

RESOLUTION NO. 19-0120

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL ADOPTING A THIRD ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT AND AMENDING CONDITIONS OF APPROVAL OF A MASTER USE PERMIT TO ALLOW FITNESS STUDIOS AND ANCILARY SALE OF ALCOHOL FOR OFF-SITE CONSUMPTION AT UP TO FOUR RESTAURANTS AT THE MANHATTAN VILLAGE SHOPPING CENTER (2600 THROUGH 3600 NORTH SEPULVEDA BOULEVARD AND 1180 THROUGH 1200 ROSECRANS AVENUE)

THE MANHATTAN BEACH CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

SECTION 1. On December 2, 2014, the Manhattan Beach City Council adopted: (1) Resolution No. 14-0025 Certifying an Environmental Impact Report (“Final EIR”) and adopting a Mitigation Monitoring Reporting Program (“MMRP”); and (2) Resolution No. 14-0026 approving an application submitted by RREEF American REIT Corp II BBB (“Applicant”) for a Master Use Permit Amendment, a height variance, and amendment to the Master Sign program/sign exceptions (collectively “MUP”) for the Manhattan Village Renovation and Expansion project (“Shopping Center”) located at 2600-3600 North Sepulveda Boulevard 1180-1200 Rosecrans Avenue (“Project site”). At that time, the City Council determined that the Project was consistent with the General Plan and the City’s Zoning Code and made all of the necessary findings to approve the MUP.

SECTION 2. In December 2016, the City approved a modified site plan (“Approved Site Plan”) for the Project. Pursuant to the California Environmental Quality Act (“CEQA”), an independent environmental consultant hired by the City performed an environmental analysis of the Approved Site Plan and prepared an addendum to the Final EIR. That addendum (hereinafter the “First Addendum”) concluded that none of the conditions requiring a subsequent or supplemental EIR was present because the Approved Site Plan did not contain any substantial changes that would require revisions to the Final EIR.

SECTION 3. On September 6, 2017, the City Council adopted Resolution No. 17-0119 approving an amendment to the MUP, to refine certain conditions of approval for the MUP to facilitate the physical construction and construction sequencing of the approved project and Approved Site Plan. Pursuant to CEQA, an independent environmental consultant hired by the City performed an environmental analysis of the

changes to the Conditions of Approval and prepared an addendum (hereinafter the “Second Addendum”) to the Final EIR. That addendum concluded that none of the conditions requiring a subsequent or supplemental EIR was present because the changes to the conditions of approval did not contain any substantial changes that would require revisions to the Final EIR.

SECTION 4. On February 19, 2019, the applicant submitted an application to modify two conditions of approval for the MUP in order to facilitate the establishment of fitness studios and to allow up to four restaurants to have ancillary off-site alcohol sales. Pursuant to CEQA, an independent environmental consultant hired by the City performed an environmental analysis of the revisions to the Conditions of Approval and prepared an addendum (hereinafter the “Third Addendum”) to the Final EIR. The Third Addendum concluded that the amendments to the conditions do not result in new significant impacts and do not require revisions to the Final EIR. In addition, substantial evidence supports the conclusion that the circumstances under which the approved Project will be undertaken have not substantially changed, and there is no evidence of new or more severe environmental impacts arising out of any of the proposed changes. No changes to the mitigation measures set forth in the adopted Mitigation Monitoring and Reporting Program (“MMRP”) are proposed. In addition, there are no substantial changes in the existing conditions on or around the Shopping Center site that affect the analyses presented in the Final EIR, First Addendum or Second Addendum. Therefore, the proposed amendments to the conditions do not meet the standards for preparation of a subsequent or supplemental EIR pursuant to State CEQA Guidelines Section 15162.

SECTION 5. On October 9, 2019, the Planning Commission conducted a duly noticed public hearing at which time it provided an opportunity for the public to provide oral and written testimony. After the public hearing was closed, the Planning Commission unanimously adopted a Resolution approving fitness studios and to allow up to four restaurants to have ancillary off-site alcohol sales (the “subject entitlements” hereinafter).

SECTION 6. On October 24, 2019, 3500 Sepulveda, LCC (“Appellant” hereinafter) appealed the Commission’s decision. Appellant owns the property located at 3500 Sepulveda Boulevard, which is a part of the Shopping Center. The Appellant questions whether the Commission’s action granting the subject entitlements confers such entitlements on the property located at 3500 Sepulveda Boulevard. The Planning Commission reassured Appellant that the subject entitlements would apply to 3500 Sepulveda Boulevard.

SECTION 7. On December 17, 2019, the City Council held a duly noticed public hearing to consider the application. Based on substantial evidence presented at the public hearing *de novo* and pursuant to Manhattan Beach Municipal Code (MBMC) Section 10.84.060, the City Council hereby finds:

- A. In its independent judgment, and based upon the analysis contained in the Third Addendum, the City Council hereby finds that none of the proposed amendments to the conditions of approval involves substantial changes that would require revisions to the Final EIR, as the amended conditions do not propose any physical changes to the Project. The amended conditions will facilitate the establishment of Fitness Studios up to 5,000 square feet per use and to allow up to four restaurants to have off-site alcohol licenses. No other “Personal Improvement Services” will be allowed by the proposed modifications. No physical changes are proposed as part of the development of the Project or the Approved Site Plan. All of the mitigation measures required by the MMRP for the Project are unaffected, and will continue to apply and will be implemented. The findings contained in the Third Addendum are hereby incorporated by this reference.
- B. The amended conditions do not in any fashion change or alter the findings that were made in 2014 at the time the MUP was approved because the findings contained in Resolution No. 14-0026 still apply to the Project, with the amended conditions of approval and are hereby incorporated by reference.

SECTION 8. After considering all of the evidence in the record, the City Council, hereby **adopts** the Third Addendum and **approves** the Master Use Permit Amendment application subject to the following conditions:

1. The following conditions 18 and 20, imposed upon the Shopping Center in connection with Resolution 14-0026 in 2014, are modified to read as follows:

Condition No. 18:

18. Land Uses and Square Footages. The existing Shopping Center contains approximately 572,837 square feet gross leasable area (GLA). The Project may add a maximum of 79,872 net new square feet GLA (89,589 square feet with the Equivalency Program) within Phases I and II in the Development Area. The Shopping Center property may not exceed 686,509 square feet GLA (696,226 square feet with the Equivalency Program). Any increase in the floor area of non-retail uses above 20 percent of GLA for the Shopping Center shall require Equivalency Program review. Retail Sales as well as Banks and Savings and Loans uses, shall be classified as retail uses.

For any proposed square footage that exceeds 686,509 square feet, up to the 696,226 square foot cap, RREEF shall submit traffic and parking data for review by the Community Development Department and the City Traffic Engineer to determine if the proposal is consistent with the trip generation and parking thresholds established in the Certified Final EIR and the Equivalency Program. The study shall include an update of the site wide list of tenants in

Exhibit "A", uses and GLA, and RREEF shall pay the cost of the City Traffic Engineer's review.

The following land uses are allowed in the Shopping Center, provided that no land use type exceeds the applicable maximum square footage for each type:

- a. Retail Sales (including drug stores).
- b. Personal Services (e.g., Beauty salons, Dry-Cleaners, Shoe repair).
- c. Food and Beverage Sales (including Grocery Stores, but excluding high traffic generating or high parking demand land uses such as liquor or convenience stores as determined by the Director).
- d. Offices, Business and Professional - 69,300 square feet maximum for Business and Professional offices. Additionally, 28,800 square feet maximum for Medical and Dental offices (existing square footage rounded, plus an additional 7,000 square feet allowed). The 3500 Sepulveda Boulevard building may be occupied with 100% Business and Professional and/or Medical and Dental offices, as long as the total combined office square footage on the entire Mall site does not exceed 98,100 square feet, and the parking requirements are met.
- e. Banks and Savings and Loans - 36,200 square feet maximum (existing square footage, no additional square footage allowed). If any of the existing bank operators in stand-alone buildings adjacent to Sepulveda Boulevard terminate their bank operation for a period longer than 6 months (except for suspended operation in the event of fire, casualty or major renovation), they may not be replaced with another bank or savings and loan use. This clause is not intended to govern business name changes or mergers or acquisitions among bank operators, commercial banks or savings and loans. No new bank or savings and loan uses are permitted in existing or new stand-alone buildings. New banks or savings and loan uses are limited to a maximum of 2,000 square feet in area.
- f. Eating and Drinking Establishments (restaurants) - 89,000 square feet maximum, which includes outdoor dining areas for restaurants that provide full table service.
- g. Personal Improvement Services (limited to Fitness Studios and

their ancillary components) - 25,000 square feet maximum for fitness studios. No individual fitness studio use (including any ancillary components) shall exceed 5,000 square feet.

- h. Uses identified as permitted (by right) in the underlying zoning district (CC) which are not included in this Master Use Permit shall be left to the discretion of the Director to determine if the use is a retail or non-retail use, and if Planning Commission review is required.

The following uses are not permitted by this Master Use Permit:

- a. Personal Improvement Services (Gyms, Dance studios, Trade schools, etc), except for fitness studios as provided in 18.g. above.
- b. High traffic generating or parking demand land uses, including but not limited to, liquor stores and convenience stores as determined by the Director of Community Development.
- c. Bars.

Condition No. 20:

20. Alcohol Off-site Sales. An amendment to the Master Use Permit must be approved by the City prior to the sale of alcohol other than for on-site consumption at an eating and drinking establishment, unless specifically permitted by this Resolution. Tenants with existing ABC licenses and City approval for off-site alcohol sales and/or on-site tasting - i.e., Ralphs, CVS, and the Vintage Shoppe - may continue to sell alcohol for off-site consumption and on-site tasting in accordance with their approvals. In addition to these tenants with existing ABC licenses and City approvals, this Master Use Permit authorizes up to four restaurants to offer ancillary off-site alcohol sales provided that such ancillary sales are conducted pursuant to an approved ABC license. Specific proposals for ancillary off-site alcohol sales for any restaurant at the Shopping Center are subject to the administrative approval by the Director to determine consistency with the Master Use Permit.

- 2. The Applicant shall comply with all other conditions of approval contained in Resolution Nos. 14-0026 and 17-0119, unless otherwise modified herein.
- 3. *Terms and Conditions are Perpetual; Recordation of Covenant.* The provisions, terms and conditions set forth herein are perpetual, and are binding on RREEF, its respective successors-in-interest, and, where applicable, all tenants and lessees of RREEF. Further, RREEF shall record a covenant

indicating its consent to the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The covenant is subject to review and approval by the City Attorney. RREEF shall deliver the executed covenant, and all required recording fees, to the Department of Community Development within 30 days of the adoption of this Resolution. If RREEF fails to deliver the executed covenant within 30 days, this Resolution shall be null and void and of no further effect. Notwithstanding the foregoing, the Director may, upon a request by RREEF, grant an extension to the 30-day time limit.

4. *Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City.* The owner shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. The owner shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify the owner of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify the owner of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, the owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. The owner shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be construed to require the owner to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. The owner shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 9. The City Council's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.

SECTION 10. The time within which judicial review, if available, of this decision must be sought is governed by California Code of Civil Procedure Section 1094.6, unless a shorter time is provided by other applicable law. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the

affidavit or certificate of mailing to project applicant and any other persons or entities requesting notice of the decision.

SECTION 11. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on December 17, 2019

AYES:

NOES:

ABSENT:

ABSTAIN:

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk