



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Kimberly Brandt, Community Development Director  
Brenda Wisneski, Deputy Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator, Police Chief, and/or Planning Division staff for the week ending April 29, 2016

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**ZONING ADMINISTRATOR ACTIONS  
APRIL 28, 2016**

- Item 1: 710 Goldenrod Avenue Tentative Parcel Map No. NP2016-004 (PA2016-036)  
Site Address: 710 Goldenrod Avenue
- Action: Approved by Resolution No. ZA2016-022 Council District 6
- Item 2: 601 Iris Avenue Tentative Parcel Map No. NP2016-005 (PA2016-037)  
Site Address: 601 and 601 ½ Iris Avenue
- Action: Approved by Resolution No. ZA2016-023 Council District 6
- Item 3: 19 Lochmoor Lane Lot Line Adjustment No. LA2015-008 (PA2015-223)  
Site Address: 19 Lochmoor Lane and 1 Big Canyon Drive
- Action: Approved by Resolution No. ZA2016-024 Council District 5
- Item 4: Araiya Thai Massage Minor Use Permit No. UP2016-009 (PA2016-038)  
Site Address: 333 Old Newport Boulevard, Suite A
- Action: Approved by Resolution No. ZA2016-025 Council District 2
- Item 5: Forte Kabob Minor Use Permit No. UP2016-011 (PA2016-043)  
Site Address: 2233 W. Balboa Boulevard, Suite 103
- Action: Approved by Resolution No. ZA2016-026 Council District 1

Item 6: Annual Review of Development Agreement for North Newport Center (PA2009-023)  
Site Address: Sub-areas of Fashion Island; Block 100, Block 400, Block 500, Block 600, and Block 800 of Newport Center Drive; and San Joaquin Plaza.  
  
Action: *Item Continued to May 12, 2016 ZA Hearing* Council District 5

Item 7: City of Newport Beach Recreation Facility Minor Use Permit No. UP2016-013 (PA2016-048)  
Site Address: 868-870 West 16<sup>th</sup> Street  
  
Action: Approved by Resolution No. ZA2016-027 Council District 2

**ACTION TAKEN BY THE CHIEF OF POLICE**  
(Non-Hearing Item)

Item 1: Island Cinema Operator License No. 2016-001 (PA2016-001)  
Site Address: 999 Newport Center Drive  
  
Action: Approved Council District 5

APPEAL PERIOD: An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2016-022

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-004 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 710 GOLDENROD AVENUE (PA2016-036)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Apex Land Surveying, Inc, with respect to property located at 710 Goldenrod Avenue, and legally described as Lot 12, Block 734, Tract 186 requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) development standards is proposed with this application. A single-unit dwelling was demolished and will be replaced with a new two-unit duplex. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 28, 2016 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project is categorically exempt under Section 15315, of the State CEQA (California Environmental Quality Act) Guidelines - Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A single-family dwelling was demolished and will be replaced with a two-unit dwelling. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation "Two-Unit Residential."
2. The subject property is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from Goldenrod Avenue and the alley at the rear, and is adequately served by existing utilities.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to 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.*

Facts in Support of Finding:

1. The site was previously developed with a single-family dwelling and will be replaced with a new two-unit dwelling.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

*E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones 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 development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, lies in a Zoning District that permits residential uses.

Finding:

*G. That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) 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 because the existing subdivision does not contain fifty (50) or more parcels.
2. The project is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The proposed two-unit dwelling is consistent with the R-2 Zoning District which allows two residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

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

Facts in Support of Finding:

1. The new two-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:

1. The subject property is not located within the Coastal Zone.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-004 (PA2016-036), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director

of Community Development in accordance with the provisions of Title 19 Subdivisions,  
of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF APRIL, 2016.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to the recordation of the parcel map, a park fee shall be paid for one (1) unit.
3. Subsequent to the recordation of the parcel map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is finalized. The building permit for the new construction shall not be finalized until after recordation of the parcel map.
4. This approval shall expire and become void unless exercised within twenty-four (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.
5. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 710 Goldenrod Avenue Tentative Parcel Map including, but not limited to, Tentative Parcel Map No. NP2016-004 (PA2016-036). 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.

**PUBLIC WORKS**

6. A Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). 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 Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual,

**Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned imaged will not be accepted.**

7. Prior to the recordation of the parcel 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, Subarticle 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 the construction project.
8. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Goldenrod Avenue frontage.
11. All existing overhead utilities shall be undergrounded.
12. No above ground improvements shall be installed within the five-foot alley setback.
13. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.
14. An encroachment permit is required for all work activities within the public right-of-way.
15. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code Section 20.30.130.
16. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
17. All on-site drainage shall comply with the latest City Water Quality requirements.
18. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line. If the sewer lateral to be abandoned has an existing cleanout, abandonment shall include removal of the cleanout riser, the 4TT box and the wye. Sewer lateral shall then be capped where the wye used to be.

## RESOLUTION NO. ZA2016-023

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-004 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 601 and 601 ½ IRIS AVENUE (PA2016-037)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Apex Land Surveying, Inc, with respect to property located at 601 and 601 ½ iris Avenue, and legally described as Lot 1, Block 653, Tract 186 requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) development standards is proposed with this application. A two-unit duplex was demolished and will be replaced with a new two-unit duplex. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 28, 2016 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project is categorically exempt under Section 15315, of the State CEQA (California Environmental Quality Act) Guidelines - Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A two-unit duplex was demolished and will be replaced with a new two-unit duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation "Two-Unit Residential."
2. The subject property is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape.
2. The subject property is accessible from Iris Avenue, Third Avenue and the alley at the rear, and is adequately served by existing utilities.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to 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.*

Facts in Support of Finding:

1. The site was previously developed with a two-unit dwelling and will be replaced with a new two-unit dwelling.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

*E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones 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 development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, lies in a Zoning District that permits residential uses.

Finding:

*G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) 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 because the existing subdivision does not contain fifty (50) or more parcels.
2. The project is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The proposed two-unit dwelling is consistent with the R-2 Zoning District which allows two residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

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

Facts in Support of Finding:

1. The new two-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:

1. The subject property is not located within the Coastal Zone.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-005 (PA2016-037), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director

of Community Development in accordance with the provisions of Title 19 Subdivisions,  
of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF APRIL, 2016.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the parcel map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is finalized. The building permit for the new construction shall not be finalized until after recordation of the parcel map.
3. This approval shall expire and become void unless exercised within twenty-four (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.
4. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 601 Iris Avenue Tentative Parcel Map including, but not limited to, Tentative Parcel Map No. NP2016-005 (PA2016-037). 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.

**PUBLIC WORKS**

5. A Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). 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 Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual,

**Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned imaged will not be accepted.**

6. Prior to the recordation of the parcel 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, Subarticle 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 the construction project.
7. A 10-foot radius corner cut-off easement for street and public utility purposes at the Iris Avenue/Third Avenue curb return shall be recorded as a part of the parcel map.
8. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Iris Avenue and Third Avenue frontages.
9. A new minimum 5-foot wide concrete sidewalk shall be constructed along the entire Third Avenue frontage.
10. Upon construction of new concrete sidewalk along the Third Avenue frontage, a new ADA compliant curb access ramp shall be constructed at the Iris Avenue/Third Avenue curb return.
11. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
12. Install new low-growing groundcover of the type approved by the City throughout the Third Avenue parkway fronting the development site.
13. All improvements shall be constructed as required by Ordinance and the Public Works Department.
14. All existing overhead utilities shall be undergrounded.
15. No above ground improvements shall be installed within the five-foot alley setback.
16. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.
17. An encroachment permit is required for all work activities within the public right-of-way.
18. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code Section 20.30.130.

19. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
20. All on-site drainage shall comply with the latest City Water Quality requirements.
21. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line. If the sewer lateral to be abandoned has an existing cleanout, abandonment shall include removal of the cleanout riser, the 4TT box and the wye. Sewer lateral shall then be capped where the wye used to be.
22. Per Chapter 13 of the City Municipal Code, a total of four (4) 36-inch box street trees shall be planted; one (1) along Iris Avenue and three (3) along the Third Avenue frontage. Tree species shall be per Council Policy G-6.

## RESOLUTION NO. ZA2016-024

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2015-008 TO ADJUST THE BOUNDARIES OF PARCELS LOCATED AT 1 BIG CANYON DRIVE AND 19 LOCHMOOR LANE (PA2015-223)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by David Voorhees on behalf of the Big Canyon Country Club, with respect to property located at 1 Big Canyon Drive and 19 Lochmoor Lane, and legally described as a portion of Block 55, 56, 92 and 93 of Irvine's Subdivision and Lot 99 of Tract No. 7223, respectively, requesting approval of a lot line adjustment.
2. The applicant proposes to adjust the boundary between two (2) contiguous parcels located in the Big Canyon Planned Community (PC 8). Land taken from 1 Big Canyon Drive will be reallocated to 19 Lochmoor Lane. There will be no change in the number of parcels.
3. The property at 1 Big Canyon Drive is the golf course area of the Big Canyon Planned Community (PC 8) Zoning District and the General Plan Land Use Element category is Parks and Recreation (PR). The property at 19 Lochmoor Lane is located within Low Density Residential Area 12 of the PC 8 Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject properties are not located within the coastal zone.
5. A public hearing was held on April 28, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

In accordance with Section 19.76.020 (Procedures for Lot Line Adjustments) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

##### Finding:

- A. *Approval of the lot line adjustment will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be*

*detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot line adjustment is consistent with the legislative intent of this title.*

Facts in Support of Finding:

1. The proposed boundary adjustment will not change the existing use of either property affected. The General Plan Land Use Designation Single-Unit Residential Detached (RS-D), which is intended for detached single-unit residential dwelling units, will be maintained for the Lochmoor Lane parcel. The Parks and Recreation designation which applies to active public or private recreational uses including golf courses will be maintained for the Big Canyon Drive parcel.
2. The proposed boundary adjustment will not result in a development pattern that is inconsistent with the surrounding neighborhood. The Lochmoor Lane parcel will continue to allow for single-unit development consistent with the applicable General Plan Land Use and zoning designation. The proposed Big Canyon Drive parcel will remain a golf course and development will continue to be consistent with limits specified by the General Plan and zoning designation.
3. The proposed boundary adjustment is consistent with the purpose identified in Chapter 19.76 (Lot Line Adjustments) of the Newport Beach Municipal Code. The lot line adjustment constitutes a minor boundary adjustment involving two (2) adjacent lots where land taken from one lot is added to an adjacent lot. The original number of lots will remain unchanged after the adjustment.
4. The subdivision is consistent with the General Plan, does not affect open space areas in the City, does not negatively impact surrounding land owners, and will not in itself be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood, because the adjustment affects an interior property line between two (2) adjacent parcels.

Finding:

- B. The number of parcels resulting from the lot line adjustment remains the same as before the lot line adjustment.*

Facts in Support of Finding:

1. The proposed boundary adjustment will shift the property line between two (2) adjacent parcels to the south. The number of parcels remains the same as before the lot line adjustment.

Finding:

- C. The lot line adjustment is consistent with applicable zoning regulations except that nothing herein shall prohibit the approval of a lot line adjustment as long as none of*

*the resultant parcels is more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment.*

Facts in Support of Finding:

1. The Lochmoor Lane property is located within Low Density Residential Area 12 of the Big Canyon Planned Community (PC 8) Zoning District, which is intended to provide for detached single-unit dwellings. The golf course is located in an area of the PC 8 Zoning District which is intended for a golf course. The proposed lot line adjustment will not change the existing use of the parcels affected.
2. The proposed boundary adjustment will shift the property line between parcels to the south, reallocating 522 square feet of land from 1 Big Canyon Drive to 19 Lochmoor Lane.
3. The proposed Lochmoor Lane parcel will continue to exceed the minimum site area requirement of the Big Canyon Planned Community development regulations. Lots in Area 12 are required to provide a minimum lot area of 8,000 square feet. In this case, the proposed Lochmoor Lane parcel is compliant in size with an area of 12,708 square feet.
4. The proposed parcels comply with all applicable lot size regulations of the Big Canyon Planned Community Development Plan and will not result in a change in allowed land uses, density, or intensity on the properties.

Finding:

- D. Neither the lots as adjusted nor adjoining parcels will be deprived of legal access as a result of the lot line adjustment.*

Facts in Support of Finding:

1. The proposed boundary adjustment affects the property line between two (2) adjacent parcels. Legal access to the subject properties from Big Canyon Drive, Jamboree Road, and Lochmoor Lane is not affected by the lot line adjustment.

Finding:

- E. That the final configuration of the parcels involved will not result in the loss of direct vehicular access from an adjacent alley for any of the parcels that are included in the lot line adjustment.*

Facts in Support of Finding:

1. Vehicular access to the existing properties is taken from Big Canyon Drive, Jamboree Road, and Lochmoor Lane, and the final configuration will not change.

Finding:

- F. *That the final configuration of a reoriented lot does not result in any reduction of the street side setbacks as currently exist adjacent to a front yard of any adjacent key, unless such reduction is accomplished through a zone change to establish appropriate street side setbacks for the reoriented lot. The Planning Commission and City Council in approving the zone change application shall determine that the street side setbacks are appropriate, and are consistent and compatible with the surrounding pattern of development and existing adjacent setbacks.*

Facts in Support of Finding:

1. The final configuration of the proposed parcels does not result in a requirement for revised setbacks since the parcels are not proposed to be reoriented. The required setbacks applicable to parcels in the PC 8 Zoning District shall continue to apply to the adjusted parcels per the Planned Community Development Plan.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2015-008, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF APRIL, 2016.**

BY:



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
3. Prior to recordation of the lot line adjustment, the applicant shall submit the Lot Line Adjustment exhibits to the Public Works Department for final review.
4. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 19 Lochmoor Lane Lot Line Adjustment including, but not limited to, Lot Line Adjustment No. LA2015-008 (PA2015-223). 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.

## RESOLUTION NO. ZA2016-025

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-009 FOR A MASSAGE ESTABLISHMENT LOCATED AT 333 OLD NEWPORT BOULEVARD, SUITE A (PA2016-038)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Suwana LaRoque on behalf of Araiya Inc., with respect to property located at 333 Old Newport Boulevard, Suite A, and legally described as that portion of Lot 24 in Block 9 of Tract No. 27, in the City of Newport Beach, County of Orange, State of California as shown on a Map thereof, recorded in Book 9, Page 26, Miscellaneous Maps, in the Office of the County Recorder of Orange County, California and that portion of the easterly 20 feet of that certain roadway, 40 feet in width, as shown on said Map adjoining said Lot 24 on the west, abandoned by order of the Board of Supervisors of Orange County California on June 4, 1929, a certified copy of which Order was recorded June 27, 1929, in Book 286, Page 273 of official records, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow the operation of an independent massage establishment on the second floor of an existing two-story multi-tenant commercial building. The establishment will provide three therapy rooms, an employee lounge, and areas for office and storage. A maximum of three massage therapists will be on-site at one time. Included is a request to waive location restrictions associated with massage establishments.
3. The subject property is located in the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
4. The subject property is not located in the coastal zone.
5. A public hearing was held on April 28, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).

2. This Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the establishment of massage services and does not result in an intensification of use, parking, or expansion in floor area.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

#### Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan.*

#### Facts in Support of Finding:

1. The property is designated General Commercial Office (CO-G) in the Land Use Element of the General Plan. This designation is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses.
2. The proposed establishment is a service use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach. Therefore, the use is consistent with the CO-G land use designation.
3. The subject property is not part of a specific plan area.

#### Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

#### Facts in Support of Finding:

1. The subject property is located in the Office General (OG) Zoning District, which is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses.
2. Pursuant to Table 2-4 of Zoning Code Chapter 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) a massage establishment is a service use that may be permitted in the OG Zoning District subject to the approval of a minor use permit.
3. The proposed massage establishment is consistent with the legislative intent of Section 20.48.120 (Massage Establishments and Services) and Chapter 5.50 (Massage Establishments) of the Municipal Code. These sections provide standards for the establishment, location, and operation of massage establishments operated as

an independent use. The intent is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration that may accompany and result from large numbers of massage establishments.

4. The massage establishment is not located within 500 feet of a public or private school, park or playground, civic center, cultural site, or religious institution.
5. Pursuant to the Zoning Code, the City may establish the parking requirement for a massage establishment through the use permit process. The applicant has proposed massage services in three rooms and indicated that a maximum of three massage therapists will be on-site at one time. The limit on massage therapists and number of rooms available for massage therapy will limit the number of patrons. Based on the proposed operation, a rate of one parking space for every 250 square feet is appropriate for the proposed use.
6. The recommended parking requirement is the same standard required of the previous use, a small health/fitness facility. Therefore, the proposed change does not result in an intensification of use and no additional parking is required.
7. Zoning Code Section 20.38.060 (Nonconforming Parking) allows a change of use on sites with nonconforming parking. It specifies that there must be no intensification or enlargement in floor area or lot area, and the new use requires a parking rate of no more than one space per 250 square feet. The applicant is not proposing to expand the existing tenant space.
8. As conditioned, the proposed use will comply with all other applicable provisions of the Zoning Code and Municipal Code.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The applicant proposes an independent massage establishment in a 1,396-square-foot tenant space on the second floor of an existing two-story multi-tenant commercial building. A small health/fitness facility previously occupied the space. The property is nonconforming in parking because there are no parking spaces on private property. However, there are 11 spaces located to the south in front of the building in the City right-of-way, and an additional 30 in the adjacent lot to the west. These spaces have served the building over time.
2. Existing uses in the building include office, medical office, an eating and drinking establishment and a hair salon. Adjacent land uses include similar nonresidential uses. The proposed massage establishment will provide a service consistent with existing and permitted uses in the area.

3. The nearest residential uses are located to east, buffered by Old Newport Boulevard and a block of nonresidential uses. These residential properties are not directly accessible from Old Newport Boulevard. This should limit any compatibility concerns regarding nearby residential uses.
4. The proposed operation will consist of three therapy rooms, an employee lounge, and areas for office and storage. A maximum of three massage therapists will be on-site at one time.
5. The proposed hours of operation between 10 a.m. and 9 p.m., daily, should limit any potential late night/early morning land use conflicts with nearby properties.
6. The existing parking spaces to the south and west provide parking for patrons and employees of the multi-tenant building. The proposed massage establishment will not result in an intensification of use and will not require the provision of additional parking.

Finding:

- D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The property is one of three lots on the block that fronts Old Newport Boulevard. This street is accessible from multiple points of entry including Hospital Road, Newport Boulevard, and Westminster Avenue. Parking nearby has functioned satisfactorily under the current configuration and is conveniently located for patrons and employees.
2. The site has supported the two-story building with nonresidential uses since 1955. It is not anticipated that the change in use will alter the site's ability to provide basic services.
3. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed massage establishment will not change this.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The massage establishment has been conditioned with hours of operation that will minimize any potential detriment to the area.
2. The existing multi-tenant building is not located in an area with problems of blight and deterioration.
3. The proposed massage establishment will provide an economic opportunity for the property owner to lease the tenant space. Additionally, the establishment will provide an additional service to those working, residing, or visiting the City of Newport Beach.
4. The Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments reviewed the proposal. Recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code, the following findings and facts in support of the findings are set forth:

Finding:

- F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.*

Facts in Support of Finding:

1. The intent of this section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration that can accompany large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the proposed massage establishment is located within 500 feet of another establishment offering massage services (404 Westminster Avenue, Suite 5 – Body Haven), both locations are located in different developments and are sufficiently separated from each another.
3. The business at 404 Westminster Avenue operates pursuant to Use Permit No. UP2005-025 and is limited to one room for massage. This existing massage service along with the proposed massage establishment will not be contrary to public interest. Both are located in managed, multi-tenant commercial buildings. These operations are limited in the number of massage therapists at one time, require an Operator's Permit from the Newport Beach Police Department, and must comply with conditions of approval, limiting concerns regarding blight.

Finding:

- G. *The proposed use will not enlarge or encourage the development of an urban blight area.*

Facts in Support of Finding:

1. The proposed use is located in a single tenant space in a managed, multi-tenant commercial building. The property fronts a well-traveled street and is not located in a blighted area.

Finding:

- H. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The proposed use is located adjacent to nonresidential uses. There are no public or private schools, parks, playgrounds, or religious institutions within 500 feet of the subject property.
2. Conditions of approval limiting hours of operation and number of massage therapists at one time will ensure the use does not constitute a hazard to public convenience. These restrictions will prevent potential late night/early morning land use conflicts and limit the number of patrons visiting the site at one time.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-009, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF APRIL, 2016.**

BY:



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. Any change in operational characteristics, expansion in area, increase in the number of massage therapy rooms, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
6. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. A maximum of three massage therapists shall be on-site at any one time.
8. A maximum of three rooms, as depicted on the approved floor plan, shall be used for massage therapy.
9. The hours of operation shall be limited to 10 a.m. to 9 p.m., daily.
10. A valid business license from the City of Newport Beach with sellers permit shall be required prior to start of business. Any contractors/subcontractors doing work at the subject site shall be required to obtain a valid business license from the City of Newport Beach prior to the commencement of any work on the subject site.
11. Any therapists/technicians working as independent contractors shall obtain their own City of Newport Beach business license.

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12. The applicant shall adhere to all provisions set forth in AB1147 and Business and Professions Code Chapter 10.5 (Massage Therapy Act), relating to operating a massage establishment.
  13. 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.
  14. 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.
  15. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
  16. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
  17. 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 Araiya Thai Massage including, but not limited to, Minor Use Permit No. UP2016-009 (PA2016-038). 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.

### **Code Enforcement Division**

18. The applicant shall provide the contact information for the owner, operator, or responsible manager of the massage establishment. Any changes to the contact information shall be submitted to the Planning Division as part of the official record.

19. A list of employee names, contact information, and state certifications shall be kept onsite at all times and available upon request by City officials.
20. There shall be no deliveries or supporting services outside of the allowed hours of operation.
21. All windows shall remain visible and transparent in nature. Window signage shall comply with the Newport Beach Municipal Code.
22. No alcohol shall be served or offered onsite.
23. Violations of the Penal Code may invoke revocation of this Minor Use Permit.

**Police Department**

24. The applicant is required to obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50 (Massage Establishments) of the Newport Beach Municipal Code and submit to inspections of the premise.
25. All employees of the business who conduct massage on or off the premise must be certified by the California Massage Therapy Council (CAMTC).

**Public Works Department**

26. Reserve and address markings shall be removed from all wheel stops and parking spaces located in the City right-of-way.

## RESOLUTION NO. ZA2016-026

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-011 FOR A TAKE-OUT SERVICE LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 2233 WEST BALBOA BOULEVARD, SUITE 103 (PA2016-043)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Chuck Woo of CW Designs, with respect to property located at 2233 West Balboa Boulevard, Suite 103, and legally described as Lot 9, 10, 11, 12, 13, 14 and 15, in Block 22 of Newport Beach, as shown on map recorded in Book 3, Page 26, Miscellaneous Maps, Records of Orange County, requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow the operation of a take-out service limited, eating and drinking establishment. No late hours (after 11 p.m.) or alcohol service are proposed as part of this application. A maximum of six seats are provided for patrons.
3. The subject property is located in the MU-W2 (Mixed-Use Water Related) Zoning District and the General Plan Land Use Element category is MU-W2 (Mixed-Use Water Related).
4. The subject property is located in the coastal zone. The Coastal Land Use Plan category is MU-W2 (Mixed-Use Water Related).
5. A public hearing was held on April 28, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Section 15301 of the State CEQA (California Environmental Quality Act) Guidelines under Class 1 – (Existing Facilities).
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of a vacant commercial space with no expansion in use.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The General Plan designates the site MU-W2 (Mixed-Use Water-Related). This designation applies to properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors.
2. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach. Therefore, it is consistent with the MU-W2 designation.
3. Small eating and drinking establishments exist in the mixed-use building and the proposed take-out service establishment would be complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

Finding:

B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. The property is located in the Mixed-Use Water Related (MU-W2) Zoning District. The proposed establishment, which includes kitchen facilities, six seats, no alcohol service, and no late hours, is a permitted use subject to the approval of a minor use permit pursuant to Newport Beach Municipal Code Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements).
2. The property is nonconforming in parking because it is deficient in parking for the nonresidential uses. Based on a retail parking ratio of one space per 250 square feet, 44 spaces ( $10,799/250 = 43.2$ ) are required. The property currently provides six spaces on-site. The residential units each provide a two-car garage, consistent with the Zoning Code.

3. Zoning Code Section 20.38.060 (Nonconforming Parking) allows a change of use on sites with nonconforming parking. It specifies that there must be no intensification or enlargement in floor area or lot area, and the new use requires a parking rate of no more than one space per 250 square feet.
4. The parking requirement for a take-out service limited, eating and drinking establishment is one space per 250 square feet, and no intensification or enlargement is proposed. Therefore, no additional parking is required.
5. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments, including those specific to the take-out service limited use classification, which includes a maximum of six seats.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The proposed establishment will be accessible from 23rd Street, West Balboa Boulevard and two alleys, which provide convenient access to motorists, pedestrians, and bicyclists.
2. The mixed-use building contains various retail, and visitor-serving commercial uses including small eating and drinking establishments. The proposed establishment is compatible with the existing and allowed uses in the area.
3. As conditioned, the allowed hours of operation will be 7 a.m. to 11 p.m., daily, which will minimize any disturbance to residences near the property.
4. The existing trash storage area at the rear of the property is adequate to accommodate the proposed use. It is conveniently located where materials can be deposited and collected and does not impede with parking spaces.

Finding:

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The existing parking lot provides adequate circulation for patrons.
2. The site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided.

3. Any proposed site and tenant improvements will comply with the Zoning Code and all Building, Public Works, and Fire Codes.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The proposed take-out service, eating and drinking establishment will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space, and provide additional services to residents and visitors.
3. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-011, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF APRIL, 2016.**

BY:



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
3. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
4. 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.
5. The hours of operation for the establishment shall be limited to 7 a.m. through 11 p.m., daily.
6. The sale of alcohol shall not be permitted.
7. The maximum number of seats allowed in the eating and drinking establishment shall be six (6). No outdoor seating is permitted unless an amendment to this Minor Use Permit is acquired.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
9. A copy of the Resolution, including conditions of approval Exhibit "A", shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
10. 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.
11. No outside paging system shall be utilized in conjunction with this establishment.

12. 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. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
13. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
14. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
15. 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 Title 14, including all future amendments (including Water Quality related requirements).
16. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
17. Storage outside of the building, in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
18. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.
19. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
20. 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 Forte Kabob including, but not limited to, Minor Use

Permit No. UP2016-011 (PA2016-043). 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.

## RESOLUTION NO. ZA2016-027

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-013 FOR A COMMUNITY RECREATION FACILITY (HEALTH AND FITNESS FACILITY, LARGE) LOCATED AT 868 AND 870 WEST 16<sup>TH</sup> STREET (PA2016-048)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by the City of Newport Beach, with respect to property located at 868 and 870 West 16<sup>th</sup> Street, and legally described as a Portion of Lot 912 of the Newport Mesa Tract requesting approval of a minor use permit.
2. The applicant proposes to use a 5,000-square-foot tenant space for community recreation classes (Health and Fitness Facility, Large land use). The use will primarily operate in the earlier morning and evening hours and will offer a wide variety of recreational programs for between 5 and 20 participants per class.
3. The subject property is designated Industrial (IG) within the Land Use Element of the General Plan and is located in the Industrial (IG) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 28, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the conversion of an existing light industrial space to a community recreation facility (Health and Fitness Facility, Large land use) and involves minor alterations to the existing floor plan as well as the addition of two parking spaces.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The property is designated Industrial (IG) within the Land Use Element of the General Plan which is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses. The proposed facility will be located within an existing multi-tenant light industrial center as an ancillary commercial use and will not compromise the character of the area as industrial.

Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. The property is located within the Industrial (IG) Zoning District which is intended to provide for areas appropriate for a wide range of moderate to low intensity industrial uses (e.g., light manufacturing and research and development) and limited accessory commercial and office uses. The proposed facility will be located within an existing multi-tenant light industrial center as an accessory commercial use and will not compromise the character of the area as primarily industrial.
2. The proposed facility will occupy an approximately 5,000-square-foot tenant space thereby making it a large health and fitness facility pursuant to Zoning Code Chapter 20.70 (Definitions) of the Zoning Code. Large health and fitness facilities (over 2,000 square feet) are permitted within the IG Zoning District subject to the approval of a minor use permit.
3. Nearly 80 percent, or 47,500 square feet, of the total gross floor area (approximately 60,000 square feet) in the center is occupied by a light industrial use (e.g., manufacturing, distribution, repairs, and research and development). The parking requirements for uses of those types are generally one parking space per each 500 square feet of gross floor area or less pursuant to Zoning Code Section 20.40.040 (Off-Street Parking Spaces Required). The parking requirement for a large health and fitness facility is one parking space per each 200 square feet of gross floor area. Analysis of the proposed use with regard to the existing 104 parking spaces on-site to

serve the center demonstrated a deficit of two parking spaces. As conditioned, the applicant is required to stripe two additional parking spaces; therefore, there will be sufficient parking to accommodate the proposed use.

4. The proposed use is required to comply with all other applicable provisions of the Zoning Code and Municipal Code.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The proposed project involves minor improvements within an existing light industrial tenant space to operate a large health and fitness facility.
2. As conditioned, a maximum total of fourteen (14) classes can occur in any one day between the two classrooms with a maximum of 20 participants each.
3. The proposed use will remain accessory to the other uses in the light industrial center, which include manufacturing, distribution, research and development, and other industrial uses.
4. The conditions of approval placed on hours of operation as well as classes and number of participants will help to ensure the use is compatible with the existing and allowed uses in the vicinity

Finding:

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The proposed use will be located in an existing tenant space within a multi-tenant light industrial building and will involve minor improvements of the space to operate a community recreation facility. There are no proposed changes to the exterior façade of the building. The site work to stripe two parking spaces will be subject to the review and approval of the Public Works Department and Building Division.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from existing driveway approaches on West 16<sup>th</sup> Street and Monrovia Avenue.

3. All tenant improvement work will comply with all Building, Public Works, and Fire Codes.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The project has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the persons using the establishment.
2. The proposed use will remain accessory to the existing industrial uses within the center as well as the surrounding area.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-013, subject to the conditions set forth in Exhibit "A", which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 28<sup>TH</sup> DAY OF APRIL, 2016.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved floor plan stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. *Prior to implementation of this minor use permit, the applicant shall stripe two (2) additional parking spaces on-site in compliance with the applicable Municipal Code regulations, subject to review by the Public Works Department.*
6. *Parking shall be provided at one (1) space per 200 square feet of gross floor area.*
7. *The hours of operation shall be from 7:00 a.m. to 9:00 p.m., daily.*
8. *The maximum number of classes occurring in any one day shall be fourteen (14).*
9. *The maximum number of participants for each class and/or group event shall be twenty (20).*
10. *No classes shall be conducted outside of the tenant space nor shall they be conducted within the parking lot area.*
11. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and may require an amendment to this Minor Use Permit or the processing of a new use permit.

12. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
13. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Minor Use Permit 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 Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
14. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

15. No outside sound emitting equipment (e.g., stereo or loudspeaker) shall be utilized in conjunction with this establishment.
16. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
17. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
18. 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.
19. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

20. 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.
  
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the City of Newport Beach Community Recreation Facility including, but not limited to, the Minor Use Permit No. UP2016-013 (PA2016-048). 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.



## OPERATOR LICENSE

POLICE DEPARTMENT  
870 SANTA BARBARA DRIVE  
NEWPORT BEACH, CA 92660  
(949) 644-3681 FAX (949) 644-3794

**Application No.**                    **Operator License No. 2016-001 (PA2016-001)**

**Owner/Applicant**                **Regal Entertainment Group**

**Location Name**                   **Island Cinema, Fashion Island**

**Site Address**                     **999 Newport Center Drive**

**Legal Description**               **Parcel 2 of Lot Line Adjustment 2009-001**

On April 28, 2016, the Chief of Police approved the following: An Operator License to allow changes to the operational characteristics of an existing movie theater and change an existing Type 41 (Beer and Wine) Alcoholic Beverage Control License to a Type 47 (On Sale General) Alcoholic Beverage Control License. An amendment to the existing Minor Use Permit for the proposed change was approved by the Zoning Administrator on April 14, 2016, and an Operator License issued by the Chief of Police is required prior to implementation of the changes. This Operator License is required pursuant to Newport Beach Municipal Code ("NBMC") Chapter 5.25 and may be subject to additional and/or more restrictive conditions to regulate and control potential nuisances associated with the operation of the theater.

### REQUIRED FINDINGS

The Chief of Police has made the following findings as required by NBMC 5.25.050(B):

#### Finding:

- A.     *The business or enterprise is located in a zone permitting the proposed use under Title 20 of the NBMC, and is subject to such use permits as may be required.*

#### Facts in Support of Finding:

1.     The subject property is located within the Fashion Island Sub-Area of the PC-56 Zoning District, which allows commercial recreation and entertainment uses (including movie theaters) and eating and drinking establishments by right. Alcohol sales is an allowed use upon the approval of a Minor Use Permit by the Zoning Administrator.
2.     On November 9, 2011, the Zoning Administrator approved Minor Use Permit No. UP2011-029 (PA2011-170) to allow the addition of a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control ("ABC") license at the existing movie theater.

3. On January 10, 2013, the Zoning Administrator approved Amendment 1 to Minor Use Permit No. UP2011-029 (PA2012-144) to allow changes in the operational characteristics of the existing movie theater that offers food and alcoholic beverage service, including the addition of patio seating area and changes to the alcoholic beverage service.
4. On April 14, 2016, the Zoning Administrator approved Minor Use Permit No. UP2016-001(PA2016-001), serving as Amendment 2 to Minor Use Permit No. UP2011-029 to change an existing Type 41 (Beer and Wine) Alcoholic Beverage Control License to a Type 47 (On Sale General) Alcoholic Beverage Control License.

Finding:

- B. *In the case of a business or enterprise offering "Entertainment," as defined, the premises meets all of the criteria in Section 5.28.040(B) (2) through (7).*

Facts in Support of Finding:

1. The movie theater does not offer entertainment as defined in Municipal Code Chapter 5.28 (Live Entertainment Establishments).

Finding:

- C. *The proposed site plan and premises improvements, with attached conditions in place, are consistent with the use and the plan of operations.*

Facts in Support of Finding:

1. The subject property and the tenant suite are designed and operated as a movie theater with accessory dining and alcohol sales.

Finding:

- D. *The plan of operations as proposed, with attached conditions in place, is adequate in light of the neighborhood in which the operation is located and supports the public health, safety, and welfare of the community.*

Facts in Support of Finding:

1. The plan of operations, along with the conditions of approval provided below and the conditions of approval placed on Minor Use Permit No. UP2016-001 (PA2016-001), is adequate in light of the establishment's location within Fashion Island to ensure the public health, safety, and welfare of the community.
2. Fashion Island is a Regional Commercial Center and is separated from other uses by parking lots, roadways and other commercial uses. The proposed use is not located in close proximity to residential districts, day care centers, park and recreation facilities, places of religious assembly, or schools.
3. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, curbs,

gutters, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

### **CONDITIONS OF APPROVAL**

In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit. The following operational conditions are reiterated from Minor Use Permit No. UP2016-001 (PA2016-001), relative to hours of operation, food service, dancing, live entertainment, sound amplification for entertainment purposes, exterior lighting, traffic management devices, security facilities, and hiring or training qualifications for employees. Conditions of approval not relevant to operations were not included. The applicant shall comply with these conditions of approval, which are incorporated by reference from these prior discretionary approvals:

1. The business shall comply with Title 20 (Zoning Code) and any other applicable provisions of the Newport Beach Municipal Code.
2. The approval is for the operation of Island Cinema by Regal Entertainment Group with the sale and service of alcoholic beverages incidental to the theater use. The type of alcoholic beverage license issued by the California Department of Alcoholic Beverage Control shall be a Type 47 (On-Sale General) Alcoholic Beverage Control License in conjunction with the movie theater as the principal use of the facility.
3. The hours of operation for sales, service, and consumption of alcohol at the movie theater shall be allowed only between the hours of 11:00 a.m. to 1:00 a.m., daily.
4. The alcoholic beverage sales concession shall be limited to a maximum of two concession areas and shall be used in conjunction with the related food service concessions.
5. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The movie theater shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
6. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
7. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned.
8. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit.

9. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.
10. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Zoning Administrator first approves a new or amended Minor Use Permit.
11. Alcoholic beverages shall be dispensed, sold, and served in containers that are easily distinguishable from non-alcoholic beverage containers.
12. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
13. No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during a single transaction. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening.
14. All sales or service of alcoholic beverages in the licensed premises shall be made only from the concession bars or servers.
15. During the period of time from the initiation of seating until the completion of the feature presentation, ambient lighting in the auditoriums shall remain at a level sufficient enough to allow a reasonable person to observe patrons who may be consuming alcoholic beverages.
16. Orders from patrons seated in theater seats must be made to the server serving that area and the alcoholic beverages ordered must be personally delivered to the patron by the server who took the order.
17. Servers shall not carry a supply of unordered alcoholic beverages.
18. The petitioner shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all premise exits.
19. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
20. The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge or cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks. This does not include ticket sales or any other fee for the standard movie theater use.
21. Live entertainment and dancing shall be prohibited as a part of the regular operation of the movie theater.
22. Strict adherence to the occupancy limits is required.
23. The quarterly gross sales of beer and wine shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of beer and wine of the licensed business.

These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on command.

24. No exterior amplified music, public address speakers, outside paging system, loudspeaker, sound system, or other noise generating device shall be utilized in conjunction with this movie theater.
25. A copy of this operator license shall be kept on the premises at all times and shall be made available to any member of the Police Department upon request.

### **OPERATOR LICENSE NONTRANSFERABLE**

No operator license issued pursuant to this chapter shall be sold, transferred, or assigned by any license holder, or by operation of law, to any other person, group, partnership, corporation or any other entity, and any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license, and such license shall be, thereafter, null and void. A license held by an individual in a corporation or partnership is subject to the same rules of transferability as contained above. License shall be valid only for the exact location specified in the license.

### **REVOCATION, SUSPENSION, OR MODIFICATION OF LICENSE FOR CAUSE**

The Chief of Police may commence a process to revoke, suspend or modify an operator license issued under the provisions of this chapter should there be reasonable suspicion of any of the following:

- A. The licensee has ceased to meet the requirements for issuance of license;
- B. The applicant gave materially false, fraudulent or misleading information within the application;
- C. Impacts emanating from the establishment for which the license was issued has substantially interfered with the peace and quiet of the neighborhood;
- D. The licensed business or activity has operated in violation of any of the requirements of this chapter, the license as issued, or any condition thereof. The Chief of Police shall notify the operator of the commencement of such revocation, suspension or modification process and shall conduct an investigation to determine if, and to what degree, one or more of the foregoing has occurred. Upon completion of the investigation, the Chief of Police may add, delete or modify the license conditions. The Chief of Police shall notify the applicant regarding the determination of the operator license, on the outcome of the investigation, and the action taken. The applicant or any interested party may appeal a determination or an added or modified condition of approval to City Manager in the manner set forth in Section 5.25.050(C) and (D).

### **PUBLIC NOTICE**

Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and at least 21 days prior to the decision date, consistent with the provisions of the Municipal Code.

**APPEAL PERIOD**

The determination of the Chief of Police to deny or to place conditions upon the approval of an operator license shall be appealable by the applicant or any interested party. Such appeal shall be made in writing to the City Manager, within fifteen (15) days of the postmark date of the Chief of Police's notice of decision. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

By: \_\_\_\_\_

  
Jon T. Lewis  
CHIEF OF POLICE

Attachments:

- PD 1 Planning Commission Resolution for Minor Use Permit No. UP2016-001 (PA2016-001)
- PD 2 Island Cinema Alcohol Control Plan
- PD 3 Fashion Island description of security service
- PD 4 Island Cinema floor plan



## OPERATOR LICENSE

POLICE DEPARTMENT  
870 SANTA BARBARA DRIVE  
NEWPORT BEACH, CA 92660  
(949) 644-3681 FAX (949) 644-3794

**Application No.**                    **Operator License No. 2016-001 (PA2016-001)**

**Owner/Applicant**                **Regal Entertainment Group**

**Location Name**                   **Island Cinema, Fashion Island**

**Site Address**                     **999 Newport Center Drive**

**Legal Description**               **Parcel 2 of Lot Line Adjustment 2009-001**

On April 28, 2016, the Chief of Police approved the following: An Operator License to allow changes to the operational characteristics of an existing movie theater and change an existing Type 41 (Beer and Wine) Alcoholic Beverage Control License to a Type 47 (On Sale General) Alcoholic Beverage Control License. An amendment to the existing Minor Use Permit for the proposed change was approved by the Zoning Administrator on April 14, 2016, and an Operator License issued by the Chief of Police is required prior to implementation of the changes. This operator license is required pursuant to Newport Beach Municipal Code ("NBMC") Chapter 5.25 and may be subject to additional and/or more restrictive conditions to regulate and control potential nuisances associated with the operation of the theater.

### REQUIRED FINDINGS

The Chief of Police has made the following findings as required by NBMC 5.25.050(B):

#### Finding:

- A. *The business or enterprise is located in a zone permitting the proposed use under Title 20 of the NBMC, and is subject to such use permits as may be required.*

#### Facts in Support of Finding:

1. The subject property is located within the Fashion Island Sub-Area of the PC-56 Zoning District, which allows commercial recreation and entertainment uses (including movie theaters) and eating and drinking establishments by right. Alcohol sales is an allowed use upon the approval of a Minor Use Permit by the Zoning Administrator.
2. On November 9, 2011, the Zoning Administrator approved Minor Use Permit No. UP2011-029 (PA2011-170) to allow the addition of a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control ("ABC") license at the existing movie theater.

3. On January 10, 2013, the Zoning Administrator approved Amendment 1 to Minor Use Permit No. UP2011-029 (PA2012-144) to allow changes in the operational characteristics of the existing movie theater that offers food and alcoholic beverage service, including the addition of patio seating area and changes to the alcoholic beverage service.
4. On April 14, 2016, the Zoning Administrator approved Minor Use Permit No. UP2016-001(PA2016-001), serving as Amendment 2 to Minor Use Permit No. UP2011-029 to change an existing Type 41 (Beer and Wine) Alcoholic Beverage Control License to a Type 47 (On Sale General) Alcoholic Beverage Control License.

Finding:

- B. In the case of a business or enterprise offering "Entertainment," as defined, the premises meets all of the criteria in Section 5.28.040(B) (2) through (7).*

Facts in Support of Finding:

1. The movie theater does not offer entertainment as defined in Municipal Code Chapter 5.28 (Live Entertainment Establishments).

Finding:

- C. The proposed site plan and premises improvements, with attached conditions in place, are consistent with the use and the plan of operations.*

Facts in Support of Finding:

1. The subject property and the tenant suite are designed and operated as a movie theater with accessory dining and alcohol sales.

Finding:

- D. The plan of operations as proposed, with attached conditions in place, is adequate in light of the neighborhood in which the operation is located and supports the public health, safety, and welfare of the community.*

Facts in Support of Finding:

1. The plan of operations, along with the conditions of approval provided below and the conditions of approval placed on Minor Use Permit No. UP2016-001 (PA2016-001), is adequate in light of the establishment's location within Fashion Island to ensure the public health, safety, and welfare of the community.
2. Fashion Island is a Regional Commercial Center and is separated from other uses by parking lots, roadways and other commercial uses. The proposed use is not located in close proximity to residential districts, day care centers, park and recreation facilities, places of religious assembly, or schools.
3. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, curbs,

gutters, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

### **CONDITIONS OF APPROVAL**

In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit. The following operational conditions are reiterated from Minor Use Permit No. UP2016-001 (PA2016-001), relative to hours of operation, food service, dancing, live entertainment, sound amplification for entertainment purposes, exterior lighting, traffic management devices, security facilities, and hiring or training qualifications for employees. Conditions of approval not relevant to operations were not included. The applicant shall comply with these conditions of approval, which are incorporated by reference from these prior discretionary approvals:

1. The business shall comply with Title 20 (Zoning Code) and any other applicable provisions of the Newport Beach Municipal Code.
2. The approval is for the operation of Island Cinema by Regal Entertainment Group with the sale and service of alcoholic beverages incidental to the theater use. The type of alcoholic beverage license issued by the California Department of Alcoholic Beverage Control shall be a Type 47 (On-Sale General) Alcoholic Beverage Control License in conjunction with the movie theater as the principal use of the facility.
3. The hours of operation for sales, service, and consumption of alcohol at the movie theater shall be allowed only between the hours of 11:00 a.m. to 1:00 a.m., daily.
4. The alcoholic beverage sales concession shall be limited to a maximum of two concession areas and shall be used in conjunction with the related food service concessions.
5. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The movie theater shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
6. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
7. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned.
8. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit.

9. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.
10. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Zoning Administrator first approves a new or amended Minor Use Permit.
11. Alcoholic beverages shall be dispensed, sold, and served in containers that are easily distinguishable from non-alcoholic beverage containers.
12. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
13. No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during a single transaction. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening.
14. All sales or service of alcoholic beverages in the licensed premises shall be made only from the concession bars or servers.
15. During the period of time from the initiation of seating until the completion of the feature presentation, ambient lighting in the auditoriums shall remain at a level sufficient enough to allow a reasonable person to observe patrons who may be consuming alcoholic beverages.
16. Orders from patrons seated in theater seats must be made to the server serving that area and the alcoholic beverages ordered must be personally delivered to the patron by the server who took the order.
17. Servers shall not carry a supply of unordered alcoholic beverages.
18. The petitioner shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all premise exits.
19. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
20. The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge or cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks. This does not include ticket sales or any other fee for the standard movie theater use.
21. Live entertainment and dancing shall be prohibited as a part of the regular operation of the movie theater.
22. Strict adherence to the occupancy limits is required.
23. The quarterly gross sales of beer and wine shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of beer and wine of the licensed business.

These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on command.

24. No exterior amplified music, public address speakers, outside paging system, loudspeaker, sound system, or other noise generating device shall be utilized in conjunction with this movie theater.
25. A copy of this operator license shall be kept on the premises at all times and shall be made available to any member of the Police Department upon request.

### **OPERATOR LICENSE NONTRANSFERABLE**

No operator license issued pursuant to this chapter shall be sold, transferred, or assigned by any license holder, or by operation of law, to any other person, group, partnership, corporation or any other entity, and any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license, and such license shall be, thereafter, null and void. A license held by an individual in a corporation or partnership is subject to the same rules of transferability as contained above. License shall be valid only for the exact location specified in the license.

### **REVOCAION, SUSPENSION, OR MODIFICATION OF LICENSE FOR CAUSE**

The Chief of Police may commence a process to revoke, suspend or modify an operator license issued under the provisions of this chapter should there be reasonable suspicion of any of the following:

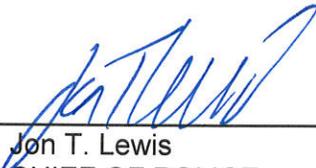
- A. The licensee has ceased to meet the requirements for issuance of license;
- B. The applicant gave materially false, fraudulent or misleading information within the application;
- C. Impacts emanating from the establishment for which the license was issued has substantially interfered with the peace and quiet of the neighborhood;
- D. The licensed business or activity has operated in violation of any of the requirements of this chapter, the license as issued, or any condition thereof. The Chief of Police shall notify the operator of the commencement of such revocation, suspension or modification process and shall conduct an investigation to determine if, and to what degree, one or more of the foregoing has occurred. Upon completion of the investigation, the Chief of Police may add, delete or modify the license conditions. The Chief of Police shall notify the applicant regarding the determination of the operator license, on the outcome of the investigation, and the action taken. The applicant or any interested party may appeal a determination or an added or modified condition of approval to City Manager in the manner set forth in Section 5.25.050(C) and (D).

### **PUBLIC NOTICE**

Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and at least 21 days prior to the decision date, consistent with the provisions of the Municipal Code.

**APPEAL PERIOD**

The determination of the Chief of Police to deny or to place conditions upon the approval of an operator license shall be appealable by the applicant or any interested party. Such appeal shall be made in writing to the City Manager, within fifteen (15) days of the postmark date of the Chief of Police's notice of decision. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

By:  \_\_\_\_\_  
Jon T. Lewis  
CHIEF OF POLICE

Attachments:

- PD 1 Planning Commission Resolution for Minor Use Permit No. UP2016-001 (PA2016-001)
- PD 2 Island Cinema Alcohol Control Plan
- PD 3 Fashion Island description of security service
- PD 4 Island Cinema floor plan

# **Attachment No. PD 1**

Planning Commission Resolution UP2016-001

## RESOLUTION NO. ZA2016-017

**A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-001 AMENDING MINOR USE PERMIT NO. UP2011-029 (PA2011-170) TO CHANGE THE ALCOHOL LICENSE TYPE FROM A TYPE 41 (BEER AND WINE) TO A TYPE 47 (ON SALE GENERAL) LOCATED AT 999 NEWPORT CENTER DRIVE (PA2016-001).**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Steve Rawlings of Alcoholic Beverage Consulting on behalf of the Irvine Company and Regal Cinemas, Inc., with respect to property located at 999 Newport Center Drive, and legally described as Parcel 2 of Lot Line Adjustment LA2009-001 requesting approval of an amendment to a Minor Use Permit.
2. On November 9, 2011, the Zoning Administrator approved Minor Use Permit No. UP2011-029 (PA2011-170) to allow the addition of a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control ("ABC") license at the existing movie theater.
3. On January 10, 2013, the Zoning Administrator approved Amendment No. 1 to modify Minor Use Permit No. UP2011-029 (PA2012-144) and allow the addition of two outdoor dining areas totaling approximately 800 square feet in area, a change in the approved hours of operation to allow the theater to open and serve alcohol at 11:00 a.m., the addition of a second concession area dedicated to the sale of beer and wine, the service and consumption of alcohol during all movie screenings, and the option to order food and alcohol from a server within the theater screening rooms and outdoor dining areas.
4. The applicant requests Amendment No. 2 to modify Minor Use Permit No. UP2011-029 to change an existing Type 41 (Beer and Wine) Alcoholic Beverage Control License to a Type 47 (On Sale General) Alcoholic Beverage Control License within an existing movie theater. The movie theater currently operates from 11:00 a.m. through 1:00 a.m., daily, and is limited to 680 seats. Pursuant to NBMC 5.25, the operation as described requires the owner/operator to modify Operator License No. OL2013-001 because the proposed amendment includes a change in the alcohol license type for the establishment.
5. The subject property is located within the North Newport Center Planned Community (PC-56) Zoning District and the General Plan Land Use Element category is Regional Commercial (CR).
6. The subject property is not located within the coastal zone.

7. A public hearing was held April 14, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. The change in alcoholic beverage license type is a negligible expansion of the existing movie theater use. No physical changes to the existing theater with alcohol sales would be authorized by this amendment.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) and Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

### Finding:

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

### Facts in Support of Finding:

1. The purpose of Section 20.48.030 (Alcohol Sales) is to preserve a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of retail alcohol sales establishments. The service of alcoholic beverages is intended for the convenience of movie theater patrons. Operational conditions of approval recommended by the Police Department relative to the sale and service of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.
2. Due to the high concentration of commercial land uses, the calls for service, crime rate, and number of arrests are greater than adjacent reporting districts containing residential uses. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. The proposed use is not located in close proximity to residential districts, day care centers, park and recreation facilities, places of religious assembly, or schools. The Police Department has reviewed the Minor Use Permit application and recommended conditions of approval to ensure that the design and security of the movie theater are properly addressed.

3. Several restaurants in the Fashion Island Sub-Area provide alcohol service as an amenity to customers. The number of alcohol licenses and the type of alcohol service proposed is typical and expected to be found at a regional mall such as Fashion Island.
4. The movie theater does not have any current objectionable conditions.
5. The provision of food service and alcoholic beverages sales will not substantially change the operational characteristics of the movie theater.
6. The existing movie theater is an allowed use in the Fashion Island Sub-Area of the North Newport Center Planned Community. The on-site consumption of alcoholic beverages provides a public convenience by allowing the sale of alcoholic beverages in addition to other concession items offered for sale.

Finding:

*B. The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The property is designated as Regional Commercial (CR) by the Land Use Element of the General Plan. The theater use is consistent with that designation as it is a supporting use that is integrated as part of a retail multi-tenant commercial center, an allowed use under the CR designation.
2. The existing movie theater is consistent with General Plan Anomaly 44, which limits Fashion Island to 680 movie theater seats.
3. The food and alcohol concessions for the movie theater have proven compatible with the existing and allowed land uses in Fashion Island.
4. The subject property is not part of a specific plan area.

Finding:

*C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. The subject property is located within the Fashion Island Sub-Area of PC-56, which allows commercial recreation and entertainment uses (including movie theaters) and eating and drinking establishments by right. Alcohol sales is an allowed use upon the approval of a Minor Use Permit by the Zoning Administrator.

2. The intent of the PC-56 Zoning District is to allow for uses that support existing retail, dining, and commercial entertainment uses. Fashion Island is intended to be a vibrant regional retail and entertainment center and a day/evening destination with a wide variety of businesses that serve visitors, residents, and employees of the area. Alcohol sales have proven compatible since 2012 and the proposed changes to alcohol service at the movie theater are not expected to generate significant alcohol-related issues and should also prove compatible with other uses within Fashion Island.
3. The existing movie theater is within the limits of the 680 seat limit allocated for the Fashion Island portion of the North Newport Center Planned Community. The proposed alcohol service change does not affect the development limit because the theater is existing and is not changing.
4. Fashion Island has a Regional Commercial parking requirement of 3 spaces per 1,000 square feet. The proposed amendment does not change or increase the parking requirement.
5. The proposed project is consistent with the on-sale alcohol sales provisions within Chapter 20.48 (Standards for Specific Land Uses) of the Zoning Code.

Finding:

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. A movie theater has operated in this location since 1989 and the use has not proven detrimental to the area. The movie theater has provided food and beer & wine service in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity. The existing beer & wine service has been offered for approximately five years and no alcohol-related problems have been reported.
2. The service of alcohol will remain restricted to between the hours of 11:00 a.m. and 1:00 a.m., daily, consistent with the existing Minor Use Permit.
3. The movie theater is located within the center of the Fashion Island Mall on the second floor. Alcohol sales will be available at two concession areas within the main lobby dedicated for only alcohol sales. The theater also provides the option to order food and alcohol from a server within the theater screening rooms and outdoor dining areas.
4. Outdoor dining areas with alcoholic beverage service are typical and expected uses within a regional mall such as Fashion Island.
5. There are no residential properties, or other sensitive land uses, within the immediate vicinity of the theater.

6. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
7. The movie theater is required to comply with the California Building Code and requirements of the California Department of Alcoholic Beverage Control to ensure the safety and welfare of customers and employees within the movie theater.

Finding:

- E. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The project site is located within an existing movie theater building. The lobby and theater screening rooms are designed and developed for food and beverage service.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing infrastructure. Fashion Island is an outdoor mall with wide and open walkways. Fashion Island is encircled by Newport Center Drive and is developed with several surface parking and loading areas.

Finding:

- F. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions including discontinuing service to intoxicated patrons. The operator must also correct conditions that constitute nuisance areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the movie theater.
2. The proposed alcohol service is provided as a public convenience to movie theater patrons. The service of alcoholic beverages will provide an economic opportunity to maintain a successful business at this location in a way which best serves the quality of life for the surrounding community.
3. The hours of operation will be between 11:00 a.m. and 1:00 a.m., daily.

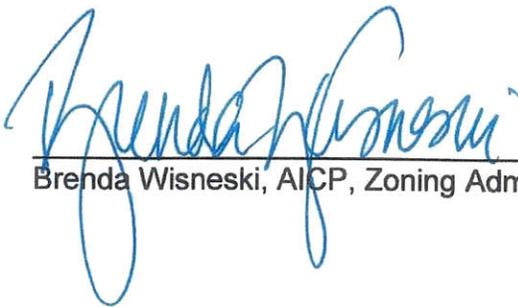
4. The proposed amendment adds a wider variety of alcoholic beverages and will not change the principal movie theater use.
5. Fashion Island provides the required parking for the entire mall and the proposed amendment does not change or increase the parking requirement.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-001 (Amendment No. 2 to Minor Use Permit No. UP2011-029), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.
3. This Resolution supersedes Zoning Administrator Action Letters dated November 9, 2011, for the approval of Minor Use Permit No. UP2011-029 (PA2011-170) and January 10, 2013, for the approval of Amendment No. 1 to Minor Use Permit No. UP2011-029 (PA2012-144), which upon vesting of the rights authorized by this application, shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>TH</sup> DAY OF APRIL, 2016.**



\_\_\_\_\_  
Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and floor plan dated with this date of approval, except as modified by applicable conditions of approval.
2. This Minor Use Permit may be modified or revoked by the Zoning Administrator upon a finding of failure to comply with the conditions set forth in Chapter 20.54 (Permit Review Procedures) of the Municipal Code, other applicable conditions and regulations governing alcohol service, or should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this minor use permit or the processing of a new use permit.
4. This Minor Use Permit 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 Zoning Code, unless an extension is otherwise granted.
5. Should the Type 47 alcohol license be transferred, any future license holders, operators or assignees shall be notified of the conditions of this approval by either the current licensee, business operator, or the leasing company. Future licensees, operators or assignees shall submit, within 30 days of transfer of the alcohol license, a letter to the Planning Division acknowledging their receipt and acceptance of the limitations, restrictions and conditions of approval of this minor use permit.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
8. Approval is required from the Orange County Health Department.
9. The project shall comply with Building Code requirements regarding egress/exit analysis and occupant load. The project may necessitate additional requirements, as required by the Building Division.
10. Approval is required from the Fire Department. The project may necessitate additional requirements regarding exit discharge widths, as required by the Fire Department.

11. The approval is only for the sale and service of alcoholic beverages incidental to the theater use. The type of alcoholic beverage license issued by the California Department of Alcoholic Beverage Control shall be a Type 47 (On Sale General) in conjunction with the movie theater as the principal use of the facility.
12. The hours of operation for sales, service, and consumption of alcohol at the movie theater shall be allowed only between the hours of 11:00 a.m. to 1:00 a.m., daily. Any increase in the hours of operation shall be subject to the approval of an amendment to this Minor Use Permit.
13. Prior to implementation of this Minor Use Permit amendment, the operator of the theater shall modify Operator License No. OL2013-001 pursuant to Chapter 5.25 of the Municipal Code to ensure the business is operated in a safe manner. The Operator License may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the theater. Future operators are required to obtain an Operator License prior to assuming management of the movie theater.
14. The alcoholic beverage sales concession shall be limited to a maximum of two concession areas and shall be used in conjunction with the related food service concessions. Any change in the operation of alcoholic beverage service or increase in the counter space devoted to alcohol sales shall be subject to the approval of an amendment to this Minor Use Permit issued by the Zoning Administrator.
15. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
16. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The movie theater shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
17. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned.
18. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit.

19. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.
20. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Zoning Administrator first approves a new or amended Minor Use Permit.
21. Alcoholic beverages shall be dispensed, sold, and served in containers that are easily distinguishable from non-alcoholic beverage containers.
22. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
23. No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during a single transaction. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening.
24. All sales or service of alcoholic beverages in the licensed premises shall be made only from the concession bars or servers.
25. During the period of time from the initiation of seating until the completion of the feature presentation, ambient lighting in the auditoriums shall remain at a level sufficient enough to allow a reasonable person to observe patrons who may be consuming alcoholic beverages.
26. Orders from patrons seated in theater seats must be made to the server serving that area and the alcoholic beverages ordered must be personally delivered to the patron by the server who took the order.
27. Servers shall not carry a supply of unordered alcoholic beverages. Food service from the regular menu must be made available to patrons during all open hours.
28. The petitioner shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all premise exits.
29. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
30. The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge or cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks. This does not include ticket sales or any other fee for the standard movie theater use.
31. Live entertainment and dancing shall be prohibited as a part of the regular operation of the movie theater.

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32. Strict adherence to the occupancy limits is required.
  33. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department upon demand.
  34. No exterior amplified music, public address speakers, outside paging system, loudspeaker, sound system, or other noise generating device shall be utilized in conjunction with this movie theater.
  35. The alcoholic beverage outlet operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the alcoholic beverage outlet and adjacent properties during business hours, if directly related to the patrons of the subject alcoholic beverage outlet. If the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor use permit in accordance with Chapter 20.68 of the Zoning Code (Enforcement).
  36. The area outside of the movie theater shall be maintained in a clean and orderly manner. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting walkways within 20 feet of the premises. The operator of the movie theater use shall be responsible for the clean-up of all on-site and off-site trash, garbage, and litter generated by the use.
  37. All trash shall be stored within dumpsters inside the mall buildings or designated areas.
  38. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Island Cinema Minor Use Permit including, but not limited to, Minor Use Permit No. UP2016-001 (Amendment No. 2 to Minor Use Permit No. UP2011-029) (PA2016-001). 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.

# **Attachment No. PD 2**

Island Cinema Alcohol Control Plan

Alcohol Control Plan for the Entire Premises  
for  
Regal Cinemas

The following control measures will be in place at the premises at all times:

1. Minors. Minors will be admitted to all G, PG, and PG' 13 rated movies at all times with or without a parent, guardian, spouse, or domestic partner. Minors under 17 years of age will be admitted to R rated movies only if accompanied by a parent, guardian, spouse, or domestic partner who is age 21 or over.
2. Auditoriums. In all auditoriums, there are fixed seats available for each patron, with the exception of open spaces reserved for patrons utilizing wheelchairs. In all auditoriums, we will require each patron to sit in a fixed seat or their provided wheelchair and will have no location for patron standing or dancing.
3. On-site manager. There will be a manager on the premises and on duty at all times when alcohol is available for sale.
4. Identification. All patrons wishing to purchase alcohol will present state or federal personal identification with photo for inspection demonstrating they are 21 years of age or older. Identification must be presented each time an alcohol beverage is purchased.
5. Underage consumption/possession. If a patron appears to be underage and is consuming alcohol, a staff member will ask to verify ID again. Any minor found with an alcohol beverage will have the beverage removed immediately and the minor will be required to leave the premises. Any patron found to have given alcohol to a minor will be required to leave the premises immediately.
6. Limit of one container per patron. A patron may only possess one container of alcohol at one time. Patrons may only purchase alcohol beverages for themselves and those individuals physically present and providing identification at the register at the time of purchase.
7. Containers. Containers used to serve alcohol beverages will be translucent plastic vessels and clearly distinguishable from those used to serve non-alcohol beverages.
8. Concession orders only. Patrons must obtain their alcohol beverages in person from the designated point of sales at the concession stand. We will not take orders for or deliver alcohol to patrons in the auditoriums.
9. Auditorium monitoring. Staff will visually monitor each theatre at least every 45 minutes during every movie showing to monitor patron behavior.

10. Training. Staff will receive training on patron removal procedures for patrons who are showing visible signs of intoxication or who are found or suspected of violating this plan. Staff will also receive training on which types of identification will be accepted and on determining the validity of identification.
11. Food service. Food and concession items will be accessible during all hours of operation at the concession stand as is practical.

Regal Cinemas, Inc.

By: \_\_\_\_\_

Name: John A. Curry

Title: Vice President

# **Attachment No. PD 3**

Fashion Island description of security service

# FASHION ISLAND®

NEWPORT BEACH, CALIFORNIA

February 8, 2016

Mr. Jake Bishop  
Vice President Alcohol & Culinary Concepts  
Regal Cinemas  
7132 Regal Lane  
Knoxville, TN 37918-5803

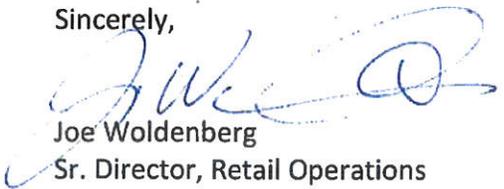
Re: Island Cinema / Fashion Island Security

This correspondence is to provide the description of the security service at Fashion Island where Island Cinema is located.

Fashion Island (Irvine Company) provides security coverage 24/7, 365 days of the year in all common areas of the shopping center. This service includes foot patrol, mobile patrol and CCTV monitoring at all times.

Should additional information be needed, please give me a call.

Sincerely,



Joe Woldenberg

Sr. Director, Retail Operations

# **Attachment No. PD 4**

Island Cinema floor plan

**Floor Plan**  
Regal Entertainment Group  
Island 7 Cinema  
999 Newport Center Drive  
Newport Beach, CA



SCALE 3/64" = 1'-0"  
0 20 40 60 80 100

**EXISTING: FLOOR PLAN**  
ISLAND CINEMA SIGNATURE BAR : CONCEPT DESIGN  
01.21.2016

2/15/16

IRVINE COMPANY

