



PLANNING COMMISSION AGENDA

Tuesday, November 9, 2021

Planning Commission Hearings 6:30 p.m.

Melanie Schlotterbeck, Chair

Sara Barnes-Ramos, Commission Member

Dan Phu, Commission Member

Gary Brattain, Vice Chair

Amit Chandel, Commission Member

This agenda contains a brief general description of each item the Commission will consider. The Planning Division has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. Contact the Planning Division at (714) 990-7674 or view the Agenda and related materials on the City's website at www.cityofbrea.net.

Procedures for Addressing the Commission Pursuant to Government Code Section 54953(e), members of the Planning Commission may participate in this meeting via teleconference. Members of the public may observe the meeting via teleconference and may offer comments in real-time, as follows:

- To provide comments in person, the Council Chambers will be open to members of the public.
- Written comments may be sent to the Planning Division at planning@cityofbrea.net no later than 4:00 p.m. on **Tuesday, November 9, 2021**. Any comments received via email will be summarized aloud into the record at the meeting.
- To provide comments by teleconference (Zoom), members of the public must contact City Staff at (714) 990-7674 or planning@cityofbrea.net no later than 4:00 p.m. on **Tuesday, November 9, 2021** to obtain the Zoom Meeting ID number and password. Teleconference participants will be muted until recognized at the appropriate time by the Commission.

Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division at (714) 990-7674. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

Important Notice

Your attendance at this public meeting may result in the recording and broadcast of your image and/or voice.

ALL PLANNING COMMISSION DECISIONS MAY BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS OF THE MEETING. PLEASE CONTACT THE CITY CLERK AT (714) 990-7756 FOR FURTHER INFORMATION ABOUT FILING AN APPEAL OR OBTAINING AN APPEAL APPLICATION.

PLANNING COMMISSION PUBLIC HEARINGS

6:30 p.m. - Council Chambers, Plaza Level

1. **CALL TO ORDER / ROLL CALL - COMMISSION**
2. **INVOCATION - Pastor John Reeve - The Cause Community Church**
3. **PLEDGE OF ALLEGIANCE**
4. **MATTERS FROM THE AUDIENCE**

*Written comments may be sent to the Planning Division at planning@cityofbrea.net no later than 4:00 p.m. on **Tuesday, November 9, 2021**. Any comments received via email will be summarized aloud into the record at the meeting. To provide comments by teleconference, members of the public must contact City Staff at (714) 990-7674 or planning@cityofbrea.net no later than 12:00 p.m. on **Tuesday, November 9, 2021** to obtain the Zoom Meeting ID number and password. Teleconference participants will be muted until recognized at the appropriate time by the Commission.*

PUBLIC HEARINGS *This portion of the meeting is for matters that legally require an opportunity for public input. Audience participation is encouraged and is limited to 3 minutes per speaker.*

CONTINUED PUBLIC HEARINGS

5. A request by the applicant to continue: General Plan Amendment No. 2021-04, Zone Change No. 2021-02, Precise Development No. 2021-03, and Conditional Use Permit Nos. 2021-17 and 2021-18. City staff recommends that the Planning Commission continue this item to the next regularly scheduled meeting on December 14, 2021.

NEW BUSINESS

6. Conditional Use Permit No. 2021-09 to allow a studio focused on group training within an approximately 4,100 square-foot tenant space, located at 910 East Birch Street, Suite 250, in the Major Shopping Center (C-C) Zone.
7. Zoning Ordinance Text Amendment No. 2021-02 (ZOTA 2021-02) to amend Title 20 of the Brea City Code regulating the PD(Precise Development) Zone within the City Of Brea.

ADMINISTRATIVE ITEMS - *This agenda category is for Commission consideration of a wide variety of topics. Public comments regarding items in this section should be presented during "Matters from the Audience."*

8. **COMMITTEE REPORTS**
9. **INFORMATIONAL / PROJECT UPDATES**
10. **ADJOURNMENT**

City of Brea

PLANNING COMMISSION COMMUNICATION

TO: Honorable Chair and Planning Commission

DATE: 11/09/2021

SUBJECT: A request by the applicant to continue: General Plan Amendment No. 2021-04, Zone Change No. 2021-02, Precise Development No. 2021-03, and Conditional Use Permit Nos. 2021-17 and 2021-18.

BACKGROUND/DISCUSSION

BACKGROUND

On October 26, 2021, the Planning Commission held a public hearing on the subject item. At this meeting, the item was continued to the November 9, 2021 Planning Commission meeting.

REQUEST

The Applicant, BOSCO Realty Advisors, has requested that this item be continued. City staff recommends that the Planning Commission continue this item to the next regularly scheduled meeting on December 14, 2021.

RESPECTFULLY SUBMITTED

Jason Killebrew, City Planner

Prepared by: Juan Arauz, Senior Planner

Attachments

A. Brea Plaza Memorandum

MEMORANDUM

TO: Honorable Chair and Planning Commission

FROM: Jason Killebrew, City Planner

DATE: November 9, 2021

SUBJECT: A REQUEST BY THE APPLICANT TO CONTINUE: GENERAL PLAN AMENDMENT NO. 2021-04, ZONE CHANGE NO. 2021-02, PRECISE DEVELOPMENT NO. 2021-03, AND CONDITIONAL USE PERMIT NOS. 2021-17 and 2021-18.

BACKGROUND

On October 26, 2021, the Planning Commission held a public hearing on the subject item. At this meeting, the item was continued to the November 9, 2021 Planning Commission meeting.

REQUEST

The Applicant, BOSCO Realty Advisors, has requested that this item be continued. City staff recommends that the Planning Commission continue this item to the next regularly scheduled meeting on December 14, 2021.

END

City of Brea

PLANNING COMMISSION COMMUNICATION

TO: Honorable Chair and Planning Commission

DATE: 11/09/2021

SUBJECT: Conditional Use Permit No. 2021-09 To Allow A Studio Focused on group training within an approximately 4,100 square-foot tenant space, located at 910 East Birch Street, Suite 250, in the Major Shopping Center (C-C) Zone.

EXECUTIVE SUMMARY

The Applicant, Joshua Fernandez, is requesting a Conditional Use Permit (CUP No. 2021-09) to allow a studio within an approximately 4,100 square foot tenant space, at 910 East Birch Street, Suite 250, in the Major Shopping Center (C-C) zone. The studio proposes to focus on group training classes with a single instructor. The Applicant's request herein may be referred to as the "Project".

RECOMMENDATION

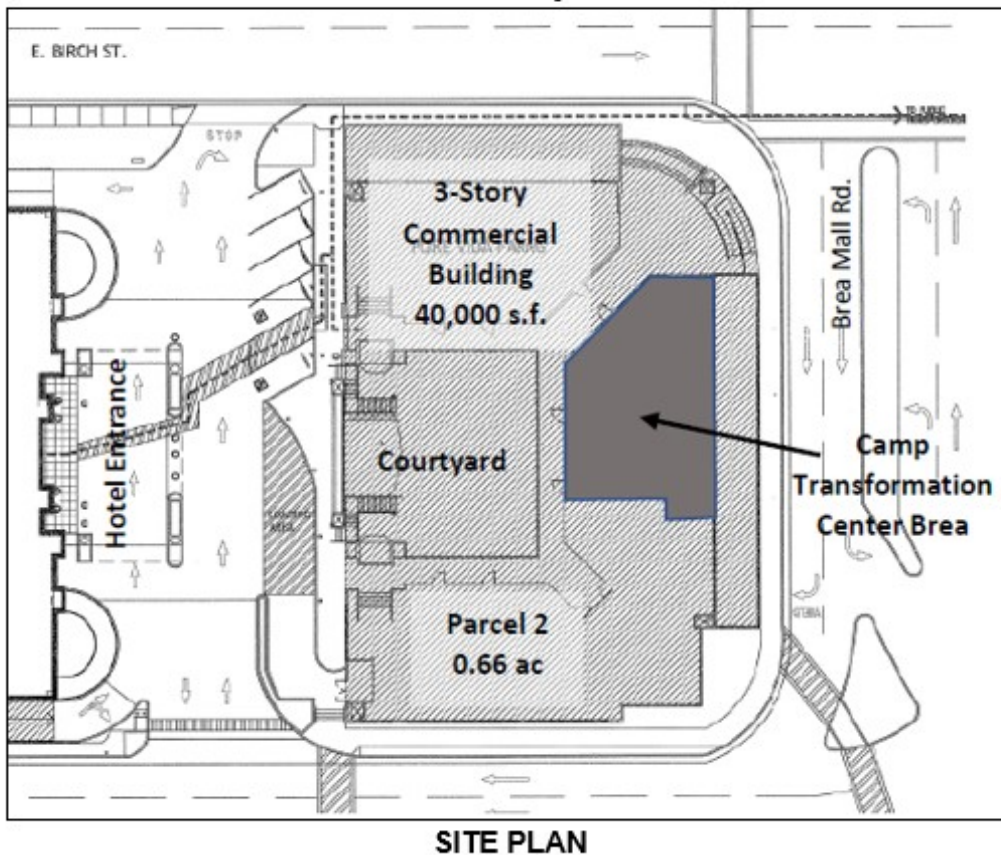
Staff recommends that the Planning Commission take the following actions:

1. Find the Project exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Class 1, Existing Facilities) and;
2. Approve CUP No. 2021-09 to allow a studio within an approximately 4,100 square foot tenant space, at 910 East Birch Street, Suite 250, based on the findings and conclusions in the attached resolution (Attachment A) and subject to the recommended conditions of approval (Attachment B).

BACKGROUND/DISCUSSION

The Project site is located within the Embassy Retail Court and is zoned C-C. The C-C zone is intended to provide *for the development of large modern shopping center facilities to serve the community*, where a wide variety of retail stores and restaurants are permitted. The Project site, which was previously occupied by office uses, is on the east side of the second floor of the existing three-story Embassy Retail Court building and is located at the southwest corner of Birch Street and Brea Mall Road. Exhibit 1 shows the location of the Project site and tenant suite.

Exhibit 1 – Project Site



On June 21, 1988, the City Council adopted Resolution No. 846 (Attachment C) approving Development Agreement (DA) No. 88-2 to allow for the construction of the Embassy Suites Hotel and Embassy Retail Court. Under the terms of the DA, the retail court was designed for commercial retail and service uses. To help achieve that goal, administrative and professional office uses were permitted but were initially limited to 15% of the building.

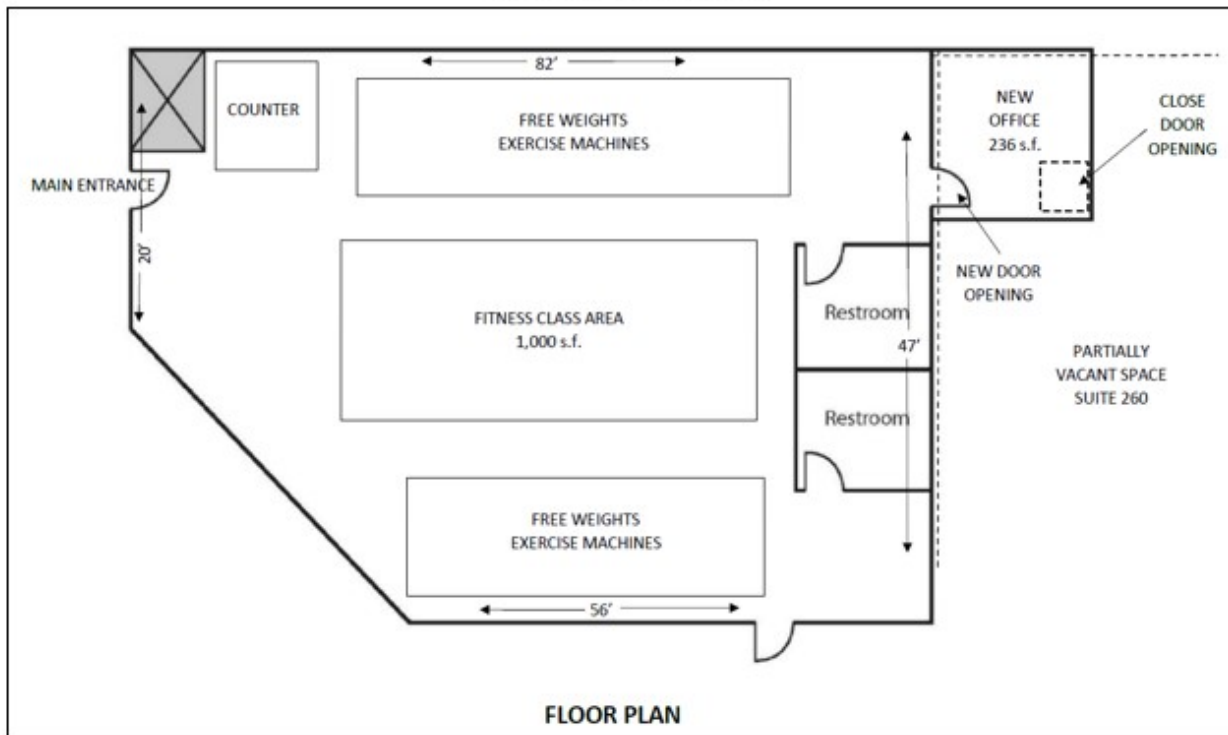
On July 28, 1992, the Planning Commission adopted Resolution No. 92-46 (Attachment D) approving an amendment to DA No. 88-2 to increase the maximum allowed percentage of administrative and professional office from 15% to 33%, and to allow medical uses subject to a CUP.

On January 28, 2020, the Planning Commission adopted Resolution No. 20-01 (Attachment E) approving a subsequent amendment to the DA deleting the 33% limitation for administrative and professional office, while specifying that uses not listed in the DA may be permitted subject to Planning Commission approval of a CUP.

PROJECT DESCRIPTION

The Applicant proposes to establish a studio for instructional fitness training within an existing 4,100 square foot commercial suite. The business proposes to offer instructor lead fitness services including high-intensity fitness training, along with health and wellness counseling with certified trainers. An area of 1,000 square feet would be designated for group training, with the remainder of the suite reserved for free weights and exercise machines, restrooms, and a new office. Exhibit 2 below outlines the proposed floor plan. Proposed hours of operation would be limited to 5:00-9:00 A.M. and 5:00-8:00 P.M., Monday to Friday, 7:00-9:00 A.M. on Saturdays, closed on Sundays.

Exhibit 2 – Floor Plan



DISCUSSION

Conditional Use Permit

Uses at the Project site are governed by Section 20.232 (C-C Zone) of the Brea City Code (BCC), and by the DA approved for the site. Section 20.00.070 of the BCC defines studios as *facilities, typically accommodating one group of students at a time, in no more than one instructional space for individual and group instruction and training*. Pursuant to DA No. 88-2, studios are permitted subject to Planning Commission approval of a CUP. A CUP is *intended for those land uses which require special consideration in a particular zone or in the city as a whole*. The Embassy Suites Retail Court is comprised of commercial uses including personal services, retail, and general offices. Uses at the site, including the Embassy Suites Hotel, have shared use of a subterranean parking garage with 417 parking spaces. The proposed hours of operation would be limited to the early morning and evening hours on weekdays, and early morning hours on Saturdays when most businesses at the site are closed (Condition “E”). In addition, all fitness activities would be conditioned to occur indoors (Condition “F”).

The proposed use would provide new fitness opportunities and wellness programs that would benefit area residents and those working in the City. This facility would provide a variation of fitness training from those found in larger health spas and gyms. The size of training groups would be smaller and would not exceed 20 members plus one instructor. The studio would offer memberships strictly for group training at designated times, therefore open use of the gym is not proposed. The studio would be compatible with other retail and office uses in the building and, with the proposed conditions of approval, no impacts from the proposed use are expected. Staff has incorporated the following conditions of approval to minimize potential impacts that may result from the business, including:

- Condition No. c. Group instructional space shall not exceed 1000 sq. ft.

- Condition No. d. There shall be a maximum of 20 members (excluding trainers) for each scheduled class.
- Condition No. e. Hours of operation shall be restricted to 5:00 a.m.-9:00 a.m. and 5:00 a.m.-8:00 p.m., Monday to Friday, and 7:00 a.m.-9:00 a.m. on Saturdays; closed on Sundays.
- Condition No. f. The operation shall be restricted to within the existing tenant suite. No outside use of the premises shall be permitted.

Parking

Pursuant to Section 20.08.040 the BCC, the proposed studio requires one parking space for every 35 square feet of instruction area, and one space for every 250 square feet of office area. As shown in the table below, when considering all uses at the site, including the Embassy Suites hotel, the site with the proposed Project requires a total of 407 parking spaces, and 417 are provided.

Table 1 – Parking Summary

BUSINESS	ADDRESS/ SUITE NO.	FLOOR AREA (Sq. Ft.)	TYPE OF USE	PARKING REQUIREMENT (space per s.f.)	TOTAL NO. OF SPACES
Embassy Suites Hotel	900 E. Birch St.	228 rooms	Hotel	1/room	228
EMBASSY RETAIL COURT 910 E. BIRCH ST.					
Alexander Salon	100	10,693	Salon	1/250	42.7
Hotel Office	100B	3,092	Storage	1/1,000	3
Leiner Inc.	200	1,144	Retail	1/200	5.7
Golftec	225	2,426	Retail	1/200	12.1
Camp Transformation	250	4,119	Fitness Center	1/35 instr. 1/250 office	28.5 0.9
Vacant	260	2,180	----	1/250	8.7
XL Learning (occupies a portion of this suite)		500	Tutoring	1/35 instr.	14.2
Pura Vida	280	2,497	Office	1/250	9.9
Vacant	300	6,500	---	1/250	26
Skin Perfect	350	4,360	Salon	1/250	17.4
Vacant	380	2,497	----	1/250	9.9
TOTAL NO. OF REQUIRED SPACES					407
NUMBER OF EXISTING ON-SITE SPACES					417

In addition to complying with the City's parking requirements, the Applicant submitted a parking survey of two similar studios to provide parking projections and justify anticipated parking demand for the proposed facility. The survey included parking counts at similar 4,000 square-foot studios, with similar operating hours, in the cities of Long Beach (Crossfit) and Cypress (Camp Transformation). The survey indicated that during morning and evening peak hours while classes were in session, parking counts ranged from 5 to 16 customer vehicles during the morning peak times, and 11 to 22 customer vehicles during the evening peak times, including the overlap between sessions. The survey counts show that the parking demand for the proposed studio could be satisfied with less than the 30 parking spaces required by the BCC.

The Applicant also submitted a separate parking analysis of the existing 417-space Embassy Suites parking structure to evaluate the occupancy rates between 9:00 A.M. to 5:30 P.M. The analysis concluded that approximately 40% of the stalls were utilized throughout the day and that with the 20-space demand generated by the proposed studio, parking in the

garage would not be impacted. Staff has reviewed the analysis and supports the findings that any parking generated by the use can be accommodated within the existing parking structure.

PUBLIC NOTICE AND COMMENTS

The project was noticed in accordance with the City's public noticing requirements, which involved mailed notices within 500 feet of the project site and publication in the local paper (Attachment G). As of the writing of this report, staff has not received any public comment.

ENVIRONMENTAL ASSESSMENT

The project has been assessed in accordance with the CEQA guidelines, and the environmental regulations of the City. The Project qualifies for a Class 1 Categorical Exemption (Existing Facilities) in accordance with the requirements of Section 15301 of the State CEQA guidelines. This exemption is applicable to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, involving negligible or no expansion of existing or former use. The proposed Project involves occupying and leasing of an existing commercial retail suite for a new studio.

CONCLUSION

The Project would conform with all the requirements of the General Plan and the provisions of the BCC. The proposed Project would not have an adverse effect on the public, health, safety, or general welfare. Therefore, staff recommends approval of the Project.

RESPECTFULLY SUBMITTED

Jason Killebrew, City Planner

Prepared by: Juan Arauz, Senior Planner

Attachments

- A. Draft Resolution No. 2021-XXX
 - B. Draft Conditions of Approval
 - C. CC Resolution No. 846 (Development Agreement No. 88-2)
 - D. PC Resolution No. 92-46 (Amendment to Development Agreement)
 - E. PC Resolution No. 20-01 (Amendment to Development Agreement)
 - F. Project Plans
 - G. Public Hearing Notice
-

RESOLUTION NO. PC 2021-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BREA APPROVING CONDITIONAL USE PERMIT NO. 2021-09 TO ALLOW A STUDIO IN AN EXISTING COMMERCIAL SUITE LOCATED AT 910 E. BIRCH STREET, IN THE MAJOR SHOPPING CENTER (C-C) ZONE.

A. RECITALS:

(i) The Planning Commission of the City of Brea has heretofore held a duly noticed public hearing, as required by law, on Conditional Use Permit No. 2021-09 (CUP No. 2021-09).

(ii) The subject property is located at 910 East Birch Street and further legally described as Assessor Parcel Nos. 319-101-45 and 319-101-46, as shown in the latest records of the County of Orange Assessor's Office.

(iii) The Project applicant is Joshua Fernandez, 648 Terra Drive, Corona, CA 92379.

(iv) The property is zoned C-C Major Shopping Center and designated as Regional Commercial in the General Plan land use designation.

(v) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION:

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Brea, as follows:

1. In all respects as set forth in Recitals, Part A, of this Resolution.
2. The Project identified above in this Resolution has been assessed in accordance with the California Environmental Quality Act (CEQA) Guidelines, and the environmental regulations of the City. The Project qualifies for a Class 1 Categorical Exemption (Existing Facilities) in accordance with the requirements of Section 15301 of

the CEQA Guidelines. This exemption is applicable to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, involving negligible or no expansion of existing or former use. The Project involves establishing a new studio within an existing commercial retail suite which is considered a minor alteration of an existing private facility under a Class 1, Categorical Exemption. Therefore, the Planning Commission finds the Project exempt from the environmental review requirements of CEQA.

3. The Planning Commission further finds in consideration of Conditional Use Permit No. 21-09 (CUP No. 21-09) as follows:

a. Finding: That the use for at the location set forth in the application is properly one for which a CUP is authorized by this title.

Fact: The Project site is located within the C-C Major Shopping Center Zone and has a general plan land use designation of C-R (Regional Commercial). Pursuant to Section 20.232.020 of the Brea City Code, and the Development Agreement for the Brea Hotel (Embassy Suites), fitness facilities offering group instruction and training are permitted uses subject to the review and approval of a CUP. The studio will provide group training within a 1,000 square foot portion of the facility.

b. Finding: The project, with conditions as imposed, is desirable for the development of the community, in harmony with the various elements or objectives of the General Plan, and not detrimental to existing uses or uses permitted in the zone.

Fact: The Project is located within an existing regional shopping center that offers various commercial uses. The proposed fitness use will provide adequate parking and will not adversely impact existing businesses in the commercial center. Furthermore, the use of the site is supported by General Plan Policy CD-1.11 in that it maintains a mixture of business and retail uses within the community.

c. Finding: The site is adequate in size and shape to accommodate the proposed development and to accommodate the proposed use.

Fact: The Project will be located within an existing tenant space located in the C-C Major Shopping Center Zone where studios for health fitness are permitted subject to approval of a CUP. No expansion to the existing space is proposed, and the existing parking will accommodate the proposed operation of the studio use and existing uses.

d. Finding: The proposed site relates to streets and highways which are properly designated and improved to carry the type of quantity of traffic generated.

Fact: Primary vehicular access to the site will continue to be provided from Birch Street, with additional access points on Brea Mall street. The Project is not anticipated to result in any traffic impacts as the proposed use will occupy an existing commercial suite. The street system has been designed to carry the quantity of traffic to the designated parking areas and structures.

e. Finding: That the conditions stated in the permit, the use will not adversely affect the public, health, safety, or general welfare.

Fact: The Project will allow for group instruction and fitness training within an existing commercial tenant space, and will not impact existing retail and office uses within the area. All group instruction will occur indoors and be restricted to a specific area within the tenant space. With conditions, the proposed operation will not be harmful to the public health, safety, and welfare of the City.

4. Conditional Use Permit No. 21-09 (CUP No. 2021-09) is hereby approved, subject to the conditions found in Attachment A of this resolution.

5. The Secretary of this Commission shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED this 9th day of November 2021.

Chairman, Planning Commission

I, Jason Killebrew, Secretary to the Planning Commission of the City of Brea, do hereby certify that the foregoing Resolution was **approved** at a regular meeting of the Planning Commission of the City of Brea held on the 9th day of November 2021, by the following votes:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ATTEST: _____
Secretary, Planning Commission

ATTACHMENT A

CONDITIONAL USE PERMIT (CUP) NO. 2021-09

DRAFT CONDITIONS OF APPROVAL

Conditional Use Permit No. 2021-09 (CUP No. 21-09) is hereby approved, subject to conditions as set forth herein:

- a. Development and business operations shall occur in substantial compliance with the plans submitted to the Planning Commission, which includes site and floor plans on file in the Planning Division, the conditions contained herein and all applicable Federal, State and local Regulations. The City Planner may approve any minor changes to the approved plans.
- b. Operations shall occur in substantial conformance with the plans and project description submitted to the Planning Commission, on-file in the Planning Division, the conditions contained herein, and all applicable Federal, State and City regulations.
- c. Group instructional space shall not exceed 1,000 sq. ft. of the total leasable floor area.
- d. There shall be a maximum of 20 members (excluding trainer) for each scheduled class.
- e. The business operations shall comply with the following hours of operation:
 - 1. Monday thru Friday 5:00 a.m. to 9:00 a.m., 5:00 p.m. to 8:00 p.m.
 - 2. Saturday 7:00 a.m. to 9:00 a.m.
 - 3. Sunday Closed
- f. The business operation shall be restricted within the existing tenant suite. No outside use of the premises shall be permitted.
- g. All proposed signage shall conform with the Brea City Code and applicable Sign Program for the Embassy Retail Court.
- h. Any permit is subject to expiration and revocation as provided in Chapter 20.412.020, and said provisions are specifically made a part hereof without negating the applicability of any other provision of this file or of any other ordinance.
- i. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold the City, its elected officials, officers, contractors serving as City officers, agents, and employees ("Indemnitees") free and harmless from: (i) any and all claims, liabilities and losses whatsoever occurring or resulting to any and all persons, firms, entities, or corporations furnishing or supplying work, services,

ATTACHMENT B

materials, or supplies in connection with, or related to, the performance of work or the exercise of rights authorized by approval of amendment to Conditional Use Permit No. 2021-09 (CUP No. 21-09); and (ii) any and all claims, lawsuits, liabilities, and/or the granting or exercise of the rights authorized by said approval; and (iii) from any and all claims, liabilities and losses occurring or resulting to any person, firm, entity, corporation for property damage, personal injury, or death, arising out of or related to the approval of, or exercise of rights granted by, this permit. Applicant's obligation to indemnify, defend and hold the Indemnitees free and harmless as required hereinabove shall include, but is not limited to, paying all fees and costs incurred by legal counsel of the Indemnatee's choice in representing the Indemnitees in connection with any such claims, losses, lawsuits, or actions, and any award of damages, judgments, verdicts, court costs or attorney's fees in any such lawsuit or action.

ORDINANCE NO. 846

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF BREA
APPROVING THAT DOCUMENT ENTITLED "DEVELOPMENT
AGREEMENT NO. 88-2 " AND AUTHORIZING THE MAYOR AND
CITY CLERK TO EXECUTE THE SAME ON BEHALF OF THE
CITY OF BREA**

A. Recitals:

(i) California Government Code Section 65864 now provides as follows:

"The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other developments to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance to the applicant for a development project that, upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

(ii) California Government Code Section 65865 provides in pertinent part as follows:

"Any city . . . , may enter into a development agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article"

(iii) California Government Code Section 65865.2 provides as follows:

"A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provision for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement"

(iv) Attached to this Ordinance, marked Exhibit "A" and incorporated herein by reference, is a proposed Development Agreement (D.A. 88-2). The property in question is located at 900 East Birch Street. Hereinafter in this Ordinance, that agreement attached hereto as Exhibit "A" is referred to as "the Development Agreement."

(v) The property which is the subject of the Development Agreement and this Ordinance now is zoned CC/PD. The proposed developer of the property and the City desire to provide through the attached Development Agreement specific development options and controls on the site, which will provide for maximum efficient utilization of the site in accordance with sound planning principles, all in accordance with the above-referenced provisions of law and the other provisions of Article 2.5 of Chapter 4 of Title 7 of the California Government Code.

B. Ordinance.

NOW, THEREFORE, it hereby is found, determined and ordained by the Council of the City of Brea as follows:

1. This Council hereby certifies that the environmental effects of this project are similar enough to the environmental effects identified by Master Environmental Impact Report No. 84-1 and addendum related thereto and, further, this Council hereby certifies that Master Environmental Impact Report No. 84-1 was completed in compliance with the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, and, further, that this Council has reviewed and considered the information contained in said Master Environmental Impact Report No. 184-1.

2. This Council hereby finds that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental impact thereof as identified in said Master Environmental Impact Report No. 84-1.

3. This Council specifically finds that the proposed Development Agreement is in conformity with the General Plan of the City of Brea, as amended, that the subject property is suitable for the use permitted in the proposed Development Agreement in terms of access, size of parcel and relationship to similar or related uses and that the proposed Development Agreement is not detrimental to the use of land in any adjacent zone.

4. This City Council hereby approves the Development Agreement.

5. This Council hereby authorizes and directs the Mayor and the City Clerk to execute the Development Agreement on behalf of the City of Brea forthwith upon this Ordinance becoming effective.

6. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published in the manner required by law.

APPROVED AND ADOPTED THIS 21st DAY OF June, 1988.

Norma Rhine - Hicks
Mayor

I, DONNA M. RHINE, Clerk of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at a ~~special~~ meeting of the City Council of the City of Brea, held on the 14th day of June, 1988, and was finally passed at a regular meeting of the City Council of the City of Brea on the 21st day of June, 1988, by the following vote:

AYES: COUNCIL MEMBERS: Blamer, Nelson, Sutton, Leyton, and Hicks

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Donna M. Rhine
City Clerk of the City of Brea

89-274649

ATTACHMENT C C 88-18

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk, City of Brea
Number One Civic Center Circle
Brea, California 92621

EXEMPT
C4

ORIGINAL
RETURN TO OFFICE OF
THE CITY CLERK

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

4:00

PM MAY 23 1989

Lee A. Branch Recorder

DEVELOPMENT AGREEMENT NO. 88-2

By and Between

CITY OF BREA

and

BREA HOTEL JOINT VENTURE

Free recording requested per CA Gov't Code
Section No. 6103.

Donna M. Rhine
Donna M. Rhine, City Clerk
City of Brea

89-274649

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DEVELOPMENT AGREEMENT
CONCERNING THE BREA HOTEL
IN THE CITY OF BREA,
ORANGE COUNTY, CALIFORNIA

89-274649

THIS AGREEMENT is made and entered into as of the thirty-first (31st) day following final adoption of the ordinance approving it (hereinafter the "Effective Date") by and between the CITY OF BREA, a municipal corporation ("City" hereinafter), and Brea Hotel Joint Venture, a California Limited Partnership ("Developer" hereinafter).
General Partnership

POK
[Signature]
[Signature]

✓ THE SUBJECT PROPERTY is owned by The Brea Foundation, a non-profit corporation.

W I T N E S S E T H:

A. Recitals.

(i) California Government Code Section 65864 provides as follows:

"The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public

planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

(ii) California Government Code Section 65865 provides in pertinent part as follows:

"Any city,. . .may enter into a development agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article. . ."

(iii) California Government Code Section 65865.2 provides as follows:

"A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time."

(iv) Developer has an equitable interest in and to that real property located entirely within City, generally located at 900 E. Birch St., which property is legally described in Exhibit "A" attached hereto. The area described in Exhibit "A" together with other areas depicted on Sheet 3 of the Specifications referred to in paragraph 1 hereof is referred to as "the site."

(v) The Site is zoned C-C/P.D.

(vi) Developer and the City desire to provide through this development agreement different development controls on the site than the ones that would ordinarily apply in the C-C/P.D. Zone in order to provide for maximum efficient utilization of the Site in accordance with sound planning principles.

(vii) This Agreement is entered into pursuant to the provisions of Article 2.5 (commencing with Section 65864) of Chapter 4, Title 7 of the California Government Code.

B. Agreement:

NOW, THEREFORE, the parties hereto agree as follows:

1. Development Agreement to Supersede Conflicting Zoning; Term. The parties hereby agree that the zoning map designation for the Site now is C-C/P.D. (Major Shopping Center/Precise Development Zone). The development of the Site shall be subject to the specific terms and provisions hereof which shall supersede conflicting standards and requirements of the C-C/P.D. Zone so long as this Development Agreement is in full force and effect. The duration of this Development Agreement shall be two (2) years following the Effective Date. Upon the expiration of said period, if Developer has not then commenced construction work on the Site or any portion or portions thereof pursuant to a building permit or permits issued by City, that portion of the Site upon which construction work has not then been commenced shall then be deemed to be zoned C-C/P.D., and the development of the Site then and thereafter shall be governed accordingly by the then current provisions of the City's Zoning Ordinance as the C-C/P.D. zoning or the then zoning category succeeding thereto. As to that portion of the Site on which construction work has been

commenced prior to the expiration of said two (2) year period, the provisions of this Development Agreement shall continue to apply during the entire course of such construction work and shall apply to the use and operation of the improvements on such portion of the Site after completion of construction. For the foregoing purpose, construction work shall be deemed to have commenced when footings and foundations are poured pursuant to a building or foundation permit issued by City.

2. Development Controls; Amendments. The Site shall be developed in accordance with (i) the plans and specifications entitled "Brea Hotel" (which plans and specifications consist of a cover sheet and Figures 1 through 11F, inclusive, are date stamped "Received 5-18-88 Planning Division," and are hereinafter referred to as the "Specifications"), (ii) the development standards hereinafter set forth, and (iii) those requirements of the C-C/P.D. Zone not in conflict with the foregoing. City's Development Services Director shall review and approve any and all proposed structures for substantial consistency with the Specifications and the standards set forth herein.

The Developer shall obtain legal possession of the entirety of the site prior to the issuance of any building permit for any improvements provided for herein.

The Alternate Site Plan as indicated on Figure 3a shall only be implemented in the event that access to the site from the adjacent Mall Loop Road cannot be secured. Final design of this site plan shall be subject to the review and approval of the Development Services Director.

3. Development Standards. The following development standards shall govern the development of the site during the term hereof, subject to the provisions of paragraph 1 hereinabove:

a. Lot Dimensions. As to lot dimensions, there shall be no requirements.

b. Uses. As to uses, the site shall be developed as follows:

(i) A seven story first class all-suite hotel containing a minimum of 220 and a maximum of 230 suites, a grand room, additional meeting rooms, a full service restaurant and bar with alcohol sales, bar and food service area for the exclusive use of hotel guests, and related uses, all as depicted in the plans and specifications, with on-sale alcohol as a principal permitted use.

(ii) An approximately 38,000 square foot three story retail/commercial building. Principal permitted uses and uses subject to Conditional Use Permits within the retail building shall include those uses listed in Exhibit "B". **Further, not more than fifteen percent (15%) of said building may be used for administrative/professional offices (no medical arts practitioners would be allowed).**

c. Maximum Building Heights. Maximum building heights shall be in substantial conformance to heights indicated in Figures 8, 8a, 9 and 9a of the Specifications. Sloping roofs and roof structures for the housing of elevators, stairways, skylights, clerestories, tanks, ventilating fans or similar equipment required to operate and maintain the buildings, fire or parapet walls, skylight structures, steeples, flagpoles, chimneys, wireless and television masts, water tanks, or similar structures may be erected above the maximum height permitted, subject to the review and approval of the Planning Division. No roof structure shall be allowed for purposes of providing additional floor space. The use of the roof area for outside patios, sundecks and similar uses shall be permitted, subject to the review

and approval of the Development Services Director.

d. **Setbacks.** Building locations and setbacks shall be as illustrated on figure 3 of the Specifications.

e. **Parking and Circulation.** A minimum of 450 parking spaces shall be provided in substantial conformance with figures 3, 3a, 4 and 4a of the specifications. The final parking plan shall be subject to the review and approval of the Development Services Director prior to the issuance of building permits to construct said parking areas.

Developer agrees to provide valet parking, utilizing parking space available at the Brea Marketplace facility and at the Brea Mall to the extent Mall parking may be made available to Developer, for events occurring at the project where overflow parking is deemed necessary by the City's Development Services Director. Further, Developer agrees to provide a parking covenant for parking at the Brea Marketplace site in form and content approved by City's City Manager and City Attorney.

(i) **Dimensional Criteria.**

Standard Space Size: 9 x 18 feet with a minimum 25 foot aisle width with 90 degree parking. Angeled standard size space shall be at a 65 degree angle and have a minimum perpendicular width and curb length parallel to the drive aisle in accordance with existing Zoning Ordinance requirments. The length of approximately 25 spaces located adjacent to shear walls within the parking structure may be reduced to 17'5".

Compact Space Size: 8 x 16 feet with a minimum 25 foot aisle width with 90 degree parking. Angled compact spaces shall be at a 65 degree angle and have a minimum perpendicular width and curb length parallel to the drive aisle in accordance with existing Zoning Ordinance regulations. The

total number of compact spaces shall not exceed 25% of the total parking provided.

Handicap Space Size: 14 x 18 feet single stall, 23 x 18 double stalls, the total number of such spaces to be provided in accordance with State of California handicap requirements.

All directional and safety signage shall be provided subject to the review and approval of the Development Services Director.

The Developer shall provide a hammerhead type turnaround at the bottom of the center ramp on Parking Level 1.

All parking areas including ramp and drive aisles shall maintain a minimum 7' height clearance.

f. Landscaping. Developer shall provide a detailed landscape and full coverage automatic irrigation plan for each phase of development, including the perimeter landscape area adjacent to public streets. Said landscape and irrigation plan shall be approved and installed as required by the Development Services Director and City's Maintenance Services Director prior to a Certificate of Occupancy being issued for any building(s) for which said landscaping is required. All exterior electrical equipment, transformers, etc. and other service elements shall be screened by a fence, wall or mature landscaping, or a combination thereof, as approved by the Development Services Director prior to building occupancy.

g. Signage. Project building mounted and monument signage for the hotel, restaurant and retail complex shall be installed and maintained as illustrated on Figure 11 of the Specifications.

Retail tenant signage shall conform to the following standards:

Each tenant and such tenant's sign contractor shall review these

Specifications before preparing sign drawings for submittal to the Development Services Director for approval in order to insure that tenant signage complies with the approved signage as set forth within the Specifications.

The wording of signs shall be limited to the store name only. Corporate crests, shields or insignia are acceptable, and such items shall not exceed thirty-six inches (36") in width or height. In no case shall there be installed more than one (1) primary sign per tenant storefront. Tenants occupying corner, through light or double frontage spaces shall be allowed one sign per elevation with a maximum of two (2) signs. All signs and identifying marks shall occur within the limits of the Premises between the floor line and the roof line or in the event of an awning, on the awning only. For purposes of this paragraph, "Elevations" shall include shop fronts located in the atrium or courtyard areas.

All illuminated signs shall have individual letters, fabricated metal channel letters, closed front and back, with flanged sides and exposed neon mounted on the sides of the letters, inside the flanges, reverse channel letters with neon behind, exposed neon with wall mounts or any combination of the above sign types. Illuminated plastic face sign cans will not be permitted. All illuminated signs and their installation must comply with all applicable building and electrical codes. Letters may be back-illuminated with lamps contained wholly within the depth of the letter and with maximum brightness not in excess of 100 foot lamberts. Signs shall have no moving or flashing lights and no luminous letters on back panels. No flashing signs will be permitted.

The total area of all signs of any storefront shall not exceed, in square feet, the foot frontage of the storefront multiplied by 0.750. For this

purpose:

1. The area of a sign is the area of a rectangle surrounding all of the letters of the sign. Where upper and lower case letters are used, the average height of the letters shall be used to determine the height of the rectangle.

2. Foot frontage of a storefront is the length of the facade measured along the lease line separating the premises from the adjacent store. Window signs shall only be permitted for identity graphics and for display of information related to hours of operation. Windows shall not be used for display of advertising materials.

All temporary signs including leasing and construction signs shall be subject to the review and approval of the Planning Division as to location and design.

h. Lighting. Prior to the issuance of building permits, a lighting plan including parking structure lighting shall be submitted and shall be subject to the review and approval of the Development Services Department and shall include the following:

1. All lighting in surface parking areas shall be provided at the equivalent of one foot candle of illumination at grade.

2. Exterior feature lighting shall consist of ground mounted uplights that wash the building major elevations. Accent lighting of major architectural elements will consist of building or roof mounted uplights and directional spot lights.

3. Cut-off luminaires shall be installed which will provide true 90 degree cut-off and prevent project of light above the horizontal from the lowest point of the lamp or light emitting

refractor or device.

4. All fixtures shall use a flat, clear lens, energy-efficient light source.

5. The lighting plan shall be designed to confine direct rays to the premises with no spillover of rays beyond the perimeter property line including building feature lighting.

6. The lighting plan shall utilize a time-clock or photo-sensor system.

i. Loading Docks, Receiving Areas, and Trash Enclosures. The general locations and design of the loading, receiving, and trash collection areas shall be as shown in the Specifications. At a minimum, all trash storage shall be shielded from public view. Prior to the issuance of building permits for such improvements, the final plans pertaining thereto shall be reviewed and subject to the approval of the Development Services Department as consistent with the Agreement.

j. Fire and Life Safety Items. The Developer shall comply with all fire and building code requirements of the City and the Orange County Fire Chief's Standard Requirements for new high rise buildings except as amended below:

(i) Brea City Ordinance No. 773 is amended as follows as to the Site only:

Section 9.110 High Rise Structures

DEFINITION: Any structure which, when measured in the vertical plane extends more than 55 feet from the lowest point of fire department access to the highest occupied floor.

(ii) The Developer shall create a common association through the recordation of covenants, conditions and restrictions which govern the use

and maintenance of shared building services. The C C & R's and any proposed future changes to the C C & R's shall be subject to the review and approval of the City Attorney, Fire Marshal and Development Services Director as to form and content. For purposes of construction and life safety codes, the project shall be reviewed as a single building on a single parcel.

For purposes of building code setback requirements, the Mall ring road and combined access roads, shall be considered public ways.

k. Architecture and Building Design. Architectural control criteria are intended to establish a level of quality and design continuity for all new buildings to be constructed by the Developer. The palette for candidate building materials and colors is illustrated on the color and materials board approved and on file with the City Planner. The building elevations delineated in Figures 8, 8a, 9, 9a, 10, 10a, b, c, d and e of the Specifications illustrate the overall general character of development anticipated.

The hotel/retail complex is bounded by the Mall entrance road to the east and a shared drive with the Civic Center at the west. A porte-cochere drive shall serve as the circulation link and shared entry between the hotel and retail components. The hotel shall consist of various distributions of balconized suites fronting all major elevations. The retail building shall consist of shop fronts on all elevations with courtyard oriented shop entries.

The hotel shall be a suites type hotel with a covered atrium. The significant architectural elements shall consist of pyramidal towers which anchor each elevation and an accented trellis or awning element as a highlight. The majority of the facade openings shall be a balcony expression with the exception of the ground and second level. The southwest corner tower

shall be twisted and oriented toward the elevated pool deck which adjoins the hotel and the civic center. On the east elevation, a covered metal trellis porte-cochere element shall extend onto the driveway (in similar form and construction as the east elevation major trellis element).

The predominant exterior material shall be painted exterior plaster over concrete structure. Wainscot shall be painted exterior plaster with contrasting texture, color, or break-up in combination with or in lieu of soft stone veneer. Balconies shall consist of painted metal railings with clear glass sliding doors beyond. Overhanging awning structures and metal trellis shall have painted finish in accent colors. Overhanging awnings and pyramidal caps shall be covered with a unitized panel system. The skylight over the atrium shall be painted or anodized aluminum mullions and may have clear glazing. The flat roof area shall be a gravel surfaced roofing system.

The retail center will function as a supportive entity to the hotel. The architectural expressions and palette for the retail center will coordinate and complement the hotel and adjacent developments. The retail functions shall be centered on a sunken courtyard directly opposite the hotel porte-cochere. A pyramidal tower shall anchor the southwest corner of the mall entry drive. In addition, gable elements shall signify the entrance and exit to the porte-cochere drive. Retail shop fronts shall be painted aluminum mullions with a mixture of clear and coated or colored glass. The predominant material shall be painted exterior plaster. Metal trellis elements shall be painted accent colors compatible with or the same as the hotel trellis elements. The Gable roof, pyramidal caps and awning structures be a unitized panel system over painted metal trellis. Flat roofs shall be a gravel surface built up system.

1. **Art In Public Places.** The Developer shall participate in the City's Art in Public Places Program in accordance with City policies therefor.

m. **Construction Staging** The Developer shall submit a Construction Staging Plan subject to the review and approval of the Development Services and Fire Departments. Said plan shall delineate approved construction staging and equipment areas, pedestrian walks, loading and unloading areas and methods, detour signs and related safety signage, emergency access, traffic delineation and barricades and other related items. City will consider in good faith a reasonable proposal to locate a construction trailer on City owned or leased property on reasonable terms and conditions. Said plan shall be approved prior to the issuance of building permits.

n. **Utilities, On-Site Improvements.** All on-site street, sewer, storm drain, water system and utility facilities to be constructed by Developer to service the site shall be approved by the Development Services Director prior to the issuance of any permit to construct the same. In addition, Developer shall:

(i) Construct curbs, gutters, sidewalk, paving, lights and conduit, water mains, fire hydrants, fire service activities and vaults, and related improvements on the Site and on the adjacent public property as necessary to facilitate the proposed development;

(ii) Construct sewer and storm drain improvements on the Site as necessary to serve the Site and connect to the existing public sewer and storm drain off-site in the Mall ring road;

(iii) Submit a final grading plan for each phase of development prepared and signed by a Registered Civil Engineer to the Development Services Department and obtain approval of such plan prior to the issuance of

a grading permit for such phase of development;

(iv) Submit the following to the Development Services Department and obtain approval prior to approval of each such final grading plan:

- a. A soils report prepared by a qualified Soils Engineer;
- b. A hydrology and hydraulic study prepared by a Registered Civil Engineer;
- c. Information on construction of all retaining walls and required calculations.

(v) Design all on-site drainage systems in a manner sufficient to handle a 25-year storm frequency or greater.

(vi) The Developer shall secure, in writing, the approval of MWD supporting the Orange County Feeder prior to the approval of a grading plan for the excavation of the Site.

(vii) The Developer shall secure necessary tie back easements from adjacent property owners as needed for construction activities prior to the approval of a grading plan.

o. Off-Site Improvements. Developer shall construct a raised median in Birch Street adjacent to the Site in substantial accordance as shown within the Site Plan, Figure 3. The final design of the median shall be subject to the review and approval of the Development Services Director.

4. Vesting of Development Rights.

Developer's right to develop the site shall vest on the Effective Date of this Development Agreement.

Except as expressly modified herein, all substantive and procedural requirements and provisions contained in City's ordinances, rules and regulations, including, but not limited to, its Zoning Ordinance, Ordinance

No. 425 as amended, building code, electrical code, fire code and plumbing code shall apply to the development of the site pursuant to this Development Agreement. Further, any terms or phrases contained herein for which there are definitions provided in City's said Zoning Ordinance shall be deemed to be utilized in accordance with those definitions. This Paragraph 5 shall not preclude the application to the Site of City ordinances, rules and regulations adopted after the Effective Date of this Development Agreement which must be applied to the site in order to comply with changes in federal or state laws or regulations, as provided for in Government Code Section 65869.5.

5. Recordation.

In accordance with California Government code Section 65868.5, a certified copy of this Agreement shall be recorded with the Recorder of Orange County, California, immediately upon this Agreement becoming effective.

7. General.

The parties further agree as follows:

a. Except as expressly set forth in this Agreement, no representations of any kind or character have been made to one another by any of the parties hereto or by any of the parties' agents, representatives, associates or attorneys with respect to each subject to which this Agreement relates.

b. This Agreement contains the entire agreement of the parties with respect to each subject to which it relates.

c. This Agreement can only be amended in writing, which writing must first be executed by all of the parties hereto.

d. No provision of this Agreement may be waived, except in writing, which writing must be executed by all of the parties hereto.

e. The parties hereto each agree that they shall execute and deliver to the other, upon request so to do, any and all documents reasonable and necessary to accomplish or evidence the agreements contained in or contemplated by this Agreement.

f. In the event that any party should default in one or more of its obligations provided in or contemplated by this Agreement, the defaulting party shall pay to the other all expenses incurred in connection with efforts to enforce such obligation, including reasonable attorney's fees, whether or not suit be commenced.

g. This Agreement, all other documents and agreements provided in or contemplated hereby, and all rights and obligations arising therefrom shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

h. City agrees that Developer will have opportunity to rent City Civic Cultural Center facilities on the same basis, terms and conditions that are available to the general public.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the effective date of the ordinance approving this Agreement.

CITY OF BREA

Dated:

April 13, 1989

By:

[Signature]
Mayor

DATED:

4-18-89

BY:

Donna M. Rhine
CITY CLERK

BREA HOTEL JOINT VENTURE, a
CALIFORNIA GENERAL PARTNERSHIP

BY LOWE BREA HOTEL LIMITED, a
CALIFORNIA LIMITED PARTNERSHIP

BY LOWE BREA SUITES, INC.

DATED:

April 14, 1989

BY:

Robert F. MacLeod, Jr.
Senior Vice President

DATED:

April 14, 1989

BY:

Peter DelFranco
Vice President

CAT. NO. NN00636
TO 1954 CA (9-84)

(Corporation as a Partner of a Partnership)

STATE OF CALIFORNIA
COUNTY OF ORANGE

 **TICOR TITLE INSURANCE**

} SS.

On April 14, 1989

said State, personally appeared

Robert F. MacLeod, Jr.

personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Senior Vice President, and Peter DelFranco

personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Vice President Secretary of Lowe Brea Suites, Inc.

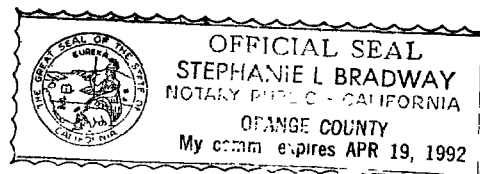
the corporation that executed the within instrument on behalf of Lowe Brea Hotel Limited

the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature

Stephanie L. Bradway



(This area for official notarial seal)

↑ STAPLE HERE ↓

EXHIBIT "A"

Legal Description

Parcel 1 of Lot Line Adjustment No. LL-14-83 recorded January 26, 1984, as
Instrument No. 037615 in the office of the Orange County Recorder.

CORPORATE ACKNOWLEDGMENT

NO 202

State of California

County of Orange

} SS

89-274649

On this the 18th day of April 19 89, before me,

Nancy B. Whitehouse

the undersigned Notary Public, personally appeared

Gene A. Leyton and Donna M. Rhine

☒ personally known to me

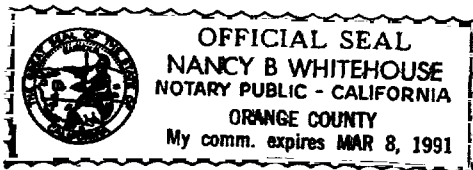
☐ proved to me on the basis of satisfactory evidence

to be the person(s) who executed the within instrument as

Mayor & City Clerk or on behalf of the corporation therein

named, and acknowledged to me that the corporation executed it

WITNESS my hand and official seal



Nancy B Whitehouse
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT

Title or Type of Document DA 88-2 w/Brea Hotel Joint Venture

Number of Pages 34

Date of Document 4-18-89

Signer(s) Other Than Named Above Rob MacLeod/Peter DelFranco

89-274649

EXHIBIT "B"

PERMITTED USES

Purpose and Intent

The intent of this Development Agreement is to encourage high-line retail uses oriented toward destination commercial uses rather than neighborhood level retail uses.

Principal Permitted Uses

1. Administrative and Professional Offices excluding medical arts practitioners
2. Specialty retail uses including clothing, leather goods, books, electronic and other hard and soft goods, food sale uses such as a deli or a bakery subject to the approval of the Development Services Director. Convenience retail uses such as franchise take-out food uses, mini-markets, cleaners, real estate store, and video shops are not included in this specialty retail category.
3. Restaurant - A maximum of one, 4,000 square foot sit-down restaurant may be located in the retail building as a principal permitted use.
4. Specialty service commercial uses such as travel agencies and other service uses oriented towards the occupants of the hotel.

Uses Subject to a Conditional Use Permit

1. Alcohol Sales; On and Off Sale
2. Sit-down restaurants in excess of 4,000 square feet
3. Any other uses not listed above

RESOLUTION NO. PC 92-46

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BREA RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF AN ORDINANCE APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT NO 88-2, AS PROVIDED FOR IN SECTION 65864 OF THE CALIFORNIA GOVERNMENT CODE, FOR REAL PROPERTY DESCRIBED HEREIN

A. Recitals.

(i) The Planning Commission of the City of Brea has heretofore held a duly noticed public hearing, as required by law, on an Amendment to Development Agreement No. DA 88-2, for property consisting of approximately 2.4 acres located at 910 E. Birch Street, within the County of Orange, City of Brea.

(ii) The subject property is shown in the latest records of the County of Orange Tax Assessors Office as APN 319-101-40, 43 and 44.

(iii) A true and correct copy of the proposed Development Agreement, as amended, is attached as exhibit "A" to this resolution.

(iv) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION. NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Brea as follows:

1. In all respects as set forth in Recitals, Part A, of this Resolution.
2. The Planning Commission hereby certifies that the environmental effects of this amendment are similar enough to the environmental effects as identified by the previously approved Master Environmental Impact Report No. 84-1, and addendum related thereto, which has been prepared in compliance with the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, and further, this Commission has

RESOLUTION NO. PC 92-46

Page two

Applicant: Lowe Development Corporation
Amendment to DA 88-2

reviewed and considered the information contained in said Master Environmental Impact Report No. 84-1 with respect to the project identified in this Resolution.

3. The Planning Commission hereby specifically finds and determines that, based upon the findings set forth below, and changes and alterations which have been incorporated into and conditioned upon the proposed project, no significant adverse environmental effects will occur and recommends the City Council of the City of Brea so find.

4. This Planning Commission hereby recommends approval to the City Council of an Ordinance adopting this Amendment to Development Agreement No. DA 88-2, attached hereto as Exhibit "A", subject to the following conditions:

- a. This amendment shall be limited to a change to Section B.3.b.ii and Exhibit B of the Development Agreement as follows:

Section B.3.b.ii, sentence 3, shall be amended to read - "Further, not more than thirty three percent (33%) of said building may be used for administrative/professional offices (Medical or Dental clinics or offices subject to Conditional Use Permit approval, as provided in Exhibit "B")."

Exhibit "B", Uses Subject to a Conditional Use Permit, shall be amended to add -
"4. Medical or Dental clinics or offices."

5. The secretary of this Commission shall (a) certify to the adoption of this resolution, and (b) forthwith transmit a copy of this resolution to the City Council of the City of Brea.

APPROVED AND ADOPTED this 28th day of July, 1992.



Chairman, Planning Commission

RESOLUTION NO. PC 92-46

Page three

Applicant: Lowe Development Corporation

Amendment to DA 88-2

I, Konradt Bartlam, Secretary to the Planning Commission of the City of Brea, do hereby certify that the foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Brea held on the 28th day of July, 1992, and was finally passed at a regular meeting of the Planning Commission of the City of Brea, held on the 28th day of July, 1992, by the following votes:


AYES: COMMISSIONERS: DAVIS, DELKESKAMP, TERRAZAS, WETTLIN

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: SWINDLE

ABSTAIN: COMMISSIONERS: NONE

ATTEST:


Secretary, Planning Commission

RESOLUTION NO. PC 20-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BREA RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF AN ORDINANCE TO MODIFY DEVELOPMENT AGREEMENT NO DA 88-2 TO DELETE THE LIMITATION REQUIREMENT (33%) OF THE ALLOWABLE AMOUNT OF ADMINISTRATIVE AND PROFESSIONAL OFFICE USE LOCATED AT EMBASSY RETAIL COURT - 910 EAST BIRCH STREET IN THE C-C (PD), REGIONAL COMMERCIAL (PRECISE DEVELOPMENT) ZONE

A. RECITALS.

(i). The Planning Commission of the City of Brea has heretofore held a duly noticed public hearing, as required by law, on a modification to Development Agreement No. DA 88-2, a request to modify Development Agreement No. DA 88-2 to delete the limitation requirement (33%) of the allowable amount of administrative and professional office at Embassy Retail Court.

(ii). The subject property is located at 910 East Birch Street, and legally described as a portion of Map Book 319, page 10, block 101, parcel 46 as shown in the latest records of the County of Orange Assessor's Office.

(iii). The project proponent is Nesbitt Partners Brea Venture Ltd., whose mailing address is located at 3250 Ocean Park Boulevard, Suite 350, Santa Monica, CA 90405.

(iv). The property is zoned C-C (PD), Regional Commercial (Precise Development) and is designated as Regional Commercial in the General Plan.

(v). A true and correct copy of the proposed Development Agreement, as amended is attached as Exhibit "A" to this resolution.

(vi). All legal prerequisites to the adoption of this Resolution have occurred.

RESOLUTION NO. PC 20-01

Page 2

Applicant: Nesbitt Partners Brea Venture, Ltd.

Modification to DA 88-2

B. RESOLUTION.

NOW, THEREFORE, BE IT FOUND, DETERMINED, AND RESOLVED, by the Planning Commission of the City of Brea, as follows:

1. In all respects as set forth in Recitals, Part A, of this Resolution.

2. The Planning Commission hereby finds that the use applied for at the location set forth in the application is authorized by Development Agreement No. DA 88-2 and Ordinance No. 927, Section 20.232 of the Brea Zoning Ordinance, as amended, and California Government Code Section 65868.

3. The Planning Commission further finds, as follows:

a. Finding: The proposed modification, within conditions as imposed, is desirable for the development of the community and further the various elements and goals of the General Plan.

Fact: This modification would allow for additional administrative and professional office use at the Embassy Retail Court. This is desirable for the continual development of the community as it helps fulfill General Plan Policy CD-2.5 – Improve existing small, commercial centers to improve access, aesthetics, and business success. Modification of the maximum office square footage would provide additional options for tenants and further success for the project.

4. The Planning Commission hereby finds and determines the project identified above in this Resolution is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) of 1970, as amended, and the Guidelines promulgated

RESOLUTION NO. PC 20-01**Page 3****Applicant: Nesbitt Partners Brea Venture, Ltd.****Modification to DA 88-2**

thereunder, pursuant to Section 15061(b)(3), and exempt from further environmental review and recommends the City Council of the City of Brea so find. .

5. This Planning Commission hereby recommends approval to the City Council of an Ordinance adopting this Modification to Development Agreement No. DA 88-2, attached hereto as Exhibit "A", subject to conditions as set forth herein:

a) The project shall occur in substantial conformance with the plans submitted to the Planning Commission and approved January 28, 2020, which includes a business description, site plan, and floor plan on file with the Planning Division, the conditions contained herein, and all applicable City regulations.

b) This modification shall be limited to a change to Section B.3.b.ii as follows:

Section B.3.b.ii, sentence 3 shall be amended to read – "Medical or Dental clinics or offices subject to Conditional Use permit approval, as provided in Exhibit "B."

c) To the fullest extent permitted by law, the applicant shall indemnify, defend and hold the City, its elected officials, officers, contractors serving as City officers, agents, and employees ("Indemnitees") free and harmless from: (i) any and all claims, liabilities and losses whatsoever occurring or resulting to any and all persons, firms, entities, or corporations furnishing or supplying work, services, materials, or supplies in connection with, or related to, the performance of work or the exercise of rights authorized by approval Conditional Use Permit No. CUP 19-04 and (ii) any and all claims, lawsuits, liabilities, and/or actions arising out of, or related to the approval of the Conditional Use Permit and Precise Development and/or the granting or exercise of the rights authorized by said approvals; and (iii) from any and all claims, liabilities and losses occurring or resulting to any person, firm, entity, corporation for property damage, personal injury, or death, arising out of or related to the approval of, or exercise of rights granted by, the Conditional Use Permit. Applicant's obligation to indemnify, defend, and hold the Indemnitees free and harmless as required hereinabove shall include, but is not limited to, paying all fees and costs incurred by legal counsel of the Indemnitees' choice in representing the Indemnitees in connection with any such claims, losses, lawsuits, or actions, and any

RESOLUTION NO. PC 20-01

Page 4

Applicant: Nesbitt Partners Brea Venture, Ltd.

Modification to DA 88-2

award of damages, judgments, verdicts, court costs or attorneys' fees in any such lawsuit or action.

6. The secretary of this Commission shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED this 28th day of January, 2020.



Chairman, Planning Commission

I, Jennifer Lilley, Secretary to the Planning Commission of the City of Brea, do hereby certify that the foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Brea held on the 28th day of January, 2020, and was finally passed at a regular meeting of the Planning Commission of the City of Brea, held on the 28th day of January, 2020, by the following votes:

AYES: COMMISSIONERS: Schlotterbeck, Brattain, Phu, Barnes-Ramos

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS: McGrade

ABSTAIN: COMMISSIONERS:

ATTEST:



Secretary, Planning Commission

DEVELOPMENT AGREEMENT
CONCERNING THE BREA HOTEL
IN THE CITY OF BREA,
ORANGE COUNTY, CALIFORNIA

ATTACHMENT 5

89-274649

THIS AGREEMENT is made and entered into as of the thirty-first (31st) day following final adoption of the ordinance approving it (hereinafter the "Effective Date") by and between the CITY OF BREA, a municipal corporation ("City" hereinafter), and Brea Hotel Joint Venture, a California ~~Limited~~ ~~Partnership~~ ("Developer" hereinafter).
General Partnership

POK
[Signature]
[Signature]

✓ THE SUBJECT PROPERTY is owned by The Brea Foundation, a non-profit corporation.

W I T N E S S E T H:

A. Recitals.

(i) California Government Code Section 65864 provides as follows:

"The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public

planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

(ii) California Government Code Section 65865 provides in pertinent part as follows:

"Any city,. . . may enter into a development agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article. . ."

(iii) California Government Code Section 65865.2 provides as follows:

"A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time."

(iv) Developer has an equitable interest in and to that real property located entirely within City, generally located at 900 E. Birch St., which property is legally described in Exhibit "A" attached hereto. The area described in Exhibit "A" together with other areas depicted on Sheet 3 of the Specifications referred to in paragraph 1 hereof is referred to as "the site."

(v) The Site is zoned C-C/P.D.

(vi) Developer and the City desire to provide through this development agreement different development controls on the site than the ones that would ordinarily apply in the C-C/P.D. Zone in order to provide for maximum efficient utilization of the Site in accordance with sound planning principles.

(vii) This Agreement is entered into pursuant to the provisions of Article 2.5 (commencing with Section 65864) of Chapter 4, Title 7 of the California Government Code.

B. Agreement:

NOW, THEREFORE, the parties hereto agree as follows:

1. Development Agreement to Supersede Conflicting Zoning; Term. The parties hereby agree that the zoning map designation for the Site now is C-C/P.D. (Major Shopping Center/Precise Development Zone). The development of the Site shall be subject to the specific terms and provisions hereof which shall supersede conflicting standards and requirements of the C-C/P.D. Zone so long as this Development Agreement is in full force and effect. The duration of this Development Agreement shall be two (2) years following the Effective Date. Upon the expiration of said period, if Developer has not then commenced construction work on the Site or any portion or portions thereof pursuant to a building permit or permits issued by City, that portion of the Site upon which construction work has not then been commenced shall then be deemed to be zoned C-C/P.D., and the development of the Site then and thereafter shall be governed accordingly by the then current provisions of the City's Zoning Ordinance as the C-C/P.D. zoning or the then zoning category succeeding thereto. As to that portion of the Site on which construction work has been

commenced prior to the expiration of said two (2) year period, the provisions of this Development Agreement shall continue to apply during the entire course of such construction work and shall apply to the use and operation of the improvements on such portion of the Site after completion of construction. For the foregoing purpose, construction work shall be deemed to have commenced when footings and foundations are poured pursuant to a building or foundation permit issued by City.

2. Development Controls; Amendments. The Site shall be developed in accordance with (i) the plans and specifications entitled "Brea Hotel" (which plans and specifications consist of a cover sheet and Figures 1 through 11F, inclusive, are date stamped "Received 5-18-88 Planning Division," and are hereinafter referred to as the "Specifications"), (ii) the development standards hereinafter set forth, and (iii) those requirements of the C-C/P.D. Zone not in conflict with the foregoing. City's Development Services Director shall review and approve any and all proposed structures for substantial consistency with the Specifications and the standards set forth herein.

The Developer shall obtain legal possession of the entirety of the site prior to the issuance of any building permit for any improvements provided for herein.

The Alternate Site Plan as indicated on Figure 3a shall only be implemented in the event that access to the site from the adjacent Mall Loop Road cannot be secured. Final design of this site plan shall be subject to the review and approval of the Development Services Director.

3. Development Standards. The following development standards shall govern the development of the site during the term hereof, subject to the provisions of paragraph 1 hereinabove:

a. Lot Dimensions. As to lot dimensions, there shall be no requirements.

b. Uses. As to uses, the site shall be developed as follows:

(i) A seven story first class all-suite hotel containing a minimum of 220 and a maximum of 230 suites, a grand room, additional meeting rooms, a full service restaurant and bar with alcohol sales, bar and food service area for the exclusive use of hotel guests, and related uses, all as depicted in the plans and specifications, with on-sale alcohol as a principal permitted use.

(ii) An approximately 38,000 square foot three story retail/commercial building. Principal permitted uses and uses subject to Conditional Use Permits within the retail building shall include those uses listed in Exhibit "B". Further, not more than fifteen percent (15%) of said building may be used for administrative/professional offices (no medical arts practitioners would be allowed).

Not more than thirty-three percent (33%) of said building may be used for administrative/professional offices (no medical arts practitioners would be allowed) (Amended, 1992).

c. Maximum Building Heights. Maximum building heights shall be in substantial conformance to heights indicated in Figures 8, 8a, 9 and 9a of the Specifications. Sloping roofs and roof structures for the housing of elevators, stairways, skylights, clerestories, tanks, ventilating fans or similar equipment required to operate and maintain the buildings, fire or parapet walls, skylight structures, steeples, flagpoles, chimneys, wireless and television masts, water tanks, or similar structures may be erected above the maximum height permitted, subject to the review and approval of the Planning Division. No roof structure shall be allowed for purposes of providing additional floor space. The use of the roof area for outside patios, sundecks and similar uses shall be permitted, subject to the review

and approval of the Development Services Director.

d. Setbacks. Building locations and setbacks shall be as illustrated on figure 3 of the Specifications.

e. Parking and Circulation. A minimum of 450 parking spaces shall be provided in substantial conformance with figures 3, 3a, 4 and 4a of the specifications. The final parking plan shall be subject to the review and approval of the Development Services Director prior to the issuance of building permits to construct said parking areas.

Developer agrees to provide valet parking, utilizing parking space available at the Brea Marketplace facility and at the Brea Mall to the extent Mall parking may be made available to Developer, for events occurring at the project where overflow parking is deemed necessary by the City's Development Services Director. Further, Developer agrees to provide a parking covenant for parking at the Brea Marketplace site in form and content approved by City's City Manager and City Attorney.

(i) Dimensional Criteria.

Standard Space Size: 9 x 18 feet with a minimum 25 foot aisle width with 90 degree parking. Angeled standard size space shall be at a 65 degree angle and have a minimum perpendicular width and curb length parallel to the drive aisle in accordance with existing Zoning Ordinance requirments. The length of approximately 25 spaces located adjacent to shear walls within the parking structure may be reduced to 17'5".

Compact Space Size: 8 x 16 feet with a minimum 25 foot aisle width with 90 degree parking. Angled compact spaces shall be at a 65 degree angle and have a minimum perpendicular width and curb length parallel to the drive aisle in accordance with existing Zoning Ordinance regulations. The

total number of compact spaces shall not exceed 25% of the total parking provided.

Handicap Space Size: 14 x 18 feet single stall, 23 x 18 double stalls, the total number of such spaces to be provided in accordance with State of California handicap requirements.

All directional and safety signage shall be provided subject to the review and approval of the Development Services Director.

The Developer shall provide a hammerhead type turnaround at the bottom of the center ramp on Parking Level 1.

All parking areas including ramp and drive aisles shall maintain a minimum 7' height clearance.

f. Landscaping. Developer shall provide a detailed landscape and full coverage automatic irrigation plan for each phase of development, including the perimeter landscape area adjacent to public streets. Said landscape and irrigation plan shall be approved and installed as required by the Development Services Director and City's Maintenance Services Director prior to a Certificate of Occupancy being issued for any building(s) for which said landscaping is required. All exterior electrical equipment, transformers, etc. and other service elements shall be screened by a fence, wall or mature landscaping, or a combination thereof, as approved by the Development Services Director prior to building occupancy.

g. Signage. Project building mounted and monument signage for the hotel, restaurant and retail complex shall be installed and maintained as illustrated on Figure 11 of the Specifications.

Retail tenant signage shall conform to the following standards:

Each tenant and such tenant's sign contractor shall review these

Specifications before preparing sign drawings for submittal to the Development Services Director for approval in order to insure that tenant signage complies with the approved signage as set forth within the Specifications.

The wording of signs shall be limited to the store name only. Corporate crests, shields or insignia are acceptable, and such items shall not exceed thirty-six inches (36") in width or height. In no case shall there be installed more than one (1) primary sign per tenant storefront. Tenants occupying corner, through light or double frontage spaces shall be allowed one sign per elevation with a maximum of two (2) signs. All signs and identifying marks shall occur within the limits of the Premises between the floor line and the roof line or in the event of an awning, on the awning only. For purposes of this paragraph, "Elevations" shall include shop fronts located in the atrium or courtyard areas.

All illuminated signs shall have individual letters, fabricated metal channel letters, closed front and back, with flanged sides and exposed neon mounted on the sides of the letters, inside the flanges, reverse channel letters with neon behind, exposed neon with wall mounts or any combination of the above sign types. Illuminated plastic face sign cans will not be permitted. All illuminated signs and their installation must comply with all applicable building and electrical codes. Letters may be back-illuminated with lamps contained wholly within the depth of the letter and with maximum brightness not in excess of 100 foot lamberts. Signs shall have no moving or flashing lights and no luminous letters on back panels. No flashing signs will be permitted.

The total area of all signs of any storefront shall not exceed, in square feet, the foot frontage of the storefront multiplied by 0.750. For this

purpose:

1. The area of a sign is the area of a rectangle surrounding all of the letters of the sign. Where upper and lower case letters are used, the average height of the letters shall be used to determine the height of the rectangle.

2. Foot frontage of a storefront is the length of the facade measured along the lease line separating the premises from the adjacent store. Window signs shall only be permitted for identity graphics and for display of information related to hours of operation. Windows shall not be used for display of advertising materials.

All temporary signs including leasing and construction signs shall be subject to the review and approval of the Planning Division as to location and design.

h. Lighting. Prior to the issuance of building permits, a lighting plan including parking structure lighting shall be submitted and shall be subject to the review and approval of the Development Services Department and shall include the following:

1. All lighting in surface parking areas shall be provided at the equivalent of one foot candle of illumination at grade.

2. Exterior feature lighting shall consist of ground mounted uplights that wash the building major elevations. Accent lighting of major architectural elements will consist of building or roof mounted uplights and directional spot lights.

3. Cut-off luminaires shall be installed which will provide true 90 degree cut-off and prevent project of light above the horizontal from the lowest point of the lamp or light emitting

refractor or device.

4. All fixtures shall use a flat, clear lens, energy-efficient light source.

5. The lighting plan shall be designed to confine direct rays to the premises with no spillover of rays beyond the perimeter property line including building feature lighting.

6. The lighting plan shall utilize a time-clock or photo-sensor system.

i. Loading Docks, Receiving Areas, and Trash Enclosures. The general locations and design of the loading, receiving, and trash collection areas shall be as shown in the Specifications. At a minimum, all trash storage shall be shielded from public view. Prior to the issuance of building permits for such improvements, the final plans pertaining thereto shall be reviewed and subject to the approval of the Development Services Department as consistent with the Agreement.

j. Fire and Life Safety Items. The Developer shall comply with all fire and building code requirements of the City and the Orange County Fire Chief's Standard Requirements for new high rise buildings except as amended below:

(i) Brea City Ordinance No. 773 is amended as follows as to the Site only:

Section 9.110 High Rise Structures

DEFINITION: Any structure which, when measured in the vertical plane extends more than 55 feet from the lowest point of fire department access to the highest occupied floor.

(ii) The Developer shall create a common association through the recordation of covenants, conditions and restrictions which govern the use

and maintenance of shared building services. The C C & R's and any proposed future changes to the C C & R's shall be subject to the review and approval of the City Attorney, Fire Marshal and Development Services Director as to form and content. For purposes of construction and life safety codes, the project shall be reviewed as a single building on a single parcel.

For purposes of building code setback requirements, the Mall ring road and combined access roads, shall be considered public ways.

k. Architecture and Building Design. Architectural control criteria are intended to establish a level of quality and design continuity for all new buildings to be constructed by the Developer. The palette for candidate building materials and colors is illustrated on the color and materials board approved and on file with the City Planner. The building elevations delineated in Figures 8, 8a, 9, 9a, 10, 10a, b, c, d and e of the Specifications illustrate the overall general character of development anticipated.

The hotel/retail complex is bounded by the Mall entrance road to the east and a shared drive with the Civic Center at the west. A porte-cochere drive shall serve as the circulation link and shared entry between the hotel and retail components. The hotel shall consist of various distributions of balconized suites fronting all major elevations. The retail building shall consist of shop fronts on all elevations with courtyard oriented shop entries.

The hotel shall be a suites type hotel with a covered atrium. The significant architectural elements shall consist of pyramidal towers which anchor each elevation and an accented trellis or awning element as a highlight. The majority of the facade openings shall be a balcony expression with the exception of the ground and second level. The southwest corner tower

shall be twisted and oriented toward the elevated pool deck which adjoins the hotel and the civic center. On the east elevation, a covered metal trellis porte-cochere element shall extend onto the driveway (in similar form and construction as the east elevation major trellis element).

The predominant exterior material shall be painted exterior plaster over concrete structure. Wainscot shall be painted exterior plaster with contrasting texture, color, or break-up in combination with or in lieu of soft stone veneer. Balconies shall consist of painted metal railings with clear glass sliding doors beyond. Overhanging awning structures and metal trellis shall have painted finish in accent colors. Overhanging awnings and pyramidal caps shall be covered with a unitized panel system. The skylight over the atrium shall be painted or anodized aluminum mullions and may have clear glazing. The flat roof area shall be a gravel surfaced roofing system.

The retail center will function as a supportive entity to the hotel. The architectural expressions and palette for the retail center will coordinate and complement the hotel and adjacent developments. The retail functions shall be centered on a sunken courtyard directly opposite the hotel porte-cochere. A pyramidal tower shall anchor the southwest corner of the mall entry drive. In addition, gable elements shall signify the entrance and exit to the porte-cochere drive. Retail shop fronts shall be painted aluminum mullions with a mixture of clear and coated or colored glass. The predominant material shall be painted exterior plaster. Metal trellis elements shall be painted accent colors compatible with or the same as the hotel trellis elements. The Gable roof, pyramidal caps and awning structures be a unitized panel system over painted metal trellis. Flat roofs shall be a gravel surface built up system.

1. Art In Public Places. The Developer shall participate in the City's Art in Public Places Program in accordance with City policies therefor.

m. Construction Staging The Developer shall submit a Construction Staging Plan subject to the review and approval of the Development Services and Fire Departments. Said plan shall delineate approved construction staging and equipment areas, pedestrian walks, loading and unloading areas and methods, detour signs and related safety signage, emergency access, traffic delineation and barricades and other related items. City will consider in good faith a reasonable proposal to locate a construction trailer on City owned or leased property on reasonable terms and conditions. Said plan shall be approved prior to the issuance of building permits.

n. Utilities, On-Site Improvements. All on-site street, sewer, storm drain, water system and utility facilities to be constructed by Developer to service the site shall be approved by the Development Services Director prior to the issuance of any permit to construct the same. In addition, Developer shall:

(i) Construct curbs, gutters, sidewalk, paving, lights and conduit, water mains, fire hydrants, fire service activities and vaults, and related improvements on the Site and on the adjacent public property as necessary to facilitate the proposed development;

(ii) Construct sewer and storm drain improvements on the Site as necessary to serve the Site and connect to the existing public sewer and storm drain off-site in the Mall ring road;

(iii) Submit a final grading plan for each phase of development prepared and signed by a Registered Civil Engineer to the Development Services Department and obtain approval of such plan prior to the issuance of

a grading permit for such phase of development;

(iv) Submit the following to the Development Services Department and obtain approval prior to approval of each such final grading plan:

- a. A soils report prepared by a qualified Soils Engineer;
- b. A hydrology and hydraulic study prepared by a Registered Civil Engineer;
- c. Information on construction of all retaining walls and required calculations.

(v) Design all on-site drainage systems in a manner sufficient to handle a 25-year storm frequency or greater.

(vi) The Developer shall secure, in writing, the approval of MWD supporting the Orange County Feeder prior to the approval of a grading plan for the excavation of the Site.

(vii) The Developer shall secure necessary tie back easements from adjacent property owners as needed for construction activities prior to the approval of a grading plan.

o. Off-Site Improvements. Developer shall construct a raised median in Birch Street adjacent to the Site in substantial accordance as shown within the Site Plan, Figure 3. The final design of the median shall be subject to the review and approval of the Development Services Director.

4. Vesting of Development Rights.

Developer's right to develop the site shall vest on the Effective Date of this Development Agreement.

Except as expressly modified herein, all substantive and procedural requirements and provisions contained in City's ordinances, rules and regulations, including, but not limited to, its Zoning Ordinance, Ordinance

No. 425 as amended, building code, electrical code, fire code and plumbing code shall apply to the development of the site pursuant to this Development Agreement. Further, any terms or phrases contained herein for which there are definitions provided in City's said Zoning Ordinance shall be deemed to be utilized in accordance with those definitions. This Paragraph 5 shall not preclude the application to the Site of City ordinances, rules and regulations adopted after the Effective Date of this Development Agreement which must be applied to the site in order to comply with changes in federal or state laws or regulations, as provided for in Government Code Section 65869.5.

5. Recordation.

In accordance with California Government code Section 65868.5, a certified copy of this Agreement shall be recorded with the Recorder of Orange County, California, immediately upon this Agreement becoming effective.

7. General.

The parties further agree as follows:

a. Except as expressly set forth in this Agreement, no representations of any kind or character have been made to one another by any of the parties hereto or by any of the parties' agents, representatives, associates or attorneys with respect to each subject to which this Agreement relates.

b. This Agreement contains the entire agreement of the parties with respect to each subject to which it relates.

c. This Agreement can only be amended in writing, which writing must first be executed by all of the parties hereto.

d. No provision of this Agreement may be waived, except in writing, which writing must be executed by all of the parties hereto.

e. The parties hereto each agree that they shall execute and deliver to the other, upon request so to do, any and all documents reasonable and necessary to accomplish or evidence the agreements contained in or contemplated by this Agreement.

f. In the event that any party should default in one or more of its obligations provided in or contemplated by this Agreement, the defaulting party shall pay to the other all expenses incurred in connection with efforts to enforce such obligation, including reasonable attorney's fees, whether or not suit be commenced.

g. This Agreement, all other documents and agreements provided in or contemplated hereby, and all rights and obligations arising therefrom shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

h. City agrees that Developer will have opportunity to rent City Civic Cultural Center facilities on the same basis, terms and conditions that

are available to the general public

CORPORATE ACKNOWLEDGMENT

NO. 202

State of California

On this the 18th day of April 19 89, before me,

County of Orange

SS.

Nancy B. Whitehouse

the undersigned Notary Public, personally appeared

Gene A. Leyton and Donna M. Rhine

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person(s) who executed the within instrument as

Mayor & City Clerk or on behalf of the corporation therein

named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Nancy B. Whitehouse
Notary's Signature



ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document DA 88-2 w/Brea Hotel Joint Venture

Number of Pages 34 Date of Document 4-18-89

Signer(s) Other Than Named Above Rob MacLeod/Peter DelFranco

e. The parties hereto each agree that they shall execute and deliver to the other, upon request so to do, any and all documents reasonable and necessary to accomplish or evidence the agreements contained in or contemplated by this Agreement.

f. In the event that any party should default in one or more of its obligations provided in or contemplated by this Agreement, the defaulting party shall pay to the other all expenses incurred in connection with efforts to enforce such obligation, including reasonable attorney's fees, whether or not suit be commenced.


g. This Agreement, all other documents and agreements provided in or contemplated hereby, and all rights and obligations arising therefrom shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

) h. City agrees that Developer will have opportunity to rent City Civic Cultural Center facilities on the same basis, terms and conditions that are available to the general public.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the effective date of the ordinance approving this Agreement.

CITY OF BREA

Dated: April 13, 1989

By: 
Mayor

DATED: 4-18-89

BY: Donna M. Rhine
CITY CLERK

BREA HOTEL JOINT VENTURE, a
CALIFORNIA GENERAL PARTNERSHIP

BY LOWE BREA HOTEL LIMITED, a
CALIFORNIA LIMITED PARTNERSHIP

BY ~~LOWE BREA SUITES, INC.~~

DATED: April 14, 1989

BY: [Signature]
Robert F. MacLeod, Jr.
Senior Vice President

DATED: April 14, 1989

BY: [Signature]
Peter DelFranco
Vice President

AT. NO. NN00636
) 1954 CA (9-84)
corporation as a Partner of a Partnership)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.

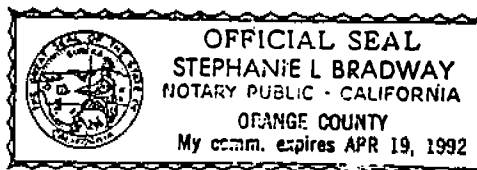
 **TICOR TITLE INSURANCE**

On April 14, 1989 before me, the undersigned, a Notary Public in and for
said State, personally appeared Robert F. MacLeod, Jr.
personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed
the within instrument as the Senior Vice President, and Peter DelFranco
personally known to me or proved to me on the basis of satisfactory evidence
to be the person who executed the within instrument as the Vice President ~~Secretary~~ of
Lowe Brea Suites, Inc.

the corporation that executed the within instrument on
behalf of Lowe Brea Hotel Limited

the partnership that executed
the within instrument, and acknowledged to me that such
corporation executed the same as such partner and that
such partnership executed the same.
WITNESS my hand and official seal.

Signature Stephanie L. Bradway



(This area for official notarial seal)

EXHIBIT "A"

Legal Description

Parcel 1 of Lot Line Adjustment No. LL-14-83 recorded January 26, 1984, as Instrument No. 037615 in the office of the Orange County Recorder.

89-274649

EXHIBIT "B"
PERMITTED USES

Purpose and Intent

The intent of this Development Agreement is to encourage high-line retail uses oriented toward destination commercial uses rather than neighborhood level retail uses.

Principal Permitted Uses

1. Administrative and Professional Offices
2. Specialty retail uses including clothing, leather goods, books, electronic and other hard and soft goods, food sale uses such as a deli or a bakery subject to the approval of the Development Services Director. Convenience retail uses such as franchise take-out food uses, mini-markets, cleaners, real estate store, and video shops are not included in this specialty retail category.
3. Restaurant - A maximum of one, 4,000 square foot sit-down restaurant may be located in the retail building as a principal permitted use.
4. Specialty service commercial uses such as travel agencies and other service uses oriented towards the occupants of the hotel.

Uses Subject to a Conditional Use Permit

1. Alcohol Sales; On and Off Sale
2. Sit-down restaurants in excess of 4,000 square feet
3. Medical and Dental Uses
4. Any other uses not listed above

Project: establish 4,119 s.f. fitness center on second floor of commercial building

Zoning: C-C

General Plan: Regional Commercial

Conditional Use Permit required for fitness center in C-C zone

APN's: 31910145 & 46

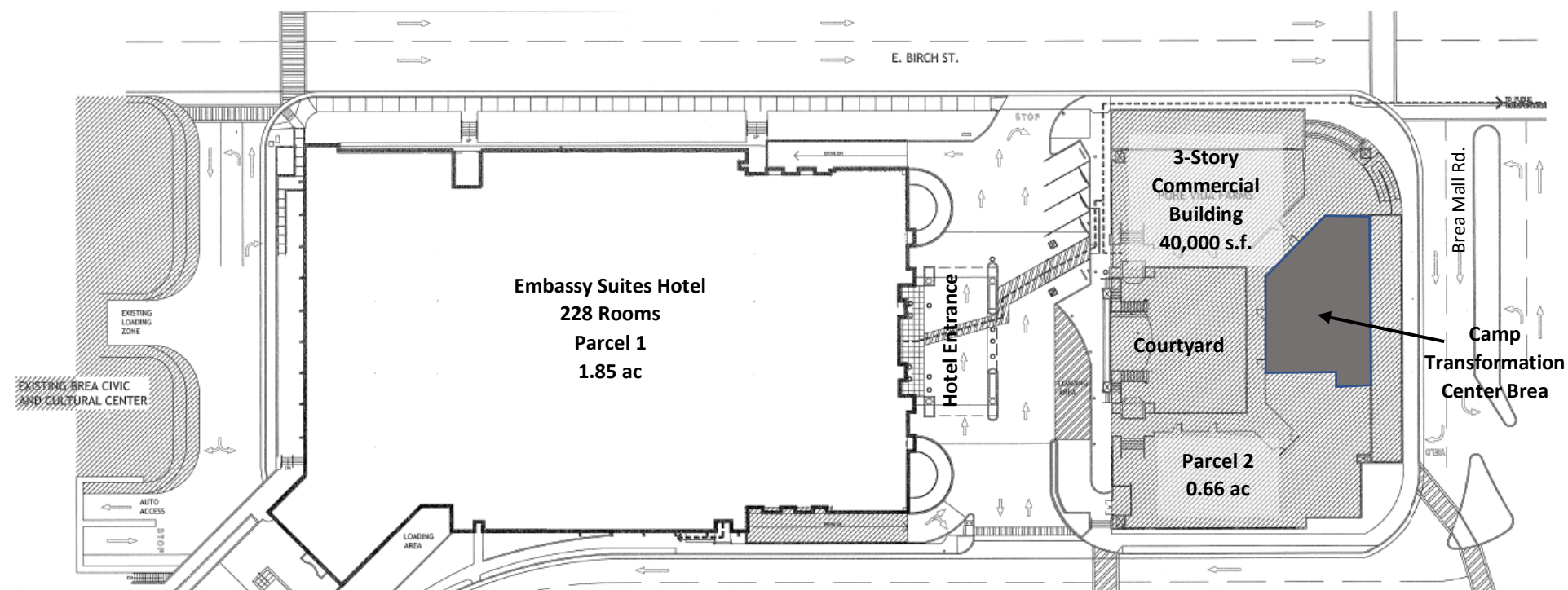
Property Owner: City of Brea

Property Manager: Nesbitt Partners Brea Ventures Ltd.

Parking – see Parking Summary below

Improvements: reorient office door openings, repaint, replace carpet

All land uses approved under Development Agreement No. 88-2



SITE PLAN

PARKING SUMMARY TABLE

BUSINESS	ADDRESS/ SUITE NO.	FLOOR AREA (Sq. Ft.)	TYPE OF USE	PARKING REQUIREMENT (space per s.f.)	TOTAL NO. OF SPACES
Embassy Suites Hotel	900 E. Birch St.	228 rooms	Hotel	1/room	228
EMBASSY RETAIL COURT 910 E. BIRCH ST.					
Alexander Salon	100	10,693	Salon	1/250	42.7
Hotel Office	100B	3,092	Storage	1/1,000	3
Leiner Inc.	200	1,144	Retail	1/200	5.7
Golftec	225	2,426	Retail	1/200	12.1
Camp Transformation	250	4,119	Fitness Center	1/35 instr. 1/250 office	28.5 0.9
Vacant	260	2,180	----	1/250	8.7
XL Learning (occupies a portion of this suite)		500	Tutoring	1/35 instr.	14.2
Pura Vida	280	2,497	Office	1/250	9.9
Vacant	300	6,500	---	1/250	26
Skin Perfect	350	4,360	Salon	1/250	17.4
Vacant	380	2,497	----	1/250	9.9
TOTAL NO. OF REQUIRED SPACES					407
NUMBER OF EXISTING ON-SITE SPACES					422

CAMP TRANSFORMATION CENTER BREA

910 E. BIRCH STREET, SUITE 250

Business Owner: Joshua Fernandez

September 28, 2021

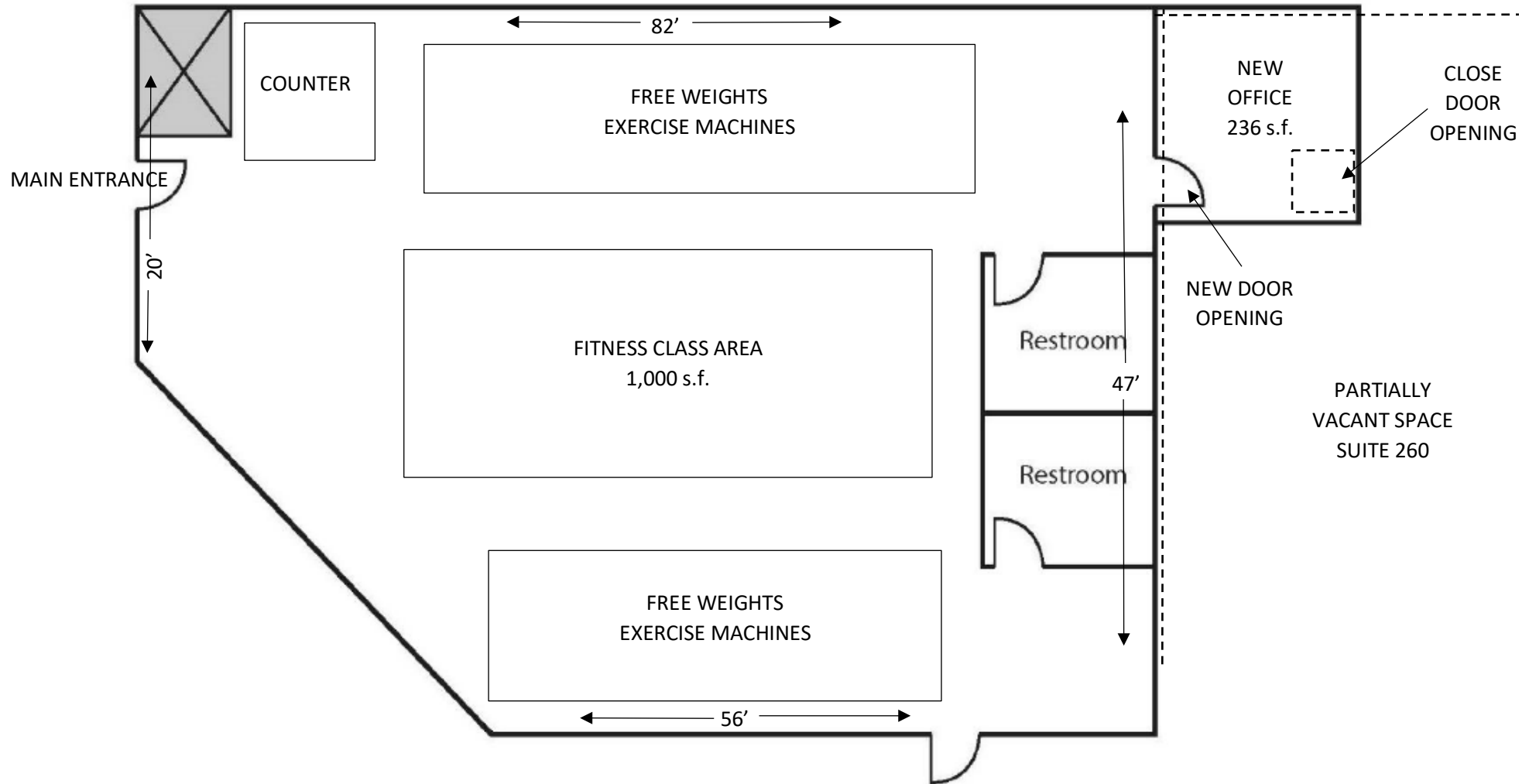
Scale: 1' = 20'

CAMP TRANSFORMATION CENTER BREA

910 BIRCH STREET, SUITE 250

4,119 SQ. FT. TENANT SPACE, SECOND FLOOR

ATTACHMENT F



FLOOR PLAN



CITY OF BREA
PLANNING COMMISSION NOTICE OF PUBLIC HEARING FOR CONDITIONAL USE PERMIT NO. 2021-09: TO ALLOW A HEALTH STUDIO FOCUSED ON GROUP TRAINING WITHIN AN APPROXIMATELY 4,100 SQUARE-FOOT TENANT SPACE, LOCATED AT 910 EAST BIRCH STREET, SUITE 250.

NOTICE IS HEREBY GIVEN, pursuant to State Law, that a public hearing will be held by the Planning Commission to determine whether or not the subject request shall be approved under the provisions of State Law and the Brea City Code as follows:

DATE AND TIME: Tuesday, November 9, 2021, 6:30 P.M.
OF HEARING: *All interested persons may appear and be heard at that time.*

PLACE OF HEARING: Brea Civic & Cultural Center, Council Chambers
1 Civic Center Circle, Brea, CA 92821

FURTHER INFORMATION MAY BE OBTAINED BY CALLING THE PLANNING DIVISION AT (714) 990-7674 OR BY EMAILING planning@cityofbrea.net. PURSUANT TO GOVERNMENT CODE SECTION 54953(E), MEMBERS OF THE PLANNING COMMISSION MAY PARTICIPATE IN THIS MEETING VIA TELECONFERENCE. MEMBERS OF THE PUBLIC MAY OBSERVE THE MEETING TELEPHONICALLY OR OTHERWISE ELECTRONICALLY, AND MAY OFFER COMMENT IN REAL TIME. ALL PERSONS WISHING TO PARTICIPATE BY TELECONFERENCE SHOULD CONTACT THE CITY NO LATER THAN 4:00 P.M. ON NOVEMBER 9, 2021.

REQUEST: The Applicant, See's Development Advisors, LLC, is requesting a Conditional Use Permit to allow a health studio within the Major Shopping Center (C-C) zone. The proposed health studio would focus on group training within an approximately 4,100 square-foot tenant space, located at 910 East Birch Street, Suite 250.

LOCATION: The project site is located at 910 East Birch Street, commonly known as the Embassy Retail Court.

ENVIRONMENTAL: The City of Brea, in accordance with the California Environmental Quality Act (CEQA) has determined that the proposed project is exempt under Section 15301 (Class 1, Existing Facilities). The project qualifies for this exemption since it consists of the operation, permitting and licensing of an existing private facility involving no expansion.

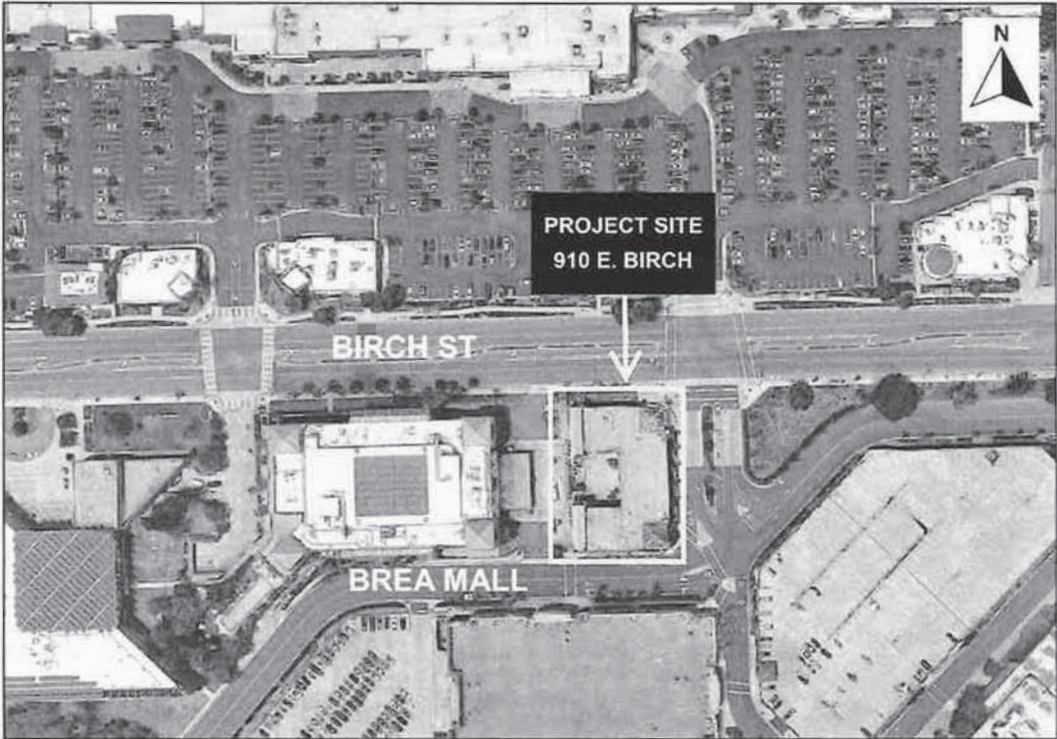
IF YOU CHALLENGE PROJECT AND RELATED ENVIRONMENTAL DETERMINATIONS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE, DELIVERED TO THE COMMISSION AT, OR PRIOR TO, THE PUBLIC HEARING.

FOR FURTHER INFORMATION ON THIS SUBJECT, PLEASE CONTACT THE PLANNING DIVISION AT (714) 990-7674.

COMMUNITY DEVELOPMENT DEPARTMENT


Jason Killebrew, City Planner

PROJECT SITE



City of Brea

PLANNING COMMISSION COMMUNICATION

TO: Honorable Chair and Planning Commission

DATE: 11/09/2021

SUBJECT: Zoning Ordinance Text Amendment No. 2021-02 (ZOTA 2021-02) to amend Title 20 of the Brea City Code regulating the PD(Precise Development) Zone within the City Of Brea.

EXECUTIVE SUMMARY

The City has initiated an amendment to Title 20 of the Brea City Code (BCC) to facilitate housing development within the PD (Precise Development) Zone. The PD Zone is an additional zone classification that may be applied to any other zone designation that would require review by the Planning Commission. The Zoning Ordinance Text Amendment (ZOTA) aims to implement components of the 6th Cycle Housing Element as well as satisfy the purpose of Senate Bill 2 Planning Grants Program (SB 2 PGP). The SB 2 PGP is geared to help cities and counties prepare, adopt, and implement plans and process improvements that accelerate housing production amidst the State's housing crisis. This ZOTA was funded by the SB 2 PGP, with the purpose of facilitating housing development and streamlining the public hearing review requirements for by-right, code-compliant, housing development.

The ZOTA herein may be referred to as the "Project."

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council take the following actions:

1. Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b)(3) and;
2. Adopt Ordinance No. 2021-XXX, approving Zoning Ordinance Text Amendment No. 2021-02, to amend sections of the BCC, regulating the PD (Precise Development) Zone within the City of Brea (Attachment A).

BACKGROUND/DISCUSSION

On September 29, 2017, then-Governor Jerry Brown signed the Legislative Housing Package which included 15 bills aimed at addressing California's housing shortage and high housing costs. Senate Bill 2, Atkins (SB 2), also referred to as the "Building Homes and Jobs Act," established a \$75 recording fee on real estate documents. As a one-time component of SB 2, 50 percent of the recording fees collected from all counties in 2018 were allocated to the SB PGP Fund. A total of \$123 million of the SB PGP funds were made available through non-competitive local grants intended to aid cities and counties in updating planning and zoning processes that would:

- Accelerate housing production;
- Streamline the approval of housing development;
- Facilitate housing affordability;
- Promote the development of housing; and
- Ensure geographic equity in the distribution and expenditure of allocated funds.

On December 30, 2019, State's Department of Housing and Community Development (HCD) awarded the City \$160,000 in SB PGP grant funding, the maximum amount for a jurisdiction of Brea's size. This money was sectioned into the four projects outlined in the SB 2 PGP application as listed below:

1. Update parking standards
2. Implement administrative approval process
3. Design guidance for accessory dwelling units
4. Affordable housing implementation guide

In October 2020, the City disseminated a Request for Proposals (RFP) seeking offers from qualified consultants to implement the Project No. 2 objectives identified in the City's SB 2 Grant application. Three proposals were received from qualified consultants, and on December 9, 2020, the City executed a Professional Services Agreement (PSA) with Gensler.

As a separate item, on September 28, 2021, City staff presented to the Planning Commission ZOTA No. 2021-01 to update the parking standards of multi-family development and remove the public hearing review requirements for multi-family residential projects seeking an off-street parking modification. ZOTA No. 2021-01 is also known as Project IV (previously named Project I) as outlined in the SB 2 PGP application. Then on November 2, 2021, the City Council adopted Ordinance No. 1222 regarding exemptions and modifications to off-street parking requirements.

DISCUSSION

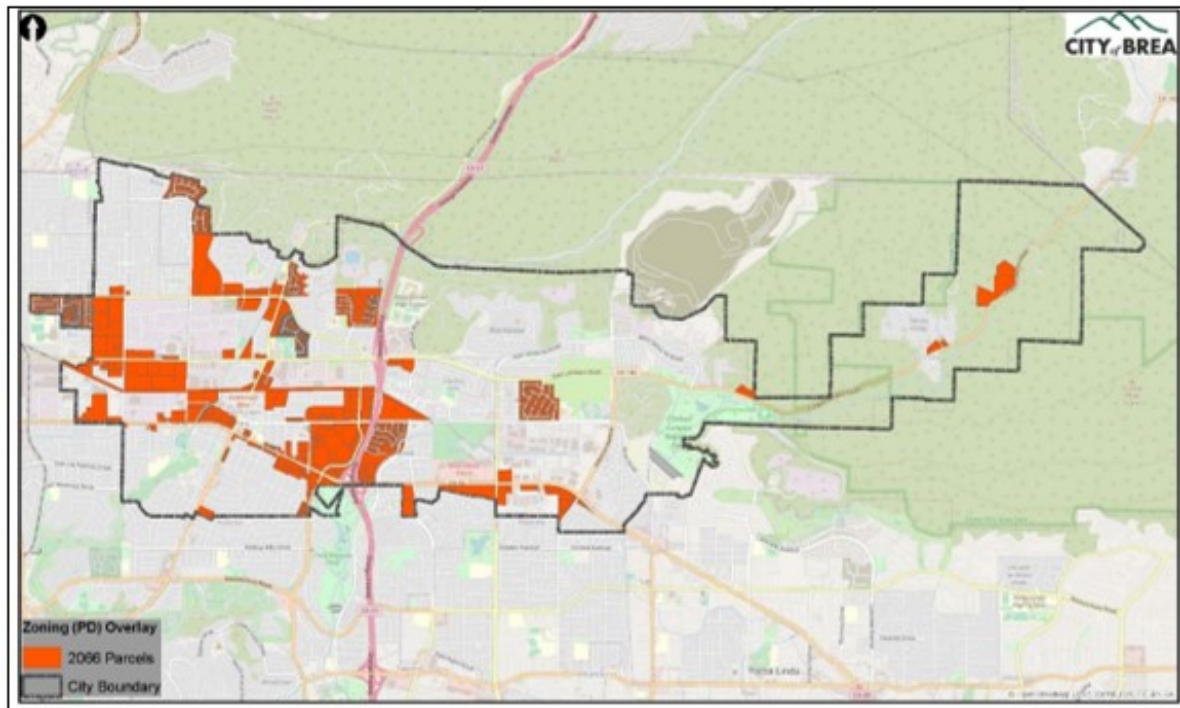
Existing Process

Currently, the BCC allows the application of the PD Zone as an additional zone classification. Areas zoned PD are subject to a review of a precise plan of development by the Planning Commission at a public hearing. The PD Zone classification may be applied to a site with any supplemental zoning designation that may range from R-1 (Single-Family Residential) to M-2 (General Industrial). Currently, approval of a precise plan of development would apply to all new development projects, whether if a project complies or request any modifications from the applicable development standards. As part of their review, the Planning Commission may impose conditions of approval in addition to those requirements of

the supplemental zone.

Currently, there are approximately 2,066 parcels within the City that have PD zone designation, as depicted in Exhibit 1 below.

Exhibit 1- PD Zone Parcels



Analysis of Proposed Zone Ordinance Text Amendment (ZOTA)

Staff, with assistance from Gensler, assessed the City's existing PD review process to identify any existing challenges in the development of housing projects in the City. One challenge that was identified by Gensler is the development process of housing projects in residentially zoned and PD zoned sites. If a site has a PD zone designation and complies with all applicable development standards of the BCC, review of a precise plan of development by the Planning Commission is required.

The ZOTA proposes language that would expedite the review process for sites located in the PD zone by eliminating the Precise Development entitlement. The Precise Development entitlement is proposed to be replaced with an Administrative Plan Review process that would only apply to sites that comply with all applicable development standards of the PD and supplemental zone. Any project that would request any additional entitlements still requires review by the Planning Commission.

Staff has developed the following scenarios below to provide examples of typical projects that could be submitted to the Community Development Department for processing. These scenarios provide examples of when a project would be subject to an Administrative Plan Review (Director) and when projects would be subject to a Precise Development (Planning Commission) review if this ZOTA were to be approved. It is important to note that given the scale, scope, and level of associated CEQA review, the Director may defer their decision authority to the Planning Commission.

- Scenario 1
 - Project Description: A proposal for an 1,800 square-foot, 4 bedroom, single-family residence with a detached 400 square-foot two-car garage on a 7,200 square-foot property.
 - Zone: R-1 (Single Family Residential) PD (Precise Development) Zone.
 - General Plan: Low-Density Residential (max. 6 du/ac).
 - This project would comply with all applicable development standards of the R-1 Zone that include building height, setbacks, lot coverage and parking.
 - Given the fact that the project is not requesting any entitlements, is exempt from CEQA, meets all applicable BCC development standards and is compatible to the General Plan land use, this request could be reviewed and approved by the Director.

- Scenario 2
 - Project Description: A proposal for a three-story 8-unit apartment building with 3 one-bedrooms, 5 two-bedrooms and 17 parking spaces on a 14,500 square-foot property.
 - Zone: R-3 (Multiple Family Residential) PD (Precise Development) Zone
 - General Plan: High-Density Residential (max. 24.89 du/ac)
 - This project site would comply with all applicable development standards of the R-3 Zone that include building height, setbacks, outdoor living space and lot coverage.
 - Given the fact that the project is not requesting any entitlements, is exempt from CEQA, meets all applicable BCC development standards and is compatible to the General Plan land use, this request could be reviewed and approved by the Director.

- Scenario 3
 - Project Description: A proposal for a 3-story, 40-unit apartment complex consisting of 18 one-bedroom units, 12 two-bedroom, 6 three-bedroom and 60 parking spaces on an approximate 2-acre property. The proposed project requires a minimum of 76 off-street parking spaces and exceeds the allowable density.
 - Zone: MU-III (Mixed-Use III) PD (Precise Development) Zone
 - General Plan: Mixed Use III (max. 18 du/ac)
 - As a result, the project proponent is requesting a General Plan Amendment and Zone Change.
 - Given the scale, scope and entitlements requested for the project, discretionary review would be required before the Planning Commission and City Council at a public hearing.

Housing Element

The ZOTA would fulfill a new policy from the 6th Cycle (2022-2029) Housing Element. The ZOTA would streamline the development review and permitting process for housing production (Policy 4.3) as outlined below:

- Policy 4.3 (Objective Development Standards): Establish objective development

standards to create greater certainty for developers and streamline the development review and permitting process.

- Program 13 (Objective Development Standards and Administrative Approval Process): Establish objective development standards and ministerial processing procedures to streamline the house review process.

ENVIRONMENTAL ASSESSMENT

The proposed project is exempt from the requirement of the California Environmental Quality Act (CEQA) pursuant to Review for Exemption Section 15061. This exemption is covered by the common-sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Any future development projects would be subject to CEQA.

CONCLUSION

Staff is in support of the ZOTA based on the analysis in conjunction of the implementation components of the 6th Cycle Housing Element and the SB 2 grant objectives to facilitate the production of code-compliant housing development. The new process would instead allow for the administrative review of housing development within residential zones and allow the Community Development Director to apply conditions of approval to protect the public safety and general welfare of the community.

RESPECTFULLY SUBMITTED

Jason Killebrew, City Planner

Prepared by: Jose Barriga, Associate Planner

Attachments

- A. Draft Ordinance
 - B. Draft Resolution
 - C. Public Hearing Notice
-

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF BREA ADOPTING ZONING
ORDINANCE TEXT AMENDMENT NO. ZOTA 2021-02, REGULATING
THE PD (PRECISE DEVELOPMENT) ZONE IN THE CITY OF BREA.**

THE CITY COUNCIL OF THE CITY OF BREA DOES ORDAIN AS FOLLOWS:

A. RECITALS.

(i) On November 9, 2021, the Planning Commission of the City of Brea held a duly noticed public hearing on this Ordinance, after which it recommended adoption of the Ordinance.

(ii) On _____, 2021, the City Council held a duly noticed public hearing, on this Ordinance.

B. ORDINANCE.

SECTION 1. Finding. The facts set forth in the Recitals, Part A, of this Ordinance are true and correct.

SECTION 2. General Plan. Adoption of this Ordinance is consistent with the City's General Plan. In particular, this Ordinance meets Housing Element Policy 4.3 by streamlining the development review and permitted process to ensure they do not constrain housing development.

SECTION 3. CEQA. The City Council finds and determines that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) under 14 C.C.R. § 15061(b)(3) because this Ordinance only modifies certain zoning procedures and does not approve any particular project or development. It can therefore be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 4. Code Amendment. Section 20.260.010 (Intent and Purpose) of Chapter 20.260 (PD Precise Development Zone) of Division II (Specific Zone

Regulations) of Title 20 (Zoning Code) of Part II (Development Code) of the Brea City Code is hereby amended to read as follows:

“The P-D (Precise Development) Zone may be applied as an additional zone classification to land zoned under any other zone classification or this title. Areas zoned P-D within Residential Zones and meeting the development standards of the supplemental zone shall only be subject to Administrative Plan Review, pursuant to Section 20.408.040(Plan Review) and 20.260.050.C (Special Provisions). All other developments shall be in compliance with an approved precise plan of development including any conditions established thereon by the Commission.”

SECTION 5. Code Amendment. A new subsection “C” is hereby added to Section 20.260.050 (Special Provisions) of Chapter 20.260 (PD Precise Development Zone) of Division II (Specific Zone Regulations) of Title 20 (Zoning Code) of Part II (Development Code) of the Brea City Code to read as follows:

C. Community Development Director authority.

1. The Community Development Director shall have the authority, as an administrative act, subject to the provisions of this section, to require conditions of development in addition to those required by the zone where, it is determined that such conditions are necessary to further the objectives of the General Plan and are in harmony with the intent, purpose and spirit of this ordinance and/or where such additional requirements are deemed essential to protect the public safety and general welfare of the community.

2. All special conditions established by the Community Development Director in accordance with this section may be appealed to Planning Commission.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Ordinance.

APPROVED AND ADOPTED this _____ day of _____, 2021.

Mayor

ATTEST:

City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Brea, held on the ____ day of _____, 2021, and was finally passed at a regular meeting of the City Council of the City of Brea on the ____ day of _____, 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAINED: COUNCIL MEMBERS:

Dated: _____

City Clerk

RESOLUTION NO. PC 2021-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BREA RECOMMENDING THAT THE CITY COUNCIL ADOPT ZONING ORDINANCE TEXT AMENDMENT NO. ZOTA 2021-02, REGULATING THE PD (PRECISE DEVELOPMENT) ZONE IN THE CITY OF BREA.

THE PLANNING COMMISSION HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

1. On November 9, 2021, the Planning Commission of the City of Brea held a duly noticed public hearing on Zoning Text Amendment No. ZOTA 2021-02, which would amend Section 20.260.050 (Special Provisions) of Chapter 20.206 (PD Precise Development Zone) of Division II (Specific Zone Regulations) of Title 20 (Zoning Code) of Part II (Development Code) of the Brea City Code.

2. Based on substantial evidence in the record of its public hearing on ZOTA 2021-02, the Planning Commission finds:

a. Approval of ZOTA 2021-02 is consistent with the City's General Plan. In particular, this ZOTA 2021-02 meets Housing Element Policy 4.3 by streamlining the development review and permitted process to ensure they do not constrain housing development.

b. ZOTA 2021-02 is exempt from the requirements of the California Environmental Quality Act (CEQA) under 14 C.C.R. § 15061(b)(3) because it only modifies certain zoning procedures and does not approve any particular project or development. It can therefore be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

3. The Planning Commission hereby recommends that the City Council of the City of Brea adopt Zoning Ordinance Text Amendment No. ZOTA 2021-02, as shown in Exhibit A attached hereto.

4. The Secretary of this Commission shall certify to the adoption of this Resolution; and forthwith transmit a copy of said Resolution to the City Clerk of the City of Brea.

APPROVED AND ADOPTED this 9th day of November, 2021.

Chair, Planning Commission

I, Jason Killebrew, Secretary to the Planning Commission of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Brea held on the 9th day of November, 2021 by the following votes:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

DATED: _____

ATTEST: _____
Secretary, Planning Commission

Star-Progress

1771 S. Lewis Street
 Anaheim, CA 92805
 714-796-2209

5190251

BREA, CITY OF/PLANNING
 1 CIVIC CENTER CIR FIRST FLR
 PLANNING
 BREA, CA 92821-5795

FILE NO. PD ZOTA**AFFIDAVIT OF PUBLICATION**

STATE OF CALIFORNIA, }
 County of Orange } **SS.**

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the Star-Progress, a newspaper that has been adjudged to be a newspaper of general circulation by the Superior Court of the County of Orange, State of California, on June 15, 2001, Case No. A-55572 in and for the County of Orange, State of California; that the notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

10/28/2021

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Executed at Anaheim, Orange County, California, on
 Date: October 28, 2021.



 Signature
PROOF OF PUBLICATIONLegal No. **0011496289**

CITY OF BREA
PLANNING COMMISSION NOTICE OF PUBLIC HEARING FOR A ZONING
ORDINANCE TEXT AMENDMENT NO. ZOTA 2021-02

NOTICE IS HEREBY GIVEN by the City of Brea that a public hearing will be held at a Planning Commission Meeting on **Tuesday, November 9, 2021 at 6:30 p.m.**, or as soon thereafter as the matter can be heard, in the Council Chambers of the City of Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California 92821, in accordance with State Law and the Brea City Code, to consider the following application:

- Zoning Ordinance Text Amendment No. 2021-02 (ZOTA 2021-02) – A proposal to amend Title 20, Chapter 20.260 of the Brea City Code regulating the PD (Precise Development) Zone within the City of Brea.

The City of Brea, in accordance with the California Environmental Quality Act (CEQA), has determined that the proposed project is exempt from the requirement of the California Environmental Quality Act (CEQA) pursuant to Section 15061 of Title 14, Chapter 4.5, Article 5 of the California Code of Regulations.

Location: Citywide

Applicant: City of Brea
 1 Civic Center Circle
 Brea, CA 92821

ALL INTERESTED PERSONS are invited to attend said hearing and express opinions on the matters outlined above.

FURTHER INFORMATION MAY BE OBTAINED BY CALLING THE PLANNING DIVISION AT (714) 990-7674 OR BY EMAILING planning@cityofbrea.net. PURSUANT TO GOVERNMENT CODE SECTION 54953(E), MEMBERS OF THE PLANNING COMMISSION MAY PARTICIPATE IN THIS MEETING VIA TELECONFERENCE. MEMBERS OF THE PUBLIC MAY OBSERVE THE MEETING TELEPHONICALLY OR OTHERWISE ELECTRONICALLY, AND MAY OFFER COMMENT IN REAL TIME.

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Jason Killebrew

City Planner

Date: 10/20/21

Publish: 10/28/2021 Star Progress

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