



CITY OF NEWPORT BEACH

OFFICE OF THE CITY CLERK

Leilani I. Brown, MMC

March 22, 2012

The Irvine Company
Attn: Dan Miller, Vice President
550 Newport Center Dr.
Newport Beach, CA 92660

Re: Contract No. 4014

Dear Mr. Miller:

Enclosed please find your executed copy of the North Newport Center Planned Community Covenant Rendering Square Footage Non-Habitable in Block 100 and Block 600 between The Irvine Company, LLC and the City of Newport Beach.

If you have any questions or need additional information, please contact Administrative Analyst, Terresa Moritz at (949) 644-3239.

Sincerely,

Leilani I. Brown, MMC
City Clerk

Enclosure

cc: Terresa Moritz, Community Development (via email only)

NORTH NEWPORT CENTER PLANNED COMMUNITY
COVENANT RENDERING SQUARE FOOTAGE NON-HABITABLE
IN BLOCK 100 AND BLOCK 600

This Covenant Rendering Square Footage Non-Habitable in Block 100 and Block 600 (Covenant) is entered into on March 21, 2012, by and between the City of Newport Beach (City) and The Irvine Company LLC (Irvine Company).

RECITALS

A. Irvine Company is the owner of the parcels of real property collectively known as the North Newport Center Planned Community (NNCPC). The property consists of Fashion Island; Block 600; Block 800; and portions of Block 100, Block 400, Block 500, and San Joaquin Plaza.

B. The City of Newport Beach City Council (City Council) adopted the North Newport Center Planned Community Development Plan (PC Text) on December 18, 2007 (Ordinance No. 2007-20) and amended it on November 24, 2009 (Ordinance No. 2009-28) and on May 24, 2011 (Ordinance No. 2011-16). Section VI.C of the PC Text allows for transfers of development rights among NNCPC sub-areas consistent with Policy LU 6.14.2 in the City's General Plan.

C. The City Council adopted the Zoning Implementation and Public Benefit Agreement between the City and Irvine Company concerning properties located in the NNCPC (Zoning Agreement) on December 18, 2007 (Ordinance No. 2007-21). Under Section 6.1 of the Zoning Agreement, Irvine Company must demolish or render non-habitable any square footage that was transferred to a new use before Irvine Company can obtain final building approval or a certificate of occupancy for the square footage transferred to that new use. The Zoning Agreement included Fashion Island, Block 500, Block 600 and San Joaquin Plaza. Although Block 100 was not included in the Zoning Agreement, subsequent transfers of development rights approved by the City Council require development in Block 100 to be considered non-habitable.

D. On December 11, 2007, the City Council approved the transfer of 17,300 square feet (sq. ft.) from the 24 Hour Fitness in Block 600 to Block 500 (Resolution No. 2007-82). In the same action, the City Council approved transfer of 8,289 sq. ft. of miscellaneous office space in Block 600 to Block 500 and 16,447 sq. ft. from Palm Garden in Block 600 to Block 500. On January 26, 2010, the City Council approved the transfer of the 16,447 sq. ft. originating in Palm Garden from Block 500 back to Block 600 (Resolution No. 2010-15).

E. On October 26, 2010, the City Council approved the transfer of 121,114 sq. ft. of commercial office space from Block 100 to Block 600 and to San Joaquin Plaza (Resolution No. 2010-124).

F. Following Transfer 2010-1 (Resolution No. 2010-124), the remaining intensity in Block 600 was 434,736 sq. ft.

G. Irvine Company has received building permits from the City allowing the construction of an office building totaling 387,472 sq. ft. in Block 600 (650 Building).

H. Following construction of the 650 Building, 47,264 un-built sq. ft. will remain in North Newport Center and 73,850 sq. ft. will need to be rendered non-habitable in Block 100 (Block 100 entitlement was 121,114 sq. ft. prior to transfer TD2011-1. 121,114 less 47,264 unbuilt entitlement = 73,850 sq. ft.).

I. On November 8, 2011, the City Council approved the transfer of 47,264 sq. ft. from Block 600 to Block 500.

J. The 650 Building would use the 17,300 sq. ft. from the 24 Hour Fitness in Block 600; the 8,289 sq. ft. of miscellaneous office space in Block 600; the 16,447 sq. ft. from Palm Garden in Block 600.

K. Irvine Company has demolished 8,289 sq. ft. of miscellaneous office space in Block 600 and 16,447 sq. ft. from the Palm Garden building in Block 600. In addition, Irvine Company intends to render non-habitable the 17,300 sq. ft. from the 24 Hour Fitness in Block 600 and the 73,850 sq. ft. of office space in Block 100. The Zoning Agreement does not specify a method or standard for rendering square footage non-habitable.

NOW, THEREFORE, it is mutually agreed by and between the City and Irvine Company as follows:

1. Maintenance of Buildings. Irvine Company does not intend to demolish the 24 Hour Fitness in Block 600 or the existing commercial office space in Block 100. Rather, Irvine Company will render the 17,300 sq. ft. 24 Hour Fitness in Block 600 and 73,850 sq. ft. of existing commercial office space in Block 100 non-habitable and will maintain them as follows:

a. Neither Irvine Company, any tenants, nor any other third parties will occupy the office buildings.

b. Irvine Company will provide access to the buildings only for the purpose of maintenance or security.

c. Electricity in the buildings will remain activated to preserve the appearance that the buildings have not been abandoned and to provide security lighting at night;

d. Water service will continue to preserve the existing landscaping;

e. Building exteriors, landscaping and irrigation systems and parking lots will be maintained to ensure continued aesthetic compatibility with surrounding properties; and

f. Security personnel will continue to patrol building grounds.

2. Reoccupation of Square Footage. The square footage rendered non-habitable may be reoccupied when Irvine Company has demonstrated that it has rendered equivalent square footage non-habitable elsewhere in NNCPC. Irvine Company can demonstrate this by obtaining approval of a transfer of development rights consistent with Section VI.C of the PC Text and Policy LU 6.14.3 in the City's General Plan or by rendering a commensurate amount of other existing square footage within the NNCPC non-habitable. This covenant will be modified or terminated upon the approval of such a transfer.

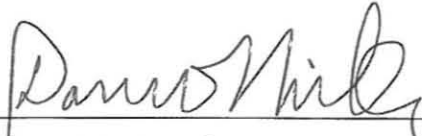
3. Tracking of Square Footage. The City and Irvine Company shall determine the best method of tracking square footage within the NNCPC rendered non-habitable and reoccupation of such square footage in the City's building permit database. The City and Irvine Company agree to track each occurrence related to square footage rendered non-habitable or reoccupation of such square footage within the NNCPC.

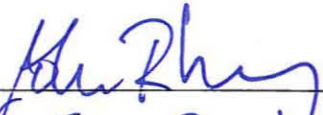
4. Future Transactions. Any future transfer of development rights within NNCPC that requires rendering square footage non-habitable will conform to Section 1, Section 2, and Section 3 of this Agreement.

(Signatures on following page)

AGREED TO AND ACCEPTED:

THE IRVINE COMPANY LLC

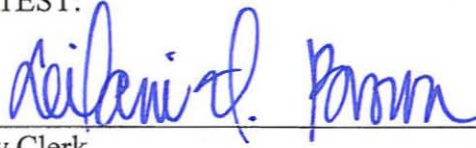
By 
Name DANIEL T. MILLER
Title SR. VICE PRESIDENT

By 
Name John Rowberry
Title Vice President

CITY OF NEWPORT BEACH

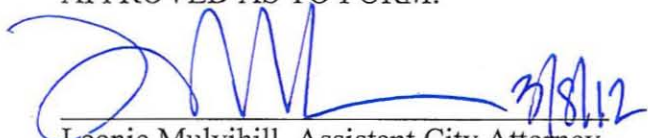
By 
Kimberly Brandt, AICP
Community Development Director

ATTEST:


City Clerk



APPROVED AS TO FORM:

 3/8/12
Leonie Mulvihill, Assistant City Attorney