



STAFF REPORT
CITY OF BEVERLY HILLS

**For the Planning
Commission Meeting of
June 25, 2009**

TO: Planning Commission

FROM: Shena Rojemann,
Assistant Planner

THROUGH: Jonathan Lait, AICP, City
Planner

SUBJECT: Development Plan Review for
open air dining on private
property and Extended Hours
Permit for a vacant restaurant
space located at **50 North La
Cienega Boulevard.**



RECOMMENDATION

It is recommended that the Planning Commission adopt the attached resolution, conditionally approving applications for a Development Plan Review Permit and an Extended Hours Permit.

BACKGROUND

This item was previously reviewed by the Planning Commission at its June 11, 2009 meeting (Staff Report – Attachment C). At that meeting, the Commission heard presentations from staff, the applicant and members of the public. The Commission requested additional information and that the item be returned to the June 25, 2009 meeting to address the following concerns:

Issues from June 11, 2009 PC Meeting	Response
Self parking could result in noise impacts to adjacent residences as patrons arrive and depart from restaurant.	As conditioned, all parking for the restaurant shall be valet. No self-parking shall be allowed.

<p>Parking on the surface area of the parking lot adjacent to the residential uses could result in noise impacts.</p>	<p>As conditioned, all parking shall be maintained in the subterranean parking garage. No parking shall be permitted on the surface level.</p>
<p>Extended hours of operation until 2:00am could result in adverse impacts to adjacent residential uses.</p>	<p>As conditioned, the extended hours of operation shall be limited to 11:00pm Sunday-Wednesday and 12:00am, Thursday-Saturday.</p>
<p>Trash and/or deliveries could impact adjacent residential uses depending on the time and location of such activities.</p>	<p>As conditioned, the use of the outdoor trash facilities shall be prohibited after 10:00 p.m., as restricted by BHC §10-3-1956. The trash facilities and deliveries shall be maintained in the subterranean parking levels.</p>
<p>The noise level from the patrons seated outdoors could impact the neighboring residential uses.</p>	<p>The applicant has provided a sound study demonstrating that no adverse noise impacts would be associated with outdoor dining in the location proposed. The sound study was conducted during a 24-hour period and measured peak noise levels during the requested extended hours of operation (from 10:00 pm – 12:00 am). The study specifically analyzed noise that might be generated from patrons of the proposed outdoor dining area as measured from the closest residential use.</p>
<p>Concern was expressed that a tenant was not known at the time of application submittal and that operational aspects of the space was not known.</p>	<p>The applicant has indicated that a letter of agreement, as a step towards the leasing of the subject space, has been executed between the applicant and a tenant for a Greek restaurant. As conditioned the applicant shall abide with the operational requirements as is required by the Beverly Hills Municipal Code Section 10-3-1956 regarding deliveries, commercial loading, trash facilities and the gathering of patrons and employees.</p>

Conditions of Approval

1. The extended hours of operation, for the acceptance of patrons, shall be limited to 11:00 p.m., Sunday through Wednesday (with no patrons being seated after 11:00 p.m.), and 12:00 a.m. Thursday through Saturday (with no patrons being seated after 12:00 a.m.).
2. The open air dining shall be limited to nineteen (19) tables and thirty-five (35) chairs, all to be located on private property.
3. Patrons of the restaurant shall be prohibited from self-parking and shall be required to use a Valet Parking Operation Plan, which shall be submitted to the Director of Community Development prior to the issuance of a building or development permit. The location of the valet pick up and drop-off shall be located at the surface level parking area near the property's ingress point.
4. The parking for the restaurant shall be maintained entirely on-site, in the subterranean garage. Surface level parking shall not be permitted.
5. The use of the outdoor trash facilities shall be prohibited after 10:00 p.m., pursuant to BHMC §10-3-1956.
6. All trash facilities shall be maintained in the subterranean parking levels and shall be maintained with nonmetallic lids which shall remain closed at all times.
7. Agents, associates or contractors of a nonresidential use shall not congregate behind the nonresidential structure or in any open area or public right of way separating a nonresidential structure and a residential zone during the extended hours.
8. No deliveries shall be received and no loading or unloading shall be permitted during the extended hours.
9. Restaurant management shall ensure that during the extended hours of operation, no unnecessary gathering of patrons, employees, or valet operators shall take place in the parking area.
10. Commercial loading shall be prohibited to occur after 10:00 p.m.
11. This application shall be brought back for review by the Planning Commission six months after the establishment of a tenant for the subject space.

12. The City expressly reserves jurisdiction relative to traffic and parking issues. In the event the Director determines that operation of the use at this site is having unanticipated traffic and parking impacts, the Director shall require the Applicant to pay for a parking demand analysis. After reviewing the parking demand analysis, if, in the opinion of the Director, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 19.5 of Chapter 3 or Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense.

A handwritten signature in black ink, appearing to read 'S. Rojemann', written over a horizontal line.

SHENA ROJEMANN, Assistant Planner

Attachments

- A) Sound Study
- B) Proposed Interior Floor Plan
- C) Staff Report from the Planning Commission Meeting of June 11, 2009
- D) Draft Planning Commission Resolution

Attachment A

Sound Study Requested by the Planning Commission

UNIFIED REAL ESTATE INVESTMENTS, LLC

50 NORTH LA CIENEGA BLVD. #212

BEVERLY HILLS, CALIFORNIA 90211

June 15, 2009

Mr. David Reyes

City of Beverly Hills

455 North Camden Dr.

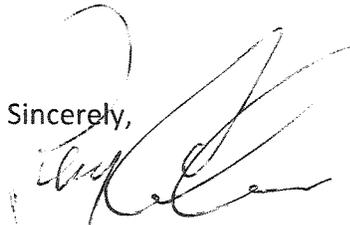
Beverly Hills, CA. 90210

Dear Mr. Reyes,

The study recommended by the Commission on June 11, 2009 has been completed. I have attached a copy of the report for submission to the Development Planning Commission for review and comments on June 24th, 2009. I have asked Mr. Khosravani, who conducted and produced the report, to be present during the hearing.

Kindly let me know if any additional information is needed before the due date so there will be no further delay in getting the approval from the commission members on June 24, 2009

Sincerely,

A handwritten signature in black ink, appearing to read 'Perry Cohan', written over a faint, illegible typed name.

Perry Cohan



March 15, 2009

Unified Real Estate Investments, LLC
50N. La Cienega Blvd., Suite 212
Beverly Hills, CA 90211

Attention: Mr. Perry Cohan, President

Subject: Noise Study and Survey for Outdoor Area of a Restaurant
50 La Cienega Blvd., Beverly Hill
V.A. Project Number 4523-001

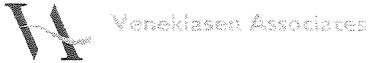
Dear Mr. Cohan:

Per your request **Veneklasen Associates, Inc. (VA)** has completed a noise study for assessment of any possible noise impact from the outdoor dining area of the proposed restaurant at the residences behind the building of the subject project. The proposed restaurant will be located at the first floor area of the property located at 50 North La Cienega Blvd., Beverly Hills, CA. There is not a line of sight between the restaurant area and the residences behind the building. The maximum occupancy of the outdoor seating area is 38. There are two levels of underground parking provided in the structure which will be available to the patrons by valet parking service as is practiced presently for the patrons of the existing Gaylord restaurant.

The purpose of the study was to measure the existing noise levels at this location and determine if the sound generated by the conversations of the patrons seated at the outdoor area can adversely affect the residences.

Noise measurements were performed at the east property line of the site, at the entry ramp to the underground parking spaces. The measurements started on June 13, 2009 at 11:00 am and were completed on June 14, 2009 at 10:00 am. During this period average noise levels, minimum and maximum levels and various statistical levels were continuously measured and recorded. The average noise levels for the hours of 10:00 pm to 12:00 am were 61 dBA. The minimum measured noise levels in the same period were 50 dBA. The statistical L_{90} levels which represent the ambient condition were about 55 dBA; the L_{90} levels are due to all sources, near and far, impacting this area;

The noise levels at this location are primarily due to the traffic on La Cienega Blvd. which controls the noise environment. The results of the measurements indicate that other sources; including all present sources associated with the subject project affect negligibly the noise levels at the east property line.



The sound levels due to the conversations of the patrons, seated in the proposed outdoor area were estimated at the east property line. The resulting level for all patrons, speaking simultaneously, was about 20 dBA which is lower by 30 dBA from the minimum measured levels. These sound levels will not affect the existing conditions at the east property line and will not be audible.

Based on the results of noise measurements and analysis, it may be concluded that the proposed restaurant will have no impact at the east property line of the site where the closest residence is located

If you have any questions regarding this report please do not hesitate to call me.

Sincerely,

Veneklasen Associates, Inc.

A handwritten signature in black ink, appearing to read 'H. Khosrovani', written over a horizontal line.

Hooshang Khosrovani, Ph.D., P.E.
Associate Principal

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Attachment B

Proposed Interior Floor Plan

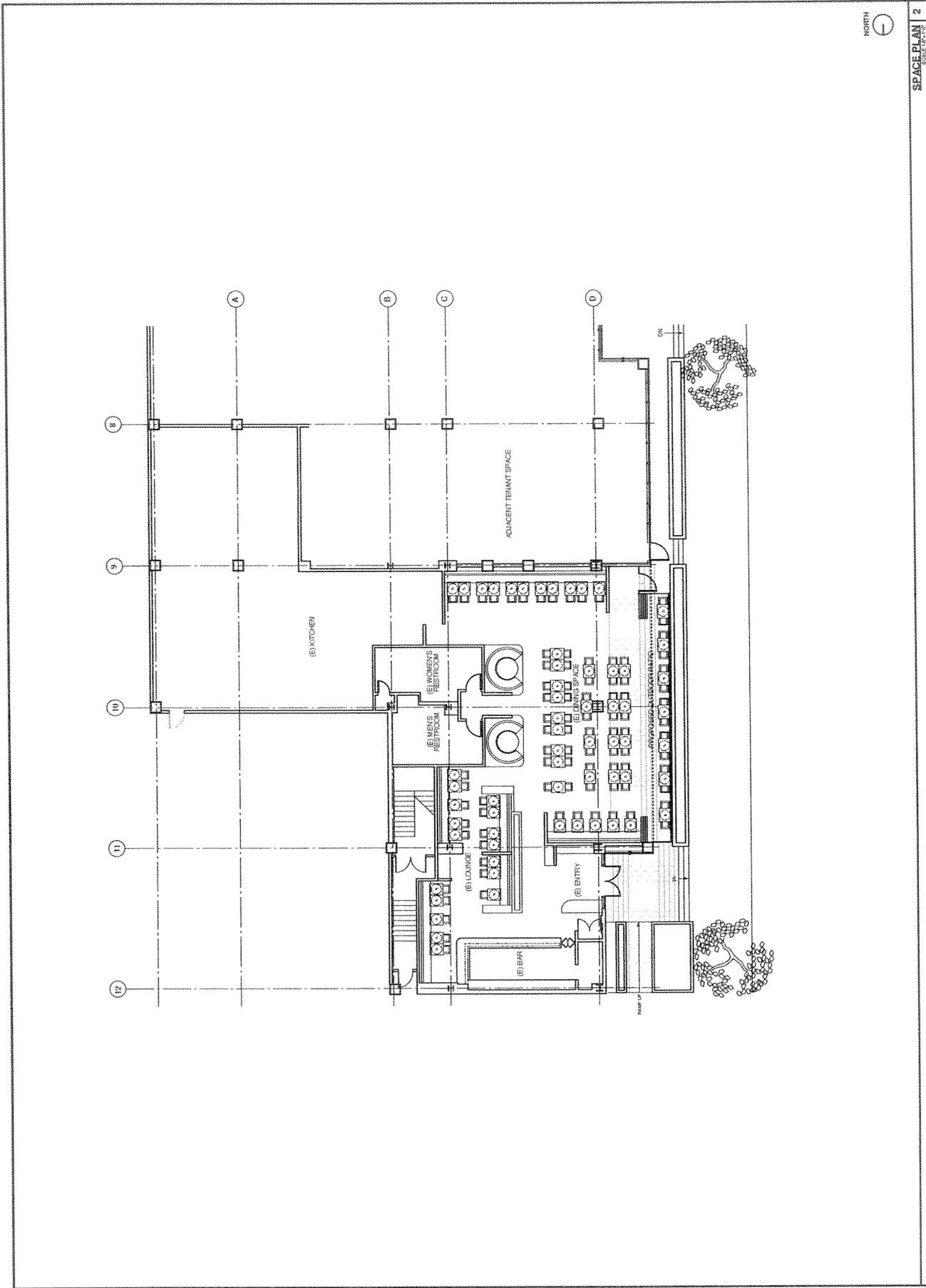
PROPOSED PATIO
 50 N. La Cienega Boulevard
 Beverly Hills, CA 90211

DATE: 11/15/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: [Number]

SCALE: AS SHOWN

DATE: 11/15/11

SCALE: AS SHOWN



NORTH

SPACE PLAN
 SCALE: 1/8" = 1'-0"

2

PC
A2.12

SPACE PLANS

Planning Commission Staff Report
50 North La Cienega Boulevard
June 25, 2009
Page 7

Attachment C

Staff Report from the Planning Commission
Meeting of June 11, 2009



STAFF REPORT
CITY OF BEVERLY HILLS

For the Planning
Commission Meeting of
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TO: Planning Commission

FROM: Shena Rojemann,
Assistant Planner

THROUGH: Jonathan Lait, AICP, City
Planner *per my for*

SUBJECT: Development Plan Review for
open air dining on private
property and Extended Hours
Permit for a vacant restaurant
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Cienega Boulevard.



RECOMMENDATION

It is recommended that the Planning Commission adopt the attached resolution, conditionally approving applications for a Development Plan Review Permit and an Extended Hours Permit.

EXECUTIVE SUMMARY

Perry Cohan, applicant, on behalf of Unified Real Estate, property owner, has submitted an application for a Development Plan Review (DPR) to permit open air dining for 19 tables and 35 chairs at the property located at 50 North La Cienega Boulevard. The applicant is also requesting approval of an Extended Hours Permit to operate a restaurant at the site until 2:00 a.m. daily. Although the subject space was previously utilized as a restaurant, it is currently vacant and the applicant seeks the requested entitlements to help facilitate its lease.

GENERAL INFORMATION	
Applicant	Perry Cohan
Project Owner	Unified Real Estate
Zoning District	C-3
Permit Streamlining Act Deadline	August 20, 2009 (without extension)

AREA CHARACTERISTICS AND PROJECT DESCRIPTION

The Project site is located on the east side of North La Cienega Boulevard, between Clifton Way and Wilshire Boulevard. The Project site is 400 feet wide by 110 feet deep. The site is developed with a 3-story, approximately 75,500 square foot commercial building which contains a combination of medical offices, commercial offices and restaurant space. The Project site includes two levels of subterranean parking garage having a total of 263 spaces. The restaurant is capable of serving 184 people (including open air dining) and on-site parking for the restaurant is legally nonconforming. The existing restaurant space is 6,800 square feet which, pursuant to the Beverly Hills Municipal Code Section 10-3-2730, would require a total of 151 parking spaces (1 parking space/45 square feet). The applicant is proposing to convert 500 square feet of the existing indoor dining area to outdoor dining, thus reducing the indoor dining square footage to 6,300 square feet. Pursuant to BHMC §10-3-2730, open air dining area is exempt from required parking, therefore the proposed space would require 140 parking spaces (1 parking space/45 square feet). Access to and from the parking garage is from a one-way entry drive and one-way exit drive from/onto North La Cienega Boulevard. A valet parking service has historically operated at the site and is planned to be provided in the designated valet zones.

The existing exterior glass wall of the Project space will be removed and inset approximately 9 feet to accommodate the open air dining area. Additionally, the applicant proposes a glass screening which will extend 3 feet 8 inches to align with the existing planter. By insetting the exterior wall and extending the glass screen to align with the planter, the applicant will be creating 700 square feet of outdoor dining area. In doing so, the applicant will reduce the interior square footage by 500 square feet, from 6,800 square feet to 6,300 square feet. The outdoor dining area is planned to contain 19 tables and 35 chairs.

The Project space has been recently vacated by the restaurant Tokyo Table. The applicant is requesting the addition of open air dining to enhance the marketability of the Project space to potential new tenants. Additionally, the applicant seeks the open air dining to improve the visibility of the restaurant use for pedestrian and vehicular traffic on North La Cienega Boulevard. The applicant is requesting an extended hours

permit to allow business until 2:00 a.m. daily so that prospective tenants will have flexibility in the hours of operation. The open air dining area will be located facing North La Cienega Boulevard and, as such, is separated from the multi-family residential area of North Hamilton Drive (to the east) by an approximately 100-foot wide, 3 story section of the commercial building, as well as a solid masonry that runs along the property line.

Project Processing

The applicant is seeking approval of a DPR for open air dining on private property and an Extended Hours Permit for the restaurant operation. BHMC Section 10-3-3100B¹ requires all uses involving open air dining for more than 2 tables or seating for more than 8 persons on a site located within 170 feet of a residential zone, but not in a public right of way, to obtain a DPR. The proposed open air dining area is within approximately 100 feet of the R-4 zone that is located along North Hamilton Drive, (east of the project site).

ENVIRONMENTAL DETERMINATION

This project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City, and it has been determined that the project is exempt from CEQA regulations pursuant to Section 15301 (a) and (e) of the State CEQA Guidelines for Existing Facilities. The project does not involve any new construction or the addition of interior floor area, but would result in (a) interior and exterior alterations which would allow outdoor dining adjacent to an existing building and would (e) be an addition of less than 2,500 square feet to the existing facility, therefore the project has been determined to be categorically exempt from CEQA.

PUBLIC NOTICE AND COMMENTS

Notice of the proposed project and public hearing was mailed on June 1, 2009 to all owners and occupants of single-family residential properties located within 500 feet and residential occupants of multi-family residential or nonresidential properties located within 300 feet from the exterior boundaries of the property. At the time of the writing of this report, no written or verbal inquires were received.

¹ BHMC Section 10-3-3100: Notwithstanding any other provision of this code, or ordinance of the city of Beverly Hills, the following shall not be permitted to be established unless a development plan is approved pursuant to the provisions of this article establishing a development plan review procedure:

B. All uses involving open air dining for more than two (2) tables or seating for more than eight (8) persons on a site located within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone, but not in a public right of way;

ANALYSIS

The Project space was previously occupied by the restaurant Tokyo Table and is currently vacant. To amplify the marketability of the space to prospective tenants, the applicant is requesting to improve the space with the addition of outdoor dining and an extended hours permit. Recognizing the current downturn in the economy, the City desires to see current spaces occupied and recognizes the applicant's wishes to improve the current space to achieve this objective; however, staff has concerns with granting an extended hours permit until 2:00 a.m. daily without knowing the business operations of the tenant who will occupy the space. Therefore, it has been conditioned that the extended hours permit be limited to 12:00 a.m., Thursday through Sunday, which is consistent with extended hours permits issued for similar uses in the neighboring vicinity. Consequently, staff has included a condition of approval which will require the applicant to return to the Planning Commission for review of the entitlements granted herein, six months after the establishment of a tenant.

Extended Hours Permit

The subject site is located in an area that is immediately adjacent to residential development, which has been classified as a transitional area. Businesses located in a transitional area are not permitted to receive patrons after 10:00 p.m. unless an Extended Hours Permit has been issued to allow operation past 10:00 p.m. In accordance with BHMC Section 10-3-1958, the Planning Commission shall grant an Extended Hours Permit if it finds that the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of any of the following:

- A. *The proposed extended hours permit and open air dining use will not create any significantly adverse impacts on neighboring properties as a result of:***
- ***The accumulation of garbage, trash or other waste;***
 - ***Noise created by operation of the restaurant or by employees or visitors entering or exiting the restaurant;***
 - ***Light and glare; or***
 - ***Odors and noxious fumes.***

The proposed location of the open air dining area is along North La Cienega Boulevard and is separated from the adjacent multi-family residential (to the east) by the existing 3-story commercial building and a solid masonry wall located at the east property line and so it is expected that the existing commercial building would act as a noise buffer and lessen any potential noise impacts associated with the operation of the open air dining. The proposed restaurant is consistent with the use that previously occupied the space; however, the open air dining area is a new element. At this time, it is unknown who the new tenant will be in the subject space and consequently, it is impossible to fully evaluate the possible impacts that the tenant's outdoor dining could have on the

neighboring residents with respect to garbage or trash, noise created, light and glare or odors and noxious fumes. As conditioned herein, the applicant shall return to the Commission for further evaluation six months after the establishment of a tenant.

B. Pedestrian queuing.

The expected location for any pedestrian queuing is located entirely on private property at the restaurant's entrance, which is accessed along North La Cienega Boulevard. A patron queue is expected only during peak hours of operation, which cannot be determined until a tenant has been established. Pedestrian queuing is anticipated to be buffered from the adjacent residential properties via the existing 3-story commercial building and an existing solid masonry wall located at the east property line. As conditioned, the applicant shall provide a site plan which indicates the onsite queuing location so that the Commission may review and verify that the queuing will not disrupt the peace and quiet of the adjacent neighborhood during the peak hours or the extended hours of operation.

C. Crime or peril to personal safety and security.

The restaurant is located near other establishments of equal activity levels. There are no indications that operating four hours later would bring an incidence of increased crime or peril to personal safety and security. The majority of restaurants located in the vicinity of the subject site are typically open until 11-12 in the evening; however, during staff's research for the proposed Extended Hours Permit, some restaurants were identified to be operating after 10:00 p.m. without the issuance of an Extended Hours Permit. Pursuant to BHMC Section 10-3-1958 (H), an extended hours permit is not required for any business that was legally operating during extended hours on January 8, 1999, as part of its customary weekly schedule of business operations. Majority of the neighboring restaurants were established and operating during extended hours prior to January 8, 1999. In July 2008, a neighboring restaurant, Gonpachi, applied for open air dining and an extended hours permit. At that time the Planning Commission reviewed the request and granted the open air dining element in conjunction with the extended hours permit for the acceptance of patrons, until 12:00 a.m., Thursday through Sunday, with no patrons being seated after 12:00 a.m.

Although no Extended Hours Permits have been issued in the majority of the establishments in the local vicinity of the subject site, the Commission should note that businesses have been operating during extended hours without any complaints being filed against the restaurants that were researched, and that operation of the subject site during extended hours would be similar to operations currently taking place along North La Cienega Boulevard.

During staff's review of the proposed extended hours of operation, many factors were taken into consideration such as vehicle and patron noise, light generated by the parking facilities, the valet parking operation, and gathering of patrons or employees.

It is anticipated that extending the hours of operation would potentially impact neighbors located adjacent to the restaurant, as the proposed closing time of 2:00 a.m. may be beyond the reasonable expectations of the adjacent neighborhood given the very close proximity of the parking lot to existing and new residential developments. As such, staff has recommended that specific conditions relating to operating hours be attached to any Extended Hours Permit in order to mitigate any potential impacts. As

conditioned, the extended hours permit shall restrict the hours of operation to 12:00 a.m., Thursday through Sunday.

D. Use of residential streets for parking which is likely to cause activity associated with the subject extended hours operation to intrude substantially into a residential area.

No patron queues are expected outside the subject property. All parking for the restaurant is provided on-site or within private parking lots under the existing 3-story commercial building. Therefore, the extended hours operation is not likely to cause activity that would intrude substantially into a residential neighborhood.

E. Effects on traffic volumes and congestion on local residential streets.

Since the subject tenant space has operated as a restaurant later than 10:00 p.m. in previous years and the proposed restaurant, as conditioned, is the same use with consistent hours of operation, the extended hours of operation for a new restaurant tenant is not anticipated to contribute to the existing traffic volumes and congestion on residential streets, and are not likely to cause disruption of the peace and safety of the adjacent residential neighborhood.

F. Cumulative impacts relating to the existing concentration of extended hours operation in the vicinity of the proposed extended hours operation.

As discussed in the conditions above, the proposed restaurant is located along a busy restaurant corridor, where restaurants have generally been open until 11 p.m. or later. At this time, a tenant has not been verified, thus full analysis of the potential impacts on the local vicinity cannot not be evaluated. Although the request to remain open until 2:00 a.m. may not cause disruption of the peace and safety of the adjacent residential neighborhood; due to the location of the tenant space and its proximity to residential uses, approval of the extended hours permit is conditioned to a 12:00 a.m. closing time, consistent with recent approvals granted in the area. This condition, along with the requirement to return to the Commission after 6 months of occupancy, will ensure that cumulative impacts relating to the existing uses with extended hours will not substantially disrupt the peace and quiet of the adjacent residential neighborhood.

Open Air Dining and Development Plan Review

Pursuant to BHMC Section 10-3-3508 "Standard of Review", the Planning Commission shall approve an Open Air Dining permit and Development Plan Review application if all of the following findings can be made.

1) The proposed open air dining use is consistent with the General Plan and any specific plans adopted for the area.

The restaurant is located within a commercial zone along North La Cienega Boulevard, which permits and encourages restaurant uses. The General Plan designates the property for commercial uses and encourages outdoor activities and sitting areas where feasible and, therefore, this Open Air Dining request is consistent with the goals

and policies of the General Plan.

- 2) The proposed open air dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.**

The proposed outdoor dining area located along North La Cienega Boulevard is in an area of the city that is mixed with retail, restaurant and office uses. The open air dining area does not extend beyond the boundaries of the property and, therefore, will not disrupt pedestrian or vehicular traffic along North La Cienega Blvd. As proposed, the open air dining is 100 feet from the adjacent residential to the East and as such is separated by the existing 3-story commercial building and an existing solid masonry wall. As conditioned, the open air dining is not anticipated to have an adverse affect on neighboring properties.

- 3) The nature, configuration, location, density, and manner of operation of any open air dining use proposed will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.**

The restaurant is located immediately adjacent to multi-family residential development to the east located along North Hamilton Drive. Existing development within the multi-family residential zone consists of condominium and apartment buildings, which vary in size and height. Although the project site is located immediately adjacent to the residentially zoned property, the proposed open air dining area is located entirely facing North La Cienega Boulevard and is substantially screened by the existing 3-story commercial building, and by a solid masonry wall located along the property line. Development along North La Cienega Boulevard consists of retail, commercial and restaurants accessible to both vehicular and pedestrian traffic. Although, the design, configuration and location of the open air dining appear to be consistent with other uses in surrounding area, the Commission may wish to address the lack of information available at this time regarding the operations of the proposed open air dining, as a tenant has not yet been established.

- 4) The proposed open air dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right of way and will not create any significantly adverse parking impacts as a result of employee or patron demands.**

The proposed open air dining area would be located in a space previously occupied by a restaurant and will be contained entirely on private property. Since a restaurant use previously occupied the subject space, it is expected that the open air dining will not have a negative impact on the traffic flows. All patron service will occur outside of the public right-of-way, on private property minimizing pedestrian-vehicle conflicts or pedestrian safety hazards. It is anticipated that the number of patrons frequenting the restaurant as a result of the new outdoor dining area would be somewhat limited. The primary goal of the outdoor dining is to provide patrons with additional seating options and enhance the restaurant's atmosphere. The number of parking spaces has been determined to be a nonconforming condition, which is being maintained, therefore, the proposal will not generate any additional demand for parking that has not already been accounted for. Sufficient on-site parking is provided to meet BHMC code requirements and valet services, as conditioned, will be available in the designated valet zones.

Therefore, the proposed open air dining is not anticipated to have any adverse impact on the flow of pedestrians or traffic along the public right-of-way or the parking impacts as a result of employee or patron demands.

5) *The proposed open air dining use will not be detrimental to the public health, safety, or general welfare.*

The proposed design and configuration of open air dining meets all the minimum development standards set forth in the BHMC Section 10-3-3500: Open Air Dining for such use and it is not anticipated to be a detriment to the public health, safety, or the general welfare of the community.

Staff recommends the following conditions of approval:

Conditions of Approval

1. The extended hours of operation, for the acceptance of patrons, shall be limited to 12:00 a.m., Thursday through Sunday, with no patrons being seated after 12:00 a.m.
2. The open air dining shall be limited to nineteen (19) tables and thirty-five (35) chairs, all to be located on private property.
3. Use of the outdoor trash facilities shall be prohibited after 10:00 p.m., pursuant to BHMC §10-3-1956.
4. Restaurant management shall ensure that during the extended hours of operation, no unnecessary gathering of patrons, employees, or valet operators shall take place in the parking area.
5. Commercial loading shall be prohibited to occur after 10:00 p.m., pursuant to BHMC §10-3-1956.
6. Six months after the establishment of a tenant for the subject space, the applicant shall return to the Planning Commission for a review of the entitlements granted herein. Such review shall be paid for by the applicant. Failure to submit an application for Commission review may result in the revocation of the entitlements granted herein.
7. The applicant shall provide a site plan which identifies a space for pedestrian queuing on site. This site plan shall be brought back for review by the Planning Commission six months after the establishment of a tenant for the subject space.



SHENA ROJEMANN, Assistant Planner

Attachments

1. Draft Planning Commission Resolution

Attachment 1

Draft Planning Commission Resolution

Attachment D

Draft Planning Commission Resolution

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A DEVELOPMENT PLAN REVIEW TO ALLOW OPEN AIR DINING AND AN EXTENDED HOURS PERMIT FOR THE PROPERTY LOCATED AT 50 NORTH LA CIENEGA BOULEVARD (VACANT RESTAURANT).

The Planning Commission of the City of Beverly Hills hereby finds, resolves and determines as follows:

Section 1. Perry Cohan, on behalf of Unified Real Estate, property owner (hereafter referred to as the "Applicant"), submitted an application for a Development Plan Review (DPR) to permit open air dining at the property located at 50 North La Cienega Boulevard (vacant restaurant space). Pursuant to Beverly Hills Municipal Code Section 10-3-3100(B), the Applicant must obtain a DPR to operate open air dining on a site within 170 feet of an R-1, R-4 or RMCP zone. The proposed outdoor dining will consist of nineteen (19) tables and seating for up to thirty five (35) persons on private property, which is located facing North La Cienega Boulevard. In addition, the Applicant has submitted an application for an Extended Hours Permit to receive patrons until 2:00 a.m. daily at the project site. The application for the DPR and the Extended Hours Permit is hereinafter referred to collectively as the "Project."

The Project site is 400 feet wide and 110 feet deep. The site is developed with a three-story, 75,500 square foot commercial building with two levels of subterranean parking garage. All levels of the building are occupied by medical offices, commercial offices and restaurant space. The restaurant is currently 6,800 square feet and has a maximum capacity of 184 people. Approximately 500 square feet of the existing restaurant will be converted from

indoor dining area to outdoor dining area. The outdoor dining area will be extended beyond the wall of the existing restaurant space and the total outdoor dining area will be 700 square feet. Parking for the Project site is located within the subterranean parking garage that can accommodate a total of 263 parking spaces. Access to and from the parking garage is from a one-way entry drive and one-way exit drive from/onto North La Cienega Boulevard. A valet parking service has historically operated at the site and is planned to be provided in the designated valet zones.

The subject site is located adjacent to a multi-family residential zone necessitating a DPR to allow the proposed open air dining area. The open air dining area will be located entirely along North La Cienega Boulevard and, as such, is separated from the multi-family residential area of North Hamilton Drive by an approximately 100-foot wide, 3-story section of the commercial building, as well as a solid masonry wall that runs along the property line.

The proposed outdoor dining area is to be located along North La Cienega Blvd. The existing exterior glass wall of the Project will be removed and inset approximately 9 feet to accommodate the open air dining area. Additionally, a glass screening will be extended 3 feet 8 inches to align with the existing planters. By insetting the wall and extending the glass screen to align with the planter, 700 square feet of outdoor dining area will be created. This will result in a 500 square foot reduction of the interior dining area, reducing the square footage from 6,800 to 6,300. The outdoor dining area is planned to contain 19 tables and 35 chairs.

Section 2. The Project has been environmentally reviewed pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*), and the

City's environmental guidelines. A Class 1 Categorical Exemption has been issued pursuant to CEQA Guidelines Section 15301 (existing facilities) for minor additions to an existing structure of less than 2,500 square feet, which constitutes a negligible expansion of the use from that presently existing.

Section 3. On June 11, 2009 the Planning Commission held a duly noticed public hearing to consider the application. Evidence, both written and oral, was presented at said hearing. At the meeting, the Commission requested additional information be provided and that the item be continued to the June 25, 2009 Planning Commission meeting. Evidence, both written and oral, was presented at June 25, 2009 hearing.

Section 4. In considering the application for the Extended Hours Permit, the Planning Commission considered whether the extended hours operation will substantially disrupt the peace and quiet of the adjacent neighborhood as a result of any of the following:

1. Adverse impacts on the neighboring residences as a result of:
 - The accumulation of garbage, loiter or other waste, both on and off of the Project site;
 - Noise created by the operation of the dining area, extended hours operation or employees or visitors entering or exiting the site;
 - Light and glare;
 - Odors and noxious fumes;
2. Pedestrian queuing;

3. Crime or peril to personal safety and security;
4. Use of residential streets for parking which is likely to cause activity associated with the extended hours operation to intrude substantially into a residential area;
5. The effects on traffic volumes and congestion on local residential streets; and;
6. The cumulative impacts relating to the existing concentration of extended hours operation in the vicinity of the proposed extended hours operation.

Section 5. Based upon the evidence presented, including the staff report and oral testimony, the Planning Commission hereby finds with respect to the Extended Hours Permit:

5.1 The proposed location of the open air dining area is along North La Cienega Boulevard and is separated from the adjacent multi-family residential (to the east) by the existing 3-story commercial building and a solid masonry wall located at the east property line and so it is expected that the existing commercial building would act as a noise buffer and lessen any potential noise impacts associated with the operation of the extended hours permit. The proposed restaurant is consistent with the use that previously occupied the space; however, the open air dining area is a new element. At this time, it is unknown who the new tenant will be in the subject space and consequently, it is impossible to fully evaluate the possible impacts that the tenant's outdoor dining and extended hours permit could have on the neighboring residents with respect to garbage or trash, noise created, light and glare or odors and noxious fumes. As

conditioned herein, the applicant shall return to the Commission for further evaluation six months after the establishment of a tenant.

5.2 As conditioned, the pedestrian queuing is not anticipated to disrupt the peace and quiet of the adjacent neighborhood during the peak hours or the extended hours of operation. The expected location for pedestrian queuing is located entirely on private property at the restaurant's entrance which is accessed along North La Cienega Boulevard. A patron queue is expected only during peak hours of operation, which cannot be determined until a tenant has been established. Pedestrian queuing is anticipated to be buffered from the adjacent residential properties via the existing 3-story commercial building and an existing solid masonry wall located at the east property line. Furthermore, a pedestrian queuing area shall also be provided in the interior entrance area of the subject space.

5.3 As conditioned the restaurant is not expected to increase the crime or peril to personal safety and security in the area. The majority of restaurants located in the vicinity of the subject site are typically open until 11-12 in the evening; however, during staff's research for the proposed Extended Hours Permit, some restaurants were identified to be operating after 10:00 p.m. without the issuance of an Extended Hours Permit. Pursuant to BHMC Section 10-3-1958 (H), an extended hours permit is not required for any business that was legally operating during extended hours on January 8, 1999, as part of its customary weekly schedule of business operations. Majority of the neighboring restaurants were established and operating during extended hours prior to January 8, 1999. In July 2008, a neighboring restaurant, Gonpachi, applied for open air dining and an extended hours permit. At that time the Planning Commission reviewed the request and granted the open air dining element in conjunction with the extended

hours permit for the acceptance of patrons, until 12:00 a.m., Thursday through Sunday, with no patrons being seated after 12:00 a.m. It is anticipated that extending the hours of operation would potentially impact neighbors located adjacent to the restaurant, as the proposed closing time of 2:00 a.m. may be beyond the reasonable expectations of the adjacent neighborhood given the very close proximity of the parking lot to existing and new residential developments. As such, the extended hours permit shall restrict the hours of operation to 11:00 p.m., Sunday through Wednesday and 12:00 a.m., Thursday through Saturday.

5.4 As presented, the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood due to pedestrian queuing. No patron queues are expected outside the subject property. As conditioned, all parking for the restaurant will be provided via valet parking and all vehicles will be parked in the subterranean parking levels below the existing 3-story commercial building. Therefore, the extended hours operation is not likely to cause activity that would intrude substantially into a residential neighborhood.

5.5 As conditioned, the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood due to traffic volumes and congestion on local residential streets. Since the subject tenant space has operated as a restaurant later than 10:00 p.m. in previous years and the proposed restaurant, as conditioned, is the same use with consistent hours of operation, the extended hours of operation for a new restaurant tenant is not anticipated to contribute to the existing traffic volumes and congestion on residential streets, and are not likely to cause disruption of the peace and safety of the adjacent residential neighborhood.

5.6 As conditioned, the extended hours operation of a restaurant in this location will not provide any additional cumulative impact on residential properties the proposed restaurant is located along a busy restaurant corridor, where restaurants have generally been open until 11 p.m. or later. Although the request to remain open until 2:00 a.m. may not cause disruption of the peace and safety of the adjacent residential neighborhood; due to the location of the tenant space and its proximity to residential uses, approval of the extended hours permit is conditioned to a 11:00 p.m., Sunday through Wednesday and 12:00 a.m., Thursday through Saturday, consistent with recent approvals granted in the area. This condition, in conjunction with all other conditions of approval, will ensure that cumulative impacts relating to the existing uses with extended hours will not substantially disrupt the peace and quiet of the adjacent residential neighborhood.

Section 6. In considering the application for the Development Plan Review Permit, the Planning Commission considered the following issues:

1. Whether the proposed plan is consistent with the General Plan and any specific plans for the area;
2. Whether the proposed plan will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
3. Whether the nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will significantly and adversely interfere with the use and enjoyment of other residential properties in the vicinity of the subject property;

4. Whether the proposed plan will create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and whether the proposed plan will create any significantly adverse parking impacts as a result of employee or patron parking demand;

5. Whether the proposed plan will be detrimental to the public health, safety or general welfare.

Section 7. Based upon the evidence presented, including the staff report and oral testimony, the Planning Commission hereby finds with respect to the DPR:

7.1 The restaurant is located within a commercial zone along North La Cienega Boulevard, which permits and encourages restaurant uses. The General Plan designates the property for commercial uses and encourages outdoor activities and sitting areas where feasible, and therefore this Open Air Dining request is consistent with the goals and policies of the General Plan.

7.2 As conditioned, the proposed Project will not adversely affect existing and anticipated development in the vicinity, will promote harmonious development of the area and will not be detrimental to the public health, safety and welfare. The proposed outdoor dining area located along North La Cienega Boulevard is in an area of the city that is mixed with retail, restaurant and office uses. The open air dining area does not extend beyond the boundaries of the property and, therefore, will not disrupt pedestrian or vehicular traffic along North La Cienega Blvd. As proposed, the open air dining is 100 feet from the adjacent residential to the East and

as such is separated by the existing 3-story commercial building and an existing solid masonry wall.

7.3 As conditioned, the nature, configuration, location, density, height and manner of operations of the proposed Project are not anticipated to significantly interfere with the use and enjoyment of residential properties in the vicinity of the subject property. The restaurant is located immediately adjacent to multi-family residential development located along North Hamilton Drive. Existing development within the multi-family residential zone consists of condominium and apartment buildings, which vary in size and height. The project site is located immediately adjacent to the residentially zoned property, the proposed outdoor dining area is located entirely facing North La Cienega Boulevard and is substantially screened by the three-story restaurant commercial building, and by a solid masonry wall located along the property line. The design, configuration and location of open air dining appear to be consistent with other uses in the surrounding area and thus the nature, location, density, height and manner of operations of the restaurant is not anticipated to significantly interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

7.4 As conditioned, the proposed Project will not create any significant adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts or pedestrian safety hazards, nor will the proposed Project have significant parking impacts as a result of patron or employee parking demand. The proposed open air dining area is located in a space previously occupied by a restaurant and will be contained entirely on private property. Since the restaurant use previously occupied the subject space, it is expected that the open air dining will not have a negative impact on the traffic flows. All patron service will occur outside of the public right-of-way, on private property minimizing pedestrian-vehicle conflicts or pedestrian safety hazards. It

is anticipated that the number of patrons frequenting the restaurant as a result of the new outdoor dining area would be somewhat limited. The primary goal of the outdoor dining is to provide patrons with additional seating options and enhance the restaurant's atmosphere. The number of parking spaces has been determined to be a nonconforming condition, which is being maintained, therefore, the proposal will not generate any additional demand for parking that has not already been accounted for. Sufficient on-site parking is provided to meet BHMC code requirements and valet services, as conditioned will be required in the designated valet zone. Therefore, the proposed open air dining is not expected to have any adverse impact on the flow of pedestrians or traffic along the public right-of-way or the parking impacts as a result of employee or patron demands.

7.5 The proposed design and configuration of open air dining meets all the minimum development standards set forth in the BHMC Section 10-3-3500: Open Air Dining for such use. As conditioned, implementation of the proposed Project will adequately protect the public health, safety and general welfare.

Section 8. Based upon the foregoing, the Planning Commission hereby approves a Development Plan Review Permit for open air dining and issues an Extended Hours Permit for Gonpachi Restaurant, subject to the following conditions:

1. The extended hours of operation, for the acceptance of patrons, shall be limited to 11:00 p.m., Sunday through Wednesday (with no patrons being seated after 11:00 p.m.), and 12:00 a.m. Thursday through Saturday (with no patrons being seated after 12:00 a.m.).

2. The open air dining shall be limited to nineteen (19) tables and thirty-five (35) chairs, all to be located on private property.

3. Patrons of the restaurant shall be prohibited from self-parking and shall be required to use a Valet Parking Operation Plan, which shall be submitted to the Director of Community Development prior to the issuance of a building or development permit. The location of the valet pick up and drop-off shall be located at the surface level parking area near the property's ingress point.

4. The parking for the restaurant shall be maintained entirely on-site, in the subterranean garage. Surface level parking shall not be permitted.

5. The use of the outdoor trash facilities shall be prohibited after 10:00 p.m., pursuant to BHMC §10-3-1956.

6. All trash facilities shall be maintained in the subterranean parking levels and shall be maintained with nonmetallic lids which shall remain closed at all times.

7. Agents, associates or contractors of a nonresidential use shall not congregate behind the nonresidential structure or in any open area or public right of way separating a nonresidential structure and a residential zone during the extended hours.

8. No deliveries shall be received and no loading or unloading shall be permitted during the extended hours.

9. Restaurant management shall ensure that during the extended hours of operation, no unnecessary gathering of patrons, employees, or valet operators shall take place in the parking area.

10. Commercial loading shall be prohibited to occur after 10:00 p.m.

11. This application shall be brought back for review by the Planning Commission six months after the establishment of a tenant for the subject space.

12. The City expressly reserves jurisdiction relative to traffic and parking issues. In the event the Director determines that operation of the use at this site is having unanticipated traffic and parking impacts, the Director shall require the Applicant to pay for a parking demand analysis. After reviewing the parking demand analysis, if, in the opinion of the Director, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 19.5 of Chapter 3 or Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense.

13. All recyclable containers, including glass bottles, shall be placed in bags prior to disposal into the recyclable bin to minimize noise and odors.

14. The Applicant shall maintain the Project site area in a clean and sanitary condition including emptying trash receptacles and sweeping the ground regularly.

15. The Applicant shall operate the open air dining area in a manner that meets all requirements of the Los Angeles County Health Department.

16. The Applicant shall submit proof that arrangements for waste disposal services have been contracted and approval by the Los Angeles County Health department has been secured for an appropriate trash area for the restaurant.

17. These conditions of approval shall run with the land and shall remain in force for the duration of the life of this Permit. This resolution approving the DPR and Extended Hours Permit shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit

18. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days of the Planning Commission decision.** At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the DPR Permit and Extended Hours Permit **shall be null and void** and of no further effect. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the City's ability to approve the DPR and grant the Extended Hours Permit.

19. Any violation of the conditions of this Resolution shall constitute a nuisance and a violation of the Municipal Code, and may result in revocation of the Development Plan Review Permit pursuant to the procedures set forth in Title 10, Chapter 3 of the Beverly Hills Municipal Code and/or other enforcement action as authorized by law.

Section 9. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: June 25, 2009

Noah Furie
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

Secretary

Approved as to form:

Approved as to content:

David M. Snow
Assistant City Attorney

Jonathan Lait, AICP
City Planner