrooms: one onsite parking space.
- b. Two to three bedrooms: one and one-half onsite parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

Table 2 is a summary of Government Code Sec. 65915 parking requirements vs. spaces to be provided:

Table 2

UNIT TYPE	NUMBER OF UNITS	STALLS/UNIT PER GOV. CODE	TOTAL STALLS PER GOV. CODE
2 Bedroom	27	1.50	40.5
3 Bedroom	40	1.50	60
Total	67	1.51	101
Total Parking Stalls Provided		2.18	146

The Developer requests that parking requirements be calculated in accordance with Government Code Sec. 65915(p).

Development Incentive Request

Pursuant to Government Code Section 65915(d)(1) and Section 20.32.070 of the City's Zoning Code, the Developer is entitled to two (2) concessions or incentive as a result of providing at least ten percent (10%) of the units as affordable for Very Low Income households. In addition, Government Code Section 65915(e)(1) also entitles developers to waivers or modifications of development standards that if applied, would physically preclude development of housing with the provided density bonus.

The Developer requests the following development incentives:

- 1) **Park In-lieu Fee Payment.** General Plan Land Use Policy LU 6.15.13 requires the dedication and improvement of a neighborhood park. However, this requirement may be waived where it can be demonstrated that the development site is too small to feasibly accommodate the park or inappropriately located to serve the needs of nearby residents. Policy LU6.15.13 requires the payment of an in-lieu fee to the City for the acquisition and improvement of other properties as

parklands to serve the airport area if the neighborhood park dedication is waived. In this case, the 1.71-acre Project site is too small to feasibly accommodate the park and the Developer requests a reduction of the in-lieu fee as a non-mandatory concession. This reduction of an in-lieu fee is an actual cost reduction that makes the development of the affordable housing units financially feasible.

- 2) **Affordable Unit Mix.** Section 20.32.110 of the City’s Municipal Code provides that “Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole.” As illustrated in the table below, the Project provides a higher percentage of affordable 2 Bedroom units compared to the market rate units provided. Granting this incentive will result in identifiable, financially sufficient, and actual cost reductions by reducing the higher housing cost subsidy associated with 2- and 3-bedroom units and thereby affording additional revenue to support the feasibility of providing affordable housing units. Developer requests that the 8 income-restricted units be provided utilizing the following unit mixes:

Table 3

UNIT TYPE	NUMBER OF UNITS	TOTAL AFFORDABLE UNITS
2 Bedroom	27	8
3 Bedroom	40	0
Total	67	8

As required by Government Code Sec. 65915(d)(1)(A), these incentives will result in identifiable and actual cost reductions to provide for the affordable housing payments to be set in accordance with Government Code Sec. 65915(c)(2).

Development Standard Waivers

Section 20.32.080 of the City’s Municipal Code provides that “In addition to requesting an incentive or concession, an applicant for a density bonus may also submit a proposal to the City to waive or reduce an unlimited number of development standards that would otherwise preclude or inhibit construction of the housing development at the densities or with the incentives permitted by this chapter.

When an applicant makes a request for a waiver, the review authority shall grant the request unless any of the following findings are made:

- 1) The waiver or reduction of development standards would have a specific adverse impact upon public health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- 2) The waiver or reduction of development standards would have an adverse impact on any real property listed in the California Register of Historical Resources.
- 3) The waiver or reduction of development standards would be contrary to State or Federal law.”

The Developer proposes the following development standard waivers:

- 1) **Street setback requirements.** The Newport Place Planned Community requires street setbacks of 30 feet from property lines. In this case, 30-foot setbacks along Quail Street and Spruce Street would substantially decrease the development of the footprint of this project. The Project is designed with approximately 10-foot setbacks to Quail Street and 11-foot setbacks to Spruce Street. The reduced street setbacks are necessary to provide sufficient area for the building as well as a 26-foot wide, 2-way driveway at the entrance to the proposed community that also serves as a required fire lane. The reduced setbacks will be sufficiently deep to provide a significant landscape buffer.
- 2) **Building height requirement.** The Newport Place Planned Community (PC-11) limits residential building height to 55 feet from established grade. In this case, a higher building height is necessary to accommodate 67 residential units. The Project is designed with a height of 86.4 feet from established grade.
- 3) **General Plan Park dedication requirement.** General Plan Land Use Policy LU 6.15.13 requires a public park equal to eight percent of the gross land area of the development, or a minimum 0.5-acres, whichever is greater, be provided. In this case, the project is required to provide a 0.50-acre public park. The 1.71-acre Project site is too small to feasibility accommodate the required 0.50-acre park and if it were dedicated, the resulting smaller site could not physically accommodate the proposed affordable housing development.
- 4) **Municipal Code Park dedication requirement.** Sections 19.52.040 and 19.52.050 of the City’s municipal code requires physical land to be dedicated to parks for projects containing more than 50 units. The requirement is 5 acres per 1,000 persons residing in a subdivision. In this case, using 2.2 persons per household, the Project would be required to dedicated 0.74 acres for park. The 1.71-acre Project site is too small to feasibility accommodate the required 0.74-acre park and if it were dedicated, the resulting smaller site could not physically accommodate the proposed affordable housing development.

Income Limits

Very Low Income Households are defined as households whose gross income does not exceed 50% of area median income, adjusted for household size while Low Income households shall not exceed 80% of area median income. Table 4 below shows the maximum income limits for 2023 as determined by the U.S. Department of Housing and Urban Development and the California Department of Housing and Community Development (“HCD”) for Low Income households with household sizes appropriate for the 1401 Quail Street development:

Table 4

AFFORDABLE HOUSING COMPUTATION	
Orange County Median Income (3-Person Household)	\$115,000
Very Low Income (50% AMI)	\$57,500
Low Income (80% AMI)	\$92,000

Housing Payment Limits for Affordable Homes

The 8 income-restricted units shall be purchase at an affordable cost calculated in accordance with the provisions of Section 50053 of the Health and Safety Code. That section requires that the housing payment for a two-bedroom unit assumes a three-person household for housing payment calculation purposes. For Very Low Income households in owner-occupied housing, Section 50052.5 of the Health and Safety Code limits affordable housing payment to 30% times 50% of area median income, as calculated in Table 5 below. For Low Income households in owner-occupied housing, affordable housing payment is limited to 30% times 70% of area median income. The values calculated are then adjusted by a utility allowance as determined annually by the County of Orange Housing & Community Services Department. As of October 1, 2022, the reduction for the utility allowance is \$238.00 per month (\$2,856 per year) for a two-bedroom unit. The utility allowance utilized assumes gas cooking, space heating, and water heating, as well as air conditioning, water and sewer, and trash fees which will be paid by the homeowner. The maximum housing payment levels before property taxes, HOA, maintenance, and insurance for 2023 are shown in Table 5 below:

Table 5

UNIT TYPE	GROSS INCOME	ANNUAL PAYMENT	UTILITY ALLOWANCE	HOA, MAINTAIN., & INSURANCE	PROPERTY TAXES	AFFORDABLE HOUSING PAYMENT
VLI	\$57,500	\$17,250	\$2,856	\$7,800	\$780	\$5,814
Low	\$80,500	\$24,150	\$2,856	\$7,800	\$1,597	\$11,897

The Developer will enter into an affordable housing agreement, in recordable form, with the City prior to obtaining the first building permit for any residential unit. That agreement will ensure that the maximum housing payment for the income-restricted units will be calculated using the methodologies as utilized in Table 5. The housing payment rates shown will be updated prior to the commencement of sales activities and on an ongoing basis to reflect then current income limits, utility allowances, and any changes in applicable regulations and statutes. The sales value for the affordable units will be calculated in the quarter that they will be available for sale. The current estimated sales price for the affordable units is shown in Tables 6A and 6B.

Table 6A

VERY LOW INCOME AFFORDABLE SALES PRICE CALCULATION	2BR UNIT
A. Income Allocated to Housing	
Area Median Income	\$115,000
50% Area Median Income	57,500
Income Allocated to Housing (30%)	17,250
B. Recurring Costs	
Annual Utilities Allowance	\$2,856
HOA, Maintenance, & Insurance	7,800
Property Taxes (1.11% of Sales Price)	780
C. Income Available for Mortgage	\$5,814
D. Affordable Sales Price	
Supportable 30-Year Mortgage at 7.9% Interest Rate	\$66,657
Home Buyer Down Payment (5% of Affordable Sales Price)	3,333
Affordable Sales Price	\$69,990

Table 6B

LOW INCOME AFFORDABLE SALES PRICE CALCULATION	2BR UNIT
A. Income Allocated to Housing	
Area Median Income	\$115,000
70% Area Median Income	80,500
Income Allocated to Housing (30%)	24,150
B. Recurring Costs	
Annual Utilities Allowance	\$2,856
HOA, Maintenance, & Insurance	7,800
Property Taxes (1.11% of Sales Price)	1,597
C. Income Available for Mortgage	\$11,897
D. Affordable Sales Price	
Supportable 30-Year Mortgage at 7.9% Interest Rate	\$136,408
Home Buyer Down Payment (5% of Affordable Sales Price)	6,820
Affordable Sales Price	\$143,228

Equity Sharing Agreement

Per Section 20.32.140 of the City's Municipal Code, if a Very Low or Low Income unit is initially occupied by a very low or low-income household and offered at an affordable housing cost, the unit will be subject to an equity sharing agreement. In lieu of an equity sharing agreement, the affordable units could per sold to a nonprofit housing corporation pursuant to six requirements in the above section.

Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation and the City of Newport Beach shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within five years for any purposes that promote affordable home ownership.

The Equity Sharing Agreement shall adhere to the following requirements:

- The City's initial subsidy shall be equal to the fair market value of the home at the time of the initial sale, minus the initial sale price, plus the amount of any down payment or mortgage assistance. If upon resale, the market value is lower than the initial market value, then the value at the time of resale shall be used as the initial market value.
- The City of Newport Beach's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of the initial sale: and
- The initial subsidy shall include any incentives granted by the City of Newport Beach and shall be equal to the monetary equivalent of the incentives.

Requested City of Newport Beach Assistance

Financial Assistance

The Developer is requesting a reduction of the park in-lieu fee payment.

EXHIBIT “F”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans, landscape plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to compliance with all applicable submittals approved by the City of Newport Beach (City) and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *Entitlements granted under PA2023-0040 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted by the City for a period of time provided in the Development Agreement pursuant to the provisions of California Government Code Section 66452.06(a).*
4. *The proposed residential development shall consist of 67 for-sale condominiums, inclusive of 52 base units and 15 density bonus units, consistent with the approved Affordable Housing Implementation Plan (AHIP).*
5. *A minimum of 8 condominium units shall be made affordable to low and very low-income households, consistent with the approved Residences at 1401 Quail Street AHIP dated November 28, 2023.*
6. *Prior to the issuance of a building permit, an affordable housing agreement shall be executed in a recordable form as required by the City Attorney’s Office.*
7. *On-site recreational amenities: private balconies, a clubroom, a pool deck, seating area, and lounge as illustrated on the approved plans shall be provided and maintained for the duration of the Project. The exact mix of amenities may be modified from the original approved plans subject to the approval by the Community Development Director. The total floor area or open space area dedicated to on-site recreational amenities shall not be reduced.*
8. *Maximum building height of the residential structure shall not exceed 81 feet, inclusive of architectural features and mechanical equipment.*
9. *The residential parking garage shall have the following features:*

- a. *A safe, secure and well lighted and signed pedestrian paths for all users.*
 - b. *Adequate and uniform lighting throughout each parking level.*
 - c. *Panic alarms and two-way communication systems in prominent locations on each parking level.*
10. *Prior to the issuance of a building permit, an acoustical analysis report, prepared by an acoustical engineer, shall be submitted to the Planning Division describing the acoustical design features of the structure that will satisfy the exterior and interior noise standards. The Project shall be attenuated in compliance with the report.*
11. *The residential structure shall be attenuated to provide an interior noise level of 45 dBA CNEL or less. Use of walls, berms, interior noise insulation, double paned windows, advanced insulation systems, or other noise mitigation measures, as deemed appropriate by the City shall be incorporated in the design of the new residential structure to provide adequate noise attenuation.*
12. *The design of the residential structure shall provide adequate noise attenuation between adjacent units (common floor/ceiling) in accordance with the California Building Code (CBC).*
13. *Advanced air filtration systems for buildings shall be considered to promote cleaner air without the opening of windows.*
14. *Prior to the issuance of a building permit, the Applicant shall submit to the Community Development Department a final copy of FAA Determination of No Hazard to Air Navigation reflective of the proposed building height.*
15. *The Applicant shall comply with all applicable provisions of NBMC Chapter 15.38, Fair Share Traffic Contribution Ordinance, and Chapter 15.42, Major Thoroughfare and Bridge Fee Program. Prior to the issuance of a building permit, Fair Share and Transportation Corridor Agency fees shall be paid for the Project.*
16. *Prior to the issuance of a building permit, the Applicant shall pay applicable school fees for the Project.*
17. *Prior to the issuance of a building permit, the Applicant shall pay applicable property development tax as required pursuant to NBMC Chapter 3.12 (Property Development Tax) for the Project.*
18. *Prior to the issuance of a building permit, the Applicant shall pay the Project's fair share of public safety fee, as determined by the Community Development Director, to fund the cost of staffing, services and equipment as necessary for fire-related public safety purposes.*

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19. *The property management company shall distribute a written disclosure statement prior to sale of any residential unit. The disclosure statement shall indicate that the occupants will be living in an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area. In addition, potential annoyances or inconveniences associated with residing in proximity to airport operations such as noise, vibration, and odor may occur. The disclosure statement shall include a written description of the potential impacts to residents of both the existing environment and potential impacts based upon the allowed uses in the zoning district and proximity to airport. Each and every purchaser shall sign the statement acknowledging that they have received, read, and understand the disclosure statement. The Applicant shall covenant to include within all deeds, leases or contracts conveying any interest in the Project: (1) the disclosure and notification requirement stated herein; (2) an acknowledgment by all grantees or lessees that the property is located within an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area; and (3) acknowledgment that the covenant is binding for the benefit and in favor of the City of Newport Beach.*
20. *Disturbance to or removal of potential bird nesting habitat shall be prohibited during the migratory bird nesting season (February 1 through August 31) unless a migratory bird nesting survey is completed. If demolition and/or vegetation removal is planned to occur during the migratory bird nesting season (February 1 through August 31), then a migratory bird nesting survey shall be completed in accordance with the following requirements:*
- a. Within three days prior to initiating demolition, tree removals and/or vegetation clearing, a nesting bird survey shall be conducted by a qualified biologist within the suitable habitat to be removed and within a 250-foot radius.*
 - b. If the survey reveals no active nesting, the proposed action may proceed.*
 - c. If the survey identifies the presence of active sensitive bird nests, then the nests shall not be disturbed unless the qualified biologist verifies through non-invasive methods that either (i) the adult birds have not begun egg-laying and incubation; or (ii) the juveniles from the occupied nests are capable of independent survival.*
 - d. If the biologist is not able to verify any of the conditions from sub-item "b," above, then no disturbance shall occur within a buffer zone specified by the qualified biologist for each nest or nesting site. The buffer zone shall be species-appropriate (no less than 100-foot radius around the nest for non-raptors and no more than a 500-foot radius around the nest for raptors, or as otherwise determined by the qualified biologist) and shall be sufficient to protect the nest from direct and indirect impacts from construction activities. The nests and buffer zones shall be field checked approximately weekly by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist with City concurrence verify that the nests*

are no longer occupied and/or juvenile birds can survive independently from the nests.

21. Any substantial modification to the approved Site Development Review plans, as determined by the Community Development Director, shall require an amendment to this Site Development Review application or the processing of a new application.
22. A copy of the Resolution, including conditions of approval Exhibit "F" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
23. Prior to the issuance of a building permit, Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Site Development Review file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Site Development Review and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
24. Prior to the issuance of a building permit, Applicant shall submit a detailed landscape and irrigation plan prepared by a licensed landscape architect for the Project. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.
25. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
26. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
27. Prior to the issuance of a building permit, the Applicant shall prepare photometric study for the Project in conjunction with a final lighting plan for approval by the Planning Division. All outdoor lighting fixtures shall be designed, shielded, aimed, located, and maintained to shield adjacent properties and to not produce glare onto adjacent properties or roadways. Parking lot light fixtures and light fixtures on buildings shall be full cut-off fixtures.

28. Prior to the issuance of Final Certificate of Occupancy, the Applicant shall schedule an evening inspection by the Code and Water Quality Enforcement Division to confirm control of light and glare specified in conditions of approval.
29. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
30. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

31. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
32. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
33. Refuse collection shall comply with the Waste Management Plan included in the approved plans. The Applicant's property management company shall contract with a franchised hauler on the City list of authorized companies.
34. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
35. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of NBMC Title 14 (Water and Sewers), including all future amendments (including Water Quality related requirements).

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36. *A qualified monitor, one from each consulting tribe (the Juaneño Band of Mission Indians - Acjachemen Nation and the Gabrieleno Band of Mission Indians - Kizh Nation), shall be retained and compensated as Native American Monitors for the project site prior to the commencement of any ground-disturbing activity to the completion of ground disturbing activities to monitor grading and excavation activities. A rotation schedule between the two tribes shall be established with the applicant. Voluntary monitoring by each consulting tribe is permitted on days that the tribe(s) is not scheduled to monitor.*
 37. *The rotating monitors, one from each consulting tribe, shall be retained prior to the commencement of any "ground-disturbing activity" for the subject project at all project locations (i.e., both on-site and any off-site locations that are included in the project description/definition and/or required in connection with the project, including as public improvement work undertaken by the applicant). "Ground-disturbing activity" shall include, but is not limited to, any demolition that includes subterranean impacts, potholing, auguring, boring, grading, excavation, drilling, and trenching.*
 38. *A copy of the executed monitoring agreement shall be submitted to the City prior to the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence a ground-disturbing activity.*
 39. *Both monitors shall complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe. Monitor logs will identify and describe any discovered TCRs, including but not limited to, Native American cultural and historical artifacts, remains, places of significance, etc., (collectively, tribal cultural resources, or "TCR"), as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs shall be shared between the two monitors and provided to the project applicant/lead agency upon written request to the monitors.*
 40. *On-site tribal monitoring shall conclude upon the latter of the following (1) written confirmation to the consulting tribes from a designated point of contact for the project applicant/lead agency that all ground-disturbing activities and phases that may involve ground-disturbing activities on the project site or in connection with the project are complete; or (2) a determination and written notification by the consulting tribes to the project applicant/lead agency that no future, planned construction activity and/or development/construction phase at the project site possesses the potential to impact TCRs of the consulting tribes.*
 41. *Upon discovery of any TCRs, all construction activities in the immediate vicinity of the discovery shall cease (i.e., within the surrounding 50 feet) and shall not resume until the discovered TCR has been fully assessed by the monitor and/or archaeologist. The monitors will recover and retain all discovered TCRs in the form and/or manner the tribes deem appropriate, in the tribes' sole discretion in coordination with the applicant, and for any purpose the tribes deem appropriate, including for educational, cultural and/or historic purposes.*

42. *Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in Public Resources Code Section 5097.98, are also to be treated according to this statute.*
43. *If Native American human remains and/or grave goods are discovered or recognized on the project site, then Public Resource Code 5097.9 as well as Health and Safety Code Section 7050.5 shall be followed.*
44. *Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).*
45. *Preservation in place (i.e., avoidance) is the preferred manner of treatment for discovered human remains and/or burial goods.*
46. *Any discovery of human remains/burial goods shall be kept confidential to prevent further disturbance.*
47. *To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Residences at 1401 Quail Street including, but not limited to, a General Plan Amendment, Planned Community Development Plan Amendment, Site Development Review, Vesting Tentative Tract Map, Affordable Housing Implementation Plan, Development Agreement and Addendum to the 2006 General Plan Update Program Environmental Impact Report (PA2023-0040). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.*

Fire Department

48. *Prior to the issuance of any occupancy permits (temporary or final), all fire and life safety systems, and the emergency responder radio system shall be inspected and approved by the Fire Marshal.*
49. *Prior to the building permit issuance, a fire master plan shall be submitted and approved by the Fire Marshal.*

50. *Prior to any foundation permit issuance for the garage basement area, a temporary fire department access way, as approved by the Fire Department, shall be provided until the permanent fire access way is installed. Required fire and life safety systems, including the fire sprinkler system, shall be operational in the garage basement areas used for parking by the construction crews and for storage of building materials and construction equipment.*
51. *One elevator shall be gurney sized and equipped as a medical emergency elevator as CBC Section 3002.*
52. Emergency responder radio coverage shall be required to comply with NBFD Guideline D.05 "Public Safety Radio Coverage" and CFC Section 510.
53. Emergency power and Standby Power System shall be required as per CFC Section 604.2.14.
54. An automatic sprinkler system shall be installed in accordance with CFC Section 903.2 amendment shall be provided throughout all buildings.
55. A standpipe system shall be required and installed as per CFC Section 905.3.1.
56. Fire Alarm system shall be provided as per CFC Section 907.2.9.

Building Division

57. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
58. The Applicant shall employ the following best available control measures (BACMs) to reduce construction-related air quality impacts:

Dust Control

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

Emissions

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

Off-Site Impacts

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

Fill Placement

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

59. Prior to the issuance of a grading permit, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The Project Applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
60. Prior to the issuance of a grading permit, the Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
61. A list of "good housekeeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
62. Prior to the building plan check submittal, the Applicant shall submit the Project for Building Code Preliminary Review.
63. *The residential dwelling units and their common use areas shall comply with Housing Accessibility per Chapter 11A.*
64. *The nonresidential portion of the development shall comply with the public accommodation requirements per Chapter 11B.*

Public Works Department

65. A Tract Map shall be recorded prior to the sale of any residential units. The map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub Article 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD standards. Scanned images will not be accepted.
66. Prior to the recordation of the tract map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub Article 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
67. Prior to the recordation of the Tract Map, a Subdivision Agreement shall be obtained and approved by the City Council consistent with the Subdivision Code Section 19.36.010.
68. Prior to Final Map approval, the applicant shall provide a Faithful Performance Bond and Labor and Materials Bond, each for 100% of the estimated improvement costs for the improvements in the public right of way, as prepared by a Registered Civil Engineer and approved by the Public Works Director, for each of the following, but not limited to, public and private improvements, street improvements, monumentation, sidewalks, striping, signage, street lights, sewer systems, water systems, storm drain systems, water quality management systems, erosion control, landscaping and irrigation within the public right of way, common open spaces areas accessible by the public, fire access and off-site improvements required as part of the project.
69. Warranty Bond for a minimum of 10% of the engineers cost estimate (final percentage to be determined by the Public Works Director) to be released 1-year after the improvements have been accepted.
70. All improvements shall be constructed as required by Ordinance and the Public Works Department.
71. An encroachment permit shall be required for all work activities within the public right-of-way.
72. The final Construction Management Plan (CMP) shall be reviewed and approved by the Community Development Director and the City Traffic Engineer prior to building permit issuance.

73. A Parking Management Plan (PMP) shall be reviewed and approved by the Community Development Director and City Traffic Engineer prior to building permit issuance. The PMP shall include information regarding gate operation, move-in and move-out, ride-share area, guest parking areas and residential parking areas.
74. Parking layout and ramp slopes shall comply with the City Parking Lot Standard 805. Dead-end drive aisle in public areas and/or unassigned parking areas shall provide a dedicated turn around space and minimum 5-foot drive aisle extension.
75. The applicant shall reconstruct all existing broken and/or otherwise damaged curb, gutter and sidewalk along the Spruce Street and Quail Street frontages per City Standards.
76. All deliveries shall be accommodated on-site and prohibited from parking or stopping within the public right of way. Only ride share vehicles shall be permitted to utilize the pull-out area located on Spruce Street.
77. The proposed driveway shall be constructed per City Standard 161. The radius for the Bristol Street North driveway shall be minimum 20-foot radius and the radius for the Spruce Street driveway shall be 15-foot minimum.
78. All on-site fire hydrants shall be privately owned and maintained.
79. All landscaping and walls along the Spruce Street and Quail Street frontages shall comply with the City's line of sight standard 105.
80. Final design of the water and sewer services is subject to further review by the Public Works Department during plan check.
81. *Prior to the issuance of a Certificate of Occupancy, the Applicant shall coordinate with the City to complete the required off-site improvements identified in the Sewer Capacity Study dated October 20, 2023, to the satisfaction of the Public Works and Utilities Directors. The Applicant shall be responsible for their fair share cost of the improvements as determined by the City, which may include the payment and construction of the entire improvement.*

EXHIBIT “F”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans, landscape plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to compliance with all applicable submittals approved by the City of Newport Beach (City) and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *Entitlements granted under PA2023-0040 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted by the City for a period of time provided in the Development Agreement pursuant to the provisions of California Government Code Section 66452.06(a).*
4. *The proposed residential development shall consist of 67 for-sale condominiums, inclusive of 52 base units and 15 density bonus units, consistent with the approved Affordable Housing Implementation Plan (AHIP).*
5. *A minimum of 8 condominium units shall be made affordable to low and very low-income households, consistent with the approved Residences at 1401 Quail Street AHIP dated November 28, 2023.*
6. *Prior to the issuance of a building permit, an affordable housing agreement shall be executed in a recordable form as required by the City Attorney’s Office.*
7. *On-site recreational amenities: private balconies, a clubroom, a pool deck, seating area, and lounge as illustrated on the approved plans shall be provided and maintained for the duration of the Project. The exact mix of amenities may be modified from the original approved plans subject to the approval by the Community Development Director. The total floor area or open space area dedicated to on-site recreational amenities shall not be reduced.*
8. *Maximum building height of the residential structure shall not exceed 81 feet, inclusive of architectural features and mechanical equipment.*
9. *The residential parking garage shall have the following features:*

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- a. A safe, secure and well lighted and signed pedestrian paths for all users.*
 - b. Adequate and uniform lighting throughout each parking level.*
 - c. Panic alarms and two-way communication systems in prominent locations on each parking level.*
 10. *Prior to the issuance of a building permit, an acoustical analysis report, prepared by an acoustical engineer, shall be submitted to the Planning Division describing the acoustical design features of the structure that will satisfy the exterior and interior noise standards. The Project shall be attenuated in compliance with the report.*
 11. *The residential structure shall be attenuated to provide an interior noise level of 45 dBA CNEL or less. Use of walls, berms, interior noise insulation, double paned windows, advanced insulation systems, or other noise mitigation measures, as deemed appropriate by the City shall be incorporated in the design of the new residential structure to provide adequate noise attenuation.*
 12. *The design of the residential structure shall provide adequate noise attenuation between adjacent units (common floor/ceiling) in accordance with the California Building Code (CBC).*
 13. *Advanced air filtration systems for buildings shall be considered to promote cleaner air without the opening of windows.*
 14. *Prior to the issuance of a building permit, the Applicant shall submit to the Community Development Department a final copy of FAA Determination of No Hazard to Air Navigation reflective of the proposed building height.*
 15. *The Applicant shall comply with all applicable provisions of NBMC Chapter 15.38, Fair Share Traffic Contribution Ordinance, and Chapter 15.42, Major Thoroughfare and Bridge Fee Program. Prior to the issuance of a building permit, Fair Share and Transportation Corridor Agency fees shall be paid for the Project.*
 16. *Prior to the issuance of a building permit, the Applicant shall pay applicable school fees for the Project.*
 17. *Prior to the issuance of a building permit, the Applicant shall pay applicable property development tax as required pursuant to NBMC Chapter 3.12 (Property Development Tax) for the Project.*
 18. *Prior to the issuance of a building permit, the Applicant shall pay the Project's fair share of public safety fee, as determined by the Community Development Director, to fund the cost of staffing, services and equipment as necessary for fire-related public safety purposes.*

19. *The property management company shall distribute a written disclosure statement prior to sale of any residential unit. The disclosure statement shall indicate that the occupants will be living in an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area. In addition, potential annoyances or inconveniences associated with residing in proximity to airport operations such as noise, vibration, and odor may occur. The disclosure statement shall include a written description of the potential impacts to residents of both the existing environment and potential impacts based upon the allowed uses in the zoning district and proximity to airport. Each and every purchaser shall sign the statement acknowledging that they have received, read, and understand the disclosure statement. The Applicant shall covenant to include within all deeds, leases or contracts conveying any interest in the Project: (1) the disclosure and notification requirement stated herein; (2) an acknowledgment by all grantees or lessees that the property is located within an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area; and (3) acknowledgment that the covenant is binding for the benefit and in favor of the City of Newport Beach.*
20. *Disturbance to or removal of potential bird nesting habitat shall be prohibited during the migratory bird nesting season (February 1 through August 31) unless a migratory bird nesting survey is completed. If demolition and/or vegetation removal is planned to occur during the migratory bird nesting season (February 1 through August 31), then a migratory bird nesting survey shall be completed in accordance with the following requirements:*
 - a. *Within three days prior to initiating demolition, tree removals and/or vegetation clearing, a nesting bird survey shall be conducted by a qualified biologist within the suitable habitat to be removed and within a 250-foot radius.*
 - b. *If the survey reveals no active nesting, the proposed action may proceed.*
 - c. *If the survey identifies the presence of active sensitive bird nests, then the nests shall not be disturbed unless the qualified biologist verifies through non-invasive methods that either (i) the adult birds have not begun egg-laying and incubation; or (ii) the juveniles from the occupied nests are capable of independent survival.*
 - d. *If the biologist is not able to verify any of the conditions from sub-item "b," above, then no disturbance shall occur within a buffer zone specified by the qualified biologist for each nest or nesting site. The buffer zone shall be species-appropriate (no less than 100-foot radius around the nest for non-raptors and no more than a 500-foot radius around the nest for raptors, or as otherwise determined by the qualified biologist) and shall be sufficient to protect the nest from direct and indirect impacts from construction activities. The nests and buffer zones shall be field checked approximately weekly by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist with City concurrence verify that the nests*

are no longer occupied and/or juvenile birds can survive independently from the nests.

21. Any substantial modification to the approved Site Development Review plans, as determined by the Community Development Director, shall require an amendment to this Site Development Review application or the processing of a new application.
22. A copy of the Resolution, including conditions of approval Exhibit "F" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
23. Prior to the issuance of a building permit, Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Site Development Review file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Site Development Review and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
24. Prior to the issuance of a building permit, Applicant shall submit a detailed landscape and irrigation plan prepared by a licensed landscape architect for the Project. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.
25. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
26. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
27. Prior to the issuance of a building permit, the Applicant shall prepare photometric study for the Project in conjunction with a final lighting plan for approval by the Planning Division. All outdoor lighting fixtures shall be designed, shielded, aimed, located, and maintained to shield adjacent properties and to not produce glare onto adjacent properties or roadways. Parking lot light fixtures and light fixtures on buildings shall be full cut-off fixtures.

28. Prior to the issuance of Final Certificate of Occupancy, the Applicant shall schedule an evening inspection by the Code and Water Quality Enforcement Division to confirm control of light and glare specified in conditions of approval.
29. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
30. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

31. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
32. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
33. Refuse collection shall comply with the Waste Management Plan included in the approved plans. The Applicant's property management company shall contract with a franchised hauler on the City list of authorized companies.
34. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
35. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of NBMC Title 14 (Water and Sewers), including all future amendments (including Water Quality related requirements).

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36. *A qualified monitor, one from each consulting tribe (the Juaneño Band of Mission Indians - Acjachemen Nation and the Gabrieleno Band of Mission Indians - Kizh Nation), shall be retained and compensated as Native American Monitors for the project site prior to the commencement of any ground-disturbing activity to the completion of ground disturbing activities to monitor grading and excavation activities. A rotation schedule between the two tribes shall be established with the applicant. Voluntary monitoring by each consulting tribe is permitted on days that the tribe(s) is not scheduled to monitor.*
 37. *The rotating monitors, one from each consulting tribe, shall be retained prior to the commencement of any "ground-disturbing activity" for the subject project at all project locations (i.e., both on-site and any off-site locations that are included in the project description/definition and/or required in connection with the project, including as public improvement work undertaken by the applicant). "Ground-disturbing activity" shall include, but is not limited to, any demolition that includes subterranean impacts, potholing, auguring, boring, grading, excavation, drilling, and trenching.*
 38. *A copy of the executed monitoring agreement shall be submitted to the City prior to the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence a ground-disturbing activity.*
 39. *Both monitors shall complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe. Monitor logs will identify and describe any discovered TCRs, including but not limited to, Native American cultural and historical artifacts, remains, places of significance, etc., (collectively, tribal cultural resources, or "TCR"), as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs shall be shared between the two monitors and provided to the project applicant/lead agency upon written request to the monitors.*
 40. *On-site tribal monitoring shall conclude upon the latter of the following (1) written confirmation to the consulting tribes from a designated point of contact for the project applicant/lead agency that all ground-disturbing activities and phases that may involve ground-disturbing activities on the project site or in connection with the project are complete; or (2) a determination and written notification by the consulting tribes to the project applicant/lead agency that no future, planned construction activity and/or development/construction phase at the project site possesses the potential to impact TCRs of the consulting tribes.*
 41. *Upon discovery of any TCRs, all construction activities in the immediate vicinity of the discovery shall cease (i.e., within the surrounding 50 feet) and shall not resume until the discovered TCR has been fully assessed by the monitor and/or archaeologist. The monitors will recover and retain all discovered TCRs in the form and/or manner the tribes deem appropriate, in the tribes' sole discretion in coordination with the applicant, and for any purpose the tribes deem appropriate, including for educational, cultural and/or historic purposes.*

42. *Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in Public Resources Code Section 5097.98, are also to be treated according to this statute.*
43. *If Native American human remains and/or grave goods are discovered or recognized on the project site, then Public Resource Code 5097.9 as well as Health and Safety Code Section 7050.5 shall be followed.*
44. *Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).*
45. *Preservation in place (i.e., avoidance) is the preferred manner of treatment for discovered human remains and/or burial goods.*
46. *Any discovery of human remains/burial goods shall be kept confidential to prevent further disturbance.*
47. *To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Residences at 1401 Quail Street including, but not limited to, a General Plan Amendment, Planned Community Development Plan Amendment, Site Development Review, Vesting Tentative Tract Map, Affordable Housing Implementation Plan, Development Agreement and Addendum to the 2006 General Plan Update Program Environmental Impact Report (PA2023-0040). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.*

Fire Department

48. *Prior to the issuance of any occupancy permits (temporary or final), all fire and life safety systems, and the emergency responder radio system shall be inspected and approved by the Fire Marshal.*
49. *Prior to the building permit issuance, a fire master plan shall be submitted and approved by the Fire Marshal.*

50. *Prior to any foundation permit issuance for the garage basement area, a temporary fire department access way, as approved by the Fire Department, shall be provided until the permanent fire access way is installed. Required fire and life safety systems, including the fire sprinkler system, shall be operational in the garage basement areas used for parking by the construction crews and for storage of building materials and construction equipment.*
51. *One elevator shall be gurney sized and equipped as a medical emergency elevator as CBC Section 3002.*
52. Emergency responder radio coverage shall be required to comply with NBFD Guideline D.05 "Public Safety Radio Coverage" and CFC Section 510.
53. Emergency power and Standby Power System shall be required as per CFC Section 604.2.14.
54. An automatic sprinkler system shall be installed in accordance with CFC Section 903.2 amendment shall be provided throughout all buildings.
55. A standpipe system shall be required and installed as per CFC Section 905.3.1.
56. Fire Alarm system shall be provided as per CFC Section 907.2.9.

Building Division

57. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
58. The Applicant shall employ the following best available control measures (BACMs) to reduce construction-related air quality impacts:

Dust Control

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

Emissions

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

Off-Site Impacts

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

Fill Placement

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

59. Prior to the issuance of a grading permit, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The Project Applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
60. Prior to the issuance of a grading permit, the Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
61. A list of "good housekeeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
62. Prior to the building plan check submittal, the Applicant shall submit the Project for Building Code Preliminary Review.
63. *The residential dwelling units and their common use areas shall comply with Housing Accessibility per Chapter 11A.*
64. *The nonresidential portion of the development shall comply with the public accommodation requirements per Chapter 11B.*

Public Works Department

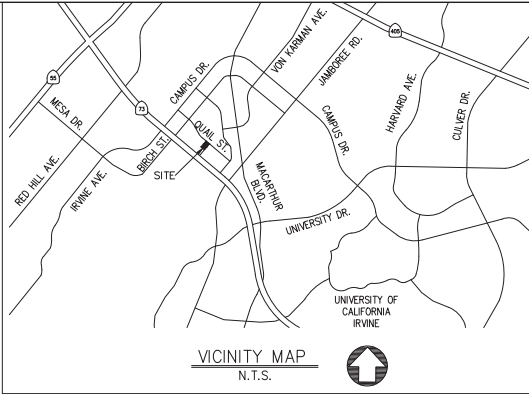
65. A Tract Map shall be recorded prior to the sale of any residential units. The map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub Article 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD standards. Scanned images will not be accepted.
66. Prior to the recordation of the tract map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub Article 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
67. Prior to the recordation of the Tract Map, a Subdivision Agreement shall be obtained and approved by the City Council consistent with the Subdivision Code Section 19.36.010.
68. Prior to Final Map approval, the applicant shall provide a Faithful Performance Bond and Labor and Materials Bond, each for 100% of the estimated improvement costs for the improvements in the public right of way, as prepared by a Registered Civil Engineer and approved by the Public Works Director, for each of the following, but not limited to, public and private improvements, street improvements, monumentation, sidewalks, striping, signage, street lights, sewer systems, water systems, storm drain systems, water quality management systems, erosion control, landscaping and irrigation within the public right of way, common open spaces areas accessible by the public, fire access and off-site improvements required as part of the project.
69. Warranty Bond for a minimum of 10% of the engineers cost estimate (final percentage to be determined by the Public Works Director) to be released 1-year after the improvements have been accepted.
70. All improvements shall be constructed as required by Ordinance and the Public Works Department.
71. An encroachment permit shall be required for all work activities within the public right-of-way.
72. The final Construction Management Plan (CMP) shall be reviewed and approved by the Community Development Director and the City Traffic Engineer prior to building permit issuance.

73. A Parking Management Plan (PMP) shall be reviewed and approved by the Community Development Director and City Traffic Engineer prior to building permit issuance. The PMP shall include information regarding gate operation, move-in and move-out, ride-share area, guest parking areas and residential parking areas.
74. Parking layout and ramp slopes shall comply with the City Parking Lot Standard 805. Dead-end drive aisle in public areas and/or unassigned parking areas shall provide a dedicated turn around space and minimum 5-foot drive aisle extension.
75. The applicant shall reconstruct all existing broken and/or otherwise damaged curb, gutter and sidewalk along the Spruce Street and Quail Street frontages per City Standards.
76. All deliveries shall be accommodated on-site and prohibited from parking or stopping within the public right of way. Only ride share vehicles shall be permitted to utilize the pull-out area located on Spruce Street.
77. The proposed driveway shall be constructed per City Standard 161. The radius for the Bristol Street North driveway shall be minimum 20-foot radius and the radius for the Spruce Street driveway shall be 15-foot minimum.
78. All on-site fire hydrants shall be privately owned and maintained.
79. All landscaping and walls along the Spruce Street and Quail Street frontages shall comply with the City's line of sight standard 105.
80. Final design of the water and sewer services is subject to further review by the Public Works Department during plan check.
81. *Prior to the issuance of a Certificate of Occupancy, the Applicant shall coordinate with the City to complete the required off-site improvements identified in the Sewer Capacity Study dated October 20, 2023, to the satisfaction of the Public Works and Utilities Directors. The Applicant shall be responsible for their fair share cost of the improvements as determined by the City, which may include the payment and construction of the entire improvement unless the City assumes the cost of the improvement.*

EXHIBIT “G”

VESTING TENTATIVE TRACT MAP NO. 19261

TENTATIVE TRACT MAP NO. 19261
FOR CONDOMINIUM PURPOSES
CITY OF NEWPORT BEACH, COUNTY OF ORANGE,
STATE OF CALIFORNIA



NOTES:

OWNER: NEWPORT PLACE INVESTMENT COMPANY, A GENERAL PARTNERSHIP
1401 QUAIL STREET, SUITE 120, NEWPORT BEACH, CA 92660

APPLICANT: INTRACORP SW, LLC
895 DOVE STREET, SUITE 400, NEWPORT BEACH, CA 92660

SURVEY/ENGINEER: ADAMS-STREETER
CIVIL ENGINEERS INC.
16755 VON KARMAN AVENUE, SUITE 150 IRVINE CA 92606
(949) 474-2330

PROJECT ADDRESS: 1401 QUAIL STREET
NEWPORT BEACH, CA 92660

APN No.: 427-332-04

BOUNDARY AREA: BASED UPON MEASURED BEARINGS AND DISTANCES AS SHOWN
HEREON, THE AREA IS: 1.71 ACRES.

FLOOD ZONE: SUBJECT PROPERTY LIES WITHIN FLOOD ZONE X (AREA OF MINIMAL
FLOOD HAZARD) AS SHOWN ON FLOOD INSURANCE RATE MAP NO.
06059C0286J DATED DECEMBER 3, 2009 AS PUBLISHED BY THE
FEDERAL MANAGEMENT AGENCY.

EXISTING USE: OFFICE BUILDING (22,536 SF)

EXISTING LAND USE: CO-G GENERAL COMMERCIAL OFFICE

EXISTING ZONING: PLANNED COMMUNITY - PC11 NEWPORT PLACE

PROPOSED NUMBER OF UNITS: 78 RESIDENTIAL UNITS

PROPOSED DENSITY: 45.61 DU/ACRE

PARKING: RESIDENTIAL PARKING REQUIRED (1.77 SPACES/UNIT AVERAGE): 138 SPACES
RESIDENTIAL PARKING PROVIDED: 159 SPACES

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF
CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 341, AS PER MAP FILED IN BOOK 44, PAGE 38 OF PARCEL
MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE FULL RIGHTS TO ALL MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON
SUBSTANCES EXISTING BELOW 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY
DESCRIBED ABOVE, PROVIDED, HOWEVER, THAT GRANTOR HEREBY EXPRESSLY WAIVES THE
RIGHT TO ENTER UPON THE SURFACE OF SAID REAL PROPERTY FOR THE PURPOSE OF
EXPLORING FOR, OR PRODUCING THE MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON
SUBSTANCES SO RESERVED, AS RESERVED IN THE DEED RECORDED AUGUST 22, 1973 IN
BOOK 10863, PAGE 782 OF OFFICIAL RECORDS.

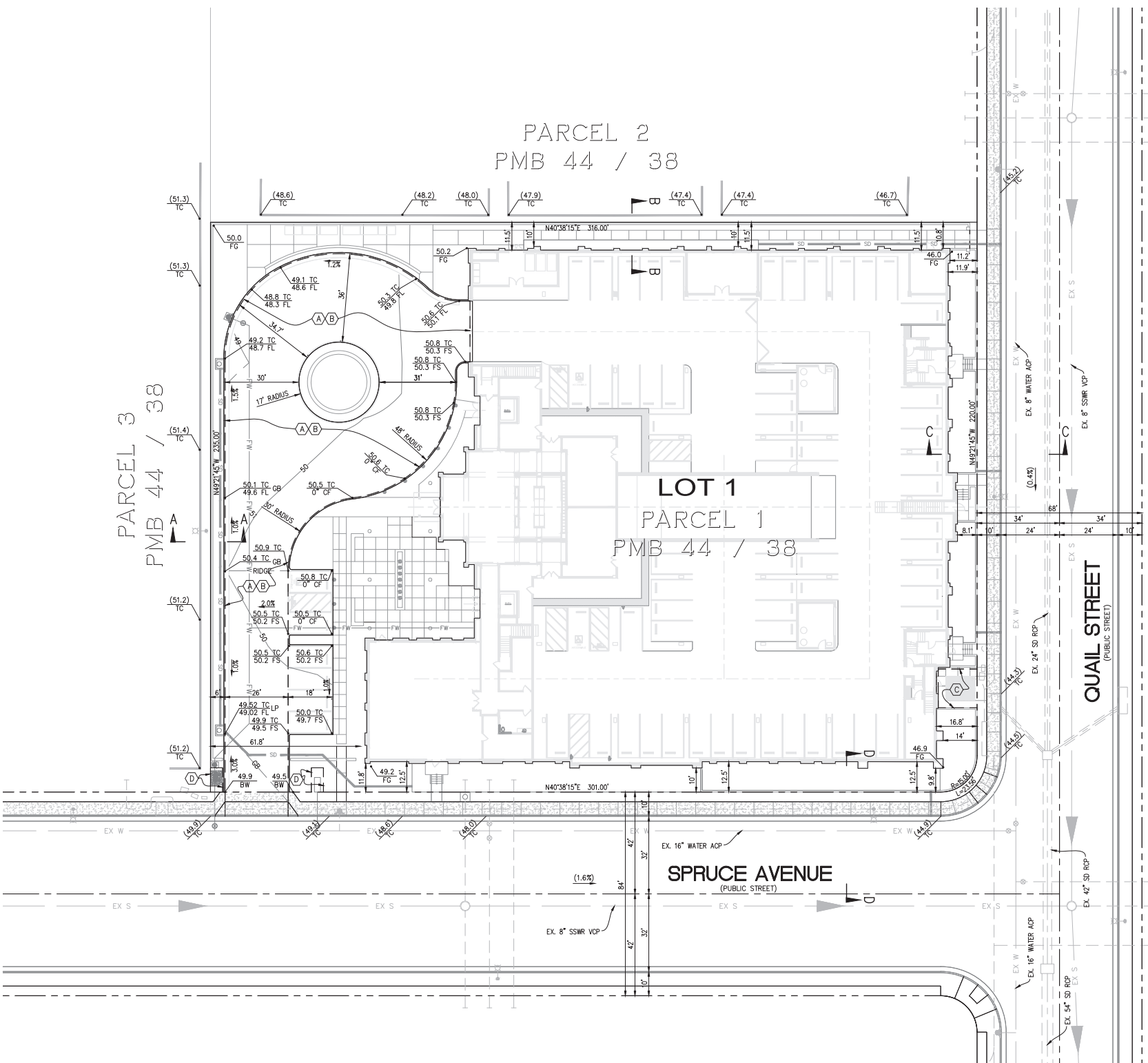
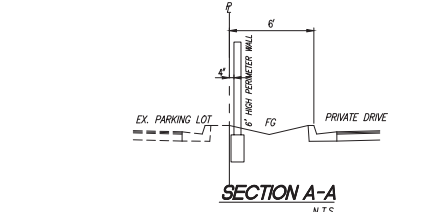
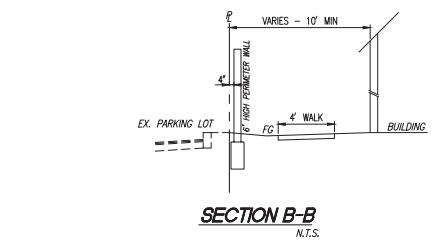
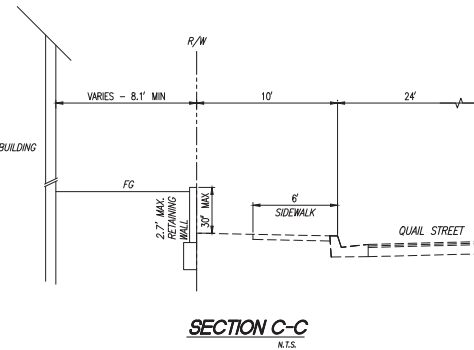
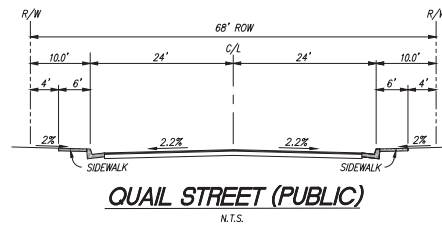
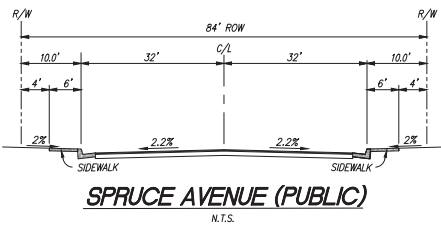
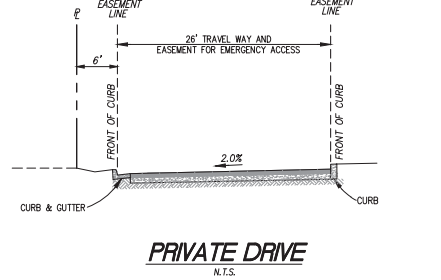
APN: 427-332-04

EXISTING EASEMENTS

PER PRELIMINARY REPORT NO. NHSC-6827206 DATED APRIL 18, 2022 BY FIRST AMERICAN
TITLE COMPANY, THERE ARE NO EXISTING EASEMENTS ENCUMBERING THE PROPERTY.

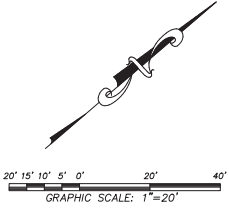
PROPOSED EASEMENT NOTES

- (A) NON-EXCLUSIVE EASEMENT FOR EMERGENCY VEHICULAR ACCESS AND FIRE
PROTECTION FACILITIES PURPOSES.
- (B) NON-EXCLUSIVE EASEMENT RESERVED FOR UTILITIES AND PRIVATE DRIVE.
- (C) PROPOSED ELECTRICAL EASEMENT.
- (D) PROPOSED UTILITY EASEMENT DEDICATED TO THE CITY OF NEWPORT BEACH.



LEGEND

- CENTERLINE
- RIGHT OF WAY
- PROPERTY LINE
- EASEMENT LINE



REV	DATE	REVISIONS DESCRIPTION

PREPARED BY: **AS**
ADAMS STREETER
CIVIL ENGINEERS
16755 Von Karmann, Suite 150, Irvine, CA 92606 | (949) 474-2330 | www.adamsstreeter.com
Date: 10/3/2023
Nicholas A. Streeter RCE 70862

DEVELOPER: **INTRACORP**
Building the Extraordinary
895 DOVE STREET, SUITE 400
NEWPORT BEACH, CA 92660



Scale: As Noted On Plan
Created: 10/3/2023
Revised:

TENTATIVE TRACT MAP NO. 19261
1401 QUAIL STREET
CITY OF NEWPORT BEACH, CALIFORNIA

SHEET
TTM-1