



**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, and/or Planning Division staff for the week ending April 15, 2016

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**ZONING ADMINISTRATOR ACTIONS  
APRIL 14, 2016**

- Item 1:** TLT Food Minor Use Permit Amendment No. UP2016-008 (PA2016-032)  
Site Address: 1332 Bison Avenue  
Action: Approved by Resolution No. ZA2016-016 Council District 4
- Item 2:** Island Cinemas Minor Use Permit Amendment No. UP2016-001 and Operator License No. OL2016-001 (PA2016-001)  
Site Address: 999 Newport Center Drive  
Action: Approved by Resolution No. ZA2016-017 Council District 5
- Item 3:** Crocker's The Well Dressed Frank Minor Use Permit Amendment No. UP2016-006 (PA2016-025)  
Site Address: 211 Marine Avenue, Unit A and B  
Action: Approved by Resolution No. ZA2016-018 Council District 5
- Item 4:** Green Element 365 Juice Bar Minor Use Permit No. UP2016-010 (PA2016-040)  
Site Address: 609 East Balboa Boulevard  
Action: Approved by Resolution No. ZA2016-019 Council District 1

**Item 5:** Villas Fashion Island Tentative Parcel Map No. NP2016-003 (PA2015-220)  
Site Address: 1101 San Joaquin Hills Road

Action: Approved by Resolution No. ZA2016-020 Council District 5

**Item 6:** Villas Fashion Island Sign Modification Permit No. MD2016-004 (PA2016-030)  
Site Address: 1101 San Joaquin Hills Road

Action: Approved by Resolution No. ZA2016-021 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.

Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)  
Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)

## RESOLUTION NO. ZA2016-016

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-008 FOR A NEW RESTAURANT TO OCCUPY AN EXISTING RESTAURANT SPACE AND CHANGE THE TYPE OF ALCOHOL LICENSE AND THE OPENING HOUR LOCATED AT 1332 BISON AVENUE (PA2016-032)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Murray Wishengrad, TLT Investors V, LLC, with respect to property located at 1332 Bison Avenue, and legally described as Parcel 1 of Parcel Map No. 2001-140 requesting approval of an amendment to an existing use permit.
2. The applicant proposes to amend a previously approved Use Permit No. UP2014-047 to change the Alcoholic Beverage Control (ABC) license at an existing eating and drinking establishment (previously occupied by Mozambique Peri Peri) from a Type 47 (On Sale General – Eating Place) to a Type 41 (On Sale Beer and Wine–Eating Place). Additionally, the request includes a change in the opening hour from 10:00 a.m. to 8:00 a.m. However, staff is recommending an opening hour of 6:00 a.m. to provide future flexibility for the establishment. These changes are a result of a new restaurant (TLT Food) occupying the existing restaurant space. No other changes are proposed including the closing hour which will remain at 11:00 p.m.
3. The subject property is located within the Bonita Canyon Planned Community (PC 50) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on 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) of the Guidelines for CEQA.

2. The existing commercial space has been a restaurant use for several years within a shopping center. The interior tenant improvements are minor in nature and do not include an increase in area or change of use.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) 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:

In finding that the proposed use is consistent with Section 20.48.030 of the Zoning Code, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
  1. The subject property is located in Reporting District 54 (RD 54). The Part One Crimes (Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson) crime rate in RD 54 is higher than adjacent Reporting Districts 51 and 52, but lower than Reporting District 36 and the City overall.
  2. Year to date, zero crimes have been reported at the subject property.
  3. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the change in alcoholic beverage license type or the earlier opening hour.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
  1. The total number of alcohol-related calls for service, crimes, or arrests in RD 54 is higher than adjacent Reporting District 52 by one, but lower than Reporting Districts 36 and 51 and significantly less than the City overall. The Police Department has reviewed the proposal and has no objection.
  2. Year to date, one call for service representing less than one percent ( $1/1,678 = 0.0006$ ) of all calls for service in the Reporting District have been reported at the subject property. There have been no arrests or citations reported at the subject property.

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- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
1. The site is developed with a commercial shopping center which is consistent with the General Plan designation, General Commercial. Properties within the shopping center consist of retail, service, and eating and drinking establishment uses. The property is not located within proximity to any day care centers, hospitals, park and recreation facilities, places of worship, schools, or similar uses that attract minors. The nearest residential and recreational uses are buffered from the shopping center by MacArthur Boulevard and Bison Avenue. Eating and drinking establishments with incidental alcohol service have existed at the subject location since original construction of the shopping center in 2002 and the proposed change in Alcoholic Beverage Control license type is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Multiple eating and drinking establishments within the shopping center including Wildfish Seafood Grille (Type 47), Islands (Type 47), Johnny's Real New York Pizza (Type 41), and Pei Wei (Type 41) sell alcoholic beverages. Previously, at the subject tenant space Mozambique Peri Peri operated with a Type 47 (On-Sale General – Eating Place) license. There is no evidence suggesting these existing restaurants with alcohol service have been detrimental to surrounding properties or the neighborhood and the change in license type at the subject location with the earlier opening hour is not expected to generate any increase in alcohol-related nuisances.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. An eating and drinking establishment with alcohol service has operated at the subject location since 2002. The proposed amendment is not correcting any objectionable conditions.
2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. 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.
3. The existing hours of operation of the establishment help to minimize the potential effects on land use. The establishment closes by 11:00 p.m., daily, which will ensure

the use does not become a late night bar, tavern, or nightclub without a future amendment to this Use Permit.

4. The establishment is located within an existing shopping center which is developed with other commercial uses. Changing the alcohol beverage control license will not alter the existing operation, but will complement the food service and provide a convenience to customers.

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:

- B. 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 as General Commercial (CG) which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The existing eating and drinking establishment is located within the Bluffs Shopping Center and serves those working, residing, or visiting the surrounding neighborhood, consistent with the CG land use designation.
3. The subject property is not a 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 site is located in Commercial Sub-Area 5 of the Bonita Canyon Planned Community (PC 50) Zoning District which was intended to provide for up to 55,000 square feet of commercial uses. Eating and drinking establishments are permitted uses subject to the approval of a use permit.
2. The previous eating and drinking establishment operated pursuant to Use Permit No. UP2014-047, which allowed the sale and service of food and beverages with a Type 47 ABC License, and established hours of operation between 10:00 a.m. and 11:00 p.m., daily.
3. The change of the opening hour from 10:00 a.m. to 6:00 a.m. is consistent with other uses in the shopping center that have 5:30 a.m. (Coffee Bean) and 6:00 a.m. (Panera

Bread) opening hours. Furthermore, these earlier opening hours have not proven detrimental and the closest residential uses are over 300 feet away across major arterial roads.

4. The use will remain an eating and drinking establishment and the change in ABC license type will not alter or intensify the existing use. There will be no change in the floor area or the number of seats.
5. The conditions of approval reflected in "Exhibit A" of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.
6. The tenant improvements are currently in the plan check process and will comply with all Building Code and Fire Code requirements.

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. Eating and drinking establishments with the service of alcohol have operated at the shopping center since original construction in 2002 and have not proven detrimental to the area.
2. The principal use will remain an eating and drinking establishment and the change in license type will not alter the design, size, or operating characteristics of the facility.
3. 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. The project has been conditioned to ensure the welfare of the surrounding community and that the eating and drinking establishment does not become a bar or tavern. The establishment is required to comply with the requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees of the establishment. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
4. The earlier opening hour of 6:00 a.m. is consistent with the shopping center which has tenants that open as early as 5:30 a.m.

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 existing eating and drinking establishment is located within an existing shopping center and has demonstrated that it is physically suitable in terms of design, location, shape, and size to support the use.
2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

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 amended use permit 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 tenant space during business hours, if directly related to the patrons of the establishment.
2. The eating and drinking establishment will continue to service patrons of the shopping center, surrounding commercial buildings, and provide dining services as a public convenience to the surrounding neighborhood. The service of alcohol will continue to complement the principal use of the facility and provide an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.
3. The proposed restaurant does not include late hours, distilled spirits, dancing or live entertainment which could have the potential to generate additional nuisances to the surrounding neighborhood.
4. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.
5. Residential uses do not exist within proximity of the establishment and are over 300 feet away separated from the shopping center and by Bison Avenue or MacArthur Boulevard.




SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-008 (PA2016-032), 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 (14) days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. UP2014-047 (PA2014-182) approved December 23, 2014, which upon vesting of the rights authorized by Minor Use Permit No. UP2016-008 (PA2016-032), shall become null and void

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



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Brenda Wisneski, AICP, Zoning Administrator

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

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 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 eating and drinking establishment as proposed will contain approximately 1,900 gross square feet. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new use permit.
5. Hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m., daily. Any increase in the hours of operation shall be subject to the approval of an amendment to this Minor Use Permit or the processing of a new use permit.
6. All employees shall park on-site.
7. The reciprocal arrangement for ingress, egress and parking that applies to the subject property shall remain in effect for the duration of the eating and drinking establishment.
8. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets in accordance with Newport Beach Municipal Code Section 20.30.020 (Buffering and Screening), and shall be sound attenuated in accordance with Chapter 10.26 (Community Noise Control).
9. Grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems, unless otherwise approved by the Building Division and Public Works Department. This condition does not preclude the shared use of a common area grease interceptor device, if determined adequate by the Building Division and Public Works Department.
10. The facility shall comply with the provisions of Chapter 14.30 (Fats, Oils and Grease Control) for commercial kitchen grease disposal.

11. Kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Division.
12. Should the alcoholic beverage control (ABC) 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 thirty (30) days of transfer of the ABC 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.
13. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control (ABC) shall be a Type 41 (On Sale Beer and Wine- Eating Place) in conjunction with the service of food.
14. The alcoholic beverage sales for the purpose of on-site consumption shall be limited to the designated dining areas indicated on the floor plan submitted with the application. Any change in the operation of on-sale alcoholic beverage sales or increase in the dining area devoted to alcohol sales for customers shall be subject to the approval of an amendment to this minor use permit issued by the Zoning Administrator.
15. Bar counters for the service of only alcoholic beverages shall be prohibited.
16. The 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 the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor use permit in accordance with Chapter 20.96 of the Zoning Code.
17. A covered wash-out area for refuse containers and kitchen equipment shall be provided and the area shall drain directly into the sewer system, unless otherwise approved by the Building Division and Public Works Department.
18. 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.
19. 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.
20. 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).

21. 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 twenty (20) feet of the premises.
22. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
23. 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.
24. There shall be no live entertainment.
25. No outside paging system shall be utilized in conjunction with this establishment.
26. 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.
27. 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.
28. 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 TLT Food Minor Use Permit including, but not limited to Minor Use Permit No. UP2016-008 (PA2016-032). 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.

**Police Department Conditions**

29. Food service from the regular menu must be available to patrons up to thirty (30) minutes before the scheduled closing time.
30. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
31. 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 on demand.
32. 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.
33. This approval does not permit the premises to operate as a bar, lounge, or nightclub as defined by the Newport Beach Municipal Code.
34. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
35. The applicant 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 exits leading from the dining area.
36. 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, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
37. 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 issued by the City of Newport Beach.
38. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
39. Dancing shall be prohibited, unless otherwise approved in conjunction with a Special Events Permit.
40. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete an ABC approved certified training program in responsible methods and skills for selling alcohol beverages.

## 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.**

  
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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.

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.

## RESOLUTION NO. ZA2016-018

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-006 FOR AN EXPANSION OF AN EXISTING FOOD SERVICE EATING AND DRINKING ESTABLISHMENT, INCLUDING A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE, LOCATED AT 211 MARINE AVENUE SUITES A AND B (PA2016-025)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John De Frenza, with respect to property located at 211 Marine Avenue, Suites A and B, and legally described as Lot 23 in Tract 102 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow the expansion of an existing 556-square-foot food service eating and drinking establishment located in Suite A, including Type 41 (On Sale Beer and Wine – Eating Place) alcohol sales, into the 438-square-foot retail space in Suite B. The total proposed net public area is 200 square feet.
3. The subject property is located within the Mixed Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed Use Water Related (MU-W2).
4. The subject property is located within the coastal zone and designated as Mixed Use Water Related (MU-W).
5. A public hearing was held on 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) of the Guidelines for CEQA.
2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves interior improvements to convert a retail space into a food service eating and drinking establishment and involves no expansion in floor area.



### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020.E (Conditional Use Permits and Minor Use Permits – Findings and Decision) and Section 20.48.030 (Alcohol Sales) 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).*

#### Facts in Support of Finding:

1. The following criteria has been considered:

- a. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
  - i. The property is located in Reporting District 42 (RD 42). The Part One Crimes (Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson) crime rate in RD 42 is lower than adjacent reporting districts 12, 41, and 43, and lower than the City overall.
  - ii. In 2015, zero crimes were reported at the subject property.
  - iii. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the expansion of the food service eating and drinking establishment and alcoholic beverage license.
- b. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
  - i. The number of alcohol related arrests and citations in RD 42 is lower than adjacent Reporting Districts 41 and 12, and is higher than adjacent Reporting District 43.
  - ii. In 2015, six calls for service were reported at the subject property. None were for crimes due to the business practice of the applicant or over service of alcohol.
- c. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

- i. The use is located on Marine Avenue in a Mixed Use zoning designation which is consistent with the General Plan land use designation, Mixed Use Water Related. The property is not located within close proximity to any day care centers, hospitals, park and recreation facilities, places of worship, schools, or similar uses that attract minors.
  - ii. The subject property is in close proximity to residential zoning districts, which is consistent with the intent of the General Plan land use designation, which is to support marine-related uses intermixed with buildings that provide residential on the upper floors.
- d. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
- i. There are 14 active alcoholic beverage control licenses in RD 42, including the subject food service eating and drinking establishment. This equals a per capita ratio of one license for every 197 residents, and is lower than the citywide average of one license for every 194 residents.
- e. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
- i. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. 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.
  - ii. The existing hours of operation of the food service eating and drinking establishment will minimize the potential effects on land use. The establishment closes by 10:00 p.m. daily, which will ensure the use does not become a late night bar, tavern, or nightclub.
  - iii. There are no current objectionable conditions caused by the sale of alcohol. Of the six calls for service to the subject property in 2015, none were for crimes due to the business practice of the applicant or over service of alcohol.

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for the subject property is Mixed Use Water related, which permits uses that are permitted in the Commercial Recreational and

Marine (CM), Commercial Visitor-Serving (CV), and Mixed-Use Vertical (MU-V) designations. The proposed expanded food service eating and drinking establishment is a use that is permitted in these zones with approval of a minor use permit and is therefore consistent with the General Plan.

2. The subject property is not a 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 the Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. The site is located in the MU-W2 (Mixed Use Water Related) Zoning District which is intended to intermix marine-related uses with general commercial, visitor-serving commercial and residential dwelling units. Food service eating and drinking establishments with alcohol and no late hours are permitted in this zone with approval of a minor use permit.
2. The existing food service eating and drinking establishment operates pursuant to Use Permit No. UP2010-016 which allowed the sale and service of food and beverages with incidental beer and wine sales, up to eight seats for customers, and hours of operation to 10:00 p.m. daily.
3. The use is proposed to remain a food service eating and drinking establishment with the same hours of operation and alcoholic beverage control license.
4. The proposed expansion will have a total of 200 square feet of net public area and will create the same parking demand of no more than 1 space per 250 square feet of gross floor area. Therefore, Zoning Code does not require additional parking to be added onsite.

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. The existing use permit, which included beer and wine sales, has been in effect since 2010 and has not proven detrimental to the area. The proposed expansion will maintain the same operating hours, alcoholic beverage control license type, and operating characteristics as the existing food service eating and drinking establishment.
2. The operational conditions of approval recommended by the Newport Beach Police Department relative to the sale of alcoholic beverages will ensure compatibility with the

surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure the welfare of the surrounding community and that the food service eating and drinking establishment does not become a bar or tavern. The establishment is required to comply with the requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees of the establishment. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.

3. The conditions of approval reflected in Exhibit A of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

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 proposed area of expansion is located within an existing retail tenant space, Suite A. Suites A and B will be combined into one food service eating and drinking establishment and will therefore share cooking facilities, storage, and a restroom. The existing site and building design has demonstrated that it is physically suitable in terms of design, location, shape, and size to support the expanded food service eating and drinking establishment.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site.

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 that constitute a nuisance in sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The food service eating and drinking establishment will continue to service the neighborhood by providing dining services as a public convenience to the surrounding

residential neighborhood as well as the visitors to the area, which is an intent of the Mixed Use Water Related Zoning Designation. The service of alcohol will continue to complement the principal use of the establishment and provide an economic opportunity for the property owner and business owner to maintain a successful business in a way that best serves the community.

3. As conditioned, the owners, managers, and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for serving alcohol.

#### SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-006, 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 (14) days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 2010-016 as approved by the Planning Commission on September 9, 2010, which upon vesting of the rights authorized by this use permit, shall become null and void.

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

BY:



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Brenda Wisneski, AICP, Zoning Administrator

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

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 applicant shall comply with all federal, state, and local laws. Material violation any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
3. The 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. Any change in operational characteristics, expansion in area, or other modification to the approved plans may require an amendment to this Minor Use Permit or the processing of a new permit.
5. Hours of operation shall be limited to 7:00 a.m. to 10:00 p.m. daily. Any increase in the hours of operation shall be subject to the approval of an amendment to this Minor Use Permit or the processing of a new use permit.
6. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets in accordance with Newport Beach Municipal Code Section 20.30.020 (Buffering and Screening), and shall be sound attenuated in accordance with Chapter 10.26 (Community Noise Control).
7. The facility shall comply with the provisions of Chapter 14.30 (Fats, Oils, Grease Control) for commercial kitchen grease disposal. A grease interceptor shall be installed, unless otherwise approved by the Building Division. Any changes to the facility or use, including menu changes or the addition of cooking facilities, that may result in the introduction of grease or similar byproducts shall be reviewed for conformance with Chapter 14.30 and may at that time require the installation of a grease interceptor.
8. Kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Division.
9. Should the alcoholic beverage control (ABC) 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 thirty (30) days of transfer of the ABC 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.

10. The type of alcoholic beverage control license issued by the California Board of Alcoholic Beverage Control (ABC) shall be a type 41 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application and may require approval of the Zoning Administrator or Planning Commission.
11. The alcoholic beverage sales for the purpose of on-site consumption shall be limited to the designated dining areas indicated on the floor plan submitted with the application. Any change in the operation of on-sale alcoholic beverage sales or increase in the dining area devoted to alcohol sales for customers shall be subject to the approval of an amendment to this minor use permit issued by the Zoning Administrator.
12. Bar counters for the service of alcoholic beverages only shall be prohibited.
13. The 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 the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor conditional use permit in accordance with Chapter 20.96 of the Zoning Code.
14. 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.
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. 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 twenty (20) feet of the premises.
17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. daily unless otherwise approved by the Director of Community Development, and may require an amendment to this use permit.
18. No outside paging system shall be utilized in conjunction with this establishment.
19. 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.

20. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director of Community Development may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
21. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. 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.
22. All signs shall conform to the provisions of Chapter 20.42 (Signs) of the Municipal Code. No temporary "sandwich" signs or similar temporary signs shall be permitted, either on-site or off-site, to advertise the food service eating and drinking establishment.
23. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
24. 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 establishment 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.
25. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
26. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
27. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
28. 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 that are clearly visible to the exterior shall constitute a violation of this condition.
29. Service and consumption of alcoholic beverages shall be limited to the interior of the food service eating and drinking establishment. Applicant shall post and maintain a professional quality sign (clearly visible at front exit) that designates the specific area



where customers may consume alcoholic beverages. Posted sign shall read "NO ALCOHOLIC BEVERAGES MAY BE TAKEN BEYOND THIS POINT."

30. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
31. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the City of Newport Beach on demand.
32. Live entertainment and dancing shall be prohibited as a part of the regular operation, unless an amendment to this use permit or other required application is first approved in accordance with the provisions of the Municipal Code.
33. A covered wash-out area for refuse containers and kitchen equipment, with minimum usable dimensions of 36-inches wide and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Official and Public Works Director in conjunction with the approval of an alternate drainage plan.
34. The use permit is for the operation of full-service, small-scale food service eating and drinking establishment and does not authorize the use or operation of a bar, tavern, cocktail lounge, nightclub, or commercial recreational entertainment venue.
35. No background music shall be allowed on any of the outdoor patios, dining areas, lounges, or waiting areas.
36. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
37. Full meal service shall be provided during all hours of operation.
38. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to deliveries and employee use only. Ingress and egress by patrons is prohibited unless there is an emergency.
39. All exits shall remain free of obstructions and available for ingress and egress at all times.
40. Strict adherence to maximum occupancy limits per the California Building Code is required.
41. All trash shall be stored within a commercial trash bin with a solid lid to screen the trash and maintain odors. The lid shall be kept closed at all times. The commercial trash bin

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shall be located flush against the rear wall of the residential building and parallel to the alley to minimize its encroachment into the 10-foot alley setback.

42. 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 bin specified in Condition No. 41.
43. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
44. 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.
45. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department, including for the existing improvements that were constructed without the benefit of building permits. 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.
46. 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 property owner or the leasing agent.
47. 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.
48. 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 Crocker's Restaurant Expansion including, but not limited to, Minor Use Permit No. UP2016-006 (PA2016-025). 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. ZA2016-019

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-010 TO ALLOW OPERATION OF A JUICE BAR (TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT) IN AN EXISTING COMMERCIAL TENANT SPACE LOCATED AT 609 EAST BALBOA BOULEVARD (PA2016-040)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Green Element 365, Inc., with respect to property located at 609 East Balboa Boulevard, and legally described as an undivided 50% (one-half) interest in that portion of Parcel 1 of Parcel Map No. 2002-127, in the City of Newport Beach, County of Orange, State of California, recorded in Book 333, Pages 27 and 28 of Parcel Maps, as per map recorded in the office of the County Recorder of said county, shown and defined as "Common Area" on the Condominium Plan recorded June 18, 2007, as Instrument No. 07-386043 of Official Records of said county, requesting approval of a minor use permit.
2. The applicant proposes a juice bar (Take-Out Service, Limited Eating and Drinking Establishment) to operate in an existing 920-square-foot vacant ground floor commercial tenant space of a two-story mixed-use development. The project includes tenant improvements to create a food preparation area, front counter, retail area and signs. The proposed hours of operation are from 6:00 a.m. to 6:00 p.m., daily, with potential adjustments due to seasonal changes.
3. The subject property is designated Mixed Use Vertical (MU-V) by the General Plan Land Use Element and is located within the Mixed-Use Vertical (MU-V) Zoning District.
4. The subject property is located within the coastal zone. The designated land use within the Coastal Land Use Plan is Mixed Uses Vertical (MU-V).
5. A public hearing was held on 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 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 an existing 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 as MU-V (Mixed-Use Vertical), which is intended to provide for the development of properties for mixed-use structures that vertically integrate housing with nonresidential uses including retail, office, restaurants and similar uses.
2. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach and is consistent with the MU-V land use category.
3. A variety of small eating and drinking establishments exist nearby and the proposed take-out service 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 Vertical (MU-V) Zoning District. The proposed take-out service, limited eating and establishment, which includes kitchen facilities, 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 also located within the Balboa Village Parking Management Overlay District. Pursuant to Municipal Code Section 20.28.030D, no off-street parking shall be required for any new nonresidential use or intensification of uses except the following

uses as defined by the Zoning Code: assembly/meeting facilities, commercial recreation and entertainment, cultural institutions, all marine services uses, schools, and visitor accommodations. The proposed use is a take-out service, limited eating and drinking establishment, and based upon the proposed design with a potential for limited seating, no additional parking is required.

3. 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.

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 location of the proposed use is appropriate given the establishment will be accessible from East Balboa Boulevard, which provides convenient access to motorists, pedestrians, and bicyclists.
2. The mixed-use development contains four other tenant spaces occupied by various retail and service uses. The proposed establishment is compatible with the existing commercial and residential uses in the area.
3. As conditioned, the allowed hours of operation will be 6:00 a.m. to 10:00 p.m. daily, which should minimize any nuisances to residents living near the property.
4. Conditions of approval are also included to limit the hours of deliveries, to ensure adequate trash receptacles are provided for patrons, and to prohibit the sales and service of alcohol.

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 and parking spaces for patrons.
2. The Fire Department found no deficiencies with the proposed use and adequate public and emergency vehicle access is provided.
3. Any proposed site improvements must comply with applicable provisions of 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:

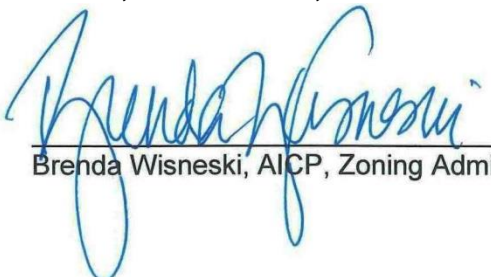
1. Conditions of approval such as those which limit the hours of operation and deliveries, require trash receptacles, and prohibit alcohol sales and services are included to help ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator 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 food 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 the residents and visitors alike.
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. UP2016-010 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 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 20, Planning and Zoning, of the Newport Beach Municipal Code.

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

  
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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Department**

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 it is 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, or other modification to the approved plans, shall require subsequent review and may require an amendment to this Minor Use Permit or the processing of a new minor use permit unless determined to be in substantial conformance with the plans and conditions by the Community Development Director.
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. The hours of operation shall be limited between 6:00 a.m. and 10:00 p.m., daily.
8. The maximum number of seats, including stand-up counter area, for patrons shall be limited to a total of 6. The addition of any seating shall be reviewed and approved by the Building Division to ensure compliance with the Building Code.
9. There shall be no outdoor dining unless otherwise reviewed and approved by the Planning Division.
10. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. A building permit is required to allow the change in use to an eating and drinking establishment. 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. Complete sets of drawings

including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.

11. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
12. There shall be no dancing allowed on the premises, no live entertainment, and no service of alcohol unless an amendment to this Minor Use Permit or the processing of a new minor use permit is first approved.
13. All proposed signs shall be in conformance with any approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 of the Newport Beach Municipal Code.
14. All lighting shall conform to the standards of Section 20.30.070 (Outdoor Lighting). The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
15. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. The 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

16. 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.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. 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. Collection shall occur as frequently as necessary to prevent accumulation of trash.



19. 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.
20. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
21. 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.
22. 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.
23. 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.
24. 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 Green Element 365 Juice Bar including, but not limited to, Minor Use Permit No. UP2016-010 (PA2016-040). 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. ZA2016-020

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-003 FOR THE VILLAS FASHION ISLAND PROJECT LOCATED AT 1101 SAN JOAQUIN HILLS ROAD (PA2015-220)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Irvine Company, with respect to property located at 1101 San Joaquin Hills Road, and legally described as Parcel 3, as shown on a Parcel Map filed in Book 81, Pages 8 and 9 of Parcel Maps, in the Office of the Orange County Recorder, except therefrom that portion of said land lying within Parcels 1 through 4 as shown on a Map, filed in Book 175, Pages 22 to 24 of Parcel Maps, Records of said County, requesting approval of a tentative parcel map.
2. The applicant proposes to subdivide one existing 18.29-acre parcel into two numbered parcels and two lettered parcels in conjunction with the Villas Fashion Island project (formerly the San Joaquin Plaza Apartments).
3. 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 Mixed-Use Horizontal (MU-H3).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on 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 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 15 (Minor Land Divisions). 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 and no variances or exceptions are required. It also requires that 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.

2. The tentative parcel map does not change uses and is for financing purposes and the numbered parcels meet the minimum parcel sizes. The two lettered parcels are landscape and open space consistent with the approved development of the property. Approved development within the boundaries of the proposed map was reviewed for consistency with the General Plan, the North Newport Center PC. The development meets these policies and regulations and has been permitted. Access and utilities were also reviewed by Building, Fire and the Public Works Departments and all necessary improvements have been authorized. The Tentative Parcel Map 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 financing purposes. The proposed subdivision of the residential project under construction and the existing office parking structure is consistent with provisions of the Subdivision Map Act and the MU-H3 (Mixed-Use Horizontal) General Plan land use designation which provides for a horizontal intermixing of uses that may include residential and commercial office uses.
2. Public improvements as required by the Public Works Department have been generally reviewed as part of the overall development of the property; however, a condition of approval is included to ensure any additional improvements resulting from the subdivision are addressed in compliance with Title 19 (Subdivisions).
3. The project 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. Development of proposed Parcel 1 has been reviewed and approved as a 524-unit residential project. A parking structure also exists on-site to serve adjacent office buildings and will be situated on proposed Parcel 2. The newly constructed buildings

were reviewed under Plan Check No. 2935-2013 and will meet all Building Code and Zoning Code requirements. As designed, the site and proposed parcels are physically suitable for the development. The proposed configuration will not create any nonconformities and all structures will meet or exceed the minimum setbacks for the existing development.

2. The subject property is directly accessible from San Joaquin Hills Road. It is also accessible by way of a private drive accessed from Santa Cruz Drive.
3. The site and development are 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 historic use of the property has been commercial office buildings and parking. Proposed Parcel 1 is being redeveloped as a multi-family residential project. The proposed subdivision does not affect existing development of the site that has been determined to be consistent with applicable land use and construction regulations.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or wildlife 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 Divisions).

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 financing purposes. All improvements relative to the development have been reviewed and building permits have been issued.

2. Any subsequent work will be reviewed to ensure compliance will be met with regard to all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Any public improvements 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 shall comply with all ordinances of the City and all Conditions of Approval.

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 Tentative Parcel Map will not conflict with the existing pedestrian easement along Santa Cruz Drive. A condition requires an additional pedestrian easement along the San Joaquin Hills Road frontage be included as part of the Parcel Map.
2. Shared vehicular and pedestrian ingress, egress, and access to the new apartment complex will be provided via a newly constructed private roadway accessed from Santa Cruz Drive. This roadway is consistent with a public utility easement, recorded as Instrument No. 2015000363257.
3. Three other public easements exist on-site as depicted on the Tentative Parcel Map and will remain unaffected.

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.

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 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. Existing 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 existing office parking structure and new multi-family residential development under construction are consistent with the North Newport Center Planned Community (PC-56), Sub-Area San Joaquin Plaza. The site has a mixed-use General Plan designation which allows for residential uses. The Tentative Parcel Map 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. Wastewater discharge into the existing sewer system will comply with the Regional Water Quality Control Board (RWQCB) requirements and the Tentative Parcel Map does not change this compliance.

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 project 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. NP2016-003, 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 14<sup>TH</sup> DAY OF APRIL, 2016.**



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Division**

1. 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 Villas Fashion Island Tentative Parcel Map including, but not limited to, Tentative Parcel Map No. NP2016-003 (PA2015-220). 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 Department**

2. The Parcel Map shall be recorded. The Parcel 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 Parcel Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
3. Prior to 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, Sub article 18. Monuments (one inch iron pipe with tag) shall be set on each lot corner, unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
4. Prior to recordation of the Parcel Map, the map shall be revised such that the proposed pedestrian easement along a portion of the San Joaquin Hills Road frontage is included to the satisfaction of the Public Works Department.
5. All improvements shall be constructed as required by Ordinance and the Public Works Department.



## RESOLUTION NO. ZA2016-021

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2016-004 TO ALLOW ADDITIONAL SIGNS AND INCREASED SIGN SIZES FOR THE VILLAS FASHION ISLAND PROJECT LOCATED AT 1101 SAN JOAQUIN HILLS ROAD (PA2016-030)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Irvine Company, with respect to property located at 1101 San Joaquin Hills Road, and legally described as Parcel 3, as shown on a Parcel Map filed in Book 81, Pages 8 and 9 of Parcel Maps, in the Office of the Orange County Recorder, except therefrom that portion of said land lying within Parcels 1 through 4 as shown on a Map, filed in Book 175, Pages 22 to 24 of Parcel Maps, Records of said County, requesting approval of a modification permit.
2. The applicant proposes two project identification monument signs and two leasing directional signs along San Joaquin Hills Road where the North Newport Center Planned Community regulations only allow one of each sign type. Also included is a request to increase the size for both signs above the maximum allowed. The proposed maximum dimensions for the project identification signs are 8 feet high by 27 feet wide, whereas the PC allows for a maximum sign height of 6 feet and a maximum width of 12 feet. The proposed maximum dimensions for the leasing directional signs are 9.75 feet high by 7 feet wide whereas the PC allows for a maximum sign height of 4.5 feet and a maximum width of 5 feet.
3. The subject property is designated Mixed-Use Horizontal (MU-H3) by the General Plan Land Use Element and is located within the North Newport Center Planned Community (PC-56) Sub-Area San Joaquin Plaza.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on 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 is categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 11 (Accessory Structures).

2. Class 11 consists of construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to signs.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050 (Modification Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *The requested modification will be compatible with existing development in the neighborhood.*

#### Facts in Support of Finding:

1. The subject property is located within San Joaquin Plaza Sub-Area of the North Newport Center Planned Community (PC-56) Zoning District. The proposed project identification monument signs and leasing directional signs are allowed ancillary structures.
2. The proposed project identification monument signs will be located on either side of the primary project entrance on San Joaquin Hills Road. The signs will be complementary to the landscaped areas and will not diminish or negatively impact the character of the development for the following reasons.
  - a. The Villas Fashion Island development is approximately 65 feet tall and set back 40 feet from the property line fronting San Joaquin Hills Road. The larger signs will be in scale with the project and will help improve the ability to identify the Villas Fashion Island development at its primary entrance to motorists on San Joaquin Hills Road, which has higher vehicle speeds. The larger leasing directional signs will better serve the development in providing clear legible leasing information.
  - b. The proposed increase in maximum sign height is similar in height to existing monument signs for adjacent office sites, Fashion Island and Big Canyon, all of which are located nearby and have frontages facing San Joaquin Hills Road.

#### Finding:

- B. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

#### Facts in Support of Finding:

1. The proposed monument signs will be located at the primary entrance to Villas Fashion Island from San Joaquin Hills Road on a large parcel (18.29 acres). The

leasing directional signs will be located on the same frontage approximately midblock in either direction. San Joaquin Hills Road is a 145-foot-wide, divided roadway with a speed limit of 50 miles per hour. The larger signs will help to improve visibility and identification of the site.

2. The sign standards in the North Newport Center Planned Community were designed and oriented toward the office uses previously located at the project site. The proposed larger signs are adequately set back from the public right-of-way and are in scale with the adjacent residential buildings under construction.

Finding:

- C. *The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

1. The Villas Fashion Island development is on 18.29 acres and will have one primary entry from a 145-foot-wide divided roadway with high speeds and reduced visibility. The strict application of the sign standards established by the North Newport Center Planned Community would result in fewer and smaller signs and could result in motorists missing the project entry or attempting project entry at higher vehicle speeds.
2. The proposed increases in number and size do not interfere with the intent of the Zoning Code as they provide for adequate identification of the site and leasing information while guarding against the excessive and confusing proliferation of signs. The proposed signs are complementary to other signs in San Joaquin Plaza and North Newport Center.

Finding:

- D. *There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

1. The alternative of compliance with the North Newport Center Planned Community sign regulations would result in signage that is too small and out of scale with the development to be effective.
2. The location of more than one sign of each type in a larger format near the primary entrance is essential for notifying visitors of the project's primary entrance. The signs as proposed will not obstruct vehicle or pedestrian sight distance, are well integrated

into the overall design and scale of the development, and will be the only signs on approximately 1,100 linear feet of street frontage.

Finding:

- E. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:


1. Approval of the application to allow an additional project identification monument sign and an additional leasing directional sign with an increase in size for both does not change the density or intensity of the existing use. The proposed signs will provide adequate identification for the unique layout of the entryway along San Joaquin Hills Road.
2. The locations of the signs are well within the private property and will not impact the surrounding properties consistent with Fact D-2 above.
3. The size of the signs is well within the scale of signs in the surrounding area and will not adversely affect or be detrimental to persons, property, or improvements in the surrounding neighborhood.
4. The project has been reviewed and conditioned to ensure the sign will be safely located outside the vehicular line of sight.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2016-004, 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 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 20 Planning and Zoning, of the Newport Beach Municipal Code.

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

  
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Brenda Wisneski, AICP, 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 Modification Permit may be modified or revoked by the Zoning Administrator, Planning Commission or City Council 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, or other modification to the approved plans, shall require an amendment to this Modification Permit or the processing of a new Modification Permit.
6. The project identification monument signs shall have a maximum height of 8 feet and a maximum width of 27 feet. Letter or logo heights shall be limited to 26 ¾ inches.
7. The leasing directional signs shall have a maximum height of 9.75 feet and a maximum width of 7 feet. Letter or logo heights shall be limited to 10 inches.
8. 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.
9. 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.
10. 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 Villas Fashion Island Signage including, but not limited to, Modification Permit No. MD2016-004 (PA2016-030). 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 Department**

11. Sign shall be located outside the vehicular line of sight area, per CIM Standards (STD-110-2).

**Building Division**

12. The applicant shall obtain building and electrical permits.