



**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 November 25, 2016

**ZONING ADMINISTRATOR ACTIONS
NOVEMBER 21, 2016**

- Item 1: 608 Heliotrope Avenue Condominiums Tentative Parcel Map No. UP2016-019 (PA2016-166)
Site Address: 608 Heliotrope Avenue
Action: Approved by Resolution No. ZA2016-063 Council District 6
- Item 2: 2392 Redlands Drive Lot Merger No. LM2016-008 (PA2016-147)
Site Address: 2392 Redlands Drive
Action: Approved by Resolution No. ZA2016-064 Council District 3
- Item 3: 216 33rd Street Condominiums Tentative Parcel Map No. NP2016-020 (PA2016-176)
Site Address: 216 33rd Street
Action: Approved by Resolution No. ZA2016-065 Council District 1
- Item 4: Amendment to Xanadu Café Minor Use Permit No. NP2016-020 (PA2016-176)
Site Address: 100 West Coast Highway, Unit 104
Action: Approved by Resolution No. ZA2016-066 Council District 3

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
Sgt. Brad Miller, NBPD

RESOLUTION NO. ZA2016-063

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-019 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 608 AND 608 ½ HELIOTROPE AVENUE (PA2016-166)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by SCA General Contracting, Inc., with respect to property located at 608 and 608 ½ Heliotrope Avenue and legally described as Lot 10 in Block 635 of Corona Del Mar, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) development standards are proposed with this application. An existing single-family residence was demolished and will be replaced with a new two-unit duplex, currently under construction. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 21, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel

Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A single-family residence was demolished and will be replaced with a new two-unit duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The Tentative Parcel Map does not apply to any specific plan area.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

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

Facts in Support of Finding:

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

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land nor is it located within the boundaries of a specific plan.

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate.

The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-019 (PA2016-166), 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 21st DAY OF NOVEMBER, 2016.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to recordation of the Parcel Map, a park fee shall be assessed for one additional dwelling unit.
3. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
5. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 608 Heliotrope Condominiums including, but not limited to, Tentative Parcel Map No. NP2016-019 (PA2016-166). 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.
6. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

7. 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, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Heliotrope Avenue frontage.
10. Reconstruct the existing broken and/or otherwise damaged concrete alley abutting the property. Extent of repair to be determined by the Public Works inspector.
11. All existing overhead utilities shall be undergrounded.
12. Heliotrope Avenue is part of the City's Moratorium List. Work performed on said roadway will require additional surfacing requirements. See City Standard 105-L-F.
13. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
14. Install new low groundcover of the type approved by the City throughout the Heliotrope Avenue parkway fronting the development site.
15. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.
16. An encroachment permit is required for all work activities within the public right-of-way.
17. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code Section 20.30.130.
18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
19. All on-site drainage shall comply with the latest City Water Quality requirements.

20. Per Chapter 13 of the City Municipal Code, one (1) 36-inch box street tree shall be planted along the Heliotrope Avenue frontage. Tree species shall be per Council Policy G-6.

RESOLUTION NO. ZA2016-064

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM2016-008 AND A WAIVER OF THE PARCEL MAP REQUIREMENT FOR A LOT MERGER LOCATED AT 2392 REDLANDS DRIVE (PA2016-147)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Apex Land Surveying Inc., with respect to property located at 2392 Redlands Drive and the unaddressed lot directly southeast of 2392 Redlands Drive. The lot at 2392 Redlands Drive is legally described as Lot 3, Tract No. 3062, as per map thereof recorded in Book 92, Pages 19 and 20 of Miscellaneous Maps, Records of Orange County, California. The unaddressed lot (APN439-232-17) is legally described as that portion of Lot 105 of Tract 300, as shown on a map recorded in Book 14, Pages 11 and 12 of Miscellaneous Maps, Records of Orange County California.
2. The applicant proposes a lot merger and requests to waive the parcel map requirement for two properties under common ownership.
3. The subject properties are located within the Single-Unit Residential 7,200 (R-1 7200) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 21, 2016 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project is categorically exempt under Section 15315, of the State CEQA (California Environmental Quality Act) Guidelines - Class 15 (Minor Land Divisions).
2. Class 15 exemption includes the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcel to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope

greater than 20 percent. This exemption includes a minor lot merger not resulting in the creation of any new parcel that complies with the conditions specified above.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.68.030 and 19.08.030 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *Approval of the merger will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot merger is consistent with the legislative intent of this title.*

Facts in Support of Finding:

1. The lot merger to combine two existing legal lots by removing the interior lot line between the lots will not result in the creation of additional parcels.
2. The project is in an area with an average slope of less than 20 percent.
3. The lot merger is consistent with the purpose and intent of Title 19 (Subdivisions).
4. The future development on the proposed parcel will be subject to the Zoning Code development standards, which are intended to promote orderly development, protect neighborhood character, and preserve public health, safety, and general welfare of the City.

Finding:

- B. *The lots to be merged are under common fee ownership at the time of the merger.*

Fact in Support of Finding:

1. The two lots to be merged are under common fee ownership.

Finding:

- C. *The lots as merged will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. The merged lots will retain the Single-Unit Residential 7,200 (R-1 7200) zoning designation, consistent with the surrounding area. The R-1 Zoning District is intended to provide for areas appropriate for a detached single-family residential dwelling unit located on a single lot with a minimum lot area of 7,200 square feet.
2. The Land Use Element of the General Plan designates the subject site as Single-Unit Residential Detached (RS-D), which applies to a range of single-family residential dwelling units. The land use will remain the same and the merger is consistent with the land use designations of the General Plan.
3. The subject property is not located within a Specific Plan area.
4. The project site is zoned for residential uses. However, at present, the unaddressed lot is not accessible via legal access routes and is therefore unsuitable for standalone residential development. By merging the two lots, the second lot (vacant) would be viable for use under the existing residential zoning.

Finding:

D. Neither the lots as merged nor adjoining parcels will be deprived of legal access as a result of the merger.

Facts in Support of Finding:

1. No adjoining parcels will be deprived of legal access as a result of the merger.
2. Legal access is provided from Redlands Drive and will remain unchanged. There is currently no legal access to the unaddressed parcel adjacent to 2392 Redlands Drive.

Finding:

E. The lots as merged will be consistent with the surrounding pattern of development and will not create an excessively large lot that is not compatible with the surrounding development.

Facts in Support of Finding:

1. Properties along Redlands Drive consist of lots of varying shapes and sizes. Although the proposed lot merger will create a larger lot, it will not create an excessively large lot in comparison to the existing lots in the area. There are many existing lots in the surrounding development that are similar to the proposed lot area, including 2390 Redlands Drive (19,799 square feet) and 2393 Tustin Avenue (14,738 square feet). Although the property would be larger in area than most properties in the area, the proposed lot merger would allow a vacant site without legal access to merge with an addressed site with legal access. Furthermore, both of the properties at 2384 and 2364 Redlands Drive utilize the adjacent lot behind

their residences for accessory structures such as pools and decks. The proposed lot merger would utilize the adjacent lot for a similar purpose. Therefore, the lot would be compatible with the surrounding development.

2. The existing and proposed lot width is approximately 66 feet, which will not create an excessively wide lot in comparison to other existing lots in the area. There are existing lots in the surrounding development similar to the proposed lot width, including 2390, 2384, and 2364 Redlands Drive (approximately 66 feet).
3. The resulting lot configuration will not change the existing pattern of development since the orientation and access to the parcels would remain the same.

Waiver of Parcel Map

In accordance with Section 19.08.30.A.3 (Waiver of Parcel Map Requirement) of the Newport Beach Municipal Code, the Zoning Administrator may approve a waiver of the parcel map requirement in cases where no more than three (3) parcels are eliminated. The following finding and facts in support of such finding are set forth:

Finding:

- F. The proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads and property access, sanitary disposal facilities, water supply availability, environmental protection, and other applicable requirements of this title, the Zoning Code, the General Plan, and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. Approval of the proposed lot merger would remove the existing interior lot line, and allow the property to be used as a single site. The lot merger in and of itself would not change the land use, density, or intensity at the site. The proposed lot would comply with all design standards and improvements required for new subdivisions by Title 19, the Zoning Code, and General Plan.
2. The subject property is not subject to a Specific Plan.
3. The proposed lot merger combines the properties into a single parcel of land and does not result in the elimination of more than three (3) parcels.
4. The subject property is accessible from Redlands Drive. The site is served by all of the necessary public utilities.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Merger No. LM2016-008, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal 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 21st DAY OF NOVEMBER, 2016



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. Lot Merger No. LM2016-008 shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
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 map shall be submitted to the Public Works Department for Final Map Review and Approval. All applicable fees shall be paid.
4. Prior to the issuance of building permits for construction to cross the existing interior lot line between the two (2) parcels to be merged, recordation of the lot merger documents with the County Recorder shall be required.
5. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of 2392 Redlands Lot Merger including, but not limited to, Lot Merger No. LM2016-008 (PA2016-147). 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. ZA2016-065

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-020 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 216 33rd STREET (PA2016-176)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 129 34th Street LLC, with respect to property located at 216 33rd Street, and legally described as Lot 9 and the southwesterly 10 feet of Lot 10, Block 132, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map application for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) design standards are proposed with this application. An existing single-family residence was demolished and will be replaced with a new two-unit duplex. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use category is Two-Unit Residential (RT-E).
5. A public hearing was held on November 21, 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 the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A single-family residence was demolished and will be replaced with a new two-unit duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use Designation.
2. The Tentative Parcel Map does not apply to any specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from 33rd Street and an alley at the rear, and is adequately served by existing utilities.

Finding:

- C. *That the design of the subdivision or the proposed improvements, are not likely to neither cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

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

Facts in Support of Finding:

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

Finding:

- G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code because the existing subdivision does not contain fifty (50) or more parcels.
2. The project is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The subject property is located within the Coastal Zone. The subdivision conforms to the Local Coastal Program since the Coastal Land Use category is Two-Unit Residential (RT-D).
2. The project is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone; therefore, the public access and recreation policies of chapter 3 of the Coastal Act are not applicable.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-020 (PA2016-176), 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 21st DAY OF NOVEMBER, 2016.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. A Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. 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, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by Ordinance and the Public Works Department.
4. The existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter shall be reconstructed along the 33rd Street frontage.
5. All existing overhead utilities shall be undergrounded.
6. No above ground improvements shall be installed within the 5-foot alley setback.
7. 33rd Street is part of the City's Moratorium List. Work performed on said roadway will require additional surfacing requirements. See City Standard 105-L-F.
8. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.
9. An encroachment permit is required for all work activities within the public right-of-way.
10. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
11. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

12. All on-site drainage shall comply with the latest City Water Quality requirements.
13. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line. If the sewer lateral to be abandoned has an existing cleanout, abandonment shall include removal of the cleanout riser, the 4TT box and the wye. Sewer lateral shall then be capped where the wye used to be.
14. Prior to recordation of the Parcel Map, a park fee shall be assessed for one additional dwelling unit.
15. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
16. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
17. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the 216 33rd Street Condominiums including, but not limited to Tentative Parcel Map No. NP2016-020 (PA2016-176). 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. ZA2016-066

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-042 FOR AN AMENDMENT TO AN EXISTING MINOR USE PERMIT TO ADD A TYPE 41 ALCOHOL BEVERAGE CONTROL LICENSE TO AN EXISTING EATING AND DRINKING ESTABLISHMENT LOCATED AT 100 W COAST HIGHWAY, UNIT 104 (PA2016-174).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Xanadu Bakery Newport Beach LLC., with respect to property located at 100 W. Coast Highway, and legally described as PCL 1, Parcel Map 2010-133 requesting approval of an amendment to a Minor Use Permit.
2. The applicant proposes to amend previously approved Use Permit No. UP2015-007 to add a Type 41 Alcohol Beverage Control (ABC) license at an existing eating and drinking establishment (Xanadu Café). No other changes to the existing operation are proposed.
3. The subject property located within the Commercial General (CG) 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 November 21, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 under Class 1 (Existing Facilities) of the Guidelines of the California Environmental Quality Act.
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves the addition of the Type 41 ABC License to the existing eating and drinking establishment with no other alterations or changes.
3. A Mitigated Negative Declaration (SCH No. No. 2011041038) was prepared for the development of the shopping center in accordance with the implementing guidelines of

the California Environmental Quality Act (CEQA) and approved by the City Council on August 9, 2011.

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 26 (RD 26). 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 26 is higher than adjacent Reporting District 25 and the City overall.
 2. The Part 1 Crime related to the property was for burglary in an adjacent suite. The Part II Crime was related to one arrest in the parking structure of a transient. None of the crimes or calls for service were due to the business practice of the applicant or related to alcohol.
 3. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the addition of the alcoholic beverage license. The operation of the establishment includes the approved floor plan with no separate bar counter or area and a closing hour of 10:00 p.m.
- 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 26 is higher than RD 41 but lower than adjacent Reporting Districts 25, 28 and the City overall. RD 41 is expected to be lower which a greater number of residential properties compared to commercial properties. The Police Department has reviewed the proposal and has no objection.

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2. Year to date, ten calls for service representing less than one percent of all calls for service in the Reporting District have been reported at the subject property. All of the calls for service are not specifically related to the existing café or alcohol.
- 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 eating and drinking establishment is developed within Mariners Pointe Shopping Center along West Coast Highway which is consistent with the General Plan designation, Commercial General. The shopping center consists of retail, service, and eating and drinking establishment uses. 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. The nature of the Commercial area along Coast Highway is to provide goods and services including eating and drinking establishments designed to foster visitor and resident activity from travelers down Coast Highway and residents nearby. The nearest residential uses are behind the shopping center site along Kings Road and across Coast Highway in the gated community of Bay Shores. Eating and drinking establishments with incidental alcohol service are common in the General Commercial area on Coast Highway 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. Currently there are no other establishments that sell alcohol within the shopping center. The closest establishment is Pizzeria Mozza at 800 West Coast Highway which is a full service restaurant. There is no evidence suggesting this use has been detrimental to surrounding properties or the neighborhood.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. An eating and drinking establishment has operated at the subject property since 2015 with no operating issues or complaints.
 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 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.
4. The establishment is located within an existing shopping center which is developed with other commercial uses. Adding 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 (GC) which is intended to provide a variety of commercial uses.
2. The existing eating and drinking establishment is located within the commercial area along West Coast Highway which provides goods and services to visitors and residents alike, 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 General (CG) Zoning District which was intended to provide commercial uses. Eating and drinking establishments are permitted uses subject to the approval of a use permit.
2. The existing eating and drinking establishment operates pursuant to Use Permit No. UP2015-007 which allowed the existing café with interior and exterior seating, and hours of operation from 6:00 a.m. to 10:00 p.m. daily.
3. The use will remain an eating and drinking establishment and the addition of the alcohol beverage control license will not alter or intensify the existing use. Further, there will be no change to the floor area including the existing net public area and seats or the hours of operation.

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 addition of the alcohol license does not change the operating characteristics of the existing eating and drinking establishment.
2. The eating and drinking establishment will remain complimentary to the other uses in the Mariner's Pointe shopping center, which will include retail stores, food services, and other commercial uses. It continues to contribute to making the shopping center a viable commercial node for the neighborhood and visitors.
3. The eating and drinking establishment will continue to provide a convenience for residents of the neighborhood and visitors to the area with adequate parking within the parking structure on-site.

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 within the shopping center has proven to be physically suitable in terms of design, location, shape, and size to support the use. The physical characteristics of the site are not changing with the addition of the alcohol license.
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 project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The 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 visitors which is the intent of the Commercial Corridor area. 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. 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-042, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. Minor Use Permit No. UP2015-007 remains in effect for the operation of the café.

PASSED, APPROVED, AND ADOPTED THIS 21st DAY OF NOVEMBER, 2016.



Patrick J. Alford, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans including seating plan, and building elevations stamped and dated with the date of this approval.
2. This Resolution approves Minor Use Permit No. UP2016-042, amending the existing Use Permit by changing one condition to allow alcohol sales and adopts the conditions below for the alcohol service. The Zoning Administrator Resolution No. ZA2015-015 and remaining Conditions of Approval from the existing Minor Use Permit No. UP2015-007 shall remain in effect for the operation of the café.
3. Use Permit No. UP2016-042 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. 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.
6. 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.
7. 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 Xanadu Café Minor Use Permit including, but not limited to, Minor Use Permit No. UP2016-042 (PA2016-174). 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

8. 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.
9. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
10. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
11. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
12. 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.
13. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
14. Food service from the regular menu must be made available to patrons until 30 minutes prior to closing.
15. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The license 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.
16. 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.
17. Strict adherence to maximum occupancy limit is required.

18. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. 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.
19. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
20. The outdoor dining patio shall be separated from the commercial corridor with a solid decorative barrier (subject to ADA compliance) at least 26 inches high placed around the perimeter of the consumption area.
21. 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 premise exits.